



ACA MANDATES > SCOTT SINDER, KATE JENSEN AND CAMERON ARTERTON

Government Love Letters

If your clients are receiving marketplace employee subsidy eligibility letters, tell them to pay attention.

NFL Wide Receiver Catches Heat for Insurance Fraud

Jeffrey Webb, a former wide receiver for the Kansas City Chiefs, was arrested for multiple felonies associated with an organized crime ring that staged auto collisions in California, netting \$70,000 in fake claims and a total potential loss of \$139,000, according to the Riverside County District Attorney's office, which is prosecuting the case. Webb is accused of being the ringleader of eight co-conspirators who crashed rented cars with only minor damage to the vehicles but allegedly inflated medical needs. Webb reportedly received most of the money paid by defrauded insurers.

Many of your clients undoubtedly have begun receiving love letters from the Department of Health and Human Services' health insurance marketplace informing them an employee is eligible for exchange subsidies. This eligibility is determined in part when employees report to the marketplace that they:

- ▶ Did not have an offer of healthcare coverage from their employer
- ▶ Did have an offer of healthcare coverage, but it was not affordable or did not provide minimum value
- ▶ Were in a waiting period and unable to enroll in healthcare coverage through the employer.

The love letter then notes the employer may appeal this decision

if the company believes it offered "affordable" coverage and satisfied the "minimum value" standards under the Affordable Care Act.

The notice goes on to clarify that any appeal will not "necessarily affect whether the employer will have to pay" an ACA employer mandate penalty. The IRS, it says, makes that decision.

So how should your client respond—if at all?

If the client is not a "large employer" subject to the ACA's employer mandate requirements (50 or more full-time employees or equivalents), there likely is no reason to appeal.

For large employers, however, a successful subsidy determination appeal to the marketplace may avert a potentially more expensive and more cumbersome IRS penalty appeal process. While only the IRS can ultimately determine employer mandate penalties, the marketplace appeal might determine whether the employee was in fact eligible to receive a subsidy. This eligibility is a key factor in determining whether the employer will be subject to a mandate penalty.

Filing a successful appeal might eliminate reports from the marketplace to the IRS that the employee received a subsidy. When full-time employees who claim they did not receive an affordable offer of coverage apply for the subsidy, the rules require the federal marketplace to contact the employer in an effort to verify that representation. If the marketplace does not hear back from the employer, it generally will accept the representation as true. >>

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increase related to updates to the Florida Workers Compensation Health Care Provider Reimbursement Manual, which became effective July 1. NCCI proposed Oct. 1 effective date for new and renewal workers comp policies and suggested the 19.6% rate increase apply to all other workers comp policies on pro rata basis for remainder of policy term. Public rate hearing results not available as of press time. >> Attorney in *Daniel Stahl v. Hialeah Hospital* petitions U.S. Supreme Court for writ of certiorari. He wants to know if state's workers comp law violates the

14th Amendment to the U.S. Constitution regarding denial of benefits to a worker with partial loss of future wage-earning capacity. State Supreme Court refused to review the case and didn't say why, which allowed a previous District Court of Appeal's ruling to stand. That court ruled Florida workers comp law is valid despite changes that eliminated permanent partial disability benefits. No action by SCOTUS as of press time. >> Creates Division of Investigative and Forensic Services, which will integrate Division of Insurance Fraud, Bureau of Fire and

Arson Investigations and Office of Fiscal Integrity, effective July 1. Integration will allow sharing of intelligence and resources to combat crime. Simon Blank heads new division, dubbed DIFS. www.floir.com

ILLINOIS Land of Lincoln Health is being shuttered by regulators and prepped for liquidation. Policyholders will fall under 60-day special enrollment period. The ACA co-op insurer sought a workaround for its debt to the federal government but was denied. www.insurance.illinois.gov

MASSACHUSETTS Workers compensation rate increased by average 1.5% as of July 1. >> Department of Industrial Accidents lowers private employers' assessment on workers comp policies to 5.6% of policy premium for policies initiated on July 1 or later, down from 5.75% in previous fiscal year. Assessment for private employers that have opted out of second-injury fund remains 1.66%. www.mass.gov

MISSOURI Pres. Barack Obama nominates insurance director John Huff to serve on



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➤➤ Given this landscape, we think it advisable for large employers that receive notices and believe they have satisfied the ACA's coverage requirements to appeal—or at least establish a traceable record for a later IRS appeal.

Employers have 90 days from the date of the notice to appeal with the Marketplace Appeals Center. It may be filed via an online form or a letter.

The Employer Appeal Request Form is here: healthcare.gov/marketplace-appeals/employer-appeals/.

If your client mails a letter, it should include the following information:

- ▶ Business name
- ▶ Employer ID number (EIN)
- ▶ Employer's primary contact name, phone number and address
- ▶ Information from the marketplace notice the client received, including the date of the notice and information about the employee covered by the notice

▶ The reason for the appeal (an explanation regarding why the employee is not subsidy eligible) and any supporting documentation.

Employers choosing to submit online may be limited to appealing one employee determination at a time. We see no indication, however, that a letter-based appeal could not address multiple employees. That said, employers will have to clearly identify each employee and explain, for each employee, why the offer of coverage met the ACA's affordability and minimum value requirements.

Following submission, the Appeals Center will notify the affected employee the appeal has been initiated, what the employee's rights are and how the appeal may affect the employee's eligibility for subsidies/cost sharing reductions. The Appeals Center may request additional information from the employer or simply send a decision.

Employers subject to a penalty do not need to report it with any tax return.

Instead, based on the employer's information, tax returns and marketplace reports, the IRS will calculate any potential liability.

Employers will not be contacted by the IRS regarding an employer's shared responsibility payment until after their employees' individual income tax returns are due, since those returns would show any claims for the premium tax credit. The employer will then have an opportunity to respond before any IRS assessment or notice and demand for payment is made.

The lesson from all of this is simple: clients, particularly large employers, should respond to these government love letters to minimize their mandate-related penalties and expenses.

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CDC Probes Zika Case in Utah

The U.S. Centers for Disease Control and Prevention is helping the Utah Department of Health investigate how a case of Zika was transmitted. The case involves a person who became infected after caring for an elderly family member who died in late June from the virus with more than 100,000 times the level of the virus in his blood than that found in other infected people. The CDC says non-sexual spread of the virus "does not appear to be common" and reports only one documented case as of July 13, which was the result of laboratory exposure. Because the infected family member (who has since recovered) had not recently traveled to an area with Zika, nor is there evidence at this time that mosquitoes that commonly spread Zika virus are in Utah, the case is unique. The U.S. had 1,306 cases of Zika reported by July 13, including 14 believed to have been sexually transmitted.

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13-member board of National Association of Registered Agents and Brokers to help standardize licensing across state lines. Board includes eight state insurance commissioners and five industry reps. www.insurance.mo.gov

NEW YORK Approves 9.3% average increase in workers comp loss costs, effective Oct. 1. Claims frequency was level on average, but indemnity rose 5.3% and medical rose 5.1%. Increase also includes rise in maximum weekly benefit to \$866 as of July 17, 2017,

and \$922 the following July 1, up from \$864 this year. ➤ Effective September, \$1 million minimum in brain injury insurance required for professional boxing and mixed-martial arts competitors. New law also requires at least \$50,000 in coverage for other injuries, an increase from the previous minimum of \$7,500 for boxers. A \$50,000 death benefit in the law is a reduction from previous \$100,000 for boxers (mixed martial arts was previously unlicensed and unregulated). State Athletic Commission says some small promoters could find the costs of

the new regs "problematic" because a 10-bout card could run \$7,500 to \$9,000 to insure. ➤ Gov. Andrew Cuomo marked in July the one-year anniversary of Task Force to Combat Worker Exploitation by establishing permanent, statewide task force on employee exploitation and misclassification via Executive Order No. 159. Since inception in July 2015, the task force has ordered 1,547 businesses to pay roughly \$4 million in back wages and damages to more than 7,500 workers. www.dfs.ny.gov

NORTH CAROLINA New flood maps for Dare County place 15,970 buildings in lower-risk flood zones or remove them altogether. New maps take effect in 18 months, and building codes could be changed to reflect the reduced flood risk assessment, though municipalities may impose stricter rules than flood maps require. www.ncdoi.com

SOUTH CAROLINA Workers comp loss cost increase of 2.5% takes effect Sept. 1. Averages by industry group: manufacturing up 4.6%; office and clerical down 0.8%;