
January 29, 2013

Notice of Coverage through the Exchange Employer Requirement Delayed

A January 24, 2013 posting prepared by the Departments of Labor, Health and Human Services, and the Treasury, “FAQs about Affordable Care Act Implementation Part XI,” explains that employers will not have to comply with one of the new employer notice requirements contained in the Affordable Care Act (or the “Act”) until the appropriate regulations are promulgated by the Department of Labor.

I. Background

A. Employer Shared Responsibility Requirements

The Affordable Care Act imposes new requirements on large employers regarding healthcare coverage for employees. Beginning in 2014, applicable large employers who fail to offer their full-time employees the opportunity to enroll in eligible employer-sponsored minimum essential coverage, or offer such coverage that is unaffordable or without minimum value, with at least one full-time employee enrolled for that month in a qualified health plan through an American Health Benefit Exchange (“Exchange”)¹ who also receives a premium tax credit or cost-sharing reduction is subject to the employers’ “shared responsibility” financial penalty.²

B. Employer Coverage Reporting Requirements

The Affordable Care Act also requires applicable employers, starting in 2014, to report to the Secretary of the Treasury whether they offer full time employees and their dependents

¹ The Act requires each state to establish an “American Health Benefits Exchange” (an “Exchange”) by January 1, 2014 through which individuals can purchase and small business (initially) can facilitate the enrollment of their employees in qualified health plans.

² For purposes of the new coverage and information reporting requirements, an “applicable large employer” is one employing fifty or more full-time employees on average over a calendar year. “Minimum essential coverage” includes “eligible employer-sponsored plans,” basically employer offered group health plans or health insurance coverage that is a governmental plan under the Public Health Service Act, or any other plan or coverage offered in a state’s small or large group market.

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the opportunity to enroll in minimum essential coverage under an eligible employer sponsored plan and to provide details regarding the coverage offered. Applicable employers must report the number of full-time employees for each month during the year, and their names, addresses and taxpayer identification numbers. A person required to file a return under the new provision is required to furnish a written statement to the individual with respect to whom information is reported, detailing the contents of the informational return.

C. Automatic Enrollment for Employees

The Act requires employers with more than 200 full-time employees who offer one or more health benefit plans to automatically enroll new employees in a plan. The automatic enrollment program must include adequate notice and the opportunity for an employee to opt out of any coverage the individual or employee was automatically enrolled in.

D. Notice of Coverage through the Exchange

Additionally, applicable large employers are required to provide an employee at the time of hiring, or for current employees not later than March 1, 2013, a written notice:

1. Informing the employee of the existence of an Exchange, including a description of the services provided by the 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 and a cost sharing reduction if the employee purchases a qualified health plan through the Exchange; and
3. If the employee purchases a qualified health plan through the Exchange and the employer does not offer a free choice voucher, that 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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The Affordable Care Act provides that the Secretary of Labor must issue regulations in regard to both the automatic enrollment and the notice of coverage provision.³ No effective date is provided for the automatic enrollment provision, but the Act specifically states that the notice of coverage provision takes effect with respect to employers in a State beginning on March 1, 2013.

II. FAQs about Affordable Care Act Implementation Part XI (“FAQs”)

A. Department of Labor Regulations

The Department of Labor (the “DOL”) has decided that until the regulations concerning the notice of coverage provision as described above are issued and take effect, employers are not required to comply with them. The DOL adopted this position for a number of reasons.

First, the notice should be coordinated with the Department of Health and Human Service’s (“HHS”) educational efforts and the Internal Revenue Service (“IRS”) guidance on minimum value. Second, DOL states that it is committed to a smooth implementation process, including providing employers with an adequate time to comply and allowing employees to receive the notice from their employers with enough time to act accordingly. The DOL expects that the timing for distribution of notices will be the late summer or fall of 2013, which will coordinate with the open enrollment period for Exchanges.

It appears from the FAQs that regulations will be promulgated to require employers to distribute the notice of coverage to their employees in “the late summer or fall of 2013, which will coordinate with the open enrollment period for Exchanges.” The DOL is considering providing model, generic language for employers to satisfy the notice requirement, along with also considering allowing employers to satisfy the notice requirement by providing employees information based on the employer coverage template discussed in the preamble to the Proposed Rule on Medicaid, Children’s Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums

³ Sections 18A and 18B of the Fair Labor Standards Act (“FLSA”), added by section 1511 and 1512 of the Affordable Care Act, respectively.

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and Cost Sharing (78 FR 4594, at 4641). That template would be available for download at the Exchange website as part of the application that will be used by the Exchange, Medicaid, and CHIP.

B. Expected Compliance Date

At any rate, the DOL maintains that future guidance on complying with the notice of coverage requirement will provide applicable employers with both flexibility and adequate time for compliance.

III. Conclusion

The FAQs are available at <http://www.dol.gov/ebsa/faqs/faq-aca11.html>

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An in-depth explanation of these and other provisions is provided in the Council's summary of the Patient Protection and Affordable Care Act. The summary, along with additional analysis, is available at: <http://www.newenglandcouncil.com/membership/members-home/healthcare-committee/>.

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