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DHHS Issues ACA Marketplace Notices

As part of ongoing Affordable Care Act (“ACA”) compliance procedures, the Department of Health and Human Services (“DHHS”) has started to send notices to companies as part of its Federally-Facilitated Marketplace’s 2016 Employer Notice Program, with the first round of notices received by many companies at the start of July. Receipt of this notice means an individual—either an employee or independent contractor—applied for and received a tax subsidy through the ACA Marketplace and indicated they were not offered ACA-compliant healthcare by their putative employer. Companies have 90 days to appeal the notice. With respect to admitted employees, it is important that employers appeal if the employee was offered ACA-compliant coverage because failure to appeal could result in significant ACA penalties. This is particularly important where the subsidy recipient provided services to the company as an independent contractor. The Firm has been contacted by a number of motor carriers that received notices related to subsidies obtained by independent contractors that had applied for health insurance through Federal-Facilitated Marketplace (“FFM”) Exchanges. While these independent contractors are free to obtain coverage through FFM Exchanges, they are not eligible to participate in any motor-carrier-sponsored health plans. It is important for companies using independent contractors to consistently respond that independent contractors are not eligible for company-provided health insurance as, ultimately, the IRS will follow up with companies that receive a notice to determine if ACA penalties are applicable, which may trigger an independent contractor classification examination. Reclassification of independent contractors as employees could result in significant ACA penalties for motor carriers.

For additional information please contact Steve Pletcher (spletcher@scopelitis.com), Greg Feary (gfeary@scopelitis.com), or Katie Feary-Gardner (kfeary-gardner@scopelitis.com) at (317) 637-1777.