

CONNECTICUT HEALTH INSURANCE EXCHANGE

d/b/a Access Health CT (the "Exchange")

FINDING REQUIRED UNDER CONN. GEN. STAT. § 1-121 For ADOPTION OF PROCEDURE ON FEWER THAN THIRTY (30) DAYS' NOTICE

Section 1-121 of the Connecticut General Statutes permits a quasi-public agency to adopt a procedure upon fewer than thirty (30) days' notice if the agency finds that imminent peril to public health, safety or welfare requires such adoption. The Exchange finds that it must adopt an employer appeals process on fewer than thirty (30) days' notice because without such adoption, employers and employees are left in limbo with respect to significant financial risks.

The Exchange is required to send a notice through its Integrated Eligibility System to any employer when their employee has been deemed eligible for Premium Tax Credits (PTC) and or Cost Sharing Reductions (CSR). Employers and employees have rights to appeal under federal law, but the federal government has yet to adopt any appeal procedures. Without the additional certainty that an appeal can provide, employers cannot plan for the financial impact of significant penalties and employees will not know if their premium tax credits are in jeopardy and their household budgets subject to a substantial additional expense. It is critical to get this information into the hands of employers and consumers as soon as possible.

For the 2015 Plan Year, the Exchange has received 163 calls from employers asking for information on how they should proceed or challenging their potential penalty in response to the notice they received. The Exchange expects this number will increase as additional notices are sent to employers during the 2015 Plan Year. The Employee's eligibility for PTCs and/or CSRs may change due to the Employer's Appeal finding. As a result, a significant number of employers and employees are immediately affected by this situation. Since the appeal process can take up to 180 days to complete, it is critical to start the appeals process as soon as possible so that the Exchange can provide much-needed answers to Connecticut businesses and citizens.

PROCEDURE: EMPLOYER APPEALS PROCESS

Authorization

The Federal regulations at 45 CFR § 155.555 authorize the Exchange to establish an appeals process (the “**Employer Appeals Process**”) whereby an employer who, in response to a notice (provided under 45 CFR § 155.310(h) (the “**Employer Notice**”)) indicating that at least one of their employees has enrolled through the Exchange and was deemed eligible for Premium Tax Credits (PTCs) can appeal their employee’s eligibility for PTCs. Such PTC eligibility results from a determination that, based on the attestations of the employee on their application, the employer: (i) does not provide minimum value coverage to the full-time employee and any child dependents of such employee who are under the age of 26 (where applicable) through a health insurance plan sponsored by the employer; or (ii) the employer offers such coverage, but the premium cost for an employee-only version of the plan is not affordable with respect to that employee’s household Modified Adjusted Gross Income (MAGI). This determination is to be made using the required contribution percentage (as defined by 26 CFR 1.36B-2(c)(3)(v)(C)) which may be amended annually by federal authorities. Such PTC eligibility shall be governed by 26 CFR § 1.36B-2.

To establish such an appeals process, the Exchange shall implement the following procedure.

Nothing in this procedure is intended to limit or change the requirements or rights established in any other statute or rule. If there is a conflict between anything in this procedure and the Federal rules in 45 CFR part 155, subpart F, the Federal rules shall prevail.

All information provided to the employer and the employee in connection with the Employer Appeals Process will be in plain language and will include information about the availability of services for individuals with disabilities and individuals who have limited English proficiency, as well as information about how to access such services. The Exchange will seek to minimize the burden on employers and employees, by, for example, not requiring duplicative information or documentation that has already been provided to the Exchange or its designee agency administering eligibility for an insurance affordability program under the ACA through previous or concurrent appeals processes occurring during the same time period and for the same coverage period.

Appeal Requests

Any employer appeal must be filed by the later of: (i) 90 days after the date the Employer Notice is sent; or (ii) 90 days after the first effective date of coverage under the plan with respect to which the appeal is requested (the “**Appeals Period**”). In order to be deemed a “Valid Appeal,”

the employer must submit a complete appeal request form and must include with such form relevant evidence to support the appeal of the determination of an employee's eligibility for PTCs. Such evidence must be probative of whether the employer-sponsored coverage in question meets the affordability threshold for the employee who enrolled with PTC eligibility and the minimum value threshold. Data used to make the initial determination of PTC eligibility may also be used in the appeal decision. However, tax return information of an employee that would be prohibited from disclosure under Section 6103 of the Internal Revenue Code will not be made available to the employer.

Employer appeal requests will be accepted by telephone [(1-860-757-6841, and for those who are deaf or hard of hearing, the TTY number is 1-855-789-2428)]; by mail [c/o Exemptions and Appeals, Access Health CT, 280 Trumbull St, 15th fl., Hartford, CT 06103]; and via email [exemptionsandappeals.ahct@ct.gov].

The Chief Executive Officer of the Exchange will designate one or more impartial individuals who have not been directly involved in the subject employee's eligibility determination to review an appeal request and accompanying information.

The Exchange will assist the employer in making the appeal request, if requested, and will not limit or interfere with the employer's right to make an appeal request.

An appeal request will be considered timely filed if it is submitted within the Appeals Period.

Notice to Employee of Employer's Appeal Request

The Exchange shall send timely notice of receipt of an employer's appeal request to the subject employee. The notice to the employee will include an explanation of the Employer Appeals Process, instructions for submitting additional evidence for consideration and an explanation of the potential effect of the employer's appeal on the employee's eligibility for the PTC and cost-sharing reductions.

Notice to Employer of Valid Appeal Request

When the Exchange receives a valid appeal request from an employer, it shall send the employer timely acknowledgement of receipt of the appeal request. Such acknowledgement will include an explanation of the Employer Appeals Process.

Invalid Appeal Requests

Upon receipt of an invalid appeal request, written notice that the request is not valid will be sent to the employer promptly and without undue delay. The written notice will inform the employer that the appeal request has not been accepted and state the nature of the defect in the appeal request. The notice will also state that the employer may cure the defect and resubmit the appeal

request within the later of: (i) the culmination of the Appeals Period or (ii) thirty (30) days after the Invalid Appeal notice is mailed. An amended appeal request that meets the requirements of 45 CFR §155.555, including the standards for timeliness, and which includes sufficient information as may be needed to conduct an investigation of the employee's PTC eligibility will be treated as valid.

Adjudication of Employer Appeals

Employer appeals will be reviewed *de novo*, meaning without deference to prior decisions in the case. Information used to determine the employee's eligibility will be considered, as well as any additional relevant evidence provided by the employer or the employee during the course of the appeal.

Decisions regarding Employer Appeals

Decisions regarding employer appeals will be based solely on the following: (i) the information used to determine the subject employee's eligibility; (ii) any additional relevant evidence provided by the employer or the employee during the course of the appeal; and (iii) the regulations set forth in 26 CFR § 1.36B-2. The Exchange may request that certain information be submitted by the employer and/or the employee.

The appeal decision will state the decision and include a plain language description of the effect of the decision on the employee's eligibility for the APTC and cost-sharing reductions. The decision will summarize the facts relevant to the appeal; identify the legal basis, including regulations that support the decision; and state the effective date of the decision.

Written notice of the appeal's decision will be provided to the employer and the employee within 90 days of the date a valid appeal request is received or within a reasonable time thereafter, as may be required due to administrative feasibility.

The notice to the employer will include the appeal decision and an explanation that the decision does not foreclose any appeal rights the employer may have under subtitle F of the Internal Revenue Code.

The notice to the employee will include the decision and an explanation that the employee and his or her household members, if applicable, may appeal a redetermination of eligibility that occurs as a result of the appeal decision.

If the appeal decision affects the employee's eligibility for APTC or cost-sharing reductions, the employee's eligibility (and the eligibility of the employee's household members, if applicable) will be redetermined promptly and in accordance with 26 CFR § 1.36B-2.

The appeal record will be accessible to the employer and the employee in a convenient format and at a convenient time, subject to the requirements of all applicable Federal and State laws regarding privacy, confidentiality, disclosure, and personally identifiable information. No tax

return information of the employee which is prohibited from disclosure by Section 6103 of the Internal Revenue Code will be made available.

Dismissal of Appeals

An Employer Appeal will be dismissed if: (i) the employer withdraws the appeal in writing, (or by telephone, if the Exchange is capable of accepting telephonic withdrawals); (ii) a valid appeal request is not submitted within the Appeals Period or within the extended period where additional information was requested or any later timeframe designated by the Exchange; or (iii) the purpose of the appeal is not to appeal the determination identified in the Employer Notice. Timely notice of the dismissal and the reason for the dismissal will be provided to the employer and the employee.

A dismissal may be vacated if the employer makes a written request within 30 days of the date of the notice of dismissal showing good cause as to why the dismissal should be vacated.

Data Exchange

The Employer Appeals Process will comply with the requirements of 45 CFR §155.510(c) (relating to ensuring that all data exchanges that are part of the Employer Appeals Process comply with the requirements of 45 CFR §155.260; 45 CFR §155.270; and 45 CFR §155.345(i), and with all data sharing requests made by the U.S. Department of Health and Human Services).