PRESBYTERIAN
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June 15, 2020

OSI Records and Docketing, NM Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

Re: Docket No. 19-00057-Rule-LH – In the Matter of the Petition of Blue Cross Blue Shield of New Mexico for Amendment of the Uniform Definitions and Standardized Methodologies for Calculating the Medical Loss Ratio Rule

To whom it may concern,

Presbyterian Health Plan, Inc. and Presbyterian Insurance Company, Inc. (collectively, "PHP") is pleased to respond to OSI's proposed rulemaking for the purpose of adding clarity to existing requirements regarding the methodologies for calculating the medical loss ratio (MLR). PHP has serious concerns that the proposed rule will unnecessarily complicate efforts to monitor medical loss among health insurers and will lead to more uncertainty for insurers in the market. This uncertainty could lead to health insurers abandoning the small group market entirely. The following comments are intended to address the notices and documents in the docket as of close of business Friday, June 12, 2020. Petitioner in this matter filed yet another proposed rule Sunday evening which PHP has not had time to fully analyze as of the deadline for this submission. PHP reserves its right to respond to that proposed rule separately from these written comments.

PHP has the following comments:

1. PHP feels strongly that OSI should adopt a calculation more in line with the current HIOS calculation methodology at the federal level. Having two different approaches could lead to additional confusion, and in some instances, could cause an insurer to owe a rebate through the state but not through HIOS. Having a consistent approach between HIOS and the state makes calculating potential financial risk easier.

2. OSI has proposed under 13.10.27.8.E NMAC to push the reporting date for the MLR out to July 31 instead of April 15. PHP does not dispute this revision but it believes the measurement period should also be moved to June 30 (currently unchanged as April 1), in order to be consistent with HIOS. If left unchanged, this could again result in inconsistencies between the HIOS and state calculation methodologies and could require a rebate in one calculation but not the other. Also, the ACA risk adjustment settlements and ACA rebate settlements are finalized on June 30th of the following year. Both are critical figures that must be included in order to have an accurate MLR, therefore these adjustments should be added as premium adjustments in the calculation.

3. PHP requests that language be added to allow an adjustment in the year following a year in which a rebate is paid through the state MLR methodology given that the current methodology is a rolling 3-year average. PHP suggests that this language could be added to the end of subparagraph (I) under 13.10.27.8 NMAC, to state, "Premium credits or rebates paid by a carrier may be listed as an adjustment in the MLR calculation in the following year."

4. Self-funded business should not be included in the calculation as it is not risk business to the carrier, rather risk to the carrier's clients. Recoveries from third parties should not be a separate line item as these adjustments are already embedded into the premium calculations. Tax treatment should be made consistent with the HIOS calculation, whereby premium and ACA taxes/fees are explicitly deducted from (rather than added to) the premium. The philosophy behind this is that taxes are not in the carrier's control and is not proper to include them. Also, the ACA taxes/fees may be completely included or excluded in a given year, so rather than setting the minimum MLR to the tax situation for a given year, it is easier to just exclude the ACA taxes/fees. Also, the HIOS formula excludes federal income tax, in order to not have this inadvertently fall into the rebate, which should also be done in this calculation.

5. Under 45 CFR 158.211, a state has the flexibility to set a higher medical loss ratio in the small group market than what is required under 45 CFR 158.210, but the state "must seek to ensure adequate participation by health insurance issuers, competition in the health insurance market in the state, and value for consumers so that premiums are used for clinical services and quality improvements." PHP worries that these changes could affect issuer participation in the small group market. Much like the individual product, the small group market has a high administrative cost ratio (including taxes, broker commissions, etc.) that would make it difficult if not impossible to achieve a positive margin with a higher MLR requirement. PHP is aware of only two states that have a minimum MLR requirement for small group that is higher than 80%--Massachusetts and New York, two states notoriously difficult for carriers to operate and the market environment greatly differs from NM. PHP supports continuing to follow the current statute under 59A-23C-10 NMSA 1978 which allows the MLR to be calculated "across all product lines" collectively, which could allow a small or large group product line to separately fall below an 85% ratio as long as they collectively achieve an 85% ratio. This approach is consistent with what Blue Cross Blue Shield of NM originally proposed in their petition to OSI. This methodology would still allow healthy competition in the market and ensure greater financial stability and risk for health insurers in New Mexico.

6. PHP believes the rule should allow carriers to take into account incurred but not reported (IBNR) claims consistent with the HIOS calculation.

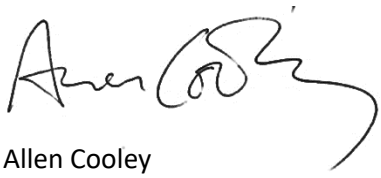
7. The definition for "health product lines" under subparagraph (I) of 13.10.27.7 NMAC means, "all programs utilized by a health insurer for the offering of products, including but not limited to…**all public programs, including all Medicaid and Medicare** and any related or future programs or products…" However, the form proposed under 13.10.27.9 NMAC would not allow for these programs to be included since the newly created columns are specific to only fully-insured business. PHP supports the inclusion of all public programs in the calculation as it lends to a greater understanding of the financial stability of an insurer. If small and large group plans must be calculated separately as proposed, PHP

proposes that another column be added to the new form for “All Other Policies”, consistent with how the current rule is written and with how it was previously reported.

8. Regarding the effective date, PHP recommends that the effective date of the rule be pushed to 2022 to allow insurers more time to build these adjustments to the rules into its pricing strategies. Most health insurers have already built their pricing for 2021 for both individual and small group based on the current rules.

If you have any questions or require additional clarification on these comments, please feel free to contact me by email or phone.

Sincerely,



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