

COMMENTS REGARDING HEALTH INSURANCE PREMIUM TAX CREDIT – RELEASED 8/17/11

(26 CFR Part 1(REG-131491-10))

Section/ FR Page	Description of Rule Provision	Comments
1.36B-1/ 50939	<p><u>Premium tax credit definitions.</u></p> <p>(d) Family and family size. A taxpayer’s family means the individuals for whom a taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year. Family size means the number of individuals in the family. Family and family size include an individual who is exempt from the requirement to maintain minimum essential coverage under section 5000A.</p>	
1.36B-2/ 50940	<p><u>Eligibility for premium tax credit.</u></p> <p>(a) In general. An applicable taxpayer (within the meaning of paragraph (b) of this section) is allowed a premium assistance amount only for any month that the applicable taxpayer, or the applicable taxpayer’s spouse or dependent--</p> <p>(1) Is enrolled in one or more qualified health plans through an Exchange; and</p> <p>(2) Is not eligible for minimum essential coverage (within the meaning of paragraph (c) of this section) other than coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).</p> <p>3(iv) Special rule for continuation coverage. An individual who may enroll in continuation coverage required under federal law or a state law that provides comparable continuation coverage is eligible for minimum essential coverage only if the individual enrolls in the coverage.</p>	<p>Could CMS confirm whether an individual who has disenrolled from COBRA coverage is still considered eligible for the premium tax credit?</p>
1.36B-2/ 50941	<p><u>Employer-Sponsored Minimum Essential Coverage.</u> [§1.36B-2(c)(3)]</p> <p>(3) <i>Employer-sponsored minimum essential coverage—(i) In general.</i> For purposes of section 36B, an employee who may enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) and an individual who may enroll in the plan because of a relationship to the employee (a related individual) are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value. Government-sponsored programs described in section 5000A(f)(1)(A) are not eligible employer-sponsored plans.</p>	<p>It would appear that if an individual is enrolled in Employer Sponsored Minimum Coverage then the standard of affordability and minimum value do not apply and they would not be eligible for a premium tax credit. While presumably the general purpose of exempting all individuals actually enrolled in Employer Sponsored Coverage from these standards is to ensure they do not drop coverage to enroll through the exchange, it seems burdensome for individuals to have to remain in coverage that is unaffordable.</p>
1.36B-2/ 50941	<p><u>Affordable Coverage.</u> [§1.36B-2(c)(3)(v)]</p> <p>(v) <i>Affordable coverage—(A) In general—(1) Affordability.</i> Except as provided in paragraph (c)(3)(v)(A)(2) of this section, an eligible employer-sponsored plan is affordable for an employee or a related</p>	<p>While we understand the rationale for this rule, we encourage consideration of amending the regulation to take into account the affordability of family coverage that would give consumers more access to affordable coverage. There will be instances where self-only coverage would be</p>

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	<p>individual if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise (required contribution), for self-only coverage for the taxable year does not exceed the required contribution percentage (as defined in paragraph (c)(3)(v)(B) of this section) of the applicable taxpayer’s household income for the taxable year.</p>	<p>deemed affordable but family coverage is not. This could create challenges for families in affording coverage for the entire family and leave dependents without coverage.</p>
<p>1.36B-3/ 50943</p>	<p><u>Computing the premium assistance credit amount.</u></p> <p>(a) In general. A taxpayer’s premium assistance credit amount for a taxable year is the sum of the premium assistance amounts determined under paragraph (d) of this section for all coverage months for individuals in the taxpayer’s family.</p> <p>...</p> <p>(f) Applicable benchmark plan--(1) In general. Except as otherwise provided in this paragraph (f), the applicable benchmark plan for a coverage month is the second lowest cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B))) offered at the time a taxpayer or family member enrolls in a qualified health plan through the Exchange in the rating area where the taxpayer resides for--</p> <p>(i) Self-only coverage for a taxpayer--</p> <p>(A) Who computes tax under section 1(c) (unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year;</p> <p>(B) Who purchases only self-only coverage for one individual; or</p> <p>(C) Whose coverage family includes only one individual; and</p> <p>(ii) Family coverage for all other taxpayers.</p> <p>(2) Family coverage. If an Exchange offers categories of family coverage (for example, two adults, one adult with children, two or more adults with children, or children only), the applicable benchmark plan for family coverage is the coverage category that applies to the members of the taxpayer’s coverage family who enroll in a qualified health plan (such as a plan covering two adults if the members of taxpayer’s coverage family are two adults).</p>	<p>In the case of a student dependent living out of state, California for example, that individual could be covered by a QHP in California. Yet, they are a dependent of the parent's household in New York. For the estimated premium amount, the cost of covering that individual in the second lowest silver plan is added to the estimates for the other family members in New York. Is CMS contemplating providing this type of data on out of state costs in a format that is current and easily accessible to states and taxpayers?</p> <p>Exchanges will likely have different tiers of coverage including Two Adults, Parent and Children, and Two Parents and Children. The preamble of the NPRM states that if there are multiple tiers of family coverage the applicable tier for determining the benchmark plan will be the one that most closely resembles the family structure of the individual seeking coverage. If this is intended, the regulation should be revised to clearly state which tier will apply for coverage other than single-only.</p>