



Maine Municipal Employees Health Trust

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To: Health Trust Participating Employers
From: Anne Wright, Director, MMEHT
Date: June 30, 2016
Re: The Letter

It's time for a new song! This one is sung to the tune of "The Letter", from the inimitable gravelly-voiced Joe Cocker, back in the 70's Again, if you are too young to remember, you can find it on YouTube. It's worth the listen. (And yes, I really am that old.)

*Got my insurance through the Marketplace
Said I couldn't buy it otherwise
Applied for a subsidy, reduced my premiums
My employer, they just got a letter*

*The letter, it came from DHHS
Told my employer just what I'd gone and done
Will they have to pay? Can they just appeal?
My employer, they just got a letter*

Now the tune is in your head, isn't it? You can thank me later.

Over the past few days, we've received several calls and emails from employers who have received a letter very similar to the one described in the above lyrics. So what are these letters all about?

As you all know (since you've been following these ACA updates with baited breath), one of the cornerstones of the ACA is that everyone should have health insurance coverage. For many people, this means coverage through an employer-sponsored plan. Others, who may not be eligible for or able to afford coverage under their employer's plan, may decide to purchase coverage through the Health Insurance Marketplace (formerly known as the Exchange). Some individuals who purchase coverage through the Marketplace may even be eligible for subsidies to help them pay their premiums, if they meet certain income guidelines.

And that's where these letters come in. When an individual applies for coverage, and a subsidy, through the Marketplace, the application form asks for the name of the person's employer, and whether or not the person has access to affordable coverage under his/her employer's health plan. The reason for this is, of course, the Marketplace does not want to give a subsidy to someone who can purchase affordable (as defined by the ACA) coverage through his/her employer. In fact, if an individual is eligible for coverage that meets the ACA's definition of affordable and minimum value, that person is not eligible for a subsidy through the Marketplace, and could face tax implications for receiving such a subsidy.

DHHS and the IRS want to ensure that everyone who receives a subsidy through the Marketplace is in fact eligible to receive it. Part of that process is for these agencies to confirm that any individual who receives a subsidy because he stated that he was not eligible for or could not afford coverage under his employer's plan was in fact telling the truth. As a result, for any individual who applies for and receives a subsidy through the Marketplace, and who listed the name of an employer on her application, the Marketplace (through DHHS) will be notifying the employer. The reason for this is really two-fold.

If the employer is a **small employer** (fewer than 50 full-time/full-time equivalent employees), this initial notice simply lets you know that one of your employees is receiving a subsidy through the Marketplace. If you did in fact offer the employee access to affordable (as defined by the ACA) health coverage, you should notify the Marketplace of this fact, by filling out and submitting an Employer Appeal Request Form. This form may be found online at <https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>. This will alert the Marketplace that the employee may have received a subsidy in error. The Marketplace and the IRS will take it from there.

If the employer is an **applicable large employer** (50 or more full-time/full-time equivalent employees and thus subject to the Employer Shared Responsibility provision of the ACA), this initial notice lets you know that one of your employees is receiving a subsidy through the Marketplace, and also lets you know that, as a result of this subsidy, you may be subject to a penalty under the ACA's Employer Shared Responsibility provision. **No penalty is being assessed at this time.** As stated in the letter, "Only the IRS, not the Marketplace, can determine whether this employer will owe an employers shared responsibility payment." However, if you as a large employer did offer the employee access to affordable (as defined by the ACA) health coverage, you should notify the Marketplace of this fact, by filling out and submitting an Employer Appeal Request Form. This form may be found online at <https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>. This will alert the Marketplace that the employee may have received a subsidy in error. The Marketplace and the IRS will take it from there.

So, to sum up: If you receive one of these letters, and you are a **small employer** – no need to worry about penalties, but if you did offer the employee affordable coverage, you should file an appeal to notify the Marketplace of that fact.

If you receive one of these letters, and you are a **large employer** and you **did offer** the employee affordable minimum value coverage, not responding may subject you to a penalty later, so you should definitely file an appeal to notify the Marketplace of the coverage offer. And if you are a **large employer** and you **did not offer** the employee affordable coverage (or the coverage did not meet minimum value standards under the ACA), you may be subject to a penalty, and will most likely hear from the IRS later in the year. We'll try to think of a new song for that letter.

Have a safe and Happy Fourth of July weekend!
Anne

Please note that the Maine Municipal Association and the Maine Municipal Employees Health Trust are sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel with specific questions relating to this law.