



American Cancer Society ☞ Children's Defense Fund/New York ☞ Community Service Society of New York
Institute for Puerto Rican and Hispanic Elderly ☞ Make The Road New York ☞ Medicare Rights Center
Metro New York Health Care for All Campaign ☞ New Yorkers for Accessible Health Coverage ☞
New York Immigration Coalition ☞ Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices ☞ Schuyler Center for Analysis and Advocacy

August 21, 2012

The Honorable Timothy Geithner
CC:PA:LPD:PR (REG-131491-10)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Final Regulations for the Health Insurance Premium Tax Credit, REG-131491-10

Dear Secretary Geithner:

Health Care for All New York (HCFANY) writes to comment on the final rule regarding the Patient Protection and Affordable Care Act's (ACA) health insurance premium tax credit provisions. HCFANY is a statewide coalition of more than 130 organizations, which seek to achieve affordable, quality health care for all New Yorkers.

Overall, we support the Department's efforts to implement this important provision of the ACA to make quality affordable coverage available to millions of families. Our main concern, as we indicated in our October comments on the related Notice of Proposed Rulemaking (NPRM), focuses on the definition of affordability for employer-sponsored coverage.

**Section 1.36B-2(c)(3)(v)(A)(2) Employer-sponsored minimum essential coverage –
Affordability for related individual**

We commend the Department for considering changes to the 2011 NPRM that HCFANY and many other advocates recommended. The final regulation indicates that the Department will address a critical affordability issue in future regulations. We urge the Department, through this upcoming regulation, to ensure that the cost of dependent coverage is considered in the affordability calculation.



Under the ACA, an employee who is offered coverage through work is permitted to instead purchase coverage on the Exchange, with premium tax credit assistance, if the coverage offered through work would cost more than 9.5 percent of the employee’s household income. In the 2011 NPRM, the Department proposed a standard that would have used the premium cost of insuring only the employee – and not the employee’s dependents – in this calculation. In our October comments on the NPRM, like many other stakeholders, we urged the Department to amend the proposed regulation to include the cost of dependent coverage in this calculation. We commend the Department for considering changes to this proposed regulation. The final rule notes that the Department will issue further guidance on determining eligibility for other family members.

Including the cost of dependent coverage in the affordability calculation is essential to make sure that the ACA’s promise of affordable coverage is fulfilled. Low-income workers who have access to coverage through work are more likely to be required to pay a large share of the premium, particularly when dependent coverage is available. These families will need to have the option of going to the Exchange for subsidized coverage if work-based coverage is too expensive. The rule proposed in the 2011 NPRM would have had a disproportionately negative effect on women and children. Women are 2.5 times more likely than men to have insurance coverage as a dependent. And a recent report by the Government Accountability Office found that the proposed rule could “potentially affect significantly more than the approximately 460,000 uninsured children we estimated above under certain scenarios.”ⁱⁱ

The intent of the ACA is to make affordable coverage available to consumers who need it, including low-wage workers and their families. We urge the Department to base the determination of whether employer-sponsored coverage is affordable on the contribution required for an employee to cover all eligible family members. This interpretation of affordability should apply to both the definition of employer-sponsored minimum essential coverage and the exemption from the individual responsibility requirement.

Section 1.36B-2(c)(3)(v)(A)(4) Wellness incentives and employer contributions to health reimbursement arrangements

We also commend the Department for carefully considering how to address the effect on affordability of wellness incentives that increase or decrease an employee’s share of premiums. Many consumers could lose access to the tax credits, forcing them to stay in unaffordable employer-sponsored coverage, if these incentives are not appropriately considered in the affordability calculation. The Department’s future guidance on this issue should clarify that the affordability determination should be calculated using the highest premium the employee could be charged under the wellness incentive program.



Today, wellness incentive programs can vary workers' premiums by up to 20 percent of the total cost of coverage (both employer's and employee's share) based on their achieving a set health outcome. Further, there is no limit on how much employers can vary workers' share of premiums based on their participation in certain wellness program activities. As a result, existing wellness incentive programs can make employer-sponsored coverage unaffordable (based on the 9.5 percent of income threshold set under the ACA) for lower and middle-income workers who are unable to meet the wellness incentive requirement, undermining the ACA's goal of delivering affordable coverage to individuals and families in greatest need of health care and least able to afford an increase in their health care costs.

To avoid this, in situations where an offer of employer-sponsored coverage includes a premium-based wellness incentive, the larger premium that is assessed employees who do not meet wellness incentive requirements should *always* be used when determining whether an employee's offer of employer-sponsored coverage is affordable. This could be a premium before a wellness premium discount or rebate is applied or, depending on how the incentive is designed, it could be a premium including an additional wellness premium surcharge.

Consistently using the larger premium that an individual would have to pay, assuming he or she does not meet wellness incentive requirements, is also critical to prevent premium-based wellness incentive programs from being used as a subterfuge for discrimination, in which employers only offer affordable coverage to healthier workers that meet wellness requirements and send their less healthy workers to the Exchange for coverage. Such a practice would not only be a subterfuge for discrimination, it could threaten the affordability and sustainability of Exchange coverage, as disproportionately fewer healthy individuals would seek Exchange coverage.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at ebenjamin@cssny.org or (212)614-5461 or Carrie Tracy at ctracy@cssny.org or (212)614-5401.

Sincerely,

Elisabeth Benjamin, MSPH, JD
Vice President of Health Initiatives
Community Service Society of New York

ⁱ Government Accountability Office Report to Congressional Requesters, "Children's Health Insurance Opportunities Exist for Improved Access to Affordable Insurance," June 2012, page 14.