

Draft Executive Summary

The Working Group received various suggestions as to possible ways to modify MLR definitions, methodology and/or numerical standards to support producer compensation. Some of these variations could be combined as appropriate. All of these options are in addition to the default option of making no changes to the current MLR formula. Here is a summary of the variations identified:

1. Types of compensation in addition to commissions, if any, eligible for special treatment;
2. Types of producers for which compensation is eligible for special treatment;
3. Limits, if any, on the amount of compensation given special treatment;
4. Increase the numerical MLR standards (85% and 80%) to reflect the exclusion of commissions;
5. Substitute producer compensation deduction for the federal tax deduction;
6. Limit the number of years that special treatment of producer compensation will be applicable to the period prior to 2014 when guaranteed issue will apply and exchanges will be in place.

The Working Group collected data from the National Association of Health Underwriters (NAHU), Connecture, three large health insurance companies, and several states, regarding commission levels. In reviewing this data, the Working Group has the following observations:

1. The numerical data from the three companies, NAHU, and Connecture do not provide a clear trend in commission reductions prior to 2011.
2. However, some of the states with higher MLR requirements do report reductions in commissions over several years in their states.
3. In 2011, a significant number of companies have reduced commission levels, particularly in the individual market. However, a significant number of companies have not reduced commissions in 2011, at least not yet.
4. The states with higher MLR requirements have not observed any problems with consumer access to insurance or to producers.

The Working Group also evaluated options based upon data derived from the Supplemental Health Care Exhibit (SHCE) for 2010. Highlights from the SCHE 2010 data include the summary tables below. (“PMPM” refers to “per member per month”.)

Table A-MLR and Rebate Levels

MLR and Rebate Levels	% of Companies Paying Rebates*	% of Members Receiving Rebates	Median MLR	Rebate \$Millions	Rebate PMPM	Member Months (Millions)
Individual Market	14.2%	52.9%	73.6%	\$978.3	\$8.09	121
Small Group Market	15.7%	22.8%	82.3%	\$447.4	\$2.13	210
Large Group Market	15.0%	14.7%	89.4%	\$526.7	\$1.13	465

*3,196 company/state combinations in data, each company counted for each state in which it writes.

The following table captures the relative levels of compensation included in the SHCE data.

Table B-Compensation Levels

Compensation Levels	Producer Commissions (SHCE 10.2) % of Earned Premium	PMPM	Other Sales Expenses (SHCE 10.1) % of Earned Premium	PMPM	Member Months (Millions)
Individual	5.86%	\$12.28	1.04%	\$2.18	121
Small Group	4.52%	\$15.08	0.65%	\$2.17	210
Large Group	1.84%	\$6.12	0.52%	\$1.73	465

Using the SHCE 2010 data, we were able to estimate the effect of 12 modifications had they been in effect in 2010. These modifications reflect changing different components of the MLR calculation, including various caps on those modifications. The basic modification is the first one, excluding agents and brokers fees and commissions. The other modifications are variations from this basic change. Below is a table showing the impact of this basic modification, followed by results of capping the commission adjustment at various levels. The tables showing results for the complete set of modifications considered are contained in the body of the report.

The results in Table C are intended to illustrate the relative impact of the first modification, not the actual level of rebates expected. Results for 2011 and later years are likely to differ from 2010 for several reasons. Carriers will likely make changes in their operations as they implement and react to the various provisions of the Affordable Care Act. Changes in commission scales are just one example of this. In addition to operational changes, they are likely to fine-tune accounting procedures with respect to the SHCE reporting. For example, many carriers may not have had time to consider all of the administrative expenses that might qualify as quality improvement expenses for 2010, but may pay more attention to this for 2011, when this item will affect actual rebate calculations.

Modification 1 subtracts agents and brokers fees and commissions (SHCE Part 1, Line 10.2) from the adjusted earned premium used in the rebate formula.

Table C-Modification 1

	% of Companies Paying Rebates	% of Members Receiving Rebates	Median MLR	Rebate \$Millions	Rebate PMPM
Individual Market	11.1%	31.3%	78.8%	\$401.3	\$3.32
Differences from Table A	-3.1%	-21.6%	5.2%	-\$577.0	-\$4.77
Small Group Market	8.4%	7.6%	87.0%	\$146.2	\$0.70
Differences from Table A	-7.3%	-15.2%	4.7%	-\$301.2	-\$1.43
Large Group Market	8.9%	5.4%	91.6%	\$215.9	\$0.46
Differences from Table A	-6.1%	-9.3%	2.2%	-\$310.8	-\$0.67

It has been suggested that rather than excluding all producer compensation from the formula, the exclusion be capped. We evaluated various caps, both on a percentage of premium basis and a PMPM basis. Generally a cap of about 3-4% would restore half the rebate reduction for individual, while a cap of under 2% would have a similar impact for the small and large group markets. Similarly, a cap of about \$6 PMPM would restore half the rebate reduction for individual and a cap under \$6 PMPM would do so for both group markets.

As evidenced in Table C, adjusting the MLR calculations for producer compensation results in an increase in the MLR by several percentage points. The Working Group calculated the “break-even” MLR level that would preserve the level of rebates prior to the commission adjustments. For the three markets (and no commission cap), this break-even level is about 86%, with some variation by market.

The Working Group did not consider modifications to the MLR calculations based on producer type.

Finally, it has been suggested that the producer compensation deduction should replace the federal tax deduction. There is a complication in this analysis, since the federal income tax depends upon incurred rebates and the effect of rebates were not factored into the taxes reported in 2010. All else being equal, rebates would have been perhaps 30% higher, so comparing this substitution is not a straight forward calculation. Based on this 30% assumption, we believe making this substitution would reduce rebates by roughly half for the individual market and by roughly a quarter in the group markets, thus having a significant impact on the rebate levels if the numerical standards remain the same.