

Part III Administrative, Procedural and Miscellaneous

Eligibility for Minimum Essential Coverage for Purposes of the Premium Tax Credit

Notice 2013-41

PURPOSE

This notice provides guidance on whether or when, for purposes of the premium tax credit under § 36B of the Internal Revenue Code, an individual is eligible for minimum essential coverage under certain government-sponsored health programs or other coverage designated as minimum essential coverage.

BACKGROUND

Beginning in 2014, eligible individuals who purchase coverage under a qualified health plan through an Affordable Insurance Exchange are allowed a premium tax credit under § 36B. Under § 36B and § 1.36B-2 of the Income Tax Regulations, in general, an individual (who may be the taxpayer claiming the premium tax credit or a member of the taxpayer's family) may receive health insurance coverage subsidized by the premium tax credit only for months the individual is enrolled in a qualified health plan through an Exchange and is not eligible for other minimum essential coverage. Section 5000A(f)(1)(A) provides that minimum essential coverage includes coverage under government-sponsored programs such as the Medicare program under part A of title XVIII of the Social Security Act, the Medicaid program under title XIX of the Social Security Act, the Children's Health Insurance Program (CHIP) under title XXI of the

Social Security Act, and the TRICARE program under chapter 55 of title 10 U.S. Code.

Under § 5000A(f)(1)(E), the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, may designate health benefits coverage not specified in § 5000A as minimum essential coverage. In final regulations filed at the Federal Register on June 26, 2013, the Secretary of Health and Human Services (HHS) designated state high risk pools and self-funded health coverage offered to students by universities as minimum essential coverage for a 1-year transitional period in 2014 (for plan or policy years beginning before January 1, 2015). See 45 CFR § 156.602(a) and (e). Starting with plan years beginning on or after January 1, 2015, sponsors of state high risk pools and individual self-funded student health plans may apply to HHS to be recognized as minimum essential coverage through the process outlined in 45 CFR § 156.604. Thus, after 2014, the provisions of this notice relating to state high risk pools and individual self-funded student health plans apply only to the extent specific coverage is recognized as minimum essential coverage.

Section 1.36B-2(c)(2)(i) provides that the Commissioner may define eligibility for specific government-sponsored programs in additional published guidance. This notice provides rules for determining whether or when certain individuals are eligible for minimum essential coverage under the Medicaid, Medicare, CHIP, or TRICARE programs for purposes of the premium tax credit. For convenience, this notice also provides rules for eligibility for minimum essential coverage through self-funded student health plans and state high risk pools.

GUIDANCE

The following rules apply for purposes of determining whether an individual is eligible

for coverage in a qualified health plan subsidized by the premium tax credit under § 36B.

A. Disenrollment from CHIP or Medicaid for Non-payment of Premiums

In some states, an individual who loses CHIP coverage due to a failure to pay premiums may not re-enroll in CHIP for a certain period of time (lockout period). Such an individual is treated as eligible for CHIP and is not eligible for qualified health plan coverage subsidized by the premium tax credit during the lockout period. This treatment is consistent with the treatment that would be accorded to an employee who fails to pay the premiums for employer-sponsored coverage and may not re-enroll in the employer coverage until the open season for the next benefit year.

An individual who is terminated from Medicaid or CHIP for failure to pay premiums is treated as eligible for Medicaid or CHIP during any period for which the individual would be eligible for Medicaid or CHIP except for the failure to pay premiums. See § 1.36B-2(c)(2)(ii), which requires an individual who meets the criteria for coverage under a government-sponsored program to complete the administrative requirements for the coverage.

B. CHIP Waiting Period

An individual who may not enroll in CHIP during a pre-enrollment waiting period is treated as not eligible for CHIP coverage during the waiting period. Accordingly, the individual may be eligible for qualified health plan coverage subsidized by the premium tax credit during this period. This rule is consistent with the rule in § 1.36B-2(c)(2)(i) that, for purposes of the premium tax credit, an individual is not eligible for minimum essential coverage under a government-sponsored program until the first day of the first

full month the individual may receive benefits under the program. The rule also is consistent with the rule in § 1.36B-2(c)(3)(iii)(B) allowing an employee in a waiting period for employer-sponsored coverage to receive qualified health plan coverage subsidized by the premium tax credit during the waiting period.

C. Eligibility Based on Agency Determination

Comments were received in response to proposed regulations under § 36B requesting guidance on when individuals are eligible for a government-sponsored program if eligibility requires a determination of disability or diagnosis of a particular disease. These individuals are unable to determine their eligibility for a program on the basis of readily ascertainable criteria such as turning age 65. Final regulations (77 FR 30377, 30379) advised that the Internal Revenue Service and Treasury Department would publish additional guidance clarifying eligibility for government-sponsored programs as the result of a disease or illness. Accordingly, this notice clarifies that, for purposes of the premium tax credit, an individual is eligible for minimum essential coverage under Medicaid or Medicare in the circumstances described below only upon a favorable determination of eligibility by the responsible agency:

1. Medicaid coverage requiring a finding of disability or blindness.
2. Medicare coverage based solely on a finding of disability or illness.

D. Eligibility Based on Enrollment

An individual is eligible for minimum essential coverage under the following programs for purposes of the premium tax credit only if the individual is enrolled in the coverage. These programs present administrative difficulties in determining who is eligible for coverage. Some of these programs, such as Medicare part A

coverage requiring payment of premiums, receive a lower or no government subsidy, disadvantaging individuals who could enroll in the coverage only at high cost and would be forced to forgo subsidized qualified health plan coverage.

1. Medicare part A coverage requiring payment of premiums. Coverage offered under Medicare for which the individual must pay a premium for Medicare part A coverage under § 1818 of the Social Security Act.

2. State high risk pools. Health coverage offered by a state under a qualified high risk pool as defined in § 2744(c)(2) of the Public Health Service Act, to the extent the program is covered by a designation by HHS as minimum essential coverage.

3. Student health plans. Self-funded health coverage offered by a college or university to its students, to the extent the plan is covered by a designation by HHS as minimum essential coverage.

4. TRICARE programs. Coverage under the following TRICARE programs:

- (a) The Continued Health Care Benefit Program (10 U.S.C. 1078);
- (b) Retired Reserve (10 U.S.C. 1076e);
- (c) Young Adult (10 U.S.C. 1110b); and
- (d) Reserve Select (10 U.S.C. 1076d).

REQUEST FOR COMMENTS

Comments are requested on the guidance provided in this notice. Comments may be submitted in writing on or before August 26, 2013. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2013-41), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, or electronically to Notice.Comments@irs counsel.treas.gov. Please include “Notice 2013-41” in the

subject line of any electronic communications. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2013-41), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. All comments will be available for public inspection and copying.

EFFECTIVE DATE

This notice applies for taxable years ending after December 31, 2013.

DRAFTING INFORMATION

The principal author of this notice is Arvind Ravichandran of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Ravichandran at (202) 622-4920 (not a toll-free call).