American Benefits Council
Preparing for PPACA

Session #23: Employee Exchange Notices
(DOL Technical Release 2013-02 & Model Notices)

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Overview

- Employee Exchange Notice
  - Statutory language
  - Transitional relief
  - Technical Release 2013-02
  - Model notices
  - Employer considerations

- COBRA
  - Updated model notice
  - Employer considerations
Employee Exchange Notice

• ACA section 1512 added FLSA section 18B

“SEC. 18B. NOTICE TO EMPLOYEES.

“(a) IN GENERAL.—In accordance with regulations promulgated by the Secretary, an employer to which this Act applies, shall provide to each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), written notice—

“(1) informing the employee of the existence of an Exchange, including a description of the services provided by such Exchange, and the manner in which the employee may contact the Exchange to request assistance;

“(2) if the employer plan’s share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986 and a cost sharing reduction under section 1402 of the Patient Protection and Affordable Care Act if the employee purchases a qualified health plan through the Exchange; and

“(3) [As revised by section 10108(i)(2)] if the employee purchases a qualified health plan through the Exchange and the employer does not offer a free choice voucher, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

“(b) EFFECTIVE DATE.—Subsection (a) shall take effect with respect to employers in a State beginning on March 1, 2013.”.
Employee Exchange Notice

• Statute requires employers to provide to all new employees and current employees a written notice:
  – About the existence of the state exchanges post-2013;
  – That the employee may be eligible for federal premium assistance and cost-sharing reductions if the plan’s share of the cost of the benefits is less than 60%; and
  – That if the employee chooses coverage through a state exchange, the employee may lose the employer’s contribution to coverage, all or part of which might be excludable from the employee’s income
Employee Exchange Notice

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C. Form and Content of the Notice

Pursuant to the statute, the notice to inform employees of coverage options must include information regarding the existence of a new Marketplace as well as contact information and description of the services provided by a Marketplace. The notice must also inform the employee that the employee may be eligible for a premium tax credit under section 36B of the Code if the employee purchases a qualified health plan through the Marketplace; and a statement informing the employee that if the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.
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(b) Effective date.—Subsection (a) shall take effect with respect to employers in a State beginning on March 1, 2013.”
New Employer Exchange Notice

• Guidance was delayed, which left people with many questions

• On May 8\textsuperscript{th}, DOL issued temporary guidance and model notices as part of Technical Release 2013-02
Technical Release 2013-02

• When must the notice be provided?
  – Generally by October 1, 2013 (see later slides for additional information)
• Which employers are subject to the notice requirement?
  
  – Applies to all employers governed by FLSA, (i.e., generally ≥ one employee, generally ≥ $500k of gross revenue) – nearly all employers
  – Note: Notice requirement applies regardless of whether the employer sponsors a plan
Technical Release 2013-02

• Writing requirement
  – Must be written to be understood by the average participant
Technical Release 2013-02

• Which employees must get the notice?
  – Must be provided to all employees regardless of full-time or part-time status
    • Must provide to new employees hired on or after 10/1/13 within 14 days of hire
    • Must provide to current employees no later than 10/1/13
    • No requirement to notice dependents
Technical Release 2013-02

- Can I charge employees for the notice?
  - No, must be provided free of charge
Technical Release 2013-02

- How can the notice be delivered?
  - Technical Release indicates that the notice can be sent by first-class mail or per DOL e-delivery safe harbor
  - What about in-person delivery of written notice?
Model Notices

• DOL provided one model notice for employers that sponsor group health plans and a separate model notice for those that do not sponsor a plan

• The model is just that – a model – not a prescribed form; actual notice can deviate so long as it meets content requirements

• Model notices appear to include lots of optional information
  – Pages 2 and 3 of group health version appears to be borrowed from proposed Employer Coverage Form from HHS
EMPLOYER COVERAGE FORM

Applying for help with health insurance costs from the Health Insurance Marketplace?

The Health Insurance Marketplace application asks questions about any health coverage available through a current job (even if it's from another person's job, like a parent or spouse) to figure out if you might be able to get help paying for health insurance. Use this form to get the information you need from the employer who offers health coverage. We'll verify this information, so it's important to be accurate. If you have more than one job that offers health coverage, use a separate form for each employer.

EMPLOYEE Information

The employee needs to fill out this section. Write down the employee's information then you may request the information below from the employer. Use this completed form when you fill out a Health Insurance Marketplace application.

Employee Name (First, Middle, Last)

Social Security Number

EMPLOYER Information

Ask the employer for this information.

Employer Name

Employer Identification Number (EIN)

Employer Address

City

State

Zip Code

Who can we contact about employee health coverage at this job?

Phone Number

Email Address

Tell us about the health plan offered by this employer

☐ This employee is ineligible for coverage under this employer’s plan.

☐ Employee is eligible for coverage under this employer's plan on _______________________. (Start Date)

What is the name of the lowest cost self-only health plan this employee could enroll in at this job? (Only consider plans that meet the minimum value standards’ set by the Affordable Care Act.)

Name:

☐ Plan meets the “minimum value standard.”

How much would the employee have to pay in premiums for that plan?

☐ Pay premium

☐ Pay every 4 weeks

☐ Twice a month

☐ Monthly

☐ Yearly

☐ Other _______________________.

*According to the standards set by the Affordable Care Act of 2010, if you do not earn, receive an employer or health insurance issuer:

Use the information in this form to complete your Health Insurance Marketplace application.

Apply online at www.placeholder.gov, or call us at 1-800-XXXX-XXXX to get started.

NEED HELP WITH YOUR APPLICATION? Call us at 1-800-XXXX-XXXX, or visit us at www.placeholder.gov. Para obtener una copia de este formulario en español, llame 1-800-XXXX-XXXX.
Model Notices

- The notices are 2 or 3 pages long
- First page is general and static information

PART A: General Information

When key parts of the health care law take effect in 2014, there will be a new way to buy health insurance: the Health Insurance Marketplace. To assist you as you evaluate options for you and your family, this notice provides some basic information about the new Marketplace and employment-based health coverage offered by your employer.

What is the Health Insurance Marketplace?
The Marketplace is designed to help you find health insurance that meets your needs and fits your budget. The Marketplace offers "one-stop shopping" to find and compare private health insurance options. You may also be eligible for a new kind of tax credit that lowers your monthly premium right away. Open enrollment for health insurance coverage through the Marketplace begins in October 2013 for coverage starting as early as January 1, 2014.

Can I Save Money on my Health Insurance Premiums in the Marketplace?
You may qualify to save money and lower your monthly premium, but only if your employer does not offer coverage, or offers coverage that doesn’t meet certain standards. The savings on your premium that you’re eligible for depends on your household income.

Does Employer Health Coverage Affect Eligibility for Premium Savings through the Marketplace?
Yes, if you have an offer of health coverage from your employer that meets certain standards, you will not be eligible for a tax credit through the Marketplace and may wish to enroll in your employer’s health plan. However, you may be eligible for a tax credit that lowers your monthly premium, or a reduction in certain cost-sharing if your employer does not offer coverage to you at all or does not offer coverage that meets certain standards. If the cost of a plan from your employer that would cover you (and not any other members of your family) is more than 9.5% of your household income for the year, or if the coverage your employer provides does not meet the "minimum value" standard set by the Affordable Care Act, you may be eligible for a tax credit.

Note: If you purchase a health plan through the Marketplace instead of accepting health coverage offered by your employer, then you may lose the employer contribution (if any) to the employer-offered coverage. Also, this employer contribution, as well as your employee contribution to employer-offered coverage, is often excluded from income for Federal and State income tax purposes. Your payments for coverage through the Marketplace are made on an after-tax basis.

How Can I Get More Information?
For more information about your coverage offered by your employer, please check your summary plan description or contact.

The Marketplace can help you evaluate your coverage options, including your eligibility for coverage through the Marketplace and its cost. Please visit HealthCare.gov for more information, including an online application for health insurance coverage and contact information for a Health Insurance Marketplace in your area.
Model Notices

- The second page includes information to be noticed.
- For plan version: technical questions requiring technical answers (such as regarding eligibility and whether plan meets MV).
- However, may be worth spending time on the front-end to ease administrative burdens on back-end.
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Model Notices

- Notice suggests page 2 is mandatory and page 3 is optional – appears all may be optional, possibly with the exception of the MV box
Model Notice

• The third page includes express “optional” information to be noticed

• Again, very technical questions requiring very technical answers

• However, may be worth spending the time on the front-end to ease administrative burdens on back-end
Employer Considerations/Open Issues

• How much of the model notice do I need to follow to ensure compliance with the notice requirement?
  – Issue of minimum value notice requirement
  – If don’t know minimum value by 10/1/13, is there a requirement to provide follow-up notice?

• Whether to expend the effort on the front-end to voluntarily provide additional information
  – Model notice is not also delivered to exchanges
  – Will the employees remember to take the notice with them to the exchange?
  – Will it help drive exchange inquiries to a central location?
  – What percentage of employees, spouses or dependents, might go to an exchange?

• Is this a one-time or annual notice for existing employees?
  – Appears all new hires will need to be provided with the notice

• Can I provide in-person delivery of written notice?

• Can I charge the cost to the plan?
  – Appears “no” since the liability runs to the employer and not the plan (and applies to all employers regardless of whether they sponsor a plan)
Increased Role for Employers in Educating Employees

• Significant opportunities for confusion for employees (and employers)

• Employees will likely be looking to their employers for help in navigating the ACA in 2014:
  – Whether the employer’s coverage satisfies the individual mandate; if not, what the penalty may be to the employee
  – Why an employee cannot pay for individual exchange-based coverage on a pre-tax basis
  – Why an employee might be better off without employer-sponsored coverage
  – “But you said I was subsidy-eligible!”
Increased Role for Employers in Educating Employees

• Example A: “No, I’m right!”

Applicable Large Employer

Is the coverage affordable based on the employee’s cost for self-only coverage when measured against the employee’s Form W-2 wages (or other safe harbor) from 2014 calendar year?

The Public Exchange

Is the coverage affordable based on the employee’s MAGHI from the 2012 calendar year?

The IRS

Was the coverage in fact affordable based on the employee’s MAGHI in 2014 calendar year?
Lastly… Continued Role of COBRA

• COBRA was not repealed as part of the ACA – thus remains in effect
  – Although, policy justifications for need seem to be reduced

• On May 8th, DOL also issued an updated COBRA model election notice
  – New model notice reflects:
    • Existence of exchange-based coverage as option for qualified beneficiaries
    • Availability of premium-tax credits for coverage purchased through the exchange
    • Effective date?
QUESTIONS?

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