

When Employers Receive a Marketplace Notice

Applicable Large Employers (ALEs) (those with 50 or more full-time and full-time equivalent employees in a prior calendar year) who are subject to the Affordable Care Act (ACA) employer mandate may be assessed a nondeductible penalty if at least one full-time employee receives subsidized health coverage from an ACA Marketplace. Beginning in 2016, the Federal Marketplace (Healthcare.gov) will notify certain employers when an employee has enrolled in Marketplace coverage, and has qualified for and receives premium and/or cost-sharing assistance for at least one month.

Employers should be mindful that these Marketplace notices may be coming, particularly if the employer has any indication that an employee has enrolled in Marketplace coverage. Employers will have only one opportunity to appeal the employee's subsidy eligibility determination to the Marketplace.

Background

For 2016, ALEs that fail to offer Minimum Essential Coverage (MEC) to 95% of full-time employees in a calendar month will be subject to a monthly penalty of \$180 times the number of full-time employees in excess of 30, if one full-time employee has secured subsidized Marketplace coverage. ALEs that do offer MEC to 95% of their full-time workforce but fail to provide coverage that satisfies (a) minimum value standards¹, or (b) is considered unaffordable² to a full-time employee would be subject to a monthly penalty of \$270 for each full-time employee who receives subsidized Marketplace coverage.

Under the ACA and implementing regulations, each Marketplace is required to notify an employer that an employee qualifies for subsidized Marketplace coverage. *It should be noted that while the process outlined below is applicable to the Federal Marketplace, States that have established their own Marketplace and have not elected to utilize the Federal appeals process will have similar latitude in designing and implementing their notice procedures*³. In fact, employers may have already begun to receive notices from certain state-based Marketplaces regarding employees who may have qualified for subsidized health coverage.

Implementing the Federal Marketplace Notice Process

The Federal Marketplace will phase in the employer notice program by sending notices only to certain employers whose employees have (a) qualified for premium assistance *and enrolled* in Marketplace coverage, and (b) provided the Marketplace with the employer's address. Unfortunately, we know that not all individuals will be completely honest when applying for Marketplace subsidized coverage and some may omit providing the required employer information. In this regard, an employer may first become aware of a penalty assessment only when the IRS notifies the employer at a later date.

Furthermore, when completing a Marketplace application, an employee may indicate his/her worksite as the employer's address which may not be the human resources or benefits administration location that would be responsible to respond to the notice. Multi-site employers should have processes in place to alert colleagues in other locations of what to do when a Marketplace notice is received in the mail.

The notice will identify the employee who has received premium assistance, although an employer will not be informed when an employee's Marketplace coverage may end. The Federal Marketplace intends to mail the employer notices in batches beginning in the spring of 2016 and thereafter, throughout the year as necessary. In the future, other contact and delivery methods may be considered such as email.

How to Appeal to the Federal Marketplace

An employer will have 90 days from the date of the notice to appeal the subsidy determination to establish that either (a) the employer provides minimum value and affordable coverage to the employee, or (b) the employee has actually enrolled in employer-sponsored coverage, as either scenario would shield the employer from penalty assessment. It is important that employers maintain good records and document offers of coverage to full-time employees to be able to respond and appeal an employee's subsidy eligibility. Should an employer elect to appeal and the appeal is successful, the Marketplace will notify the employee to update their application and inform the employee they may face additional tax liabilities.

An employer appeal form is available [here](#). The appeal may be faxed to 1-877-369-0129 or mailed to:

Health Insurance Marketplace
465 Industrial Blvd.
London, KY 40750-0061

Finally, it should be noted that the Internal Revenue Service ("IRS") will *independently* determine if an employer is liable for any employer mandate penalty, regardless of whether the employer receives a notice from any Marketplace or engages in any Marketplace appeals process. Employers should also be on alert for any IRS notification of penalty assessment, and be prepared to respond as directed.

More information about the notice and appeal process to the Federal Marketplace can be found [here](#).

¹ Minimum Value: The plan covers at least 60% of the costs and includes substantial in-patient hospital services, as well as physician services.

² An employer plan is considered unaffordable if an employee in 2016 must pay more than 9.66% of W-2 wages or base pay towards the cost of single coverage for the lowest cost minimum value option plan that is offered to the employee by the employer.

³ Several states, including CA, CO, MD, MA, NY, VT and the District of Columbia, have elected to use the Federal appeals process described above. Other state-based Marketplaces include CT, ID, KY, RI and WA.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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