



Compliance Alert

"1411 Certifications" – New ACA Notice for Employers

April 30, 2015

Quick Facts:

- Section 1411 of the Affordable Care Act (ACA) includes a process for verifying an individual's eligibility for subsidies from a health insurance Marketplace ("Exchanges"). A "1411 certification" is part of the verification process.
- The certification informs an employer that an employee enrolled in a health plan through the Marketplace and received a subsidy for the coverage.
- An employer that does not offer minimum essential coverage to a full-time employee that is affordable and provides minimum value may be subject to a tax penalty if the employee receives a subsidy for Marketplace coverage.
- If an employer disagrees with the certification, an appeals process is available. Employers generally have 90 days to appeal a certification.

The Affordable Care Act (ACA) requires health insurance Marketplaces ("Exchanges") to send a notice to employers regarding employees who purchase coverage through a Marketplace and qualify for a health insurance subsidy. These notices are called "Section 1411 certifications" because the notice requirement is contained in Section 1411 of the ACA.

The Section 1411 certification is part of the process established by the Department of Health and Human Services (HHS) to verify that only eligible individuals receive health insurance subsidies. As part of the process, a Marketplace must notify an employee's employer when it determines that an employee is eligible for subsidized coverage. Both state-run and federally facilitated Marketplaces are required to send these certifications to employers. HHS is expected to issue the certifications in batches, beginning in spring 2015.

Employers that receive certifications may appeal a subsidy determination to help ensure that employees are not mistakenly receiving subsidies. Appealing subsidy determinations may also help limit an ALE's potential liability for an employer shared responsibility penalty.



Notice to employers

The Marketplaces are required to provide the 1411 certifications to all employers with employees who purchase coverage through the Marketplace and qualify for a health insurance subsidy. This includes ALEs that are subject to the ACA's shared responsibility rules and small employers that do not qualify as ALEs. The Marketplace can either send the certifications on an employee-by-employee basis as subsidy determinations are made, send the certifications to employers in batches.

Health insurance subsidies

Two federal health insurance subsidies are available for coverage purchased through a Marketplace—premium tax credits and cost-sharing reductions. Both of these subsidies vary in amount based on the taxpayer's household income; both reduce the out-of-pocket costs of health insurance for the insured.

- Premium tax credits, which reduce health insurance premiums, are available for people with somewhat higher incomes (up to 400 percent of the federal poverty level, or FPL). The 2015 FPL is \$11,770 in the contiguous United States. Alaska and Hawaii have higher FPLs.
- Reduced cost-sharing (e.g., lower deductibles and copayments) is available for individuals who qualify to receive the premium tax credit and have lower incomes (up to 250 percent of the FPL).

To be eligible for a health insurance subsidy, a taxpayer:

- must have a household income for the year between 100 percent and 400 percent of the federal poverty level for the taxpayer's family size;
- may not be claimed as a tax dependent of another taxpayer;
- must file a joint return, if married; and
- cannot be eligible for minimum essential coverage (such as coverage under an employer-sponsored medical plan).

Employees who are eligible for employer-sponsored minimum essential coverage that is affordable and provides minimum value are not eligible for a subsidy. This is significant because the ACA's employer shared responsibility penalty may be triggered when a full-time employee receives a subsidy for coverage obtained through the Marketplace.

Section 1411 content

Final regulations specify the content requirements for the Section 1411 certifications. The certification must:

- identify the employee;
- provide that the employee has been determined to be eligible for a health insurance subsidy;
- indicate that, if the employer has 50 or more full-time employees, the employer may be liable for a penalty under the employer shared responsibility provisions of the ACA (Internal Revenue Code Section 4980H); and
- describe the employer's appeal rights.



Appeal rights

When an employer receives a certification regarding an employee's eligibility for a Marketplace subsidy, the employer may appeal the determination to correct any information about the health coverage it offers to employees. The appeals process can help:

- protect the employer from being incorrectly assessed with a tax penalty under the employer shared responsibility rules (if the employer is an ALE). If the appeal is successful and the employee does not receive a Marketplace subsidy, the employee cannot trigger penalties for an ALE under the shared responsibility rules; and
- minimize the employee's potential liability to repay subsidies that he or she was not eligible to receive.

A state-run Marketplace may have its own appeals process or it may follow the federal appeals process established by HHS. In either case, the Marketplace must:

- give employers at least 90 days from the date of the Marketplace notice to request an appeal;
- allow employers to submit relevant information to support the appeal;
- not limit or interfere with an employer's right to make an appeal request; and
- accept appeal requests made by telephone, by mail, via the Internet or in person (if the Marketplace is capable of receiving in-person appeal requests) and provide assistance in making the appeal request if this assistance is needed.

The appeals entity (e.g., the Marketplace) must provide written notice of the appeal decision within 90 days of the date the appeal request is received, if administratively feasible.

HHS regulations clarify that an appeals decision in favor of the employee's eligibility for a subsidy does not preclude any appeal rights the employer may have for a penalty assessment under Internal Revenue Code Section 4980H. Thus, while ALEs that receive certifications may appeal a subsidy determination to help ensure that employees are not mistakenly receiving subsidies, they are *not required* to appeal a subsidy determination to preserve their rights to appeal an IRS assessment of a penalty tax.

Note that employers may develop policies to allow an employee to enroll in coverage outside of the employer's open enrollment period when the employee is determined to be ineligible for Marketplace subsidies as a result of an employer appeal decision.

Other employer considerations

To help avoid incorrect subsidy determinations, HHS encourages employers to educate their employees about the details of employer-sponsored health coverage. This includes information on whether their plans are affordable and provide minimum value. Employees enrolling in Marketplace coverage will generally complete an [Employer Coverage Tool](#) that gathers information about the employers' group health plans, such as eligibility and coverage cost. HHS encourages employers to assist employees with



their Marketplace applications by providing information regarding the employer-sponsored coverage through the Employer Coverage Tool.

Suggested next steps

Employers should be prepared to potentially receive Section 1411 certifications in 2015. Some suggested next steps for employers are listed below.

- Designate responsibility for reviewing and responding to the certifications within 90 days of receipt or other timeframe provided in the certification.
- Develop a process for reviewing and appealing incorrect certifications.
- Establish a retention policy for the certifications and any appeals.
- Determine whether to allow employees to enroll in employer coverage outside of the employer's open enrollment period if an employee is determined to be ineligible for Marketplace subsidies as a result of an employer appeal decision.

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For further information on this or any other topics, please contact your EPIC benefits consulting team.

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