

# Calendar No. 184

111TH CONGRESS

## 1ST SESSION **S. 1796**

### **[Report No. 111-89]**

To provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2009

Mr. BAUCUS, from the Committee on Finance reported the following original bill; which was read twice and placed on the calendar.

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### **PART II—PREMIUM CREDITS, COST-SHARING SUBSIDIES, AND SMALL BUSINESS CREDITS**

#### **Subpart A—Premium Credits and Cost-sharing Subsidies**

##### **SEC. 1205. REFUNDABLE CREDIT PROVIDING PREMIUM ASSISTANCE FOR COVERAGE UNDER A QUALIFIED HEALTH BENEFITS PLAN.**

(a) IN GENERAL. —Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by inserting after section 36A the following new section:

##### **SEC. 36B. REFUNDABLE CREDIT FOR COVERAGE UNDER A QUALIFIED HEALTH BENEFITS PLAN.**

(a) IN GENERAL. —In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the premium assistance credit amount of the taxpayer for the taxable year.

(b) PREMIUM ASSISTANCE CREDIT AMOUNT. —For purposes of this section—

(1) IN GENERAL. —The term ‘premium assistance credit amount’ means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year.

(2) PREMIUM ASSISTANCE AMOUNT. —The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the excess (if any) of—

(A) the lesser of—

(i) the monthly premiums for such month for 1 or more qualified health benefits plans offered in the individual market within a State which cover the taxpayer, the taxpayer's spouse, or any dependent (as defined in section 152) of the taxpayer and which were enrolled in through an exchange established by the State under subpart B of title XXII of the Social Security Act, or  
(ii) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over  
(B) an amount equal to 1/12 of the product of the applicable percentage and the taxpayer's household income for the taxable year.

(3) OTHER TERMS AND RULES RELATING TO PREMIUM ASSISTANCE AMOUNTS. —For purposes of paragraph (2)—

(A) APPLICABLE PERCENTAGE. —

(i) IN GENERAL. —The applicable percentage with respect to any taxpayer for any taxable year is equal to 2 percent, increased by the number of percentage points (not greater than 10) which bears the same ratio to 10 percentage points as—

(I) the taxpayer's household income for the taxable year in excess of 100 percent of the poverty line for a family of the size involved, bears to

(II) an amount equal to 200 percent of the poverty line for a family of the size involved.

(ii) INDEXING. —In the case of taxable years beginning in any calendar year after 2013, the Secretary shall adjust the initial and final applicable percentages for the calendar year to reflect the excess of the rate of premium growth between the preceding calendar year and 2012 over the rate of income growth for such period.

(B) APPLICABLE SECOND LOWEST COST SILVER PLAN. —The applicable second lowest cost silver plan with respect to any applicable taxpayer is the second lowest cost silver plan in the individual market which—

(i) is offered through the same exchange through which the qualified health benefits plans taken into account under paragraph (2) (A) (i) were offered, and

(ii) in the case of-

(I) an applicable taxpayer whose tax for the taxable year is determined under section 1(c) (relating to unmarried individuals other than surviving spouses and heads of households), provides self-only coverage, and

(II) any other applicable taxpayer, provides family coverage.

If a taxpayer files a joint return and no credit is allowed under this section with respect to 1 of the spouses by reason of subsection (e), the taxpayer shall be treated as described in clause (ii) (I) unless a deduction is allowed under section 151 for the taxable year with respect to a dependent other than either spouse.

(C) ADJUSTED MONTHLY PREMIUM. -

The adjusted monthly premium for an applicable second lowest cost silver plan is the monthly premium which would have been charged for the plan if each individual covered under a qualified health benefits plan taken into account under paragraph (2) (A) (i) were covered by the plan and the premium was adjusted only for the age of each such individual in the manner allowed under section 2204 of the Social Security Act.

(4) REDUCTION TO ELIMINATE FEDERAL BUDGET DEFICIT. -The premium assistance credit amount (determined without regard to this paragraph) with respect to a month in a plan year for which a reduction is required in such amount under section 1209 of the America's Healthy Future Act of 2009 shall be reduced by the percentage specified in such section.

(c) DEFINITION AND RULES RELATING TO APPLICABLE TAXPAYERS, COVERAGE MONTHS, AND QUALIFIED HEALTH BENEFITS PLAN. -For purposes of this section-

(1) APPLICABLE TAXPAYER. -

(A) IN GENERAL. -The term 'applicable taxpayer' means, with respect to any taxable year, a taxpayer whose household income for the taxable year exceeds 100 percent (133 percent in the case of taxable years beginning in 2013) but does not exceed 400 percent of an amount equal to the poverty line for a family of the size involved.

(B) SPECIAL RULE FOR CERTAIN INDIVIDUALS LAWFULLY PRESENT IN THE UNITED STATES. —In the case of any taxable year beginning after December 31, 2013, if—

(i) a taxpayer has a household income which is not greater than 100 percent of an amount equal to the poverty line for a family of the size involved, and

(ii) the taxpayer is an alien lawfully admitted to the United States for permanent residence, or an alien lawfully present in the United States, but is not eligible for the medicaid program under title XIX of the Social Security Act by reason of such alien status, the taxpayer shall be treated as an applicable taxpayer.

(C) MARRIED COUPLES MUST FILE JOINT RETURN. —If the taxpayer is married within the meaning of section 7703) at the close of the taxable year, the taxpayer shall be treated as an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(D) DENIAL OF CREDIT TO DEPENDENTS. —No credit shall be allowed under this section to any individual 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 such individual's taxable year begins.

(2) COVERAGE MONTH. —For purposes of this subsection—

(A) IN GENERAL. —The term 'coverage month' means, with respect to an applicable taxpayer, any month if—

(i) as of the first day of such month the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer is covered by a qualified health benefits plan described in subsection (b) (2) (A) (i), and

(ii) the premium for coverage under such plan for such month is paid by the taxpayer (or through advance payment of the credit under subsection (a) under section 2248 of the Social Security Act).

(B) EXCEPTION FOR ESSENTIAL HEALTH BENEFITS COVERAGE. —

(i) IN GENERAL. —The term 'coverage month' shall not include any month with respect to an individual if for such month the individual is eligible for essential health benefits coverage

other than eligibility for coverage under a qualified health benefits plan in the individual market offered through an exchange.

(ii) ESSENTIAL HEALTH BENEFITS COVERAGE. —The term ‘essential health benefits coverage’ has the meaning given such term by section 5000A.

(C) SPECIAL RULE FOR EMPLOYER-SPONSORED ESSENTIAL COVERAGE. —For purposes of subparagraph (B) —

(i) COVERAGE MUST BE AFFORDABLE. —Except as provided in clause (iii), an employee shall not be treated as eligible for essential health benefits coverage if such coverage —

(I) consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) or a grandfathered health benefits plan maintained by the employee’s employer, and

(II) the employee’s required contribution (within the meaning of section 5000A(e)(2)) with respect to the plan exceeds 10 percent of the applicable taxpayer’s household income. This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.

(ii) COVERAGE MUST PROVIDE MINIMUM VALUE. —Except as provided in clause (iii), an employee shall not be treated as eligible for essential health benefits coverage if such coverage consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) or a grandfathered health benefits plan maintained by the employee’s employer and the plan’s share of the total allowed costs of benefits provided under the plan is less than 65 percent of such costs.

(iii) EMPLOYEE OR FAMILY MUST NOT BE COVERED UNDER EMPLOYER PLAN. —Clauses (i) and (ii) shall not apply if the employee (or any individual described in the last sentence of clause (i)) is covered under the eligible employer-sponsored plan or the grandfathered health benefits plan.

(iv) INDEXING. —In the case of plan years beginning in any calendar year after 2013, clause (i)(II) shall be applied by substituting for 10 percent a percentage equal to the sum of —

(I) 10 percent, plus

(II) 10 percent multiplied by the premium adjustment percentage (as defined in section 2242(c)(7) of the Social Security Act) for the calendar year.

(D) SPECIAL RULE FOR MEDICAID INDIVIDUALS.—An individual shall not be treated as eligible for essential health benefits coverage if under title XIX of the Social Security Act the individual may elect to enroll in the medicaid program or in a qualified health benefits plan in the individual market through an exchange and elects to enroll in such plan even if under the medicaid program the individual receives coverage for items and services or cost-sharing which is provided under the medicaid program but not under such plan.

(3) DEFINITIONS.—For purposes of this paragraph—

(A) QUALIFIED HEALTH BENEFITS PLAN.—The term ‘qualified health benefits plan’ has the meaning given such term by section 2201(b) of the Social Security Act.

(B) GRANDFATHERED HEALTH BENEFITS PLAN.—The term ‘grandfathered health benefits plan’ has the meaning given such term by section 2221 of the Social Security Act.

(d) TERMS RELATING TO INCOME AND FAMILIES.—

For purposes of this section—

(1) FAMILY SIZE.—The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

(2) HOUSEHOLD INCOME.—

(A) IN GENERAL.—The term ‘household income’ means, with respect to any taxpayer, an amount equal to the sum of—

(i) the modified gross income of the taxpayer, plus

(ii) the aggregate modified gross incomes of all other individuals taken into account in determining the taxpayer’s family size under paragraph (1).

(B) MODIFIED GROSS INCOME.—The term ‘modified gross income’ means gross income—

(i) decreased by the amount of any deduction allowable under paragraphs (1), (3), or (4) of section 62(a),  
(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and  
(iii) determined without regard to sections 911, 931, and 933.

(3) POVERTY LINE. —

(A) IN GENERAL. —The term ‘poverty line’ has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

(B) POVERTY LINE USED. —In the case of any qualified health benefits plan offered through an exchange for coverage during a taxable year beginning in a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of the regular enrollment period for coverage during such calendar year.

(e) RULES FOR UNDOCUMENTED ALIENS. —

(1) IN GENERAL. —If any individual for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year is an undocumented alien—

(A) no credit shall be allowed under subsection (a) with respect to any portion of any premium taken into account under clause (i) or (ii) of subsection (b)(2)(A) which is attributable to the individual, and

(B) the individual shall not be taken into account in determining the family size involved but the individual’s modified gross income shall be taken into account in determining household income.

(2) UNDOCUMENTED ALIEN. —For purposes of this section—

(A) The term ‘undocumented alien’ means an individual who is not, or who is reasonably not expected to be for the entire taxable year, a citizen or national of the United States, an alien lawfully admitted to the United States for permanent residence, or an alien lawfully present in the United States.

(B) IDENTIFICATION REQUIREMENT. —An individual shall be treated as an undocumented alien unless the information required under section

2238(b)(2) of the Social Security Act has been provided with respect to such individual.

(f) RECONCILIATION OF CREDIT AND ADVANCE CREDIT. —

(1) IN GENERAL. —The amount of the credit allowed under this section for any taxable year shall be reduced (but not below zero) by the amount of any advance payment of such credit under section 2248 of the Social Security Act.

(2) EXCESS ADVANCE PAYMENTS. —

(A) IN GENERAL. —If the advance payments to a taxpayer under section 2248 of the Social Security Act for a taxable year exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess.

(B) LIMITATION ON INCREASE WHERE INCOME LESS THAN 300 PERCENT OF POVERTY LINE. —In the case of an applicable taxpayer whose household income is less than 300 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed \$400 (\$250 in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year).

(g) REGULATIONS. —The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations which provide for—

(1) the coordination of the credit allowed under this section with the program for advance payment of the credit under section 2248 of the Social Security Act,

(2) requirements for information required to be included on a return of tax with respect to the modified gross income of individuals other than the taxpayer, and

(3) the application of subsection (f) where the filing status of the taxpayer for a taxable year is different from such status used for determining the advance payment of the credit.' ' .

(b) DISALLOWANCE OF DEDUCTION. —Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

(g) CREDIT FOR HEALTH INSURANCE PREMIUMS. —

No deduction shall be allowed for the portion of the premiums paid by the taxpayer for coverage of 1 or more individuals under a qualified health benefits plan which is equal to the amount of the credit determined for the taxable year under section 36B(a) with respect to such premiums.’ ’ .

(c) TREATMENT OF FAILURE TO PROVIDE DOCUMENTATION AS MATHEMATICAL ERROR. —Section 6213(g) (2) of the Internal Revenue Code of 1986 is amended by striking ‘ ‘and’ ’ at the end of subparagraph (M), by striking the period at the end of subparagraph (N) and inserting ‘ ‘, and’ ’ , and by inserting after subparagraph (N) the following new subparagraph:

(O) the omission of identifying information described in section 2238(b) (1) of the Social Security Act and required under section 36B(e) (2) (B).’ ’ .

(d) STUDY. —Not later than 5 years after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of whether the percentage of household income used for purposes of section 36B(c) (2) (C) of the Internal Revenue Code of 1986 (as added by this section) is the appropriate level for determining whether employer-provided coverage is affordable for an employee and whether such level may be lowered without significantly increasing the costs to the Federal Government and reducing employer-provided coverage. The Secretary shall report the results of such study to the appropriate committees of Congress, including any recommendations for legislative changes.

(e) CONFORMING AMENDMENTS. —

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting ‘36B,’ ’ after ‘ ‘36A,’ ’ .

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 36A the following new item:

“Sec. 36B. Refundable credit for coverage under a qualified health benefits plan.’ ’ .

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.