



## Legal Alert: Medical Loss Ratio Interim Final Rule Released

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On December 1, 2010, the Department of Health and Human Services (HHS) published its interim final regulation implementing Medical Loss Ratio requirements for health insurance issuers under the health care reform law. The Medical Loss Ratio (MLR) requirements generally provide that beginning January 1, 2011 health insurance companies in the group and individual markets are required to spend at least 80% of premium dollars on medical care and quality improvement activities. Large group health care plans will be required to spend at least 85% of premium dollars on medical care and quality improvement activities. This is referred to as the MLR standard. Insurers offering coverage in a state with a higher MLR standard must meet that state's requirement.

Insurance companies must submit a report to HHS for each state in which the company is licensed to issue coverage that includes the experience of all policies issued during the MLR reporting year (i.e., calendar year.) The report will aggregate data separately for the large group policies, small group policies and individual policies at the state level. Certain exceptions are made for mini-med plans and policies that have been effective for less than the MLR reporting year. The report must be submitted no later than June 1 after the MLR reporting year and will reflect whether or not the health insurance issuer has met the applicable MLR standard.

If the MLR standard is not met, the insurer must provide a rebate to each person or entity that paid the premium on behalf of the enrollee proportionate to the premium amount paid for the enrollee. The rebate is generally calculated by multiplying the premium paid (minus taxes and other permissible adjustments) times the amount by which the actual MLR exceeded the MLR standard. The rebate attributable to current enrollees may be paid in the form of a premium credit, a lump sum check, or if the premium was paid using a credit or debit card, the insurance company may reimburse the credit or debit card account. Rebates attributable to former enrollees must be paid in a lump sum amount either by check or reimbursement of the debit or credit card used to make the premium payment.

If the insurance contract is a group policy that is part of an employer-sponsored health plan, the interim final regulations allow an insurance company to enter into an agreement with the employer to distribute the rebate on behalf of the insurance company. However, the insurance company is still liable to ensure that the rebates are appropriately distributed. The regulations also clarify that the employer may retain its proportionate share of the rebate if it paid a portion or all of the insurance

premium. Rebates must be paid no later than August 1 following the end of the MLR reporting year. Interest will be added to any late payment at the current Federal Reserve Board lending rate or 10% annually, whichever is higher.

HHS has enforcement authority for the Medical Loss Ratio requirements. Penalties for each violation of the requirements can be up to \$100 per entity, per day, per individual affected by the violation.

**Employers' Bottom Line:**

Although the interim final regulation applies only to health insurance issuers, employers are also impacted by the regulation. Employers that sponsor group health plans with fully insured contracts or that are otherwise group policyholders of health insurance contracts will need to be aware that they may be entitled to certain rebates under these policies if they pay a portion or all of the premium. Also, such employers may be asked by the insurance company to distribute rebates to enrollees entitled to rebates under the contracts.

If you have any questions regarding this Alert, please contact the author, Daniel Sulton, [dsulton@fordharrison.com](mailto:dsulton@fordharrison.com), any member of Ford & Harrison's Employee Benefits Practice Group, or the Ford & Harrison attorney with whom you usually work. You may also visit the health care reform section of the Ford & Harrison website, <http://www.fordharrison.com/HealthcareReform.aspx>, for more helpful resources and tools on health care reform.