

CLIENT ALERT

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MEDICAL LOSS REBATE DISTRIBUTION GUIDELINES

What are the acceptable Loss Ratios? The MLR for the Large Group market is 85% and 80% for the Small Group market.

Is there a minimum rebate that the insurer does not need to return? If the insurer distributes the rebate to the policyholder and the total rebate owed to the policyholder and the subscribers combined is less than \$20, then no rebate is owed. If the insurer distributes the rebate directly to the subscribers and the total rebate owed to each subscriber is less than \$5, then no rebate is owed. These are called de minimus rebates.

What is the employer/policyholder's responsibility? How rebates are treated is dependent on type of employer, requirements vary by the type of plan sponsor (i.e. private employers, state and local government plans or church plans), the premium contribution split between employee and employer and whether employee contributions are made pre or post-tax. In most cases, the employer will be obligated to use some of the rebate for the benefit of enrollees, unless the employer pays 100% of the cost of coverage.

GUIDANCE FOR ERISA PLANS

How much may the employer keep? The employer's responsibility for distributing the rebate to participants is dependent on who paid for the insurance coverage. The employer must determine what portion of the rebate is attributable to the employee's contributions. For employers subject to ERISA, this figure will typically be considered plan assets and must be returned to the employees in a fair and equitable fashion. The other portion is the employer's money.

If a plan provides benefits under multiple policies, the employer must be careful to allocate the rebate for a 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.

Who should the Plan Assets be distributed to? There are general guidelines and the DOL allows for some flexibility here as to whether you must provide the rebate to participants who were (1) covered in both the year in which the rebate was generated and the year in which the rebate was received or (2) just current

participants. If the employer determines that the cost of distributing rebates to former participants approximates or exceeds the amount of the rebate, the employer may decide to limit rebates only to current participants. This option allows employers to avoid the burden of tracking down previous participants who are no longer employees of the company. However, current COBRA participants must be included. The allocation method must be reasonable, fair and objective, but does not have to reflect the actual contribution cost of each employee. This means that the employer could choose to provide a flat amount rebate to each participant or a percentage of actual contribution, so long as the method is reasonable, fair and objective.

How should Rebates be distributed? The rebates are most often distributed to participants as a reduction to contributions or as cash compensation.

Are Rebate distributions to employees taxable? Whether a rebate is taxable or not will depend on whether the contribution was paid pre or post tax and if the contribution was post tax, whether the employee deducted their premium contributions on their 2020 Form 1040.

In general, if contributions are made subject to a Section 125 plan, then rebate distributions will be taxable to the participant. If contributions are post tax, then distributions will only be considered taxable if a corresponding deduction was taken on the individual's 2020 Form 1040.

How quickly must rebates to employees be distributed? The rebates must be distributed to the employees within 90 days of receipt of the rebate from the insurer.

Additional Guidance is provided by the Department of Labor – [Technical Release 2011-4](#)

Remember – that participants who were enrolled in 2020 will receive a letter from the insurance company advising them that their employer/former employer received a rebate. The rebate amount is not included in the letter. Below is wording that you may customize to send to your employees once you determine the amount of the distribution and the recipients of rebate.

Dear Employee,

You may have recently received a letter from [INSURANCE COMPANY] regarding a premium rebate. This rebate is required by the Affordable Care Act – the health reform law.

The Affordable Care Act requires [INSURANCE COMPANY] to rebate part of the premiums it received if it does not spend at least [80% OR 85%] of the premiums it receives on health care services, such as doctors and hospital bills, and activities to improve health care quality, such as efforts to improve patient safety. No more than [20% OR 15%] of premiums may be spent on administrative costs such as salaries, sales, and advertising. These percentages and rebates apply to [INSURANCE COMPANY]'S [STATE] business and not specifically to our company.

[INSURANCE COMPANY] recently provided [COMPANY] with a rebate check of which \$[XX.XX] will be allocated back to our employees in a reasonable, fair and objective manner. Based on current enrollment, this will mean a rebate of \$[XX.XX] per enrolled employee. This amount will be credited towards your Medical Contribution for our check run on xx/xx/xxxx.

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