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# Marketplace Notices: What Employers Should Know

JULY 12, 2016

Soon the U.S. Department of Health and Human Services (HHS) will begin notifying employers about employees receiving advance premium tax credits (APTC) or subsidies for 2016 on the ACA federally facilitated exchange. For an idea of what the notice will look like, see the [sample employer notice](#) recently posted by HHS. If you receive a notice despite providing ACA-compliant health coverage, you may take the following two actions: 1) Appeal to HHS and 2) Notify employee.

## **Steps for Reviewing and Responding to an Exchange Notice**

First, confirm who is sending the request. Some of the steps outlined below, such as use of the model appeal form, apply only to notices from the Federal exchange or a state-based exchange operating in California, Maryland, Colorado, Massachusetts, the District of Columbia, New York, Kentucky, or Vermont. If employer receives a notice from another state-based exchange, it would be necessary to review the contents of the notice regarding required appeal steps and documentation to be provided (although many state exchanges are likely to apply a similar process to the one used by the HHS).

Then check your records to confirm whether the person listed is an employee of the employer, or a dependent of the employee. If the notice does not provide enough detail for employer to confirm this point, such as a name that is similar to the name of an employee, but slightly different from the information in employer's records, it may be necessary to call the phone number provided in the notice in an attempt to confirm whether the notice identifies an employee or dependent.

Assuming that the notice does identify an employer's employee (or dependent of an employee), it will then be necessary to confirm:

- Whether an offer of coverage was made for the applicable time period described in the exchange notice, and
- If not, was there a reason that no offer of coverage was made, such as the person being classified as a part-time employee.

## **Appealing an Exchange Notice**

Although employers are not technically required to appeal an exchange notice, employers may want to consider doing so in the following situations:

Where the information reflected on the notice appears to be incorrect (for example, the identified individual is not an employee); where the notice identifies a full-time employee who was offered affordable, minimum value coverage; or where coverage was not offered because it would not be required in order to avoid penalties (for example, because the employee was correctly classified as part-time or had previously terminated employment).

Appealing the notice in these situations may preempt the future assessment of penalties by the IRS, in that it alerts the exchange to the fact that the employee may not be eligible for subsidized exchange coverage. At worst, the appeal will help create documentation to be used in the event that the IRS does attempt to assess penalties with respect to the identified individual. It is our understanding that some payroll vendors and third party administrators are willing to assist employers with this process, typically for an additional fee, if the employer does not have the resources (or interest) to manage this process in-house.

**For notices from a Federal exchange or one of the state-based exchanges listed above, employers will have 90 days from the date of the notice to file an appeal. The appeal can be filed in one of two ways:**

By filling out an Employer Appeal Request Form, currently available at this link: <https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>, or

By submitting a letter with the following information:

- Business name,
- EIN,
- The employer's primary contact name, phone number, and address,
- The reason for the appeal, and
- Information from the notice that was received, including date and employee information.

Mail the form or letter described above to:

Department of Health and Human Services Health Insurance Marketplace  
465 Industrial Blvd.  
London, KY 40750-0061

According to the HHS website, once the appeal is received by HHS, the employer should receive a letter acknowledging its receipt that will provide a description of the appeals process, as well as instructions for submitting any additional materials, if needed.

If the employer identifies that any employee was inadvertently not offered coverage while working through the steps above, it should make an offer as soon as possible, so that it can at least limit the potential IRS penalty that may be applied on a going forward basis. As a reminder, the Affordable Care Act penalties are applied on a monthly basis, so acting quickly to remedy any coverage errors can have a significant impact on any potential penalties that might otherwise apply.

Note that the exchange notices will generally be sent to the address the employee provides when applying for exchange coverage. As a result, the employer may also want to think about communicating with individual office locations other than corporate headquarters (if any), to make sure that managers and other personnel are aware that they need to route these to your preferred department/contact as soon as possible following receipt. Similarly, it may be necessary to put your mail department on notice of where these notices should be routed, so that the chance to appeal a notice is not missed due to the notice being inadvertently misdirected.

### **Communicating with Employees**

As you may know, employers are required to provide a notice to new hires explaining the availability of exchange coverage (please see the following link for more information: <https://www.dol.gov/ebsa/newsroom/tr13-02.html>). One step employers could consider taking to help direct any exchange communications to the correct address and contact would be to include that contact information in this notice when it is provided to new hires in the future. Although this would not guarantee that employees will use the correct address, it may increase the chances that, when inputting information online while enrolling in an exchange, an employee will use employer preferred contact information, rather than an individual location (or incorrect address). There may also be other employment or benefits communications routinely provided to employees that could be revised to accomplish the same result.

If you chose to also notify the employee of the appeal you are filing, below is sample wording you can use:

*Dear employee,*

*The Affordable Care Act exchange where you purchased health insurance for 2016 notified us*

*they granted you a government-paid advance premium tax credit to help pay for the insurance. Usually, a person receives these credits only if his or her employer did not offer him or her affordable health insurance coverage of a minimum value.*

*We are committed to providing competitive wages and benefits, including health insurance, to full-time employees. We regularly review our health insurance program in order to provide valuable coverage at a cost that is as reasonable as possible. We believe the health insurance we offered you for 2016 meets the Affordable Care Act guidelines for being affordable and providing minimum value.*

*We are appealing the notice from the Affordable Care Act exchange because if the government believes we did not offer our full-time employees health coverage that met or exceeded the Affordable Care Act requirements for affordability and value, the Internal Revenue Service (IRS) could charge us large fines. We believe the health insurance we offer our full-time employees meets the government requirements.*

*We wanted to let you know we are appealing. The government will also notify you and, depending on its final decision, you might have to make a repayment to the IRS for an advance premium tax credit if they find you were not eligible. We want to assure you we are not accusing you of any wrongdoing and this does not affect your employment relationship with us in any way. We value all our employees, and we realize the Affordable Care Act is a very complicated law for both employers and employees.*

*If you have questions on how the premium tax credits and cost-sharing subsidies are credited or repaid, please see questions 20 through 25 on the [IRS Questions and Answers on the Premium Tax Credit webpage](#). You can also visit HealthCare.gov's [premium tax credit page](#) or [questions and answers section](#).*

*If you have any questions about the health insurance we offer here at \_\_\_\_\_, please contact an employee benefits team member at \_\_\_\_\_ or visit our company website at \_\_\_\_\_.*  
*Sincerely,*

*Your company name here*

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