LawTrends™

A publication of Eastman & Smith Ltd.

EASTMAN & SMITH LTD.
ATTORNEYS AT LAW
Established 1844

October 2012
Special Issue

What Employers Need to Know About MLR Rebates

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By now, employers should have received a medical loss ratio (MLR) rebate if entitled to receive one. Under the health care reform laws, insurance companies are required to spend a minimum portion of premiums received for claim costs and other expenditures designed to improve health care quality. The purpose of the MLR is to limit the amount of administrative and overhead costs spent by an insurer. For the large group market (meaning employers with at least 101 employees), insurers must provide a rebate if it does not spend at least 85% of the premiums toward expenditures designed to improve health care quality. For the small group market (those with less than 101 employees), the threshold is 80%. The rebate is comprised of the amount of premiums received by the insurer (less taxes and regulatory and licensing fees) multiplied by the difference between the insurer's MLR and the MLR required by the health care reform laws.

The first MLR reporting year for insurers was calendar year 2011. Health care reform requires insurers to provide rebates no later than August 1 following the end of the reporting year. Therefore, for the 2011 reporting year, rebates were required to be provided no later than August 1, 2012. Most insurers sent checks directly to employers. After receipt of the rebate, employers must decide whether they have an obligation to return none, some or the entire rebate to its plan participants.

The Department of Labor issued Technical Release 2011-04 to provide guidance on how policyholders who are group health plans under ERISA, or

About the photo: Lobby of Eastman & Smith's Toledo office

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sponsors of such plans, should handle the MLR rebates. Typically, the employer is the policyholder. However, the fact that the employer is the policyholder or owner of the policy would not, by itself, mean the employer may retain the MLR rebate. Instead, in the absence of specific employer plan document or insurance policy language to the contrary, the portion of a rebate that is attributable to participant contributions is considered a plan asset for purposes of ERISA. This imposes fiduciary responsibilities on the employer. For example, if the employer and plan participants each paid 50% of the cost of insurance coverage, the 50% paid by the participants would be considered plan assets. Where the plan or trust, as opposed to the employer, is the policyholder, and there is no language in the plan or policy to the contrary, then the employer would not be entitled to keep the rebate.

ERISA's standards of fiduciary conduct must be kept in mind when deciding how to allocate the portion of an MLR rebate considered a plan asset. Generally, when determining how to allocate the MLR rebate, an employer must act solely in the interest of plan participants and beneficiaries; however, an employer is permitted to weigh the costs and benefits of an allocation method. For example, should the cost to distribute the amount of a rebate belonging to the former participants be approximately equal to their share of the rebate, then the proceeds can be given to the current participants in a way that is "reasonable, fair and objective." Additionally, where distributing rebates directly to participants is determined to be not cost effective, the guidance provides other acceptable methods for utilizing an MLR rebate, such as applying the rebate toward future participant premiums or toward benefit enhancements. Under any allocation method chosen, employers need to be aware of tax consequences for participants when deciding an allocation method of an MLR rebate.

Now is also a good time for employers who are policyholders to review their policies and plan documents to determine if the allocation of MLR rebates is addressed. If such language expressly provides that MLR rebates belong to the employer, then that language generally will govern, and the employer may retain the rebate. If no language exists, then distributions may be required due to the employer's ERISA fiduciary obligations. If the employer desires to retain MLR rebates for future distribution years (i.e., MLR reporting years 2012 and thereafter), qualified legal counsel can assist with amending the plan documents.

If you received an MLR rebate and have questions about your fiduciary obligations or about the tax consequences of your chosen allocation method, please do not hesitate to contact Eastman & Smith Ltd.

Mr. Gibney is a member of the Firm. He practices in the areas of human resources management, employment litigation, labor negotiations and contract application, workers' compensation, as well as federal and state safety regulation litigation. Mr. Cravener is an associate in the Labor & Employment Practice Group. He can be reached at our Columbus office (614-564-1445) while Mr. Gibney can be reached at our Toledo office (419-241-6000).