

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
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CENTER FOR CONSUMER INFORMATION & INSURANCE OVERSIGHT

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TO: All Issuers Offering Health Insurance Coverage in the Individual and Small Group Markets

FROM: Randy Pate
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SUBJECT: Temporary Policy on 2020 Premium Credits Associated with the COVID-19 Public Health Emergency

Purpose

Due to the urgent need to help facilitate the nation’s response to the public health emergency posed by coronavirus disease 2019 (COVID-19),¹ the Centers for Medicare & Medicaid Services (CMS) is exercising discretion to adopt a temporary policy of relaxed enforcement in connection with the below identified standards under the conditions outlined in this bulletin. CMS is providing this additional flexibility to allow health insurance issuers in the individual and small group markets to temporarily offer premium credits for 2020 coverage to support continuity of coverage for individuals, families and small employers who may struggle to pay premiums because of illness or loss of incomes or revenue resulting from the COVID-19 public health emergency.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

¹ On January 31, 2020, HHS Secretary Alex M. Azar II declared that as of January 27, 2020, a public health emergency exists nationwide as the result of the 2019 novel coronavirus. *See* Determination of the HHS Secretary that a Public Health Emergency Exists, <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>. On April 21, 2020, the HHS Secretary renewed the COVID-19 public health emergency declaration, effective April 26, 2020. *See* <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>. On March 13, 2020, the President declared that the outbreak of COVID-19 in the United States constitutes a national emergency beginning March 1, 2020. *See* Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, issued March 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novelcoronavirus-disease-covid-19-outbreak/>.

Temporary 2020 Premium Credits

Issuers generally are not permitted under federal law and regulations to reduce premiums that are otherwise due. However, in light of the urgent need to help individuals and small employers experiencing economic hardship maintain continuous coverage through the COVID-19 public health emergency, CMS will adopt a policy of relaxed enforcement with respect to 45 CFR 147.102, 155.200(f)(4), 155.400(e) and (g), 155.706(b)(6)(1)(A), 156.80(d), 156.210(a), and 156.286(a)(2)–(4) to allow issuers, on a temporary basis, to offer premium credits for 2020 coverage in the manner outlined in this bulletin. CMS encourages states to adopt a similar approach and, under this temporary exercise of enforcement discretion, will also not consider a state to have failed to substantially enforce applicable federal requirements under the Public Health Service Act (PHS Act) or the Patient Protection and Affordable Care Act (PPACA) if the state permits issuers to provide premium credits in the manner outlined in this bulletin. Similarly, in states where CMS is the primary enforcer of the applicable federal requirements, CMS will adopt a policy of relaxed enforcement to temporarily allow issuers to offer premium credits in the manner outlined in this bulletin.

Issuers wishing to provide premium credits for 2020 coverage must, in advance of providing these credits, receive the applicable regulator's permission to provide premium credits as outlined in this bulletin, or CMS's permission in states where CMS is the primary enforcer of the applicable federal requirements.² In addition to approval from the applicable insurance regulator, an issuer seeking to provide premium credits must also receive permission from any applicable Exchange through which they offer qualified health plan (QHP) coverage, as outlined in the information reporting requirements described below.

In their requests to provide these credits, issuers must indicate the fixed percentage by which they intend to provide credits against 2020 premium amounts and the month(s) in 2020 to which the credits would apply. This fixed percentage credit must be offered uniformly in a non-discriminatory manner³ to all members in a market in a state without regard to whether the plan is offered through or outside an Exchange, or whether the member is eligible for advance payments of the premium tax credit (APTC). Any premium credit must begin on the first day of a month and continue for one or more full months, ending no later than the end of the 2020 calendar year. In addition, premium credits can only be applied prospectively to future month(s) of 2020 coverage for which premiums are not yet due. Moreover, these premium credits may not be used to reduce the amount QHP issuers collect from enrollees for coverage of non-Hyde abortion services, if applicable, to less than \$1 per member per month (PMPM) as required under section 1303 of the PPACA. QHP issuers must continue to comply with all applicable requirements pursuant to section 1303 of the PPACA.

² CMS is currently the primary enforcer of the applicable federal requirements in Missouri Oklahoma, Texas, and Wyoming. CMS intends to coordinate with state regulators in these states for premium credit requests submitted to CMS pursuant to this bulletin.

³ See, e.g., 45 CFR 146.121, 147.104(e), 147.110, 156.125, and 156.225.

Reporting Information on 2020 Temporary Premium Credits

Current CMS regulations governing Medical Loss Ratio (MLR) reporting require that issuers that elect to provide these credits report the full premium amounts as earned premium on their 2020 MLR Annual Reporting Forms. Currently, issuers of risk adjustment covered plans that elect to provide these credits would also report the full premium amounts for purposes of 2020 benefit year data submission for the HHS-operated risk adjustment program. In light of the flexibility CMS grants in this bulletin, CMS intends to clarify these MLR and risk adjustment reporting requirements in future rulemaking to ensure that issuers may accurately report premium amounts actually billed for months in 2020 for which issuers provided these credits.

In the interim, to comply with existing reporting requirements, QHP issuers offering these premium credits in states with a Federally-facilitated Exchange (FFE) or State-based Exchange using the Federal platform (SBE-FP) must notify CMS of the parameters of these credits using a template to be provided by CMS. Issuers must submit the templates to notify CMS of all planned temporary premium credits for FFE or SBE-FP QHPs no later than October 1, 2020, regardless of the month(s) to which the credit will be applied.⁴

The Internal Revenue Service (IRS) and the Treasury Department have advised CMS that, under IRS regulations, Exchanges must accurately report enrollee premiums, as reduced by any credits, to enrollees on the annual IRS Form 1095-A, *Health Insurance Marketplace Statement*, and to the IRS. To ensure proper allocation of APTC to the portion of premium that covers essential health benefits, CMS will adjust premium and APTC amounts in its enrollment data. CMS will also report to the IRS the adjusted premium and APTC amounts in the issuer-submitted template for purposes of reconciling APTC with the premium tax credit (PTC).

Display of Premiums and Eligibility for Catastrophic Plans

For issuers' plans in states with an FFE or SBE-FP, due to systems limitations, HealthCare.gov will continue to display within the plan shopping experience the full plan premiums without reference to or application of any premium credits provided by the issuer. Given the temporary nature of the premium relief issuers may provide under this bulletin, HealthCare.gov will identify the Second Lowest Cost Silver Plan premium for new applicants based on full plan

⁴ The majority of the data to be submitted through this template is covered under an existing Paperwork Reduction Act (PRA) package, CMS-10592, approved under OMB control number 0938-1341 (Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers). CMS will seek OMB approval under the PRA for the template and any new data elements not covered by PRA package CMS-10592, i.e., State approval of the credit, fixed percentage, and credit start/end dates. CMS will not solicit or collect responses to the information collection request until approved by OMB.

premiums without the application of any premium credits for the purpose of calculating the maximum APTC amount, and will use full plan premiums without application of any premium credits to determine eligibility for an affordability exemption that would enable an applicant to enroll in a catastrophic plan. CMS will adjust premium amounts and APTC amounts in its enrollment data to reflect premium credits for new enrollees in the same manner described above.

FFE and SBE-FP User Fees

At 45 CFR 156.50(c), we specify that a participating issuer offering a plan through an FFE or SBE-FP must remit a user fee to HHS each month that is equal to the product of the annual user fee rate specified in the annual HHS notice of benefit and payment parameters for FFEs and SBE-FPs for the applicable benefit year and the monthly premium charged by the issuer for each policy where enrollment is through an FFE or SBE-FP. We are clarifying that HHS will calculate the 2020 benefit year user fees based on the monthly billed premium amount, as lowered by the premium credit, for issuers that provide these premium credits to consumers. The 2020 benefit year user fee rates and methodology for calculating user fees will remain unchanged from those previously finalized in the 2020 Payment Notice, published on April 25, 2019 in the Federal Register (84 FR 17454).

Premium Credits on State-based Exchanges (SBEs)

QHP issuers offering premium credits in a state with an SBE that relies on its own eligibility and enrollment system should follow any requirements established by the SBE for reporting planned temporary premium credits. Under Treas. Reg. §1.36B-5(c), Exchanges must report to the IRS and to individuals enrolled in a QHP the monthly premiums for the plan in which the individual enrolled. The IRS and the Treasury Department have advised CMS that Exchanges should report the monthly premium amount that includes application of the premium credit provided by the issuer, which is the lower amount the enrolled individual will use to compute the individual's PTC for the month, to ensure that APTC reported to CMS for payment does not exceed that premium. See Treas. Reg. §1.36B-3(d)(1)(i).

Additional guidance, including the template that issuers in FFE and SBE-FP states wishing to offer these credits must complete and instructions for issuers in states that do not directly enforce the applicable federal requirements, will be provided soon. Issuers should reach out to CMS at fmcc@cms.hhs.gov for additional information or questions. Please put "Temporary 2020 Premium Credits" in the subject line to ensure proper and timely delivery of the request.