EVERY TEXAN

Formerly Center for Public Policy Priorities

June 6, 2022

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
U.S. Department of the Treasury
P.O. Box 7604, Ben Franklin Station
Washington, D.C., 20044

Via electronic submission to Regulations.Gov

Re: Affordability of Employer Coverage for Family Members of Employees (REG-114339-21)

Dear Commissioner Rettig:

Thank you for the opportunity to submit comments on the proposed rule, Affordability of Employer Coverage for Family Members of Employees, issued by the Internal Revenue Service (IRS).

At Every Texan, we envision a Texas where people of all backgrounds can contribute to and share in the prosperity of our state. The Benedictine Sisters of Boerne, Texas, founded Every Texan in 1985 to advance public policy solutions for expanding access to health care. We became an independent, tax-exempt organization in 1999. Texas faces long-standing challenges to optimal health, including the nation's highest uninsured rates, and steep financial and systemic barriers for those who have insurance. We work to improve public policies to make affordable, comprehensive health care a reality for every Texan. We are based in Austin, Texas, and work statewide.

We are writing in strong support of the proposed rule, which would correct the "family glitch" that was created by a 2013 misreading of the Affordable Care Act (ACA). That misreading erected a barrier to affordable coverage for millions of Americans barring them from eligibility for premium tax credits despite having an offer of unaffordable employer coverage. We ask that the proposed rule be finalized, as-is and as soon as possible, so that it can take effect in advance of open enrollment for the upcoming 2023 marketplace plan year.

We strongly agree with the preamble to the proposed rule that the proposed changes to 26 C.F.R. § 1.36B-2 (Eligibility for premium tax credits), as well as the related amendments to 26 C.F.R. §§ 1.36B-3 (Computing the premium assistance credit amount) and 1.36B-6 (Minimum value), are a sound and reasonable legal interpretation of the statutory language.

We also strongly agree with the preamble that the proposed changes would substantially advance the goals of the Affordable Care Act in expanding access to affordable and comprehensive health coverage.

The current interpretation affects as many as 5.1 million people in the country who are barred from obtaining premium tax credits because "affordable" coverage is based only on the cost to cover the employee.[1] Texas has the largest number (671,000) of any other state of people falling into the family glitch. Most of the people impacted are children, and nearly half a million people in the country go uninsured when faced with unaffordable coverage under a family member's employer plan.

The family glitch has a greater impact on low-income families, but it is also a problem for middle-income families. Almost half (46%) of the people in the family glitch have incomes under 250% of the federal policy level (FPL) and another third (33%) have income between 250%-400% of FPL.[2] Fixing the family glitch would provide greater premium savings for those families with incomes under 200% of FPL ($580 average savings per person). Low-income families would also see significant savings in out-of-pocket costs, thanks to cost-sharing subsidies available to families with income under 250% of FPL. This could mean thousands of dollars in cost-sharing savings for these families.

Many families offered family coverage through their employers are required to pay premiums that they cannot afford or that impose undue financial burdens. Because of the family glitch, dependents including children and spouses are ineligible for premium tax credits to purchase marketplace coverage. Family members thus either end up uninsured or face premiums and out-of-pocket costs that seriously strain limited household budgets. In Texas, employees in the public education system are often burdened with high premiums for their families. An enrollment Navigator in Houston, Texas reported helping a teacher and spouse seeking affordable coverage. The teacher's spouse was an amputee and needed heart surgery. The cost to include the spouse under employer coverage was $680 per pay period. The enrollment Navigator was tasked with delivering difficult news to this couple: the spouse was ineligibile for premium tax credits due to the family glitch. While the couple came seeking help to enroll in coverage, they left feeling frustrated and expressed disappointment in the Affordable Care Act. Enrollment Navigators have repeatedly seen consumers coming to them for help, full of excitement about affordable coverage only to be shut out by the nuances of the law's misinterpretation.

The proposed rule would extend the availability of subsidized marketplace coverage to 600,000 family members in Texas who are currently ineligible, according to the Urban Institute.[3] The proposed rule thus will help reduce hundreds of thousands of families' out-of-pocket costs in Texas and could significantly reduce the ranks of uninsured children and adults in our state. Texas has the highest uninsured rate in the U.S., 17.3% — about double the national average of 8.7%. [4]

---

[1] Cynthia Cox, Krutika Amin, Gary Claxton, and Daniel McDermott, "The ACA Family Glitch and Affordability of Employer Coverage," Kaiser Family Foundation, April 7, 2021, https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/.

[2] Ibid.

[3] Matthew Buettgens and Jessica Banthin, "Changing the "Family Glitch" Would Make Health Coverage More Affordable for Many Families," Urban Institute, May 2021, https://www.urban.org/research/publication/changing-family-glitch-would-make-health-coverage-more-affordable-many-families.

[4] U.S. Census Bureau, American Community Survey 2016-2020 5-year estimates, March 2022, https://www.census.gov/newsroom/press-releases/2022/acs-5-year-estimates.html.

EVERY TEXAN

Formerly Center for Public Policy Priorities

The proposed rule would also better ensure that more of the 3.9 million low-income children now enrolled in Medicaid in Texas[5] who may lose such coverage when the COVID-19 public health emergency expires have access to affordable coverage through the marketplaces, rather than end up uninsured. The Families First Coronavirus Response Act included a critically important continuous coverage protection to keep children and other Medicaid beneficiaries enrolled during the public health emergency, which avoided a spike in the number of the uninsured during the pandemic. When this protection ends, millions of children in our state will be at risk of losing their Medicaid coverage. Nationally, the Georgetown University Center for Children and Families estimates that 6.7 million children now enrolled in Medicaid will likely lose their Medicaid coverage when the continuous coverage protection expires.[6] Some could end up uninsured because they get trapped in the family glitch. The proposed rule, however, would help mitigate this risk by extending premium tax credit eligibility to more children losing Medicaid coverage and therefore reduce the number of children in Texas who may become newly uninsured.

Enrollment assisters in Texas have seen families perform balancing acts between the cost of health coverage, rent, and food. Many without a path to affordable coverage have accrued credit card debt and even considered bankruptcy. The proposed rule will help millions of families by allowing for a separate affordability test for family members that would be based on the cost to enroll family members in the employer coverage (not the cost of enrolling only the employee). The proposed rule will help fulfill the promise of affordability in the Affordable Care Act. **We strongly support this interpretation of the statute and the approach to determining family members' eligibility for premium tax credits.**

Thank you for the opportunity to comment on this important proposal.

Sincerely,

Karla Martinez

Karla Martinez
Policy Analyst

---

[5] Texas Health and Human Services Commission, "Medicaid and CHIP Monthly Enrollment by Risk Group," Children's Medicaid enrollment data from March 2022, https://www.hhs.texas.gov/about/records-statistics/data-statistics/healthcare-statistics.

[6] Joan Alker and Tricia Brooks, "Millions of Children May Lose Medicaid: What Can Be Done to Help Prevent Them From Becoming Uninsured?," Georgetown Center for Children and Families, February 17, 2022, https://ccf.georgetown.edu/2022/02/17/millions-of-children-may-lose-medicaid-what-can-be-done-to-help-prevent-them-from-becoming-uninsured/