

Exhibit 23

**TECHNICAL EXPLANATION OF THE REVENUE PROVISIONS
OF THE “RECONCILIATION ACT OF 2010,”
AS AMENDED, IN COMBINATION WITH THE
“PATIENT PROTECTION AND AFFORDABLE CARE ACT”**

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of the
JOINT COMMITTEE ON TAXATION



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**C. Refundable Tax Credit Providing Premium Assistance
for Coverage Under a Qualified Health Plan
(secs. 1401, 1411, and 1412²⁰ of the Senate amendment and new sec. 36B of the Code)**

Present Law

Currently there is no tax credit that is generally available to low or middle income individuals or families for the purchase of health insurance. Some individuals may be eligible for health coverage through State Medicaid programs which consider income, assets, and family circumstances. However, these Medicaid programs are not in the Code.

Health coverage tax credit

Certain individuals are eligible for the health coverage tax credit (“HCTC”). The HCTC is a refundable tax credit equal to 80 percent of the cost of qualified health coverage paid by an eligible individual. In general, eligible individuals are individuals who receive a trade adjustment allowance (and individuals who would be eligible to receive such an allowance but for the fact that they have not exhausted their regular unemployment benefits), individuals eligible for the alternative trade adjustment assistance program, and individuals over age 55 who receive pension benefits from the Pension Benefit Guaranty Corporation. The HCTC is available for “qualified health insurance,” which includes certain employer-based insurance, certain State-based insurance, and in some cases, insurance purchased in the individual market.

The credit is available on an advance basis through a program established and administered by the Treasury Department. The credit generally is delivered as follows: the eligible individual sends his or her portion of the premium to the Treasury, and the Treasury then pays the full premium (the individual’s portion and the amount of the refundable tax credit) to the insurer. Alternatively, an eligible individual is also permitted to pay the entire premium during the year and claim the credit on his or her income tax return.

Individuals entitled to Medicare and certain other governmental health programs, covered under certain employer-subsidized health plans, or with certain other specified health coverage are not eligible for the credit.

COBRA continuation coverage premium reduction

The Consolidated Omnibus Reconciliation Act of 1985 (“COBRA”)²¹ requires that a group health plan must offer continuation coverage to qualified beneficiaries in the case of a qualifying event (such as a loss of employment). A plan may require payment of a premium for any period of continuation coverage. The amount of such premium generally may not exceed 102 percent of the “applicable premium” for such period and the premium must be payable, at the election of the payor, in monthly installments.

²⁰ Sections 1401, 1411 and 1412 of the Senate amendment, as amended by sections 10104, 10105, 10107, are further amended by section 1001 of the Reconciliation bill.

²¹ Pub. L. No. 99-272.

Section 3001 of the American Recovery and Reinvestment Act of 2009,²² as amended by the Department of Defense Appropriations Act, 2010,²³ and the Temporary Extension Act of 2010²⁴ provides that, for a period not exceeding 15 months, an assistance eligible individual is treated as having paid any premium required for COBRA continuation coverage under a group health plan if the individual pays 35 percent of the premium. Thus, if the assistance eligible individual pays 35 percent of the premium, the group health plan must treat the individual as having paid the full premium required for COBRA continuation coverage, and the individual is entitled to a subsidy for 65 percent of the premium. An assistance eligible individual generally is any qualified beneficiary who elects COBRA continuation coverage and the qualifying event with respect to the covered employee for that qualified beneficiary is a loss of group health plan coverage on account of an involuntary termination of the covered employee's employment (for other than gross misconduct).²⁵ In addition, the qualifying event must occur during the period beginning September 1, 2008, and ending March 31, 2010.

The COBRA continuation coverage subsidy also applies to temporary continuation coverage elected under the Federal Employees Health Benefits Program and to continuation health coverage under State programs that provide coverage comparable to continuation coverage. The subsidy is generally delivered by requiring employers to pay the subsidized portion of the premium for assistance eligible individuals. The employer then treats the payment of the subsidized portion as a payment of employment taxes and offsets its employment tax liability by the amount of the subsidy. To the extent that the aggregate amount of the subsidy for all assistance eligible individuals for which the employer is entitled to a credit for a quarter exceeds the employer's employment tax liability for the quarter, the employer can request a tax refund or can claim the credit against future employment tax liability.

There is an income limit on the entitlement to the COBRA continuation coverage subsidy. Taxpayers with modified adjusted gross income exceeding \$145,000 (or \$290,000 for joint filers), must repay any subsidy received by them, their spouse, or their dependant, during the taxable year. For taxpayers with modified adjusted gross incomes between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the subsidy that must be repaid is reduced proportionately. The subsidy is also conditioned on the individual not being eligible for certain other health coverage. To the extent that an eligible individual receives a subsidy during a taxable year to which the individual was not entitled due to income or being eligible for other health coverage, the subsidy overpayment is repaid on the individual's income

²² Pub. L. No. 111-5.

²³ Pub. L. No. 111-118.

²⁴ Pub. L. No. 111-144.

²⁵ TEA expanded eligibility for the COBRA subsidy to include individuals who experience a loss of coverage on account of a reduction in hours of employment followed by the involuntary termination of employment of the covered employee. For an individual entitled to COBRA because of a reduction in hours and who is then subsequently involuntarily terminated from employment, the termination is considered a qualifying event for purposes of the COBRA subsidy, as long as the termination occurs during the period beginning on the date following TEA's date of enactment and ending on March 31, 2010.

tax return as additional tax. However, in contrast to the HCTC, the subsidy for COBRA continuation coverage may only be claimed through the employer and cannot be claimed at the end of the year on an individual tax return.

Explanation of Provision

Premium assistance credit

The provision creates a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an exchange.²⁶ The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an exchange.

Under the provision, an eligible individual enrolls in a plan offered through an exchange and reports his or her income to the exchange. Based on the information provided to the exchange, the individual receives a premium assistance credit based on income and the Treasury pays the premium assistance credit amount directly to the insurance plan in which the individual is enrolled. The individual then pays to the plan in which he or she is enrolled the dollar difference between the premium tax credit amount and the total premium charged for the plan.²⁷ Individuals who fail to pay all or part of the remaining premium amount are given a mandatory three-month grace period prior to an involuntary termination of their participation in the plan. For employed individuals who purchase health insurance through a State exchange, the premium payments are made through payroll deductions. Initial eligibility for the premium assistance credit is based on the individual’s income for the tax year ending two years prior to the enrollment period. Individuals (or couples) who experience a change in marital status or other household circumstance, experience a decrease in income of more than 20 percent, or receive unemployment insurance, may update eligibility information or request a redetermination of their tax credit eligibility.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the Federal poverty level (“FPL”) for the family size involved who do not received health insurance through an employer or a spouse’s employer.²⁸ Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer’s family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as

²⁶ Individuals enrolled in multi-state plans, pursuant to section 1334 of the Senate amendment, are also eligible for the credit.

²⁷ Although the credit is generally payable in advance directly to the insurer, individuals may elect to purchase health insurance out-of-pocket and apply to the IRS for the credit at the end of the taxable year. The amount of the reduction in premium is required to be included with each bill sent to the individual.

²⁸ Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of FPL.

adjusted gross income increased by: (1) the amount (if any) normally excluded by section 911 (the exclusion from gross income for citizens or residents living abroad), plus (2) any tax-exempt interest received or accrued during the tax year. To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of section 7703) must file a joint return. Individuals who are listed as dependants on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding scale basis for individuals and families with household incomes between 100 and 400 percent of FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount is determined by the Secretary of HHS based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of FPL for the family size involved to 9.5 percent of income for those at 400 percent of FPL for the family size involved. Beginning in 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year (in order to hold steady the share of premiums that enrollees at a given poverty level pay over time). Beginning in 2018, if the aggregate amount of premium assistance credits and cost-sharing reductions²⁹ exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating household size, individuals who are in the country illegally are not included. Individuals who are listed as dependants on a return are ineligible for the premium assistance credit.

Premium assistance credits, or any amounts that are attributable to them, cannot be used to pay for abortions for which federal funding is prohibited. Premium assistance credits are not available for months in which an individual has a free choice voucher (as defined in section 10108 of the Senate amendment).

The low income premium credit phase-out

The premium assistance credit increases, on a sliding scale in a linear manner, as shown in the table below.

²⁹ As described in section 1402 of the Senate amendment.

Household Income (expressed as a percent of poverty line)	Initial Premium (percentage)	Final Premium (percentage)
100% through 133%	2.0	3.0
133% through 150%	3.0	4.0
150% through 200%	4.0	6.3
200% through 250%	6.3	8.05
250% through 300%	8.05	9.5
300% through 400%	9.5	9.5

The premium assistance credit amount is tied to the cost of the second lowest-cost silver plan (adjusted for age) which: (1) is in the rating area where the individual resides, (2) is offered through an exchange in the area in which the individual resides, and (3) provides self-only coverage in the case of an individual who purchases self-only coverage, or family coverage in the case of any other individual. If the plan in which the individual enrolls offers benefits in addition to essential health benefits,³⁰ even if the State in which the individual resides requires such additional benefits, the portion of the premium that is allocable to those additional benefits is disregarded in determining the premium assistance credit amount.³¹ Premium assistance credits may be used for any plan purchased through an exchange, including bronze, silver, gold and platinum level plans and, for those eligible,³² catastrophic plans.

³⁰ As defined in section 1302(b) of the Senate amendment.

³¹ A similar rule applies to additional benefits that are offered in multi-State plans, under section 1334 of the Senate amendment.

³² Those eligible to purchase catastrophic plans either must have not reached the age of 30 before the beginning of the plan year, or have certification or an affordability or hardship exemption from the individual responsibility payment, as described in new sections 5000A(e)(1) and 5000A(e)(5), respectively.

Minimum essential coverage and employer offer of health insurance coverage

Generally, if an employee is offered minimum essential coverage³³ in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium tax credit for health insurance purchased through a State exchange.

If an employee is offered unaffordable coverage by his or her employer or the plan's share of provided benefits is less than 60 percent, the employee can be eligible for the premium tax credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a tax credit through an exchange. Unaffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on the type of coverage applicable (e.g., individual or family coverage).³⁴ The percentage of income that is considered unaffordable is indexed in the same manner as the percentage of income is indexed for purposes of determining eligibility for the credit (as discussed above). The Secretary of the Treasury is informed of the name and employer identification number of every employer that has one or more employees receiving a premium tax credit.

No later than five years after the date of the enactment of the provision the Comptroller General must conduct a study of whether the percentage of household income used for purposes of determining whether coverage is affordable is the appropriate level, and whether such level can be lowered without significantly increasing the costs to the Federal Government and reducing employer-provided health coverage. The Secretary reports the results of such study to the appropriate committees of Congress, including any recommendations for legislative changes.

Procedures for determining eligibility

For purposes of the premium assistance credit, exchange participants must provide information from their tax return from two years prior during the open enrollment period for coverage during the next calendar year. For example, if an individual applies for a premium assistance credit for 2014, the individual must provide a tax return from 2012 during the 2103 open enrollment period. The Internal Revenue Service ("IRS") is authorized to disclose to HHS limited tax return information to verify a taxpayer's income based on the most recent return information available to establish eligibility for the premium tax credit. Existing privacy and safeguard requirements apply. Individuals who do not qualify for the premium tax credit on the basis of their prior year income may apply for the premium tax credit based on specified changes in circumstances. For individuals and families who did not file a tax return in the prior tax year, the Secretary of HHS will establish alternative income documentation that may be provided to determine income eligibility for the premium tax credit.

The Secretary of HHS must establish a program for determining whether or not individuals are eligible to: (1) enroll in an exchange-offered health plan; (2) claim a premium

³³ As defined in section 5000A(f) of the Senate amendment.

³⁴ The 9.5 percent amount is indexed for calendar years beginning after 2014.

assistance credit; and (3) establish that their coverage under an employer-sponsored plan is unaffordable. The program must provide for the following: (1) the details of an individual's application process; (2) the details of how public entities are to make determinations of individuals' eligibility; (3) procedures for deeming individuals to be eligible; and, (4) procedures for allowing individuals with limited English proficiency to have proper access to exchanges.

In applying for enrollment in an exchange-offered health plan, an individual applicant is required to provide individually identifiable information, including name, address, date of birth, and citizenship or immigration status. In the case of an individual claiming a premium assistance credit, the individual is required to submit to the exchange income and family size information and information regarding changes in marital or family status or income. Personal information provided to the exchange is submitted to the Secretary of HHS. In turn, the Secretary of HHS submits the applicable information to the Social Security Commissioner, Homeland Security Secretary, and Treasury Secretary for verification purposes. The Secretary of HHS is notified of the results following verification, and notifies the exchange of such results. The provision specifies actions to be undertaken if inconsistencies are found. The Secretary of HHS, in consultation with the Social Security Commissioner, the Secretary of Homeland Security, and the Treasury Secretary must establish procedures for appealing determinations resulting from the verification process, and redetermining eligibility on a periodic basis.

An employer must be notified if one of its employees is determined to be eligible for a premium assistance credit because the employer does not provide minimal essential coverage through an employer-sponsored plan, or the employer does offer such coverage but it is not affordable. The notice must include information about the employer's potential liability for payments under section 4980H and that terminating or discriminating against an employee because he or she received a credit or subsidy is in violation of the Fair Labor Standards Act.³⁵ An employer is generally not entitled to information about its employees who qualify for the premium assistance credit. Employers may, however, be notified of the name of the employee and whether his or her income is above or below the threshold used to measure the affordability of the employer's health insurance coverage.

Personal information submitted for verification may be used only to the extent necessary for verification purposes and may not be disclosed to anyone not identified in this provision. Any person, who submits false information due to negligence or disregard of any rule, and without reasonable cause, is subject to a civil penalty of not more than \$25,000. Any person who intentionally provides false information will be fined not more than \$250,000. Any person who knowingly and willfully uses or discloses confidential applicant information will be fined not more than \$25,000. Any fines imposed by this provision may not be collected through a lien or levy against property, and the section does not impose any criminal liability.

The provision requires the Secretary of HHS, in consultation with the Secretaries of the Treasury and Labor, to conduct a study to ensure that the procedures necessary to administer the determination of individuals' eligibility to participate in an exchange, to receive premium

³⁵ Pub. L. No. 75-718.

assistance credits, and to obtain an individual responsibility exemption, adequately protect employees' rights of privacy and employers' rights to due process. The results of the study must be reported by January 1, 2013, to the appropriate committees of Congress.

Reconciliation

If the premium assistance received through an advance payment exceeds the amount of credit to which the taxpayer is entitled, the excess advance payment is treated as an increase in tax. For persons whose household income is below 400% of the FPL, the amount of the increase in tax is limited to \$400. If the premium assistance received through an advance payment is less than the amount of the credit to which the taxpayer is entitled, the shortfall is treated as a reduction in tax.

The eligibility for and amount of premium assistance is determined in advance of the coverage year, on the basis of household income and family size from two years prior, and the monthly premiums for qualified health plans in the individual market in which the taxpayer, spouse and any dependent enroll in an exchange. Any advance premium assistance is paid during the year for which coverage is provided by the exchange. In the subsequent year, the amount of advance premium assistance is required to be reconciled with the allowable refundable credit for the year of coverage. Generally, this would be accomplished on the tax return filed for the year of coverage, based on that year's actual household income, family size, and premiums. Any adjustment to tax resulting from the difference between the advance premium assistance and the allowable refundable tax credit would be assessed as additional tax or a reduction in tax on the tax return.

Separately, the provision requires that the exchange, or any person with whom it contracts to administer the insurance program, must report to the Secretary with respect to any taxpayer's participation in the health plan offered by the Exchange. The information to be reported is information necessary to determine whether a person has received excess advance payments, identifying information about the taxpayer (such as name, taxpayer identification number, months of coverage) and any other person covered by that policy; the level of coverage purchased by the taxpayer; the total premium charged for the coverage, as well as the aggregate advance payments credited to that taxpayer; and information provided to the Exchange for the purpose of establishing eligibility for the program, including changes of circumstances of the taxpayer since first purchasing the coverage. Finally, the party submitting the report must provide a copy to the taxpayer whose information is the subject of the report.

Effective Date

The provision is effective for taxable years ending after December 31, 2013.

**D. Reduced Cost-Sharing for Individuals Enrolling in Qualified Health Plans
(secs. 1402, 1411, and 1412 of the Senate amendment³⁶)**

Present Law

Currently there is no tax credit that is generally available to low or middle income individuals or families for the purchase of health insurance. Some individuals may be eligible for health coverage through State Medicaid programs which consider income, assets, and family circumstances. However, these Medicaid programs are not in the Code.

Health coverage tax credit

Certain individuals are eligible for the HCTC. The HCTC is a refundable tax credit equal to 80 percent of the cost of qualified health coverage paid by an eligible individual. In general, eligible individuals are individuals who receive a trade adjustment allowance (and individuals who would be eligible to receive such an allowance but for the fact that they have not exhausted their regular unemployment benefits), individuals eligible for the alternative trade adjustment assistance program, and individuals over age 55 who receive pension benefits from the Pension Benefit Guaranty Corporation. The HCTC is available for “qualified health insurance,” which includes certain employer-based insurance, certain State-based insurance, and in some cases, insurance purchased in the individual market.

The credit is available on an advance basis through a program established and administered by the Treasury Department. The credit generally is delivered as follows: the eligible individual sends his or her portion of the premium to the Treasury, and the Treasury then pays the full premium (the individual’s portion and the amount of the refundable tax credit) to the insurer. Alternatively, an eligible individual is also permitted to pay the entire premium during the year and claim the credit on his or her income tax return.

Individuals entitled to Medicare and certain other governmental health programs, covered under certain employer-subsidized health plans, or with certain other specified health coverage are not eligible for the credit.

COBRA continuation coverage premium reduction

COBRA³⁷ requires that a group health plan must offer continuation coverage to qualified beneficiaries in the case of a qualifying event (such as a loss of employment). A plan may require payment of a premium for any period of continuation coverage. The amount of such premium generally may not exceed 102 percent of the “applicable premium” for such period and the premium must be payable, at the election of the payor, in monthly installments.

³⁶ Sections 1401, 1411 and 1412 of the Senate amendment, as amended by section 10104, is further amended by section 1001 of the Reconciliation bill.

³⁷ Pub. L. No. 99-272.

Section 3001 of the American Recovery and Reinvestment Act of 2009,³⁸ as amended by the Department of Defense Appropriations Act, 2010,³⁹ and the Temporary Extension Act of 2010⁴⁰ provides that, for a period not exceeding 15 months, an assistance eligible individual is treated as having paid any premium required for COBRA continuation coverage under a group health plan if the individual pays 35 percent of the premium. Thus, if the assistance eligible individual pays 35 percent of the premium, the group health plan must treat the individual as having paid the full premium required for COBRA continuation coverage, and the individual is entitled to a subsidy for 65 percent of the premium. An assistance eligible individual generally is any qualified beneficiary who elects COBRA continuation coverage and the qualifying event with respect to the covered employee for that qualified beneficiary is a loss of group health plan coverage on account of an involuntary termination of the covered employee's employment (for other than gross misconduct).⁴¹ In addition, the qualifying event must occur during the period beginning September 1, 2008, and ending March 31, 2010.

The COBRA continuation coverage subsidy also applies to temporary continuation coverage elected under the Federal Employees Health Benefits Program and to continuation health coverage under State programs that provide coverage comparable to continuation coverage. The subsidy is generally delivered by requiring employers to pay the subsidized portion of the premium for assistance eligible individuals. The employer then treats the payment of the subsidized portion as a payment of employment taxes and offsets its employment tax liability by the amount of the subsidy. To the extent that the aggregate amount of the subsidy for all assistance eligible individuals for which the employer is entitled to a credit for a quarter exceeds the employer's employment tax liability for the quarter, the employer can request a tax refund or can claim the credit against future employment tax liability.

There is an income limit on the entitlement to the COBRA continuation coverage subsidy. Taxpayers with modified adjusted gross income exceeding \$145,000 (or \$290,000 for joint filers), must repay any subsidy received by them, their spouse, or their dependant, during the taxable year. For taxpayers with modified adjusted gross incomes between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the subsidy that must be repaid is reduced proportionately. The subsidy is also conditioned on the individual not being eligible for certain other health coverage. To the extent that an eligible individual receives a subsidy during a taxable year to which the individual was not entitled due to income or being eligible for other health coverage, the subsidy overpayment is repaid on the individual's income

³⁸ Pub. L. No. 111-5.

³⁹ Pub. L. No. 111-118.

⁴⁰ Pub. L. No. 111-144.

⁴¹ TEA expanded eligibility for the COBRA subsidy to include individuals who experience a loss of coverage on account of a reduction in hours of employment followed by the involuntary termination of employment of the covered employee. For an individual entitled to COBRA because of a reduction in hours and who is then subsequently involuntarily terminated from employment, the termination is considered a qualifying event for purposes of the COBRA subsidy, as long as the termination occurs during the period beginning on the date following TEA's date of enactment and ending on March 31, 2010.

tax return as additional tax. However, in contrast to the HCTC, the subsidy for COBRA continuation coverage may only be claimed through the employer and cannot be claimed at the end of the year on an individual tax return.

Explanation of Provision

Cost-sharing subsidy

A cost-sharing subsidy is provided to reduce annual out-of-pocket cost-sharing for individuals and households between 100 and 400 percent of FPL (for the family size involved). The reductions are made in reference to the dollar cap on annual deductibles for high deductible health plans in section 223(c)(2)(A)(ii) (currently \$5,000 for self-only coverage and \$10,000 for family coverage). For individuals with household income of more than 100 but not more than 200 percent of FPL, the out-of-pocket limit is reduced by two-thirds. For those between 201 and 300 percent of FPL by one-half, and for those between 301 and 400 percent of FPL by one-third.

The cost-sharing subsidy that is provided must buy out any difference in cost-sharing between the qualified health insurance purchased and the actuarial values specified below. For individuals between 100 and 150 percent of FPL (for the family size involved), the subsidy must bring the value of the plan to not more than 94 percent actuarial value. For those between 150 and 200 percent of FPL, the subsidy must bring the value of the plan to not more than 87 percent actuarial value. For those between 201 and 250 percent of FPL, the subsidy must bring the value of the plan to not more than 73 percent actuarial value. For those between 251 and 400 percent of FPL, the subsidy must bring the value of the plan to not more than 70 percent actuarial value. The determination of cost-sharing subsidies will be made based on data from the same taxable year as is used for determining advance credits under section 1412 of the Senate amendment (and not the taxable year used for determining premium assistance credits under section 36B). The amount received by an insurer as a cost-sharing subsidy on behalf of an individual, as well as any out-of-pocket spending by the individual, counts towards the out-of-pocket limit. Individuals enrolled in multi-state plans, pursuant to section 1334 of the Senate amendment, are eligible for the subsidy.

In addition to adjusting actuarial values, plans must further reduce cost-sharing for low-income individuals as specified below. For individuals between 100 and 150 percent of FPL (for the family size involved) the plan's share of the total allowed cost of benefits provided under the plan must be 94 percent. For those between 151 and 200 percent of FPL, the plan's share must be 87 percent, and for those between 201 and 250 percent of FPL the plan's share must be 73 percent.

The cost-sharing subsidy is available only for those months in which an individual receives an affordability credit under new section 36B.⁴²

As with the premium assistance credit, if the plan in which the individual enrolls offers benefits in addition to essential health benefits,⁴³ even if the State in which the individual resides

⁴² Section 1401 of the Senate amendment.

requires such additional benefits, the reduction in cost-sharing does not apply to the additional benefits. In addition, individuals enrolled in both a qualified health plan and a pediatric dental plan may not receive a cost-sharing subsidy for the pediatric dental benefits that are included in the essential health benefits required to be provided by the qualified health plan. Cost-sharing subsidies, and any amounts that are attributable to them, cannot be used to pay for abortions for which federal funding is prohibited.

The Secretary of HHS must establish a program for determining whether individuals are eligible to claim a cost-sharing credit. The program must provide for the following: (1) the details of an individual's application process; (2) the details of how public entities are to make determinations of individuals' eligibility; (3) procedures for deeming individuals to be eligible; and, (4) procedures for allowing individuals with limited English proficiency proper access to exchanges.

In applying for enrollment, an individual claiming a cost-sharing subsidy is required to submit to the exchange income and family size information and information regarding changes in marital or family status or income. Personal information provided to the exchange is submitted to the Secretary of HHS. In turn, the Secretary of HHS submits the applicable information to the Social Security Commissioner, Homeland Security Secretary, and Treasury Secretary for verification purposes. The Secretary of HHS is notified of the results following verification, and notifies the exchange of such results. The provision specifies actions to be undertaken if inconsistencies are found. The Secretary of HHS, in consultation with the Treasury Secretary, Homeland Security Secretary, and Social Security Commissioner, must establish procedures for appealing determinations resulting from the verification process, and redetermining eligibility on a periodic basis.

The Secretary notifies the plan that the individual is eligible and the plan reduces the cost-sharing by reducing the out-of-pocket limit under the provision. The plan notifies the Secretary of cost-sharing reductions and the Secretary makes periodic and timely payments to the plan equal to the value of the reductions in cost-sharing. The provision authorizes the Secretary to establish a capitated payment system with appropriate risk adjustments.

An employer must be notified if one of its employees is determined to be eligible for a cost-sharing subsidy. The notice must include information about the employer's potential liability for payments under section 4980H and explicit notice that hiring, terminating, or otherwise discriminating against an employee because he or she received a credit or subsidy is in violation of the Fair Labor Standards Act.⁴⁴ An employer is generally not entitled to information about its employees who qualify for the premium assistance credit or the cost-sharing subsidy. Employers may, however, be notified of the name of an employee and whether his or her income is above or below the threshold used to measure the affordability of the employer's health insurance coverage.

⁴³ As defined in section 1302(b) of the Senate amendment.

⁴⁴ Pub. Law No. 75-718.

The Secretary of the Treasury is informed of the name and employer identification number of every employer that has one or more employee receiving a cost-sharing subsidy.

The provision implements special rules for Indians (as defined by the Indian Health Care Improvement Act) and undocumented aliens. The provision prohibits cost-sharing reductions for individuals who are not lawfully present in the United States, and such individuals are not taken into account in determining the family size involved.

The provision defines any term used in this section that is also used by section 36B as having the same meaning as defined by the latter. The provision also denies subsidies to dependents, with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins. Further, the provision does not permit a subsidy for any month that is not treated as a coverage month.

Effective Date

The provision is effective on date of enactment.