Q&A from Assurex Global Webinar "Public Marketplace (Exchange) Second Enrollment Period"	September 18, 2014
Question	**Answer**
Q: as a large group employer, is it my responsibility to inform my employees who do not qualify or decline our affordable coverage about the market place or the open enrollment periods etc???? Q: And is it really the role of the employer to tell your employees whether or not they qualify for a subsidy??	A: Employers must provide the "Notice of Exchange" to all new hires. Beyond that employers have no specific regulatory obligation to make employees aware of the specific impact of employer-sponsored coverage, but there is certainly an employee relations aspect to consider. Individuals that incorrectly continue to receive subsidies will likely have to pay back all or a portion of the subsidy when information is reconciled on personal tax returns. Also know that when employer reporting is first done in early 2016, employees will receive statements indicating whether their coverage options make them eligible/ineligible for subsidies through the public Marketplace (Exchange).
Q: can a current COBRA member change to ACA plan at open enrollment - even if COBRA is not exhausted?	A: Yes, during the Marketplace (Exchange) open enrollment period (i.e. Nov 15 - Feb 15), a COBRA participant may voluntarily terminate COBRA coverage and enroll for coverage through the Marketplace (Exchange).
Q: can you review tax period that determines employee eligibility for subsidy? It is based on earnings after marketplace coverage is to be effective or based on income in the prior tax year?	A: An individual's eligibility for a subsidy (tax credit) toward the premium for coverage through a public Marketplace (Exchange) is determined based on current income (i.e. while the coverage is effective), but is reconciled by the IRS and the Marketplace on a retrospective basis using the individual's personal tax return. For example, during 2014, an individual enrolled for coverage through a public Marketplace is eligible for a subsidy so long as the individual has no other disqualifying coverage and household income is between 100-400% of federal poverty level (FPL). Eligibility will be based upon an estimate of monthly income. Once individual's personal tax return is filed for 2014 (early in 2015), the actual subsidy available to the individual for 2014 will be calculated and a reconciliation will occur (i.e. additional tax credit if subsidy was underestimated and a possible payback if overestimated). This is why it is important for individuals receiving a subsidy to keep the Marketplace updated with any income changes during the year; to avoid any unexpected overages/underages in the subsidy amount provided.

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Q: Do you expect section 125 rules to be changed to accommodate marketplace eligibility for individuals who are eligible for subsidy where coverage is unaffordable)	A: Guidance on this was released shortly after our webinar was presented. The Section 125 guidance allows for two new permitted election changes (prospective revocations). For those employers who choose to adopt such changes, the new rules provide more flexibility for individuals in either of two scenarios: (i) those changing from employer-sponsored group health coverage to other minimum essential coverage (MEC) options due to a reduction in hours; or (ii) those changing from employer-sponsored group health coverage to a qualified health plan (QHP) during a special enrollment period or annual open enrollment period through a public Marketplace (Exchange).
Q: Do you need a qualifying event to move from COBRA to Marketplace during Open Enrollment?	A: No - during open enrollment, any eligible individual may enroll for coverage through a public Marketplace (Exchange). Outside of open enrollment, on the other hand, COBRA would need to be exhausted or another special event allowing for a special enrollment period would need to occur.
Q: If a member elects & starts COBRA in October, 2014, is she eligible to enroll in the Marketplace under Open Enrollment on 11/15?	A: Yes - during open enrollment, any eligible individual may enroll for coverage through a public Marketplace (Exchange). However, the earliest the coverage would be available is Jan 1, 2015.
Q: When should/did the requirement to send initial exchange notices begin? Q: Does the notice of exchange have to be distributed annually or just to new employees?	A: ALL employees were to be provided with the Notice of Exchange by Oct 1, 2013. However, going forward, the notice is only required for new hires (within 14 days of hire).
Q: Have the rates been updated for 2015?	A: Availability of Marketplace (Exchange) rates for 2015 will vary from state to state…it would be best to check with your local Marketplace to check on rate availability.
Q: Can the employee drop dependent coverage and buy dependent coverage through the marketplace?	A: During open enrollment for the Marketplace (Nov 15 - Feb 15), the answer is generally yes. Outside of open enrollment, it would be necessary for their to be a special event allowing for a special enrollment period. In addition, if the change is desired mid-plan year, the premium contributions, if taken on a pre-tax basis through a Section 125 (Cafeteria) plan, may only be revoked if the plan allows such mid-year election change.

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Q: How does the market place plan affect anyone who has COBRA?	A: When a qualifying event occurs and there is a loss of coverage triggering a right to COBRA, the individual has the option at that point in time of choosing COBRA or individual health insurance coverage through a public Marketplace (Exchange). If the individual enrolls for COBRA coverage, the individual is then ineligible for coverage through a public Marketplace until the COBRA coverage is exhausted, until the next Marketplace open enrollment period, or until a special event occurs allowing for a special enrollment period.
Q: If an employee is currently covered on our company plan and our plan meets minimum requirements, can they drop our coverage to enroll in the exchange?	A: Generally any eligible individual may enroll for coverage through a public Marketplace (Exchange), regardless of whether they have other coverage or not. However, if the individual has other coverage available, the individual may not qualify for a subsidy. If the employer-sponsored group health coverage provides minimum value and is affordable, the individual may enroll for coverage through a public Marketplace, but will not qualify for a subsidy. If the employer-sponsored group health coverage provides minimum essential coverage, but does not meet minimum value standards or is not "affordable", then the individual may enroll for coverage through a public Marketplace and may also qualify for a subsidy so long as the individual does not actually enroll in the employer-sponsored coverage.
Q: I am new to a company and not sure if they have been giving notices to new employees, how far back can I go to send out notices?	A: At a minimum you should provide the Notice of Exchange to all current employees as soon as possible and then thereafter provide it to new hires going forward.
Q: If you have coverage available through a prior employer's retirement plan, that is not considered affordable, would the prior employer be penalized if the retiree enrolled in the exchange and got a subsidy?	A: No - under Section 4980H (the employer shared responsibility rules), applicable large employers are only responsible for offering coverage to full-time EMPLOYEES. As retirees are generally no longer employees, the employer will not face any penalties for coverage provided or not provided to the retirees.
Q: If an employer covers full and part-time employees down to 20 hours per week, do the part-time employees (less than 30 hours per week) expose employers to a penalty if their insurance is not affordable and the employee gets a subsidy through the exchange?	A: No - under Section 4980H (the employer shared responsibility rules), applicable large employers will only be penalized for a failure to offer “affordable” coverage to those that are full-time employees (averaging 30 or more hours of service per week). If the employer chooses to be more generous and offer coverage to part-time employees as well, such coverage does not have to be “affordable”. In fact, making it affordable may not be a benefit to lower income part-time employees as it would disqualify them from possible subsidies for individual coverage through a public Marketplace (Exchange).

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Q: In regard to the QE of becoming eligible/ ineligible for premium tax credits - if the employee loses eligibility for a subsidy midyear, will that be a QE under the ER's Section 125 plan to join the employer plan mid-year? And vice versa for dropping ER coverage?	A: The recently released IRS guidance in regards to new Section 125 permitted election changes, if adopted by the employer, allow for an individual to drop employer-sponsored group health coverage to enroll in coverage through a public Marketplace (Exchange) during a special enrollment period. Becoming newly eligible for a subsidy is a special event allowing for such special enrollment period. On the other hand, losing eligibility for a subsidy is not considered a HIPAA special enrollment event, thus a plan would not be required to allow an individual to enroll in the employer-sponsored group health plan mid-year.
Q: Is it necessary for part time employees to work 30 hours to be eligible for small group coverage or can they work 20 hours?	A: Small employers, less than 50 full-time equivalents (FTEs), are not required to offer coverage to any particular category of employees. Therefore, employees of small employers are eligible or not in accordance with the eligibility rules defined in the employer's plan.
Q: Many employers have experienced significant increases in their health insurance premiums during this plan year. Are there any issues with an employer making the business decision to terminate their group health plan, so that their employees might be eligible for subsidies?	A: For a small employer, less than 50 full-time equivalents (FTEs), that is not an issue, other than perhaps in regards to employee relations and/or competitive hiring practices. However, for applicable large employers (50 or more FTEs), the employer will pay a shared responsibility payment (i.e. penalty) if coverage isn't offered to substantially all full-time employees and their dependent children as required under Section 4980H - the employer shared responsibility rules.
Q: What if most of my employees choose not to participate in the plan because our cheapest option is $280 a month, employee portion only...we offer to pay $200...	A: If the employer is large enough to be subject to the employer shared responsibility rules under Section 4980H - 50 or more full-time equivalents (FTEs) - the employer will not be off the hook simply because there is not enough participation to secure a plan. Rather, the employer will have to provide coverage attractive enough to get the participation required to be able to offer a plan; otherwise potential 4980H shared responsibility payments (i.e. penalties) could apply.
Q: what if we have a section 125 plan the employee elects to have their health premiums deducted post tax? can they then join on the open market when eligible?	A: Technically this strategy will work. But now that the IRS has released guidance allowing Section 125 mid-year election changes on account of availability of coverage through a public Marketplace (Exchange) during an open enrollment period or special enrollment period, the strategy is not necessary unless the employer chooses not to adopt the newly allowed election changes.

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Q: When talking about number of employees, are these the number of employees that want to enroll in health insurance, or the total number of people employed by the company?	A: For purposes of Section 4980H (the employer shared responsibility rules), the number of full-time equivalents (FTEs) - counting full-time and part-time employees - determines whether or not an employer is required to comply with the rules. Employers with 50 or more FTEs must comply. In regards to who must be offered coverage, only full-time employees (averaging 30 or more hours of service per week) are considered. An employer that is required to comply with the rules must offer coverage to substantially all full-time employees to avoid potential penalties.
Q: The model notice goes to ALL employees or only those employees who are hired as full time or what you believe to be FTE?	A: The Notice of Exchange is required for ALL EMPLOYEES, not just those considered to be full-time or eligible for coverage.
Q: Will Benefit Comply be offering a model of a Marketplace notice with updated 2014/2015 dates?	A: The DOL model Notice of Exchange currently available via the website is good through January 2017 - http://www.dol.gov/ebsa/healthreform/regulations/coverageoptionsnotice.html
Q: you mentioned a voluntary loss of coverage is not a qualifying event. does this include voluntary termination of employment from an employer who provided minimum essential coverage?	A: A voluntary termination of coverage is not considered a special event allowing for a special enrollment period through a public Marketplace (Exchange). A voluntary termination of employment accompanied by a loss of coverage, however, would allow for a special enrollment period through a public Marketplace.
Q: You mentioned early on that as long as the coverage was considered affordable for the employee only coverage neither the employee or any of their family members would be eligible for subsidies. Our plans are very unaffordable outside of employee only coverage. Is there anything that is being talked about or considered for these family members who kind of slipped through the cracks when it was decided to look at employee only coverage when considering affordability. I would like to help our employees.	A: At this time, we are unaware of anything. Congress would need to pass a technical correction to fix this issue. With the current makeup of Congress it is extremely unlikely that any fix for the ACA would pass in the House of Representatives. It is true that so long as the employee contribution for single (employee-only) coverage is affordable, the coverage is considered affordable for the whole family and therefore the whole family is ineligible for coverage. Unless future regulation/guidance is provided addressing this, the only option is to carve out eligibility for the dependents; however, that can have some negative consequences as well (i.e. for dependents that may not have coverage available elsewhere and do not qualify for subsidies due to household income).

Question	Answer
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