

REFORM *Update*

Issue Seventy

July 2013

July 30, 2013

The IRS recently released two notices. The first, Notice 2013-41, discusses eligibility for minimum essential coverage. Individuals eligible for minimum essential coverage are generally not eligible for premium tax credits in the Health Insurance Marketplace. The second, Notice 2013-42, provides transitional relief for anyone eligible to enroll in an employer-sponsored health plan that begins in 2013 and ends in 2014. This *Reform Update* summarizes both notices.

Notice 41

In 2014, certain people may be eligible for premium tax credits in state Health Insurance Marketplaces. In order to be eligible, they must enroll in a Qualified Health Plan (QHP) and have household income between 100 and 400 percent of the Federal Poverty Limit. These premium tax credits are not available for those **eligible** for minimum essential coverage.

Minimum essential coverage for this purpose includes the following:

- ***Affordable employer-sponsored minimum value coverage.*** Employer-sponsored coverage is considered affordable if the cost for single coverage is less than 9.5 percent of the household income. Employer-sponsored coverage offers minimum value if it covers 60 percent of eligible expenses.
- ***Medicare Part A***
- ***Medicaid***
- ***Children's Health Insurance Program (CHIP)***
- ***TRICARE***

The Secretary of Health and Human Services has also designated state high-risk pools and university student health coverage as minimum essential coverage for a one-year transitional period in 2014. For plan years beginning on or after January 1, 2015, sponsors of high-risk pools and student health plans may apply to HHS to be recognized as minimum essential coverage.

This notice provides rules for determining when a person is eligible for minimum essential coverage such as Medicaid, Medicare, CHIP or TRICARE, and thus not eligible for the premium tax credit.

In some states, people can lose Medicaid or CHIP coverage if they do not pay the premium. Some states do not allow re-enrollment for a period of time, called a lockout period. The lockout period is a period of time after a person loses coverage because of non-payment. Individuals in a lockout period are still eligible for Medicaid or CHIP during the lockout. They would still have coverage if they had paid the premium. Time spent in a lockout period is considered time individuals are eligible for minimum essential coverage.

People who may not enroll in CHIP during a pre-enrollment waiting period are treated as **not eligible** for CHIP coverage during the waiting period. They may be eligible for premium tax credits, based on their household income, if they enroll in a QHP during a waiting period.

A person is not considered eligible for minimum essential coverage under a government-sponsored program until the first day of the first month in which that person may receive benefits under the program. In some circumstances, the individual's eligibility may not be immediately known. For example, it takes time to determine whether a disabled person is eligible for Medicaid or Medicare. For the purposes of the premium tax credit, a responsible agency must determine whether a person is eligible in the following circumstances:

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

It is difficult to determine who is eligible for coverage in some programs. Individuals are eligible for minimum essential coverage (and thus not eligible for the premium tax credit) only if **they are enrolled** in the following programs:

- Medicare Part A requiring premium payments (most individuals receive Medicare Part A at no cost)
- State high-risk pools providing HHS designates as minimum essential coverage
- Student health plans providing HHS designates as minimum essential coverage
- TRICARE-specified programs:
 - The Continued Health Care Benefit Program
 - Retired Reserve
 - Young Adult
 - Reserve Select

This guidance will help people determine when they are eligible for subsidized coverage in the state Health Insurance Marketplace. Feedback has been requested from stakeholders.

Notice 42

This notice concerns the penalty for not obtaining minimum essential coverage in 2014. The details of the penalty are discussed in our *Reform Update* at http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_61.pdf.

In some situations, an employee may be eligible for employer-sponsored coverage that operates on a non-calendar-year basis. In these cases, the rules delay the individual penalty for failing to obtain coverage until the first day of the first plan year in 2014. For example, the individual penalty will generally apply as of January 1, 2014. However, if an employee is eligible for coverage under a non-calendar year employer plan, that employee's coverage can begin as of the first day of that plan year

instead. This transitional relief is provided so that people will not be forced to enroll for coverage in 2013 in order to satisfy the coverage requirement as of January 1, 2014.

The Notice offers two examples showing how the delayed penalty applies:

Example 1: Taxpayer B is unmarried and has a five-year-old daughter. B's employer, ABC Company, has a group health plan with an August 1 – July 31 plan year. B is eligible for coverage under the plan, but she and her daughter do not enroll in the plan as of August 1, 2013. The transitional relief will apply in this situation. B will not be assessed a penalty from January 1, 2014 through July 31, 2014. If she and her daughter do not enroll in ABC's plan as of August 1, 2014, then B will be assessed the tax penalty from August 1, 2014, if no other exclusions apply.

Example 2: Married taxpayers C and D are eligible for health coverage through each of their employers. C's employer has a group health plan with an August 1 – July 31 plan year. D's employer has a group health plan with a January 1 – December 31 plan year. C and D do not enroll for coverage in either employer plan for 2013. They also do not enroll for coverage as of January 1, 2014 under D's plan. Transitional relief applies to both C and D. They will not be assessed a penalty from January 1, 2014 through July 31, 2014. If they do not enroll in C's plan as of August 1, 2014, then they will be assessed the tax penalty from August 1, 2014, if no other exclusions apply.

Notice 42 does not mention the special Section 125 mid-year change that is permitted for non-calendar-year plans. This one-time allowance for a mid-year election change, without a qualifying change in status, is optional for employers. However, it appears that if employers do allow a one-time mid-year enrollment, the penalty for an individual without coverage will still be delayed until the employer's first plan year in 2014.

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