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CMS Proposes Reopening MLR Filings to Account for Risk Corridor Payouts

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The Centers for Medicare & Medicaid Services (CMS) has issued guidance on how health insurers must report and rebate recoveries obtained from the federal government under the Supreme Court's 8-1 decision in Maine Community Health Options v. United States. Under the ruling, issued in April 2020 after years of litigation, the federal government must make risk corridor payments still owed to health insurers who suffered losses in the Affordable Care Act's (ACA) health insurance exchanges during benefit years 2014 to 2016. In total, insurers are still owed about $12 billion dollars. In recent weeks, consistent with the Supreme Court's decision, the Treasury Department has begun making payments.

The payment of risk corridor receivables in 2020 for the benefit years 2014 to 2016 creates a scenario not envisioned when CMS issued rules for the ACA's Medical Loss Ratio (MLR) program. MLR regulations generally establish a three-year period during which the claims and quality improvement expenses of the individual or small group market issuer must meet or exceed 80% of its collected premiums. If an issuer's MLR is below 80%, it must rebate the difference to its members.

The determination of whether an issuer must make an MLR rebate is determined by the average MLR over three preceding years (for example, MLR rebates paid in 2020 are based on the average MLR from benefit years 2017 to 2019). Because most issuers lost money in the early years of the ACA exchanges, MLRs generally exceeded 80%, and few MLR rebates were required. As issuers and regulators subsequently adjusted premiums upward, MLRs inched downward and more rebates were paid. The Kaiser Family Foundation has calculated that MLR rebates will total $2.7 billion in 2020.

On September 30, 2020, CMS issued a draft bulletin describing how it proposes to treat the risk corridor litigation receivables in the MLR rebate calculation. CMS proposes that the late-arriving risk corridor receivables will be retroactively applied to issuers' original MLR filings for the years that include plan years 2014 to 2016 (MLR years 2015 to 2018). Retroactively applying the risk corridor payments mitigates the massive MLR rebates that would result if risk corridor receivables were treated as a lump sum payment for benefit year 2020. By retroactively applying the receivables to past years when most issuers lost money, smaller rebates or no rebates will result for most issuers.

Nonetheless, the CMS draft proposal does create a number of potential complications. As one example, under this proposal, issuers will have to locate members who left the issuer's plan years ago. As another example, issuers will have to explain to members why they are receiving a rebate — a difficult task given the exceptional legal and regulatory maneuvers that led to this outcome. In order to address these complications, issuers will need to incur the administrative expense of reopening books in order to meet their obligations.

A link to the bulletin is found here. CMS is accepting comments on its proposed guidance until October 21, 2020.

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