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COMPLIANCE INSIGHTS

WHAT IS MEDICAL LOSS RATIO (MLR) AND HOW DO YOU HANDLE MLR REBATES?

What is Medical Loss Ratio (MLR)?

Over the next month, health insurance carriers will need to distribute approximately $1 billion in medical loss ratio (MLR) rebates from 2022 to individual and group health insurance consumers. The following article provides an overview of an employer plan sponsor's obligation for handling MLR rebates.

The MLR, is the percentage of premium dollars received by a health insurance carrier that is spent on medical claims and quality improvement.

The Affordable Care Act (ACA) requires health insurance carriers to submit data to the U.S. Department of Health & Human Services (HHS) each year detailing premiums received and how those premium dollars are spent. The ACA requires carriers to maintain at least an 80% MLR for small group (1-50 employees on average in prior calendar year and at least two employees on first day of plan year, though a few states define small group as 1-100 employees) or 85% MLR for large group.

If a carrier maintains a lower MLR, it must issue a premium rebate to policyholders by no later than September 30th each year.

What does MLR mean for Plan Sponsors?

Plan sponsors first must determine how much, if any, of the rebate amount, is considered "plan assets" under the Employee Retirement Income Security Act of 1974 (ERISA). Typically, the percentage of the MLR rebate, considered to be plan assets, is proportionate to the employee's percentage of overall premium contributions. Thus, for example, if an employer pays 100% of premium cost, none of the rebate is plan assets, and the employer may retain the full amount. If participants pay all of the premium cost, all of the rebate is plan assets and must be used for the benefit of the participants. If, for example, an employer pays 70% of premiums and employees contribute 30%, 30% of the MLR rebate is plan assets.

What does ERISA require?

Determining how much of a rebate is plan assets is important because ERISA requires plan sponsors to use any MLR rebate amount found to be plan assets for the exclusive benefit of plan participants and beneficiaries *within three months of receiving an MLR rebate*. Plan sponsors must decide whether they will use these plan assets for the benefit of current participants or current as well as prior year participants (i.e., participants who actually contributed premiums for coverage subject to the MLR rebate but who are no longer employed). U.S. Department of Labor (DOL) Technical Release 2011-04 permits plan sponsors to choose to provide rebated plan assets solely to current participants if the costs of paying former participants is equal to or greater than the rebate amount due to them.

What does the DOL require of MLR rebates?

The DOL states that plan sponsors must use a reasonable

and objective method to allocate any MLR rebate amounts they distribute in cash to all affected individuals and provides these three safe harbors: • Evenly to all covered participants.

- Based on each participant's actual contributions; or
- In a way that reasonably reflects each participant's contributions.

Plan sponsors have options aside from making cash payments directly to current and former participants. Plan sponsors may weigh all facts and circumstances, including:

- Cost of distributing payments.
- Size of the rebate amounts due (i.e., *de minimis* amounts); and/or
- Negative tax consequences (e.g., amounts are taxable to fully insured plan participants who paid premiums contributions on a pre-tax basis).

If, based on the foregoing factors, an employer decides it will not make cash payments to current or former participants, an employer may use the assets to reduce future premium contributions for current participants, or to provide general benefit enhancements for current plan participants.

How is *de minimis* determined?

One of the permissible reasons for an employer not to make cash distributions to current and former participants is if the amounts due to each such participant is *de minimis*. Plan sponsors have leeway to determine whether rebate payments would be *de minimis* and should consider how much each participant would get after taxes, the costs of producing rebate checks and the costs of mailing rebates. There are no hard and fast rules on what amounts are *de minimis*, but

A fair, objective, and reasonable analysis will consider the foregoing factors when making this determination. Additionally, plan sponsors should document any decisions relating to determining *de minimis* amounts and should be sure to apply these amounts either to offset future premium payments or to add enhanced benefits to the plan.

Conclusion

Prudence suggests that plan sponsors should determine their general strategy for handling MLR rebates and draft it into their group health plan documents and SPDs. The overall strategy should address how plan assets will be calculated, how rebates will be distributed, whether any rebates will go to cover administrative expenses and how the sponsor will determine *de minimis* amounts and what will be done with those amounts.

For assistance with your MLR questions, please contact your advisor.

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