



March 2, 2012

Marilyn Tavenner, Acting Administrator
Center for Medicare and Medicaid Services (CMS)
Office of Strategic Operations and Regulatory Affairs
Division of Regulations Development, Attention
Document Identifier/OMB
Control Number CMS-10418 (OCN 0938-NEW)
Room C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Acting Administrator Tavenner:

AARP is pleased to comment on the Medical Loss Ratio (MLR) rebate notice instructions. AARP believes these provisions can promote cost-effectiveness, improve transparency and make health insurance companies more accountable for their health care expenditures.

The intent of the Affordable Care Act's (ACA) MLR requirements is first, to establish greater transparency and accountability for the expenditures made by health insurance issuers and second, to establish MLR standards to encourage issuers to become more efficient in their operations and help ensure that consumers receive value for their premium dollars.

AARP supports a uniform process for providing rebates to group enrollees and notifying policyholders and subscribers of group health plans about the rebates they or their plan are receiving. CMS should take steps to minimize the reporting effort and the cost of carrying out the requirements.

AARP appreciates HHS' effort to develop a standardized form for the rebate notification. To be effective, the forms should be written clearly and in plain language so an average layperson who is unfamiliar with insurance terminology can easily understand them. It is our belief that the notices as they are currently drafted are not easily understandable to the average individual.

AARP believes several issues in all four draft template letters must be addressed in order to create a more user friendly document. These include:

- The language throughout the notices is extremely technical and will confuse the average individual. The intent of the notification is to advise that the consumer is receiving a rebate and explain why. This is not the opportunity to provide individuals with background information on insurance policy; the notice should advise that their plan did not reach the 80/20 or 85/15 standard and explain the consequence thereof.
- The notices give wellness programs as an example of activities to improve health care quality. AARP suggests using the phrase *health promotion and efforts to improve patient safety*. The link to additional information should be prominently displayed at the end of the letter. In addition, the link should be shortened and simplified to provide greater access.

Edits to simplify language and some additional comments on the specific notices are included in the attached.

Once the content of the notice is in plain language and finalized, it should also be available in other languages, as appropriate. AARP suggests a 5% enrollee threshold requirement for plans to provide this document in other languages to persons who are not proficient in English. This threshold is consistent with both the DOJ/HHS LEP Guidance, as well as recently revised regulations from the Centers for Medicare & Medicaid Services governing marketing by Medicare Part C & D plans. Given that plans and insurers are already following these guidelines for Medicare, our suggested standard will be consistent with other federal requirements. We do not believe this will be unduly burdensome.

AARP believes that information about an insurer's/group health plan's MLR performance may be most helpful when people are making decisions about what plan to purchase/enroll in. AARP suggests when HHS posts insurers' MLR reports on its website, as called for in Sec. 2718 of the ACA, HHS should consider posting publically the MLR for three years. This information should be publicly available so consumers can determine which health insurance policies have consistently succeeded or failed to meet the statutory requirements for MLR.

Based on the interim final rule, AARP understands that insurers that meet or exceed the MLR standards have the option of notifying their policyholders of their MLR. If they decide to do so, they would use the notices as a template. While it is worthwhile to educate people in a general way about the value they are getting for their premiums, an additional notice may prove costly and confusing. For plans that meet the MLR threshold and are not required to offer a rebate, an alternative means of communication may be preferable. For example, it may be more efficient to incorporate information about a plan's MLR while individuals are evaluating what plan to purchase. AARP recommends that HHS find a way to link MLR history to the information on insurance options on HHS' healthcare.gov website, or in the information that health insurance exchanges will make available on certified qualified health plans. Either of these options may provide the necessary information in a more timely and useful manner for consumers while also serving to reduce the notification burden for plans that do not have to provide rebates.

Acting Administrator Tavenner
March 2, 2012
Page 3

We reiterate the importance of maximizing transparency with respect to MLR reporting. Information should be provided in a timely manner and in standardized language the average consumer can readily understand. Providing this information during the plan selection process will help facilitate informed choice among competing insurance options. In addition to the notices, we also urge HHS to sponsor other forms of public education so consumers are aware of the possibility of rebates and why they may or may not receive them.

Thank you for the opportunity to comment on this important matter. If you have any questions, please feel free to contact Leah Cohen Hirsch on our Government Affairs staff at 202-434-3770.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Certner".

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

Letter 1

Notice of Health Insurance Premium Refund

[August 1, 20XX 1]
[Subscriber Name 2a]
123 Main Street 2b
Anytown, USA 2c]

Re: Health Insurance Premium Refund for Year [20XX 3]; [Policy #XXXXX 4]

Dear [Subscriber Name 5]:

This letter is to inform you that you will receive a refund of a portion of your health insurance premiums. This refund is required by the Affordable Care Act – the health reform law.

The law requires [Health Insurer 6] to spend at least 80 percent of the premiums it receives on health care services, such as doctors and hospital bills, and activities to improve health care quality, such as health promotion and efforts to improve patient safety. No more than 20 percent of premiums may be spent on administrative costs such as salaries and advertising. This is called the “80 / 20 rule”. If [health insurer] does not spend at least 80% on health care services and quality improvement, it must pay policyholders a rebate; The rule helps make sure consumers get value for their premiums. You can learn more about the 80/20 rule and other provisions of the health reform law at: <http://www.healthcare.gov/law/features/costs/value-for-premium/index.html>.

[The Affordable Care Act allows States to apply for a lower ratio. In [20XX 8], your State applied for and received a temporary adjustment to the 80/20 rule. For [20XX 9], [Health Insurer 10] must spend at least [XX% 12] of premiums on medical services and activities to improve health care quality, and no more than [XX% 13] of premiums on administrative costs. Additional information on State requests for an adjustment to the 80 /20 rule can be found at: <http://ccio.cms.gov/programs/marketreforms/mlr/index.html>].

[The Affordable Care Act allows States to require health insurers to meet a higher ratio. [Your State sets a higher standard, so [Health Insurer 14] must spend at least [XX% 16] of premiums on medical services and activities to improve health care quality, and no more than [XX% 17] of premiums on administrative costs].

What the Medical Loss Ratio Rule Means to You

In your State, [Health Insurer 18] did not meet the 80/20 [or whatever ratio applies] standard. In [20XX 19], [Health Insurer 20] spent only [XX% 21] of a total of [\$YYY 22] in premium dollars on health care and activities to improve health care quality. Since this is [X% 24] less than the [80%/or other state standard], **we are required to provide this refund to you by August 1, [20XX 27].**

[We are enclosing a check/We are sending you a check separately from this letter/We are giving you this refund by reducing your next premium payment/We are issuing a credit to the credit or debit card you used to pay your premium 28].

Comment [S1]: This sentence should be bolded to provide the average consumer with a simple takeaway message.

Need more information?

If you have any questions about the Medical Loss Ratio and your health insurance coverage, please contact [Health Insurer 30] toll-free at [1-XXX-XXX-XXX 31]. **You can also find more information about the rule and state requests for adjustments at <http://www.healthcare.gov/law/features/costs/value-for-premium/index.html>.**

Sincerely,
[John Doe, President and CEO 32]
[Health Insurer 33]

Comment [S2]: We suggest you bold this so that the consumer is able to easily identify where to find additional information.

Letter 2

Notice of Health Insurance Premium Refund

[August 1, 20XX 1]

[Subscriber or Policyholder Name 2a]

123 Main Street 2b

Anytown, USA 2c]

Re: Health Insurance Premium Refund for Year [20XX 3]; [Policy #XXXXX 4]

Dear [Subscriber or Policyholder Name 5]:

This letter is to inform you that [Health Insurer 6] will be refunding a portion of your health insurance premiums. This refund is required by the Affordable Care Act – the health reform law.

The Affordable Care Act requires [Health Insurer 7] to refund part of the premiums it received if it does not spend at least [80/85 8] percent of the premiums [Health Insurer 9] receives on health care services, such as doctors and hospital bills, and activities to improve health care quality, such as wellness programs. No more than [20/15 10] percent of premiums may be spent on administrative costs such as salaries and advertising. This is referred to as the “Medical Loss Ratio” standard or the [80/20 85/15 11] rule. The [80/20 85/15 12] rule in the Affordable Care Act is intended to ensure that consumers get value for their health care dollars. You can learn more about the [80 /20 85/15 13] rule and other provisions of the health reform law at: <http://www.healthcare.gov/law/features/costs/value-for-premium/index.html>.

[The Affordable Care Act allows States to require health insurers to meet a higher ratio. Your State sets a higher Medical Loss Ratio standard, so [Health Insurer 14] must meet a [XX% 15] Medical Loss Ratio, meaning that [XX% 16] of premiums must be spent on medical services and activities to improve health care quality, and no more than [XX% 17] of premiums can be spent on administrative costs.]

What the Medical Loss Ratio Rule Means to You

The Medical Loss Ratio rule is calculated on a State by State basis. In your State, [Health Insurer 18] did not meet the [80/20 85/15 /target in your state 19] standard. In [20XX 20], [Health Insurer 21] spent only [XX% 22] of a total of [\$YYY 23] in premium dollars on health care and activities to improve health care quality. Since it missed the [80 85 percent target / target in your State 24] by [X% 25] of premium it receives, [Health Insurer 26] must refund [X% 27] of the total health insurance premiums paid by the employer and employees in your group health plan. **We must send this refund to your employer by August 1, [20XX 28]. Employers or group policyholders must follow certain rules for distributing the refund to you.**

Ways in Which an Employer Can Distribute the Refund

If your group health plan is a non-Federal governmental plan, the employer or group policyholder must distribute part of all of the refund in one of two ways:

- Reducing premium for the upcoming year; or
- Providing a cash refund to employees or subscribers that were covered by the health insurance on which the refund is based.

Comment [S3]: Group policy holders needs to be defined.

If your group health plan is a church plan, the employer or group policyholder has agreed to distribute the portion of the refund that is based on the total amount all of the employees contributed to the health insurance premium in one of the ways discussed in the preceding paragraph.

If your group health plan is not a governmental plan or a church plan, it likely is subject to the federal Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA, the employer or the administrator of the group health plan may have fiduciary responsibilities regarding use of the refunds. Some or all of the refund may be an asset of the plan, which must be used for the benefit of the employees covered by the policy. Employees or subscribers should contact the employer or group policyholder directly for information on how the refund will be used. For general information about your rights regarding the refund, 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 web site at <http://www.dol.gov/ebsa/newsroom/tr11-04.html>.

Need more information?

If you have any questions about the Medical Loss Ratio and your health insurance coverage, please contact [Health Insurer 29] toll-free at [1-XXX-XXX-XXX 30].

Contact your employer or Administrator directly for information on how the refund will be distributed. For general information about your rights regarding the refund if your group health plan is subject to ERISA, 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 web site at <http://www.dol.gov/ebsa/newsroom/tr11-04.html>.

Sincerely,
[John Doe, President and CEO 31]
[Health Insurer 32]

Letter 3

Notice of Health Insurance Premium Refund

[August 1, 20XX 1]

[Subscriber Name 2a]

123 Main Street 2b

Anytown, USA 2c]

Re: Health Insurance Premium Refund for Year [20XX 3]; [Policy #XXXXX 4]

Dear [Subscriber Name 5]:

This letter is to inform you that you will receive a refund of a portion of your health insurance premiums. This refund is required by the Affordable Care Act – the health reform law.

The Affordable Care Act requires [Health Insurer 6] to refund part of the premiums it received if it does not spend at least [80/85 7] percent of the premiums [Health Insurer 8] receives on health care services, such as doctors and hospital bills, and activities to improve health care quality, such as wellness programs. No more than [20/15 9] percent of premiums may be spent on administrative costs such as salaries and advertising. This is referred to as the “Medical Loss Ratio” standard or the [80/20 85/15 10] rule. The [80/20 85/15 11] rule in the Affordable Care Act is intended to ensure that consumers get value for their health care dollars. You can learn more about the [80/20 85/15 12] rule and other provisions of the health reform law at: <http://www.healthcare.gov/law/features/costs/value-for-premium/index.html>.

[The Affordable Care Act allows States to require health insurers to meet a higher ratio. Your State sets a higher Medical Loss Ratio standard, so [Health Insurer 13] must meet a [XX% 14] Medical Loss Ratio, meaning that [XX% 15] of premiums must be spent on medical services and activities to improve health care quality, and no more than [XX% 16] of premiums can be spent on administrative costs].

What the Medical Loss Ratio Rule Means to You

The Medical Loss Ratio rule is calculated on a State by State basis. In your State, [Health Insurer 17] did not meet the [80/20 85/15 /target in the state 18] standard. In [20XX 19], [Health Insurer 20] spent only [XX% 21] of a total of [\$YYY 22] in premium dollars on health care and activities to improve health care quality. Since it missed the [80 85 percent target / target in your State 23] by [X% 24], [Health Insurer 25] must refund [X% 26] of the total health insurance premiums paid by the employer and employees in your group health plan. We must send this refund by August 1, [20XX 27].

Rebate Distribution Method

[Health Insurer 28] is distributing the refund based on the total premium paid your group health plan directly to the employees or subscribers in the group health plan. The refund is being distributed evenly among these subscribers. [We are enclosing a check/We are sending you a check separately from this letter 29].

Need more information?

If you have any questions about the Medical Loss Ratio and your health insurance coverage, please contact [Health Insurer 30] toll-free at [1-XXX-XXX-XXX 31].

Sincerely,

[John Doe, President and CEO 32]

[Health Insurer 33]

Comment [S4]: Recommend requiring a website or email address for additional information.

Letter 4

Notice of Issuer's Medical Loss Ratio

Dear [Subscriber or Policyholder Name 5]:

This letter is to inform you that in [20XX 6] [Health Insurer 7] has met or had a higher Medical Loss Ratio than the [80/20 85/15 8] standard required by the Affordable Care Act – the health reform law. This letter explains what this means.

The Affordable Care Act requires [Health Insurer 9] to spend at least [80/85 10] percent of the premiums it receives on health care services, such as doctors and hospital bills, and activities to improve health care quality, such as wellness programs. No more than [20/15 11] percent of premiums may be spent on administrative costs such as salaries and advertising. If [Health Insurer 12] does not do so, it must refund part of your premium. This requirement is referred to as the "Medical Loss Ratio" standard or the "[80/20 85/15 13] rule". The [80/20 85/15 14] rule in the Affordable Care Act is intended to ensure that you get value for your health care dollars. You can learn more about the [80/20 85/15 15] rule and other provisions of the health reform law at: <http://www.healthcare.gov/law/features/costs/value-for-premium/index.html>.

Comment [S5]: Recommend changing any reference to ACA to "the law".

[The Affordable Care Act allows States to apply for a lower ratio. In [20XX 16], your State applied for and received a temporary adjustment to the 80/20 rule. For [20XX 17], [Health Insurer 18] must meet a [XX% 19] Medical Loss Ratio, meaning that [XX% 20] of premiums must be spent on medical services and activities to improve health care quality, and no more than [XX% 21] of premiums may be spent on administrative costs.]

[The Affordable Care Act allows States to require health insurers to meet a higher ratio. Your State sets a higher Medical Loss Ratio standard, so [Health Insurer 22] must meet a [XX% 23] Medical Loss Ratio, meaning that [XX% 24] of premiums must be spent on medical services and activities to improve health care quality, and no more than [XX% 25] of premiums can be spent on administrative costs.]

What the Medical Loss Ratio Rule Means to You

The Medical Loss Ratio rule is calculated each year on a State by State basis. In [20XX 26], [Health Insurer 27] met the Medical Loss Ratio standard. In [20XX 28], [Health Insurer 29] spent [XX% 30] of a total of [\$XXX 31] in premium dollars on health care and activities to improve health care quality – [\$XXX 32] above the minimum standard.

[Health Insurer 33] has met the Affordable Care Act's Medical Loss Ratio minimum, indicating that you are receiving the required value for your health care dollars.

Sincerely,

[John Doe, President and CEO 34]

[Health Insurer 35]