The Affordable Care Act (ACA) requires employers to provide employees with a notice regarding the Health Insurance Marketplace.

**Marketplace Overview:** The ACA provides for the creation of Health Insurance Marketplaces in each state. Marketplaces are not insurers but will provide individuals with access to health insurance plans in a comparable way. Any person may enroll in insurance through the Marketplace so long as the person is a lawful resident of the state and is not incarcerated.\(^1\) The Marketplace in Texas is run by the federal government.\(^2\) Texas residents may enroll in insurance through the federal government’s website, www.healthcare.gov.\(^3\)

Any district employee may opt to obtain insurance through the Marketplace even if the district offers insurance to the employee. The employee may not be eligible for a premium tax credit, however. (See *The Individual Mandate* for more information about premium tax credits.)

Enrollment through the Marketplace for 2014 began October 2013 and ran through March 2014, with the deadline for some extended into April.\(^4\) For 2015 and later years, the open enrollment period for the Marketplace will be October 15 to December 7 of the previous year. For example, to be covered by insurance through the Marketplace for the 2015 calendar year, an individual must enroll between October 15 and December 7, 2014. An individual who experiences a special enrollment event, such as loss of a job, may enroll outside of open enrollment.\(^5\)

**Employer Notice:** The ACA requires employers to provide employees with written notice regarding the Marketplace. The requirement applies to all employers, even those that are not considered *large employers* under the ACA.

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\(^3\) Health Insurance Marketplace in Texas, [www.healthcare.gov/marketplace/individual#state=texas](http://www.healthcare.gov/marketplace/individual#state=texas).


The ACA does not provide a fine or penalty for failing to provide the notice. TASB Legal Services nonetheless recommends that districts provide notices because the notices answer questions about how district health care coverage relates to the Affordable Care Act.\(^6\)

The notice regarding the Marketplace must:\(^7\):

- inform employees of the existence of the Marketplace, including a description of the services provided and the manner in which an employee may contact the Marketplace to request assistance;
- if the employer’s plan does not provide *minimum value*, as defined by the ACA, provide notice that an employee may be eligible for a premium tax credit and a cost sharing reduction if the employee enrolls in health insurance through the Marketplace; and
- provide notice that, if an employee enrolls in insurance through the Marketplace, the employee may lose any premium contribution paid by the employer. The notice must also explain that all or a portion of the contribution paid by an employer may be excludable from income for federal income tax purposes.

These elements are addressed below.

The United States Department of Labor (DOL) has issued a model notice.\(^8\) TASB has also issued a model notice. A district may use either the DOL model notice, the TASB model notice, or a modified notice that addresses the elements described above.\(^9\)

The TASB model includes information regarding TRS-ActiveCare, the individual mandate, exemptions, and penalties. The TASB model notice, in English and Spanish, is available at the TASB School Law eSource. If your district does not participate in ActiveCare and you wish to use the TASB model notice, you should adjust the text of the model notice to reflect the terms and conditions of coverage offered by the district.

**Services provided by the Marketplace and contact information for the Marketplace:** The Centers for Medicare and Medicaid Services describe the Health Insurance Marketplace as a state-based, competitive marketplace where people and small businesses can shop for and buy private health insurance.\(^10\) With one application, consumers can find out if they qualify for health plans in the Marketplace and other programs like Medicaid and the Children’s Health Insurance Program (CHIP), tax credits, and cost-sharing reductions. The Marketplace is not a private insurance company or a government-run health plan.

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\(^6\) *FAQ on Notice of Coverage Options*, [www.dol.gov/ebsa/faqs/faq-noticeofcoverageoptions.html](http://www.dol.gov/ebsa/faqs/faq-noticeofcoverageoptions.html).


The Marketplace in Texas is operated by the federal government. Accordingly, the TASB Model provides the federal government’s website, [www.healthcare.gov](http://www.healthcare.gov), for contact information.\(^{11}\)

**Minimum value, premium tax credits, and cost sharing:** The TASB model states that the plans offered through TRS-ActiveCare provide minimum value.\(^{12}\) If your district does not participate in TRS-ActiveCare, it is likely that your plan provides minimum value because of the requirement, under Texas Education Code section 22.004, that the insurance be comparable to TRS-ActiveCare. You should confirm with your plan administrator or benefits attorney that your plan provides minimum value. If your district does not participate in TRS-ActiveCare, you should adjust the text of the TASB model notice.

The ACA requires an employer to address premium tax credits if its plan does not provide minimum value. Because the plans offered in most Texas school districts provide minimum value, most districts are not required to address this element. TASB Legal Services nonetheless recommends that districts notify employees of the availability of credits: In rare cases, an employee may be eligible for a premium tax credit even if the district’s plan provides minimum value.\(^{13}\)

The TASB model addresses minimum essential coverage. The terms *minimum essential coverage* and *minimum value* sound similar but represent different concepts. In very broad terms, minimum essential coverage refers to the types of health benefits covered under the plan\(^{14}\) and minimum value refers to the percentage of costs paid by the plan.\(^{15}\) Both concepts impact the individual mandate and employer shared responsibility\(^{16}\):

- An individual is subject to a penalty if the individual does not maintain minimum essential coverage on himself/herself and any dependents (See Individual Mandate).
- If an employer does not offer minimum essential coverage to an employee, the employer is treated as not having offered insurance at all and is subject to the penalty for failure to offer insurance.
- If an employer offers minimum essential coverage, but the coverage does not provide minimum value, the employee may be eligible for premium tax credits for insurance obtained through the Marketplace. In addition, the employer is potentially subject to a penalty.

The TASB model states that ActiveCare provides minimum value.

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\(^{11}\) [Health Insurance Marketplace in Texas](http://www.healthcare.gov/marketplace/individual#state=texas).

\(^{12}\) [Affordable Care Act Clarifications](http://www.trs.state.tx.us/global.jsp?page_id=/TRS_activecare/affordable_care_act).


\(^{16}\) 79 Fed. Reg. 8545-6 (Feb. 12, 2014).
**Employer premium contribution and tax exclusions:** Texas districts make mandatory contributions—“maintenance of effort” (MOE)—toward employee premiums for health insurance.\(^{17}\) MOE is required only if an employee enrolls in insurance through the district and the employee is an active, contributing TRS member.\(^{18}\) The TASB model states that the district will not pay the premium contribution if an employee enrolls in insurance through the Marketplace.

Some districts have considered paying the district’s share of MOE directly to employees who wish to comparison shop for insurance through the Marketplace. A district that is considering this option should review the financial and tax implications. MOE is not considered taxable income when paid for insurance provided through the district.\(^{19}\) Similarly, an employee’s share of the premiums for insurance purchased through the district may be paid with pre-tax dollars if the district has a Section 125 plan (cafeteria plan).\(^{20}\) Premiums for health insurance purchased through the Marketplace, on the other hand, are paid with after-tax income. The TASB model states that the benefit of paying the premium with pre-tax income will be lost if the employee purchases insurance through the Marketplace.

If your district does pay its share of MOE to employees who are not enrolled in the district’s plan, adjust the language of the TASB model notice accordingly.

**Timing and delivery of the notice:** A district must provide a notice to all employees, regardless of whether they are full-time or part-time, even if they are not eligible for health insurance through the district. This includes rehired-retirees, substitutes, and temporary employees, but not persons who are accurately classified as independent contractors. Employers were required to provide the notice to current employees by October 2013.\(^{21}\) Every new employee hired on or after October 2013, must be provided the notice within 14 days of the employee’s start date.\(^{22}\) The notice is a one-time requirement: An employer is not required to re-publish the notice to current employees each year.

The notice may be provided by first-class mail.\(^{23}\) TASB Legal Services believes that hand-delivery will also suffice. The district should document the method of delivery and the persons to whom notice was provided. Examples of documentation include a list of employees to whom notice was mailed or a sign-in sheet from a staff meeting at which the notice was distributed.

The notice may be provided electronically if the requirements of the DOL’s electronic disclosure safe harbor are met.\(^{24}\) The electronic disclosure safe harbor may be impractical for most districts. Districts that are considering electronic delivery of the ACA notice should work with their school attorney to ensure compliance with the electronic disclosure safe harbor.

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\(^{17}\) Tex. Ins. Code § 1581.052(a).
\(^{18}\) Tex. Ins. Code §§ 1579.204, .252; 1581.052(a).
\(^{19}\) 26 C.F.R. § 1.106-1.

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Employer plan information: The DOL’s model form includes a space for employer-specific information regarding employer-provided health insurance. The ACA does not require employers to provide this information with the notice. However, employees will need this information if they wish to comparison shop through the Marketplace. Accordingly, districts may find it helpful to prepare basic information about their health insurance plans and provide this information to employees upon request.

Attached to the TASB model notice is a form for providing basic information about the district’s health insurance. Again, this form is not mandatory. If used, the completed form may be distributed with the notice or upon request, or provided to employees in a different manner such as by posting on the district’s website. Employees seeking specific information about enrollment, eligibility, and benefits should be directed to the enrollment guide, in districts that participate in ActiveCare, or an enrollment guide or summary plan description in districts that do not participate in ActiveCare.

For more information on this and other school law topics, visit TASB School Law eSource online at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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