

Electronic Alert

Volume 23, Issue 54

September 18, 2020

Health Insurance Rebates: What Are Your Options for Spending That Cash?

By Iris Tilley & Gabrielle Hansen

It is rebate time, and for those lucky companies who received a rebate from their health insurers, the first question is always, how can we spend this money?

Who gets a rebate?

The concept of rebates is not new and is driven by cost ratios mandated by the Affordable Care Act (ACA). Companies with insured health plans receive a rebate when their insurance companies determine that too small a percentage of premium dollars were spent on medical claims. The ACA defines what it means for the amount to be too small, but for large group plans, at least 85% of premium revenue is to be spent on medical claims. For small group and individual plans, the number is 80%. When claims costs are low, insurers are required to return some of the premium funds to the employers and individuals paying into the plans.

How can companies spend their rebates?

If your company received a rebate, do not start eyeing that frozen yogurt machine just yet. Like everything in health insurance, understanding how the rebate money can be spent is not necessarily straightforward.

Where the rebate is subject to ERISA, the funds must be treated as plan assets and can only be spent as permitted by ERISA. Where the rebate is not subject to ERISA, it can be spent on general corporate purchases, like that frozen yogurt machine.

How can an employer determine if the rebate is subject to ERISA?

Determining whether a rebate is subject to ERISA is often a multi-step process:

1. Check the policy language to determine if the policy states what portion of the rebate is a plan asset.
2. If it is not stated in the policy, look at who paid for the health insurance premiums. If the employer paid 50% of the premiums and passed 50% of the cost on to employees, generally the rebate will be 50% plan assets and 50% corporate assets.

Some or all of the rebate is a plan asset, now what?

If an employer determines that any or all of a rebate is a plan asset, then the portion of the rebate that constitutes a plan asset must be used for the exclusive benefit of plan participants.

Using the rebate or credit for the benefit of plan participants generally means that the value should be realized by participants in some way related to the plan. However, factors such as tax consequences and the cost of distributing the value of the benefit may be relevant to how an employer is required to use it.

Employers who have questions about whether received rebates or premium credits are plan assets, as well as how those rebates can be spent, should contact Jeff Robertson, Iris Tilley, or Gabrielle Hansen at 503-228-0500 (or via email at jrobertson@barran.com, itilley@barran.com, ghansen@barran.com).