

RE-WRITING THE MLR STATUTE POST-ENACTMENT WILL RESULT IN LOSS OF CHOICE AND DISRUPT COVERAGE FOR INDIVIDUALS, FAMILIES AND SMALL EMPLOYERS

The Legislative Language is Clear: Federal Taxes Are Excluded

- During the health care reform debate, the PPACA provision relating to MLR was specifically amended as part of the manager’s amendment to exclude from the MLR calculation “Federal” taxes in addition to State taxes and licensing fees.

FROM PPACA, SECTION 2718b

*“(A) REQUIREMENT.—Beginning not later than January 1, 2011, a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan) shall, with respect to each plan year, provide an annual rebate to each enrollee under such coverage, on a pro rata basis, if the ratio of the amount of premium revenue expended by the issuer on costs described in paragraphs (1) and (2) of subsection (a) to the total amount of premium revenue **excluding Federal and State taxes** and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act) for the plan year (except as provided in subparagraph (B)(ii)), is less than...”*

- The language explicitly excludes “Federal and State taxes and licensing or regulatory fees” from the denominator and these exclusions are not tied to the PPACA provisions.

Exclusion of Federal Taxes is Necessary to Protect Consumers from Loss of Choice and Disruption in Coverage

- The exclusion of taxes from the MLR rebate calculation is important to protect individuals’, families’ and small employers’ interests with respect to premium and coverage stability. Including federal taxes in the MLR calculation effectively raises the MLR threshold beyond the statutorily set level – in effect creating a new tax. The unintended consequences of re-writing the legislation in this way would be loss of choice and disruptions in coverage on which individuals, families and small employers rely today.
 - Adding to the uncertainty individuals, families and employers could face is the fact that health plans would have fewer resources to cover solvency requirements. This could lead to even more loss of choice and further disruption of coverage if plans became insolvent.
- The loss of choice and coverage disruptions would occur if health plans are unable to meet the new MLR threshold as a result of the new “tax on the tax” requirement. Health plans might then have to consider either withdrawing from markets entirely or offering fewer product choices in a particular market.

- Reversing the exclusion of federal taxes creates a new tax. Most health plans are required to pay federal income taxes as well as payroll taxes. The statutory tax rate for federal income tax is 35 cents. This means that for every dollar of net income that a health plan earns it already pays a 35 cent tax to the federal government. Payroll taxes typically amount to another 8% of wages paid to the typical employee.

Mechanics of Re-Writing the Statute to Include Federal Taxes in the MLR Calculation

- Advocates of a higher MLR have contended that health plans will be forced to compete to hold down their discretionary administrative costs, become more efficient and provide more value to policyholders. However, health plans have no control over the requirement that they pay Federal and state taxes – and thus they have no way to hold down those costs.
- If taxes paid to the federal government are not excluded from premium revenue, the health plan's MLR will be calculated inaccurately, suggesting that there is still a dollar of net income included in the premium when in fact there is only 65 cents less payroll taxes. As a result, if the premium revenue is not adjusted to reflect the amount in taxes already paid to the federal government, the health plan will potentially pay a double tax on the same net income.
- Rewriting the statute effectively raises the MLR threshold by essentially taxing a tax, and in effect creates a new tax that will have clear and direct consequences on the cost and stability of coverage on which millions of individuals, families and employers currently rely.