

**Are you prepared to refund your Medical Loss Rebate?  
Not sure what we are talking about?  
Be in the know... Medical Loss Ratio Rebates**

**When it comes to Medical Loss Ratio rebates (MLR) who gets the cash?**

**What is the Medical Loss Ratio?**

Medical Loss Ratio (MLR) is the percent of premiums an insurance company spends on claims and expenses that improve health care quality. These rebates were mandated under the Patient Protection and Affordable Care Act (PPACA) whenever health insurers do not spend at least a certain percentage of the prior year's health insurance premiums on health care services. Currently the healthcare reform law requires insurance companies to pay annual rebates if the MLR for groups of health insurance policies issued in a state is less than 85 percent for large employer group policies and 80 percent for most small employer group policies and individual policies.

**How are rebates determined?**

Rebates are determined on a state-by-state basis. Rebates are based on all premiums and claims for a group of policies issued by an insurance company in a state during the previous calendar year. Rebates are not based only on the claims for the employer's policy.

- If claims for all policies similar to your size in your state for the previous calendar year were **lower** than the required MLR percent, you **will** receive a rebate.
- If claims for all policies similar to your size in your state for the previous calendar year were **higher** than the required MLR percent, you will **not** receive a rebate.

### **What are you required to do with the rebate check?**

When it comes to deciding how to distribute these rebates, the first question is whether the rebate is considered part of the health insurance plan's assets. When considering plan assets three potential scenarios are presented:

1. If the employer paid the entire premium with no contributions from employees, then the rebate is not part of plan assets and the employer can keep the entire rebate.
2. If employees covered the entire cost of their health insurance premiums, the entire rebate would be considered plan assets and must be used for the sole benefit of the participants.
3. If employees contributed a portion of their health insurance premiums, employers need to determine how to apportion the amount of the rebate to be used for the sole benefit of the participants.

- **Example**

- Total group health plan premiums paid to a carrier during 2017 = \$500,000
- Total employee payroll deductions during 2017 plus COBRA premium payments received by the employer = \$100,000 (i.e. participants paid 20% of total plan premiums for the year)
- In 2018, the employer receives a \$500.00 rebate check from the carrier for Year 2017.
- The employer needs to allocate the \$500 and "refund" employees.
- In this example, the employees paid 20% of the premium. Therefore, 20% of the \$500 or \$100 would need to be "refunded" to the participating employees.

### **Which Employees should receive the refund/ rebate**

All active employees, currently participating on the group medical plan, AND active COBRA participants should receive the refund/ rebate.

- In our above example, a Company with 25 employees participating in the group medical plan would split the \$100 evenly over the 25 active participants.

### **Timeliness of the rebate**

Rebates must be allocated and distributed within **3 months** of when the employer receives the rebate check.

### **DOL Guidance on how to allocate the “refunds” due to employees**

The DOL guidance provides employers with the following three options for disbursing rebates:

1. To reduce employees’ portion of the annual premium for the subsequent policy year for all employees covered under any group health policy offered by the plan; or
2. To reduce employees’ portion of the annual premium for the subsequent policy year for only those employees covered by the group health policy on which the rebate was based; or
3. To provide cash refund only to employees who were covered by the group policy on which the rebate is based.

### **McCloskey Partners recommendation of how to process the “refunds” due to employees**

- McCloskey Partners recommends providing the refund through payroll deduction.
- We recommend that a one-time flat dollar amount “refund/ rebate” be included in the first payroll following when the employer receives the refund check.
- The deduction should be processed as a negative medical deduction so that the money is given back to the employee.
  - The same payroll deduction code that is used for the standard pre-tax medical deductions should be used when the deduction is processed to “refund/ rebate” the employee.

### **Refunding COBRA Participants**

COBRA participants must receive any refund due to them as well. Payments can be made in the form of check to a COBRA participant to provide them with any portion of the refund that is due to them.

### **Communication to Employees**

Employers should be aware that although employers are not required to send a specific notice regarding the rebate to employees, insurance carriers are required to send notices of rebates to participants. The notices sent by carriers will not include the amount of the rebate, but will state that the rebate was sent to the employer and that a portion may be distributed to participants.

Employers receiving a rebate may want to consider sending an employee communication that clarifies whether, and how, employees can expect to receive their portion of the rebate.

Employers may also want to point out that the rebate will usually be a relatively small amount on a per-participant basis. Employees may incorrectly assume that they will be receiving a significant rebate based only on the communication included in the carrier notices.

As in most cases there is no penalty for doing more than is required, therefore many employers are choosing to give back the entire rebate to the employees to avoid the work of calculating the allocation and explaining this allocation to the employees.

***Need more information on the Medical Loss Ratio Rebate?*** Contact McCloskey Partners for the answers!

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