

It Benefits You Your Employee Benefits Newsletter

October 2022

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“What we've got here is a failure to communicate.” –Cool Hand Luke

As we round into the last few months of 2022, many companies are entering the season that every HR professional loves to hate – Open Enrollment! A company's benefit plan is an enormous tool for recruitment and retention, and also one of the most expensive investments that a company will make.

At McGriff, we can provide you with the communication tools you need to help your employees understand exactly what their benefits options are, and also understand their responsibilities when they select those options.



2023 Open Enrollment Checklist

To prepare for open enrollment, group health plan sponsors should be aware of the legal changes affecting the design and administration of their plans for plan years beginning on or after January 1, 2023. Employers should review their plan documents to confirm that they include these required changes.

In addition, any changes to a health plan's benefits for the 2023 plan year should be communicated to plan participants through an updated summary plan description (SPD) or a summary of material modifications (SMM).

Health plan sponsors should also confirm that their open enrollment materials contain certain required participant notices, when applicable—for example, the summary of benefits and coverage (SBC). Some participant notices must also be provided annually or upon initial enrollment. To minimize costs and streamline administration, employers should consider including these notices in their open enrollment materials. [Click HERE to learn more!](#)

Upcoming Compliance Deadlines

October Medicare Part D Notices



The Centers for Medicare and Medicaid Services (CMS) requires plan sponsors that provide prescription drug coverage to furnish Part-D-eligible individuals with a notice disclosing the creditable or noncreditable status of their coverage by October 14, 2022.

If a health plan's open enrollment period begins on or before October 14, plan sponsors can meet this requirement by including the Medicare Part D notice in the plan's open enrollment materials

October Form 5500 Extended Deadline



An extension of up to 2 ½ months after the Form 5500 due date is available for employers that request an extension using Form 5558. For plan sponsors with calendar year plans, the extended deadline will fall on October 17, 2022.

Redefining Food with Intuitive Eating

For the last several decades, diet culture has vilified many different categories of food. In the 1990s, dietary fat was public enemy number one, and movie theaters were pressured to remove coconut oil from their popcorn. Now, you find coconut oil on the shelves at every health food store. In the early 2000s, dietary fat was given a pardon and carbohydrates became the new enemy as people replaced slices of apples with slabs of bacon.

Thankfully, a diet culture focused on restriction and thinness is evolving into a healthier food dynamic focused on intuitive eating and food for health. What if instead of diets we focused on the value of different food choices? What if we looked at eating for nourishment and not from a place of guilt or shame?

Many weight management programs today are focused on the mental, emotional, and social cues, in addition to the physical ones, that drive eating behaviors. By breaking the diet cycle of restriction and indulgence, these programs focus on users evaluating why they are driven to certain eating behaviors and making more informed and conscious decisions around food.

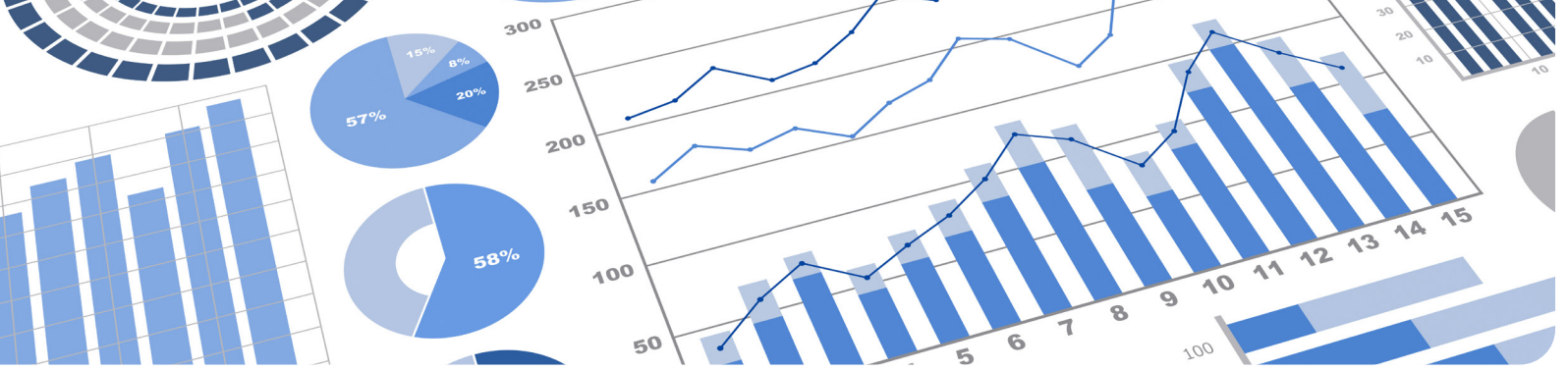
With an intuitive eating approach, no foods are considered inherently bad, just varying in nutritional value. Instead of being held hostage by the urge to indulge, people evaluate why they are eating beyond their natural hunger cues and learn ways to address unconscious habits. They also learn how to make choices that are better for providing more nutrition. For example, if someone has a chocolate craving, they are encouraged to mindfully enjoy some antioxidant rich dark chocolate, vs. mindlessly eating ultra-processed foods with little nutritional value.

With this approach, weight loss is an added benefit of making more healthful choices instead of being the primary focus. This can help people reframe their relationship with food and promote more sustainable outcomes. Weight management programs can help ward off the progression of many chronic conditions, and an approach that is multi-faceted and empowering for users can yield greater results.



Katie O'Neill, DC, BS

McGriff Clinical Wellness Practice Leader



Benefit Analytics: How to Maximize the Value of Your Benefits Offering

Do employers really understand how employees are actually using their flexible benefits, FSA, HSA, HRA and TSA? Wouldn't it be nice to know:

- If employees are engaged with their flexible benefits?
- That your employees are optimizing the value of the benefits you offer?
- If HSA participants are spenders or savers?
- Would this data help employers make educated decisions about their annual benefits packages?

Access to this type of data provides the insights to make decisions about flexible benefit offerings. With our Benefit Analytics system employers can:

- **Track** employee utilization to improve future benefit offerings. When you see how employees are using their accounts and how financially prepared they are to pay for out-of-pocket healthcare expenses, you can optimize your benefits package to fit the needs of your employees.
- **View** how employees interact with their benefits to identify education gaps and promote utilization. You can make informed decisions about flexible benefit design and education when you know how and how often employees are interacting with benefit accounts.
- **Compare** benefit offerings to similar companies in your market. Differentiate offerings from similar companies or make strategic decisions to boost performance.

Understanding employee engagement in benefit offerings through analytics can boost recruiting and retention. According to SHRM in 2021, 36% of employees say better compensation and corporate benefits are the primary reason why they would consider changing jobs. With Benefit Analytics, employers can make educated, strategic decisions about their flexible benefit plans.

Data and analytics need to be easy and intuitive. Employers are interested in what the data tells them, not just the numbers alone. Benefit analytics is the story behind the numbers. With easy to digest graphs and charts in our Benefit Analytics system, employers don't have to be number crunchers in order to spot trends in participant behavior.

Benefit Analytics, available soon through McGriff Flexible Benefits, can deliver results.

For more information on Benefit Analytics please contact your McGriff Benefits Consultant.

Paula Smith, SHRM-CP, PHR, FCS, CFC
McGriff Flexible Benefits, New Business Specialist



How Employers Should Handle MLR Rebates

The Affordable Care Act (ACA) established medical loss ratio (MLR) rules to help control health care coverage costs and ensure that enrollees receive value for their premium dollars. The MLR rules require health insurance issuers to spend 80-85% of premium dollars on medical care and health care quality improvement, rather than administrative costs.

Issuers that do not meet these requirements must provide rebates to consumers. Rebates must be provided by September 30 following the end of the MLR reporting year.

For the 2021 reporting year, issuers are required to pay rebates by September 30, 2022.

For current enrollees, issuers may provide rebates in the form of:

- A lump-sum payment; or
- A premium credit (that is, a reduction in the amount of premium owed).

Also, to avoid having to pay a rebate, an issuer may institute a “premium holiday” during an MLR reporting year if it finds that its MLR is lower than the required percentage (if permissible under state law). Also, any issuers using premium holidays must meet certain other requirements, such as providing the holiday in a nondiscriminatory manner and refunding premium overpayments.

How an **employer** should handle any MLR rebate it receives from an issuer depends on the type of group health plan (an ERISA plan, a non-federal governmental group health plan or a non-ERISA, non-governmental plan) and whether the rebate is considered a plan asset.

ERISA Plans

Most, but not all, group health plans are governed by ERISA. Any rebate amount that qualifies as a plan asset under ERISA must be used for the exclusive benefit of the plan’s participants and beneficiaries.

Is the Rebate a Plan Asset?

According to the Department of Labor (DOL) Technical Release 2011-4 (DOL TR 2011-04), in the absence of specific plan or policy language addressing these types of distributions, whether the rebate will constitute a plan asset



depends, in part, on the identity of the policyholder and the source of premium payments.

If the plan or its trust is the policyholder, the policy is an asset of the plan and the entire rebate must be treated as a plan asset. If the employer is the policyholder—as is most often the case—the portion of the rebate that must be treated as a plan asset depends on who paid the insurance premiums. For example:

- If the premiums were paid entirely out of trust assets, the entire rebate amount is a plan asset;
- If the employer paid 100% of the premiums, the rebate is not a plan asset and the employer can retain the entire rebate amount;
- If participants paid 100% of the premiums, the entire rebate amount is a plan asset; and
- If the employer and participants each paid a fixed percentage of the premiums, the percentage of the rebate equal to the percentage of the cost paid by participants is a plan asset.

Also, if the employer was required to pay a fixed amount and participants were responsible for paying any additional costs, the portion of the rebate that does not exceed the participants’ total amount of contributions for the MLR reporting period would be a plan asset. If participants paid a fixed amount and the employer was responsible for paying any additional costs, the portion of the rebate that does not exceed the employer’s total amount of

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contributions during the MLR reporting year would not be a plan asset.

In any case, under the DOL's guidance, employers are generally prohibited from retaining a rebate amount greater than the total amount of premiums and other plan expenses paid by the employer.

How Should the Rebate be Used?

Once an employer determines that all or a portion of an MLR rebate is a plan asset, it must decide how to use the rebate for the exclusive benefit of the plan's participants and beneficiaries. DOL TR 2011-4 identifies the following methods for applying the rebates:

- The rebate can be distributed to participants under a reasonable, fair and objective allocation method. If the employer finds that the cost of distributing shares of a rebate to former participants approximates the amount of the proceeds, the fiduciary may decide to limit rebates to current participants. Also, an allocation does not fail to be impartial merely because it does not exactly reflect the premium activities of participants.
- If distributing payments to participants is not cost-effective because the amounts are small or would cause tax consequences for the participants, the employer may utilize the rebate for other permissible plan purposes, such as applying the rebate toward future participant premium payments or benefit enhancements.

If a plan provides benefits under multiple policies, the employer must be careful to allocate the rebate for a particular policy only to the participants who were covered by that policy. According to the DOL, using a rebate generated by one plan to benefit another plan's participants would be a breach of fiduciary duty.

Is there a Time Limit for Using Rebates?

To the extent a rebate qualifies as a plan asset, ERISA would generally require the amount to be held in trust. However, most group health plans receiving rebates do not maintain trusts because their premiums are paid from the employer's general assets (including employee payroll deductions). In TR 2011-4, the DOL provides relief from the trust requirement for premium rebates that are used within three months of their receipt.

In addition, directing an issuer to apply the rebate toward future participant premium payments or toward benefit enhancements adopted by the plan sponsor would avoid the need for a trust and, in some circumstances, may be consistent with the employer's fiduciary duties. Employers that decide to take this approach should coordinate with their insurance issuers to establish the process for handling rebates.

Non-ERISA Plans—Non-federal Governmental Plans

Group health plans maintained by non-federal government employers (for example, state and local governments) are not governed by ERISA's fiduciary standards. HHS' interim final regulations on the MLR rules provide that employers must use the portion of the rebate attributable to the amount of premium paid by employees to:

- Reduce subscribers' portion of the annual premium for the subsequent policy year for all subscribers covered under any group health policy offered by the plan;
- Reduce subscribers' portion of the annual premium for the subsequent policy year for only those subscribers covered by the group health policy on which the rebate was based; or

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- Provide a cash refund only to subscribers covered by the group health policy on which the rebate is based.

In all three cases, the rebate is used to reduce premiums or is paid to subscribers enrolled during the year in which the rebate is actually paid, rather than the MLR reporting year on which the rebate was calculated. Whichever method is selected, the policyholder may choose to:

- Divide the reduction or refund evenly among the subscribers;
- Divide it based on each subscriber's actual contributions to the premium; or
- Apportion it in a manner that reasonably reflects each subscriber's contributions to the premium.

HHS' final 2016 Notice of Benefit and Payment Parameters changed the MLR rules to require that participants of non-federal governmental or other group health plans not subject to ERISA receive the benefit of MLR rebates within three months of receipt of the rebate by their group policyholder, just as participants of group health plans subject to ERISA do.

Non-ERISA, Church Plans

HHS also addressed rebates for non-governmental group health plans that are not subject to ERISA, such as church plans. Under HHS final regulations, an issuer may make a rebate payment to the policyholder (typically, the employer sponsoring the plan) if it receives the policyholder's written assurance that the rebate will be used for the benefit of current subscribers using one of the options described above for non-federal governmental plans. Without this written assurance, issuers must pay the rebate directly to employees covered under the policy during the MLR reporting year.

Also, HHS proposed requiring that participants in non-ERISA plans receive the benefit of the MLR rebate within three months of when the rebate is received by the plan sponsor. If a church plan is covered by ERISA, the standard rules for ERISA plan assets will apply.

Tax Treatment of Rebates

The IRS issued a set of [FAQs](#) addressing the tax treatment of MLR rebates. In general, the rebates' tax consequences depend on whether employees paid their premiums on an after-tax or a pre-tax basis.

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Compliance Q&A: Remote Employees

Can we require remote employees to inform us when they move to a new city or state?

Yes, you can and should require that remote employees notify the company when they move. There may be compliance and tax obligations when an employee relocates to a new city or state—not only for the employee, but also for you as the employer. For example, a relocated employee may now be owed a higher minimum wage or be eligible for paid sick leave. Workers' compensation and unemployment insurance may also be affected.

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To learn more about compliance challenges with remote or hybrid work arrangements, join our McGriff HR Advisory and Compliance presenters in exploring **LESSONS LEARNED: THE ONGOING HR CHALLENGES OF THE CHANGING WORKPLACE** – [Click HERE to listen!](#)

McGriff October Webinar Opportunities

As part of McGriff's commitment to bring you information on regulatory updates, current trends and best practices, we invite you to the following webinars scheduled for October. We hope you can join us for one or more of these educational opportunities!

What Every Employer Should Know About Managing a Drug Free Workplace

October 20 | 2:00 pm EDT

To register, please [click here](#).

During this session we will discuss how medical and recreational marijuana impact a drug-free workplace and how it can be managed. We will also cover best practices for implementing a random drug testing policy. Presented by Kim Claytor, CPCT Compliance Director with Nationwide Testing Association, Inc.

Wellness Programs – Looking Back/Looking Forward

October 27 | 2:00 pm EDT

To register, please [click here](#).

Wellness is evolving in multiple dimensions, yet wellness programs have not kept pace. Join the McGriff Peak Health Team to discuss how wellness is evolving to meet the changing workplace landscape. We will also revisit how to evaluate wellness program success by over-viewing metrics that go beyond typical enrollment and interaction numbers to truly connect the dots between the program and an employer's health risk strategy.

Monthly Mineral Demonstration

October 18 | 2:00 pm EDT

To register, please [click here](#).

McGriff is excited to bring you Mineral (formerly ThinkHR) – a robust web-based resource with live advisors, reliable content and interactive technology solutions that provides an end-to-end People Risk Management solution! If you are involved with HR compliance or employee issues at any level, this will be another valuable benefit from your trusted McGriff team that can save you time and money. Join us for a brief overview of Mineral and its benefits available to you as an employee benefits client of McGriff.



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