

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CMS COULD NOT EFFECTIVELY  
ENSURE THAT ADVANCE  
PREMIUM TAX CREDIT  
PAYMENTS MADE UNDER THE  
AFFORDABLE CARE ACT WERE  
ONLY FOR ENROLLEES  
WHO PAID THEIR PREMIUMS**

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December 2015  
A-02-14-02025

# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*CMS could not ensure that advance premium tax credit payments made to insurance companies under the Affordable Care Act were only for enrollees who paid their premiums.*

### WHY WE DID THIS REVIEW

The Patient Protection and Affordable Care Act (ACA) established health insurance marketplaces to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia. A marketplace allows insurance companies (issuers) to offer individuals private health insurance plans, known as qualified health plans (QHPs), and enrolls individuals in those plans. The Centers for Medicare & Medicaid Services (CMS) operates the federally facilitated marketplace (Federal marketplace) and is responsible for reviewing, approving, and generating financial assistance payments made to QHPs (e.g., advance premium tax credits (APTCs)) for the Federal and State-based marketplaces. Our review covered the 2014 benefit year, during which CMS was using an interim process for approving financial assistance payments.

The ACA vested in the Department of Health and Human Services (HHS) substantial responsibilities for increasing access to health insurance for those who are eligible for coverage, improving access to and the quality of health care, and lowering health care costs and increasing value for taxpayers and patients. We initiated this review in response to a congressional request for the HHS Office of Inspector General (OIG) to collaborate with the Department of the Treasury's (Treasury) Inspector General for Tax Administration (TIGTA) to examine CMS's and the Internal Revenue Service's (IRS) administration of premium tax credits (PTCs) and advance payments of them under the ACA. This report is part of a broader portfolio of OIG reviews examining various aspects of marketplace operations, including payment accuracy, eligibility verifications, management and administration, and data security.

The objectives of this review were to determine whether (1) CMS had a process in place to ensure that APTC payments were made only for enrollees who paid their monthly premiums and (2) CMS shared APTC payment data for enrollees with the IRS when making these payments.

### BACKGROUND

#### Health Insurance Marketplaces

A marketplace is designed to serve as a one-stop shop at which individuals get information about their health insurance options; are evaluated for eligibility for a QHP and, when applicable, eligibility for PTCs; and enroll in the QHP of their choice. QHPs are grouped into four "metal levels:" bronze, silver, gold, and platinum.

Individuals in States without a State-based marketplace can choose a QHP through the CMS-administered Federal marketplace. States can also establish State-partnership marketplaces for which they share responsibilities for core functions with CMS. During the 2014 benefit year, 34

States, including 7 State-partnership marketplaces, used the Federal marketplace, and the other 17 States had State-based marketplaces.

### **CMS's Process for Reviewing, Approving and Generating Advance Premium Tax Credit Payments to Qualified Health Plan Issuers**

The ACA provides PTCs to help certain low-income enrollees pay their premiums. The Federal Government distributes advance payments of the PTCs to QHP issuers on behalf of eligible enrollees. For enrollees determined eligible for APTCs, the applicable marketplace determines the APTC amounts using the price of the second-lowest-priced silver-level plan available in the area in which the enrollees reside and the enrollees' reported income and family size. Eligible enrollees may opt to enroll in any plan, regardless of metal level.

Under CMS's interim process for approving APTC payments in effect during the 2014 benefit year, issuers submitted to CMS a monthly "Enrollment and Payment Data Template" (template) covering enrollees in all of the issuers' plans. Each template contained the aggregate APTC payment amounts that the issuer submitted for reimbursement on the basis of its confirmed enrollment totals. Confirmed enrollees were defined as those who had paid their first month's premium to the QHP issuer and had their enrollment information approved by the issuer.

In addition, CMS required QHP issuers to submit attestation agreements stating that all template information was accurate and in compliance with Federal policies and regulations before CMS processed their payments. As of October 2015, CMS officials stated that CMS is pilot-testing an automated policy-based payment process with issuers, and the majority of Federal marketplace issuers should begin using this process in early 2016.

### **Treasury's Processes for Paying and Reconciling Advance Premium Tax Credit Payments**

Treasury is responsible for ensuring that sufficient funds are available at the beginning of the fiscal year and that sufficient funding has been transferred into an account the IRS and CMS jointly established to disburse APTC payments in a timely manner. Treasury is required to ensure that all unobligated funds for APTC payments are returned to the jointly established account at the end of the benefit year. In addition, the IRS is responsible for reconciling APTC payments made to QHP issuers on behalf of confirmed enrollees to the individual taxpayer returns, using data provided by the marketplaces.

## **HOW WE CONDUCTED THIS REVIEW**

We met with three QHP issuers to obtain an understanding of their processes for requesting APTC payments from CMS and their procedures for terminating enrollees who have not paid their portion of premiums. We interviewed CMS officials and reviewed their processes for obtaining APTC payment data from QHP issuers and CMS's subsequent processes for providing payment data to Treasury. We also interviewed TIGTA officials to determine how the IRS coordinates with CMS to account for policyholders who lost medical coverage after not paying their premium portion amounts during the 2014 benefit year.

## WHAT WE FOUND

CMS could not ensure that APTC payments made to QHP issuers were only for enrollees who had paid their premiums. Specifically, we found that CMS:

- did not have an effective process in place to ensure that APTC payments were made only for enrollees who had paid their monthly premiums; instead, CMS relied on each QHP issuer to verify that enrollees paid their monthly premiums and to attest that APTC payment information that the issuer reported on its template was accurate; and
- had sole responsibility for ensuring that APTC payments were made only for confirmed enrollees and did not share these data for enrollees with the IRS when making payments.

We determined that CMS's processes limited its ability to ensure that APTC payments made to QHP issuers were only for enrollees who had made their premium payments. Without effective processes for ensuring that APTC payments are made on behalf of confirmed enrollees, Federal funds may be at risk (e.g., there is a risk that funds were authorized for payment to QHP issuers in the incorrect amounts).

## WHAT WE RECOMMEND

We recommend that CMS:

- establish policies and procedures to calculate APTC payments without relying solely on QHP issuers' attestations, including QHP issuer assurances, that enrollees have paid their premiums, and
- once it implements an automated policy-based payment process to maintain individual enrollee data, consult with the IRS to explore sharing APTC payment data when these payments are made throughout the year in order to allow the IRS to verify the data reported on each individual's Form 1095-A at tax filing time.

## CMS COMMENTS AND OUR RESPONSE

In written comments on our draft report, CMS concurred with our first recommendation and did not indicate concurrence or nonconcurrence with our second recommendation. Regarding our first recommendation, CMS described steps that it has taken and plans to take to ensure that APTC payments are being made on behalf of enrollees who have paid their premiums.

Regarding our second recommendation, CMS stated that it conducts its verification of APTC payments in accordance with a Memorandum of Understanding (MOU) with the IRS. CMS explained that, under the MOU, CMS is responsible for ensuring the APTC payments are made only for confirmed enrollees. CMS stated that it works collaboratively with the IRS to provide the necessary data so that the IRS can reconcile the CMS-authorized APTC payments made to QHP issuers to enrollees' tax returns.

After reviewing CMS's comments, we maintain that our findings and recommendations are valid. Regarding our second recommendation, under the MOU, the IRS relies on CMS to make payments for eligible and confirmed enrollees; as our report describes, CMS did not have an effective process in place to ensure that APTC payments were made only for enrollees who had paid their monthly premiums.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

The Patient Protection and Affordable Care Act (ACA)<sup>1</sup> established health insurance marketplaces to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia. A marketplace allows insurance companies (issuers) to offer individuals private health insurance plans, known as qualified health plans (QHPs), and enrolls individuals in those plans.

The Centers for Medicare & Medicaid Services (CMS) operates the federally facilitated marketplace (Federal marketplace) and is responsible for reviewing, approving, and generating financial assistance payments made to QHPs (e.g., advanced premium tax credits (APTCs)) for the Federal and State-based marketplaces. Under the ACA, individuals who enroll in QHPs may be eligible for premium tax credits (PTCs). Our review covered the 2014 benefit year, during which CMS was using an interim process for approving financial assistance payments.

The ACA vested in the Department of Health and Human Services (HHS) substantial responsibilities for increasing access to health insurance for those who are eligible for coverage, improving access to and the quality of health care, and lowering health care costs and increasing value for taxpayers and patients. We initiated this review in response to a congressional request for the HHS Office of Inspector General (OIG) to collaborate with the Department of the Treasury's (Treasury) Inspector General for Tax Administration (TIGTA) to examine CMS's and the Internal Revenue Service's (IRS) administration of PTCs and advance payments of them under the ACA. This report is part of a broader portfolio of OIG reviews examining various aspects of marketplace operations, including payment accuracy, eligibility verifications, management and administration, and data security. See "Affordable Care Act Reviews" on the OIG Web site for a list of related OIG reports on marketplace operations.<sup>2</sup>

### OBJECTIVES

Our objectives were to determine whether (1) CMS had a process in place to ensure that APTC payments were made only for enrollees who paid their monthly premiums and (2) CMS shared APTC payment data for enrollees with the IRS when making these payments.

### BACKGROUND

#### Health Insurance Marketplaces

A marketplace is designed to serve as a one-stop shop at which individuals get information about their health insurance options; are evaluated for eligibility for a QHP and, when applicable, eligibility for PTCs; and enroll in the QHP of their choice. QHPs are grouped into four "metal

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<sup>1</sup> P.L. No. 111-148 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010), is known as the Affordable Care Act.

<sup>2</sup> <http://oig.hhs.gov/reports-and-publications/aca/>.

levels:” bronze, silver, gold, and platinum. These levels determine the percentage that each QHP expects to pay, on average, for the overall costs of providing essential health benefits to its plan members.

Individuals in States without a State-based marketplace can choose a QHP through the CMS-administered Federal marketplace. States are also able to establish State-partnership marketplaces in which they share responsibilities for core functions with CMS. During the 2014 benefit year, 34 States, including 7 State-partnership marketplaces, used the Federal marketplace, and the other 17 States established State-based marketplaces.

## **Premium Tax Credits**

The ACA provides for PTCs to lower certain enrollees’ insurance premiums. The Federal Government distributes advance payments of PTCs to QHP issuers on behalf of confirmed enrollees.<sup>3</sup>

PTCs reduce the cost of plan premiums and are available at tax filing time or in advance. Generally, PTCs are available on a sliding scale to individuals or families with incomes from 100 through 400 percent of the Federal poverty level.<sup>4</sup> If a marketplace determines that an enrollee is eligible for a PTC, it determines the amount of the financial assistance payment on the basis of (1) the premium associated with the second-lowest-priced silver plan available in the area in which the enrollee resides and (2) the enrollee’s reported income and family size. When paid in advance, PTCs are referred to as “advance premium tax credits,”<sup>5</sup> or APTC payments.<sup>6</sup> Starting with the 2015 tax filing season, taxpayers must include on their tax returns the amount of any APTC payment made on their behalf. The IRS is responsible for reconciling APTC payments with the maximum allowable amount of the credit through enrollees’ tax returns.<sup>7</sup>

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<sup>3</sup> For the purpose of this report, the term “enrollee” refers to an applicant who has completed an application, was determined eligible, and has selected a QHP and whose enrollment information was sent to a QHP issuer.

<sup>4</sup> An individual or family with income below 100 percent of the Federal poverty level may be eligible for Medicaid under the State’s Medicaid rules but would not qualify for the PTC.

<sup>5</sup> ACA §§ 1401, 1412 and 45 CFR § 155.20 (definition of “advance payment of the premium tax credit”).

<sup>6</sup> The Federal Government pays the APTC monthly to the QHP issuer on behalf of the enrollee to offset a portion of the cost of the premium. For example, if an enrollee who selects an insurance plan with a \$500 monthly insurance premium qualifies for a \$400 monthly APTC payment (and chooses to use it all), the enrollee pays only \$100 to the QHP issuer. The Federal Government pays the remaining \$400 to the QHP issuer.

<sup>7</sup> The maximum allowable amount of the credit is the total amount of the PTC for which an individual may be eligible in a benefit year (26 U.S.C. §§ 36B(a) and (b)). Enrollees may elect to receive any portion of the maximum allowable amount of the credit in advance.

## **CMS's Processes for Reviewing, Approving, and Generating Advance Premium Tax Credit Payments to Qualified Health Plan Issuers**

For the 2014 benefit year, CMS had not developed a permanent process for approving APTC payments. CMS officials stated that CMS is pilot-testing an automated policy-based payment process with issuers, and the majority of Federal marketplace issuers should begin using this process in early 2016.<sup>8</sup> Under CMS's automated system, QHP issuers would use computerized systems to electronically transmit confirmed enrollment and payment data to CMS via the marketplaces. Confirmed enrollees are those who have paid their first month's premium and have had their enrollment information approved by the issuer. CMS would then make APTC payments on the basis of the confirmed enrollment data provided by the marketplaces and provide a monthly report to QHP issuers. However, during the 2014 benefit year, CMS had not implemented computerized systems that would enable marketplaces to share confirmed enrollment data, and CMS used an interim process to approve APTC payments to QHP issuers on an aggregate basis.

Under CMS's interim process for approving APTC payments, issuers submit to CMS a monthly "Enrollment and Payment Data Template" (template) aggregating the confirmed enrollment and APTC totals covering enrollees in all of the issuers' plans. The aggregate data on the template do not contain detailed information on the individual enrollees along with their associated APTC payment amounts. Instead, the aggregate data contain only confirmed enrollment and payment totals that QHP issuers maintain from each individual enrollee's "confirmation 834 transaction."<sup>9</sup> Along with each template, QHP issuers submit an attestation agreement stating that all aggregate information included in the template is accurate. CMS policy states that CMS will not issue APTC payments to QHP issuers if the attestation is not provided.

## **Treasury's Processes for Paying and Reconciling Advance Premium Tax Credit Payments**

Congress appropriated funds to Treasury for APTC payments to help individuals pay for health insurance.<sup>10</sup> In addition, HHS must establish a program to determine APTC payment amounts to be paid to each QHP issuer and to submit the APTC payment amounts to Treasury for payment.<sup>11</sup>

HHS and Treasury have established a process whereby CMS would determine APTC payment amounts. After an eligibility determination has been made by the marketplaces, CMS accesses

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<sup>8</sup> On December 4, 2015, after issuance of our draft report, CMS issued guidance indicating that all QHP issuers would be required to use the automated policy-based system beginning January 2016 (*Policy-Based Payment Bulletin—INFORMATION*, CMS).

<sup>9</sup> "834 transactions" are electronic files used by CMS to share health insurance information between QHP issuers, marketplaces, and CMS. A QHP issuer creates a "confirmation 834 transaction" after reviewing the data in the application and ensures that enrollees paid their portion of the first month's premium (premium amount less APTC). For the 2014 benefit year, CMS did not have access to "confirmation 834 transactions."

<sup>10</sup> ACA § 1401(a) and (b).

<sup>11</sup> ACA §§ 1411(a)(1)(b) and 1412(a)(2)(a).

Treasury's Secure Payment System to authorize APTC payments to QHP issuers. Treasury is responsible for ensuring that sufficient funds are available at the beginning of the fiscal year and that sufficient funding has been transferred into an account the IRS and CMS jointly established to disburse APTC payments in a timely manner.<sup>12</sup> Treasury is required to ensure that all unobligated funds for APTC payments are returned to its account at the end of the benefit year. The IRS is responsible for reconciling APTC payments made to QHP issuers on behalf of confirmed enrollees to the individual taxpayer returns.<sup>13</sup>

## HOW WE CONDUCTED THIS REVIEW

We met with three QHP issuers to obtain an understanding of their processes for requesting APTC payments from CMS and their procedures for terminating enrollees who have not paid their portion of premiums. We selected three different QHP issuers on the basis of three elements: (1) the marketplace (i.e., Federal, State-based, and State-partnership) in which they operated, (2) the amount of APTC payments they received in a given month,<sup>14</sup> and (3) geographic location.<sup>15</sup>

We interviewed CMS officials and reviewed their processes for obtaining APTC payment data from QHP issuers and CMS's subsequent processes for providing payment data to Treasury. We also interviewed TIGTA officials to determine how the IRS coordinates with CMS to account for policyholders who lost medical coverage after not paying their premium portion amounts during the 2014 benefit year. Further, we discussed with TIGTA how the IRS plans to reconcile APTC payments made for enrollees to the enrollees' individual tax returns.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The appendix contains the details of our audit scope and methodology.

## FINDINGS

CMS could not ensure that APTC payments made to QHP issuers were only for enrollees who paid their premiums. Specifically, we found that CMS:

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<sup>12</sup> For further details on the structure of this account, see the joint HHS OIG and TIGTA report entitled *Review of the Accounting Structure Used for the Administration of Premium Tax Credits* (OEI-06-14-00590), issued March 31, 2015.

<sup>13</sup> ACA § 1401(f)(2).

<sup>14</sup> APTC payment amounts for the three QHP issuers were \$119,924, \$510,511, and \$6,349,707, respectively.

<sup>15</sup> The three QHP issuers offered plans through the marketplaces operating in Louisiana, Michigan, and New York.

- did not have an effective process in place to ensure that APTC payments were made only for enrollees who had paid their monthly premiums; instead, CMS relied on each QHP issuer to verify that enrollees had paid their monthly premiums and to attest that APTC payment information that the issuer reported on its template was accurate; and
- had sole responsibility for ensuring that APTC payments were made only for confirmed enrollees and did not share these data for enrollees with the IRS when making payments.

We determined that CMS’s processes limited its ability to ensure that APTC payments made to QHP issuers were only for enrollees who made their premium payments. Without effective processes for ensuring that APTC payments are made on behalf of confirmed enrollees, Federal funds may be at risk (e.g., there is a risk that funds were authorized for payment to QHP issuers in the incorrect amounts).

**CMS RELIED ON QUALIFIED HEALTH PLAN ISSUERS’ ATTESTATIONS TO ENSURE THAT ADVANCE PREMIUM TAX CREDIT PAYMENTS WERE MADE ONLY FOR ENROLLEES WHO HAD PAID THEIR MONTHLY PREMIUMS**

The marketplaces must allow an enrollee to pay directly to the QHP issuer any applicable premium owed (45 CFR § 155.240(a)). Also, the marketplaces must reconcile enrollment information with QHP issuers and HHS no less than monthly (45 CFR § 155.400(d)). QHP issuers must establish a standard policy for the termination of the enrollment of an individual in a QHP if the enrollee fails to pay his or her portion of the monthly QHP premium.<sup>16</sup> For QHP enrollees who receive APTC payments and who have paid at least 1 full month’s premium during the benefit year but who then fail to pay their portion of the monthly QHP premium, QHP issuers must provide a 3-consecutive-month grace period before terminating coverage.<sup>17</sup> If the 3-month grace period lapses without the enrollee paying all outstanding premiums, the issuer must terminate the enrollee’s coverage, retroactive to the last day of the first month of the grace period. Further, if the enrollee exhausts the grace period, the QHP issuer is required to return the APTC payment for the second and third months of the grace period to Treasury, while the enrollee is responsible for paying back the first month’s APTC payment through his or her tax return.<sup>18</sup>

CMS did not have an effective process in place to ensure that APTC payments were made only for enrollees who had paid their monthly premiums. Instead, CMS relied on each QHP issuer to verify that enrollees paid their monthly premiums and to attest that APTC payment information that the issuer reported on its template was accurate. Since CMS obtained APTC payment information on an aggregate basis rather than on an enrollee-by-enrollee basis, it was unable to

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<sup>16</sup> 45 CFR §§ 156.270 and 155.430(b)(2)(ii).

<sup>17</sup> ACA § 1412(c)(2)(B)(iv)(II).

<sup>18</sup> 45 CFR § 156.270(e)(2) and 77 Fed. Reg. 18310, 18429 (Mar. 27, 2012).

verify the amounts requested through QHP issuers' attestations.<sup>19</sup> If CMS were able to do this, it could perform tests to ensure that APTC payments were appropriately applied on behalf of confirmed enrollees. For example, CMS could test a sample of enrollees' APTC payments requested through QHP issuers' attestations.

All three QHP issuers that we reviewed had implemented similar policies and procedures for requesting APTC payments on behalf of confirmed enrollees from CMS, as well as for terminating enrollees who have not paid their portion of premiums. The QHP issuers stated that they receive directly from the marketplaces the determinations that enrollees are eligible to receive PTCs and the associated APTC payment amounts elected by the enrollees.<sup>20</sup>

QHP issuers stated that enrollees are not medically covered unless they pay their portion of the first month's premium. Once enrollees pay their portion of the first month's premium, they are considered confirmed, and the QHP issuers send a notification ("834 transaction") to their respective marketplace to indicate that these enrollees have paid the first month's premiums. Aggregated totals of confirmed enrollees, along with the aggregated APTC payment amounts requested on behalf of those confirmed enrollees, are included in the QHP issuers' monthly template submissions to CMS. In addition, all three QHP issuers specified that they adhere to Federal regulations by terminating enrollees who fail to pay their portion of the monthly QHP premium. The QHP issuers explained that there is a 4-month timeline to properly account for the enrollment status and the APTC payments for enrollees who fail to pay their portion of the monthly QHP premium.

After the first month that enrollees fail to pay the portion of their monthly QHP premium, they are still medically covered, and the QHP issuer requests APTC payments on their behalf. After the second month, all medical claims submitted by providers on the enrollees' behalf are categorized as "pending" by the QHP issuer and subsequently not paid if the enrollee does not catch up in paying the premiums in a timely manner. However, enrollees are still medically covered, and the QHP issuer requests APTC payments for that month on their behalf. After the third month, QHP issuers terminate the enrollees' coverage. However, since QHP issuers are required to submit their monthly template to CMS *before* they verify that enrollees have not paid their portion of the monthly QHP premium for a third consecutive month, APTC payments are requested on behalf of enrollees for that month.

During the fourth month of this cycle, QHP issuers do not include the terminated enrollees and their associated APTC payments in the aggregate enrollment and payment totals contained in the template submitted to CMS. Further, in that template, they offset the APTC payment amounts they received for those enrollees during the second and third month of the 4-month cycle against APTC payment amounts requested for all enrollees during the fourth month. However, CMS

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<sup>19</sup> In June 2015, OIG issued a report (*CMS's Internal Controls Did Not Effectively Ensure The Accuracy of Aggregate Financial Assistance Payments Made to Qualified Health Plan Issuers Under the Affordable Care Act*, report number A-02-14-02006) that reviewed CMS's processes in place to ensure the accuracy of aggregate financial assistance payments made to QHP issuers.

<sup>20</sup> QHP issuers are not required to verify the validity of the eligibility determinations and APTC payment amounts transmitted by the marketplaces.

had not yet established computer systems to enable marketplaces to share confirmed enrollment data; therefore, CMS did not verify that QHP issuers were returning APTC overpayments to Treasury.<sup>21</sup> Instead, CMS received from the QHP issuers one aggregate number of confirmed enrollees receiving APTC payments, along with one aggregate APTC payment amount net of any underpayments or overpayments for each of their plans. In addition, QHP issuers send termination notices to the marketplaces indicating that enrollees have lost medical coverage and APTC payment eligibility. The figure (below) illustrates an example of the 4-month timeline described above.

**Figure: Qualified Health Plan Issuers’ 4-Month Timeline for Terminating Enrollees Who Fail To Pay Their Portion of the Monthly Qualified Health Plan Premium (Example)**

Month	Medical Coverage Status of Enrollees	APTC Payments to QHP Issuer on Behalf of Enrollees	APTC Payments Refunded to Federal Government by QHP Issuers
March 2014	Medically Covered	Yes	No <sup>22</sup>
April 2014	Medically Covered (claims pending)	Yes	Yes
May 2014	Medically Covered (claims pending)	Yes	Yes
June 2014	Terminated from Coverage*	No	N/A

\* The termination notice sent to the respective marketplace by the QHP issuer will indicate a policy termination date of March 31, 2014.

Without processes to verify that APTC payments are made on behalf of confirmed enrollees who have paid their premiums, Federal funds may be at risk.

**CMS DOES NOT SHARE ADVANCE PREMIUM TAX CREDIT DATA FOR ENROLLEES WITH THE INTERNAL REVENUE SERVICE WHEN MAKING PAYMENTS**

In its role in approving APTC payments, CMS does not share APTC payment data for enrollees with the IRS when making these payments. As outlined in a Memorandum of Understanding (MOU) between CMS and the IRS, CMS is responsible for ensuring that APTC payments are made only for confirmed enrollees.<sup>23</sup> The IRS is responsible for reconciling CMS-authorized APTC payments made to QHP issuers to the enrollees’ tax returns filed with the IRS. As such, the IRS cannot, and is not required to, independently verify that APTC payments were made only on behalf of eligible enrollees who paid their portion of the monthly QHP premium. The

<sup>21</sup> As of October 2015, CMS officials stated that CMS is pilot-testing an automated policy-based payment process with issuers, and the majority of Federal marketplace issuers should begin using this process in early 2016. On December 4, 2015, after issuance of our draft report, CMS issued guidance indicating that all QHP issuers would be required to use the automated policy-based system beginning January 2016 (*Policy-Based Payment Bulletin—INFORMATION*, CMS).

<sup>22</sup> The enrollee is responsible for paying back the first month’s APTC payment through his or her tax return.

<sup>23</sup> *MOU Between IRS and CMS*; CMS control number MOU 13-150 (effective January 31, 2013).

IRS, through TIGTA officials, explained that they rely on the marketplaces to accurately calculate the PTC amounts for eligible enrollees and any associated APTC payment amounts. The marketplaces annually submit this information to the IRS via Form 1095-A, Health Insurance Marketplace Statement.

Specifically, the marketplaces are required to send Form 1095-A to all enrollees obtaining medical coverage through a QHP issuer after the end of the benefit year. Form 1095-A provides information enrollees need to complete Form 8962, Premium Tax Credit, which they must file with their tax return if they received a PTC. The marketplaces are also required to report to the IRS the information contained on Form 1095-A for enrollees. The IRS uses this information to reconcile APTC payments on the enrollees' tax returns.

## **RECOMMENDATIONS**

We recommend that CMS:

- establish policies and procedures to calculate APTC payments without relying solely on QHP issuers' attestations, including QHP issuer assurances, that enrollees have paid their premiums, and
- once it implements an automated policy-based payment process to maintain individual enrollee data, consult with the IRS to explore sharing APTC payment data when these payments are made throughout the year in order to allow the IRS to verify the data reported on each individual's Form 1095-A at tax filing time.

## **CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

### **CMS COMMENTS**

In written comments on our draft report, CMS concurred with our first recommendation and did not indicate concurrence or nonconcurrence with our second recommendation.

Regarding our first recommendation, CMS described steps that it has taken and plans to take to ensure that APTC payments are being made on behalf of enrollees who have paid their premiums. Specifically, CMS stated that it is pilot-testing an automated policy-based payment process that will allow it to obtain APTC payment data on an enrollee-by-enrollee basis from issuers when making payments. CMS stated that a majority of issuers in the Federal marketplace will begin using the automated process in early 2016. Regarding our second recommendation, CMS stated that it conducts its verification of APTC payments in accordance with its MOU with the IRS. CMS explained that, under the MOU, CMS is responsible for ensuring that APTC payments are made only for confirmed enrollees. CMS stated that it works collaboratively with the IRS to provide the necessary data so that the IRS can reconcile the CMS-authorized APTC payments made to QHP issuers to enrollees' tax returns.

CMS further stated that it conducted an internal controls review over its financial reporting that determined its processes to be effective. It also stated that an independent accounting firm

conducted a similar review and reported no significant issues. Finally, CMS stated that, even after it implements its automated policy-based payment process, issuers will always be responsible for collecting premiums from enrollees and be the source for confirming enrollment.

CMS's comments are included in their entirety as Appendix B.

## **OFFICE OF INSPECTOR GENERAL RESPONSE**

After reviewing CMS's comments, we maintain that our findings and recommendations are valid. Regarding our second recommendation (consulting with the IRS to explore sharing APTC payment data when these payments are made), our report explains both CMS's and the IRS's required roles in the APTC payment process, as described in the MOU referenced in CMS's comments. However, under the MOU, the IRS relies on CMS to make payments for eligible and confirmed enrollees; as our report describes, CMS did not have an effective process in place to ensure that APTC payments were made only for enrollees who had paid their monthly premiums. For example, CMS provides APTC payment data to the IRS for enrollees through Form 1095-A. An important factor in calculating the APTC payment data included on Form 1095-A is determining whether enrollees had paid their monthly premiums. After the APTC payment data is calculated by CMS and these forms are provided to the IRS, the payment data is not recalculated or reviewed by the IRS to ensure that it is accurate. If CMS provided APTC payment data to the IRS throughout the year, the IRS could verify the accuracy of the Form 1095-A.

Regarding the independent accounting firm's review of CMS's financial reporting, we note that the firm tested basic transactions and security vulnerabilities and did not perform any tests on CMS's processes to verify that APTC payments were made on behalf of confirmed enrollees.

Although issuers serve as the source for confirming enrollment, CMS's automated policy-based payment process will allow it to obtain confirmed enrollment information on an enrollee-by-enrollee basis. Once CMS obtains this information, it will be able to verify APTC data obtained from issuers. At the end of our fieldwork, CMS did not have a process in place to ensure that APTC payments were made only for enrollees who had paid their monthly premiums but relied solely on issuer attestations.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We interviewed three QHP issuers to obtain an understanding of their processes pertaining to the request for APTC payments from CMS and of their procedures for terminating enrollees who have not paid their portion of the monthly premiums. We interviewed CMS officials and reviewed their processes for obtaining APTC payment data from QHP issuers and CMS's subsequent processes for providing payment data to Treasury. We also interviewed TIGTA officials to determine how the IRS coordinates with CMS to account for policyholders who lost medical coverage after not paying their premium portion amount during the 2014 benefit year.

The scope of our audit did not require us to review enrollee eligibility or calculate actual APTC payments claimed for reimbursement. Rather, we limited our review to CMS's internal controls for ensuring that APTC payments are made only for enrollees who have made their premium payments.

We performed our fieldwork at CMS's central office in Baltimore, Maryland, from December 2014 through January 2015.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- met with CMS officials to gain an understanding of their processes for administering and approving APTC payments, determining APTC payment amounts, and authorizing these payments to QHP issuers;
- met with TIGTA officials to gain an understanding of the IRS's processes for coordinating with CMS in disbursing and reconciling APTC payments;<sup>24</sup>
- interviewed three QHP issuers<sup>25</sup> to obtain an understanding of their processes for requesting APTC payments from CMS and of their procedures for terminating enrollees who have not paid their portion of premiums, which included the issuers' processes for:
  - obtaining and storing enrollees' PTC information from the marketplaces,
  - confirming that enrollees paid their portion of premiums,

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<sup>24</sup> TIGTA interviewed IRS officials, and we relied on information provided by TIGTA.

<sup>25</sup> We selected these QHP issuers on the basis of three elements: (1) the marketplace (i.e., Federal, State-based, and State-partnership) in which they operated, (2) the amount of APTC payments they received in a given month, and (3) geographic location.

- informing the marketplaces that enrollees were confirmed,
  - converting confirmed enrollee data into the aggregate enrollment and APTC payment amounts that are detailed in the monthly templates to CMS,
  - terminating enrollee coverage because of nonpayment of premiums and how this information is shared with CMS and Treasury, and
  - repaying APTC payments for enrollees whose coverage has been terminated because of nonpayment of premiums; and
- discussed the results of our review with CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX B: CMS COMMENTS



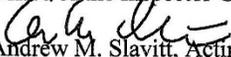
DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW  
Washington, DC 20201

OCT - 2 2015

**TO:** Daniel R. Levinson, Inspector General  
Office of the Inspector General

**FROM:**   
Andrew M. Slavitt, Acting Administrator  
Centers for Medicare & Medicaid Services

**SUBJECT:** CMS Could Not Effectively Ensure That Advance Premium Tax Credit Payments Made Under the Affordable Care Act Were Only for Enrollees Who Paid Their Premiums (A-02-14-02025)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review the Office of Inspector General's (OIG) draft report on advance payment of the premium tax credits (APTC). CMS has continuously worked to implement a rigorous and effective set of internal controls over the interim manual payment process. CMS is addressing, or has already addressed, all of the OIG's recommendations in this report.

Each month, CMS receives completed templates from issuers and State Based Marketplaces (SBMs) on behalf of its issuers to calculate the payment amounts owed to issuers for Marketplace financial assistance on behalf of eligible enrollees. Once per month, issuers restate/update their prior month enrollment counts for a number of events including retroactive enrollments, terminations, special enrollment periods, and grace periods. This payment process is designed to account for fluctuations in issuer data that are the result of normal business processes, while protecting taxpayer dollars by reconciling issuer data on an ongoing basis. This restatement/update process is similar to that of other programs, including Medicare Advantage and Part D.

CMS takes the stewardship of tax dollars seriously, and implemented a series of payment and process controls to assist in making manual financial assistance payments accurately to issuers. These controls include parallel processing and multiple levels of review of the data at CMS, and requiring QHP issuers to certify the accuracy of their data submissions each month as a prerequisite for payment. A deliberate misstatement of data in the face of this certification would constitute fraud. In addition, under CMS's Office of Management and Budget (OMB) A-123 internal controls review over financial reporting, key controls surrounding this 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. Both reviews were completed with no significant deficiencies or material weaknesses identified over the payment process. While CMS lacks fully automated payment systems for the Marketplace payments at this time, it has implemented a rigorous and effective set of internal controls to make accurate payments. As discussed below, CMS anticipates that the majority of

issuers in the Federally Facilitated Marketplaces (FFM) will use an automated policy-based payment system by early 2016.

As issuers are responsible for collecting premiums from consumers, issuers are the source of information on effectuated enrollment. Issuers will continue providing data on effectuated enrollment to CMS even after a fully automated policy-based payment process has been implemented and CMS will continue to make retroactive payments that result from late policy terminations or cancellations. CMS is working to implement a process to receive effectuated enrollment information through the FFM via enrollment transactions, and is currently pilot testing this process with FFM issuers. CMS initiated this process as part of its work toward making APTC payments to issuers based on policy-level (subscriber) effectuated enrollment data. In addition, CMS will conduct internal parallel reviews and validation checks for payment accuracy for policy level enrollment data from issuers.

#### **OIG Recommendation**

We recommend that CMS establish policies and procedures to calculate APTC payments without relying solely on QHP issuers' attestations, including QHP issuer assurances, that enrollees have paid their premiums

#### **CMS Response**

CMS concurs with this recommendation. CMS currently has processes in place make sure that APTC payments are being made with respect to enrollees that have paid their premiums. Under the CMS processes, CMS collects aggregate enrollment and payment data by statement month. Each issuer provides data for the current month and also restates prior months' enrollment and payment data as needed. The restated data allows CMS to calculate the amount of APTCs that should be paid out. CMS is currently pilot-testing the automated policy-based payment process with issuers, and the majority of FFM issuers should begin using this process in early 2016.

Issuers are the source of information on who has paid their premiums, which is the criterion for enrollment effectuation and will continue providing data on effectuated enrollment to CMS even after a fully automated policy-based payment process has been implemented.

#### **OIG Recommendation**

We recommend that CMS consult with the IRS to explore sharing APTC payment data when these payments are made in order to allow the IRS to verify that these payments were made only on behalf of eligible enrollees who paid their portion of the monthly premium.

#### **CMS Response**

CMS and IRS share responsibility for program operations supporting the payment of and accounting for APTC payments as required under section 1412 of the Patient Protection and Affordable Care Act (PPACA) and as outlined in the inter-agency Memorandum of

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Understanding (MOU). Under the MOU, CMS is responsible for making sure that APTC payments are made only for confirmed enrollees. The IRS is responsible for reconciling CMS-authorized APTC payments made to QHP issuers to enrollees' tax returns.

CMS conducts its verification of APTC payments in accordance with the MOU. CMS works collaboratively with IRS to make sure that APTC payments are reconciled through the tax filing process.

CMS thanks OIG for their efforts on this issue, and looks forward to working with OIG on this and other issues in the future.