Health Care Premium Rebates and Credits

COVID-19 Premium Relief for Insured Health Care Plans

During the earlier months of the current COVID-19 national health emergency, stay-at-home orders and reduced access to elective and non-emergency health care services have resulted in temporary health care claims reductions (including medical, dental and vision care) for many insurers. As a result, many insurers have announced they will be providing temporary premium reductions or credits to sponsors of fully-insured group health care benefit programs.

Most often, such carriers offer a percentage discount off a future month's group billing statement, based on one or two past monthly premiums. For example, one carrier (BlueCross BlueShield of Minnesota) will be crediting clients' October, 2020 bills with an amount equal to 20% of dental and/or vision premiums paid for the months of April and May, 2020 and 20% of medical premiums paid for the month of April, 2020.

ACA Medical Loss Ratio (MLR) Requirements

In addition to the temporary premium credit offered by insurers due to COVID-19 changes in health care usage, insurance market reforms in the Affordable Care Act (ACA) require that medical insurers in the small and large group markets maintain loss ratios (the ratio of claims paid to premiums collected) that are no less than 80% to 85% of premiums collected (excluding state taxes, insurer fees and assessments). The intent of the MLR requirement is to help stabilize premium costs for insureds.

This means that no more than 15% of premiums collected in the large group market, or 20% in the small group sector (groups with fewer than 50 employees in the preceding calendar year) can be retained by issuers for administrative costs, reserves, and other retention. Excess premiums above these loss ratio percentages must be returned to enrollees and policyholders once per year. These rebates are determined based on the average loss ratio over the previous three calendar years.

Generally, insurers must report their loss ratios to the US Department of Health and Human Services (HHS) between June 1 and July 31 each year, with rebates distributed to policyholders by August 1. However, in order to allow the carriers to determine any applicable premium stabilization payments and receipt amounts, *the 2020 deadline for distributing MLR rebates is extended to September 30*.

Compliance Considerations for Credits and Rebates

Depending on state law, the rebates and credits may be offered in the form of a reduction in billed premium, a lump sum payment, or a premium holiday. These premium reductions can create certain administrative and compliance concerns.

POTENTIAL TRUST OBLIGATION (FOR PLANS SUBJECT TO ERISA)

Participant contributions are treated under ERISA as plan assets as soon as they can be reasonably segregated from the employer's general assets. To avoid triggering a trust obligation, possession of any funds withheld from employees' pay should be transferred to insurers within 90 days of the date of such salary reductions.

USE OF REBATES AND/OR PREMIUM RELIEF

Unless the plan sponsor has made provision within their plan document(s) that they retain any rebates, the employer should return rebates proportionally to plan participants based on their share of the premium paid for the period in question.

For active employees, if premiums are shared between the employer and active employees, the best practice in our opinion is to share the savings with current participants proportionally based on the employer's contribution strategy, unless the plan sponsor has language in their plan documents and SPDs stipulating that the plan sponsor will retain any premium refunds or rebates. The credit may be shared with participants in the form of a premium holiday, additional pay or reduced payroll deductions – each of which will affect participants' taxable earnings.

Alternately, the funds might be used to enhance future non-taxable health care or wellness benefits. If the plan is fully funded with employee contributions, because of this concern employers should pass through the savings in its entirety, while plan sponsors who have paid 100% of the premiums may retain any such credits.

IMPACT OF SECTION 125 (PRE-TAX) PLANS

Employers maintaining Section 125 plans should ensure that their plan documents permit the employer to automatically adjust employees' pre-tax elections when there is a premium change.

EXCLUSIVE BENEFIT RULE (FOR PLANS MAINTAINED BY NON-FEDERAL GOVERNMENT AND CHURCH EMPLOYERS)

Because non-federal governmental employers are not subject to ERISA, the ERISA trust obligation does not exist. However, HHS guidance stipulates that the plan policyholder must use the portion of the rebate attributable to participant contributions for the exclusive benefit of plan participants within three months of receipt.

COBRA COMPLIANCE

The DOL and IRS COBRA regulations stipulate that COBRA premiums for fully-insured plans cannot exceed 102% of the billed premium amount. If the premiums are reduced for certain months of the COBRA rate determination period, absent further IRS and DOL guidance on this issue, the conservative approach for plan sponsors would be to reduce the COBRA rate for the corresponding coverage month(s), to avoid over-charging COBRA qualified beneficiaries for their continuation coverage. To comply with the COBRA regulations, billed COBRA premiums should be adjusted to reflect actual premiums charged after applying the credit.

Summary

For active employees, if there is premium cost sharing between the employer and active employees, generally employers should share in the savings with current participants based on their contribution strategy. The credit can be provided in the form of a premium holiday, additional pay or reduced payroll deductions. If employers adjust payroll deductions, ensure that the cafeteria (Section 125) plan document provides for automatic adjustment to participants' pre-tax elections. In some cases, the funds might be used to enhance future non-taxable health, dental or vision benefits or be utilized for a wellness activity. If the plan is fully funded with employee contributions, employers should pass through the savings in its entirety, while plan sponsors who have paid 100% of the premiums may retain all such credits.

In terms of COBRA participants, qualified beneficiaries should be informed of the temporary change in rates, and should receive the benefit of the reduced premium for the duration of the carrier credit.