

However, if the employee deducted the premium on the employee's personal income tax return, the rebate is taxable income.<sup>1</sup> If a person participates in the plan in the year in which the rebate is paid, but not the prior year, and receives a share of the rebate, the rebate is not taxed.<sup>2</sup>

Where the insurance policy is a group policy, and the employee paid the employee's share of the premium with pre-tax dollars (amounts not taxed to an employee, such as a salary reduction payment through a cafeteria plan that is not reported as taxable income to the employee) in the plan year to which the rebate relates, the following rules apply:

- If the employer applies the employee's share of the rebate to reduce the employee's share of the premium, this is taxed to the employee.<sup>3</sup>
- The rebate is also taxable in the year paid if it is paid to the employee and is "wages" subject to payroll and employment taxes.<sup>4</sup>

Where the insurance policy is a group policy, the rebate is paid to participants regardless of whether they participated in the plan in the year generating the rebate, and the employee pays the employee's share of the premium in the current plan year with pre-tax dollars:

- If the employee's share of the rebate is allocated to reduce the cost of insurance for the year in which the rebate was received, the rebate is taxable and is wages in the year paid subject to employment taxes.<sup>5</sup>
- If the rebate is paid to the employee, who participated in the plan in the year for which the rebated is paid, the rebate is taxable and is wages in the year paid subject to employment taxes.<sup>6</sup>
- If the rebate is paid to the employee, who did not participate in the plan in the year for which the rebated is paid, the rebate is taxable and is wages in the year paid subject to employment taxes.<sup>7</sup>

## Summary of Benefits and Coverage (SBC) Requirement for Insurers and Employers

### **214. Are insurance companies and health plans required to prepare and distribute to participants/insureds a Summary of Benefits and Coverage (SBC)?**

Yes, for those providing essential health benefits, and they also must provide a Uniform Glossary, a list of important defined terms. This health reform requirement<sup>8</sup> applies to essential

1. IRS Medical Loss Ratio (MLR) FAQs Q/A-7 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
2. IRS Medical Loss Ratio (MLR) FAQs Q/A-8&9 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
3. IRS Medical Loss Ratio (MLR) FAQs Q/A-10 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
4. IRS Medical Loss Ratio (MLR) FAQs Q/A-11 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
5. IRS Medical Loss Ratio (MLR) FAQs Q/A-12 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
6. IRS Medical Loss Ratio (MLR) FAQs Q/A-13 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
7. IRS Medical Loss Ratio (MLR) FAQs Q/A-14 at <http://www.irs.gov/newsroom/article/0,,id=256167,00.html>.
8. PHSA §2715(a), ERISA Sec. 715, and IRC Sec. 9815.

health benefits and not “excepted benefits.” Where a plan is insured, the insurer is required to prepare the SBC, and the employer or other plan sponsor is required to distribute it annually in a timely manner. A self-funded plan must prepare its own SBC. Where an employer has several health benefit package options, this requirement will require coordination.

### **215. What if there is more than one benefit package for essential health benefits?**

A plan sponsor may offer more than one essential health benefits benefit package, such as a choice among an HMO, a PPO, and a self-insured option, or a high deductible option paired with an HSA. In such a case, for a newly eligible participant, SBCs for each benefit package must be distributed. For those already enrolled, the SBC for the option previously selected must be distributed.<sup>1</sup> In addition, the SBC for any benefit package must be provided within seven days of a participant or insured’s request.<sup>2</sup>

### **216. Does the SBC/Uniform Glossary requirement apply to grandfathered plans?**

Yes.<sup>3</sup>

### **217. What plans are exempt from the SBC and Uniform Glossary requirements? What about HSAs, HRAs, MERPs, health FSAs, EAPs, and wellness programs?**

Any plan or policy that is not an essential health benefit need not comply with these rules.<sup>4</sup> Thus, policies and plans that provide “excepted benefits” need not comply. Generally, health savings accounts, health reimbursement accounts (medical expense reimbursement accounts), and health flexible spending accounts are “excepted benefits.” Where the employer provides a high deductible health plan (HDHP) that funds HSAs, the role of the HSA is mentioned when discussing the HDHP.<sup>5</sup> When stand-alone HRAs and health FSAs are not excepted benefits, they must comply with the SBC/Uniform Glossary rules.<sup>6</sup> Plans in which HRAs are integrated with other coverage may use one SBC.<sup>7</sup> In this case, the HRA plan administrator is responsible for the SBC’s description of the HRA’s coverage.<sup>8</sup>

The SBC rules do not discuss employee assistance programs (EAPs). Whether the SBC requirements apply depends on whether the EAP is a group health plan. EAPs offer a range of benefits, such as counseling for alcohol and substance abuse, marital, family, and personal problems, stress, anxiety, grief, finances, retirement as well as childcare and elder care. These benefits are not included in the model SBC. Thus, EAPs are governed by the rule that where

1. Treas. Reg. §54.9815-2715(a)(1)(ii); DOL Reg. §2590.715-2715(a)(1)(ii); HHS Reg. §147.200(a)(1)(ii).
2. Treas. Reg. §54.9815-2715(a)(1)(ii)(F); DOL Reg. §2590.715-2715(a)(1)(ii)(F); HHS Reg. §147.200(a)(1)(ii)(F).
3. PPACA, §§1251(a) and 10101(d) (2010).
4. Preamble to Final Rule: Summary of Benefits and Coverage and the Uniform Glossary, 77 Fed. Reg. 8668, 8670 (Feb. 14, 2012).
5. Preamble to Final Rule: Summary of Benefits and Coverage and the Uniform Glossary, 77 Fed. Reg. 8668, 8670–8671 (Feb. 14, 2012).
6. Preamble to Final Rule: Summary of Benefits and Coverage and the Uniform Glossary, 77 Fed. Reg. 8668, 8671 (Feb. 14, 2012).
7. HHS, DOL & TREASURY, FAQs About the Affordable Care Act Implementation Part VIII, Q/A-6, at <http://www.dol.gov/ebsa/faqs/faq-aca8.html>.
8. HHS, DOL & TREASURY, FAQs About the Affordable Care Act Implementation Part IX, Q/A-10, at <http://www.dol.gov/ebsa/faqs/faq-aca9.html>.