Child Support and the Affordable Care Act

IRS Considerations

This fact sheet series is intended to be used by state and tribal child support directors and their lead policy staff, to assist in their analysis of their jurisdictions' medical support policies, regulations and practices in light of the Affordable Care Act. The series contains information on existing Affordable Care Act laws and regulations, as enacted by the Internal Revenue Service (IRS) and the Centers for Medicare and Medicaid Services (CMS). The Act provides many new options for parents seeking health care coverage for their children and themselves. While the Affordable Care Act does not amend Title IV-D of the Social Security Act, understanding how it works can help state, tribal, and local child support agencies develop policies and procedures to meet the needs of the families they serve.

This fact sheet explains some of the Affordable Care Act provisions that apply to parents who claim a child as a dependent for federal tax purposes. Jurisdictions may want to revisit their order-setting practices to consider how claiming a child as a dependent affects both a parent's responsibility for providing medical coverage and his or her eligibility for premium tax credits.

Definition of "Parent"

This fact sheet uses the term "parent" broadly. As in IRS policy, a parent is someone who claims a child as a dependent for federal tax purposes, regardless of the actual legal or genetic relationship. The Affordable Care Act considers the dependency claim the important detail, not the formal parental relationship.[1]

IRS Provisions for Children of Divorced or Separated Parents or Parents Who Live Apart

The IRS broadly defines a custodial parent as the one the child lives with for the most nights of the year. The other parent is the noncustodial parent.[2]

The IRS generally considers the child the dependent of the custodial parent, in terms of which parent should claim the child as a tax deduction for federal tax purposes. Some child support jurisdictions routinely specify in court orders which parent claims the child. The custodial parent may also grant the deduction to the noncustodial parent, using IRS Form 8332. Child support jurisdictions should consider which parent will be claiming the child as a tax deduction when establishing or enforcing medical support orders.

Q&A Answers to frequently asked questions from the child support community

1 Under the Affordable Care Act, who is responsible for making sure dependents have medical insurance?

The parent who claims the child as a dependent for federal tax purposes is responsible and must do one of the following:

- Demonstrate that the child has adequate medical coverage; *or*
- Secure an exemption if needed; *or*
- Pay the individual shared responsibility payment if he or she fails to demonstrate that the child has coverage (see question 2 below).

Either parent can provide medical insurance for the child, but no matter which parent provides the insurance, only the parent who claims the child may be eligible for the premium tax credits and cost sharing reductions that help pay for insurance premiums and related out-of-pocket medical expenses.

You may want to consider aligning the medical support responsibility with the tax dependency claim in child support orders, and dividing the financial contribution for health care coverage between the parents.

2 What fees must parents pay if they don't purchase and maintain health insurance?

Taxpayers must pay an individual shared responsibility payment if they fail to maintain medical coverage as required under the Affordable Care Act. The IRS calculates the penalty amount based on the number of uninsured family members — up to an annual household maximum. In 2014, for example, if a mother with one child fails to maintain coverage for them both and they do not have an exemption, she would pay a shared responsibility payment of either $142.50, or 1% of her household income, whichever is greater.

Tax Year	Annual Shared Responsibility Payment
2014	• Each uninsured adult: 1% of annual income or $95 (whichever is higher) • Each uninsured child: $47.50 • Annual household maximum: $285*
2015	• Each uninsured adult: 2% of annual income or $325 (whichever is higher) • Each uninsured child: $162.50 • Annual household maximum: $975*
2016 and beyond	• Each uninsured adult: 2.5% of annual income or $695 (whichever is higher) • Each uninsured child: $347.50 • Annual household maximum: $2,085*

* For parents who have to make a payment based on a percentage of their annual income, the annual household maximum they must pay is the average cost of the Bronze plan at the national level.[3]

Figure 1: Annual Shared Responsiblity Payment Amounts

The IRS divides the annual shared responsibility payment into 12 monthly payments, and applies it only to those months during the year when the taxpayer did not have medical coverage or an exemption.

3 Should we include the individual shared responsibility payment a parent may have to pay when we calculate a child support obligation?

It depends on your program's child support guidelines.

4 What are Affordable Care Act exemptions?

Sometimes people are in situations that make it difficult for them to purchase or maintain health insurance. Under certain circumstances, the IRS excuses them from paying the individual shared responsibility payment by giving them an exemption. There are too many exemptions to list here, but the HealthCare.gov website has the full list of the general and hardship exemptions, at www.healthcare.gov/exemptions.

While the Affordable Care Act may exempt a parent from the individual shared responsibility payment for failing to provide health insurance, this does not relieve the parent from his or her court-ordered obligation to provide medical support.

5 It looks like hardship exemption #10 might apply to many of my child support cases. Please explain this exemption.[4]

Hardship exemption #10 applies when a parent meets three conditions:

- He or she expects to claim a child as a tax dependent; *and*
- The person (other than the parent who claims the child as a dependent) who is under court order to provide the child's medical support has failed to do so; *and*
- The child has been denied Medicaid and Children's Health Insurance Program coverage.

Parents must include copies of the support order and the Medicaid and CHIP denials when they apply for this exemption from the individual shared responsibility payment.

6 Individuals have the option of using part or all of their premium tax credit throughout the year to offset the monthly cost of Marketplace insurance premiums. If an individual has some premium tax credits left at the end of the year, the IRS will add the amount to the taxpayer's refund. When the IRS intercepts the refund under the child support tax offset process, can we use the portion linked to the unused premium tax credit to satisfy an overdue support obligation?

Yes. A refund is a lump sum. There is no distinction between parts of a refund that come from tax overpayments, Earned Income Tax Credit benefits, premium tax credit amounts, or anything else. If a past-due child support debt is owed and certified for federal tax offset, the entire refund is subject to offset.[5]

There is an exception. If there is a spouse, the spouse/tax filer may file an injured spouse claim with the IRS to potentially limit the refund intercepted to the portion that belongs to the parent owing the arrears. Otherwise, the full refund is subject to offset.[6]

7 An individual's circumstances may change during the year such that they received more premium tax credits than they were entitled to. In this instance, the taxpayer may need to repay part or all of the premium tax credits they received during the year. Additionally, a taxpayer may owe an individual shared responsibility payment for failing to maintain medical coverage as required under the Affordable Care Act. The taxpayer reconciles any overpayment of the premium tax credit and pays any individual shared responsibility payment they owe when filing their annual federal tax returns. When a taxpayer's refund is subject to garnishment, child support offsets take priority over all debts except IRS debts. Will the child support offset take priority over any shared responsibility payment or premium tax credit overpayment the taxpayer may owe?

No. The IRS (under 26 CFR 5000A) considers overpaid premium tax credits and individual shared responsibility payments as tax debts. The IRS uses federal tax refunds to satisfy these tax debts before any non-IRS debt, including child support.

References

1. For more information, see IRS Publication 504, Divorced or Separated Individuals, and IRS Publication 501, Exemptions, Standard Deduction, and Filing Information.
2. See 26 CFR 1.52-4, www.law.cornell.edu/cfr/text/26/1.152-4
3. Marketplaces offer qualified health plans in four "metal" tiers: Bronze, Silver, Gold, and Platinum. Generally, Bronze plans offer the least expensive premiums.
4. See www.healthcare.gov/exemptions
5. As clarified via email received from the Director of Customer Service and Stakeholder Relations, Affordable Care Act Office, Internal Revenue Service, on December 20, 2013.
6. See IRS Tax Topic #203: Refund Offsets: For Unpaid Child Support, and Certain Federal, State and Unemployment Compensation Debts, www.irs.gov/taxtopics/tc203.html