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Circular Letter

August 16, 2013

TO: CALPERS CONTRACTING AGENCIES AND SCHOOLS

SUBJECT: Health Insurance Marketplace Employee Notice and Modified COBRA Notice

This Circular Letter is to inform personnel staff of recently issued guidance ([Technical Release No. 2013-02](#)) from the U.S. Department of Labor (DOL) regarding a new notice employers must issue to their employees about the new Health Insurance Marketplaces created under the Affordable Care Act (ACA). In California, the Marketplace is known as [Covered California](#). The DOL Technical Release also provides a new Consolidated Omnibus Budget Reconciliation Act (COBRA) model election notice for group health plans.

CalPERS makes every effort to assist our contracting agencies in implementation requirements of the ACA. In this case, however, the Fair Labor Standards Act (FLSA), as amended by section 1512 of the ACA, requires employers to issue the notice directly.¹

Health Care Marketplace (Covered California) Employee Notice

The Technical Release provides temporary guidance regarding new notice requirements to inform employees of their coverage options through Covered California. Covered California is a health insurance marketplace that helps individuals and small businesses shop for, select, and enroll in high-quality, affordable health plans and also assists eligible individuals in receiving premium tax credits or coverage through other federal or state health care programs.

Both large and small employers must provide the new notice to current employees by October 1, 2013, and at the time of hiring for employees hired on or after October 1, 2013.² The notice informs the employee:

¹ The requirement contained in Section 18B of the Fair Labor Standards Act (FLSA), as added by section 1512 of the ACA, to provide a notice to employees of coverage options applies to employers to which FLSA applies, including federal, state, and local government agencies.

² For 2014, employers meet the notice requirement "at the time of hiring" if they provide the notice within 14 days of an employee's start date.

1. Of the existence of Covered California, including a description of services provided and the manner in which the employee may contact Covered California to request assistance;
2. That if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs,³ the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through Covered California; and
3. That if the employee purchases a qualified health plan through Covered California, the employee may lose the employer contribution to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

Beginning January 1, 2014, individuals and employees of small businesses in California will have access to health insurance coverage through Covered California. Covered California's open enrollment starts October 1, 2013 for coverage beginning January 1, 2014.

The DOL Technical Release provides two model notice options for employers—one for employers who offer health coverage to some or all employees, and another for employers who do not offer coverage. Employers who offer coverage must provide the information contained in the "[New Health Insurance Marketplace Coverage Options and Your Health Coverage](#)" model notice to each employee, regardless of their plan enrollment status or part-time or full-time status. Employers must fill out Part A of the model notice and page one of Part B (Part B page two is optional).

CalPERS has modified the model notice for employers who offer health coverage to make it specific to Covered California and to provide CalPERS health plan information in Part B of the notice. CalPERS employers may use this modified version if they choose. Employers can provide the notice by first-class mail or electronically, if they meet DOL's electronic disclosure safe harbor requirements found at [29 CFR 2520.104b-1\(c\)](#). Again, CalPERS, as your health benefits purchaser, cannot fulfill the obligations of this employer notice.

CalPERS is aware that some contracting public agencies and schools have employees that meet the definition of a full-time employee (working an average of 30 hours per week) under the ACA but are not offered health benefits. CalPERS is seeking statutory change to permit public agencies and schools to offer Public Employees' Medical and Hospital Care Act (PEMHCA) health benefits to these employees meeting the full-time employee definition under the ACA. Notwithstanding this proposed statutory change, current statute and regulations permit public agencies and schools to bring these employees into PEMHCA if the employees also participate in a publically-funded retirement system. Alternatively, employers may seek health coverage for these

³ This is known as "minimum value." Although CalPERS awaits federal regulations on reporting minimum value, CalPERS health plans are well above the 60 percent minimum value threshold.

employees outside of PEMHCA. We will provide employers additional information as it becomes available.

The model notice includes a check box on whether the employer's coverage meets the minimum value standard and if coverage is intended to be affordable⁴ based on employee wages. Although CalPERS awaits regulations on reporting minimum value to the federal government, our calculations show that CalPERS health plans are well above the 60 percent minimum value threshold. CalPERS however, as your health plan purchaser, cannot determine whether our lowest cost health plan is considered "affordable" to your employees, as we do not know your employee salary schedule or employer contribution. Finally, beginning January 1, 2015, foster children are considered eligible dependents. CalPERS will modify PEMHCA to include foster children for the 2015 plan year.

COBRA Model Election Notice

The Technical Release also includes an updated COBRA model election notice for group health plans. This notice includes new information on health coverage alternatives offered through the Marketplace, in addition to other changes made by DOL. Employers should update their COBRA election notice for active employees to include the new information, including information on how to contact Covered California. You may access the new election notice on the [DOL website](#).

CalPERS staff continue to analyze the federal regulations to determine impacts to the PEMHCA program. Visit us at CalPERS On-Line to access the most current information available on these and other regulations relating to the ACA. Please contact the CalPERS Customer Contact Center at 888 CalPERS (or 888-225-7377) if you have further questions.

Sincerely,

DOUG P. McKEEVER, Chief
Health Policy Research Division

Enclosures:

[New Health Insurance Coverage Options and Your Health Coverage - CalPERS Mockup \(PDF, 158 KB\)](#)

⁴ One way to determine if coverage is "affordable" is if the employee's required contribution for self-only coverage for the lowest cost health plan is less than 9.5 percent of his or her household income.