COUNCIL FOR AFFORDABLE
HEALTH COVERAGE

June 6, 2022

Submitted electronically

Attention: IRS REG-114339-21
Internal Revenue Service, Department of the Treasury
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

RE: Affordability of Employer Coverage for Family Members of Employees

Thank you for the opportunity to provide comments on the Notice of Proposed Rulemaking (NPRM) on the "Affordability of Employer Coverage for Family Members of Employees" published in the Federal Register (87 FR 20354, April 7, 2022). The Council for Affordable Health Coverage (CAHC) and the Health Benefits Institute (HBI) have long supported increasing access to affordable health coverage and welcome the chance to provide feedback to the IRS as it considers modifications to the current interpretation of the statute.

CAHC (www.cahc.net) is a broad-based alliance with a primary focus: bringing down the cost of health care for all Americans. Our members include employers, medical providers, patient groups, insurers, agents and brokers, technology companies, pharmaceutical manufacturers, and pharmacy benefit managers who collectively cover millions of lives in the private market.

The Health Benefits Institute is a policy organization supported by agents, brokers, insurers, employers, benefit platforms and others seeking to protect the ability of consumers to make their own health care financing choices. We support policies that expand consumer choice and control, promote industry standards, educate consumers on their options and foster high quality health outcomes through transparency in health care prices, quality, and the financing mechanisms used to pay for care.

Background

The "family glitch" has been a long-standing issue, and we are pleased the Biden Administration is working to resolve this problem. The mechanisms of the proposed rule, however, will have consequences for job-based coverage, that will erode insurance options for employees and their families while increasing costs for employers. Fixing one problem in ACA markets should not detrimentally impact markets where a majority of Americans receive their coverage. We encourage you to revise the rule to clarify your intent to protect employer coverage and retain affordable options for employees.

We also note many have raised questions about the revised interpretation of the statute considering the 12 years of Congressional attempts and refusal to amend Section 36B. In seeking to expand entitlement to ACA's tax credits, the NPRM appears to conflate two separate sections of the law and the revised interpretation creates a new, separate affordability test for dependents and a new minimum value test.

This has broad implications for the relationship between the shared responsibility requirements, the affordability test for self-only coverage, and the ability for employers to compete in labor markets by offering quality, affordable employee benefits.

Our specific concerns are outlined below.

Erosion of Employer Coverage

CAHC and HBI agree that a fix to the “family glitch” is needed and are pleased that the IRS has proposed a solution to the problem. However, the way in which the proposed fix is laid out would negatively impact a wide range of job-based coverage for both large and small employers.

The ACA law does not require employers to contribute to dependent coverage, although most do. According to the Kaiser Family Foundation, companies that offered health benefits in 2021 paid on average 83 percent of the premium for self-only coverage and 72 percent of the premium for family coverage.[1] If the NPRM is finalized as-is, employers would reduce or eliminate their contributions for health coverage. The NPRM acknowledges this, stating the proposed rule "would likely lead to a decrease in the total amount employers are spending on health insurance as the federal government increases spending on PTC." This will increase the cost of job-based dependent coverage for workers, while lowering the value of insurance provided. The Bureau of Labor Statistics estimates that employer sponsored insurance provides 85 percent actuarial value.[2] The most popular plans in ACA markets provide an average AV between 60 and 70 percent. It is also true that ACA plans have much narrower networks than ESI, eroding access to providers at a time millions of Americans already lack the ability to receive care from local healthcare providers. Decreasing value and increasing costs seems like a poor trade-off in fixing the family glitch.

While the White House estimates that about 200,000 uninsured will gain coverage through this action, another 1 million will move from their employer coverage into the ACA market.[3] Individuals who choose to switch from their employer plan to the ACA market will likely be younger and healthier, opting for the low or no-cost premiums offered under ACA plans, even if it means higher deductibles and less rich benefits. The result will be adverse selection in employer markets – the healthy will leave employer coverage for ACA coverage while those with health conditions will stay on richer employer coverage. The result will no doubt further drive up premiums and exacerbate problems in labor markets.

The proposed rule goes beyond merely solving a problem – it would result in a net push from job-based plans into the ACA marketplace. We believe that a solution to this issue should avoid unintended detrimental effects to the employer market, and the IRS should reconsider its approach.

While in some cases this proposal may result in savings for some families, pushing more people into government subsidized coverage is not a win for the country. ACA plans, in general, have much higher deductibles than many employer plans and the trend has shown increasing deductibles. In 2014, the

[1] https://www.kff.org/report-section/ehbs-2020-section-6-worker-and-employer-contributions-for-premiums/
[2] https://www.dol.gov/sites/dolgov/files/ebsa/researchers/analysis/health-and-welfare/analysis-of-actuarial-values-and-plan-funding-using-plans-from-the-national-compensation-survey.pdf
[3] https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/05/fact-sheet-biden-harris-administration-proposes-rule-to-fix-family-glitch-and-lower-health-care-costs/

average bronze plan deductible was $5,318, while for silver plans it was $3,070.[4] In contrast, average deductibles for the same metal levels were $6,992 and $4,879 in 2021. For most people, these deductibles are out of reach, and unless they pay for expensive drugs or emergency care, they have no hope of meeting their deductible. By contrast, the average deductible for a single person with job-based coverage was $1,945 in 2020.

Finally, we are concerned about "split coverage" situations, where an employee receives coverage from their employer, but dependents receive coverage through an exchange plan. Under the rule, a worker whose self-only coverage costs less than 9.5 percent of household income would not be eligible for premium tax credits. If their coverage were unaffordable under the new standard that the agencies propose, dependents, however, might be. In this scenario, family members would have different provider networks and drug formularies, be required to meet deductibles in separate policies, and have separate caps on out-of-pocket spending. This will increase complexity, confusion, and out-of-pocket medical spending for many families.

In conclusion, we reiterate that solving the family glitch should not result in pressure towards one market or another – consumers should weigh the options and choose what works best for them. Any fix to the family glitch should not raise costs, result in worse coverage, increase complexity, or erode coverage for millions of Americans. The NPRM fails these tests, and would result in significant harm to employers and their employees, and create difficult situations for families.

Reporting Requirements

The proposed rule also raises questions about who would be responsible for determining whether family members have "affordable coverage", and their eligibility for ACA subsidies. In general, under the employer shared responsibility requirement, the IRS provides three affordability safe harbors employers are allowed to use (Form W-2 wages, an employee's rate of pay, or the federal poverty line) instead of household income in making the affordability determination.

Under the NPRM, if employers take on this new tracking burden and are required to report household income, it would raise a number of concerns. Currently, no employer collects the type of information that would allow them to make determinations about the employment status and health coverage of family members. Not only would such data be costly and burdensome for the employer to collect, it would also be deeply invasive into employees' private lives. In situations where more than one family member is employed with an offer of health coverage, this becomes increasingly complicated. It is likely many consumers would receive surprising tax bills in the coming years after finding their calculations were incorrect, their employment situation changes, or because their employer gave them a raise.

Placing the burden and responsibility of this determination on employers is wrong-headed. Government should bear the burden and the cost of this new mandate, not employers. We request the IRS clarify that the existing affordability safe harbors would be retained for purposes of the employer shared responsibility requirement if the proposed rule is finalized.

---

[4] https://healthcareinsider.com/affordable-care-act-deductibles-367400#:~:text=Affordable%20Care%20Act%20Deductibles%20Have%20Risen%20Steadily&text=The%20average%20median%20deductible%20for,years%20to%20%244%2C879%20in%202021.

Legal Authority

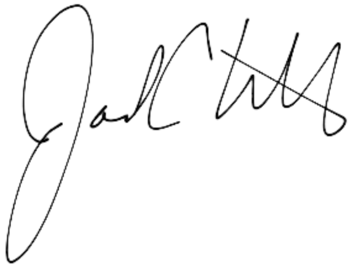
It is surprising that this administration has suddenly found new authority that did not exist in either of the last two administrations. Prior legal analyses found no authority to make this proposed change. While we share the administration's frustration with Congressional inaction, we do not believe the rule demonstrates any legal authority. If implemented and subsequently reviewed by the courts and struck down, it will likely result in both destabilized employer health insurance and destabilized ACA markets as people scramble to put coverage back together again.

Conclusion

For the reasons outlined in this letter, CAHC and HBI encourage the IRS to significantly rework the rule and work with Congress to produce a statutory change that enhances employer coverage.

If you have questions about these comments, please do not hesitate to contact us.

Sincerely,



Joel C. White
President
Council for Affordable Health Coverage

J.P. Wieske
Executive Director
Health Benefits Institute