



June 6, 2022

Charles P. Rettig
Commissioner Internal Revenue Service
111 Constitution Ave, NW
Washington, DC 20224

Re: Covered California Comments on the Proposed Rule, Affordability of Employer Coverage for Family Members of Employees (RIN 1545–BQ16)

Dear Commissioner Rettig:

Covered California is pleased to submit comments in support of this proposed rule issued by the Internal Revenue Service (IRS). Covered California makes these comments based on our technical and market experience as a State-based Exchange (SBE) that has successfully expanded coverage, offered consumers both stability and choice through competing health plans, and fostered enrollment. Our comments are also based on our experience and analysis of what efforts are necessary to uphold the integrity of the Affordable Care Act (ACA) and its goal to provide quality, affordable care to Americans across all states.

Covered California supports this proposed rule's reinterpretation of the ACA's affordability provision as it relates to employer-sponsored coverage, allowing certain family members – spouses and children – to become newly eligible for affordable health care. Under this provision, individuals are not eligible to obtain subsidies to purchase coverage through an exchange if they have an offer of affordable coverage from an employer. The original implementing regulations issued by the IRS in 2013 define the affordability test for family coverage as based solely on the affordability of self-only coverage – meaning that an employer meets the affordability requirement by offering an employee self-only coverage that does not cost more than 9.5 percent of their household income¹, regardless of the cost associated with the offer of family coverage, thereby creating the “family glitch.” This interpretation has eliminated an affordable alternative to employer-based family coverage by making individuals ineligible for subsidies to purchase coverage through an exchange.

Covered California supports the IRS's decision to exercise its regulatory authority² to adopt an alternative reading of the affordability rules within the ACA. In reviewing current regulations, the IRS determined that its original interpretation of affordability is

¹ The required contribution is indexed annually and is set at 9.61% for the 2022 Plan Year.

² 26 U.S.C. § 36B(h).

inconsistent with the ACA's fundamental purpose to expand access to affordable health care coverage. Notably, the interpretation is also inconsistent with other affordability rules in the ACA, including the determination for an exemption to the individual mandate³ and eligibility for subsidies due to employer-sponsored coverage being unaffordable⁴. When determining whether an individual is eligible for an exemption to the individual mandate, the affordability calculation is based on the employee's required contribution towards family coverage, not employee-only coverage. Additionally, when determining whether an individual's employer-sponsored coverage is unaffordable, an exchange must collect the enrollee's or individual's required contribution towards the employer-sponsored coverage.⁵ This proposed rule will finally resolve these inconsistencies, bringing this affordability provision into alignment with the rest of the ACA.

This reinterpretation will also have a real, tangible impact on consumers who have continued to see their premiums increase with no ability to seek subsidized coverage through an exchange. The Kaiser Family Foundation's recent annual Employer Health Benefits Survey, which collects information from private and non-federal public employers, found that employers continued to shift costs to family coverage as seen by premiums for family coverage increasing 22 percent from 2016 to 2021.⁶ The negative effects of these rising costs are being continually accelerated by the family glitch, increasing the burden on families and effectively pricing them out of affordable coverage.

An estimated 615,000 Californians are negatively impacted by the family glitch.⁷ Nationally, over 5.1 million individuals, including 500,000 uninsured individuals, are similarly negatively affected.⁸ Even more concerning, the family glitch disproportionately affects low and middle-income families, with nearly half of the individuals impacted having incomes under 250 percent federal poverty level.⁹ These

³ 78 Fed.Reg. 53646 (Aug. 30, 2013).

⁴ 42 U.S.C. § 18081(b)(4)(C).

⁵ *Ibid.*

⁶ Kaiser Family Foundation, 2021 Employer Health Benefits Survey (Nov. 10, 2021) <<https://www.kff.org/health-costs/report/2021-employer-health-benefits-survey>> (as of June 6, 2022).

⁷ UC Berkeley Center for Labor and Research and Education, UCLA Center for Health Policy and Research, Fact Sheet Fixing the Family Glitch in California: Projections from the California Simulation of Insurance Markets (June 2, 2022) <<https://laborcenter.berkeley.edu/wp-content/uploads/2022/06/Fact-Sheet-Family-Glitch.pdf>> (as of June 6, 2022).

⁸ Claxton et al., Kaiser Family Foundation, *Many Workers, Particularly at Small Firms, Face High Premiums to Enroll in Family Coverage, Leaving Many in the "Family Glitch"* (April 12, 2022) <<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>> (as of June 6, 2022).

⁹ *Ibid.*

families in particular would see significant savings in out-of-pocket costs through cost-sharing subsidies.¹⁰

Resolving this inconsistency as set forth in the proposed rule will not lead to a rapid increase in new federal spending. As the IRS explains, not all individuals who become newly eligible for subsidies will purchase coverage through an exchange. This rule is not an attempt to expand federal subsidies or otherwise increase enrollment in exchanges, but rather an effort to accurately and consistently implement the statutory text and intent of the ACA. As a result, millions of families would be given the meaningful choice of coverage through an employer or an affordable alternative with subsidized coverage on the exchange.

We appreciate your consideration of our comments. We look forward to continuing our partnership with you to make the ACA work as effectively as possible and build on its foundation as we work to ensure that all Americans have access to affordable health coverage. If you have any questions or would like more information about the proposed rules' impact on individuals' access to affordable coverage, please feel free to contact me.

Sincerely,



Jessica Altman
Executive Director

¹⁰ Goe and Palanker, The Commonwealth Fund, *ACA "Family Glitch" Increases Health Care Costs for Millions of Low- and Middle-Income Families* (April 22, 2021) <<https://www.commonwealthfund.org/blog/2021/aca-family-glitch-increases-health-care-costs-millions-low-and-middle-income-families>> (as of June 6, 2022).