**FAQs on Unintended Consequences of the Federal Decision on Automatic Payments**

**Are you sure that insurance companies don’t have to accept automatic payments from debit and credit cards?**

Yes.  The preamble to the final rule notes explicitly that “At this time, we will allow issuers to decide whether or not to accept automatic deductions from credit or debit cards.”

**What’s the big deal?**

This policy choice is inconsistent with the goal of ensuring continuous enrollment and minimizing attrition in the ACA’s insurance affordability programs.  By denying consumers the ability to set up an automatic payment, HHS practically ensures that many individuals and families will forget or be unable to make their payment each month – which makes it more likely that they risk having their coverage lapse. Consumers will face tax penalties for being uninsured under the recently-released IRS rules on the individual mandate – and we should be making every effort to help consumers avoid those penalties and maintain coverage.

**Okay, but don’t we need to factor in the cost of recurring payment transactions to insurance companies?**

Yes, absolutely – which is exactly what we noted in our report on May 21, 2013 entitled “Uninsured + Unbanked = Unenrolled”  Specifically, we suggest that HHS exclude such transaction costs from the medical loss ratio calculations for insurers, which would largely address industry concerns.

But let’s not be penny-wise and pound-foolish: there are equally important economics to consider.  The federal government is spending over $200 million on Navigator and community outreach work – and tens of millions in marketing and advertising to induce uninsured individuals to enroll in coverage.  Why are we spending all of this money to get someone signed up – but willing to do so little to help ensure that they remain enrolled month in and month out?

**So a consumer misses a payment.  Can’t they just catch up?**

Yes, they can.  But each consumer must “come current” by paying the full outstanding premium balance for any missed months – and they’ll have to do so within 90 days. Among low-and middle-income households, getting behind in payments with only three months to catch up poses a significant challenge and dramatically increases the likelihood that their coverage will lapse.

**So a consumer drops out of coverage for a few months.  What’s the downside?**

Plenty.  At least under the rules as currently written, it appears that individuals who fail to make a premium payment and enjoy the 30-day grace period may have a large problem at tax time: they may have to repay the government the full advance payments of the tax credit paid to the issuer during the first month of the grace period.\*

Here’s an example: Jonathan is a 49-year-old self-employed graphic designer with a wife and two children.  His modified adjusted gross income is $59,950, or roughly 255% FPL, and his family lacks insurance.  Jonathan’s family is eligible for the advance payment of premium tax credits and enrolls in a silver-tier plan effective January 1st.  The total premium for the plan is about $1,177 per month; Jonathan must pay $409 and the federal government will pay $769 through the ACA tax credit.  Jonathan continues to pay his premium until October, when he forgets to make his insurance payment because he is busy at work and it slips his mind.  Not fully understanding how the three month grace period works, he decides to wait until after the Christmas holidays to true up on his premium. What he doesn’t realize is that by not fully paying back his premium by December 31st, his coverage for November and December is invalid and he has exhausted the three month grace period. When it comes time to reconcile his tax credits in the next tax season, his tax advisor tells him that according to the IRS rules, he can either pay his insurance company the $409 overdue premium, or become liable for the lesser of $769 (the advance payment of the premium tax credit) and $750 (the additional tax limitations at 26 CFR § 1.36B-4(a)(3)(ii)).  (Instead of deducting $409 from any refund due (the amount of premium he failed to pay), the IRS would presumably reduce his refund by $750). Reluctantly, with a tight family budget, Jonathan elects to have $750 come out of his refund because he no longer has the cash on-hand to pay his insurance company the original $409.

So, Jonathan and his family end up inadvertently uninsured for two months and owing nearly double their overdue premium balance back to the IRS. Furthermore it is possible that the insurance company still initiates a collection action against them for the $409 past due premium.  Unless the IRS changes the rules or issues clarifying guidance, the family would appear to owe a pretty hefty repayment of the advance payment of the tax credit, which is 80% more than the premium that they already couldn’t pay.  And they may also owe a penalty of about $120 under the individual mandate rules for the four months that Jonathan and his wife were uninsured.

Yikes!  Should a missed payment really cost that much – and still leave the parents of a family without coverage for two months?  More to the point, shouldn’t we do everything in our power to minimize the chances that consumers may miss payments?

**Why does Jackson Hewitt care?  What’s in it for them?**

Frankly, we don’t have much of a dog in this fight beyond our concern for the unbanked, uninsured customers we serve.  We want to make sure that the federal government protects the interests of the unbanked.  In the interest of full disclosure, Jackson Hewitt does offer customers the option of receiving their tax refunds on prepaid debit cards as a less costly alternative to many storefront checking-cashing entities. Our offering reflects our understanding of the challenges faced by unbanked consumers—and the recommendations here are borne out of that same concern.  Consistent with that representation, both Brian Haile and George Brandes made similar recommendations to federal officials in their previous roles in state government prior to joining Jackson Hewitt earlier this year.

\* For reference, here is the detailed logic behind the assertion above about the repayment obligation of the advance payment: The final premium assistance tax credit rules define a “coverage month” for which an individual may be eligible for tax credits as one in which “…The taxpayer pays the taxpayer’s share of the premium for the individual’s coverage under the plan for the month by the unextended due date for filing the taxpayer’s income tax return for that taxable year, or the full premium for the month is paid by advance credit payments….”  77 Fed. Reg. 30377, 30390 (May 23, 2012) (to be codified at 26 CFR § 1.36B-3(c)(1)(ii)).  *See* IRC § 36B(c)(2) as added by PPACA § 1401(a).  If an individual for whom the Treasury makes an advance payment of a premium tax credit does not fulfill the requirements for having a “coverage month” (e.g., by not paying their premium), then the individual may be liable for the lesser of the advance payment of tax credit paid for this month and the additional tax limitation.  77 Fed. Reg. at 30394 (to be codified at 26 CFR § 1.36B-4(a)(3)(ii)).  *See id*. at 30382 (noting in the preamble that “The final regulations also clarify that a month is not a coverage month for a taxpayer if the taxpayer’s share of premiums is not paid in full by the unextended due date for filing the taxpayer’s income tax return for the taxable year.”); *id*. at 30383 (noting in the preamble that “If the taxpayer has not paid the taxpayer’s share of the premium for that month by the unextended due date for filing the return, the first month is not a coverage month, and the taxpayer is not eligible for the premium tax credit for that month.”); IRC § 36B(f) as amended.  [Note: Jackson Hewitt made the federal government aware of our concerns in this regard in correspondence dated April 18, 2013 and on several occasions thereafter.]

Brian Haile

Senior Vice President for Health Policy

**Jackson Hewitt Tax Service Inc.**

Cell: (615) 761-6929

Email: brian.haile@jtax.com

Twitter: @haile\_brian