

Verification of Access to Employer-Sponsored Coverage Bulletin

Center for Consumer Information and Insurance Oversight

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Purpose

Verification of access to employer-sponsored coverage is a necessary part of the process for determining eligibility for advance payments of the premium tax credit available to support the purchase of qualified health plans through Affordable Insurance Exchanges. The purpose of this bulletin is to request comment from the public on a proposed interim strategy and potential regulatory approach for verification of an applicant's access to qualifying coverage in an employer-sponsored plan under section 1411 of the Affordable Care Act. The Department of Health and Human Services (HHS) also solicits comments on the development of a long-term verification strategy.

Part I of this bulletin provides background information and an overview of the relevant legal provisions as well as a discussion of stakeholder considerations, Part II outlines a proposed interim strategy for verification related to coverage during the 2014 and 2015 plan years, and Part III describes considerations and requests comment on long-term strategies for verification related to coverage during plan year 2016 and beyond.

Please send comments to: EmployerCoverageBulletin@cms.hhs.gov.

Part I. Background

Legal Provisions

The Affordable Care Act establishes premium tax credits for certain individuals who are enrolled in a qualified health plan (QHP) through an Exchange. Subject to other requirements, an individual is eligible for premium tax credits only if he or she does not have access to minimum essential coverage. One type of minimum essential coverage is an eligible employer-sponsored plan (often referred to as employer-sponsored coverage¹); the statute specifies that for purposes of eligibility for premium tax credits, an individual must not be eligible for coverage in an eligible employer-sponsored plan that meets a minimum value² requirement and is affordable under section 36B(c)(2)(C) of the Internal Revenue Code ("the Code"), as added by section 1401(a) of the Affordable Care Act. In addition, an individual is not eligible for a premium tax credit during the time that he or she is enrolled in an employer-sponsored plan, regardless of its affordability or whether it meets the minimum value standard.³

¹ Section 5000A(f) of the Internal Revenue Code of 1986, as added by section 1501(b) of the Affordable Care Act, defines minimum essential coverage to include "coverage under an eligible employer-sponsored plan", which is defined as a governmental plan under section 2791(d)(8) of the Public Health Service Act, a self-insured plan, or any other plan or coverage offered in the small or large group market in a State. In addition, Department of the Treasury regulations under section 5000A are expected to provide that an employer-sponsored plan will not fail to be minimum essential coverage solely because it is a plan to reimburse employees for medical care for which reimbursement is not provided under a policy of accident and health insurance (a self-insured plan). (See Internal Revenue Code Section 36B Proposed Regulations).

² The minimum value bulletin is being released concurrently.

³ This informational bulletin does not include a discussion of verification of actual enrollment in an eligible employer-sponsored plan. However, the basic approach detailed herein would also be an acceptable solution for verification of enrollment.

Pursuant to subpart D of 45 CFR part 155, an Exchange will make a determination of eligibility for advance payments of the premium tax credit for individuals enrolling in coverage through the Exchange and seeking financial assistance, or will ensure such determinations are made. Section 1411(b)(4) of the Affordable Care Act directs that an individual seeking eligibility for advance payments of the premium tax credit must provide certain information to the Exchange regarding his or her access to qualifying coverage in an eligible employer-sponsored plan, including the contact information and employer identification number(s) for his or her (or related individual's) employer(s), whether the applicant or related individual is employed on a full-time basis, whether the applicant's or related individual's employer provides minimum essential coverage, and if so, the required employee contribution for the lowest-cost plan that the employer offers. Section 1411(d) of the Affordable Care Act and 42 CFR 155.320(e) require verification of the accuracy of information submitted by the individual regarding eligibility for qualifying coverage in an eligible employer-sponsored plan.

Additionally, sections 1411(e)(4)(B)(iii) and 1411(e)(4)(C) of the Affordable Care Act and 42 CFR 155.310(h) direct that when an individual is determined eligible for advance payments of the premium tax credit based, in part, on a finding that the applicant's or related individual's employer does not offer affordable coverage that meets minimum value standards, the Exchange must notify the employer of the eligibility determination; the identity of the employee; that, if the employer has 50 or more full-time employees, the employer may be liable for the payment assessed under section 4980H of the Code; and that the employer may appeal such determination. The Affordable Care Act does not require employers to report to Exchanges for purposes of verifying information about employer-sponsored coverage.

Stakeholder Input and Other Considerations

The August 17, 2011 Exchange Eligibility notice of proposed rulemaking (NPRM)⁴ sought comment on the timing and reporting of information needed to verify whether an individual is eligible for advance payments of the premium tax credit and the optimal way for Exchanges to interact and communicate with employers to verify information regarding employer-sponsored coverage. The preamble of the NPRM requested comment on two proposed interim strategies: (1) a sample template that could be used voluntarily by employers and employees to assist applicants in filling out the Exchange application; and (2) a database that employers could voluntarily populate with relevant information and that Exchanges could access.

Generally, written comments supported the voluntary use of the template, the use of a database, or the option of both. However, commenters requested that HHS streamline reporting by employers to the extent feasible. Commenters also expressed concern regarding the increased burden that the creation of a database might place on employers. Some commenters requested that HHS perform the verification on an Exchange's behalf. Consumer groups noted that certain elements needed for verification are unknown or not readily accessible to employees, and recommended that the burden to supply this data not be placed on individuals. Comments received in response to the NPRM are further summarized in the Exchange Eligibility final rule.⁵

The Departments of HHS, Labor, and the Treasury have consulted with an array of employers and employee groups with different workforce characteristics on this issue. HHS has also consulted with Labor and Treasury to determine whether any current and future reporting by employers or

⁴ 76 Fed. Reg. 51202 (Aug. 17, 2011).

⁵ 77 Fed. Reg. 18310 (March 27, 2012)

health insurance issuers might be leveraged by Exchanges to support the verification process in the short and/or long-term. The provisions in the final rule and the proposed interim strategy, outlined below, are based in part on the input of these stakeholders.

Part II. Request for Comment and a Proposed Interim Strategy for Verification

Exchanges will be best able to perform verification of access to employer-sponsored coverage on a real-time basis during the enrollment process if they can access one or more authoritative data sources that capture the relevant information in an automated fashion. However, data sources that contain all the information Exchanges will be seeking to verify do not currently exist. Until more comprehensive data sources are available, an interim strategy for verifying employer-sponsored coverage is needed to meet the following goals: (1) ensuring access to affordable coverage for consumers, (2) minimizing burdens on Exchanges, individuals and employers, and (3) supporting eligibility determinations to ensure accuracy in the administration of advance payments of the premium tax credit.

HHS is seeking comment on the following as a proposed interim strategy for compliance with the verification obligation. It is anticipated that any interim strategy will be employed for the first two years of Exchange operations (i.e., for the 2014 and 2015 plan years). This proposal is consistent with the obligation the Exchange bears under 45 CFR §155.320(e) to verify eligibility for employer-sponsored coverage.

First, HHS proposes to provide a standardized way for employees and employers to voluntarily collect and communicate employer-sponsored coverage information needed to complete an Exchange application. Second, HHS proposes to allow Exchanges to verify employer-sponsored coverage for this interim period through use of limited pre-enrollment verification based on data sources available to an Exchange and a post-enrollment verification screening process where data sources are not available during the eligibility determination process. When pre-enrollment verification is possible, this is the preferred approach. For this reason, the interim strategy is subject to change as Exchanges gain access to data sources that might allow more pre-enrollment verification.

Collection and Communication of Employer-Sponsored Coverage Information

The Affordable Care Act requires individuals requesting an eligibility determination for advance payments of the premium tax credit to provide information regarding access to employer-sponsored coverage. As the application process will be new for the 2014 coverage year, individuals may be unfamiliar with some pieces of information that are needed to complete the application, and may turn to their employers for help in acquiring some of the information.

To minimize the burden on individuals, employers, and Exchanges, HHS intends to propose to develop and disseminate a standardized method that individuals and employers could voluntarily employ to facilitate the collection and communication of employer-sponsored coverage information. For individuals applying for advance payments of the premium tax credit, this approach could help them gather the complete and accurate information they need about available employer-sponsored coverage from an employer or other existing sources. For example, employees may need help in getting the correct employer identification number.

If the employer offers more than one type of coverage, the employee may also need help in knowing which option offers the lowest-cost alternative and what the cost of that alternative is to the employee. HHS will continue to seek ways to make this easier for employees by indicating where

and how this information might be found. For example, HHS will review certain documentation already available to employees in 2013 that may contain relevant elements needed to complete an employee attestation. HHS or the Exchange could also make a downloadable collection tool available on Exchange web sites. The tool would list the employer-sponsored coverage information an individual will need to have available to complete an application, information which is generally limited to the short list of elements indicated in 1411(b)(4) of the Affordable Care Act.

Helping employees work with their employers to gather the necessary information in a standardized way would simplify the work for Exchanges. This is because it lessens the need for applicant inquiries to the Exchange call center regarding what kind of information or documentation is needed from employers to complete the application. HHS requests comment on the optimal method for assisting employees in gathering this information.

For employers, a standardized method or methods for collecting and communicating information about employer-sponsored coverage would also reduce burden. Employers could anticipate requests for information from their employees and prepare standard information that could satisfy requests from across their workforces in the most efficient, least burdensome fashion, including making information directly available to an Exchange or to multiple Exchanges. If an individual can provide an Exchange with accurate and complete employer-sponsored coverage information, the Exchange will be better equipped to make an accurate determination about eligibility for advance payments of the premium tax credit. Further, if the Exchange has access to authoritative information provided by an employer, the Exchange would not need to request information directly from the employer as part of a post-eligibility screening process. Additionally, providing accurate and complete contact information for an employer would help the Exchange promptly provide the notification under section 1411(e)(4)(B)(iii) of the Affordable Care Act when an employee (or related individual) is determined eligible for advance payments of the premium tax credit and alert employers of their right to appeal such determination.

Verification

Under our proposed interim approach and in accordance with the Affordable Care Act, an individual requesting an eligibility determination for advance payments of the premium tax credit must attest to whether he or she has access to affordable employer-sponsored coverage that meets minimum value standards, and whether he or she reasonably expects to be enrolled in such coverage during the months in which he or she plans to seek coverage through the Exchange. Under section 1411(d) of the Affordable Care Act and 42 CFR 155.320(e), an Exchange then verifies this information. HHS is considering proposing that the Exchange compare the individual's attestation to existing data sources and records available to the Exchange.

HHS believes there are some existing sources of information available to Exchanges that can support the verification of selected elements of an individual's attestation. For example, an Exchange might verify an individual's employer through data sources such as the State Directory of New Hires or the State quarterly wage database. To the extent feasible, HHS expects the Exchange to make a reasonable effort to review and leverage existing data sources to verify attestations.

To the extent that information provided by an applicant is not reasonably compatible with information in these existing data sources, if available, the Exchange could accept the attestation for 90 days, in accordance with section 1411(e)(4) of the Affordable Care Act, and require the applicant to submit documentation or otherwise resolve the inconsistency in accordance with the verification procedures in 42 CFR 155.315(f). If the Exchange does not have information that is inconsistent

with the individual's attestation, the Exchange could accept the applicant's attestation, and additional verification would occur in the post-enrollment period.

After an eligibility determination is made pursuant to 45 CFR §155.310, the interim strategy HHS is considering would provide that the Exchange screen a representative sample of enrollees whose eligibility was based on an attestation (that is, where reliable electronic data was unavailable), and manually verify these attestations. The proposed post-enrollment screening would involve an Exchange comparing data from a selection of applicants with information gathered directly from employers.

The proposed approach combines pre-enrollment and post-enrollment steps and action to improve the accuracy of eligibility determinations. This approach would involve an Exchange identifying existing sources of information that might assist in the pre-enrollment verification, which may include submissions of employer-provided information by applicants, voluntary direct data collection from employers, and/or automated verifications using existing electronic resources if available. For example, an Exchange might access the State Quarterly Wage, New Hires, or unemployment databases to verify applicants' employment status. The proposed approach would also direct an Exchange to complete a manual post-enrollment screening of enrollees. In the absence of a way to verify an applicant's access to employer-sponsored coverage prior to enrollment when the applicant's attestation is consistent with all other information available to the Exchange, the statutory and regulatory requirement to verify may be satisfied by verifying this information post-enrollment for a selection of applications identified through the screening process.

Under this proposed approach, an Exchange would manually verify employer-sponsored coverage information for a selection of applicants. HHS believes that this could necessitate direct contact with employers by Exchange staff for those employees determined eligible for advance payments of the premium tax credit. HHS recognizes that post-enrollment screening is a resource-intensive endeavor and believes that an employer could expect fewer contacts of this nature if information that enables pre-enrollment verification is provided to employees, Exchanges or any potential database in advance of application filing.

Federally-Managed Verification Service and Database

As discussed in the State Exchange Implementation Questions and Answers published on November 29, 2011, HHS is exploring whether and how the Federal government could manage or facilitate services for verification of access to employer-sponsored coverage. For example, HHS could provide opportunities for employers to voluntarily submit information directly to one or more private or public databases that an Exchange might access for the purposes of verification.⁶ Comments are requested on this database option in Part III, below.

Part III. Request for Comment on Approach to Verification for Exchange Plan Years in 2016 and Beyond

HHS believes that existing data sources do not contain all data elements needed to verify access to employer-sponsored coverage. However, it is anticipated that the interim strategy will evolve as additional data and data sources become available. For this reason, any proposed interim

⁶ HHS anticipates that an employer could either voluntarily submit data or have a third party to submit data on its behalf. We are reviewing options regarding how this service might be financed by the Exchanges and/or the Federal government.

verification strategy is subject to change in later years. The approach for plan years 2016 and beyond will depend on the identification and/or development of one or more data sources to support a more comprehensive and automated pre-enrollment verification process, much like the other pre-enrollment verification processes described in the Exchange final rule.⁷ Automated data sources would decrease the necessity or frequency of post-enrollment screening.

Data Sources

HHS is looking for ways to foster the identification and/or development of data sources that would facilitate real-time verification of access to employer-sponsored coverage information during the enrollment process. HHS seeks comment from employers and other stakeholders on data sources so as to minimize the need for employers to respond to requests from employees or Exchanges for information.

There is particular interest in leveraging any data accumulated through other reporting requirements. HHS, Labor and Treasury together are considering a number of existing reporting mechanisms to identify opportunities for streamlining, with the goal of minimizing the burden on employers. While none of these sources provides a comprehensive, authoritative source that satisfies the need to conduct pre-enrollment verification of access to employer sponsored coverage in the interim, some of them may be useful as part of a long term solution. HHS seeks comment on the usefulness of this approach.

The Departments of HHS, Labor, and the Treasury are also considering ways to minimize burden and gain efficiency in light of other employer reporting requirements. For example, the data that insurers and employers will need to accumulate for purposes of reporting under sections 6055 and 6056 of the Code will include most of the information Exchanges will need for purposes of verification. However, reporting under sections 6055 and 6056 of the Code will first be submitted in 2015 and will not provide real-time information about an individual's access to employer-sponsored coverage. Department of Labor and Internal Revenue Service Form 5500 also contains certain relevant coverage information, but it is filed 7 months after the plan year for which a filing is required (or later, if an extension is taken). For the reasons listed above, these existing disclosure mechanisms are not part of the initial verification strategy. However, HHS requests comments on how these reporting mechanisms may be part of a longer-term solution, taking into consideration the limitations discussed here.

HHS is also currently evaluating additional internal resources that might assist HHS in capturing some of the needed elements. Examples include the tools used for coordination of benefits (COB) reporting and notice of creditable coverage (NCC) reporting for Medicare Part D. HHS requests comments on how these reporting mechanisms may be part of a longer-term solution.

HHS seeks comment on the following questions:

- 1) In addition to those mentioned herein, what are potential public and private sources of employer-sponsored coverage data, including sources that might, in the future, capture information on minimum value and on the employee portion of the premium for the lowest cost plan option offered by a given employer? Specific examples of relevant data elements include those enumerated in 1411(b)(4) of the Affordable Care Act.

⁷ 77 Fed. Reg. 18310, at 18455-457 (March 27, 2012).

- 2) What are the options for an Exchange obtaining employer-sponsored coverage data (including affordability and minimum value) from employers? Other government agencies? Issuers? Other sources?
- 3) How can Exchanges best achieve real-time verification of access to employer-sponsored coverage information during the enrollment process without creating burdens on applicants or employers?

Operational Considerations

The long-term process should facilitate a streamlined, predictable, and accurate eligibility process that allows verification of needed information in a timely fashion, while minimizing burden. The information needed for verification includes data that certain large employers will report to the IRS under section 6056 of the Code. This alignment means that these employers would not have to collect or manage data for the Exchange beyond what would already be necessary to support reporting under section 6056 of the Code. Under the proposed long-term process, the enhanced pre-enrollment verification process could still be paired with use of self-attestation when no data are available, and continue to include post-enrollment reviews, although it is expected that the existence of an authoritative data source would mean that both would be needed much less frequently.

Next Steps

HHS appreciates comments regarding the proposed strategies identified in this bulletin. In particular, input is requested from the employer community, States and consumer advocates regarding the process for verifying employer-sponsored coverage, the current capabilities and data collected through existing channels, and the benefits to employees and employers, large and small, of different approaches to verification. Please submit comments to: EmployerCoverageBulletin@cms.hhs.gov.