

June 6, 2022

Internal Revenue Service
U.S. Department of the Treasury
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: IRS Reg-114339-21; Affordability of Employer Coverage for Family Members of Employees

Submitted electronically via <http://www.regulations.gov>

On behalf of UnidosUS (formerly the National Council of La Raza), we respectfully submit this comment on the Internal Revenue Service (IRS) proposed rule, “Affordability of Employer Coverage for Family Members of Employees.”

UnidosUS, previously known as the National Council of La Raza, is the nation’s largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers to the success and well-being of Latinos at the national and local levels. For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration and that share a desire to make our country stronger.

Over the past twelve years, UnidosUS helped shape, implement, and defend the Affordable Care Act (ACA).¹ During annual Open Enrollment, we work closely with our Affiliate Network and through social media, events, and other channels to ensure that more Latinos enroll in affordable health coverage through the Marketplace.² We also have long advocated for policies to build upon and improve the law, including through Medicaid expansion in the remaining twelve states, qualifying Deferred Action for Childhood Arrivals (DACA) recipients for Marketplace coverage, and improving access and affordability through the American Rescue Plan Act (ARPA).³

The “family glitch” unnecessarily excludes millions of Americans from the benefits of the ACA. We welcome the IRS’s proposed rule which interprets the law in a manner more consistent with the intent of the ACA. Specifically, we support:

- The proposed changes to the affordability test and eligibility for premium tax credits (PTCs), which will especially benefit working Latino families in the service, construction, and agricultural industries in which they are highly represented

- The proposed changes to the minimum value of coverage to ensure that families receive coverage that is affordable and comprehensive, with access to inpatient and physician services

Proposed changes to the affordability test and eligibility for PTCs will benefit working Latino families.

Despite progress following implementation of the ACA, Latinos are still far more likely to be uninsured (20%) than are non-Hispanic Whites (7.8%).⁴ Under the previous administration, the rate of uninsured Latinos began moving in the wrong direction, particularly for children. By 2019, more than 9% of Latino children were uninsured (an increase from 7.9% in 2017).⁵ Nearly 5 million individuals would benefit from fixing the family glitch, and children are more than 40% of the 5 million.⁶

The Medicaid disenrollment freeze in effect throughout the COVID-19 public health emergency (PHE) has helped to keep the uninsured rate lower than it might otherwise have been. When the freeze ends, as many as 2.4 million Latino children will be at risk of losing health coverage.⁷ Yet many people who will no longer be eligible for Medicaid will still be eligible for Marketplace coverage. By fixing the family glitch, even more working families will be able to qualify for affordable health insurance and be less likely to go without coverage.

Latinos are also likely to greatly benefit from the proposed changes given the industries in which many of them work. Fixing the family glitch is estimated to significantly benefit workers in the service, construction, and agricultural industries.⁸ Latinos make up 35% of construction workers, more than 25% of crop production workers, and a disproportionate share of service workers.⁹

For many employees in these occupations, even if they do receive an “affordable” offer of employer-sponsored insurance (i.e., 9.61% of household income based on the cost of self-only coverage this year), it is unlikely to be sufficient to allow them to sustainably cover their entire family. Tragically, such an offer would also effectively bar their family members from accessing coverage in the Marketplace, where PTCs and cost-sharing reductions would otherwise be available.

The current rule can lead families to enroll in higher-cost job-based coverage, despite the availability of more affordable, comprehensive coverage on the Marketplace. This poses an even greater obstacle during the ongoing economic crisis as we emerge from the pandemic. The proposed changes will ensure that more Latinos qualify for lower-cost Marketplace coverage and will benefit uninsured individuals who might decide to forgo coverage altogether because of high costs.

Proposed changes to the minimum value rule will help to ensure that more Latino families can access affordable comprehensive coverage.

The rule also provides that current minimum value requirements (i.e., plans must cover at least 60% of the total allowed costs of benefits provided under the plan as well as substantial coverage of inpatient hospital services and physician services) apply for both employees and related individuals. As the proposed rule explains, without these additional changes, the revisions to the affordability test would be insufficient and would undermine the comprehensiveness of the benefits a family member would otherwise receive.

By expanding the 60% minimum value rule and ensuring access to employer-sponsored insurance with substantial coverage of inpatient hospital services and physician services for both employees and related individuals, the proposed rule will improve the quality of health coverage for which Latino families are eligible.

Additional considerations should be taken into account for families with differing source of coverage.

While the changes in the proposed rule will improve working Latino families' access to affordable, comprehensive health coverage, it will likely result in families being splintered between different sources of coverage (e.g., an employee parent with job-based coverage, with their spouse and child or children covered through the Marketplace).

Under these circumstances, families will need to contend with different provider networks, deductibles, open enrollment periods, appeals and grievance procedures, and other parameters unique to their different health plans. This could present difficulties, particularly for those with limited English proficiency or lower rates of health literacy.

Given this, UnidosUS urges the Department of the Treasury and the IRS to work with the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services to ensure that individuals who will benefit from the proposed rule are aware of culturally responsive, linguistically appropriate resources for consumer health assistance and navigation.

For its part, the Treasury, in coordination with HHS and the U.S. Department of Labor, should issue tri-agency guidance and consumer-friendly resources to help families navigate challenges that arise from splintered coverage arrangements. This could include publishing resources that clarify the applicability of key consumer protections and benefit requirements (e.g., essential health benefits and first-dollar coverage of preventive services) by plan type.

Conclusion

We appreciate the IRS and Department of the Treasury's efforts to improve access to quality, affordable health coverage as our nation continues to recover from the health and economic

crises. Should you have any questions or need further information, please contact Matthew Snider at msnider@unidosus.org.

Notes

¹ Manuela McDonough et al., *Readiness to Implement the Affordable Care Act in the Latino Community among Health Centers and Community-Based Organizations* (Washington, DC: National Council of La Raza and John Snow, Inc., 2014), https://www.unidosus.org/wp-content/uploads/2021/07/readinesstoimplementaca_ib.pdf (accessed May 2022); Sonya Schwartz et al., *Historic Gains in Health Coverage for Hispanic Children in the Affordable Care Act's First Year* (Washington, DC: Georgetown University Health Policy Institute Center for Children and Families and National Council of La Raza, January 2016), <https://www.unidosus.org/wp-content/uploads/2021/07/uninsuredhispanickids.pdf> (accessed May 2022); UnidosUS, *Affordable Care Act Threatened: What's at Stake for Latinos* (Washington, DC: UnidosUS, October 2020), https://www.unidosus.org/wp-content/uploads/2021/07/unidosus_acathreatened.pdf (accessed May 2022); and Matthew Snider, "On its 12th anniversary, it's time to make the Affordable Care Act work for more people," *UnidosUS blog*, March 24, 2022, <https://www.unidosus.org/blog/2022/03/24/on-its-12th-anniversary-its-time-to-make-the-affordable-care-act-work-for-more-people/> (accessed May 2022).

² UnidosUS, "Affordable Care Act and Medicaid," <https://www.unidosus.org/issues/health/aca-open-enrollment/> (accessed May 2022).

³ Kelly Whitener, Matthew Snider, and Alexandra Corcoran, *Expanding Medicaid Would Help Close Coverage Gap for Latino Children and Parents* (Washington, DC: Georgetown University Health Policy Institute Center for Children and Families and UnidosUS, June 2021), <https://www.unidosus.org/publications/expanding-medicaid-would-help-close-coverage-gap-for-latino-children-and-parents/> (accessed May 2022); and Melissa McChesney, *Supporting People with DACA and Boosting Our Economic Recovery by Extending Access to Affordable Health Care* (Washington, DC: UnidosUS, August 2021), <https://www.unidosus.org/publications/supporting-people-with-daca-and-boosting-our-economic-recovery-by-extending-access-to-affordable-health-care/> (accessed May 2022).

⁴ Kaiser Family Foundation, "Uninsured Rates for the Nonelderly by Race/Ethnicity (2019)," <https://www.kff.org/uninsured/state-indicator/nonelderly-uninsured-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (accessed May 2022).

⁵ Joan Alker and Alexandra Corcoran, *Children's Uninsured Rate Rises by Largest Annual Jump in More Than a Decade* (Washington, DC: Georgetown University Health Policy Institute Center for Children and Families, October 8, 2020), <https://ccf.georgetown.edu/2020/10/08/childrens-uninsured-rate-rises-by-largest-annual-jump-in-more-than-a-decade-2/> (accessed May 2022).

⁶ Matthew Buettgens and Jessica Banthin, *Changing the 'Family Glitch' Would Make Health Coverage More Affordable for Many Families* (Washington, DC: Urban Institute, May 2021), https://www.urban.org/sites/default/files/publication/104223/changing-the-family-glitch-would-make-health-coverage-more-affordable-for-many-families_1.pdf (accessed May 2022); and Matthew Buettgens, Lisa Dubay, and Genevieve M. Kenney, "Marketplace Subsidies: Changing The 'Family Glitch' Reduces Family Health Spending But Increases Government Costs," *Health Affairs* 35, no. 7 (2016): 1167–1175, <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.1491> (accessed May 2022).

⁷ Melissa McChesney, "New Report: Texas and Florida at highest risk of eligible children losing Medicaid," *UnidosUS blog*, March 10, 2022, <https://www.unidosus.org/blog/2022/03/10/texas-and-florida-at-highest-risk-of-eligible-children-losing-medicaid/> (accessed May 2022).

⁸ Gary Claxton, Larry Levitt, and Matthew Rae, *Many Workers, Particularly at Small Firms, Face High Premiums to Enroll in Family Coverage, Leaving Many in the 'Family Glitch'* (Washington, DC: Kaiser Family Foundation, 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/> (accessed May 2022).

⁹ United States Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Household Data: Annual Averages: 18. Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity, <https://www.bls.gov/cps/cpsaat18.htm> (accessed May 2022).