



SITZMANN ▪ MORRIS ▪ LAVIS

Employee Benefits | Life Insurance | Risk Management

**TO: Clients of Sitzmann Morris & Lavis Insurance Agency**

**RE: Model Exchange Notices Reminder**

We first reported on the Exchange “Marketplace” Notice requirement on May 10<sup>th</sup>. This is a reminder that although the Patient Protection and Affordable Care Act’s (ACA’s) penalty phase of the Pay or Play requirement has been postponed, the Exchange Notice requirements remain with a deadline for plan sponsors to provide the Notices by October 1, 2013.

**October 1, 2013: ACA’s Exchange Notice Deadline**

In May 2013, the Department of Labor (DOL) issued temporary guidance addressing the Exchange notice requirements under the Health Care Reform laws (HCR). Pursuant to these requirements, plan sponsors are required to provide written notice to employees of the availability of the coverage through the Exchanges (or Marketplaces).

- **Notice Content.** The notice must include the following content:
  - Information regarding the existence of the new Marketplace;
  - Contact information and a description of the services provided by the Marketplace;
  - A statement that the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan (QHP) through the Marketplace; and,
  - A statement informing the employee that if the employee purchases a QHP through a Marketplace, the employee will lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.
  
- **The Forms to Use.** Plan sponsors may use the model notices contained in the new guidance. These notices include a model notice for employers who offer a health plan and

a model notice for employers who do not offer a health plan. Plan sponsors may use one of these models or develop a modified version as long as it meets the DOL's content requirements. We recommend that, to the extent possible, employers should use the DOL models.

- **Delivery of the Marketplace Notice.** Plan sponsors must provide the notice to employees in writing in a manner calculated to be understood by the average employee and it must be provided automatically and free of charge. Employers may use first-class mail or, alternatively, by electronic means, so long as the DOL's electronic disclosure safe harbor requirements are met (Safe Harbor). The Guidance has no notice requirements for spouses or dependents. The Notice must also be provided to new employees within 14 days from date of hire.
- **Electronic Delivery Safe Harbor.** Generally, the plan sponsor must notify the employee each time a document is provided electronically, the significance of the document, and that a paper copy is available at no charge upon request. In addition, the method of disclosure must be reasonably calculated to ensure actual receipt. The DOL considers the use of return-receipt, notice of undelivered mail features or periodic surveys as permissible ways to confirm receipt.

Participants who have work-related computer access and whose access to the employer's electronic information system is an integral part of his or her employment duties are not required to consent to the electronic disclosure. However, the employer must obtain consent from employees who do not have work-related computer access (e.g. outside sales people) or whose access is not an integral part of their employment duties, and from other beneficiaries (i.e. covered spouse or COBRA participant).

### Covered California

The federal Exchange Notice will apply to all California plans as of October 1, 2013. As far as other California notices, the California legislature (A.B. 792) also requires insurers and Health Care Service Organizations (HMOs) to provide notice about the availability of Covered California and other notices, such as MediCal, to plan participants who lose employer-sponsored health insurance coverage (medical only). This California rule will not apply to self-insured medical plans.

### What's Next:

With the delay of Pay or Play penalties we see little or no reason for an employer to complete the optional information on page 3. We recommend that employers simply provide the first two

pages of the Notice. If you are unsure of whether or not your plans meet the minimum value and affordability requirements you can leave the related box on page 2 unchecked.

Please contact your SML Account team if you have any questions.

The information provided in this legislative update for our clients and colleagues is for general guidance only and is not intended to be, and does not constitute, tax or legal advice. We recommend that you consult with your tax and legal advisors for the interpretation or application of any laws for your particular circumstances and situation.