American Cancer Society ☙ Children's Defense Fund/New York ☙ Community Service Society of New York ☙
Make The Road New York ☙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

October 31, 2011

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

Dear Secretary Geithner:

Health Care for All New York (HCFANY) writes to comment on the notice of proposed rulemaking regarding the Patient Protection and Affordable Care Act's (ACA) health insurance premium tax credit provisions. HCFANY is a statewide coalition of more than 100 organizations, which seek to achieve affordable, quality health care for all New Yorkers.

We would like to thank the Department for the opportunity to influence future rulemaking. Overall, our main concern regarding the proposed premium tax credit rules is affordability.

§136B-2(c)(3)(v)(A)(1) Affordability

The NPRM states that an eligible employer-sponsored plan is affordable for an employee or a related individual if the portion of the annual premium the employee must pay for self-only coverage for the taxable year does not exceed the required contribution percentage of the

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taxpayer's household income for the taxable year. As Example 2 (§136B-2(c)(3)(v)(2)(C)) demonstrates, if the employee's share of the premium is less than the required contribution percentage, the coverage is considered affordable even if the employee's share of the premium to cover his or her family exceeds the required contribution percentage.

***HCFANY Comment*:** The NPRM should base the determination of whether employer-sponsored coverage is unaffordable on the employee's contribution for family coverage both for the purposes of the firewall and the exemption from the penalty for not having coverage.

Consumers are more likely to obtain and use coverage for every member of the family if it is possible to cover all family members with the same policy. And coverage that costs up to 9.5 percent of an entire household's income, to cover only one member of the household, will be prohibitively expensive for many low-income families. Some families would have to go into debt to pay for coverage, while others would go uninsured and pay a penalty.

Under the approach in the proposed rule, many families would face these difficult choices. Failing to account for the affordability of employer-sponsored family coverage would render an estimated 3.9 million non-working dependents ineligible for subsidies, according to an analysis by the Kaiser Family Foundation. On average, these family members would have to pay 14 percent of their income to access the employer coverage.[1]

Low-income consumers who do not qualify for public programs will have a very difficult time affording coverage on the Exchange without subsidies. Low-income consumers are already struggling to meet basic household needs. A 2011 survey by the Community Service Society of New York of New York City residents with incomes below 200 percent FPL found that:

- 18% of low-income New Yorkers have not gotten or postponed getting medical care or surgery because of a lack of money or insurance.
- 26% say they or a member of their household went without health insurance coverage.
- 20% say they have debt due to medical bills.
- 17% say they skipped meals because there wasn't enough money to buy food.
- 18% say that they or a member of their household had their gas, electricity or phone turned off because the bill was not paid.

[1] Larry Levitt and Gary Claxton, "Measuring the Affordability of Employer Health Coverage," Kaiser Family Foundation, August 24, 2011. The analysis relies on 2008 demographic and insurance data from the Medical Expenditure Panel Survey and employee premium contribution information from the Kaiser/HRET Employer Health Benefits Survey. It assumes no behavior changes by employers in response to the health reform law. See also, Peter Gosselin, "New Rule Could Narrow Aid for Health-Plan Buyers and Shrink Insurers' Sales," Bloomberg Government, September 27, 2011.

- 25% say they fell behind in their rent or mortgage.
- 13% say they have been threatened with foreclosure or eviction.
- 21% say they had their hours, wages, or tips reduced.

The rule making employer-sponsored coverage affordable, even if the cost of premiums for a family is higher than the required contribution percentage, will affect these low-income consumers the most. Low-wage workers are more likely to pay a higher share of their income in premiums. If the Department does not amend this rule, it will be even more important for Exchanges to offer subsidized coverage to low-income consumers through a Basic Health Plan.

§1.36B-3 Computing the premium assistance credit amount

The NPRM creates a second affordability issue by failing to account for CHIP premiums in the calculation of the premium assistance amount. Under the proposed rules, a family would pay no less for a qualified health plan that covers two adults than the family would pay for covering two adults and children. If the children are enrolled in CHIP, this family would pay CHIP premiums in addition to percentage of income they are required to contribute for the qualified health plan.

The number of families subject to this type of "double premium" is likely to be significant. Estimates from the Urban Institute indicate that three out of four (75%) parents who are eligible for the Exchange will have one or more children who are eligible for CHIP or Medicaid. It is unknown how many of these families must pay premiums to enroll their children in public coverage, but 30 states charge a premium or annual enrollment fee to children in CHIP, so premium stacking will be widespread. While the fundamental issue arises from the statute, the proposed rules do not acknowledge the problem, nor do they provide states with any options or advice for addressing it.

HCFANY Comment**:** The NPRM should include a solution to this problem One solution could be to count CHIP premiums as part of the family contribution in tax credit calculations, or using a benchmark plan for the entire family rather than for the family members enrolling in coverage. Additionally, the Department should urge HHS to modify CHIP rules to avoid adding unaffordable cost burdens for families with children in CHIP and adults in subsidized QHPs.

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

Carrie Tracy, JD
Policy Associate
Community Service Society of New York