

July 17, 2012

Greetings!

Medical Loss Ratio (MLR) Rebate Checks...What to do with them?

The Affordable Care Act (ACA) requires health insurance issuers to spend a minimum of their premium dollars on medical care and health care quality improvement. This percentage, or medical loss ratio (MLR) is 85 percent for issuers in the large group market and 80 percent for issuers in the small and individual group markets. Issuers that do not meet the applicable MLR standard must provide rebates to consumers.

The MLR requirements became effective for issuers in 2011 with **rebates required to be paid by August 1, 2012**. Some of your clients may have already received their rebate checks.

Key Questions

The main questions that your clients will be faced with pertain to what they can do with their rebate checks. The following is a brief summary to help your clients answer their questions. We are also going to assume two things, 1). that your employers have a health plan that is governed by the Employee Retirement Income Security Act (ERISA) and 2). that the employer is the policyholder.

The first question we need to answer is whether the rebate check is considered to be a plan asset. Assuming that the employer is the policyholder, and whether the check is a plan asset depends upon who paid the insurance premiums.

- If the employer paid 100 percent of the premiums, the rebate is not a plan asset and your client can keep the entire rebate amount.
- If the employees paid 100 percent of the premiums, the entire rebate amount is a plan asset, and must be dealt with as described later in this summary.
- If the premiums were paid partly by the employer and partly by employees, a portion of the cost of the premium paid by employees is a plan asset.

The reason why it is important to determine what constitutes a plan asset, is that your client will not be able to keep that portion of the refund check for their own use which is considered to be a plan asset.

Distribution Process Options

Once you or your client determines that all or a portion of the rebate check is a plan asset, then your client's first option is to issue rebate checks to their plan participants in one of the following ways as long as they are distributed using a reasonable, fair and objective process.

- If the participants and the employer each paid a fixed percentage of the cost, a percentage of the rebate equal to the percentage of the cost paid by participants would be attributable to participant contributions.
- If the employer was required to pay a fixed amount and participants were responsible for paying any additional costs, then the portion of the rebate under the policy that does not exceed the participants' total amount of prior contributions during the relevant period would be attributable to participant contributions.
- If the participants paid a fixed amount and the employer was responsible for paying any additional costs, then the portion of the rebate under such a policy that did not exceed the employer's total amount of prior contributions during the relevant period would not be attributable to participant contributions.

To the extent that a rebate qualifies as a plan asset, normally ERISA would require the amount to be held in trust. However, in Technical Release 2011-4, the U.S. Department of Labor stated that it will not require that the funds be held in trust, if the funds are distributed to participants within three months of their receipt by the employer-policyholder.

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 payments or toward benefit enhancements...within three months of their receipt.

Tax Treatment of Rebates

The following briefly addresses the tax treatment of rebates:

- If employees were paying for premiums on an after-tax basis (not through a Section 125 Plan) then their rebate check would not be taxable.
- If employees were paying for premiums on a pre-tax basis (through a Section 125 Plan) then their rebate check would be taxable.
- If your client decides to offset the employee after-tax contributions by the amount of the rebate due each participant, then there would be no tax impact from the decrease in premium.
- If your client decides to offset the employee pre-tax contributions by the amount of the rebate due each participant, then the decrease in pre-tax premiums would result in an increase in the employee-participant's taxable income.

[Click here](#) to obtain a copy of Technical Release 2011-04 which may be useful in advising your clients. As well, the Internal Revenue Service (IRS) issued a set of Frequently Asked Questions on April 19, 2012 that may also be of assistance to you, [click here](#) to access the FAQs. If you have any further questions, please contact us toll free at **(855) 222-5727** or visit us online at www.theharrisongrouponline.com.

Best Wishes

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Please note that the preceding is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. Readers should contact their legal counsel for legal advice.

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