



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM **Update #51** **September, 2015**

Federal Exchange Notices to Employers Set to Start in 2016

CMS has issued FAQ guidance providing that, beginning in 2016, all Health Insurance Marketplaces (exchange) operating on Healthcare.gov (including federally facilitated and state-based exchanges using the federal platform) will start to notify certain employers if one or more of their employees has received an advance payment of premium tax credits.

As background, the Affordable Care Act regulations require each exchange to notify any employer whose employee was determined eligible for advance premium tax credits (APTC) and cost sharing reductions (CSRs) because the employee attested that he or she was neither enrolled in employer sponsored coverage nor eligible for employer coverage that is affordable and meets the minimum value standard. A full-time employee actually receiving premium tax credits can trigger penalties under Code § 4980H for his or her employer unless the employer has offered adequate coverage to its full-time employees.

Exchanges using the federal platform will phase in the employer notice program by first sending notices to employers with employees who received advanced payment of premium tax credits for at least one month in 2016 and for whom the employee provided a complete employer mailing address. CMS intends to evaluate the program phase-in for 2016 and then determine the best means of expanding and improving the process in subsequent years. State-based Exchanges not on the federal platform also have the option to phase in the notice process.

The FAQs explain that the first batch of notices will be sent in spring 2016, and additional batches will be sent throughout the year. For 2016, the notices will be sent to the mailing address of the employer provided by the employee on his or her application for exchange coverage, but CMS is considering alternatives, such as email notifications. An employer has 90 days from the date of the notice to appeal. The FAQs note that an employer appeal request form will be available on Healthcare.gov.

Even though these exchanges have not been providing notices for 2015, employer penalties can still be triggered with the IRS independently determining liability without regard to whether an exchange issued a notice or whether the employer appealed such a notice.

Employers should consider making their plan information readily available to their employees so that accurate premium tax credit eligibility determinations may be made by the exchanges. In addition, employers should develop a process for handling exchange notifications, including appealing any incorrect determination.

The CMS FAQ is available at <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Employer-Notice-FAQ-9-18-15.pdf>

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