

§ 158.260 Reporting of rebates.

(a) *General requirement.* For each MLR reporting year, an issuer must submit to the Secretary a report concerning the rebates provided to and on behalf of enrollees pursuant to this subpart.

(b) *Aggregation of information in the report.* The information in the report must be aggregated in the same manner as required by § 158.120.

(c) *Information to report.* The report required by this section must include the total:

(1) Number of subscribers in the individual, small group and large group markets to whom the issuer paid a rebate directly, and number of small group and large group policyholders receiving a rebate on behalf of enrollees;

(2) Amount of rebates provided as premium credit;

(3) Amount of rebates provided as lump sum payment regardless of whether in cash, reimbursement to an enrollee's credit card, or direct payment to an enrollee's bank account;

(4) Amount of rebates that were de minimis as provided in § 158.243 of this subpart and the number of enrollees who did not receive a rebate because it was de minimis; and

(5) Amount of unclaimed rebates, a description of the methods used to locate the applicable enrollees, and a description of how the unclaimed rebates were disbursed.

(d) *Timing and form of report.* The data required by paragraphs (c)(1) through (4) of this section must be submitted with the report under § 158.110, on a form and in the manner prescribed by the Secretary. The data required by paragraph (c)(5) of this section must be submitted with the report under § 158.110 for the subsequent MLR reporting year.

[75 FR 74921, Dec. 1, 2010, as amended at 76 FR 76594, Dec. 7, 2011]

§ 158.270 Effect of rebate payments on solvency.

(a) If a State's insurance commissioner, superintendent, or other responsible official determines that the payment of rebates by a domestic issuer in that State will cause the issuer's risk based capital (RBC) level

to fall below the Company Action Level RBC, as defined in the NAIC's Risk Based Capital (RBC) for Insurers Model Act, the commissioner, superintendent, or other responsible official must notify the Secretary. In such a circumstance, the commissioner, superintendent, or other responsible official may request that the Secretary defer all or a portion of the rebate payments owed by the issuer.

(b) In the event an insurance commissioner, superintendent, or other responsible official makes the request set forth in paragraph (a) of this section, the following should be provided to the Secretary along with the notification:

(1) The domestic issuer's RBC reports for the current calendar year and the 2 preceding calendar years; and

(2) A calculation of the amount of rebates that would be owed by the domestic issuer pursuant to this part.

(c) Upon receipt of the notification under paragraph (a), the Secretary will examine the information provided by the insurance commissioner, superintendent, or other responsible official along with any other information the Secretary may request from the issuer, and determine whether the payment of rebates by the issuer will cause its RBC level to fall below the Company Action Level RBC.

(d) When the Secretary determines that the payment of rebates by an issuer will cause its RBC level to fall below the Company Action Level RBC, the Secretary may permit a deferral of all or a portion of the rebates owed, but only for a period determined by the Secretary in consultation with the State. The Secretary will require that the issuer must pay these rebates with interest in a future year in which payment of the rebates would not cause the issuer's RBC level to fall below the Company Action Level RBC.

Subpart C—Potential Adjustment to the MLR for a State's Individual Market**§ 158.301 Standard for adjustment to the medical loss ratio.**

The Secretary may adjust the MLR standard that must be met by issuers offering coverage in the individual market in a State, as defined in section

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2791 of the PHS Act, for a given MLR reporting year if, in the Secretary's discretion, the Secretary determines that there is a reasonable likelihood that an adjustment to the 80 percent MLR standard of section 2718(b)(1)(A)(ii) of the Public Health Service Act will help stabilize the individual market in that State.

[83 FR 17070, Apr. 17, 2018]

§ 158.310 Who may request adjustment to the medical loss ratio.

A request for an adjustment to the MLR standard for a State must be submitted by the State's insurance commissioner, superintendent, or comparable official of that State in order to be considered by the Secretary.

§ 158.311 Duration of adjustment to the medical loss ratio.

A State may request that an adjustment to the MLR standard be for up to three MLR reporting years.

§ 158.320 Information supporting a request for adjustment to the medical loss ratio.

A State must submit in electronic format the information required by §§ 158.321 through 158.323 of this subpart in order for the request for adjustment to the MLR standard for the State to be considered by the Secretary. A State may submit to the Secretary any additional information it determines would support its request. In the event that certain data are unavailable or that the collection of certain data is unduly burdensome, a State may provide written notice to the Secretary and the Secretary may, at her discretion, request alternative supporting data or move forward with her determination.

§ 158.321 Information regarding the State's individual health insurance market.

(a) Subject to § 158.320, the State must provide, for each issuer who actively offers coverage in the individual market in the State, the following information, in accordance with paragraph (b) of this section, for the preceding calendar year and, at the State's option, for the current year:

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(1) Total earned premium and incurred claims;

(2) Total number of enrollees (life-years and covered lives);

(3) Total agents' and brokers' commission expenses;

(4) Net underwriting gain;

(5) Risk-based capital level; and

(6) Whether the issuer has provided notice to the State's insurance commissioner, superintendent, or comparable State authority that the issuer will cease or begin offering individual market coverage on the Exchange, certain geographic areas, or the entire individual market in the State.

(b) The information required in paragraphs (a)(1) through (4) and (6) of this section must be provided separately for the issuer's individual market plans grouped by the following categories, as applicable: On-Exchange, off-Exchange, grandfathered health plans as defined in § 147.140 of this subchapter, coverage that meets the criteria for transitional policies outlined in applicable guidance, and non-grandfathered single risk pool coverage. The information required in paragraph (a)(5) of this section must be provided at the issuer level.

(c) The State must also provide information regarding whether any issuer other than those described in paragraph (a) of this section has provided notice to the State's insurance commissioner, superintendent, or comparable State authority that the issuer will cease or begin offering individual market coverage on the Exchange, certain geographic areas, or the entire individual market in the State.

[83 FR 17070, Apr. 17, 2018]

§ 158.322 Proposal for adjusted medical loss ratio.

A State must provide its own proposal as to the adjustment it seeks to the MLR standard. This proposal must include an explanation of how an adjustment to the MLR standard for the State's individual market will help stabilize the State's individual market.

[83 FR 17071, Apr. 17, 2018]

§ 158.323 State contact information.

A State must provide the name, telephone number, e-mail address, and