



THE CAPITAL GROUP

Business and Personal Financial Services

MLR Rebate

Below is an expansion to our May Article “Medical Loss Ratio”.

Large group insured plans (over 100 employees) must spend at least 85% of premiums paid on medical claims. Small groups (100 or fewer employees) and individual markets must spend at least 80% on medical claims. If not, a rebate is owed to the policyholder and subscriber, based on pre-established pools.

According to Technical Release 2011-04, whether the rebate will constitute a plan asset depends, on the identity of the policyholder and on the source of premium payments.

If the plan or its trust is the policyholder, the policy is an asset of the plan and the entire rebate must be treated as a plan asset. In most cases, the employer is the policyholder and the portion of the rebate depends on who paid the insurance premiums.

For Example:

- If the employer paid 100 percent of the premiums, the rebate is not a plan asset and the employer can retain the entire rebate amount.
- If participants paid 100 percent of the premiums, the entire rebate amount is a plan asset.
- If the premiums were paid partly by the employer and partly by the participants, the percentage of the rebate equal to the percentage of the cost paid by participants is a plan asset.

How Should the Rebate be Used?

Once an employer determines how much, if any, portion of an MLR rebate is a plan asset, they need to decide how to use the rebate for the exclusive benefit of the plan’s participants and beneficiaries.

DOL Technical Release 2011-04 identifies the following methods:

- 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 fiduciary may decide to limit rebates to current participants.
- If distributing payments to participants is not cost-effective because the amounts are small or would give rise to tax consequences to the participants, the employer may utilize the rebate for other permissible plan purposes, such as applying the rebate toward future participant premium payments or toward benefit enhancements.
- 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 covered by that policy. According to the DOL, using a rebate generated by one plan to benefit another plan’s participants would be a breach of fiduciary duty.

ADDITIONAL GUIDANCE

A copy of DOL Technical Release 2011-4 is available at: www.dol.gov/ebsa/newsroom/tr11-04.html.

A copy of the IRS’ FAQs is available at: www.irs.gov/newsroom/article/0,,id=256167,00.html.

More MLR guidance is available from HHS at:

<http://ccio.cms.gov/programs/marketreforms/mlr/index.html>.