

Benefits BULLETIN



Medical Loss Ratio (MLR)

● August 2025 ●

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 "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. In the small group market, New York and Massachusetts have set higher rates of 82% and 88% respectively.

When an issuer fails to meet the requisite MLR for a year, it must provide a rebate to its policyholders. MLR rebates for the 2024 calendar year are due to policyholders by September 30, 2025. An employer-policyholder that 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 Plan Assets

Many employer-sponsored health plans are subject to ERISA. ERISA imposes various fiduciary duties upon plan sponsors, including the obligation to use plan assets for the exclusive benefit of plan participants and beneficiaries. Therefore, an employer-sponsor of an ERISA plan that receives an MLR rebate will need to identify what portion of the rebate (if any) constitutes plan assets.

In the absence of definitive direction in the Plan Document:

- 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 the premium was paid by **both the employer and employees**.

Use of Plan Assets

Any portion of the rebate that constitutes a plan asset must be used to 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

- 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);
- providing a **credit** to reduce the cost of future premium contributions for current plan participants and beneficiaries, including COBRA beneficiaries; or
- 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, which can include 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 detail [here](#).

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 be helpful in determining whether rebates are plan assets or how the rebates should be used, but some plans may have added potentially useful language that should be followed.

Additionally, employers should be diligent about documenting the process of handling the rebate, 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 where a rebate is issued for a plan that is terminated.

Finally, employers should plan to communicate with employees about the rebate. Insurance carriers that issue MLR rebates will notify not only the employer about the rebate, but also all employees who were 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 the manner in which the refund will be allocated.

ADDITIONAL RESOURCES

Technical Release 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 (MLR) FAQs

Source: Department of Treasury, Internal Revenue Service

Medical Loss Ratio Rebate Requirements for Non-Federal Governmental Plans

Source: Health & Human Services, Federal Register

Medical Loss Ratio Data and System Resources

Source: Centers for Medicare & Medicaid Services