



American Federation
of Teachers, AFL-CIO

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August 20, 2012

Internal Revenue Service
CC:PA:LPD:PR (REG-131491-10)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Ladies and Gentlemen:

On behalf of our 1.5 million members, the American Federation of Teachers (AFT) welcomes the chance to comment on the Internal Revenue Service (IRS) final regulations concerning the health insurance premium tax credit. The AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families, and our communities.

Many AFT members have strong employer-sponsored health coverage, which has often been maintained in collective bargaining at the expense of wage increases. However, our members still have a stake in the creation of strong health insurance exchanges. Exchanges will provide an important counterpoint to employer-sponsored coverage, and could encourage greater quality and efficiency in the broader healthcare marketplace. Further, AFT members in lower-wage or part-time positions may directly benefit from the premium tax credits available in the exchanges. The AFT is interested in the successful implementation of the Affordable Care Act, including the effective functioning of the premium tax credit system.

Premium Tax Credits Should be Available to Those Purchasing Health Insurance through a Federally-Facilitated Exchange

The Affordable Care Act's signature achievement is the expansion of health insurance coverage. The Act achieves this coverage expansion in part by offering premium credits that make coverage affordable for low- and moderate-income people who purchase insurance through the exchange. These premium credits are meant to be available to all those who meet the statutory criteria, and not merely to those who happen to live in a state that has created its own exchange. As Timothy Jost points out in his July 18, 2012,

Health Affairs blog post, the Congressional Budget Office has long assumed that the premium credits would be available in all states, not just those with state-created exchanges.¹

We strongly support the Treasury's interpretation of Section 36B as providing premium tax credits to those "who obtain coverage through a State Exchange, regional Exchange, subsidiary Exchange, and the Federally-facilitated Exchange" (IRS REG-131491-10, p. 7).

Premium Tax Credits Should be Available to those with Incomes between 100% and 133% of the Federal Poverty Line

We also strongly support the Treasury's ruling that premium tax credits should be available to those with income between 100% and 133% of the poverty line. Section 36B(a) of the Act indicates that the premium tax credits are available to an "applicable taxpayer" (PPACA, p. 110). Section 36B(c)(1)(A) defines "applicable taxpayer" as "a taxpayer whose household income for the taxable year equals or exceeds 100 percent but does not exceed 400 percent of an amount equal to the poverty line for a family of the size involved" (PPACA, p. 113). The Congressional Budget Office, like the Treasury, interprets the law as providing premium tax credits to those with income between 100% and 133% FPL.²

To suggest, as some commentators have, that the premium tax credits should not be available to those with household income between 100% and 133% of the poverty line contradicts both the spirit and the letter of the ACA. We applaud the Treasury's interpretation of this section as providing premium tax credits to those between 100% and 400% FPL.

The Employee Share of the Family Premium Should Determine Affordability

The current regulations do not provide guidance on the affordability of employer-sponsored coverage, but instead defer that decision for future rulemaking. We again urge the Treasury to consider the cost of the family premium when determining affordability.³

The AFT represents many low- and moderate-income employees for whom healthcare costs are an ever-increasing burden. The Kaiser Family Foundation reports that while health insurance premiums have risen 114% from 2000 to 2010, employees' premium contributions have increased 147% in that period. Employees' earnings rose only 36% in

¹ *Health Affairs* blog, July 18, 2012: <http://healthaffairs.org/blog/2012/07/18/tax-credits-in-federally-facilitated-exchanges-are-consistent-with-the-affordable-care-acts-language-and-history/>.

² "to be eligible for subsidies, individuals and families must have income between 100 percent and 400 percent of the FPL...." Congressional Budget Office, "Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision," July 2012, p. 7.

³ On October 31, 2011, the AFT submitted comments on the affordability of employer-sponsored coverage in response to IRS REG-131491-10.

that time.⁴ In short, employees are shouldering ever-greater shares of their healthcare costs.

Family coverage is particularly vulnerable to cost shifting. It is not uncommon for family coverage to cost employees three to six times that of single coverage.⁵ Some employers offer single coverage at no cost to the employee, but charge steeply for family coverage.⁶ As a result, many low- and moderate-wage employees whose spouses and children need insurance coverage may have to pay significantly more than 9.5% of their household income for family coverage.

In keeping with the Act's intention to make insurance coverage more affordable for those who struggle to pay for it, future guidance should consider the share of the premium that an employee actually pays (and not just the single coverage premium share) when determining affordability. Affordability determinations should consider the employee premium share for all tiers of coverage, including employee-plus-children, employee-plus-spouse, and family coverage. If coverage is deemed unaffordable and the household meets the income threshold, all family members should be eligible for premium tax credits in the exchange.

Wellness Programs and Affordability Determinations

The regulation requests comments “on types of wellness incentives, how these programs affect the affordability of eligible employer-sponsored coverage for employees and related individuals, and how incentives are earned and applied.”

The AFT is concerned that considering wellness incentives when determining affordability could penalize employees who participate in wellness programs by potentially undermining their eligibility for exchange premium tax credits. An employee below 400% FPL whose share of the premium for employer-sponsored coverage is greater than 9.5% of her income, and who is therefore eligible for subsidized exchange coverage, could lose eligibility for the exchange premium credit if her share of the employer-sponsored premium were reduced thanks to her successful participation in a wellness program. If that employee stopped fulfilling the wellness requirements, she could then become eligible for the exchange premium credit.

Wellness incentives are intended to reward employees who take steps to improve and safeguard their health. The AFT is concerned that wellness incentives could become

⁴ The Kaiser Family Foundation: <http://facts.kff.org/chart.aspx?ch=2515>. See also <http://facts.kff.org/chart.aspx?ch=1690>.

⁵ As, for example, in public school systems in Dallas and Houston, and for lower-wage employees of the Red Cross.

⁶ In the Broward County, Fla. public schools, single coverage is free for the employee, but the family HMO high option costs the employee \$1,100 per month. In the Dade County, Fla. school district, certain employer-sponsored plans are free to the employee, but family coverage ranges from \$3,048 to \$7,392 per year, depending on the employee's income and choice of plan (sources: school districts' benefits websites).

liabilities for employees if they render otherwise eligible employees ineligible for subsidized exchange coverage.

Thank you for the opportunity to comment on these important matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Cowan', with a stylized flourish at the end.

Kristor W. Cowan
Director, Legislation

ALC : pc opeiu#2 afl-cio