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Insurance Regulation

Medical Claims Spending Requirement Not Cutting Premiums

BNA Snapshot

- Senate health-care bill would repeal Obamacare medical loss ratio
- $396.7M in rebates paid to 4.9M enrollees for 2015

By Sara Hansard

An Obamacare requirement that insurers spend at least 80 percent of premiums on medical claims may not have lowered premiums.

The Senate draft Better Care Reconciliation Act (H.R. 1628) would repeal the Affordable Care Act's medical loss ratio (MLR) in 2019, allowing states to establish MLR standards for fully insured group and individual policies and set rules regarding annual rebates. The ACA requires health insurers that haven't spent at least 80 percent of premiums on claims or quality improvements in the individual and small group markets, and 85 percent in the large group market, to refund the difference to enrollees.

The MLR has been advocated by ACA supporters as an important provision to reduce premiums and ensure that insurers spend most of enrollees' premiums on medical claims rather than administrative expenses, such as executive salaries. But some who have knowledge about how the MLR has been implemented have questioned its efficacy.

Nearly $2.8B in Rebates Since 2011

Since the rule was enacted by the Department of Health and Human Services in 2011, nearly $2.8 billion in rebates have been paid to consumers, according to the Centers for Medicare & Medicaid Services. The average rebate per family for 2015 was $138. Insurers have been able to reduce the rebates from $1.1 billion to 12.8 million policyholders for 2011 , to $396.7 million covering 4.9 million policyholders for 2015 , the last year for which they have been paid. Insurers' 2016 MLR reports must be filed by July 31 .

However, "We do not find that medical loss ratio regulations reduce premiums in any way," Steve Cicala, assistant professor of economics at the University of Chicago, told Bloomberg BNA. Cicala was the lead author of a study on the MLR published in April that found that premiums were not reduced but claims costs increased. "There was really no impact on premiums at all."

Premiums didn't fall or grow more slowly than they previously had for health insurers that needed to increase the MLR to come into compliance with the requirement, Cicala said. Insurers make more money if they spend more on medical claims, so it benefits them to spend more on claims, he said.

In areas where there is little insurance competition, insurers may be turning down legitimate claims, Cicala said. If they are doing that, they should be spending more on claims, he said. "But on the other hand, when people are insured they're not bearing the full cost of what they're getting, so they tend to get more than they would if they were paying for it themselves. People who are insured tend to get more care than they necessarily need."

2015 Rebate Payers

For 2015, United Healthcare Insurance Co. paid the largest amount of rebates, nearly $50 million, according to the CMS. The company paid $32.1 million in the small group market and $17.8 million in the large group market. The company wouldn't comment to Bloomberg BNA.

The second-highest payer of 2015 rebates was CareFirst BlueChoice Inc., the largest health insurer in the Mid-Atlantic region with 3.2 million members. CareFirst, which declined to comment to Bloomberg BNA, paid $25.6 million in rebates, including $21.2 million in the small group market.

Other large rebate payers in 2015 included New York State Catholic Health Plan Inc., which does business under the name of Fidelis Care. The company, which didn't respond to a request for comment, paid $14.5 million in the individual market.

Insurers With Highest MLR Rebates to Enrollees in 2015

Company Name	Rebates in the Individual Market	Rebates in the Small Group Market	Rebates in the Large Group Market	Total Rebates
UnitedHealthcare Insurance Company	$17,952	$32,140,319	$17,832,166	$49,990,437
CareFirst BlueChoice, Inc.	-	$21,154,138	$4,420,711	$25,574,849
California Physicians Service	-	$24,732,610	-	$24,732,610
Oxford Health Insurance, Inc.	-	-	$23,862,315	$23,862,315
Health Options, Inc.	-	$4,846,629	$12,368,279	$17,214,908
New York State Catholic Health Plan, Inc.	$14,466,241	-	-	$14,466,241
Blue Cross and Blue Shield of Georgia, Inc.	$12,667,900	-	-	$12,667,900
Blue Care Network	-	$12,480,281	-	$12,480,281
Nippon Life Insurance Company of America	-	-	$11,254,415	$11,254,415
Healthy Alliance Life Insurance Company	$4,342,468	$6,700,178	-	$11,042,646
Golden Rule Insurance Company	$10,279,464	-	-	$10,279,464
Aetna Life Insurance Company	$935,203	$1,372,344	$7,955,796	$10,263,343
Optimum Choice Inc.	$7,111	$2,378,327	$7,353,428	$9,738,866

Source: Centers for Medicare & Medicaid Services — Bloomberg BNA

Blue Cross and Blue Shield of Georgia Inc., part of Anthem Inc., paid $12.7 million in the individual market for 2015. “Rebate amounts vary and depend on a variety of factors, and MLR requirements do not impact the cost to consumers,” Anthem public relations director Leslie Porras told Bloomberg BNA in an email.

“In Georgia the overall rebates we issued across our lines of business represented a very small percentage of the total premium,” Porras said. “Insurers set premiums at a level sufficient to cover the cost of medical claims; in doing so Anthem has to estimate what medical costs will be 12 to 18 months in advance.”

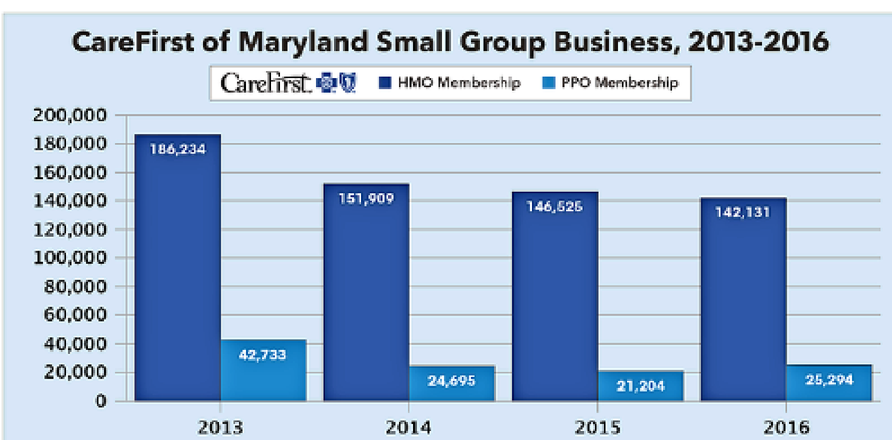
The medical loss ratio doesn't have “anything to do with controlling the underlying health-care costs,” Maryland Insurance Commissioner Al Redmer Jr. told Bloomberg BNA. Redmer, who was appointed by Gov. Larry Hogan (R), is chairman of the National Association of Insurance Commissioners’ health insurance and managed care committee.

Insurers More Competitive Before MLR

Prior to the ACA requirement, insurers were less afraid to be more competitive some years because “they knew if they made a mistake they could take a rate increase the next year, to maybe offset losses and replenish their surplus,” Redmer said. But with the MLR, “if a carrier loses a lot of money in one year they can't make it up in the next year.”

As a result, particularly in the small group market, carriers are less likely to be more competitive, Redmer said. “They're going to err on the side of caution and keep their rates a little higher than they otherwise would have.”

CareFirst lost a significant amount of small group business from 2013 to 2014, the first year the ACA exchanges began, according to Maryland Insurance Administration data. The company's small group coverage went from about 229,000 enrollees in 2013 to about 177,000 enrollees. In 2015 CareFirst's small group enrollees dropped to about 168,000, and in 2016 they numbered about 167,000.



Source: Maryland Insurance Administration — Bloomberg BNA

Many of CareFirst's small group enrollees moved to the individual exchange market, Redmer said. Low-income employees are eligible for tax subsidies to help cover premiums in the exchange, and employers with fewer than 50 full-time employees wouldn't have to pay any penalty for not covering employees.

It isn't clear what effect the loss of CareFirst's small group business had on its MLR liability for 2015, but if companies with older or sicker employees shed their coverage, that could have resulted in fewer claims payments and a lower MLR.

Repealing MLR Will Benefit Insurers

Defenders of the MLR argue that repealing the provision will reduce health insurer accountability. Previous to the MLR requirement, “The complaint most small businesses had is the premiums are so high yet they didn't see it coming back to them or their employees,” Rep. Gene Green (D-Texas) told Bloomberg BNA. Green helped push for the provision when the House was considering the ACA.

Under the MLR, "millions of dollars have gone back to them in reimbursements for the premiums they paid," Green said. "It helps to make sure the health-care dollar someone spends on premiums goes to the health care and not just the profit."

The repeal proposal "is just a gift to the health insurance industry" that will allow health insurance companies to charge whatever they want without any accountability, Green said. He added that a compromise might be to base rebates on average MLRs over several years.

Sen. Al Franken (D-Minn.), also a proponent of the MLR, told Bloomberg BNA in an email that because of the provision "a majority of Americans' health care premium dollars are now spent exactly where they should be—on providing actual health care. Not on marketing, huge executive bonuses, and administrative overhead costs."

The provision has resulted in insurance companies "becoming more efficient on the front end with the premiums you pay each month," Franken said. If the provision is repealed, "health insurance premiums would rise," he said.

Distorts Incentives

But consultants who work with insurers argue that it distorts their incentives. "If they're doing what we want them to do—cut costs and rein in premiums, it's likely that their loss ratios will fall," which results in MLR liability, John Gorman, executive chairman of Gorman Health Group LLC, told Bloomberg BNA. Gorman, an ACA supporter, was assistant director of the Office of Managed Care in what is now the CMS during the Clinton administration. Gorman's company works with health insurers on meeting the MLR.

"It's an artificial target," Gorman said. If loss ratios fall, premiums are likely to go down, he said. "Setting a minimum penalizes them for doing well," he said. "This requirement embodies Americans' discomfort with health insurance companies making a profit, period. That's all this embodies."

Companies that offer Medicare Advantage and Medicaid managed care plans also have an MLR requirement, but enrollees in those plans are sicker than commercial plan enrollees and the MLR is easier to meet, Gorman said.

Fraud Costs Not Covered

Insurers also complained that the MLR rules don't account for their expenses to detect fraud, and brokers have called for their commissions to be an allowable expense as well. The rule prompted health insurers to cut back on their payments to brokers, which brokers say has hurt their ability to help people choose health insurance.

The rule is "one-sided," Scott Harrington, chair of the health care management department at the University of Pennsylvania's Wharton School, told Bloomberg BNA. "If you do things to lower costs you may have to pay the money back."

Moreover, the rebates are a small percentage of premiums, Harrington said. With exchange plans losing money and many dropping out of the marketplaces and the nongroup market, "We'd like to encourage companies to participate in the individual and small group market," he said. "Relaxing some of the regulation that really doesn't have much effect may make the markets at least somewhat more attractive."

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For More Information

Information on the Senate Better Care Reconciliation Act (H.R. 1628) is at https://www.budget.senate.gov/bettercare .
The 80/20 Rule Increases Value For Consumers For Fifth Year In A Row is at
https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Medical-Loss-Ratio-Annual-Report-2016-11-18-FINAL.pdf .
The List of Health Insurers Owing Refunds for 2011 (as of November 26, 2012) is at
https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/mlr-issuer-rebates-20121126.pdf .
2015 MLR Rebates by State is at https://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/2015_Rebates_by_State.pdf .
The Announcement of Medical Loss Ratio and Risk Corridors Annual Reporting Procedures for the 2016 MLR Reporting Year is at
https://www.cms.gov/CCIIO/Resources/Training-Resources/Downloads/Issuer-2016-MLR-Memopdf.pdf .
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