

Employer Guide to Medical Loss Ratio Rebates



The Affordable Care Act (ACA) established medical loss ratio (MLR) rules to help control health care coverage costs and ensure that enrollees receive value for their premium dollars. The MLR rules require health insurance issuers to spend 80-85 percent of premium dollars on medical care and health care quality improvement, rather than administrative costs. Issuers that do not meet these requirements must provide rebates to consumers.

This guide outlines the questions employers need to ask and actions they may need to take in regard to MLR rebates.

Which plan or policy is covered by the rebate?

Employers that have multiple health plans or provide benefits under multiple policies must determine which plan or policy is covered by the rebate.

Is the rebate a plan asset under ERISA?

Who is the policyholder? The employer or a trust?

If the employer is the policyholder – as is most often the case – the portion of the rebate that must be treated as a plan asset depends on who paid the insurance premiums.

EXAMPLES	
PAYOR	OUTCOME
IF THE EMPLOYER PAID THE ENTIRE COST OF THE INSURANCE COVERAGE	- No part of the rebate/refund would be attributable to participant contributions and there would be no plan assets - Nothing would need to be returned to employees
IF PARTICIPANTS PAID THE ENTIRE COST OF THE INSURANCE COVERAGE	- The entire amount of the rebate/refund would be attributable to participant contributions and would be deemed entirely plan assets - It would have to be distributed entirely to the participants
IF THE PARTICIPANTS AND THE EMPLOYER EACH PAID A FIXED PERCENTAGE OF THE COST	- A percentage of the rebate/refund equal to the percentage of the cost paid by participants would be attributable to participant contributions - It would have to be distributed to the participants
IF THE EMPLOYER WAS REQUIRED TO PAY A FIXED AMOUNT AND PARTICIPANTS WERE RESPONSIBLE FOR PAYING ANY ADDITIONAL COSTS	- The portion of the rebate/refund up to the participants' total amount of contributions during the relevant period would be attributable to participant contributions - It would be plan assets that would have to be distributed to the participants.
IF PARTICIPANTS PAID A FIXED AMOUNT AND THE EMPLOYER WAS RESPONSIBLE FOR PAYING ANY ADDITIONAL COSTS	- The portion of the rebate/refund under the policy up to the employer's total amount of contributions during the relevant period would not be attributable to participant contributions and would not be plan assets - It would not be returned to the participants unless the rebate exceeds the employer's total premium contributions for the year. In that case, any amount above the employer's total contributions would be refunded to participants.

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How should the rebate be used?

Once an employer determines that all or a portion of an MLR rebate is a plan asset, the employer must decide how to use the rebate for the exclusive benefit of the plan's participants and beneficiaries. DOL TR 2011-4 identifies the following methods for applying the rebates:

- **The rebate can be distributed to participants** under a reasonable, fair and objective allocation method. If the employer finds that the cost of distributing shares of a rebate to former participants approximates the amount of the proceeds, the employer may decide to limit rebates to current participants.
- Similarly, if distributing cash payments to participants is not cost-effective (for example, the payments would be de minimis amounts, or would have tax consequences for participants) the employer may **apply the rebate toward future premium payments or benefit enhancements**. An employer may also "weight" the rebate so that employees who paid a larger share of the premium will receive a larger share of the rebate.
- Ultimately, many employers provide the employees' share of the rebate in the form of a premium reduction or discount to all employees participating in the plan at the time the rebate is distributed. Employers should review all relevant facts and circumstances when determining how the rebate will be distributed.

If a plan provides benefits under multiple policies, the employer must be careful to allocate the rebate for a particular policy only to the participants who were/are covered by that policy. According to the U.S. Department of Labor (DOL), using a rebate generated by one plan to benefit another plan's participants would be a breach of fiduciary duty. For example, a rebate attributed to a Kaiser Plan for California employees should not be distributed to the other U.S. employees covered by a UnitedHealthcare plan.

Is there a time limit for distribution of the rebate?

Yes. To avoid the requirement under ERISA that the premium rebate be held in trust, the rebate must be distributed within three months of receipt.

Directing an issuer to apply the rebate toward future participant premium payments or toward benefit enhancements adopted by the plan sponsor would also avoid the need for a trust.

Are there any tax considerations?

- **After tax premium payments** – If premiums were paid by employees on an after-tax basis, the rebate will generally not be taxable income to employees and will not be subject to employment taxes. This is the case if the rebate is paid in cash or if it is applied to reduce current year premiums.
- **Pre-tax premium payments** – If premiums were paid by employees on a pre-tax basis under a cafeteria plan, the rebate will generally be taxable income to employees in the current year and will be subject to employment taxes. This is the case whether the rebate is paid in cash or is applied to reduce current year premiums.

Using the rebate to offset future plan premiums of current participants would be an acceptable way to avoid any tax issues that would arise with issuing a check to participants.

However the employer decides to handle the rebate, it should be done within three months of receipt to avoid any trust requirements.

For More Information

For further assistance or clarification on MLR rebates, please contact your Higginbotham representative.