



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

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). I am writing on behalf of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE), to indicate our strong support for 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.

National PLACE and our 75 local, state and national member organizations are committed to ensuring that families and family-led organizations are at the table when decisions regarding children and families are being made, and that our diverse voices, experiences, and perspectives gleaned from both lived experience and interactions with millions of families with lived experience meaningfully influence those decisions. Our primary goal is to strengthen the voice of families and family-led organizations at decision-making tables on issues impacting our nation’s children and families, especially those who face the greatest challenges and have the poorest outcomes, including children with disabilities and special healthcare (including mental health) needs, children of color, immigrant children, low-income children, and LGBTQ+ children, and their families. All of our members – who include Parent Centers, Family to Family Health Information Centers, Federation of Families (for Children’s Mental Health) chapters, and Parent to Parent USA affiliates, serve families who have been directly and negatively impacted by the “family glitch.” We have reviewed the Notice of Proposed Rulemaking and include our thoughts below.

National PLACE has long supported the interpretation applied in this proposed rule as the best reading of the statute and consistent with the goals of the ACA to expand access to affordable coverage. As noted in the preamble to this proposed rule, the current interpretation was originally proposed in a broader rule on premium tax credits (76 FR 50931), but not finalized in 2012 (77 FR 30377). In that final rule, IRS noted that commenters opposed the proposed interpretation, calling instead for the IRS to adopt an affordability test for family members based on the cost of family coverage.

Despite these objections, IRS finalized the policy in 2013 (78 FR 7264), with an interpretation inconsistent with the text and intent of the ACA, thereby creating the “family glitch.”

The current interpretation affects as many as 5.1 million people who are barred from obtaining premium tax credits because “affordable” coverage is based only on the cost to cover the employee and not the entire family.¹ As a membership organization of family-led, family-serving non-profits, National PLACE is well aware that most of the people impacted by the current rule are children, and nearly half a million people go uninsured when faced with unaffordable coverage under a family member’s employer plan.² Workers in small businesses are also impacted as they are more likely to face higher premiums for family coverage. Of covered workers in large businesses face a premium of at least \$10,000 to enroll family members in their employer plan. That number grows to 29% of covered workers in small businesses who must pay \$10,000 to obtain family coverage.³

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.⁴ Fixing the family glitch would provide greater premium savings for those families with incomes under 200% of FPL (\$580 average savings per person).⁵ 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.⁶

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). **We strongly support this interpretation of the statute and the approach to determining family members’ eligibility for premium tax credits.**

We also appreciate the opportunity to comment on the minimum value definition requiring employer plans to provide substantial coverage of inpatient hospital and physician services in order to satisfy the 60% actuarial value threshold. **We support this definition and the proposed rule clarifying that the minimum value requirement should, like the affordability test, be applied separately for employees and family members.** We agree that this clarification will ensure family members are not barred from premium tax credits by coverage that is affordable, but fails to provide minimum value.

¹Cynthia Cox, Krutika Amin, Gary Claxton, and Daniel McDermott, “The ACA Family Glitch and Affordability of Employer Coverage,” KFF, Apr. 7, 2021, accessed at <https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/>

² Ibid.

³ Gary Claxton, Larry Levitt and Matthew Rae, “Many Workers, Particularly at Small Firms, Face High Premiums to Enroll in Family Coverage, Leaving Many in the ‘Family Glitch,’” KFF, Apr. 12, 2022, accessed at <https://www.kff.org/health-reform/issue-brief/many-workers-particularly-at-small-firms-face-high-premiums-to-enroll-in-family-coverage-leaving-many-in-the-family-glitch/>.

⁴ Ibid.

⁵ Mathew Buettgens and Jessica Banthin, “Changing the ‘Family Glitch’ Would Make Health Coverage More Affordable for Many Families,” The Urban Institute, May 2021, accessed at https://www.urban.org/sites/default/files/publication/104223/changing-the-family-glitch-would-make-health-coverage-more-affordable-for-many-families_1.pdf

⁶ Dania Palanker and Christina Goe, “ACA ‘Family Glitch’ Increases Health Care Costs for Millions of Low-and Middle-Income Families,” Commonwealth Fund, Apr. 22, 2021, accessed at <https://www.commonwealthfund.org/blog/2021/aca-family-glitch-increases-health-care-costs-millions-low-and-middle-income-families>

We agree with the IRS that the proposed rule's new interpretation is a better reading of the statute. It is also consistent with the goals of the ACA to expand access to affordable coverage. As a result, millions of families – particularly those of low-wage workers -- will no longer be forced to choose between unaffordable employer coverage and unsubsidized marketplace coverage for dependents. Families will be able to choose the coverage option that works best for them, whether that be to remain as a family in the employer plan or to obtain marketplace coverage, with financial assistance, for those family members for whom the employer plan would be unaffordable.

National PLACE also endorses the comments of the American Academy of Pediatrics, Family Voices, Children's Hospital Association, First Focus on Children, Georgetown Center for Children and Families, National Association of Pediatric Nurse Practitioners, and the March of Dimes, among other organizations. As their comments note, "Children must be able to get the care they need, when they need it, without jeopardizing their families' financial security. When children see clinicians who know their medical history, can monitor their physical and socioemotional development, and provide them with appropriate interventions, they are more likely to have better overall health, be up-to-date on immunizations, perform better in school and receive care in the most cost-effective way. On the contrary, missed screenings, diagnoses, and treatments can result in life-long health consequences that generate extensive and avoidable costs. As such, we support the proposed rule, which is consistent with the goals of the ACA to expand access to affordable coverage and will benefit millions of families."

Conclusion

In conclusion, we appreciate the opportunity to comment on the Notice of Proposed Rulemaking, and strongly support the proposed rule which will minimize the harm to children and families, especially those who already face the greatest challenges to meaningful, sustainable lives. The members of National PLACE see daily the harmful impacts on children and families when family members are unable to obtain quality healthcare services and affordable health coverage.

Finally, National PLACE strongly recommends that any decisions made about access of children and families to public benefits, services, and resources be conducted with the active and meaningful participation of representatives of the very parents and families who will be most impacted by those decisions as well as the family/parent, immigrant, disability, and other organizations that provide them with information and support and represent their interests. Once the rule is finalized, National PLACE urges additional funding to provide outreach and education to families and the organizations that serve them about the new rule so that families can maximize coverage and services for themselves and their children.

For any questions or for additional information about this letter and its recommendations, please contact Diana Autin, Executive Director of the National Center for Parent Leadership, Advocacy, and Community Empowerment (National PLACE), at dautin@parentsatthetable.org.

Sincerely:



Diana MTK Autin, Executive Director
On behalf of National PLACE