

(d) *No credibility adjustment.* For the 2013 MLR reporting year, the credibility adjustment for an MLR based on partially credible experience is zero if both of the following conditions are met:

(1) The current MLR reporting year and each of the two previous MLR reporting years included experience of at least 1,000 life-years; and

(2) Without applying any credibility adjustment, the issuer's MLR for the current MLR reporting year and each of the two previous MLR reporting years were below the applicable MLR standard for each year as established under § 158.210 in this subpart.

[75 FR 74921, Dec. 1, 2010, as amended at 75 FR 82279, Dec. 30, 2010]

**§ 158.240 Rebating premium if the applicable medical loss ratio standard is not met.**

(a) *General requirement.* For each MLR reporting year, an issuer must provide a rebate to each enrollee if the issuer's MLR does not meet or exceed the minimum percentage required by §§ 158.210 and 158.211 of this subpart.

(b) *Definition of enrollee for purposes of rebate.* For the sole purpose of determining whom is entitled to receive a rebate pursuant to this part, the term "enrollee" means the subscriber, policyholder, and/or government entity that paid the premium for health care coverage received by an individual during the respective MLR reporting year.

(c) *Amount of rebate to each enrollee.*

(1) For each MLR reporting year, an issuer must rebate to the enrollee the total amount of premium revenue received by the issuer from the enrollee after subtracting Federal and State taxes and licensing and regulatory fees as provided in § 158.161(a), § 158.162(a)(1) and § 158.162(b)(1) of this part, multiplied by the difference between the MLR required by § 158.210 or § 158.211 of this subpart, and the issuer's MLR as calculated under § 158.221 of this subpart.

(2) For example, an issuer must rebate a pro rata portion of premium revenue if it does not meet an 80 percent MLR for the small group market in a State that has not set a higher MLR. If an issuer has a 75 percent MLR for the coverage it offers in the small group

market in a State that has not set a higher MLR, the issuer must rebate 5 percent of the premium paid by or on behalf of the enrollee for the MLR reporting year after subtracting premium and subtracting taxes and fees as provided in paragraph (c) of this section. In this example, an enrollee may have paid \$2,000 in premiums for the MLR reporting year. If the Federal and State taxes and licensing and regulatory fees that may be excluded from premium revenue as described in § 158.161(a), § 158.161(a)(1) and § 158.162(b)(1) of this subpart are \$150 for a premium of \$2,000, then the issuer would subtract \$150 from premium revenue, for a base of \$1,850 in premium. The enrollee would be entitled to a rebate of 5 percent of \$1,850, or \$92.50.

(d) *Timing of rebate.* An issuer must provide any rebate owing to an enrollee no later than August 1 following the end of the MLR reporting year.

(e) *Late payment interest.* An issuer that fails to pay any rebate owing to an enrollee or subscriber in accordance with paragraph (d) of this section or to take other required action within the time periods set forth in this Part must, in addition to providing the required rebate to the enrollee, pay the enrollee interest at the current Federal Reserve Board lending rate or ten percent annually, whichever is higher, on the total amount of the rebate, accruing from the date payment was due under paragraph (d) of this section.

**§ 158.241 Form of rebate.**

(a) *Current enrollees.* (1) An issuer may choose to provide any rebates owing to current enrollees in the form of a premium credit, lump-sum check, or, if an enrollee paid the premium using a credit card or direct debit, by lump-sum reimbursement to the account used to pay the premium.

(2) Any rebate provided in the form of a premium credit must be provided by applying the full amount due to the first month's premium that is due on or after August 1 following the MLR Reporting year. If the amount of the rebate exceeds the premium due for August, then any overage shall be applied to succeeding premium payments until the full amount of the rebate has been credited.

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(b) *Former enrollees.* Rebates owing to former enrollees must be paid in the form of lump-sum check or lump-sum reimbursement using the same method that was used for payment, such as credit card or direct debit.

### § 158.242 Recipients of rebates.

(a) *Individual market.* An issuer must meet its obligation to provide any rebate due to an enrollee in the individual market by providing it to the enrollee. For individual policies that cover more than one person, one lump-sum rebate may be provided to the subscriber on behalf of all enrollees covered by the policy.

(b) *Large group and small group markets.* An issuer must meet its obligation to provide any rebate to persons covered under a group health plan by providing it to the enrollee, in amounts proportionate to the amount of premium the policyholder and each subscriber paid.

(1) *Arrangement with policyholder to distribute rebates.* An issuer may meet its obligation to provide any rebate owing to a large group or small group enrollee by entering into an agreement with the group policyholder to distribute the rebate on behalf of the issuer, subject to all of the following conditions:

(i) The issuer must remain liable for complying with all of its obligations under this part.

(ii) The issuer must obtain and retain records and documentation evidencing accurate distribution of any rebate owing, sufficient to demonstrate compliance with its obligations under this subpart, subpart D, and subpart E. Such records and documentation include:

(A) The amount of the premium paid by each subscriber;

(B) The amount of the premium paid by the group policyholder;

(C) The amount of the rebate provided to each subscriber;

(D) The amount of the rebate retained by the group policyholder; and

(E) The amount of any unclaimed rebate and how and when it was distributed.

(2) [Reserved]

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### § 158.243 *De minimis* rebates.

(a) *Minimum threshold.* An issuer is not required to provide a rebate to an enrollee based upon the premium that enrollee paid, under the following circumstances:

(1) For a group policy, if the total rebate owed to the policyholder and the subscribers is less than \$5 per subscriber covered by the policy for a given MLR reporting year.

(2) In the individual market, if the total rebated owed to the subscriber is less than \$5.

(b) *Distribution.* (1) An issuer must aggregate and distribute any rebates not provided because they did not meet the minimum threshold set forth in paragraph (a) of this section by aggregating the unpaid rebates by individual market, small group market and large group market in a State and use them to increase the rebates provided to enrollees who receive rebates based upon the same MLR reporting year as the aggregated unpaid rebates. An issuer must distribute such aggregated rebates by providing additional premium credit or payment divided evenly among enrollees who are being provided a rebate.

(2) For example, an issuer in the individual market has aggregated unpaid rebates totaling \$2,000, and the issuer has 10,000 enrollees who are entitled to be provided a rebate above the minimum threshold for the applicable MLR reporting year. The \$2,000 must be redistributed to the 10,000 and added on to their existing rebate amounts. The \$2,000 is divided evenly among the 10,000 enrollees, so the issuer increases each enrollee's rebate by \$0.20.

### § 158.244 Unclaimed rebates.

An issuer must make a good faith effort to locate and deliver to an enrollee any rebate required under this Part. If, after making a good faith effort, an issuer is unable to locate a former enrollee, the issuer must comply with any applicable State law.

### § 158.250 Notice of rebates.

For each MLR reporting year, at the time any rebate of premium is provided in accordance with this Part, an issuer