

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Submitted via *regulations.gov*

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Director
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

re: Interim Final Rule on the **Medical Loss Ratio** (MLR) requirements
Reference Number: (OCIIO-9998-IFC)

Ladies and Gentlemen:

The National Coordinating Committee for Multiemployer Plans (the NCCMP) is pleased to provide these comments regarding the Interim Final Rule on the Medical Loss Ratio (MLR) requirements for health insurance issuers under the Public Health Service Act, as added by the Patient Protection and Affordable Care Act (Affordable Care Act), which were published on December 1, 2010 (Reference number OCIIO-9998-IFC).

The NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately twenty-six million Americans - workers, retirees, and their families - who rely on multiemployer plans for retirement, health and other benefits. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit, non-partisan organization, with members, plans, and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, service and trucking industries.

In this comment letter, we request clarification regarding the terms used in the MLR regulation and the application of these rules to multiemployer plans.

Background

Multiemployer plans, established and maintained through collective bargaining and structured in accordance with the Taft-Hartley Act provisions of the National Labor Relations Act, serve The

participant populations in industries where employment is historically fluid, such as the construction trade, maritime, and the hotel and restaurant industries. Participants often move from one contributing employer to another. The multiemployer fund enables employers to pool their resources, and mobile employees to pool their service with many different employers, to achieve critical mass to make it cost-efficient to provide group health coverage.

Multiemployer plans are established when a union, contributing employers, and the designated trustees enter into an "agreement and declaration of trust" or "trust agreement," which creates the trust fund and defines the authority and responsibilities of the labor-management trustees. The employers agree in their collective bargaining agreements with the union to contribute to the trust fund at certain rates that are typically based upon hours worked by the covered employees. Multiemployer health and welfare plans are generally subject to Internal Revenue Code provisions such as Sections 501(c)(9) (regarding voluntary employees beneficiary associations or "VEBAs").

As described earlier, multiemployer plans are established and maintained pursuant to collective bargaining agreements as trust funds administered by labor-management boards of trustees and otherwise in accordance with Taft-Hartley Act Section 302(c) and ERISA. In contrast, MEWAs are typically created, owned, and operated by entrepreneurs as for-profit businesses. They usually are not employee benefit plans covered by ERISA, but merely vehicles for funding or insuring the individual health plans of the various unrelated employers that pay premiums to the MEWA's operators. In the 1983 ERISA amendments concerning the regulation of MEWAs, Congress included statutory language intended to exempt multiemployer plans from treatment as a MEWA.

Medical Loss Ratio Rules Should Clarify Treatment of Multiemployer Plans

Most multiemployer plans are self-insured. As noted in the interim final regulation, the MLR regulation does not apply to self-insured plans, including self-insured plans offered through an association or trust. Because most multiemployer plans are self-insured, this regulation would not affect them. It would only apply where health insurance is purchase by a plan from a commercial insurance carrier. The regulations should clarify that the regulation also does not apply to self-insured multiemployer plans.

Notwithstanding the above, as a general rule, MLR is based on the situs of the contract. This is true even if employees in multiple states are covered under that contract. However, as an exception, regulation section 158.120(d)(2) states:

For employer business issued through a group trust or multiple employer welfare association, the experience of the issuer must be included in the State report for the State where the employer or the association has its principal place of business.

The regulation does not define the term "group trust." However, the regulation appears to contemplate group trusts held by single employers, which is why they refer to the location of the

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employer, as opposed to the location of the trust. In situations involving group trusts that are multiemployer plans, it would not be appropriate to make an allocation based on the situs of an employer, as the trust itself is the policyholder and would be the only appropriate situs.

The regulations should clarify that any situs determinations would be related to the situs of the collectively bargained plan and trust, not to a contributing employer. In addition, the regulations should assure that proper clarification is made so that multiemployer plans are not confused with “multiple employer welfare associations.”

We greatly appreciate the opportunity to comment on these rules as they apply to multiemployer plans and are more than happy to discuss any questions you may have regarding these comments.

Respectfully submitted

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Executive Director