

Medical Loss Ratio Rebate

September 27, 2012

This alert is directed to entities sponsoring group health plans (“plans”) that received a Medical Loss Ratio Rebate (“MLRR”). At this point, some entities that received an MLRR have already decided how to utilize those amounts. This alert intends to assist those having trouble with this decision. The first step is to determine which portion of the rebate belongs to the plan, the employer, and the employees. For most situations in which the funds for premiums come from a combination of the employer’s general fund and employee payroll, the MLRR is attributable to the employer and employees in proportion to that split. The next step is to ensure the division is “reasonable.” Since the most “reasonable” way to allocate the rebate is based on who was participating in the plan (or the plan option receiving the MLRR) for the year in which the rebate relates (generally the plan year beginning in 2011), the author’s recommendation is that, to the extent your company utilizes a different allocation method, it should consider how to respond to the question “why aren’t you allocating the rebate based on who was participating in the year for which the rebate relates.” To the extent the company is comfortable with its response, it should proceed, but if there is no reasonable answer to this question, consider rethinking the application of these rebates. The last step is to determine if and how the rebate should be taxed. In general, to the extent insurance premiums were paid with after-tax dollars, the rebate is not taxable, and to the extent the rebate relates to premiums that are paid with pretax dollars, the rebate should be treated as taxable income. To the extent the rebate is provided as a reduction of future premiums, the taxation will be automatically-addressed, as those paying premiums through pretax payroll deduction will have less pretax deductions and more taxable income automatically. To the extent the above tips are not sufficient to guide your entity’s MLRR allocation, the following sources may be useful:

1. Department of Labor Technical Release No. 2011-04 (“Guidance on Rebates for Group Health Plans Paid Pursuant to the Medical Loss Ratio Requirements of the Public Health Service Act”): <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/11-04>
2. IRS-prepared Q&A: <https://www.irs.gov/newsroom/medical-loss-ratio-mlr-faqs>
3. The federal law establishing MLRRs (42 USC 300gg-18): <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap6A-subchapXXV-partA-subpartii-sec300gg-18.pdf>

For more information, please contact your tax and insurance advisors, the Carlton Fields attorney with whom you usually work, or the author of this Legal News Alert.

Authored By



Lowell J. Walters

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