

# HEALTH LAW ADVISORS, PLLC

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## MEMORANDUM

September 16, 2013

### EXCHANGE NOTICES

Attached to this Memorandum is a copy of the “*New Health Insurance Marketplace Coverage Options and Your Health Coverage*” (“Exchange Notice”) for your Company.

The Patient Protection and Affordable Care Act (PPACA) (also called the Affordable Healthcare Act) is designed to provide individuals access to affordable health coverage. Such coverage will be available through a centralized sales and enrollment system called the “Exchanges” (also called “Marketplace”). The Exchanges are intended to provide a competitive private health insurance market where your employees can shop for alternative coverage. Oklahoma, Texas and Louisiana will have federally-run Exchanges, as they opted to not create their own.

As of the date of the memo, these Exchanges are still being set up. They are expected to be open for enrollment on October 1, 2013. We understand that three companies have been approved to offer coverage on the Exchanges in Oklahoma: Blue Cross Blue Shield, Aetna, and Coventry which is owned by Aetna. We have not been able to identify the companies for Texas and Louisiana yet. There is no information as to the cost of these policies. Apparently, the pricing information will not be disclosed until October 1, 2013.

Federal law requires that you provide the attached Exchange Notice to all your employees on or before October 1, 2013. For employees hired after this date, the Notice will also need to be provided to employees within 14 days of their hire. Here are some key items you need to know:

- Open enrollment for health insurance coverage through the Exchanges is set to begin October 1, 2013.
- Coverage on the Exchange will not be effective until January 1, 2014.

#### Who is Eligible?

Any individual who wants to buy his own policy can do so on the Exchange. There is currently no actual program for small employers to offer a plan through the Exchange. This may change in 2015.

The selling point of the policies sold on the Exchange is the credit and subsidy that the Federal government will provide to individuals whose household income is between 100% and 400% of the poverty level. The subsidy depends on the actual household income for 2014, which will be determined when income tax returns are filed in 2015.

Neither the credit nor the subsidy is available if the individual's employer offers a health plan with minimum essential coverage that is “affordable” and meets the minimum value standard. A plan is considered to meet the minimum value standard if its share of the total cost of benefits is at least 60%. Coverage is considered “affordable” if the only-employee's cost for the employer's lowest cost plan does not exceed 9.5% of the employee's household income. Because employers do not have access to the household income for their employees, a safe-harbor allows employers to consider the coverage “affordable” if the cost charged to the employee for **single only coverage on the lowest cost plan is 9.5% of the employee's taxable income.**

#### What Is Required of Employers?

Employers are required to provide employees a copy of the Exchange Notice. This is to make employees are aware of the Exchanges and to give them limited information that would allow them to enroll on the Exchanges. The Notice includes

information about your Company, who is eligible under your plan, and whether your plan meets the "minimum value." The Notice includes an explanation of the Exchanges and the coverage options. The Federal government's goal is to allow employees to take this information to the Exchange *when they apply for insurance*.

### **Employers Subject to the Notice Requirement**

Under the Fair Labor Standards Act (FLSA), an employer that has one or more employees who are engaged in commerce and that has gross annual sales of \$500,000 or more is required to provide the Notice.

### **Providing Notice to Employees**

The notice must be provided to ALL employees. You are not required to provide the Exchange Notice to dependents. There is no penalty or fine that can be assessed if you don't provide the Exchange Notice.

Our recommendation is that you provide the Exchange Notice to your employees.

### **Content of the Notice**

The notice must include specific information. The form of Exchange Notice that is attached is the same a DOL Model Notice. The model notice is on the DOL website at [www.dol.gov](http://www.dol.gov). You can find it by searching for "health insurance coverage options." **The attached Exchange Notice has been completed for you to include all required information.** Optional information is not included. If you wish to add the optional information, you may use the blank Exchange Notice available at the DOL site or on [advantagehealthplans.com](http://advantagehealthplans.com).

### **Timing and Delivery of the Notice**

The notice must be provided by October 1, 2013, to current employees. New employees should get a copy within 14 days of being hired. The Exchange Notice must be in writing. It may be delivered:

- by first-class mail,
- by electronic means if certain requirements are met. Electronic delivery is permissible to all employees who have access to your Company's intranet. Employees who have the ability to effectively access documents furnished in electronic form at any location where the employee is reasonably expected to perform his or her duties as an employee and with respect to whom access to the employer's electronic information system is an integral part of those duties. See 29 CFR 2520.104b-1(c)(2)(i). The employer should take appropriate and necessary measures reasonably calculated to ensure that the electronic delivery system results in actual receipt of transmitted information (e.g., using return receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of transmitted information, etc.).
- by hand delivery.

An employee that does not have access to electronic delivery should receive a copy by mail or by hand delivery.

It is recommended that you document the manner in which you distributed your notices and retain that information in your files. If hand delivery is used, it may be useful to have a log signed to ensure that it was delivered to all employees or that you document the process that would ensure all employees received the Exchange Notice (e.g., if it is inserted with pay check stubs).

*This Memorandum was written by Maria Robles Meyers, Health Law Advisors, PLLC, for the sole use by clients of The Kempton Company, Inc. It is intended to be informational and does not constitute legal advice regarding any specific situation.*