



NAVIGATING HEALTHCARE REFORM

July, 2016

ACA In The News: Employer Appeals of Exchange Subsidy Notices | Part 2

OVERVIEW

Beginning in spring 2016, employers started receiving notices from the Exchange if any of their employees were deemed eligible for health insurance subsidies through an Exchange. Employers that receive these notices will have 90 days to file an appeal if they feel the eligibility determination was made in error.

Department of Health and Human Services (HHS) regulations require appeals to be accepted online, by phone, by mail, by fax or in person, although Exchanges have been permitted to delay implementation of an electronic appeals process.

EMPLOYER APPEALS PROCESS

If the employer wishes to appeal a subsidy eligibility determination after receiving an Exchange certification, it must file an appeal request within 90 days from the date the notice was sent. Information on how to file an appeal request in the federally-facilitated Exchanges, as well as some state-based Exchanges, is available [online](#).

Exchanges and any other appeals entities must provide assistance if an employer asks for help with the filing. Employers may include evidence supporting their appeal along with the initial request, but they will also have an opportunity to present this after filing the request as well.

When the Exchange or other appeals entity receives a request for an appeal, it will send an acknowledgment of the appeal and an explanation of the appeals process to both the employer and the employee. If the entity determines that an appeal request is not valid, it must send written notification to the employer and include instructions for curing the defects.

During the appeals process, the appeals entity must give the employer an opportunity to review the information that the Exchange used to make the eligibility determination. This information will not include the employee's tax return information. **An appeals entity must make, and send written notice of, an appeal decision within 90 days after the date it received the appeal request.**

If the appeals decision affects the employee's eligibility, the Exchange must promptly make a redetermination. Employees and their household members, if applicable, will have the right to appeal an Exchange redetermination that occurs as a result of an appeals decision.

Reasons for appeal:

1. Employee was not eligible for benefits, as they did not work the hours required by ACA.
2. Employee was offered coverage that meet both the affordability and minimum value standards under ACA.

STEPS FOR APPEAL

Employers have **90 days from the date stated on the notice from the Marketplace** to file an appeal. This appeal can be filed 2 ways:

- Fill out the [Employer Appeal Request Form](#)
- Submit a letter with the following information:
 - Business name
 - Employer ID Number (EIN)
 - Employer's primary contact name, phone number and address
 - The reason for the appeal
 - Information from the Marketplace notice received, including date and employee information

Mail your appeal request form or letter and a copy of the Marketplace notice to this address:

Department of Health and Human Services
Health Insurance Marketplace
465 Industrial Blvd.
London, KY 40750-0061

Recommended Documentation to Include with Appeal

OPTION 1: If not eligible for the coverage – payroll roster verifying employee did not work the hours required for coverage.

Sample language for cover letter:

We are in receipt of your attached letter, dated **XX/XX/XX**, regarding our possible shared responsibility for Marketplace applicant (**member name and employee's Marketplace Application ID#, if known**).

(Member name) is/was an employee of **(Company)**, however he/she was a part-time employee, averaging less than 30 hours per week during the ACA measurement period; therefore he/she was not eligible to participate in our group health plan.

OR

(Member name) is/was an employee of **(Company)**, however he/she was a seasonal employee, expected to work less than six months of the year during the ACA measurement period; therefore he/she was not eligible to participate in our group health plan.

OR

(Member name) is/was an employee of **(Company)**, however, he/she declined affordable coverage that met the minimum value requirements; therefore he/she was not enrolled in our group health plan.

OR

(Member name) is an employee of **(Company)**, however he/she is considered a variable hour employee and is currently in the measurement period for determining whether they are working an average of 30 hours per week; until such time as this is determined, he/she is not eligible to participate in our group health plan.

Attached, please find the Employer Appeal Request Form, along with the applicable payroll records during the measurement period.

OPTION 2: If eligible for coverage – a statement verifying the group plan met affordability and minimum value standards under ACA.

Sample language for cover letter:

We are in receipt of your attached letter, dated **XX/XX/XX**, regarding our possible shared responsibility for Marketplace applicant (**member name**).

(Member name) is an employee of **(Company)** and he/she was offered coverage through our group plan on (date). Our group medical plan with (carrier) meets both the affordability and minimum value standards set under the ACA; therefore he/she should not have been eligible for a subsidy through the Federal Marketplace.

Attached, please find the Employer Appeal Request Form.

After an appeal is filed

The employer will receive a letter saying the appeal was received. It will provide a description of the appeals process and instructions for submitting additional materials if needed.