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October 31, 2011

CC:PA:LPD:PR (Reg-131491-10)  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20004

Re: Health Insurance Premium Tax Credit Proposed Rule

Submitted Electronically: [www.regulations.gov](http://www.regulations.gov)

Dear Sir/Madam:

America's Health Insurance Plans (AHIP) is writing to provide comments in response to the Notice of Proposed Rulemaking published in the *Federal Register* on August 17, 2011 regarding the health insurance premium tax credit (the "Proposed Rule"). The Proposed Rule implements Section 1401 of the Affordable Care Act (ACA) which provides a premium tax credit to assist eligible individuals with the purchase of health coverage through an insurance Exchange starting in 2014.

We want to thank the Internal Revenue Service (the "Service") for their efforts to establish uniform and simplified procedures for determining the eligibility of taxpayers and their family members to qualify for the tax credit. Our comments below are intended to help streamline this process.

## **I. Coordination with Government Programs**

**Recommendation:** AHIP recommends that the Service work with the Department of Health and Human Services (HHS) and the states to ensure a smooth and timely transition between eligibility for the premium tax credit and eligibility for government programs such as Medicare and Medicaid. In support of this effort, the agencies should consider releasing information on the Federal Poverty Line (FPL) mid-year (e.g., July), rather than in January.

**Rationale:** The Preamble to the Proposed Rule asks "whether rules should provide additional flexibility if operational challenges prevent timely transition from coverage under a qualified health plan to coverage under a government-sponsored program." (76 Fed. Reg. 50934). This question arises because a taxpayer is not eligible for a premium tax credit if they are eligible for a government program such as Medicare or Medicaid. We urge the Service to work with HHS and the states to ensure that coverage is not disrupted and that a taxpayer's eligibility for a

October 31, 2011

Page 2

premium tax credit is not negatively impacted during a transition between coverage through the Exchange and under a government program.

There is a particular concern with respect to how and where the FPL is used for eligibility determinations.<sup>1</sup> The FPL is generally published annually in late January in the *Federal Register* by the HHS Secretary. The Proposed Rule defines FPL as “the most recently published poverty guidelines . . . as of the first day of the regular enrollment period for coverage by a qualified health plan offered through an Exchange for a calendar year.” (26 CFR §1.36B-1(h)). As a result, the FPL for purposes of the premium tax credit is generally the Federal Poverty Line in effect as of the annual open enrollment period for Exchange coverage. However, the FPL for Medicaid eligibility is the Federal Poverty Line in effect as of the month the individual is eligible for coverage.

We support the FPL definition in the Proposed Rule. We are concerned, however, with the potential disruption that may occur because of the timing of the eligibility determination for the tax credit and for Medicaid. Assume that a taxpayer with household modified adjusted gross income (MAGI) greater than 133% of FPL based on the Federal Poverty Line released by HHS in January 2013 qualifies for Exchange coverage and a premium tax credit starting in 2014. If the increase in the FPL released in January 2014 is sufficient to change the taxpayer’s status such that they now qualify for Medicaid (as a result of their Medicaid qualifying income dropping below 133% of FPL), the taxpayer would no longer be eligible for the premium tax credit. As a result, there may be a disruption in their eligibility for a premium tax credit because of a change from coverage through the Exchange to coverage under the government program.

## II. Addressing De Minimis Penalty Amounts

**Recommendation:** AHIP recommends that the Service provide a *de minimis* exception such that taxpayers will not be penalized if changes in household size or income over the taxable year results in a minimal tax liability.

**Rationale:** Under the Proposed Rule, eligibility for premium assistance is generally determined as of the first of the year and an advance credit is paid each month for coverage through the Exchange. At the end of the taxable year, the premium assistance amount is computed based on the taxpayer’s household MAGI for the year. As part of the year-end reconciliation process, “a taxpayer whose advance credit payments for the taxable year exceed the taxpayer’s premium tax credit owes the excess as an additional income tax liability.” (26 CFR §1.36B-4(a)(1)).

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<sup>1</sup> The Proposed Rule uses the term “Federal Poverty Line” while the proposed rules issued by the Department of Health and Human Services with respect to eligibility for Medicaid and for coverage under an Exchange uses the term “Federal Poverty Level.” (*see*: 76 Fed. Reg. 51148 and 76 Fed. Reg. 51202). We suggest that these terms be harmonized across all three proposed rules.

October 31, 2011

Page 3

The payment of additional tax liability may result from adjustments to household size or income over the taxable year. The ACA and the proposed rule places certain limits on the total amount of tax liability based on the taxpayer's household income as a percentage of the FPL.

The Service should consider adopting a *de minimis* rule such that taxpayers will not be penalized if the amount of the excess premium tax credit is less than a certain dollar amount (e.g., \$10). This approach will protect taxpayers from tax liability if changes in household income or family size over the course of the taxable year result in a small amount of tax liability.

### **III. Using Form W-2 Wages to Determine an Employee's Household Income**

**Recommendation:** AHIP recommends that the Service adopt a safe harbor permitting the use of an employee's Form W-2 wages allowing the employer to determine whether employer-sponsored coverage is affordable for purposes of the employer responsibility requirements.

**Rationale:** In general, an individual is not eligible for a premium tax credit if they are eligible for employer-sponsored coverage that is: (a) affordable and (b) meets minimum essential value standards. If the employer-sponsored coverage does not meet either of these standards, and the employee obtains a tax credit for coverage through the Exchange, the employer is subject to a penalty provision.

The affordability of employer-sponsored coverage is based on the employee's cost for self-only coverage as a percentage of their household income. As noted in the preamble to the Proposed Rule, it is unlikely that most employers will be aware of an employee's household income, and therefore unable to determine if the coverage offered by the employer is affordable. The preamble suggests the Service is considering a safe harbor allowing employers to use the employee's Form W-2 wages to determine whether coverage is affordable and Notice 2011-73 requests comments on such a safe harbor. We will provide more detailed comments in response to Notice 2011-73, but want to offer our support for a safe harbor that allows an employer to determine if their coverage for purposes of the coverage mandate is affordable based on use of the employee's W-2 wages.

### **IV. Exclusion for Employer-Sponsored Coverage**

**Recommendation:** AHIP requests that the Service provide clarification on the eligibility of a taxpayer for a premium tax credit if they are eligible for employer-sponsored coverage through a parent.

**Rationale:** As noted above, a taxpayer is not eligible for a premium tax credit if they are eligible for employer-sponsored coverage that is affordable and meets minimum essential value standards. Questions have been raised about the interaction of this exclusion with a provision in

October 31, 2011

Page 4

the ACA requiring health insurers and group health plans to provide coverage for children up to age 26. For example, an individual age 24 with income between 100 and 400 percent of FPL may reside apart from her parents but maintain eligibility under the employer-sponsored group health plan coverage provided to one or both parents. In this case, would the individual be ineligible for a premium tax credit because of the employer-sponsored coverage provided to his or her parents which covers dependents up to age 26?

## **V. Eligibility Requirements for Coverage Obtained Through Different Exchanges**

**Recommendation:** AHIP recommends the Service provide examples on the determination of eligibility for the premium tax credit where a taxpayer and qualified dependents reside in and are eligible for Exchange coverage in different states.

**Rationale:** The Proposed Rule provides an example of how the premium tax credit is determined in situations where the taxpayer and the dependents reside in different rating areas within a single Exchange (i.e., married taxpayers X and Z reside in different rating areas and their child lives with one parent) (26 CFR 1.36B-3(f)(5), Example 8). A similar situation may arise where a taxpayer and qualified dependents reside in and are eligible for Exchange coverage in different states. For example, a divorced taxpayer residing in Kansas may be legally responsible to maintain health coverage for a child residing with his divorced spouse in Missouri. In this situation, the taxpayer may be eligible for a tax credit to assist with the purchase of coverage for himself through the Exchange in Kansas and for his child through the Exchange in Missouri. Examples clarifying how premium tax credit eligibility would be determined in situations involving coverage in different Exchanges would be useful.

## **VI. Payment of Tax Credits for Coverage through Different Qualified Health Plans**

**Recommendation:** AHIP recommends that the Service provide additional guidance and examples clarifying how a premium tax credit for a taxpayer would be split among separate qualified health plans covering members of the taxpayer's household.

**Rationale:** As discussed above, it is possible that a taxpayer may be eligible for a premium tax credit in situations where more than one qualified health plan (QHP) is purchased to provide coverage for a member of the taxpayer's household – for example, coverage provided in different Exchange rating areas or states. A similar situation may arise if the taxpayer's household includes non-related dependents (e.g., a taxpayer claims a domestic partner as a dependent and that partner purchases a separate Exchange QHP).

It would be helpful to provide examples clarifying how the amount of the tax credits are to be split among the separate QHPs covering members of the taxpayer's household.

October 31, 2011

Page 5

## **VII. Determining the Value of Pediatric Dental Coverage**

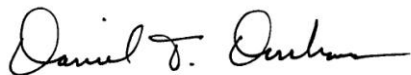
**Recommendation:** AHIP recommends that a safe harbor be provided allowing a stand-alone dental insurance carrier to estimate the portion of a premium for a stand-alone dental plan that is properly allocable to pediatric dental benefits. The safe harbor should permit the carrier to use any reasonable method that is determined on sound actuarial practices.

**Rationale:** The ACA provides that the premium tax credit is available for the portion of the premium for a stand-alone dental plan offered through an Exchange that is properly allocable to pediatric dental benefits that are essential health benefits. The preamble to the Proposed Rule requests comments “on methods of determining the amount of the premium properly allocable to pediatric dental benefits.” (76 Fed. Reg. 50937).

The specific determination of the pediatric dental benefit will be difficult until such time as the HHS Secretary issues a final rule defining the essential benefits package (which under the ACA must include pediatric dental services). The stand-alone dental insurance carrier should be permitted to provide an estimate of the value of the coverage that is allocated to pediatric dental benefits using any reasonable method that is determined on sound actuarial practices. The Service should create a safe harbor methodology for such reasonable method (for example, basing the value on data on the cost of the pediatric dental services from three independent sources).

AHIP appreciates the opportunity to provide comments on the Proposed Rule and we look forward to working with you on this issue.

Sincerely,



Daniel T. Durham  
Executive Vice President  
Policy and Regulatory Affairs