

May 20, 2013

Exchanges: New Consumer Applications and the Employer Notice

In anticipation of the initial healthcare exchange (or Marketplace) open enrollment, which begins October 1, 2013, the agencies have issued draft exchange applications as well as [temporary guidance](#) regarding the exchange notice to employees. Under the rules, all applicable employers must provide each employee with a written notice providing information about the exchange and how to request assistance, describing the availability of a premium tax credit, and outlining the implications for the employee if they choose to purchase a plan through an exchange. The notice requirement was originally scheduled to take effect on March 1, 2013, but it is now confirmed that the notice does not need to be issued until October 1, 2013. The notice refers employees to the [HealthCare.gov](#) website for more information and for access to the online application for health insurance coverage.

Notice to Employees of Coverage Options

The rules require that employers subject to the Fair Labor Standards Act (FLSA) must provide a written "Notice to Employees of Coverage Options" to each employee, regardless of plan enrollment status or part-time or full-time status. Employers do not have to provide a separate notice to dependents or other individuals who are not employees. Employers must provide the Notice in writing, automatically, and free of charge:

- No later than October 1, 2013 to employees who are current employees before that date; and
- To each new employee at the time of hire beginning October 1, 2013. For 2014, employers will be in compliance if they provide the notice within 14 days of an employee's start date.

Employers can provide the Notice by first-class mail or electronically if they meet the requirements of the DOL's electronic disclosure safe harbor, which apply to electronic disclosure of other plan documents such as SPDs. The Notice has to inform employees:

- Of the existence of the Marketplace,
- Whether the employer offers health coverage to employees,
- Whether the coverage meets minimum value requirements,
- That if no coverage is offered, or the coverage doesn't meet minimum value requirements, a subsidy (premium tax credit) for coverage may be available to the employee,
- That if the employee purchases coverage on the exchange, any employer contribution to coverage may be lost, and
- That the employer contribution to coverage is excludable from income (exchange coverage

is paid with after-tax dollars).

The DOL has provided two model notices that employers can use to satisfy the requirement (employers can also use a modified version of these models as long as they satisfy the above content requirements):

- [Model notice for employers who offer a health plan to some or all employees](#)
- [Model notice for employers who do not offer a health plan](#)

The agencies have also issued a revised COBRA model election notice that incorporates information about exchanges:

- [COBRA model election notice](#)
- [COBRA model election notice redline version](#)

As with the earlier COBRA notice model, plans must fill in the appropriate plan information on the model. If plans use this model, appropriately completed, they will be considered to be in good faith compliance with COBRA's election notice content requirements.

Marketplace Consumer Applications

Draft applications have been released for consumer to apply for health insurance through an exchange, which can be submitted starting on October 1, 2013:

- [Individual Short Form](#)
- [Family](#)
- [Individual without Financial Assistance](#)

It is intended that consumers will be able to fill out one application (as appropriate to their situation) and see their entire range of health insurance options, including plans in the Health Insurance Marketplace, Medicaid, the Children's Health Insurance Program (CHIP) and tax credits that will help pay for premiums. Consumers can apply online, by phone or paper when open enrollment begins October 1, 2013.

The rules contemplate that information providers, or Navigators, will be available to provide assistance to consumers as they make their exchange decisions. Navigators are organizations that are charged with providing unbiased information to consumers about health insurance, the new health insurance Marketplaces, qualified health plans, and public programs, including Medicaid and the Children's Health Insurance Program.

Next Steps

Employers will need to identify the contact person(s) who will answer questions from the Marketplace about employee coverage, and also consider how to handle employee questions directed to the employer regarding the exchanges, the Notice, and the employee's options once the exchanges go live. Employers should also begin to gather information necessary to prepare and distribute the Notice, including:

- which employees are eligible for coverage, which employees will be eligible within 3 months of providing the Notice, and which employees are not eligible.
- whether coverage offered meets minimum value requirements.
- the cost of premiums for employee-only coverage (and if there will be changes for the next year, the new premium cost for employee-only coverage.)

Conner Strong & Buckelew will provide alerts and updates as new information is issued on these important topics. We are also actively developing tools, resources and service solutions to assist plan sponsors with compliance. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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