

MAOs Hope for More Clarity on Quota Share Reinsurance

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Under Medicare law, Medicare Advantage organizations must assume full financial risk on a prospective basis for the provision of basic benefits provided to enrollees. But certain exceptions exist that allow MAOs to purchase reinsurance, such as excess of loss reinsurance limiting the primary carrier's liability in excess of a specified dollar "attachment point." As MAOs seek permissible reinsurance arrangements to manage new risk associated with the coronavirus, plans and their actuaries are hopeful that CMS will provide much-needed clarity around the use of quota share reinsurance in a soon-to-be finalized rule, one industry expert tells AIS Health.

Through a proposed rule issued in February (85 Fed. Reg. 9002, Feb. 18, 2020), CMS sought to codify previous policy changes, extend new flexibilities to MAOs and make some major changes to the MA star quality ratings. The rule also included a provision that would define the purchase of reinsurance in a way that CMS hasn't before. To remove some legal ambiguity mentioned in previous stakeholder comments, CMS said it planned to implement a new exception and "establish in regulation options to use reinsurance for costs beyond a specified threshold."

For organizations wishing to obtain reinsurance, CMS proposed two options: (1) buying per-member reinsurance when an individual enrollee's covered costs for basic benefits exceed \$10,000 during a contract year, or (2) purchasing first dollar pro rata reinsurance that cannot exceed the cost to the MAO of purchasing the \$10,000 per-member per-year excess of loss reinsurance and that has an actuarially equivalent value of the insured risk to such excess of loss reinsurance. These provisions would not apply to supplemental benefits, CMS clarified.

The agency added that it believes this level of risk transfer "is reasonable and consistent with supporting robust competition" in the MA market and said it recognizes that insuring a portion of risk provides "financial stability for the MA organization, which in turn can lead to enhanced competition and consumer choice, especially in small and mid-sized market areas."

"For small MAOs, a larger-than-expected number of extremely high-cost enrollees can cause substantial losses for the plan," and reinsurance allows smaller organizations to limit their financial risk, observed attorney Alex Dworkowitz in a March 4 article from Manatt, Phelps & Phillips, LLP. Or, if an organization sells a plan to another, the parties may use reinsurance "as a means of keeping financial risk with the selling organization for a limited time period."

The changes proposed in the new rule "would provide more flexibility to MAOs regarding reinsurance than exist under CMS's prior guidance on the subject," he wrote. But they may disappoint some MAOs, particularly those that want to temporarily shift part or all of their financial risk in connection with a transaction, he suggested.

In its March 27 comment letter to CMS, Locke Lord LLP called the rule "a welcome development in light of the legal uncertainty MAOs have operated under during the past several years" with regards to quota share reinsurance. But the firm suggested that the rule still leaves considerable ambiguity as to what the new conditions mean for the future purchase of quota share reinsurance.

CMS in the 2018 Advance Notice and draft Call Letter surprised MAOs when it said that quota share reinsurance, a type of reinsurance in which a percentage of all premiums and claims are shared with the reinsurer beginning with the first dollar, does not fall squarely into one of the statutory exceptions. After receiving feedback from concerned commenters, however, CMS retracted its ban without providing any follow-up guidance on the matter and, according to Locke Lord, has been inconsistently disallowing certain quota share arrangements either through audits or applications.

Although the new provisions do not explicitly refer to quota share reinsurance, the rule's mention of "pro rata insurance coverage" and that such costs "may be shared proportionally on a first dollar basis" can only be interpreted as referring to quota share reinsurance, explains Jon Biasetti, a partner with Locke Lord.

Quota Share Proposal Needs Tweaks

“Quota share reinsurance has been used by Medicare Advantage plans for decades...by the large and small MAOs and everybody in between,” says Biasetti. And while the firm is pleased to see that CMS now recognizes the value of quota share reinsurance to MA plans and beneficiaries, and is trying to clarify the conditions upon which MAOs may enter into such reinsurance arrangements, the way the agency proposes to do so does not fully assure actuaries that their arrangements will be in compliance, he says.

“I have spoken with many actuaries of MAOs over the last few weeks, and they’re all scratching their heads,” Biasetti tells AIS Health. That’s because the agency proposes to apply a dollar attachment point for reinsurance (i.e., the \$10,000 threshold in this case) on two very different types of reinsurance. Excess of loss reinsurance is nonproportional, he explains, so requiring that costs must exceed \$10,000 per person before that type of reinsurance kicks in makes sense. But requiring that the actuarial value of the insured risk under quota share reinsurance — which is proportional — is measured against such an attachment point doesn’t work, he argues.

Ambiguity Could Create Bid Issues

This ambiguity, Biasetti pointed out in the comment letter, will present a bid filing dilemma for the MAOs that use quota share reinsurance. And, without further clarity, MAOs are likely to qualify their bid certifications by explicitly excluding compliance with the new CMS quota share reinsurance rule, he suggested.

Regardless of how the timing of the rule may impact bids, Biasetti says he hopes CMS alters its guidance soon and makes the regulation retroactive to 2020 (as opposed to taking effect in contract year 2021 as proposed) “so that health plans today can be reassured that they can continue to enter into quota share reinsurance, not only in the context of submitting bids but also in the ordinary course of business from today going forward.”

Locke Lorde proposed that CMS require that a minimum quota share percentage of risk be retained by the MAO. Specifically, the firm suggested the following language for the exception allowing an MAO to obtain reinsurance for the cost of providing basic benefits to an enrollee: “through quota share reinsurance on a first dollar proportional basis, where the MA organization and/or an affiliate of the MA organization retains a minimum ten percent (10%) quota share percentage of the risks being transferred.” Such minimum retention, however, would not apply to quota share reinsurance within an MAO’s affiliated group.

Part of CMS’s reluctance to allow quota share reinsurance on a widespread basis may come from concerns about the agency’s statutory authority to do so because of the requirement that MAOs assume full financial risk, Dworkowitz suggested in the Manatt article. Beyond that, “CMS also may be concerned that if it allowed for 100% quota share reinsurance, the organizations with which CMS contracts would not have sufficient financial incentives under the program,” he wrote. “On the other hand, allowing for reinsurance in many circumstances could...encourage smaller, provider-led organizations to participate” in MA.

Comments on the proposed rule were due April 6. CMS said it is particularly interested in comments regarding whether the \$10,000 threshold is reasonable and sufficient to serve the goals of the MA program. “In addition, we welcome comments that provide additional information about insurance or other arrangements for addressing the risk of costs that exceed specific thresholds.”

View the Manatt article at <https://bit.ly/2UMLpud>. Contact Biasetti at jbiasetti@lockelord.com.

View the proposed rule and comments submitted so far at <https://bit.ly/3bGHypv>.



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