THE ADVISOR

National Marketing Group Services, Inc.
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Medical Loss Ratio (MLR) Rebates and Employer Responsibilities

Under the Affordable Care Act, insurers must spend a minimum percentage of the money they receive from health insurance premiums on medical care and quality improvement activities. This percentage is called a medical loss ratio (MLR). Insurers that offer health care coverage to **individuals or small groups** (usually not more than 50 employees) generally must meet an 80% MLR; for the **large group market** (usually more than 50 employees) the MLR is 85%. States can require a higher MLR.

MLR Rebates

An insurer that does not meet its MLR for the year is required to issue rebates to individuals enrolled in the plan. Rebates are based upon aggregated market data in each state and not upon a particular group health plan's experience.
Issuers pay the rebates to the policyholder (typically the employer that sponsors the plan) by Sept. 30 following the end of the MLR reporting year. The policyholder is then responsible for distributing the rebate to eligible plan enrollees (that is, participating employees).

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. Rebates that are plan assets are subject to ERISA (including ERISA's 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**

requirements in the handling of rebates 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.

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 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, consistent with ERISA.
- 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.
    - For example, if a fiduciary finds that the cost of distributing shares of a rebate to former participants approximates the amount of the proceeds, the fiduciary allocate the proceeds to current participants based on a reasonable, fair and objective allocation method.
    - Or, if distributing payments to any participants is not cost-effective (that is, payments to participants are of de minimis amounts, or would give rise to tax consequences to participants or the plan), the fiduciary may use the rebate for other permissible plan purposes including applying the rebate toward future participant premium payments or benefit enhancements.

There may also be tax implications to the distribution of rebates by employers. For more information, see the IRS MLR FAQs.

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Should you have additional questions or need assistance, please contact **NMGS** at 305 592-9926 or by email customerservice@mynmgs.com

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