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Bob Thompson, Chairman | Margaret A. Murray, Chief Executive Officer

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Room 5203
Internal Revenue Service
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Submitted electronically via: <http://www.regulations.gov>

To Whom It May Concern:

The Association for Community Affiliated Plans (ACAP) very much appreciates this opportunity to provide comments to the Department of Treasury, Internal Revenue Service regarding *Health Insurance Premium Tax Credit*, REG-131491-10; 76 Fed. Reg. 50931 (Aug. 17, 2011), codifying portions of the Patient Protection and Affordable Care Act, enacted on March 23, 2010.¹

ACAP is an association of 59 not-for-profit and community-based Safety Net Health Plans (SNHPs) located in 28 states.² Our member plans provide coverage to 9 million individuals enrolled in Medicaid, Children's Health Insurance Program (CHIP) and Medicare Special Needs Plans for dual eligibles. Nationally, ACAP plans serve approximately one-third of all Medicaid managed care enrollees. Safety Net Health Plans currently are developing plans to serve those individuals that will gain new coverage due to insurance expansions enacted by the Affordable Care Act; such plans must be viewed as full partners in meeting the coverage needs of our nation's low-income health care consumers – whether they are eligible for Medicaid, CHIP, coverage in health state-based health insurance Exchanges, or other health care programs.

ACAP is limiting our comments primarily to issues that are of particular importance to Safety Net Health Plans as they strive to support the implementation of the Affordable Care Act. We also have attached the comments we submitted to the Department of Health and Human Services (HHS) today regarding *Medicaid Eligibility Changes under the Affordable Care Act of 2010*, CMS-2349-P; 76 Fed. Reg. 51148 (Aug. 17, 2011) and *Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers* (CMS-9974-P; 76 Fed. Reg. 51202 (Aug. 17, 2011)). A summary of our comments follows here:

¹ The Patient Protection and Affordable Care Act (P.L. 111-148) and the Healthcare and Education Reconciliation Act (P.L. 111-152) together are referred to in this letter as the Affordable Care Act.

² ACAP represents Safety Net Health Plans that are exempt from federal income tax, or that are owned by an entity or entities exempt from federal income tax, and in which no less than 75 percent of the enrolled population receives benefits under a Federal health care program as defined in section 1128B(f)(1) (42 USC 1320a-7b(f)(1)) or a health care plan or program which is funded, in whole or in part, by a State or locality (other than a program for government employees).



1. ACAP supports the proposed rule that considers an individual not eligible for Medicaid or CHIP if that person is so determined at application.
2. ACAP supports the proposed rule that prevents an individual from losing Exchange coverage and advance premium tax credits until she is actually enrolled in government-sponsored minimum essential coverage.

The proposed Premium Tax Credit rule provides guidance on:

- Eligibility for premium tax credits,
- Premium tax credit computation, and
- Reconciliation of advanced premium tax credits.

ACAP is strongly supportive of the Affordable Care Act and of the new regulations that further the goal of ensuring that all Americans can easily enroll in, pay for, and retain health coverage. We applaud the Department of Treasury on its efforts, and respectfully urge you to consider the following comments that will help to ensure that low-income health care consumers are well-served by the Exchanges and qualified health plans. In particular, we support efforts to ensure that people experience stable, continuous and affordable coverage.

Section 1.36B-2 Eligibility for premium tax credit, (c)(2) Government-sponsored minimum essential coverage

Among other actions, this subpart states that individuals are eligible for government-sponsored minimum essential coverage if they meet the criteria for such programs described in 5000A(f)(1)(A).

ACAP understand that individuals will be determined prospectively eligible for advance premium tax credits based on projected income or income data from a period prior to the actual coverage year. We also understand that eligibility based on actual income during the coverage year will be determined at reconciliation. This retrospective process may cause some individuals to be enrolled during the coverage year in Exchange coverage when they are actually eligible for Medicaid or CHIP, and vice versa. It may also lead to individuals receiving advance premium tax credits when they are eligible for minimum essential coverage.

The proposed rule indicates that an individual is treated as not eligible for Medicaid, CHIP or a similar program for a period of coverage under a qualified health plan if an Exchange determines that the individual is not eligible for the program when the individual enrolls in the qualified health plan.

ACAP supports the proposed rule that considers an individual not eligible for Medicaid or CHIP if that person is so determined at application. Because cost-sharing protections are more stringent for Medicaid enrollees than for Exchange enrollees, it is likely that such individuals would have paid greater sums out of pocket for premiums and cost sharing than they would have otherwise paid had they been enrolled in Medicaid or CHIP. In light of these excess expenditures, this rule humanely prevents such an individual from having to repay advance premium tax credits to the IRS.



The preamble to the proposed rule also states that an individual is considered eligible for Medicaid or CHIP on the first day of the first full month in which the individual may receive benefits from that program. The preamble continues to say that “taxpayers would not lose eligibility for the credit for a month in which the taxpayer or a family member is technically eligible for a government program but cannot yet receive benefits due to, for example, the need for administrative processing.”

ACAP recognizes that many individuals will experience frequent income changes that will cause their eligibility to alter between Medicaid and Exchange with premium tax credits. We further recognize that mid-year redeterminations of eligibility will reduce the chance that low-income individuals will receive coverage in the wrong program or receive incorrect premium tax credits or cost-sharing reductions. However, ACAP harbors concerns regarding the frequency with which lower-income Exchange enrollees can be expected to experience changes in income that will impact their eligibility, and feels strongly that the Exchange should be allowed to employ a variety of policies to coordinate coverage for people with changing eligibility.

ACAP supports the proposed rule that prevents an individual from losing Exchange coverage and advance premium tax credits until she is actually enrolled in government-sponsored minimum essential coverage, and views this as an effort to ensure that low-income individuals do not experience gaps in coverage.

Conclusion

Again, ACAP thanks the Internal Revenue Service for its efforts to develop regulations to further the goal of ensuring that all Americans can easily enroll in, pay for and retain health coverage. We appreciate your consideration of our comments regarding *Health Insurance Premium Tax Credit*. ACAP is prepared to assist the agency with additional information as needed. If you have any additional questions please do not hesitate to contact Jennifer Babcock at (202) 204-7518 or jbabcock@communityplans.net.

Sincerely,

Margaret A. Murray
Chief Executive Officer