

e-Alert

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BCBSMA Health Plan Medical Loss Ratio Premium Rebates (For 2021, Issued in 2022)

The Affordable Care Act (ACA) requires that health insurers spend a certain amount of medical premiums on their subscribers' medical claims and on improving the quality of care. This is referred to as the Medical Loss Ratio (MLR) rule. The MLR provision of the ACA limits the amount of premium income that insurers can keep for administration, marketing, and fees. This rule intends to limit spending on administrative costs and fees. The ACA requires health insurers to publicly report the portion of their premium dollars spent on health care costs, quality improvement, and other activities in each state they operate in.

In Massachusetts, the required spending threshold for direct pay and small groups (defined in MLR rules as those with 1 to 50 employees) is 88 percent, meaning that 88 percent of premiums must be spent on medical claims and activities to improve health care quality, and no more than 12 percent of premiums can be spent on administrative costs. In 2021, Blue Cross Blue Shield of Massachusetts (BCBSMA) spent only 87.1 percent of a total of \$1,490,597,447 in premium dollars on health care and activities to improve health care quality. Since it missed the target by 0.9 percent of the premiums it receives, BCBSMA must rebate 0.9 percent of the total health insurance premiums paid by the employer and employees in your group health plan.

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Who will receive rebates and how will they be received?

Since BCBSMA spent less than the limit for small group account holders in 2021, those customers will be issued rebates. All impacted small group account holders will be notified by letter dated August 25, 2022. An informational email will be sent on the same day.

BCBSMA will also be mailing letters to members (subscribers) of all impacted accounts informing them of the MLR rules and letting them know that their employer is entitled to and will be receiving a rebate. These letters will be mailed between September 15th and September 30th, 2022.

In compliance with Massachusetts State and Federal MLR standards, small group employers will receive their rebate as a credit on their invoices generated in September. Those small group employers that no longer have an active account with BCBSMA will receive a rebate check by September 30, 2022.

What do employers need to do with the premium rebate?

As an employer, you have fiduciary responsibilities regarding the use of the Medical Loss Ratio rebates. The portion of the rebate attributable to participant contributions is considered to be an asset of the plan, which must be used for the benefit of the employees covered by the policy.

What portion of the rebate is considered an asset of the plan that needs to be distributed to plan participants?

Employers will need to determine what portion of the rebate plan participants are entitled to receive.

For example, if the employer paid the entire cost of the insurance coverage, then no part of the rebate would be attributable to participant contributions. However, if the employer pays 75% of the premium and an employee pays 25%, the employer would distribute 25% of the rebate to the participating employees.

Example (based on 75% Employer/25% Employee contribution to premiums):

- Total group health plan premiums paid to a carrier during 2021 = \$180,000
- Total employee payroll deductions during 2021 plus COBRA premium payments received by the employer = \$45,000
- The employer receives a \$4,320 premium rebate
- In this example \$1,080 (25% of the \$4,320) must be returned to participants
- \$1,080 should be divided equally among the participants

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The distribution allocation method is not required to exactly reflect the premium activity of individual plan participants. In many situations, the fairest, most reasonable, and objective method of allocation may be as easy as dividing the rebate evenly over all current plan participants, even if those participants made different contributions to the plan based on class, income, or coverage tier.

How do employers issue the rebate?

Once the employer has decided on each participating employee's share of the rebate, they will need to decide how to administer the distribution of the rebate to the plan participants.

An employer has two options:

1. Issue rebate checks
2. Give participants a "premium holiday" by applying the rebate amount toward future premium payments

The first option – rebate checks – tends to be administratively burdensome and results in tax consequences for rebate recipients. Accordingly, as a general matter, applying the rebate towards participants' future premiums will be the best choice for many employers.

Rebates should be distributed to participants within three months of receipt by the employer.

How do I determine which participants are eligible for the rebate distribution?

If an employer has more than one plan, the rebate generated by each plan should be distributed to participants in that plan. For example: HMO rebates to HMO participants and PPO rebates to PPO participants. Using a rebate generated by one plan to benefit the participants of another plan would be a breach of ERISA rules.

The most commonly chosen options for choosing which participants are eligible for the rebate are:

1. Return the rebate to participants covered by the plan in the year in which the rebate is received (current plan year participants in 2022, including COBRA participants); or
2. Return the rebate to individuals who participated in the plan both in the year in which the rebate is received (2022 in this case) and in the year used to calculate the rebate (2021).

There is some flexibility regarding whether former participants are included. "Former participants" refers to previous plan year participants (2021 in this case). If a fiduciary determines that the cost or burden of including former participants in a rebate distribution

is too high, it may properly decide to allocate the rebate only to current participants. Current COBRA participants must be included.

Does an employer have to notify plan participants of the rebate distribution?

An explanation is not required, but it likely will reduce questions and misunderstandings over the long run; particularly since if a rebate is paid, the carrier is required to send a notice to all participants of the plan stating that a rebate is being paid.

An employer's explanation does not need to be detailed; something like this should be enough:

"Blue Cross Blue Shield of Massachusetts has issued a Medical Loss Ratio (MLR) rebate for premiums paid for our medical plan(s) in 2021. The same contribution strategy that we use to determine Employer/Employee contributions to premium will be used to determine what portion of the premium rebate will be distributed equally among plan participants.

We have determined that it is in the best interest of plan participants to use the MLR rebate to provide a "premium holiday" for the month of October 2022. This means that your share of the premium for October will be reduced by \$_____ (which is each participant's share of the MLR Rebate).

OR

We have determined that it is in the best interest of plan participants to return your share of the MLR rebate to you in cash. The rebate will be added to your _____, 2022 pay as taxable income."

Employer Next Steps

- Decide how you will administer the distribution of the rebate to plan participants.
- Determine what portion of the rebate plan participants are entitled to receive and which participants are eligible for the rebate.
- Issue the rebate as a "premium holiday" or issue rebate checks within three months of your receipt of the rebate. If you decide on a "premium holiday" and are a Full-Service client with HRK, contact your Client Account Manager to schedule the "premium holiday" on an upcoming payroll. If you are not a Full-Service client, you should work with your payroll provider to apply the "premium holiday".
- Notify plan participants of the rebate distribution.

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For general information about your responsibilities regarding the rebate, you may contact the Department of Labor's Employee Benefits Security Administration at 1-866-444-EBSA (3272) or review the Department's technical guidance on this issue on its [website](#).

If you have further questions regarding this e-Alert, please contact our [Benefits Team](#).

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