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What's Next in ACA Management: How Staffing Firms Should Address Subsidy Appeals and Penalty Disputes

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Wednesday, Oct. 26
1:45–3:30 p.m.



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WHAT'S NEXT FOR ACA MANAGEMENT

How Staffing Agencies Can Address Subsidy Appeals and Penalty Disputes

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Agenda

- › ACA Subsidy Notifications
- › The Players
- › The Process
- › State vs. Federal Exchanges
- › Employer's Perspective
- › What to Include
- › Employee Communication
- › Staffmark Experiences
- › Q & A

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THE PLAYERS

Parties and Their Involvement



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The Players



- › Income and employment verification
- › Employer sponsored coverage verification
- › General oversight and administration of state and federal exchanges



- › Promulgates regulations which govern the appeal process
- › Responsible for administration of appeals for both federal and state exchanges



- › Determine if individuals and employers are subject to fines
- › Determine if reconciliation of erroneous subsidies are necessary for individuals

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The Players



Employees

- › Required to enroll in coverage
- › Potentially eligible for subsidies
- › Attest important information during application process



Employers

- › Required to offer employer-sponsored coverage to full time employees
- › Right to appeal employee subsidies awarded
- › Burdened with proving compliance once subsidy is granted



- › Provider of employment and income verifications for ACA-related subsidies
- › Navigates complexities of fluid ACA appeal regulations and processes

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FEDERAL AND STATE PROCESSES


Givens, Possibilities, and Uncertainties



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Exchange Types and Deferrals

- › Federal Exchange manages 38 states
- › 12 states and D.C. created their own Exchanges (SBMs)
 - › 8 have deferred to the Federal employer appeal process (blue)
 - › For 2016, 6 total appeals processes (red)
- › Federal*
- › Connecticut*
- › Idaho
- › Minnesota*
- › Rhode Island
- › Washington*



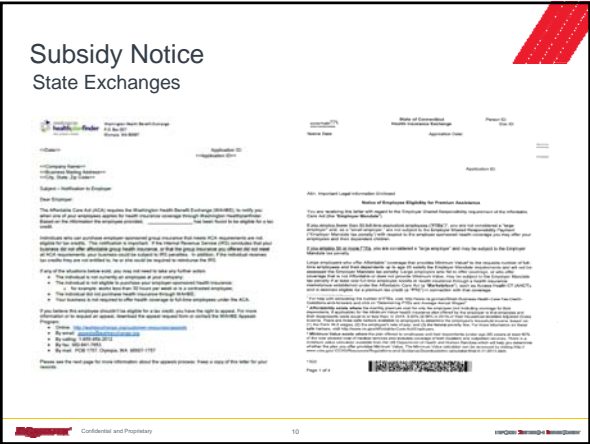
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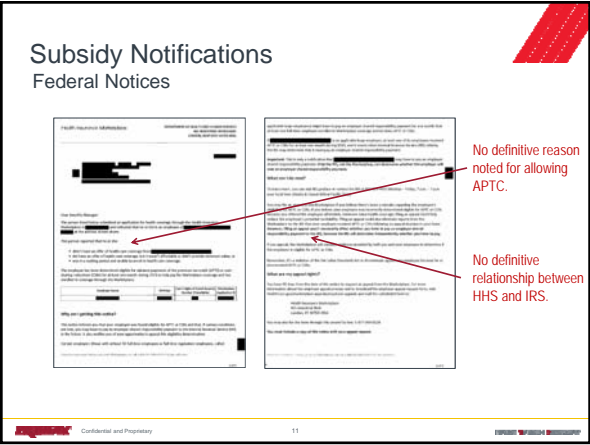
Unique State & Federal Appeal Processes

Understanding the Key Differences

- › Appeal response methods
 - › Fax, USPS, e-mail, phone, online systems
- › Appeal deadlines
 - › 90 days (One final state exchange considering 30 day deadline)
- › Appeal stages
 - › Written appeal, evidentiary/documentary desk review, hearings
- › Evidentiary requirements
 - › Specificity requirements vary

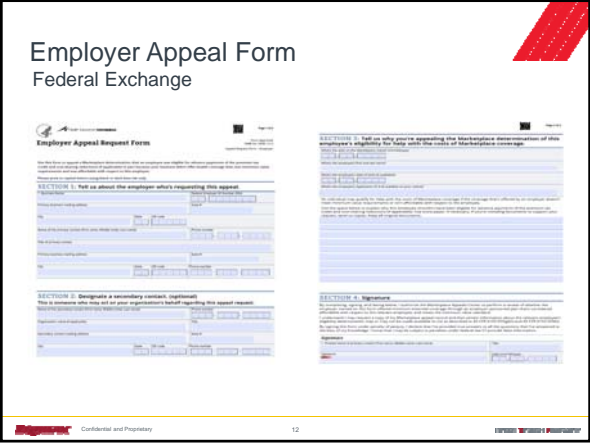
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No definitive reason noted for allowing APTC.

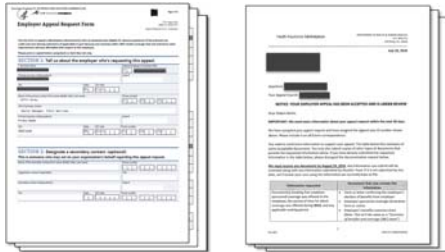
No definitive relationship between HHS and IRS.



Employer Appeal Form Sample Resources



Subsidy Notice Request for Information

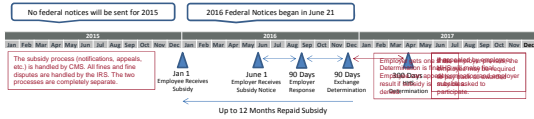


Identified Problems for Employers

- Notification**
 - Address for employers – no Official Mailing Address
 - Late appeals automatically dismissed
 - Batched or sent individually
- Information**
 - Minimal employee/employer identifying information (State Forms)
 - Uncertainty about what triggered notice
- Communication**
 - Snail mail notifications – reachable only by mail or fax
 - Inconsistent response methods – no lasting Power of Attorney
 - Long timelines

Subsidies Notices vs. Fines

Appeals Process – CMS / HHS



Fine Process – IRS



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Takeaways: Subsidy Appeals

- ▶ The Health Insurance Marketplace has released the employer appeals form
- ▶ Notifications will be released Q2 of 2016 at the earliest. Backlog of 2015 notifications will not be released
- ▶ Notices and Fines are wholly separate (CMS and IRS do not communicate.)
- ▶ 2015 subsidy notices will not be set, but 2015 subsidy fines are still applicable
- ▶ Appealing subsidies does not prevent a fine.

Why Appeal?

- ▶ It could provide evidentiary support for potential fine appeal and could also eliminate reporting from the Marketplace to the IRS if the appeal is successful.
- ▶ It can reduce the tax liability for the employee
- ▶ Responding to federal notices is good practice and can strengthen "good faith" defense. Reduce IRS scrutiny

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A STAFFING AGENCY'S PERSPECTIVE

Managing Subsidy Notifications



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What to Include in an Appeal Response

Average 28 – 32 pages

1. Copy of HHS Subsidy Notice (I'm not including the translation pages 4 and 5)
2. Employer Appeal Form with added explanation included
3. Measurement period dates and results
4. History of measurement hours by pay period, for each measurement period
5. Hire Date
6. Break in Service or Termination dates
7. HRIS system benefits eligibility screenshots
8. Copy of most recent W2 & 1095
9. Offer of coverage evidence
10. Enrollment or Waiver of coverage evidence
11. SBC with minimum value statement
12. Cost of coverage for lowest cost, single tier plan – benefits rate sheet
13. Paystub examples with benefit cost if it differs employee by employee



What to Keep on File

- › Online HR and Benefits file scanning solution (paper files work too)
- › Save all evidence and documents in an appeals computer folder for each employee
- › Use a master tracking sheet containing:
 - Date of notice
 - Appeal due date
 - Appeal date
 - Company name and FEIN
 - Employee demographics
 - Application ID number
- › Original HHS Subsidy Notice
- › Completed Employer Appeal Form
- › Full HHS Employer Appeal response with all backup
- › Fax Confirmation
- › Receipt confirmation letters from HHS and requests for further information
- › Appeal determination correspondence



Communications to Field Employees

- › Educate employees up front – what does MEC, MV and Affordable really mean?
- › Use benefits portal, employee intranet
- › Marketplace notice with statement of plan offering and address/phone number – new hires and ongoing posting
- › 1095-C FAQ
- › "AskBenefits" and "AskACA" email inboxes
- › Business cards with benefits call center number and email
- › Table tents and clings at branch kiosks
- › If you appeal a subsidy, use a template letter to explain to employee
- › Contact employee and manager directly if you wish



ACA Subsidy and Appeals Job Aid

- › Staffmark includes:
 - ACA Employer mandate overview
 - Why we receive subsidy notices – relation to 1094/1095/subsidy awards
 - CMS, HHS and IRS players and roles
 - Subsidy process from the employee standpoint – application, verification, award
 - What to do if you receive one, includes example, deadlines
 - Stage 1 and 2 appeal explanation



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Staffmark HHS Subsidy Notices Experience

- › **68 HHS notices received** between the last week of June and the third week of July – we have over 10,000 full-time employees; 170,000+ W2 employees in 2015
- › **34 of the 68** were measured full-time employees
- › **We are responding to every notice** – even to state that the employee is not currently FT
- › **We include future eligibility dates** if they have already worked 1560 hours and are coming to the end of their measurement period, with the disclaimer “barring a break in service.”
- › **Almost all notices went to a local branch**
- › 1 went to a customer site
- › 1 spelled the name of our company wrong
- › 5 came to the corporate address (correct address)
- › **Branches forgot to scan** the back sides of the double sided notice which required follow up
- › 1 of the notices was not our employee – it was a dependent child of a FTE.
- › **The 34 have been offered** our MEC, MV and Affordable plan multiple plan years now
- › **None of the 34** actually enrolled in our plans
- › 1 of the notices was from Connecticut. The rest were Federal.
- › **All were dated June 21.** We have not received anymore since July.
- › **So far, there is not a consistent pattern.** Staffmark is tracking our data to identify possible trends –
 - Branch of employee
 - Age of employee



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Employee Response Example

- › Inform the employee and their manager, if applicable, if you are appealing a subsidy.
- › Reeducate the employee on the benefits offered, the timing for enrollment, and the ACA definitions of MEC, MV and Affordable.
- › Remember the human element – these are real people with real life consequences.
- › Reiterate employer obligation to protect the company from fines if they have chosen to offer a MEC, and MV and/or Affordable plan



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ACA PENALTY EXPOSURE SURVEY

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Three in 10 Firms Exposed to "B" Taxes

Plan Offerings to Temporary and Contract Employees

■ Affordable "minimum value" plans
 ■ MEC-only plans




Source: American Staffing Association, 2016 ACA Penalty Exposure Survey

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Firms Offering MEC-Only Plans: Generally Smaller, Receiving Fewer Notices

- › Staffing firms offering MEC-only plans...
 - <\$25M in annual revenue
 - 300-8,000 Forms W-2
- › Notices correlate with firm size
 - <\$7.5M = 2 notices
 - \$100M+ = 24 notices



Source: American Staffing Association, 2016 ACA Penalty Exposure Survey

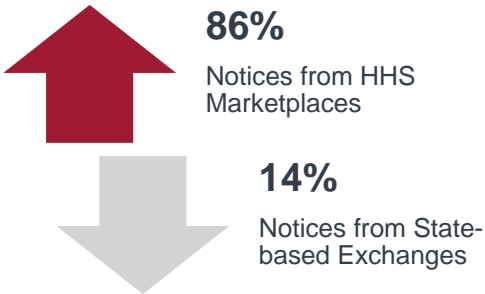
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Average of Six Exchange Notices for Exposed Firms

Health Coverage Offering	Average Number of Notices Received
Affordable "minimum value" plans	14
MEC-only plans	6

Source: American Staffing Association, 2016 ACA Penalty Exposure Survey

Vast Majority of Notices Received from HHS Marketplaces



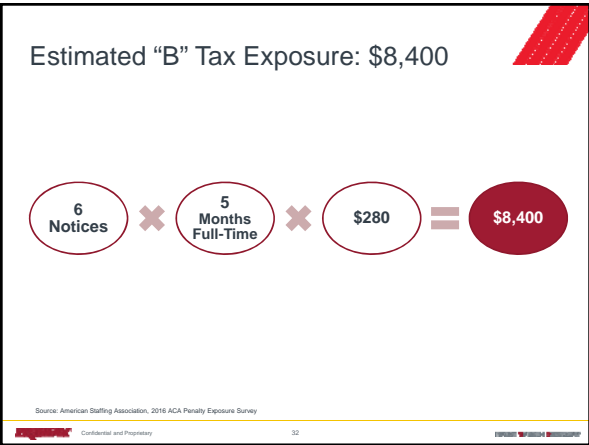
Source: American Staffing Association, 2016 ACA Penalty Exposure Survey

Staffing Employees Expected to Work Full-Time 5 Months in 2016

Health Coverage Offering	Average Number of "Full-Time" Months
Affordable "minimum value" plans	4
MEC-only plans	5

Source: American Staffing Association, 2016 ACA Penalty Exposure Survey







Thank You for Attending



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