



Guidance Regarding Notice to Employees of Health Insurance Marketplace

Effective October 1, 2013, the Affordable Care Act (ACA) requires employers to provide employees with written notice regarding the Health Insurance Marketplace. This requirement has not been postponed. The notice must:

- inform employees of the existence of the Marketplace, including a description of the services provided and the manner in which an employee may contact the Marketplace to request assistance;
- if the employer's plan does not provide *minimum value*, as defined by the ACA, provide notice that an employee may be eligible for a premium tax credit and a cost sharing reduction if the employee enrolls in health insurance through the Marketplace; and
- provide notice that an employee may lose the employer contribution (if any) to any health benefits plan offered by the employer if the employee enrolls in insurance through the Marketplace and that all or a portion of such contribution may be excludable from income for federal income tax purposes.

29 U.S.C. § 218b.

Services provided by the Marketplace and contact information for the Marketplace: The Centers for Medicare and Medicaid Services describe the Health Insurance Marketplace as a state-based competitive marketplace where people and small businesses can shop for and buy private health insurance.¹ The Marketplace is not a private insurance company or government-run health plan. With one application, consumers can find out if they qualify for health plans in the Marketplace and other programs like Medicaid and the Children's Health Insurance Program (CHIP), tax credits, and cost-sharing reductions. Consumers can apply for coverage and enroll in a health plan through the Marketplace starting October 1, 2013, with coverage starting January 1, 2014. The Marketplace in Texas will be run by the federal government.² Persons in Texas will enroll in insurance through the federal government's Web site, www.healthcare.gov.³

Minimum value, premium tax credits, and cost sharing: The plans offered through TRS-ActiveCare provide minimum value.⁴ If your district does not participate in ActiveCare, it is likely that your plan provides minimum value because of the comparability requirements under Texas Education Code section 22.004. You should confirm this with your plan administrator or benefits attorney. If your district does not participate in ActiveCare, you should adjust the text of the TASB model notice.

¹ What are Health Insurance Marketplaces?, <https://questions.cms.gov/faq.php?id=5005&faqId=7369>

² Federal Reform Insurance Provisions – Health Insurance Marketplace, www.tdi.texas.gov/consumer/cpmhealthcare.html

³ Health Insurance Marketplace in Texas, www.healthcare.gov/marketplace/individual#state=texas

⁴ Affordable Care Act Clarifications, www.trs.state.tx.us/global.jsp?page_id=/TRS_activecare/affordable_care_act

The ACA requires the notice to the employee address premium tax credits only if the employer's plan fails to provide minimum value. However, TASB Legal Services recommends that all employees be notified of the availability of credits since some employees are eligible for credits even if their employer's plan provides minimum value.⁵

Premium subsidies and tax exclusions: Texas districts make mandatory contributions—"maintenance of effort" (MOE) – toward the premiums for health insurance. Each district must contribute at least \$150 per month toward the insurance premiums for each enrolled employee who is an active member of TRS. In addition, the state pays \$75 per month for each qualifying employee. Thus, the combined state and district contribution for each qualifying employee's health insurance premiums is at least \$225 per month.

Districts are not required to pay MOE to employees who do not enroll in insurance through the district. Thus, a district is not required to pay MOE if an employee decides to enroll in insurance through the Marketplace. Some districts have considered paying the district's share of MOE directly to employees who wish to comparison shop for insurance. A district that is considering this option should review the financial and tax implications. If your district does pay its share of MOE to employees who are not enrolled in the district's plan, adjust the language of the TASB model notice accordingly.

MOE is not considered taxable income when paid for insurance provided through the district.⁶ Similarly, an employee's share of the premiums for insurance purchased through the district may be paid with pretax dollars through a section 125 plan (cafeteria plan).⁷ Premiums for health insurance purchased through the Marketplace, on the other hand, are paid with after-tax income.

Department of Labor and TASB model notices: The DOL has issued a model notice.⁸ A district may use either the DOL model notice or a modified notice that addresses the elements described above.⁹ TASB has developed a notice that addresses information not included in the DOL model notice, such as the individual mandate, exemptions, and penalty. If your district does not participate in ActiveCare and you wish to use the TASB model notice, you should adjust the text of the model notice to reflect the terms and conditions of coverage offered by the district.

Timing and delivery of the notice: A district must provide the notice to *all* employees, regardless of whether they are full-time or part-time, even if they are not eligible for health insurance through the district. This includes rehired-retirees, substitutes, and temporary employees, but not persons who are accurately classified as independent contractors. The notice must be provided to current employees by October 1, 2013.¹⁰ Every employee hired on or after October 1, 2013, must be provided the notice within 14 days of the employee's start date.¹¹

ActiveCare districts may wish to provide the notice to employees in connection with August open

⁵ Health Insurance Premium Tax Credit, final regulations: 77 Fed. Reg. 30377 (May 23, 2012), www.gpo.gov/fdsys/pkg/FR-2012-05-23/pdf/2012-12421.pdf.

⁶ 26 C.F.R. § 1.106-1.

⁷ *FAQs for government entities regarding Cafeteria Plans*, www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/FAQs-for-government-entities-regarding-Cafeteria-Plans.

⁸ *New Health Insurance Marketplace Coverage Options and Your Health Coverage*, www.dol.gov/ebsa/pdf/FLSAwithplans.pdf

⁹ U.S. Department of Labor, Technical Release No. 2013-02, www.dol.gov/ebsa/newsroom/tr13-02.html.

¹⁰ U.S. Department of Labor, Technical Release No. 2013-02, www.dol.gov/ebsa/newsroom/tr13-02.html.

¹¹ U.S. Department of Labor, Technical Release No. 2013-02, www.dol.gov/ebsa/newsroom/tr13-02.html.

enrollment. An employee who enrolls during open enrollment may cancel insurance during the plan year (i.e., during the school year) if permitted by the district's section 125 plan (cafeteria plan). Adjust the text of the model notice according to whether the district's section 125 plan permits cancellation during the plan year.

The notice may be provided by first-class mail.¹² TASB Legal Services believes that hand-delivery will also suffice. The district should document the method of delivery and the persons to whom notice was provided. Examples of documentation include a list of employees to whom notice was mailed or a sign-in sheet from a staff meeting at which the notice was distributed.

Alternatively, the notice may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor are met.¹³ The electronic disclosure safe harbor may be impractical for most districts. Districts that are considering electronic delivery of the ACA notice should work with their school attorney to ensure compliance with the safe harbor.

Employer plan information: The DOL's model form includes employer-specific information regarding employer-provided health insurance that employees will need if they wish to comparison shop through the Marketplace. The ACA does not require employers to provide this information with the notice. However, employees may request this information. Accordingly, districts may find it helpful to prepare basic information about their health insurance plans and provide this information to employees upon request.

Attached to the model notice is a form for providing basic contact information about the district's health insurance. This information may be distributed with the model form or provided to employees in a different manner, such as by posting on the district's Web site. Employees seeking specific information about enrollment, eligibility, and benefits should be directed to the enrollment guide, in districts that participate in ActiveCare, or to the summary plan description in districts that do not participate in ActiveCare.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

¹² U.S. Department of Labor, Technical Release No. 2013-02, www.dol.gov/ebsa/newsroom/tr13-02.html.

¹³ U.S. Department of Labor, Technical Release No. 2013-02, www.dol.gov/ebsa/newsroom/tr13-02.html.