

§ 158.161

and must provide an explanation of how premium revenue is used, other than to provide reimbursement for clinical services covered by the benefit plan, expenditures for activities that improve health care quality, and Federal and State taxes and licensing or regulatory fees as specified in this part.

(b) *Non-claims costs other than taxes and regulatory fees.* (1) The report required in §158.110 of this subpart must include any expenses for administrative services that do not constitute adjustments to premium revenue as provided in §158.130 of this subpart, reimbursement for clinical services to enrollees as defined in §158.140 of this subpart, or expenditures on quality improvement activities as defined in §§158.150 and 158.151 of this subpart.

(2) Expenses for administrative services include the following:

(i) Cost-containment expenses not included as an expenditure related to an activity at §158.150 of this subpart.

(ii) Loss adjustment expenses not classified as a cost containment expense.

(iii) Direct sales salaries, workforce salaries and benefits.

(iv) Agents and brokers fees and commissions.

(v) General and administrative expenses.

(vi) Community benefit expenditures.

(vii) Beginning with the 2022 MLR reporting year, prescription drug rebates and other price concessions that are received and retained by an entity providing pharmacy benefit management services to the issuer and are associated with administering the issuer's prescription drug benefits.

[75 FR 74921, Dec. 1, 2010, as amended at 85 FR 29262, May 14, 2020]

§ 158.161 Reporting of Federal and State licensing and regulatory fees.

(a) *Licensing and regulatory fees included.* The report required in §158.110 must include statutory assessments to defray operating expenses of any State or Federal department, transitional reinsurance contributions assessed under section 1341 of the Patient Protection and Affordable Care Act, 42 U.S.C. 18061, and examination fees in lieu of

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premium taxes as specified by State law.

(b) *Licensing and regulatory fees excluded.* The report required in §158.110 must include fines and penalties of regulatory authorities, and fees for examinations by any State or Federal departments other than as specified in §158.161(a) as other non-claims costs, but not as an adjustment to premium revenue.”

[75 FR 82279, Dec. 30, 2010, as amended at 78 FR 15539, Mar. 11, 2013]

§ 158.162 Reporting of Federal and State taxes.

(a) *Federal taxes.* The report required in §158.110 of this subpart must separately report:

(1) Federal taxes excluded from premium under subpart B which include all Federal taxes and assessments allocated to health insurance coverage reported under section 2718 of the PHS Act.

(2) Federal taxes not excluded from premium under subpart B of this part which include Federal income taxes on investment income and capital gains, as well as Federal employment taxes, as other non-claims costs.

(b) *State taxes and assessments.* The report required in §158.110 of this subpart must separately report:

(1) State taxes and assessments excluded from premium under subpart B which include:

(i) Any industry-wide (or subset) assessments (other than surcharges on specific claims) paid to the State directly, or premium subsidies that are designed to cover the costs of providing indigent care or other access to health care throughout the State.

(ii) Guaranty fund assessments.

(iii) Assessments of State industrial boards or other boards for operating expenses or for benefits to sick employed persons in connection with disability benefit laws or similar taxes levied by States.

(iv) Advertising required by law, regulation or ruling, except advertising associated with investments.

(v) State income, excise, and business taxes other than premium taxes.

(vi) State premium taxes plus State taxes based on policy reserves, if in lieu of premium taxes.