



**National
Business
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Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

October 31, 2011

Submitted electronically via: www.regulations.gov

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
CC:PA:LPD:PR (REG-131491-10)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

**Re: REG-131491-10 – Proposed Regulations Relating to the Health Insurance
Premium Tax Credit Enacted by the Patient Protection and Affordable Care
Act**

Dear Commissioner Shulman:

The National Business Group on Health is pleased to respond to the proposed regulations relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act (Affordable Care Act) and Health Care and Education Reconciliation Act of 2010.

The National Business Group on Health represents approximately 330 primarily large employers, including 67 of the Fortune 100, who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families. Our members employ and provide health benefits for employees through a variety of benefit arrangements, including self-insured and insured major medical coverage, health flexible spending accounts, health reimbursement arrangements, on-site health centers, and wellness programs. In addition, our members often operate multiple lines of business and tailor employee benefit arrangements to the specific needs of each line of business.

As our members prepare for implementation of Section 36B and other new provisions of the Internal Revenue Code (Code), a primary concern will be minimizing the administrative and cost burdens associated with these Affordable Care Act requirements. Allowing plan sponsors flexibility to adapt their Affordable Care Act compliance procedures to existing benefit and payroll arrangements will reduce these burdens and

allow plan sponsors to devote more resources toward maintaining and improving health benefits for their employees. Therefore, the National Business Group on Health welcomes the Service's proposals to:

- Clarify that for employees and their dependents who are eligible to enroll in employer-sponsored coverage, the coverage is unaffordable for purposes of Code § 36B if the required contribution for self-only coverage (as opposed to family coverage) exceeds 9.5% of household income;
- Clarify in regulations under Code § 5000A that an employer-sponsored plan will not fail to be minimum essential coverage solely because it is a self-insured plan;
- Provide in regulations under Code § 4980H that an employer will not be subject to a penalty merely because an employee receives a premium tax credit under the employee safe harbor as set forth in Prop. Treas. Reg. § 1.36B-2(c)(3)(v)(A)(2); and
- Provide in regulations under Code § 4980H an affordability safe harbor under which an employer will not be subject to an assessable payment with respect to an employee who receives a premium tax credit or cost-sharing reduction for a taxable year if the employee portion of the self-only premium for that employer's lowest cost plan that provides minimum value does not exceed 9.5% of the employee's current W-2 wages from the employer.

We believe that such regulations will reduce administrative and cost burdens and allow plan sponsors much-needed flexibility in complying with Affordable Care Act requirements, particularly with respect to employees who transition between employer-sponsored health coverage and coverage available through state-based Exchanges.

The National Business Group on Health supports the Service's efforts to develop workable and predictable methods of facilitating affordable employer-sponsored coverage, and we encourage the Services to continue such efforts when developing regulations under Code Sections 36B, 4980H, and other Code provisions affecting employers. **Specifically, the National Business Group on Health supports:**

- (1) **Clarification in final regulations that affordability determinations under Prop. Treas. Reg. § 1.36B-2(c)(3)(v)(A)(1) will be made with reference to the lowest cost self-only coverage for the taxable year;**
- (2) **A streamlined system for determining eligibility for the premium tax credit under Code § 36B; and**
- (3) **Creation of a central database to which employers can submit information required for verification processes related to premium tax credit eligibility,**

application of the affordability safe harbor, and other determinations requiring verification under the Affordable Care Act.

We provide further discussion of these recommendations below.

I. Affordable Coverage Determinations

As noted above, the National Business Group on Health welcomes the proposed regulations’ clarification that affordability of employer-sponsored coverage will be based on the cost of *self-only* coverage for the taxable year. However, the proposed regulations do not specify which self-only option must be used in making this affordability determination. To accommodate the health care needs of their large and varied employee populations, our members provide a wide variety of health plan options at different cost and coverage levels. Unlike health coverage in the individual and small group markets, our members’ health plans often make numerous benefit packages with different premium, coinsurance, deductible, and copayment levels available to employees. Cost-sharing levels and coverage options may vary with employees’ compensation and employees’ participation in wellness programs. Thus, a single group health plan (and a single participant) may include a number of options with different employee premium contribution levels for “self-only” coverage.

Because the affordability determination—and the coverage used to make this determination—will be necessary for both employees and employers to determine eligibility for the premium tax credit, we recommend:

- That final regulations clarify that that affordability, as described in Prop. Treas. Reg. 1.36B-2(c)(3)(v)(A)(1), will be determined based on the annual premium for self-only coverage that is *lowest cost to the employee* for the taxable year and
- That the Service issue guidance as to how employers and employees should determine the self-only coverage that is lowest cost to the employee, taking into account variables such as employee contribution levels based on compensation and premium reductions tied to wellness programs.

This approach would be consistent with the proposed affordability safe harbor under Code § 4980H, which would be based on the self-only premium for an employer’s lowest cost plan that provides minimum value.

II. Streamlined Eligibility Determinations

In the Preamble to proposed regulations implementing eligibility determinations for Exchange participation and insurance affordability programs, the Department of Health and Human Services (HHS) emphasized its intent to create an integrated, streamlined eligibility determination process for Exchange participation, advance payments of the premium tax credit, cost-sharing reductions, and exemptions from the individual

responsibility provision that will avoid redundancy and minimize confusion for applicants. We continue to support such efforts and encourage the Service to maintain this focus as it develops regulations to implement Code Sections 36B, 4980H, and other Code provisions affecting employers. Specifically, we recommend that the Service:

- Limit information submission requirements for employers to information related to employer-sponsored coverage;
- To the extent possible, minimize the number of potential eligibility redeterminations related to Exchange participation, the premium tax credit, and cost-sharing reductions; and
- Allow employers to designate a single location for receipt of notices from federal agencies, employees, and Exchanges in connection with Exchange participation, premium tax credit, and cost-sharing reductions.

We believe that these measures will reduce administrative and cost burdens and further the goal of providing a simple, streamlined eligibility determination process for employees.

III. Central Database for Employer Information Submissions

Finally, in the Preamble to HHS proposed regulations implementing eligibility determinations for Exchange participation and insurance affordability programs, HHS invited comments on the feasibility of a central database that employers could voluntarily populate, which would serve as a potential resource for verifying information related to the premium tax credit, cost-sharing reduction, and employer-sponsored coverage. We support this proposal and encourage the Service, as it develops regulations to implement Code Sections 36B, 4980H, and other Code provisions affecting employers, to allow employers to make information submissions associated with these Code provisions through such a central database. This approach would allow a uniform verification process for employees and simplify multi-state employers' interactions with Exchanges and the agencies implementing the Affordable Care Act. We also recommend allowing employers to make submit information electronically, which would lower administrative costs and allow employers to make information submissions more quickly.

Again, thank you for considering our comments and recommendations on the proposed regulations for the premium tax credit under Code § 36B. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,



Helen Darling

President