



PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

December 22, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Steven Mnuchin
Secretary
U.S. Department the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: *CMS-9914-P - Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2022*
Submitted via www.regulations.gov

Dear Secretaries Azar and Mnuchin:

The Partnership for Employer-Sponsored Coverage (P4ESC) writes with comments on the notice of proposed rulemaking (NPRM) on the Patient Protection and Affordable Care Act (ACA) and 2022 Notice of Benefit and Payment Parameters. Specifically, we are writing to provide comments on the employment verification process for Exchange coverage eligibility for advanced premium tax credits (APTCs) and your interest in replacing the current procedures.

The Partnership for Employer-Sponsored Coverage (P4ESC) is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and millions of American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

P4ESC, its member organizations and predecessor coalition, Employers for Flexibility in Health Care (E-Flex), have worked on ACA-related employer compliance with federal regulators and lawmakers in Congress for a decade. The Exchange subsidy eligibility and verification process go hand-in-hand with the employer shared responsibility (Code section 4980H) and annual employer reporting requirements (Code sections 6055 and 6056). We have long advocated for a more consumer-friendly process for individuals, and a less burdensome and costly compliance process for employers, the federally facilitated and state-based Exchange systems and the Internal Revenue Service (IRS) alike. The ACA reporting process confuses individuals and families seeking coverage through the federally facilitated and state-based Exchanges and exposes employers complying with the ACA mandate to misguided tax penalties and compliance costs.

The current bifurcated front-end Exchange enrollment verification system and the back-end annual employer reporting process under the IRS do not work. We want to work with you to fix it. As a coalition representing businesses of all sizes, we have the unique ability to



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provide operational input across the full spectrum of the employer system – from the smallest family business to the largest corporation.

The following are policy improvements and comments we have provided and proposed to the Departments of Health and Human Services (HHS), the Treasury and Labor, the IRS, two White House administrations, and numerous Members of Congress since the enactment of the ACA. We are eager to improve the current compliance system and ensure that individuals are enrolled in the appropriate healthcare home, whether that is in employer-sponsored coverage or an insurance plan through the Exchange system, without adversely impacting individuals' and employers' tax liability.

- Establish a simple web-based platform or landing page for an employer to enter basic contact information (business address, email, phone number, contact name) for use by the federal facilitated and state-based Exchanges when needing to verify information on an individual's Exchange coverage application.
- Provide employers with a second, voluntary option to prospectively report information with the IRS, prior to annual open enrollment and for use by the federal facilitated and state-based Exchanges, about a plan that is offered to full-time employees that meets the employer shared responsibility (4890H) affordability and minimum value tests.

The current front-end employment verification process through the federal and state-based Exchanges, governed under HHS, relies on an individual's self-attestation of eligibility for an offer of coverage by their employer during the enrollment process. There is no real-time data at HHS to verify that the contact information for the employer listed on an individual's Exchange application is correct and/or if the employer offers at least one coverage plan to its full-time employees that meets the law's employer shared responsibility requirements.

Over the last few years, HHS and state-based Exchanges have been conducting a random sampling of applications to verify the information an individual listed on his or her application directly with an employer. The NPRM notes "*HHS's experience conducting random sampling revealed that employer response rates to HHS's request for information were low.*" The employer responses were likely low because HHS did not have the correct employer contact information and relied only on the contact information an individual listed on his or her application, which would likely be their physical place of employment and direct supervisor. For multi-location, multi-state employers, the appropriate contact for an offer of employer-sponsored coverage verification is likely a human resources professional or business operator, and not a direct supervisor at the individual's place of employment.

We have long urged HHS to create a simple web-based platform or page on [healthcare.gov](https://www.healthcare.gov) to enable an employer to easily, and proactively, provide HHS and the Exchanges with the correct contact information for any verification or benefits-eligibility questions. This



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information, which would include mailing address, email address, contact name and direct telephone number, could easily be accessed by Exchanges and updated as needed by an employer. Should an employer-coverage verification question arise regarding an individual's application, HHS and the state Exchanges could easily contact the appropriate employer representative in a short amount of time as not to delay the application and enrollment in Exchange coverage.

The back-end, retrospective annual reporting process, governed under the IRS, requires employers to report numerous amounts of data after the completion of a coverage year, which is over a year after the Exchange open enrollment period for that particular coverage year. During this time period, our full-time employees could apply for individual coverage, for varying reasons, and receive an APTC through healthcare.gov or a state-based Exchange – even though the employee is ineligible. Because the IRS does not permit employers to report pertinent information about the type of health coverage offered to full-time employees prior to Exchange open enrollment period, APTCs are given out without real-time data, which exposes our employees to IRS enforcement actions. Under the law, an individual is ineligible for a tax credit if he or she is a full-time employee and was made an offer of coverage by an employer that met the two-prong employer shared responsibility requirement (affordability and minimum value tests). If found ineligible for the tax credit, the individual is required to pay the full value back to the IRS.

The IRS uses employer-reported information upwards of 12- to 24-months later to reconcile with an individual's tax return to determine if the individual received an Exchange tax credit because an employer did not offer coverage that met the employer shared responsibility. The IRS then issues the employer a 226-J letter in the mail notifying it of a potential tax liability under the employer shared responsibility and the employer has 30 days to appeal the tax notification. This starts a long, burdensome, and costly appeals process for the employer, on top of the already long, burdensome, and costly annual 6055 and 6056 reporting process. The IRS is issuing 226-J tax penalty letters to that business regardless of the employer's reporting data.

We have long urged Treasury and the IRS to provide a second, voluntary prospective reporting option to enable employers to populate the already existing Exchange datahub used by healthcare.gov and state-based Exchanges with real-time employer coverage data to help consumers navigate their appropriate coverage needs and healthcare home. Under this proposal, pertinent plan information would be reported to the IRS prior to Exchange open enrollment and not over more than a year later at the end of the calendar coverage year as is the current process. This would not call for the federal government to create another IT reporting system but rather utilize the existing system used for retrospective reporting – just at a different time of the year. Prospective reporting will also reduce misguided 226-J tax penalty letters to employers which will provide relief and eliminate compliance costs to businesses.



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In conclusion, employers want the Exchange eligibility verification process to run efficiently and effectively so their employees are not subject to the costly repayment of premium tax credits and the business is not subject to possible violations under the employer shared responsibility. **The Partnership for Employer-Sponsored Coverage would like to discuss these ideas in further detail with the appropriate policy experts at HHS, Treasury, and the IRS.** Please contact Christine Pollack, our executive director, at christine@pollackconsultingdc.com to schedule a discussion.

Sincerely,

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American Hotel & Lodging Association
American Rental Association
American Staffing Association
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Associated General Contractors of America
Auto Care Association
The Council of Insurance Agents & Brokers
The ERISA Industry Committee (ERIC)
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