

191—37.23(514D) Loss ratio standards and refund or credit of premium.

37.23(1) Definitions. For the purposes of this rule:

“*Health care expenses*” means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of issuers.

“*Type*” means one of the following: an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

37.23(2) Loss ratio standards.

a. Calculations.

(1) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the Medicare supplement policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to covered individuals one of the following amounts in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

1. At least 75 percent of the aggregate amount of premiums earned in the case of group Medicare supplement policies, or
2. At least 65 percent of the aggregate amount of premiums earned in the case of individual Medicare supplement policies.

(2) The percentages in subparagraph 37.23(2)“a”(1) are to be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(3) For purposes of subparagraph 37.23(2)“a”(2), “incurred health care expenses where coverage is provided by a health maintenance organization” shall not include:

1. Home office and overhead costs;
2. Advertising costs;
3. Commissions and other acquisition costs;
4. Taxes;
5. Capital costs;
6. Administrative costs; and
7. Claims processing costs.

b. Filing demonstration of compliance. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this rule when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

c. Certain direct sales. For purposes of applying paragraph 37.23(2)“a” only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

d. Prestandardized plans. For all policies issued prior to January 1, 1992, expected claims in relation to premiums shall meet:

(1) The originally filed anticipated loss ratio when combined with the actual experience from inception;

(2) The appropriate loss ratio requirement from paragraphs “1” and “2” of subparagraph 37.23(1)“a”(1) when combined with actual experience beginning with January 1, 1996, to date; and

(3) The appropriate loss ratio requirement from paragraphs “1” and “2” of subparagraph 37.23(1)“a”(1) over the entire future period for which rates are computed to provide coverage.

37.23(3) Refund or credit calculation.

a. An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in Appendix A for each type in a standardized Medicare supplement benefit plan (SMSBP).

b. If, on the basis of the experience as reported, the benchmark ratio since inception (Appendix A, ratio 1) exceeds the adjusted experience ratio since inception (Appendix A, ratio 3), then a refund or credit

calculation is required. The refund calculation shall be done on a statewide basis for each type in an SMSBP. For purposes of the refund or credit calculation, experience on SMSBP policies issued within the reporting year shall be excluded.

c. For purposes of this rule, for SMSBP policies or certificates issued prior to January 1, 1992, the issuer shall make the refund or credit calculation separately for all individual SMSBP policies (including all group SMSBP policies subject to an individual loss ratio standard when issued) combined and all other group SMSBP policies combined for experience after January 1, 1996. The first report shall be due May 31, 1998.

d. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

37.23(4) *Annual filing of premium rates.* An issuer of Medicare supplement policies and certificates issued before or after the effective date of January 1, 1992, in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by SMSBP policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

a. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed.

(1) Such demonstration shall exclude active life reserves.

(2) An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for SMSBP policies or certificates in force less than three years.

b. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state, the following:

(1) Such supporting documents as necessary to justify that the adjustments are appropriate.

1. Appropriate premium adjustments shall be those which:

- Are necessary to produce loss ratios as anticipated for the current premium for the applicable SMSBP policies or certificates;

- Are necessary to produce an expected loss ratio under such SMSBP policies or certificates as will conform with minimum loss ratio standards for SMSBP policies or certificates; and

- Are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such SMSBP policies or certificates.

2. No premium adjustment which would modify the loss ratio experience under the SMSBP policy other than the adjustments described herein shall be made with respect to an SMSBP policy at any time other than upon its renewal date or anniversary date.

3. If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this rule.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the SMSBP policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the SMSBP policy or certificate.

37.23(5) *Public hearings.* The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for an SMSBP policy form or certificate form issued before or after the effective date of January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is to be made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in a manner deemed appropriate by the commissioner.

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