



**Research**

# MLR Bait and Switch: PPACA's Latest Controversy

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## Understanding the Medical Loss Ratio (MLR) Policy Debate

The medical loss ratio (MLR) measures how much of premiums insurers pay out for medical care versus administrative cost. The healthcare reform law requires that insurers use at least 80% of the premiums from individuals and small businesses to pay for medical care and profit-taking. The requirement is 85% of premiums from large employers.

Central to the implementation of the Patient Protection and Affordable Care Act (PPACA) is how the National Association of Insurance Commissioners (NAIC) define medical care and whether state and federal taxes can be deducted from the revenue part of MLR. As it is written in Sec. 2718 of PPACA, the medical loss ratio is suppose to be calculated by “excluding Federal and State taxes and licensing or regulatory fees.”

In a letter to Secretary Sebelius, the Congressional Committee Chairmen who oversaw PPACA's passage assert that Federal income taxes and payroll taxes were intended to be included. The lawmakers contend, “Federal taxes and fees in this context is meant to refer only to Federal taxes and fees that relate specifically to revenue derived from the provision of health insurance coverage that were included in the PPACA.”

## At Issue May Be the Very Existence of Private Insurance

Two months after the Administration missed PPACA's deadline to finalize the MLR rule, the public policy debate now shifts to whether the Democratic Congress is actively trying to destroy private insurance through “bait and switch” rulemaking.

If NAIC and the Department of Health and Human Services (HHS) change the law's written exclusion of federal income tax from the MLR, they will be effectively creating a new tax on insurers. Most health plans are required to pay federal income taxes (35%) as well as payroll taxes (8%). If these taxes paid to the federal government are not excluded from the premium revenue, the health plans' MLR will be paying a potential double tax or rebate on the same net income: first paying taxes to the federal government and a rebate to consumers using the same dollars

## Unanswered Questions Continue to Mount

As each day passes since the Obama Administration failed to meet PPACA's June 1<sup>st</sup> deadline for determining the MLR, unanswered questions continue to mount:

- Since there was no conference report completed for PPACA, can the letter from the Committee Chairmen be used as evidence to determine what Congress actually meant when it wrote the bill?
- If NAIC submits a final rule that excludes federal and state taxes as the law is written, will HHS deny

certification of the final MLR definition?

**Bottom Line:** HHS can do the right thing and follow what is written in the law, or it can take the extraordinary step toward driving out private insurance in America.