

Benefits BULLETIN



Medical Loss Ratio (MLR)

● October 3, 2024 ●

The Affordable Care Act (ACA) requires health insurance issuers to spend a minimum percentage of premium dollars on medical care and health care quality improvement, which is intended to lower the cost of care. This percentage is known as the "medical loss ratio" (MLR). In the large group insurance market, the required MLR is 85%; the small group and individual markets have a required MLR of 80%. However, each state may set a higher rate.

When an issuer fails to meet the requisite MLR for a year, it must provide a rebate to its policyholders. MLR rebates for the 2023 calendar year are due to policyholders by September 30, 2024. An employer-policyholder who receives a rebate for its insured group health plan will be responsible for determining how to appropriately use the refund, particularly in the context of the Employee Retirement Income Security Act (ERISA).

ERISA's Plan Asset Rule

Several annual limits apply to health plans and flexible spending accounts (FSAs), which may be adjusted annually to accommodate changes in the cost of living. The new amounts should be considered upon renewal.

- no portion of the rebate is a plan asset when the premium was paid entirely by the **employer**;
- the full amount of the rebate is a plan asset when the premium was paid entirely by **employees**;
- the full amount of the rebate is a plan asset when the premium was paid entirely from **trust assets**; or
- the portion of the rebate attributable to employee contributions is a plan asset when **both the employer and employees** pay the premium.

Use of Plan Assets

Any portion of the rebate that constitutes a plan asset must benefit plan participants and beneficiaries and cannot be retained by the employer. The U.S. Department of Labor (DOL) provides guidance to employers on permitted methods of use and distribution of the refund.

Permitted Methods of Use and Distribution of the Refund

- 1 Making a **cash refund** to former and/or current plan participants (note: where employee contributions are made on a pre-tax basis, the cash refund will be treated as taxable income);
- 2 Providing a **credit** to reduce the cost of future premium contributions for current plan participants and beneficiaries, including COBRA beneficiaries; or
- 3 Applying the refund to create a **benefit enhancement**, such as the addition of a new type of coverage or wellness program.

In deciding upon a distribution method, employers must be fair, objective, and reasonable, and may consider the costs and administrative feasibility associated with any particular method. Generally, employers should ensure that the rebate is used to benefit participants in the policy to which the rebate applies, though the amount of the distribution can be provided in equal shares. Employers should decide upon an allocation method and use the funds no later than 90 days from the date of receipt of the rebate.

Considerations for Non-ERISA Plans

The plan asset rule does not apply to non-ERISA plans, including plans maintained by non-federal governments and church plans. However, the Department of Health and Human Services (HHS) places some restrictions on how such plans can use MLR rebates, and these restrictions are similar to those imposed by ERISA. In sum, these rules dictate the portion of the rebate that must be distributed to plan participants, which participants should receive the distribution and the form and amount of the refund. The HHS rules applicable to non-ERISA plans are provided in [45 CFR Part 158](#).

Employer Next Steps

Employers that sponsor an insured health plan should be prepared to receive MLR rebates from issuers. Upon receipt, the employer should first consult the Plan Document. Not all plan documents will have language that will help determine whether rebates are plan assets or how they should be used, but some plans may have added potentially useful language that should be followed.

Additionally, employers should diligently document the rebate handling process, from calculating the portion of the rebate that constitutes plan assets to the decision-making regarding a distribution method. The documentation should sufficiently demonstrate that the employer complied with the handling procedures imposed by ERISA or HHS. This is true even when a rebate is issued for a terminated plan.

Finally, employers should plan to communicate with employees about the rebate. Insurance carriers that issue MLR rebates will notify not only the employer but also all employees enrolled in the policy to which the rebate relates. Consequently, employees will be aware of the rebate and may expect to receive a refund. Employers, therefore, should work to provide timely information to employees about the receipt of the rebate and the portion that constitutes plan assets, as well as how the refund will be allocated.

ADDITIONAL RESOURCES

Notice 2011-04 - Guidance on Rebates for Group Health Plans Paid Pursuant to the Medical Loss Ratio Requirements

Source: Department of Labor, Employee Benefits Security Administration

Medical Loss Ratio Rebate Requirements for Non-Federal Governmental Plans

Source: Health & Human Services, Federal Register