

Sending the Notice of Exchange to Employees



PARKER | SMITH | FEEK

INSURANCE • SURETY • EMPLOYEE BENEFITS

Issue Date: September 4, 2013

Background

The ACA requires that employers provide employees with a written notice containing the information regarding exchanges and possible subsidies when purchasing individual coverage through a public exchange. Originally the ACA required the notice be provided to employees by March 1, 2013; however, the DOL issued guidance delaying the notice requirement.

Employers are now required to provide the notice to all current employees no later than October 1, 2013. We are recommending that employers wait to send the notice until mid-September to avoid any confusion since the details of the exchanges will not be available until October 1st. Employers are also required to provide the notice to each new employee at the time of hire. For new hires, a notice provided within 14 days of an employee's start date will be considered timely through the end of 2014 (pending additional guidance).

How to Send the Notice

- The DOL guidance specifically states the notice may be provided by first-class mail, or electronically if the requirements of the DOL's electronic disclosure safe harbor are met.
- While this guidance does not specifically endorse the distribution of the notice directly to employees at the worksite, previous comments by the DOL have implied that distribution of the notice with other benefits and enrollment material would be allowed. Further clarification from the DOL regarding this possible method of distribution would be helpful.
- The notice must be provided to all employees, full-time and part-time, regardless of enrollment status. Employers are not required to provide the notice to spouses and/or dependents.

DOL Guidance and DOL Model Notices

The DOL published model notices for employers to use - one designed for employers offering health coverage and one for employers not offering health coverage. The models can be found at www.dol.gov/ebsa/healthreform. Since the DOL model notices have been released there has been significant confusion regarding what information must be provided to employees. The DOL models contain a considerable amount of extra information that is not required by the law. This additional "optional" information creates a significant administrative burden on employers. Understandably, employers are nervous about making changes to the DOL model notices. Importantly, however, the statute requires only that the following information be addressed in the notice:

- Informing the employee of the existence of the Marketplace (referred to in the statute as the Exchange) including a description of the services provided by the Marketplace, and the manner in which the employee may contact the Marketplace to request assistance;
- Notify employees that if the employer's plan does not provide minimum value (as defined by the ACA),



INSURANCE • SURETY • EMPLOYEE BENEFITS

employees may be eligible for a premium tax credit if the employee purchases a qualified individual health plan through the Marketplace; and

- If the employee purchases a qualified health plan through the Marketplace, the employee would lose the tax-free employer contribution to any health benefits plan offered, and premiums paid for individual coverage would be made on an after-tax basis.

Furthermore, the DOL guidance released in conjunction with the model notices makes it clear that employers are not required to use the model notice as long as the required elements (described above) are included in an employer's communication.

What's Missing from the Model Notice?

The DOL model notices fail to communicate what is arguably the most important thing an employer may want to communicate to employees. Most employees (and their eligible family members) will not qualify for federal subsidies described in the model notice because the employee is eligible for "affordable" employer-sponsored health insurance.

Affordable Coverage

The ACA defines that an employer plan is affordable to the employee if the required employee contribution to participate in single (employee only) coverage is no more than 9.5% of that employee's household income.

For a large majority of full time employees (other than relatively low wage workers), their employer plan will be

affordable, and all the information about federal subsidies does not apply to them. For example if an employee has an annual household income of just \$24,000, the required contribution for single coverage would need to be more than \$190.00 per month for the employer plan to be considered "unaffordable".

Most employers should focus on the fact that if the employer plan is relatively affordable, very few, if any, employees or their family members will qualify for subsidies when purchasing individual coverage through a public exchange.

Notice of Exchange Suggestions

- If an employer plans to use a version of the DOL model notice, include a cover letter with information explaining that very few (if any) employees will be eligible for the subsidies described in the notice. (Click [here](#) for a draft cover letter we created to assist you.)
- The DOL model contains no requirement to provide specific exchange contact information. The model notice simply directs the employees to www.HealthCare.gov to find information on how to contact the exchange in their area. This is welcome news for multi-state employers who were concerned about providing various contact details for different state exchanges. There is no reason to attempt to include specific state information in the notice.
- The model notice contains a more extensive section on the employer's current plan offering than was anticipated. This section includes information that is not required by the statute such as plan eligibility



INSURANCE • SURETY • EMPLOYEE BENEFITS

information, employer EIN, employer contact information, etc. If employers choose to include this information it should be done at a high level.

- o For example, an employer may wish to describe eligibility with a statement such as “In general, full time employees working 30 hours or more are eligible for our health plan. For detailed eligibility rules consult the plan’s SPD”.
- o Employers offering multiple plans with different eligibility could choose to simply summarize eligibility in general and send employees to the SPD of the HR department for their particular questions. There is no requirement to clearly spell out detailed complex eligibility rules as part of this notice.
- There is also an “optional section” of the notice (3rd page, items 13-16) the employer can use to provide employee specific information including the cost to participate in the plan, employee specific eligibility dates, and more. This section is designed to assist the employee in supplying the information they need to provide to an exchange when applying for individual coverage. Considering the fact that it will be a significant administrative burden to provide this employee specific information, we believe that very few employers will choose to provide this.

Summary

It is expected that media coverage will increase as the October 1 opening of enrollment approaches, generating

questions from employees. For many employers, the answer to these employee questions is simple. If the employer offers affordable minimum value coverage (as defined by the ACA) to an employee, the employee and their family will not be eligible for subsidized individual coverage. On the other hand, employers may wish to more aggressively promote the availability of the exchange insurance options to categories of employees (such as part-time or seasonal employees) not currently eligible for the employer’s plan.

As always, should you have any questions about the Notice of Exchange or require assistance, please contact your Parker, Smith & Feek Benefits Team.

While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept liability for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it. This publication is distributed on the understanding that the publisher is not engaged in rendering legal, accounting or other professional advice or services. Readers should always seek professional advice before entering into any commitments.