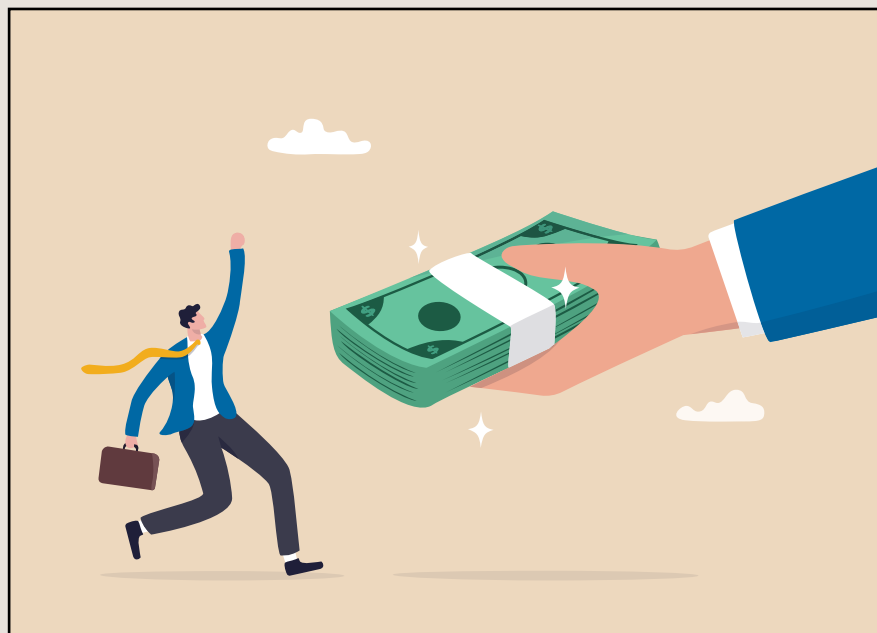


COMPLIANCE CHRONICLE

REGULATIONS | POLICIES | STANDARDS | REQUIREMENTS | LAWS

Staying on top of compliance requirements is critical for protecting your business, your clients and their employees. This month we're highlighting two timely issues every broker and employer should keep in mind: handling Medical Loss Ratio (MLR) rebates the right way and understanding compliance responsibilities for small fully insured employers.

Handling Medical Loss Ratio (MLR) Rebates Under ERISA and the ACA



Each year, some employers may receive Medical Loss Ratio (MLR) rebates from their insurance carriers. While these funds can seem like a welcome bonus, employers must remember that they are subject to strict rules under the Affordable Care Act (ACA) and ERISA.

Improper handling of rebates can create compliance risks, so it's important to know whether the funds belong to the employer, employees, or the plan — and to distribute or apply them accordingly.



Medical Loss Ratio Definition:

- *Total claims paid / Total premiums collected*
- *What percentage of earned premiums are paid out medical claims*

Distributing Medical Loss Ratio (MLR) Rebates

When employers receive Medical Loss Ratio (MLR) rebates from their insurance carriers, they must handle them in compliance with ERISA and ACA regulations.

Determine the Plan Asset Portion

- If employees contributed to the cost of coverage, the portion of the rebate attributable to their contributions is considered a plan asset.
- Employers must calculate the percentage of total premiums paid by employees during the MLR calculation year to determine the share of the rebate that must be returned to them.

Distribution Options for the Employee Share

Employers can choose from several methods to return the employee portion:

1. Premium Reduction

- Apply the rebate to reduce future premium contributions for current plan participants.
- This method is simple and benefits all current employees proportionally.

2. Cash Refunds

- Issue direct cash payments to current and/or former employees who contributed to premiums.
- This may be more complex administratively and could have tax implications.

3. Benefit Enhancements

- Use the rebate to enhance plan benefits (e.g., lower deductibles or copays).
- Must be consistent with ERISA fiduciary rules and benefit all participants fairly.

Timing Requirements

- The Department of Labor expects employers to distribute the plan asset portion **within three months** of receiving the rebate to avoid triggering trust requirements.

Tax Considerations

- **Cash refunds** may be taxable if employees paid premiums with pre-tax dollars.
- **Premium reductions** typically do not have tax consequences.

Special Cases

- **Self-funded plans** are not subject to MLR rebate rules.
- **Church and governmental plans** may have different ERISA obligations.



Health Plan Compliance Requirements For Small Fully Insured Employers (<50 FTEs)

Compliance Requirements for Small Fully Insured Employers (<50 FTEs)

Even smaller employers with fewer than 50 full-time employees aren't exempt from health plan compliance obligations. Fully insured groups must meet key federal requirements, including ERISA, ACA, COBRA (when applicable), and other notice and reporting rules. These responsibilities may not be as extensive as those for larger employers, but they still carry risk if overlooked. Staying compliant helps avoid penalties and ensures your plan runs smoothly.

1. Affordable Care Act (ACA) Basics

- No mandate to offer coverage: Employers under 50 FTEs are not required to offer health insurance under the ACA.
- If coverage is offered:
 - It must meet ACA standards for Minimum Essential Coverage (MEC) and Essential Health Benefits.
 - Plans must not discriminate in favor of highly compensated employees.

2. W-2 Reporting

Employers may be required to report the value of health coverage on employees' W-2 forms (Box 12, Code DD), depending on plan type and IRS thresholds.

3. Medicare Secondary Payer Rules

If any employees are Medicare-eligible, employers must comply with Medicare Secondary Payer (MSP) rules (if the employer has 20 or more employees, it cannot encourage employees to drop employer coverage in favor of Medicare).

4. COBRA Compliance

If the employer has 20 or more employees, COBRA continuation coverage rules apply. For fewer than 20 employees, state mini-COBRA laws may apply.



5. HIPAA Privacy and Security

Employers must ensure compliance with HIPAA if they handle Protected Health Information (PHI), especially when administering benefits (not typical with fully insured plans).

6. ERISA Requirements

Fully insured plans are subject to ERISA:

- Must provide a Summary Plan Description (SPD) or Wrap Plan.
- Must comply with fiduciary standards and claims procedures.

7. Nondiscrimination Rules

Plans must comply with Section 105(h) nondiscrimination rules if they offer self-insured benefits (not applicable to fully insured plans).

8. State Insurance Laws

Fully insured plans are regulated by state insurance departments, which may impose additional requirements (e.g., coverage mandates, notices).

9. Required Notice Distribution

Even small employers must provide certain notices to employees when offering health coverage:

- **Summary of Benefits and Coverage (SBC)**
 - Must be provided at enrollment and renewal
 - Explains plan features in a standardized format
- **HIPAA Notices**
 - Privacy notice: Required if the employer handles PHI
- **Special Enrollment Rights**
 - Must inform employees of rights to enroll due to life events (e.g., marriage, birth)
- **COBRA or State Continuation**
 - If subject to COBRA (20+ employees) or state mini-COBRA, must provide:
 1. Initial COBRA notice
 2. Election notice upon qualifying event
- **Women's Health and Cancer Rights Act (WHCRA)**
 - Must notify employees annually about rights to breast reconstruction and related services.
- **Newborns' and Mothers' Health Protection Act**
 - Requires notice about minimum hospital stays for childbirth.
- **Mental Health Parity and Addiction Equity Act**
 - If mental health benefits are offered, parity rules apply and must be disclosed.
- **CHIPRA Notice**
 - Required annually if state premium assistance programs are available.

10. Section 125 Nondiscrimination Testing

If the employer offers a Section 125 Cafeteria Plan (e.g., allowing pre-tax payroll deductions for premiums), then:

- Testing is required annually

Even for small employers, the IRS requires nondiscrimination testing to ensure the plan does not favor:

- Highly compensated employees (HCEs)
- Key employees
- Owners/shareholders

Key Tests Include:

- Eligibility Test
- Benefits Test
- Contributions and Benefits Test

Consequences of Failing

- If the plan fails testing:
 - HCEs may lose the tax-advantaged status of their benefits.
 - Employers may face penalties or need to adjust plan design.



Check out all of our compliance and legislative resources at warnerpacific.com.