



The
ERISA
Industry
Committee

October 31, 2011

Submitted through the Federal eRulemaking Portal:
<http://www.regulations.gov>

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9974-P
P.O. Box 8010
Baltimore, MD 21244-8010

Attention: CMS-9974-P

Ladies and Gentlemen:

The ERISA Industry Committee (“ERIC”) is pleased to submit these comments on the proposed regulations implementing certain functions of the new health insurance exchanges under the Patient Protection and Affordable Care Act (“ACA”). In particular, the proposed regulations implement provisions relating to how the exchanges can determine whether an individual is eligible to purchase health coverage through an exchange or is eligible to receive premium tax credits or cost-sharing reductions. The proposed regulations were published by the Department of Health and Human Services in the Federal Register on August 17, 2011.

ERIC’s Interest in the Proposed Regulations Implementing Exchange Eligibility Functions

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, and other welfare benefits of America’s largest employers. ERIC’s members sponsor many of the largest private group health plans in the country. These plans provide health care to tens of millions of workers and their families.

ERIC’s members are committed to, and known for, providing high quality, affordable health care. Employers do not have unlimited resources to spend on health care, however. ACA has imposed a number of expensive new mandates on employer health plans, and has significantly increased the administrative burden and cost of operating these plans.

ERIC’s members have a vital interest in ensuring that the process through which exchanges determine whether an applicant is eligible for premium tax credits or cost-sharing assistance results in accurate determinations without imposing unnecessary costs and administrative burdens on large employers. Employees will be eligible for premium tax credits and cost-sharing assistance if they purchase coverage on a health exchange and either are not eligible for employer-sponsored coverage or are eligible for employer-sponsored coverage but the employer coverage is not affordable (i.e., costs more than 9.5 percent of the individual’s household income) or does not provide minimum value (i.e., the plan’s share of total allowed costs of benefits provided under the plan is less than 60 percent of such costs).

If exchanges do not correctly make eligibility determinations, large employers may be forced to incur additional costs to dispute incorrect determinations and may be unfairly penalized under ACA's shared responsibility provisions. In addition, large employers are particularly concerned that a mechanism be found to avoid frequent requests for information and disclosure with respect to employees who may be eligible to purchase coverage through an exchange. Accordingly, ERIC urges the Department to adopt a verification process that provides efficient and accurate determinations of an individual's eligibility for premium tax credits and cost-sharing assistance at the lowest possible cost and administrative burden to employers.

Comments on Proposed Rules

In the Preamble to the proposed rules, the Department states that it is considering two methods through which exchanges can verify whether an individual is eligible for employer-sponsored coverage that is affordable and provides minimum value: The first method would require exchanges to provide a template that employers and employees could use to capture required information. The second method would require exchanges to establish a central database that employers could voluntarily populate as a resource for the verification process. ERIC recommends that the Department make both methods available to employers and allow employers to choose which method to use.

It may generally be more cost-effective for employers that experience higher turnover in their workforce, such as in the retail and food service industries, to populate a central database once a year rather than provide a separate document to each worker. In contrast, it might be less expensive for employers in industries that typically experience lower turnover to complete a template for individuals upon request or provide the template to their workers as part of the hiring process. Moreover, giving employers a choice between the two methods will not impose undue burdens on exchanges. An exchange can easily determine whether an employer has populated the database and instruct applicants to provide a completed template if they are employed by an employer that has not reported information to the database.

The central database should be designed to facilitate the exchange of information between employers and exchanges without imposing unnecessary administrative burdens and costs on employers. Large employers will be required to report much of the information that exchanges need to verify eligibility for employer-sponsored coverage under new Code section 6056.¹ Accordingly, to avoid imposing duplicative reporting requirements on employers, the reporting mechanism through which employers submit required information to the central database should be compatible with the mechanism through which employers will submit much of the same information for purposes of section 6056 of the Code.

An employer that does not use the database should be permitted to provide employees with a template that includes the information that the employer is required to provide to the exchange, such as the monthly premium for the lowest cost option available to the individual, the employer's contribution

¹ Effective January 1, 2014, section 6056 of the Code requires large employers who are subject to the shared responsibility provisions of section 4980H of the Code to report to Treasury information necessary for Treasury to determine whether an employer is subject to the shared responsibility penalty, including whether the employer offers its full-time employees employer-sponsored coverage, the monthly premium for the lowest cost option under the plan, and the employer's share of the total allowed costs of benefits provided under the plan.

towards the cost of coverage, the months the coverage is available to the individual, and whether the coverage meets the minimum value standard.

Employers should be given the flexibility to provide the template to either all employees on their date of hire and annually thereafter (such as during open enrollment) or to provide the template within a reasonable period after an employee requests the information. This will allow employers to provide the notice in the most cost-effective way that meets the needs of exchanges and their employees. For example, employers that anticipate that relatively few of their employees will seek health insurance coverage on the exchange would reduce costs by preparing templates only upon request and still meet the need for the exchanges to verify eligibility for employer-sponsored coverage.

The rules propose that exchanges are required to conduct eligibility redeterminations through verification of an individual's eligibility for premium tax credits and cost-sharing reductions once a year.² Accordingly, employers should be permitted to populate the database or provide the template as frequently as they desire; however, they should not be *required* to populate the database or provide the template more than once a year.

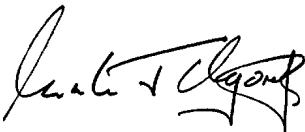
As the Department acknowledges, other provisions of ACA, such as new section 6056 of the Code, require employers to provide to the federal government and employees much of the information needed to verify whether employer coverage is affordable and provides minimum value. Accordingly, ERIC recommends that the Department allow employers to populate the database or complete the template using the most recent information reported in compliance with the requirements of section 6056 of the Code and similar ACA requirements, unless the employer chooses to complete the template or update the database with more recent information.

We look forward to providing additional comments on this and related issues when the Department issues its proposal for how exchanges will interact with employers to verify whether an individual is eligible for affordable employer-sponsored coverage that provides minimum value.


* * *

ERIC appreciates the opportunity to provide comments on the proposed rules establishing a process for exchanges to verify whether an individual is eligible for premium tax credits or cost-sharing assistance. If the Department has any questions concerning our comments, or if we can be of further assistance, please let us know.

Sincerely,



Mark J. Ugoretz
President & CEO



Gretchen K. Young
Senior Vice President, Health Policy

² Proposed 45 C.F.R. § 155.335.