Guidance On MLR Rebates For Insured Plans

Insights
5.01.12

(Benefits Update, No. 2, May 2012)

One of the provisions in the recent healthcare reform law is the medical loss ratio (MLR) that requires insurance companies to spend a certain proportion of their income on healthcare benefits for their customers. If an insurance company does not meet its MLR standard, it is required to issue a rebate to its policyholders. (The MLR standards do not apply to self-insured medical plans.) In 2011, the Labor Department issued a Technical Release, which provided guidance on how sponsors of group health plans covered by ERISA should handle such rebates.

The MLR Requirements

The Affordable Care Act requires insurance companies in the large-group market (employers with at least 100 employees) to spend at least 85% of premiums on medical benefits and quality-improvement activities. Insurance companies in the small-group and individual markets must spend at least 80% of premiums.

Beginning this summer, insurance companies will be required to report 2011 MLR data to each state in which they do business. They will report aggregate premium, claims experience, and quality-improvement expenditures for their large-group, small-group and individual markets in each state. Insurers will be calculating MLR based on their entire business in the large-group or small-group market, not based on a particular group health plan's experience.

In August 2012, insurance companies that did not meet the MLR standards in 2011 will be required to provide a rebate to their customers. Health and Human Services (HHS) has directed insurers in the group market to provide rebates to the group policyholder and to include protections designed to benefit plan participants.

Details Of The Rule

When rebates are paid to a group policyholder that is an ERISA plan sponsor, the rebates may be plan assets, and thus subject to rules under Title I of ERISA relating to fiduciary responsibilities and prohibited transactions. The DOL's Technical Release provides guidance regarding the duties of employers, plan sponsors, and other fiduciaries' responsibilities for decisions related to the MLR rebates they receive from insurance companies.

If the plan or its trust is the policyholder, then the policy and the rebate are definitely plan assets. When a rebate is a plan asset, fiduciaries must act prudently, solely in the interest of the plan participants, and in accordance with the terms of the plan document when handling the assets. If distributing payments to any participant is not cost effective, the fiduciary may apply the rebate toward future participant premium payments or toward benefit enhancements.

Insurance companies must provide notices of rebates to current group health plan participants and group policyholders. The notice must include general information about the MLR standard, the issuer's actual MLR, and the rebate. To prepare for the possibility of receiving rebates, plan sponsors with insured group health plans should review their plan documents now to determine whether they address payment of rebates.