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Fixing the Kid Glitch: Treasury Regulations Put Children's Coverage at Risk

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What is the concern for children and families in the Treasury proposed rule?

Following passage of the Affordable Care Act (ACA) (P.L. 111-148), the Obama Administration began issuing regulations to implement the numerous provisions of the health reform law. This summer, the U.S. Treasury Department issued a proposed rule (IRS REG -131491-10) providing guidance on making determinations on whether an offer of employer coverage is deemed affordable for an employee. Also included was a methodology to establish who is eligible for premium credits or subsidized coverage in the health insurance exchanges. The proposed rule incorporates the ACA requirement that employees are ineligible for premium credits or exchange subsidies if they have an affordable offer of "minimal essential" health coverage.

Why do the Treasury rules come up short for children and families?

According to Treasury's proposed rule, the test to determine whether an employer-sponsored health plan is affordable for an **entire** family is based on the costs of coverage for the **individual** employee only. It does not take into account what coverage for the family costs.

Specifically, the Treasury proposed rule indicates that if the cost of self-only coverage for an employee does not exceed 9.5 percent of the taxpayer's household income then the coverage is considered affordable for the family even though that coverage doesn't include the employee's family. Under this interpretation, dependent family members would be excluded from eligibility for premium tax credits or cost-sharing subsidies when the employed family member has an affordable offer of employee-only coverage.

This is particularly problematic given that employee-only insurance premiums average about $5,000 per year, while annual employee-and-family premiums are nearly triple the cost, averaging about $14,000. With family coverage 2.7 times more expensive than individual coverage, this glitch could make it difficult for families to secure affordable coverage for their children.

How can the Kid-Glitch be fixed?

A study by University of California, Los Angeles, and University of California, Berkeley researchers entitled "Proposed Regulations Could Limit Access to Affordable Health Coverage for Workers' Children and Family Members," confirms that, unless the final rule adopts a more realistic approach, families will be denied ACA health insurance affordability tax credits, with significant financial consequences. More specifically, the researchers found that the Treasury regulation could deny health care insurance to tens of thousands of California children and hundreds of thousands nationwide if this issue is not addressed by the Administration or Congress.

The UCLA/UC Berkeley study presents data to support a hybrid approach to implementing this provision of the ACA. Specifically, if an employee has an offer of coverage which does not exceed 9.5 percent of household income then the employee should be required to take that offer of coverage and should be ineligible for exchange subsidies. However, if the cost of family coverage exceeds the 9.5 percent threshold then family members should be eligible for subsidized exchange coverage.

According to UCLA/UC Berkeley data, allowing family members without an affordable offer of coverage to get subsidized coverage in the exchange would have a minimal effect on exchange enrollment, increasing it by less than one percent. Notably, nearly half of the increase in enrollment would be attributable to children under the age of 19 with family incomes between 250 and 400 percent of the federal poverty level.

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The Treasury Department's proposed affordability test is problematic on many levels. Most important, dependents would wrongly be considered to have access to an affordable coverage option even when the costs of premiums for family coverage exceed 9.5 percent of household income. This interpretation would be devastating for millions of children and families who would be left not only without an affordable coverage option but also ineligible for subsidized exchange coverage.

Without action by the Administration or Congress to fix this "kid glitch", it is a certainty that families will face significantly higher costs in covering dependents or may be left without an affordable coverage option altogether. Whether through Administrative action or legislation clarifying congressional intent, this problem must be addressed quickly, making sure that the test to determine whether coverage is affordable for a family is based on the cost of covering an entire family and not solely on the cost of coverage for an individual employee.

FOR MORE INFORMATION about this and other child health issues
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