

Guidance regarding the premium tax credit and Medicaid coverage of COVID-19 testing and diagnostic services

Notice 2020-66

SECTION 1. PURPOSE

This notice provides interim guidance addressing whether certain Medicaid coverage of Coronavirus Disease 2019 (COVID-19) testing and diagnostic services is minimum essential coverage for purposes of the premium tax credit under section 36B of the Internal Revenue Code (Code). This notice also announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend § 1.5000A-2 of the Income Tax Regulations to add Medicaid coverage of COVID-19 testing and diagnostic services to the list of health care coverage that is not minimum essential coverage under a government-sponsored program.

SECTION 2. BACKGROUND

Section 6004(a)(3) of the Families First Coronavirus Response Act (Families First Act), Pub. L. No. 116-127, 134 Stat. 178 (March 18, 2020), authorizes states to provide COVID-19 testing and diagnostic services to uninsured individuals under the Medicaid program in Title XIX of the Social Security Act.

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation

Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, PPACA), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the PPACA may claim a premium tax credit under section 36B. Section 36B and § 1.36B-3(a) of the Income Tax Regulations provide that a taxpayer is allowed a premium tax credit only for months that are coverage months for individuals in the taxpayer's family, as defined in § 1.36B-1(d). Under § 1.36B-3(c)(1)(ii), a coverage month for an individual includes only those months the individual is not eligible for minimum essential coverage, except coverage in the individual market.

Minimum essential coverage is defined in section 5000A(f) of the Code and generally includes coverage under government-sponsored programs, including Medicaid coverage under title XIX of the Social Security Act. However, the Treasury Department and the IRS have determined that certain health care coverage providing limited benefits is not minimum essential coverage under a government-sponsored program. See § 1.5000A-2(b)(2).

SECTION 3. INTERIM GUIDANCE

The Treasury Department and the IRS have determined that Medicaid coverage limited to COVID-19 testing and diagnostic services under section 6004(a)(3) of the Families First Act is not minimum essential coverage under a government-sponsored program. Thus, an individual's eligibility for this coverage for one or more months does not prevent those months from qualifying as coverage months for purposes of determining eligibility for the premium tax credit under section 36B.

SECTION 4. EFFECTIVE/APPLICABILITY DATE

This notice applies to taxable years beginning in or after 2020. Until further guidance is issued, taxpayers may rely on the interim guidance described in this notice.

Pursuant to Section IV. of the Policy Statement on the Tax Regulatory Process issued by the Treasury Department and the IRS on March 5, 2019, if no proposed regulations or other guidance is released within 18 months after **[INSERT DATE THAT NOTICE IS PUBLISHED IN THE INTERNAL REVENUE BULLETIN]**, taxpayers may continue to rely on the interim guidance described in this notice but, until additional guidance is issued, the Treasury Department and the IRS will not assert a position adverse to any taxpayer, including an applicable large employer under section 4980H, based in whole or in part on this notice.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Steve Toomey of the Office of Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Steve Toomey at 202-317-4718 (not a toll-free number).