



December 16, 2011

Final Medical Loss Ratio Rules Released

The U.S. Department of Health and Human Services (HHS) has issued [final regulations](#) and a [fact sheet](#) on the Medical Loss Ratio (MLR) requirements under the Patient Protection and Affordable Care Act (PPACA). Under the MLR rules, group health plan issuers must pay to the policyholder any rebates owed under a group health plan. The new regulations make fundamental changes for employer-sponsored, insured group health plans, including revised rules on who receives the rebates and how such amounts may be applied. Self-insured health plans are not subject to the MLR rules.

As background, the MLR rules are designed to ensure that health insurers in the individual and group market spend 80% to 85% of consumers' premiums on direct care for patients and efforts to improve care quality, and not on income, overhead and marketing. Insurance companies that fail to meet the new standard are required to provide a rebate to policyholders if the issuer has an MLR that is less than 85% in the large group market, or less than 80% in the small group market and individual market. MLR rules took effect on January 1, 2011 but the new final rule makes modifications and provides certainty to how the MLR is calculated. The effective date of the new rule is January 1, 2012.

What's Changing in the Final MLR Rules?

Most notably, the final rules change the process for distributing rebates to enrollees in insured group health plans and require issuers to provide notice about the rebate to consumers. In addition, the final rules modify the MLR calculation for "mini-med" and expatriate health plans and the treatment of ICD-10 conversion costs, fraud reduction expenses and community benefit expenditures.

Employers Distribute Rebates to Employees in Group Health Plans

The new final rule directs issuers to provide rebates to the group policyholder (usually the employer) through lower premiums or in other ways that are not taxable. This process will vary by plan type. Insurers will be required to make the first round of rebates to employers in 2012. Rebates must be paid by August 1st each year.

The Old Rule: Under the old interim final rules, issuers in the large and small group markets were to provide any owed rebate to the policyholder (generally the employer) and each subscriber (generally the employees), in amounts proportionate to the amount of premium each paid. The old interim final rule also allowed an issuer to enter into an agreement with the employer to distribute

the rebates on behalf of the issuer if the employer agreed to distribute it proportionately as directed and provide detailed documentation regarding the distribution to each employee.

The New Final Rule: Many expressed concern about the logistical and tax problems inherent in issuers disbursing rebates directly to employees (as most group premiums are paid with pre-tax dollars and thus the rebates could be deemed wages subject to withholding obligations). To address these concerns, the new final rules direct issuers in group markets to provide rebates, if any, to the employer for distribution to the employees. Detailed rules address how plans sponsored by ERISA and non-federal governmental employers must distribute these rebates received from insurers. Our next Update will address the standards for group health plans regarding the distribution of these rebates to employees.

Provide MLR Notice to Consumers

The new final rule also requires that issuers provide notice of rebates to employees and the employer. All employees must be given information about the MLR and its purpose, the MLR standard, the issuer's MLR, and the rebate provided (if any). In addition, the notice to employers and current employees in plans that are not subject to ERISA must contain an explanation as to how the rebate will be handled. If the plan is subject to ERISA, the notice to employers and current employees must contain an explanation that the employer may have obligations under ERISA's fiduciary responsibility as to the allocation of the rebate and contact information for questions concerning the handling and allocation of the rebate.

Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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