



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

October 26, 2021

The Honorable Mike Crapo
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Crapo:

Thank you for your letter regarding the American Rescue Plan Act of 2021 (ARP) and the work of the Department of Health and Human Services (HHS) and the Internal Revenue Service (IRS) to safeguard taxpayer funds and verify applicant eligibility for advance payments of the premium tax credit (APTC). I am responding on behalf of HHS and the IRS.

The ARP builds on and strengthens the Affordable Care Act by increasing the value of premium tax credits that consumers can use to help pay premiums for their Marketplace coverage. Since the implementation of the ARP's expanded APTC in the HealthCare.gov Marketplaces on April 1, 2021, 1.2 million new and returning consumers have health coverage through HealthCare.gov that costs \$10 or less per month, after APTC.¹ In addition, the median deductible for consumers new to the Marketplace since February 15 fell by 83 percent, from \$450 prior to April 1 to \$75 for those consumers selecting a plan from April 1 through May 31.²

In implementing the ARP, HHS has taken care to ensure that consumers applying for coverage through HealthCare.gov are properly determined eligible, consistent with the ARP and the ACA and its implementing regulations. While section 9661 of the ARP temporarily changed the value of APTC available to consumers and expanded eligibility for premium tax credits, the ARP did not change other core elements of the eligibility process. Applicants remain required to provide information to the Marketplace about their household income, family size, and citizenship or immigration status, and this information is verified against trusted data sources like the IRS, Social Security Administration, and the Department of Homeland Security.

Consistent with longstanding eligibility determination rules, applicants are given the opportunity to resolve inconsistencies between their attested information and information available in trusted data sources.³ If, at the end of the inconsistency period the Marketplace is unable to verify an applicant's attested household income (including for applicants who attest to household income above 400 percent of the federal poverty level (FPL) and may now be eligible for APTC for the

¹ <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-launches-summer-sprint-coverage-campaign-final-30-days-special>

² <https://www.hhs.gov/about/news/2021/06/14/four-ten-new-consumers-spend-10-or-less-month-healthcaregov-coverage-following-implementation-american-rescue-plan-tax-credits.html>.

³ See Affordable Care Act Section 1411, 45 CFR 155.305, 45 CFR 155.315 and 45 CFR 155.320.

first time), the Marketplace generally must determine an applicant's eligibility for APTC based on information that is available from trusted data sources.⁴

The ARP did not change the requirements that a consumer who is offered affordable, minimum-value employer-sponsored coverage may not forgo that offer and receive APTC and cost-sharing reductions (CSR). Thus, applicants who are receiving premium-free COBRA coverage, pursuant to section 9501 of the ARP are not eligible to receive APTC and CSR for the months in which they are enrolled in COBRA and receiving the COBRA subsidy. HealthCare.gov has and will continue to verify an applicant's access to employer sponsored coverage by checking information provided by an applicant against available trusted data sources and by accepting the applicant's attestation regarding their access to such coverage.⁵ Finally, the ARP did not change the requirements under section 1303 of the ACA that issuers collect a separate payment for coverage of abortion services for which federal funds are prohibited. This requirement remains effective regardless of the amount of APTC that a consumer may be eligible for.

In addition to implementing the changes made by Section 9661 of the ARP, HHS has been working to implement sections 9663 and 2305, which provide additional financial assistance to consumers who have received or have been approved to receive unemployment compensation for any week beginning during 2021. As your letter notes, this spring HHS promoted the availability of a special enrollment period (SEP) due to the COVID-19 public health emergency and encouraged eligible consumers, including those who are receiving unemployment compensation, to apply and select a plan. HHS also announced that consumers would need to come back to the Marketplace in the summer to update their application to receive additional assistance they may be eligible for pursuant to sections 9663 and 2305 of the ARP.⁶

Implementation of the ARP provisions modifying the financial assistance available to consumers enrolling in Marketplace coverage required updates to the various IT systems that enable HealthCare.gov to accurately determine an applicant's eligibility for insurance affordability programs. As HHS became aware of the potential for statutory changes that would necessitate timely modifications to the eligibility systems, work began to develop the technical specifications that might be needed to implement such provisions. The first set of system updates were delivered by April 1, 2021, enabling consumers applying through HealthCare.gov to access the additional APTC available under section 9661 of the ARP. Beginning on July 1, 2021, consumers who have received or have been approved to receive unemployment compensation during any week beginning in 2021 were able to come back to HealthCare.gov to update their application and attest to such receipt or approval and access additional APTC and CSR, if eligible. When consumers attest to this question, they are also advised that they may be required to submit documentation when they file their federal income tax return to demonstrate that they have received or been approved to receive unemployment compensation for a week during 2021.

HHS and the IRS take program integrity seriously and work collaboratively to share relevant information to efficiently administer APTC and protect taxpayer funds. For example, each

⁴ See 45 CFR 155.315(f)(5).

⁵ 45 CFR 155.320(d).

⁶ <https://www.cms.gov/newsroom/fact-sheets/american-rescue-plan-and-marketplace>.

month the Centers for Medicare & Medicaid Services (CMS) reconciles enrollment data with issuers and then transmits information to Department of the Treasury to enable the Department of the Treasury to make APTC payments to issuers, on behalf of enrollees. Because enrollment data is verified during initial processing of the tax return, IRS does not check enrollment during the APTC recovery process. IRS is not issuing or changing the credit received, only refunding back the excess APTC repayment. To ensure that accurate enrollment data are transmitted, CMS has developed a series of operational analytics and internal controls that enable us to quickly identify and remediate problems in the enrollment data received from issuers. These key controls and processes are detailed in the operational cycle memos that CMS updates every year, and are tested under the Office of Management and Budget's A-123 internal controls review over financial reporting. During this review, key controls surrounding the payment process were tested and determined to be operating effectively. Moreover, an independent certified public accounting firm conducted its review of the payment process and reported no significant issues. Lastly, CMS has undergone an Agreed Upon Procedures review to evaluate the payments and controls under the payment processes. These reports are shared with GAO and the IRS annually. No major findings were noted during Fiscal Years (FY) 2014-2020.

In addition, CMS has taken a number of other steps to reduce the APTC program's susceptibility to potential improper payments including the implementation of the policy-based payment system that calculates issuer payments directly from Marketplace enrollment systems, annual audits of issuers receiving APTC payments, and regular tracking, reporting, and outreach to improve issuer data submission performance and data integrity within the enrollment reconciliation. These actions are part of ongoing efforts to improve and enhance program integrity. As stated in CMS's 2020 Agency Financial Report (AFR) in FY 2017 through 2020, CMS conducted development and piloting activities for the APTC improper payment measurement program. In FY 2021, CMS commenced the improper payment measurement program for the Federally-facilitated Marketplaces, and CMS anticipates reporting an improper payment rate estimate for the Federally-facilitated Marketplaces in the FY 2022 AFR. CMS will continue to update the AFR with the measurement program development status for the State-based Marketplaces. The improper payment measurement programs are structured to meet the requirements and guidance set forth in the Payment Integrity Information Act of 2019 and Appendix C to Office of Management and Budget Circular A-123, *Requirements for Payment Integrity Improvement*.

Thank you for your interest in the implementation of the ARP and HHS and IRS's ongoing efforts to efficiently and effectively administer the APTC program. If you or your staff have further questions or comment, please contact HHS's Office of the Assistant Secretary for Legislation at (202) 690-7627.

Sincerely,



Xavier Becerra

Cc:

Hon. John Barrasso
Hon. Richard Burr
Hon. Bill Cassidy
Hon. John Cornyn
Hon. Steve Daines
Hon. Charles Grassley
Hon. James Lankford
Hon. John Thune
Hon. Pat Toomey
Hon. Todd Young
Hon. Jodey Arrington
Hon. Kevin Brady
Hon. Vern Buchanan
Hon. Drew Ferguson
Hon. Kevin Hern
Hon. Mike Kelly
Hon. Darin LaHood
Hon. Carol Miller
Hon. Devin Nunes
Hon. Tom Reed
Hon. Tom Rice
Hon. David Schweikert
Hon. Adrian Smith
Hon. Jason Smith
Hon. Lloyd Smucker
Hon. Jackie Walorski
Hon. Brad Wenstrup