CMS Guidance, Risk Corridors Payments, and MLR Rebates

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Risk Corridors Recovery Payments Could Result in Approximately $300 Million in MLR Rebates

New CMS Guidance on Risk Corridors Recovery Payments:

On September 30, 2020, CMS released new guidance on the treatment of risk corridors (RC) recovery payments.[1] The RC program was one of three premium stabilization programs that were part of the Affordable Care (ACA) and operated from 2014 to 2016. The program did not fund all payments calculated for issuers that operated in the individual and small group markets as originally scheduled. As a result of a Supreme Court ruling, issuers are entitled to receive any remaining RC payments owed.

However, a question remained about how issuers should account for these RC payments in their Medical Loss Ratio (MLR) filings. CMS (Centers for Medicare & Medicaid Services), through the published guidance, proposed that issuers that receive risk corridor payments should refile their MLR reports for 2015 through 2018. Additionally, if the updated MLR calculations for the individual and small group market exceed the MLR threshold, then issuers must make the additional rebate payments. Rebates must be made regardless of whether the issuer is still active or owned by a new controlling entity. The additional MLR rebates must be paid out by December 31, 2020, or within 60 days of receiving additional RC payments.

Table 1: Estimated Potential Risk Corridor Payments in Millions by Year and Market[2]

Market	2014 RC Payments[3]	2015 RC Payments	2016 RC Payments
Individual	$2,117 M	$5,323 M	$3,505 M
Small Group	$271 M	$594 M	$474 M
Total	**$2,388 M**	**$5,917 M**	**$3,978 M**

Table 1 above shows the total additional potential RC recovery payments for 2014, 2015, and 2016 by market owed, which totals $12.3 billion. It should be noted that some of the total calculated RC payments owed were previously made by CMS and are not included in the table above. Wakely has made estimates of the RC amounts paid previously and used those to estimate the total potential risk corridor recovery

[1] https://www.cms.gov/files/document/MLR-Guidance-RC-Recoveries-and-MLR.pdf
[2] Please note that values may not equal when summed to match total amounts due to rounding.

payments. Given ongoing uncertainties the final amounts paid as part of the lawsuits may differ from the above figures. Additionally, the potential recovery payments related to the 2014 RC amounts would not result in restating the 2014 MLR amounts, as they previously were included in the 2014 MLR report. The payments of the owed RC amounts will only impact the 2015-2018 MLR statements per CMS guidance[4].

To what extent does the application of RC recovery payments from 2015 through 2018 result in MLR rebates in the individual and small group markets? This is a complicated question as issuers, especially in 2015 and 2016 benefit years, tended to have higher MLRs, fewer MLR rebates, and overall lower levels of profitability.

Findings

Based on our findings, Wakely estimates that approximately $298 million (or 2.4% of total additional RC recovery payments) additional MLR rebates will be distributed as a result of the adjustment to the 2015-2018 MLR filings due to retroactive RC payments. Table 2 below provides a breakdown of MLR rebate payments that have already been paid, MLR rebates that were paid for issuers that will be receiving the remaining RC payments, and the estimated new additional MLR rebate payments. Issuers set to receive the remaining RC payments paid a total of $578 million of MLR rebates to consumers between 2015 and 2018. Those same issuers are estimated to pay out an additional $298 million in rebates as a result of the additional RC recovery payments, increasing the total rebate paid for these issuers by roughly 52%.

Table 2: Estimated Additional Rebate Payment in Millions by Year[5]

Year	Rebate Already Paid by All Issuers	Rebate Paid RC Receivers	Est Add'l Rebate RC Receivers
2015	$249 M	$29 M	$11 M
2016	$247 M	$26 M	$2 M
2017	$443 M	$67 M	$59 M
2018	$1,083 M	$455 M	$225 M
Total	**$2,022 M**	**$578 M**	**$298 M**

Table 3 shows the distribution of payments by individual and small group markets. As expected, based on the volume of remaining RC payments shown in Table 1, the largest impact will be on the individual market. Additionally, the percentage impact on the individual market is higher (a portion of the rebates as a percentage of RC payments at 2.7% vs. 0.5% for the small group market).

[4] MLR calculations are based on a three-year average; therefore, the 2016 RC recovery payments will impact not only one MLR report but also multiple MLR reports. For example, 2016 RC recovery payments will impact the MLR calculations for 2016, 2017, and 2018 reporting years.
[5] Please note that values may not equal when summed to match total amounts due to rounding.

Table 3: Estimated Additional Rebate Payment in Millions by Market[6]

Market	Rebate Already Paid by All Issuers	Rebate Paid RC Receivers	Est Add'l Rebate RC Receivers
Individual	$1,090 M	$510 M	$290 M
Small Group	$932 M	$67 M	$7 M
Total	**$2,022 M**	**$578 M**	**$298 M**

Most of the issuers (or entities) receiving payments were still actively offering coverage to new enrollees as of 2019. Using CMS' 2019 risk adjustment report,[7] we identified issuers that were still active in 2019 and issuers that were no longer actively offering new coverage in their respective market.

Table 5: Estimated Additional Rebate Payment by Issuer Status[8]

Offering New Coverage as of 2019	Rebate Already Paid by All Issuers	Rebate Paid RC Receivers	Est Add'l Rebate RC Receivers
In 2019 Transfer Report	$1,769 M	$566 M	$297 M
Not on 2019 Transfer Report	$253 M	$11 M	< $1 M
Total	**$2,022 M**	**$578 M**	**$298 M**

For a description of Wakely's methodology, please see Appendix A for the Methodology and Limitations that should be considered when reviewing these results.

To the Future

The proposed guidance notes that issuers must make a good faith effort to find consumers to pay the rebates. However, it is likely that not all consumers will be able to be found after all of these years, and consequently, state law and state policy may affect the ultimate fate of the disbursement. Finally, it should be noted that ongoing lawsuits around cost-sharing reductions (CSRs) may result in similar MLR restatements, where large payments due to court settlements could result in large MLR rebates in the future. The adjustment to MLR amounts due to the payment of the outstanding RC amounts may also contribute to larger rebate calculations if the MLR amounts are similarly adjusted for the CSR amounts.

Please contact michael.cohen@wakely.com and nick.shaneyfelt@wakely.com with any questions or follow up on any of the concepts presented here.

[6] Please note that values may not equal when summed to match total amounts due to rounding.
[7] https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RA-Report-BY2019.pdf
[8] Please note that values may not equal when summed to match total amounts due to rounding.

Appendix A: Methodology and Limitations

Wakely used data published by CMS, including the MLR data public use files[9] and 2014,[10] 2015,[11] and 2016[12] CMS RC reports. Data fields related to the calculation of the reported MLR values and rebate amounts were collected from "Part3 MLR Rebate Calculation" that were input in the CMS MLR calculator in the "Pt 3 MLR and Rebate Calculation" tab. Wakely followed CMS guidance required for calculating MLR rebates, specifically those outlined in 45 CFR 148.140(b)(4)(ii) in terms of the treatment of RC in MLR calculations. As part of the calculation, Wakely removed the reported RC payment or receivable from the reported MLR calculation and added the RC amounts from the CMS RC reports. Issuers that had fewer than 1,000 lives, did not have a reported MLR, or did not include their 2014 experience in their MLR 2015-2016 submissions were not included in Wakely's calculations.

It should be noted that the guidance released by CMS was proposed and, therefore, subject to change. Furthermore, each individual issuer must submit their MLR filings. It is possible that nuances in the experience or the MLR filing data known to the issuer (or entity) and unknown to the authors could influence the ultimate filing submission and the final MLR rebate amounts. Wakely relied on the accuracy of the information we used in our estimates, without auditing those values. Consequently, the figures provided in this report should be assumed to be preliminary estimates and subject to uncertainty. For further details on the methodology, please contact the report authors.

The assumptions and resulting estimates included in this report and produced by the model are inherently uncertain. Users of the results should be qualified to use it and understand the results and the inherent uncertainty. Actual results will likely vary, potentially materially, from our estimates. Wakely does not warrant or guarantee that the RC amounts will attain the projected values included in the report. In particular, Wakely assumed that the ultimate RC amounts calculated by CMS, as reported in the RC reports, are ultimately the amounts paid to issuers as part of the Supreme Court legal ruling. Wakely also assumed that issuers did not make any other changes to their MLR reports except the RC portion of their MLR filing.

We have relied on others for the data and assumptions used in the assignment. We have reviewed the data for reasonableness, but have not performed any independent audit or otherwise verified the data/information's accuracy. If the underlying information is incomplete or inaccurate, our estimates may be impacted, potentially significantly. After the report's date, unanticipated events are beyond the scope of the work, including changes to CMS' guidance or future judicial rulings.

[9] https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr
[10] https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RC-Issuer-level-Report.pdf
[11] https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf
[12] https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-Amounts-2016.pdf