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Medical Loss Ratio (MLR) Rebates and Employer Responsibilities

A medical loss ratio (MLR) is the amount of health insurance premiums that an insurer spends on health care and activities to improve health care quality. It is expressed as a percentage: for example, an MLR of 90% means 9 out of 10 of all premium dollars the insurer receives are spent on health care and quality improvement, with the other dollars spent on overhead, profits, and administrative costs. Starting in 2012, an insurer that does not spend enough of its premium dollars on health care must provide a rebate to the insured individual or to the policyholder, which may be the employer that purchased the insurance.

What MLR do plans have to meet?
Under Health Care Reform, an insurer that offers health care coverage to individuals or small groups (usually less than 50 employees) generally must meet an 80% MLR. This means that these insurers must spend at least 80% of annual premiums they take in on health care costs (or activities that improve health care quality) as opposed to profits and administrative costs, including executive salaries, overhead, and marketing.

An insurer that offers coverage in the large group market (usually over 50 employees) must meet at least an 85% MLR. It must spend at least 85% of premiums on health care costs or quality improvement.

Individual states can require a higher MLR for insurers operating within their state.

MLR Rebates

An insurance issuer that does not meet its MLR for the year is required to issue rebates to persons enrolled in the plan. Rebates are based upon aggregated market data in each state and not upon a particular group health plan's experience.

In order to reduce the burden on issuers and minimize the tax impacts on participants in and sponsors of group health plans, the rules provide that **issuers must pay any rebates owed to persons covered under a group health plan to the policyholder (typically the employer that sponsors the plan), who is then responsible for distributing the rebate to eligible plan enrollees.** Each year's rebates must be provided to policyholders by August 1 of the following year. Special Update: Starting with the 2014 MLR reporting year, an issuer must provide any rebate owed to an enrollee by September 30 following the end of the MLR reporting year. For years prior to 2014, the deadline remains August 1.

Notice of Rebate—To Be Provided by Issuer
Under the rules, issuers are required to provide information in the form of a rebate notice to enrollees who are owed rebates. This notice must be sent by August 1 of the following year to enrollees entitled to a rebate based upon the prior MLR reporting year

Employer Responsibilities for Distribution
The U.S. Employee Benefits Security Administration has released technical guidance for employers and group health plans on how to handle the distribution of rebates paid pursuant to the MLR requirements. To the extent that premium rebates are considered to be plan assets, they become subject to ERISA (including ERISA's requirements related to standards of fiduciary conduct). According to the guidance:

- If the plan or its trust is the policyholder, in the absence of specific plan or policy language to the contrary, the entire rebate would constitute plan assets, and the policyholder would be required to comply with ERISA's fiduciary provisions in the handling of rebates that it receives.
- If the employer is the policyholder, determining the plan's portion, if any, may depend on provisions in the plan or the policy or on the manner in which the plan sponsor and the plan participants have shared in the cost of the policy.

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Information Regarding the Health Insurance Premium Tax Credit

There are several methods by which an employer may distribute rebates to plan enrollees, including a rebate check in the mail; a lump-sum reimbursement to the same account that was used to pay the premium if it was paid by credit card or debit card; or a direct reduction in future premiums. **Decisions on how to apply or expend the plan's portion of a rebate are subject to ERISA's general standards of fiduciary conduct.**

- Under ERISA, the responsible plan fiduciaries must act prudently, solely in the interest of the plan participants and beneficiaries, and in accordance with the terms of the plan to the extent consistent with the provisions of ERISA.
- With respect to these duties, the technical guidance notes that a fiduciary also has a duty of impartiality to the plan's participants. A selection of an allocation method that benefits the fiduciary, as a participant in the plan, at the expense of other participants in the plan would be inconsistent with this duty.
- An allocation does not fail to be impartial or "solely in the interest of participants," for purposes of ERISA, merely because it does not exactly reflect the premium activity of policy subscribers. In deciding on an allocation method, the plan fiduciary may properly weigh the costs to the plan and the ultimate plan benefit as well as the competing interests of participants or classes of participants provided such method is reasonable, fair and objective.

Potential Tax Consequences

In addition to requirements under ERISA that may apply to the distribution of rebates by employers, there may also be tax implications that need to be considered. The IRS has issued a set of MLR FAQs that provide information on the federal tax consequences to employees when a MLR rebate stems from a group health insurance policy, including with respect to both employee after-tax and pre-tax premium payments.