The ACA: It's All a Matter of Timing

By Lindsey Buchholz


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In this article, Buchholz discusses administration of the ACA, exploring problems that arise when the return filing season and health insurance open enrollment period are out of sync. She also discusses potential solutions that industry-government working groups have discussed, many of which would require legislative changes.

The Patient Protection and Affordable Care Act has brought together two of the most complex American institutions: taxes and healthcare. That union hasn't always been easy, with many obstacles preventing a harmonious, intertwined existence.

What sometimes appear to be simple, common-sense tenets of the ACA are, in reality, complicated to put into practice. Complications often arise because two completely unrelated government agencies must marry two completely unrelated systems that would operate autonomously if not for the ACA.

The autonomy of the IRS and the Centers for Medicaid and Medicare Services (CMS) becomes especially apparent for taxpayers who enroll in health insurance through the marketplace, estimate their incomes, and complete the open enrollment process.

A. Income Estimates Are Based on Old Data

In July IRS Commissioner John Koskinen gave Congress statistics on ACA filers. At the end of May, 4.5 million taxpayers had received monthly advance payments of the premium tax credit (APTC) to help pay for their insurance premiums. Of those 4.5 million, only 2.7 million had filed tax returns.

That is important because those individuals must file tax returns to remain eligible for APTC in future years. On their returns they must reconcile the amount of APTC they received throughout the year with the actual amount of premium tax credit (PTC) they were eligible to receive for that year.

To receive APTC when they sign up for health coverage, individuals must estimate the amount of modified adjusted gross income (MAGI) they will have for the upcoming year and determine which dependents they will claim on their tax returns. To ensure that taxpayers use reliable income estimates, the health insurance marketplace matches taxpayers' estimated incomes against their last tax returns on file with the IRS.

Most marketplace enrollees estimate their incomes and family situations during the open enrollment period. But because the current ACA open enrollment period began November 1 and will end January 31, open enrollment will end before most people have filed their 2015 tax returns. The past two ACA enrollment cycles were similarly out of sync with the tax season.

The result: The marketplace must use two-year-old tax data to verify taxpayers' estimated incomes. If the information is badly outdated, it can lead to inaccurate APTC amounts and compounding effects in future years.

For example, if taxpayers receive too much or too little APTC based on old tax data, they won't feel the effects until they file their tax returns for that enrollment year. In some cases they could end up having to repay some or all APTC at the end of the year if their estimated incomes are too low. If their estimated incomes are too high, they may not get all of the premium help they should receive and could end up with large credits at the end of the year.

There are also compounding effects if the marketplace is not working off the taxpayer's most recent tax-filing data. If the taxpayer is automatically re-enrolled in a health plan with the same level of tax assistance he had received in the prior year (based on old tax data), the potentially inaccurate APTC amounts would continue into the next enrollment year.

B. Compounding Effects: An Illustration

For plan year 2014, Mark and Mary enrolled their family of three in a marketplace health plan. When enrolling in November 2013, the couple used their most recently filed tax return for 2012 to estimate their income at $45,000. The marketplace determined that the couple was eligible for $3,740 in APTC. When the couple reconciled their APTC and

PTC on their 2014 tax return, their actual income was $50,000, meaning they received $803 in excess APTC that they had to repay with their 2014 tax return.

For plan year 2015, the couple didn't contact the marketplace to update their income information. The marketplace re-enrolled them in the same plan, with the same level of assistance. When the couple reconciled on their 2015 tax return, their actual income was $53,000, meaning they received $1,266 in excess APTC that they had to repay with their 2015 tax return.

For 2014 and 2015, the couple had to repay the full amount of excess APTC they received, because their repayment amounts were below the repayment cap of $1,500 for their income and filing status.

For plan year 2016, the couple again didn't contact the marketplace to update their income information. The marketplace automatically re-enrolled them in the same plan, with the same level of assistance, for the second consecutive year.

Looking ahead to next tax season, when the couple reconciles on their 2016 tax return, their actual income will be $55,000, meaning that they will have received $1,582 in excess APTC during the year. For the 2016 plan year, their repayment will be capped at $1,500 for their income and filing status.

Note: Beginning with plan year 2017, the marketplace will automatically enroll individuals in plans *without* APTC if the individuals were automatically re-enrolled in the prior two plan years without providing updated income information. Thus, individuals like those in our example must provide the marketplace with updated income information to continue receiving APTC in the 2017 plan year.

C. Late Filers May Face Consequences

Another factor complicating open enrollment is that the IRS is still waiting on millions of tax returns.

For tax year 2014 — the first year taxpayers received APTC — tax returns were due April 15, 2015, with an extended due date of October 15, 2015. According to the information Koskinen provided in July, of the 1.8 million APTC returns that the IRS hadn't yet received or processed, more than 700,000 filers hadn't filed for extensions, and more than 350,000 had.

As outlined above, APTC recipients must file tax returns and reconcile their tax credits to remain eligible to receive premium assistance and cost-sharing reductions. New for this year, the marketplace must check with the IRS to verify that each individual has, indeed, filed a return and reconciled APTC.

That takes time. It takes time for the IRS to process returns. It takes time for the IRS to compile filing data. And it takes time for the marketplace to pull IRS filing data into its systems.

How much time? Because the process is so new, there is no definite answer. The IRS updates filing data once a month, but the lag time can be as much as two months depending on when the taxpayer enrolled and when the IRS updated the data.

D. Taxpayers Were Put on Notice

The IRS and CMS anticipated that the marketplace may not have all the filing data it needs during open enrollment. That's why, starting in August, the IRS urged millions of taxpayers who hadn't filed by April 15, 2015, to file as soon as possible:

- Letter 5596 went to individuals who *had* filed for extensions.
- Letter 5591 and 5591A went to individuals who *had not* filed for extensions.

These letters reminded APTC recipients that they must file their 2014 tax returns and reconcile their APTC to continue receiving it in the 2016 plan year. The letters also encouraged APTC recipients to file their returns as soon a possible but no later than 30 days from receipt of the letters. The message warned taxpayers that if they didn't file, they might risk losing some or all of their premium assistance for the next plan year.

Those letters confused taxpayers because the letters didn't explain the urgency. The reason for the urgency was a series of special notices called Marketplace Open Enrollment Notices (MOENs) that the marketplace was preparing to send to enrollees. Different taxpayers received different notices, based on taxpayers' most recent tax-filing data. The most recent data ideally would be 2014 tax-filing data — which was the critical missing piece for taxpayers who got letters 5596 and 5591.

MOENs were set to go out about a month before open enrollment began. That is also generally before the extended tax return due date. Therefore, while APTC recipients can technically file for extensions, it could put them at a disadvantage if the marketplace only has their outdated tax-filing data.

E. Why MOENs Matter

The marketplace sent MOENs to taxpayers who hadn't indicated that they wanted to discontinue coverage. The notices encouraged enrollees to update their marketplace applications and choose new plans.

1. General MOENs. The general MOEN for the 2016 benefit year contains information about:

- the redetermination and re-enrollment process;
- the requirement to report information that may affect eligibility for APTC or cost-sharing reductions (generally income and family configuration);

- the final date to get January 1, 2016, coverage and the end date for 2016 open enrollment; and
- the default process the marketplace will use to determine APTC or cost-sharing reduction eligibility if the individual doesn't contact the marketplace with updated eligibility information.

2. Special-notice MOENs. Along with the general notice, the marketplace sends more information to individuals in the special-notice group, which includes taxpayers who during the summer received letters 5591, 5591A, and 5596.

To determine whether an individual is in the special-notice group, the marketplace must have up-to-date tax-filing data for the most recent filing year — in this case, 2014 returns. There are four special-notice groups, segmented based on:

1. household income exceeding certain thresholds in relation to the federal poverty level;

2. whether taxpayers authorized the IRS to share information with the marketplace;

3. whether taxpayers had reconciled APTC on their 2014 returns; and

4. special household-income situations (called the income-based outreach group).

To minimize insurance coverage disruptions, the marketplace automatically re-enrolls individuals in the same plans or the most similar plans if their prior-year plans are no longer available.

If people in the first three groups don't contact the marketplace with updated filing information, the marketplace will re-enroll them in coverage without APTC or cost-sharing reductions.

Enrollees in the fourth group face different outcomes, depending on why they are in that group. The marketplace generally tries to re-enroll these individuals in plans with APTC or cost-sharing reductions using the information it has available from the most recent marketplace application and the most recent tax data, if it is available.

The mailings highlight again why it is important for the marketplace to have updated tax data for automatic re-enrollment. However, it is also important that, while the marketplace may have started sending MOENs before open enrollment, it did not automatically re-enroll anyone in a new plan until December 15, 2015 — the last day of enrollment for coverage beginning January 1, 2016.

The marketplace obtains updated filing data from the IRS every month, so the marketplace should have received updated filing data before the December 15, deadline. But the marketplace does not explicitly spell out when data exchanges occur. So, for APTC recipients who had not filed their 2014 tax returns before open enrollment began in November 2015, there was no safe timeframe — other than as soon as possible — to file.

F. Taxpayers Can Attest That They Filed Returns

According to CMS, there is a temporary fix for APTC recipients who file their 2014 returns but don't do it in time to enroll in their benefits for 2016.

During the current open enrollment period, these taxpayers can attest that they have filed 2014 returns and reconciled their APTCs. The marketplace will continue APTC or cost-sharing reductions so eligible individuals can continue receiving the help they need to pay for their health coverage.

At some point the marketplace will verify that those taxpayers have actually filed their returns as they attested. If no return is on file, the marketplace will discontinue APTC and cost-sharing benefits. However, no further details on the timing of the future compliance check were available as of this writing.

G. Are There Any Solutions?

The tax industry and government representatives have discussed several possible fixes to the timing complications that arise between the IRS and CMS systems. Most of those would require legal changes to implement.

1. Run health plans on a non-fiscal-year basis. For example, health plans could begin in June of each year instead of January. But this would mean taxpayers' income data wouldn't line up neatly with the health insurance enrollment process.

2. Make health insurance enrollment part of the tax-filing process. This option makes sense because much of the information needed for filing a tax return is duplicative with information needed for enrolling in health insurance. Once the taxpayer completes his tax return, the IRS could directly transmit personal information — including names, addresses, Social Security numbers, and income information — to CMS. CMS could then use that tax-filing information to create an accurate enrollment packet for taxpayers who need marketplace insurance. Enrollees could log into their marketplace accounts and choose the plans that best fit their needs.

Integrating the tax-filing process with the enrollment process would create additional dependencies between the IRS and CMS and would require plan years to run on a non-fiscal-year basis. However, it would also mean that taxpayers and the CMS would be working with the most up-to-date income and family information available.

3. Average income over a set number of prior years to create the current-year estimate. Averaging income from the prior three years of tax returns could lead to more accurate income estimates than using the most recently filed return.

4. Base the initial income estimate on the year-end Form W-2, paystubs, or other income documents. This would also likely ensure better estimates of actual income than two-year-old tax data. However, because the marketplace determines APTC eligibility using MAGI, these documents alone do not guarantee a precise income estimate.

5. Separate APTC determinations from the tax filing process. This method would run more like the way the Social Security Administration handles Social Security benefits. Under that system, the SSA essentially performs an income reconciliation between the most recently filed earnings report from the employer and the tax data employers submit to the IRS. If there's a discrepancy, the SSA sends a notice and questionnaire requesting an explanation and resolution of the differences.

For the ACA, CMS could adjust monthly APTC payments on a prospective basis to ensure the individual receives the right amount of premium assistance for the year. However, that would completely change ACA administration and would require a rewrite of the law.

H. Timing Is Everything

As the IRS and CMS continue to integrate different aspects of tax filing and insurance enrollment, taxpayers may experience some bumps in the road. Taxpayers covered under marketplace plans should be especially careful when it comes to estimating their income, filing for return extensions, and navigating the open enrollment process.

Scenario: Household size 3 — mother, father, child

- **Enrollment for plan year 2014**
  - **Estimated MAGI at enrollment using 2012 income data: $45,000**
    - Federal Poverty Level (FPL): 230 percent
    - Applicable Figure: 0.0735
    - Contribution: $3,307.50 annual / $276.63 monthly
    - Second Lowest Cost Silver plan (SLCSP): $7,046.76 annual / $587.23 monthly
    - Max APTC: $3,739.26 annual / $311.61 monthly
    - Actual Premiums (Silver Plan): $7,046.76 annual / $587.23 monthly
    - APTC: $3,739.26 annual / $311.61 monthly
- **2014 tax return**
  - **Actual 2014 MAGI: $50,000**
    - FPL: 256 percent
    - Applicable Figure: 0.0822
    - Contribution: $4,110 annual / $343 monthly
  - **Reconciliation**
    - Annual Premium Amount: $7,046.76
    - Annual SLCSP: $7,046.76
    - Annual Contribution Amount: $4,110
    - Annual Maximum Premium Assistance: $2,936.76
    - Annual PTC Allowed: $2,936.76
    - Annual APTC: $3,739.26
  - **Repayment**
    - Excess APTC: $802.50
- **2015 tax return**
  - **Actual 2015 MAGI: $53,000**
    - FPL: 268 percent
    - Applicable Figure: 0.0863
    - Contribution: $4573.90 annual / $381.16 monthly
- **Reconciliation**
    - Annual Premium Amount: $7,046.76
    - Annual SLCSP: $7,046.76
    - Annual Contribution Amount: $4573.90
    - Annual Maximum Premium Assistance: $2,472.86
    - Annual PTC Allowed: $2,472.86
    - Annual APTC: $3,739.26
- **Repayment**
    - Excess APTC: $1,266.40
- **2016 tax return**
  - **Actual 2016 MAGI: $55,000**
    - FPL: 274 percent
    - Applicable Figure: 0.0889
    - Contribution: $4,889.50 annually / $407.46 montly
- **Reconciliation**
    - Annual Premium Amount: $7,046.76
    - Annual SLCSP: $7,046.76
    - Annual Contribution Amount: $4,889.50
    - Annual Maximum Premium Assistance: $2,157.26
    - Annual PTC Allowed: $2,157.26
    - Annual APTC: $3,739.26
- **Repayment**
    - Excess APTC: $1,582