HBE Eligibility Determinations: Notice of Proposed Rulemaking

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shaping policy for a healthier state

Agenda

- NPRM: Comment Period
- Key Definitions
- Eligibility Standards
- Eligibility Determinations, Redeterminations, and Verification Processes
- Administration of Advance Premium Tax Credit and Cost-Sharing Reductions
- Coordination with Medicaid, CHIP, Basic Health Plan, and High Risk Pool
- Special Rights for American Indians
- Appeal Rights

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Notice of Proposed Rulemaking (NPRM)

- NPRM released August 17, 2011.
  - 76 Federal Register 51202-51237.
- Public comment due no later than October 31, 2011.

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Selected Definitions (45 CFR 155.300(a))

- *Application filer*: the person who submits the application and answers questions, regardless of whether they are seeking coverage.
- *Insurance affordability program*: Includes Medicaid, CHIP, basic health program (BHP), if applicable, coverage in a qualified health plan with advance payments of the premium tax credit or cost sharing reductions. (42 CFR 435.4)
- *Primary taxpayer*: The person who expects to file a tax return (or if married, to file a joint tax return), and is expected to claim a personal exemption for one or more applicants, including him/herself. To be a primary taxpayer, no other person can be able to claim him/her as a tax dependent for that taxable year.

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Eligibility Standards (45 CFR 155.305)

- The HBE must determine a person is eligible for enrollment in a Qualified Health Plan (QHP) through the HBE:
  - 1) Person must be a *citizen or lawfully present* in the US. (Note: unlike Medicaid, there is no requirement that a person lawfully present have resided in the US for at least 5 years).
  - 2) The individual may not be incarcerated (other than incarceration pending disposition of the charges).
  - 3) The person must intend to reside in the state within the HBE service area. (Special rules apply to minors, or people who are institutionalized or who are not capable of indicating intent, or who are family members living outside the service area of the HBE of the primary taxpayer.)

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Eligibility for Medicaid, CHIP or Basic Health Plan (45 CFR 155.305(c)(d)(e))

- The HBE must determine that a person is eligible for Medicaid, CHIP, or the BHP, if applicable, if they meet the eligibility rules for those programs.

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Eligibility for Advance Payment of Tax Credits

- The HBE must determine a primary taxpayer eligible for advance payments of the premium tax credit if the person:
  - Has a household income between 100-400% FPL, not eligible for other governmental or employer minimum essential coverage, is enrolled in a QHP in the HBE, and otherwise meets the eligibility rules. (45 CFR 155.305(f))
  - Non-citizens who are lawfully present, but who have resided in the US for less than five years (and who are not eligible for Medicaid), can qualify for premium subsidies in the HBE if their income is below 100% FPG. (45 CFR 155.305(f)(2))

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Eligibility for Advance Payment of Tax Credits

- The HBE may not determine eligibility if:
  - The primary taxpayer failed to file a tax return in a prior year where the taxpayer received a premium tax credit (45 CFR 155.305(f)(4))
  - The HBE must use the IRS rules specified in 26 CFR 1.36B-3 to calculate the advance payment of the premium tax credit. (45 CFR 155.305(f)(5))
  - The HBE must obtain a Social Security number (SSN) for the primary taxpayer if he/she has a SSN and filed a tax return for the year for which tax data would be utilized to verify household income and family size. (45 CFR 155.305(f)(4))

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Eligibility for Cost-Sharing Reductions (45 CFR 155.305(g))

- The HBE must determine an applicant's eligibility for cost-sharing reductions if he or she:
  - Meets the requirements to enroll in a QHP
  - Meets the requirements for an advance payment of the premium tax credit
  - Has a household income that does not exceed 250% FPL
  - Is enrolled in a silver-level QHP (Note: special rules apply for American Indians)

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Sliding Scale Subsidies

Individual or family income	Out-of-pocket cost sharing* (Amount family pays out-of-pocket)
Greater than 100%, but equal to or less than 150% FPL	6%
Greater than 150%, but equal to or less than 200% FPL	13%
Greater than 200%, but equal to or less than 250% FPL	27%
Everyone with higher incomes	30%

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*Out-of-pocket cost sharing includes deductibles, coinsurance, copays.

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Eligibility Determination Process (45 CFR 155.310)

- HBE must accept applications as set out in 45 CFR 155.405:
  - Single streamlined application for QHP, advance payment of premium tax credit, cost sharing reductions, and Medicaid/CHIP or BPH (if applicable)
  - Accept the application from an applicant, authorized representative, or someone acting responsibly for the applicant
  - Provide tools to allow applicants to file applications online, by telephone, by mail, or in person.

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Eligibility Determination Process (45 CFR 155.310)

- HBE may not require individual who is *not* an applicant to provide information about citizenship or immigration status.
  - SSN can only be required to determine household income and family size if needed to determine other family member's eligibility.
- The HBE must allow applicants to waive an eligibility determination process for *all* insurance affordability programs
  - But individuals may not waive eligibility determinations for Medicaid and CHIP if seeking premium tax credit or cost sharing reductions.

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Eligibility Determination Process (45 CFR 155.310)

- HBE must accept an application and make an eligibility determination for applicants seeking determinations any time during the year.
- HBE must allow individual to accept less than the full amount of the advance premium tax credit to which they are eligible.
- Before providing the advance credit, the primary taxpayer must attest that:
  - He/She will file a tax return that year, and if married, will file jointly.
  - No other taxpayer will be able to claim him or her as a dependent for the tax year.
  - He/She will claim a personal exemption for everyone in the family.

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Eligibility Determination Process (45 CFR 155.310)

- HBE must act in a timely manner once the eligibility determination is made. HBE must:
  - Promptly notify the appropriate state agency if it determines an applicant is eligible for Medicaid or CHIP.
  - Implement eligibility determinations for advance payment of tax credit or cost sharing reduction in a timely manner (45 CFR 155.410(c)(f), .420(b).)
  - Provide timely notice to applicants of the eligibility determination.
  - Notify and employer that an employee has been determined to be eligible for advance payment of the premium tax credit or cost-sharing reductions.

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Verification Process for Eligibility to Enroll in QHP

(45 CFR 155.315)

- The HBE may only require minimum information necessary to determine eligibility. (45 CFR 155.315(g))
- HBE must verify:
  - *Citizenship and lawful permanent status*: If applicant attests to citizenship and has SSN, HBE must submit information to US DHHS who will submit to Social Security Administration (SSA) and/or Department of Homeland Security (DHS) to verify.
    - Additional eligibility requirements for Medicaid/CHIP for noncitizens. (45 CFR 155.320(f))
  - *Residency*: Generally, an applicant can attest to their residency in the HBE's service area.*
  - *Incarceration*: HBE should use electronic data sources, or if unavailable—the person's attestation.

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* If the state Medicaid/CHIP agency verifies residency, then HBE must follow Medicaid/CHIP policies.

Verification for Insurance Affordability Programs (45 CFR 155.320)

- HBE must first verify if the person is eligible for other minimum essential coverage (eg, employer, Medicaid/CHIP/ or other). To do this, the HBE must:
  - Determine if the individual is eligible for minimum essential coverage other than employer, Medicaid, CHIP, BHP (eg, VA benefits) (45 CFR 155.320(b)(1))
  - Determine if the person is eligible for Medicaid, CHIP, BHP (45 CFR 155.320(b)(2)).
  - Determine if the person is enrolled in, or eligible for minimum essential coverage through an employer (45 CFR 155.320(d)(e)).

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Verification for Insurance Affordability Programs (45 CFR 155.320)

- Once the HBE determines the person is not receiving other minimum essential coverage, the HBE must verify:
  - *Household members and family size*: The HBE will accept self-attestation:
    - For the premium tax credit, family defined as tax filing family. (45 CFR 155.320(c)(3)(i)) .
    - Medicaid/CHIP purposes, family composition may be different than tax filing family. (45 CFR 155.320(c)(2)(i); 42 CFR 435.603(f)).

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Verification for Insurance Affordability Programs (45 CFR 155.320)

- HBE verification (cont'd).
  - *Household income.* The HBE must verify income annually (for advance payment of tax credit and cost-sharing purposes), and current (for Medicaid/CHIP purposes). The HBE must obtain information from:
    - Annual income: Tax records through the IRS. (45 CFR 155.320(c)(1)(i)(A))
    - Current income: Data matches with State Wage Information Collection Agency , IRS, SSA, or Employment Security Commission, and information related to eligibility or enrollment in public assistance, SNAP, and other insurance affordability program. (45 CFR 155.320(c)(1)(ii); 42 CFR 435.948(a), 435.952)

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Verification for Insurance Affordability Programs (45 CFR 155.320)

- *Household income (cont'd).* To determine eligibility for the premium tax credit, the HBE must ask applicant to validate income information to determine if income represents an accurate projection of the family's household income for the benefit year. If its not reasonably accurate, the HBE must ask the applicant to attest to projected annual income. (45 CFR 155.320(c)(3)).
  - If the applicant states his/her income is likely to increase, accept the applicants self-attestation.
  - Special rules if the applicant's income has decreased at least 20%, is filing an application for unemployment benefits, or is not required to file a tax return.

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Verification Process: Alternative Verification (45 CFR 155.315(e))

- If the HBE obtains inconsistent information (eg, from applicant self-attestation and other information contained in the record), or the HBE is unable to obtain electronic verification, then the HBE must use an alternative verification process. The HBE must:
  - 1) Must make reasonable effort to identify and address causes of inconsistency. (45 CFR 155.315(e)(1))
  - 2) If unable to resolve inconsistency, the HBE must notify the applicant and give them 90 days to present satisfactory documentary evidence or otherwise resolve the inconsistency. (45 CFR 155.315(e)(2))

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Verification Process: Alternative Verification (45 CFR 155.315(e))

- 3) This time period can be extended if the applicant is making a good faith effort to obtain required documentation. (45 CFR 155.315(e)(3))
- 4) If otherwise eligible, the HBE must enroll the individual in the QHP or provide advance payment of tax credit during the 90 days pending resolution of the inconsistencies, or provision of other verification. (45 CFR 155.315(e)(4))
- 5) At the end of 90 days (or extended period), the HBE must make the eligibility determination based on the available data. **(45 CFR 155.315(e)(5))**

- HBE can seek to use other methods to collect and verify information if approved by US DHHS. (45 CFR 155.315(f))

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Eligibility Redetermination

(45 CFR 155.330)

- HBE must redetermine eligibility if it receives information during the benefit year that could impact eligibility.
  - Enrollees required to report changes that could affect eligibility within 30 days of such change.
  - HBE must periodically check data sources (eg, to check for changes including death, eligibility for Medicare, Medicaid, CHIP, or BHP).
  - Must notify applicant and his/her employer (if applicable) about changes.
  - Changes effective on the first day of the month following the notice.

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Annual Redetermination (45 CFR 155.335)

- The HBE must redetermine eligibility on an annual basis.
  - If the enrollee requests an eligibility determination for an insurance affordability program, the HBE must request updated tax return information and other information about MAGI-based income.
  - The HBE will send a notice with the updated information to the enrollee, along with the enrollee's projected eligibility determination for the upcoming year.
  - The enrollee must report any changes to the information listed in the notice within 30 days. Any new information provided by the employee must be verified.
  - The enrollee will remain in the same QHP, unless s/he selects an alternative plan.

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Advance Payment of Premium Tax Credit (45 CFR 155.340)

- If the HBE determines the applicant is eligible for advance payments of premium tax credit or cost sharing reductions, or eligibility has changed, the HBE must:
  - Send information to the US DHHS so that HHS can begin, end, or change the advance payment of premium tax credits or cost sharing reductions.
  - Send information to the QHP, so that the QHP can modify the individual's premiums or cost-sharing (as applicable).
  - Send information to the employer, if the HBE determines that the employer does not provide affordable minimum essential coverage.
- The HBE must send similar information to US DHHS and the employer if the individual disenrolls from a QHP during the benefit year.

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Coordination with Public Programs (45 CFR 155.345)

- HBE must coordinate with Medicaid and CHIP agency:
  - HBE must conduct a basic screening for an applicant requesting insurance affordability program to determine if person potentially eligible for Medicaid program other than MAGI-income eligibility (eg, based on disability)
    - If potentially eligible, HBE must submit this information promptly to the state Medicaid agency.
    - If the individual is otherwise eligible for advance payment of premium tax credit and cost-sharing subsidy, must provide this to applicant pending Medicaid determination.

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Coordination with Public Programs (45 CFR 155.345)

- If person applies directly to public agency, but determined ineligible based on the applicable MAGI, information must be transmitted directly to the HBE for a determination for the advance premium tax credit and cost sharing subsidy.
  - The HBE may not require any eligibility or verification finding already made by the public agency.
- The HBE and state agency must utilize a secure electronic interface to exchange data.
- The HBE must transition individuals enrolled in the Pre-existing Condition Insurance Plan to the HBE without a lapse in coverage.

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Special Rules for American Indians (45 CFR 155.350)

- American Indians are eligible for cost sharing reductions if their household income does not exceed 300% FPL if the person is enrolled in a QHP in the HBE.
  - The HBE must determine eligibility for a cost-sharing reduction without requiring the applicant to request this determination.
  - Indian is a member of a recognized Indian tribe. (25 USC 450b(d)).
  - An applicant's attestation that s/he is an Indian must be verified.

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Appeal Rights (45 CFR 155.355)

- The HBE must include information about the right to appeal (and appeal instructions) in any notices sent to the applicant.

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Employer Interaction and Participation in SHOP (45 CFR 157.200)

- Only qualified small employers may participate in the SHOP (as defined in 45 CFR 155.710).
  - Qualified small employer must:
    - Meet size requirements (ie, have at least one but not more than 50 (or 100) employees).
    - Offer coverage, at a minimum, to all full-time employees.
    - Have principal business address in SHOP service area or offer coverage through the SHOP serving that employee's primary worksite.
  - A qualified employer may continue to participate in the SHOP even if it ceases to be a small employer.
  - A qualified employer may participate in multiple SHOPs.

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Employer Requirements in SHOP (45 CFR 157.200)

- To participate in the SHOP, the employer must:
  - Make coverage available to employees during open enrollment periods (pursuant to: 45 CFR 155.705)
  - Submit any premium contributions (pursuant to 45 CFR 155.705)
  - Provide employees hired outside the initial or annual enrollment period to seek coverage beginning the first day of employment (45 CFR 155.725)
  - Provide the SHOP with information about changes in employee eligibility status
  - Adhere to the annual employer election period (45 CFR 155.725(c))
  - If the employer doesn't elect new coverage during the open enrollment period, the employer will continue to offer the same plan, at the same coverage level, during the next year.

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Sliding Scale Subsidies

Individual or family income	Maximum premiums (Percent of family income)	Out-of-pocket cost sharing* (Amount family pays out-of-pocket)	Out-of-pocket cost sharing limits (Examples below based on 2012 HSA OOP limits)**
<133% FPL	2% of income	6%	$2,017 (ind)/$4,033 (fam) (1/3rd HSA limit)
133-150% FPL	3-4%	6%	$2,017 / $4,033
150-200% FPL	4-6.3%	13%	$2,017/ $4,033
200-250% FPL	6.3-8.05%	27%	$3,025/ $6,050 (1/2 HSA limit)
250-300% FPL	8.05-9.5%	30%	$3,025/ $6,050
300-400% FPL	9.5%	30%	$4,033/ $8,067 (2/3rds HSA limit)

*Out-of-pocket cost sharing includes deductibles, coinsurance, copays.
**Out of pocket limits do not include premium costs. Annual cost sharing limited to: $6,050 per individual and $12,100 family in 2012 (HSA limits) (Sec. 1302(c), 1401, 1402, as amended by Sec. 1001 of Reconciliation)

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