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Texas Medical Loss Ratio Adjustment Request
A Bad Deal for Consumers

The health of our entire state is improved when every one of us has access to quality, affordable health care. A key new consumer protection from the national health reform law will make it easier for Texans to purchase health care plans that provide better value for our money. Insurers are now required to meet minimum standards for how much of each premium dollar is used for health care, and to make rebates to consumers if they miss those standards. A recent request from the Texas Department of Insurance (TDI) seeks to delay full implementation of this new consumer protection, which will redirect to insurance companies hundreds of millions of dollars in rebates due by law to Texas consumers.

Medical Loss Ratio Standards and Rebates

Under the Patient Protection and Affordable Care Act (ACA), health insurers must spend a reasonable share of premium dollars on medical care and quality improvement efforts, as opposed to administration, marketing, and profits. These standards, known as medical loss ratio (MLR) requirements, hold insurers accountable for how they use consumers' premium dollars.

Starting in 2011, insurers that sell health plans to large businesses (firms with 51 or more employees) must spend at least 85 percent of the premium dollars they collect on medical care and quality improvement. Insurers that sell plans to small employers (2-50 employees) or directly to individuals and families in the "individual market" must meet an 80 percent medical loss ratio. Federal law makes several adjustments to lower MLR standards for smaller and newer plans and certain other types of plans.[1]

Insurers that do not meet MLR requirements must annually refund the excess to policyholders. The first rebates for calendar year 2011 MLRs will be sent to consumers and employers by August 1, 2012. Federal rules outlining the rebate process are under development.

MLR Adjustments

The ACA allows the U.S. Secretary of Health and Human Services (HHS) to adjust a state's MLR standard for the individual market on a case-by-case basis, if a state's individual market would be destabilized by an 80 percent standard. Federal law makes no provision for the adjustment of MLRs in the group markets.

The state's insurance commissioner may apply to HHS for an individual market MLR adjustment for up to three years. The Texas Department of Insurance (TDI) applied to HHS for an adjustment on July 28, 2011. The application is currently pending with HHS. Public comments about Texas' application are due to HHS by December 8, and HHS must issue a decision by December 28, with a possible 30-day extension if needed.

State applications for MLR adjustments must contain the following information:

- Current state MLR standard in the individual market, if any (Texas has none);
- State market withdrawal requirements. For example, Texas requires notice of individual market withdrawal to TDI and affected consumers 180 days in advance and prohibits insurers that exit the individual market from returning to the state's market for five years;[2]
- Mechanisms to provide coverage options to consumers. For example, Texans have access to a state and a federal high-risk pool;
- For all individual market health plans operating in the state, the number of enrollees by product, premium data by product, and insurer market share;
- For each individual market health plan with more than 1,000 enrollees, earned premium, MLR reported under state law, estimated MLR in accordance with the calculation in federal regulation, total agents' commission expenses, estimated rebates to consumers that would be required under the federal MLR regulation, net underwriting profit, after-tax profit and profit margin, risk-based capital level, and whether the insurer has provided notice of exit to the insurance commissioner;
- The state's proposed adjustment to the individual market MLR standard, including a justification of how it was determined; and
- An estimate of the rebates that would, without an adjustment, be paid to consumers under the 80 percent standard and an estimate of the rebates that would be paid under the state's proposed adjusted standard.

Adjustments to the MLR may be granted if the Secretary determines that there is a "reasonable likelihood" that the 80 percent standard will "destabilize" the individual market.[3] The Secretary will assess the following criteria in making her determination:

- The number of plans reasonably likely to exit the state's market without an adjustment and the resulting impact on competition;
- The number of individual market enrollees covered by issuers that are reasonably likely to exit without an adjustment;
- Whether consumers may be unable to access agents without an adjustment;
- Alternate coverage options available to individual market enrollees if an issuer exits the market;
- The impact on premiums, benefits, and cost-sharing in remaining coverage if one or more insurers leaves the market; and
- Other relevant information.[4]

Once HHS certifies a state's application as complete, HHS will accept public comment on the state's application for 10 days. HHS must respond to the state's application within 30 days of certifying an application as complete, with a possible 30-day extension.

States' Requests for Adjustments

Seventeen states and Guam have applied to HHS for an adjustment:

- HHS has approved six applications: Georgia, Iowa, Kentucky, Maine, Nevada, and New Hampshire. In several states, HHS approved less of an MLR adjustment than the state requested based on its analysis of what is warranted to prevent market destabilization.
- HHS has denied five applications: Delaware, Guam, Indiana, Louisiana, and North Dakota.
- Applications for the remaining seven states are under review by HHS: Florida, Kansas, Michigan, North Carolina, Oklahoma, Texas, and Wisconsin.

Texas' Adjustment Request

TDI requested to adjust the 80 percent medical loss ratio requirement in Texas' individual health insurance market to 71 percent, 74 percent, and 77 percent in calendar years 2011, 2012, and 2013, respectively. In 2010, the individual market average MLR was 71.5 percent. TDI cites concerns about insurers withdrawing from the market or facing financial losses if they cannot reduce administrative costs enough to comply with the 80 percent standard. TDI's full application is available at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_texas.html.

Harm to Texas Consumers

If the ACA's new MLR requirements were implemented today, TDI estimates that insurers would owe rebates of $160 million annually to Texas consumers. Under TDI's proposed adjustment, rebates would be reduced from 2011-2013, causing Texas consumers to lose out on $260 million in rebates over three years, or $350 on average for every Texan with individual health insurance.[5] Not only would TDI's request for an adjustment reduce rebates due to Texas families, it would also reduce the important incentives for insurers to hold down premium increases, causing Texas families to lose out on future savings.

Texas Request Not Justified

TDI's application does not demonstrate a reasonable likelihood of market destabilization absent an MLR adjustment. Rather, the application contains the following information that describes a competitive market with little risk of destabilization:

- Texas has more than 40 individual market carriers with a total of 744,988 people enrolled. TDI notes that, "at present, Texas has a diverse market with sufficient competition." Thirty-four insurers cover more than 1,000 lives, making them subject to the new MLR standards.

- The top 8 companies in Texas all indicate plans to remain in the market. These insurers cover about 90 percent of the market.

- Only two companies with just 0.68 percent of the market indicated plans to withdraw in a blinded survey from May 2011. If these small carriers exited, it would not destabilize the market, as enrollees could seek coverage from dozens of other companies or the state or federal high risk pools.

- TDI has existing regulatory tools that discourage carriers from leaving the market and empower the department to prevent market disruptions. To pull out of the individual market, a carrier must give 180-days advance notice and file a withdrawal plan. TDI has authority to modify or restrict the withdrawal plan if other coverage options are inadequate. If a carrier withdraws, it cannot sell individual health insurance in Texas for five years, meaning it would have to forego access to the greatly expanded and subsidized market that will start in 2014.[6]

- On average, carriers are positioned financially to pay rebates if necessary in 2011. Data from TDI show that on average, underwriting profit is equal to (with larger carriers that make up about 90 percent of the market) or slightly exceeds (with "mid-size" carriers that make up less than 10 percent of the market) the estimated rebates due.[7] In other words, carriers on average could fully fund estimated rebates just by shaving underwriting profit margins. And actual rebates could be lower than those estimated in TDI's application. Estimated rebates are based on 2010 experience, before health plans had the incentive and opportunity to reduce administrative costs in response to the MLR standards. Since the passage of the ACA in March 2010, carriers have had time to begin adjusting their business models so that they can avoid rebates or pay any necessary rebates and remain profitable.

CPPP is submitting public comments urging HHS to reject Texas' application because the state has not demonstrated a reasonable likelihood of market destabilization absent an MLR adjustment. An MLR adjustment in Texas would cause consumers to lose out on hundreds of millions of dollars in rebates and weaken an important ACA tool that is already helping hold down premium increases for consumers. Our comments will be available at www.cppp.org.

Timeline

HHS certified Texas' application as complete on November 28, 2011. Public comments are due to HHS by December 8. HHS has until December 28 to issue a decision on Texas' application. HHS can extend its decision deadline by an additional 30 days, if needed.

Endnotes

1 The MLR regulations make several exceptions to the 80%/85% MLR standards. Insurers with fewer than 1,000 enrollees in a state are exempt from rebates. Insurers with 1,001-75,000 enrollees in a state receive a sliding-scale adjustment to lower their MLR requirement. Expatriate plans, "mini-med" (limited benefit) plans, high-deductible health plans, and new market entrants also receive special treatment.

2 Texas Administrative Code, Title 28, part 1, rule 3.3038

3 45 CFR Part 158.301

4 45 CFR Part 158.330

5 Estimated rebates for 2011-2013 based on 2010 experience as provided in TDI's application.

6 Texas Insurance Code §§ 827.001-827.011; 28 Texas Administrative Code §§7.1801-7.1808; and 28 TAC § 3.3038.

7 TDI, Request for Adjustment to the Medical Loss Ratio, pp. 2-3 and Figure 1 on p. 6. http://cciio.cms.gov/programs/marketreforms/mlr/states/texas/tx_mlr_adj_request_07292011.pdf.

About CPPP

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