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Welcome

Employee benefit laws change rapidly —
UBA Partner Firms help their clients stay one step ahead with ongoing expert compliance resources.

This webinar is intended to provide general compliance information regarding employee benefits laws. Please consult your legal advisor for specific legal advice.

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Make It a Win: Medical Loss Ratio Rebates

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Agenda

1. Medical Loss Ratio Formula: What It Entails
2. What The Medical Loss Ratio Says About Your Carrier If You Receive a Rebate
3. Tax Considerations With Rebates
4. The Rules for MLR Rebate Distribution
5. How Is The Pandemic Expected to Affect Rebates?

Medical Loss Ratio Formula: What it Entails

Medical Loss Ratio Formula

- The Medical Loss Ratio (MLR) provision of the Affordable Care Act (ACA) limits the amount of premium income that insurers can keep for administration, marketing, and profits. Insurers that fail to meet the applicable MLR threshold are required to pay back excess profits or margins in the form of rebates to their enrollees.

$$MLR = \frac{Health\ Care\ Claims\ +\ Quality\ Improvement\ Expenses}{Premiums\ -\ Taxes, Licensing\ \&\ Regulatory\ Fees}$$

Calculating MLRs and Rebate Amounts

- $\text{ACA } MLR = \dfrac{Health\ Care\ Claims + Quality\ Improvement\ Expenses}{Premiums - Taxes, Licensing\ \&\ Regulatory\ Fees}$
- The ACA MLR standard requires each large group insurer to spend at least 85% of collected health insurance premiums on clinical services and quality improvement each year or provide a rebate.
- Each health insurer must reimburse policyholders any difference between the MLR and the 85% minimum expenditure
- Does not apply to self-funded plans

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What The Medical Loss Ratio Says About Your Carrier

Acceptable Forms of Rebate Payments

- If a carrier is in a position where it must provide a rebate, that means that they have excessive fees and administrative costs and are over charging their policyholders while not providing an adequate level of service
- In order to cure this delinquency, carriers must make rebate payments to shore up this gap
- These rebates may come in the form of either a premium credit (i.e., a reduction in a premium owed) or a lump-sum payment.

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Tax Considerations With Rebates

Tax Consequences for Employees in Group Health Plan

- Tax consequences for employees will depend on whether or not the employee's share of the premiums were paid on a pre-tax or after-tax basis
  - When employees pay their portion of premiums for employer-sponsored health coverage on a pre-tax basis under a cafeteria plan, MLR rebates distributed as a reduction of the employee premium cost or in cash to employees will be taxable
  - When employees pay their portion of the premiums on an after-tax basis, MLR rebates that are distributed as a reduction of the employee premium cost or in cash to employees will generally not be subject to federal income tax.
    - But rebates that relate to premium payments that were deducted on the employee's federal income tax return are subject to federal income tax

The Rules for MLR Rebate Distribution

When Will Rebates Be Treated As Plan Assets?

- Under section 403 of ERISA, plan assets generally must be held in trust, may not inure to the benefit of any employer, and must be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.
  - However, rebates will not always be treated as plan assets subject to ERISA's Fiduciary duty requirements.
- In order to determine whether an MLR rebate is a plan asset under ERISA, DOL guidance suggests that multiple factors should be considered:
  - whether the insurance policy is issued to the plan itself (or a related trust),
  - the terms of the group health plan's governing documents,
  - and whether insurance premiums are paid from trust assets

The exclusive benefit rule and the fiduciary duty of loyalty in allocating rebates

- The DOL guidance also includes a reminder that under ERISA's exclusive benefit rule, an employer may not receive a rebate amount that exceeds the total amount of premiums and plan expenses paid by the employer
- In addition, any portion of a rebate that constitutes plan assets must be used for the exclusive benefit of plan participants and beneficiaries, and ERISA fiduciary principles must be followed in choosing how to use that portion of the rebate

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The exclusive benefit rule and the fiduciary duty of loyalty in allocating rebates

- For example, under section 404(a)(1) of ERISA, the plan fiduciaries must act solely for the interest of plan participants.
- However, An allocation does not fail to be impartial or “solely in the interest of participants,” for purposes of ERISA section 404(a)(1), merely because it does not exactly reflect the premium activity of policy subscribers. In deciding on an allocation method, the plan fiduciary may properly weigh the costs to the plan and the ultimate plan benefit as well as the competing interests of participants or classes of participants provided such method is reasonable, fair and objective.
  - Where a plan provides benefits under multiple policies, the fiduciary should allocate or apply the plan's portion of a rebate for the benefit of participants and beneficiaries who are covered by the policy to which the rebate relates provided doing so would be prudent and solely in the interests of the plan according to the above analysis. However, the use of a rebate generated by one plan to benefit the participants of another plan would be a breach of the duty of loyalty to a plan's participants.

Trust Requirements for Plan Assets

- Plan assets generally must be held in trust until appropriately expended
- However, the DOL issued guidance that Technical Release 92-01 will apply to premium rebates that are plan assets if they are used within three months of receipt by the policyholder to pay premiums or refunds
- For other plans not subject to trust requirements of section of ERISA, fiduciaries may consider the cost of creating a trust when deciding how to expend rebates.

How Has the Pandemic Affected Rebates?

Lingering Affects of the Pandemic Keep Rebate Payments High

- COVID- 19 led to huge declines in care utilization, and insurers are still feeling the effects as they are estimated to issue $1.1 billion in rebates for 2023

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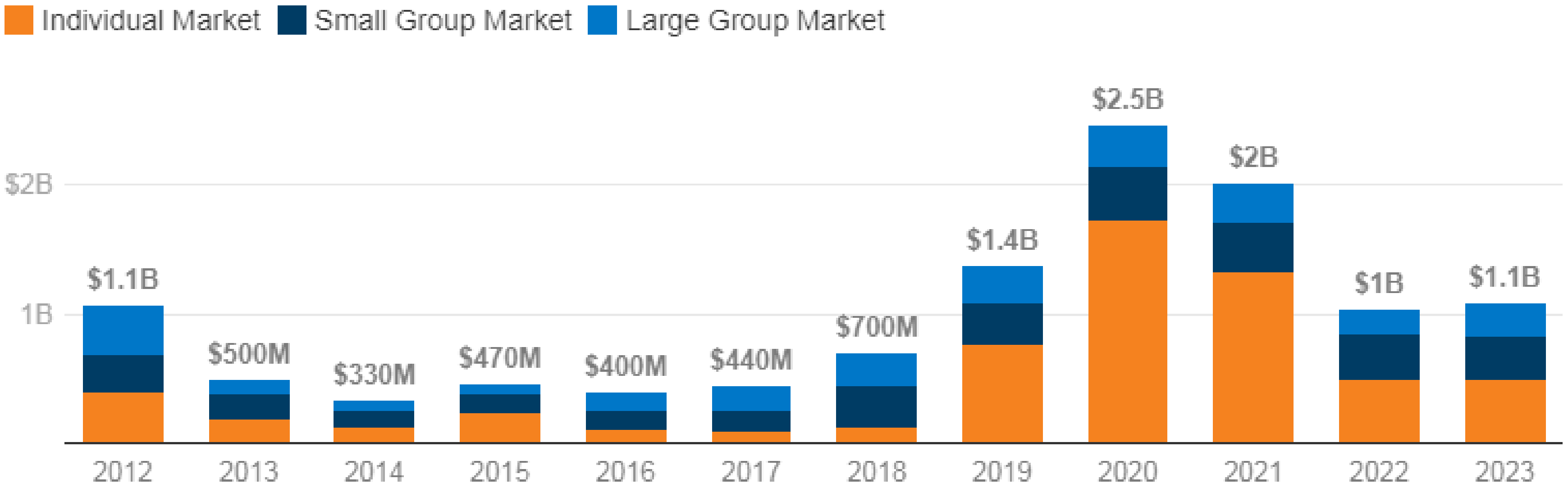
Lingering Affects of the Pandemic Keep Rebate Payments High

Figure 1

Medical Loss Ratio Rebates, Actual (2012-2022) and Estimated (2023)



NOTE: Rebates being paid out in 2023 are based on experience from 2020 – 2022 and will be issued to consumers who were enrolled in 2022. Rebates for 2023 are based on preliminary insurer estimates, and final numbers will be released later in 2023. The small and large group market only includes fully-insured plans.

SOURCE: KFF analysis of data from CMS MLR fact sheets and from Mark Farrah Associates TM • Get the data • PNG

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Q&A

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