October 27, 2011

By Mail

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

To whom it may concern:

The American Cancer Society Cancer Action Network ("ACS CAN") is the advocacy affiliate of the American Cancer Society (the "Society"). The Society is a nationwide, community-based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer, through research, education, advocacy, and service. The American Cancer Society, operating through its national office and 12 chartered, geographic division affiliates throughout the United States is the largest voluntary health organization in the United States.

ACS CAN appreciates the opportunity to provide comments to the Internal Revenue Service on the proposed rule on the Health Insurance Premium Tax Credit published in the Federal Register on August 17, 2011.

Making health insurance affordable to middle-income Americans is essential to making the goal of providing adequate, affordable health insurance. The Affordable Care Act establishes premium subsidies for people in the health exchanges that meet certain income requirements. Other consumer groups are likely to provide more extensive comments on the proposed rule, but ACS CAN is writing specifically to express its deep concern about the proposed method for determining whether employment based coverage is affordable for individuals eligible for coverage through a family member's employment, specifically whether affordability should be determined by looking at the cost of coverage just for the employee or for the entire family. The preliminary interpretation in the proposed rule that affordability of coverage for the family should be measured by the cost for employee-only coverage could result in almost 4 million Americans without access to affordable health insurance.

Under the ACA, the premium tax credit is available to individuals with family income between 100 and 400 percent of federal poverty who do not have access to minimum essential coverage. There is a special rule in the statute relating to determining whether employment based coverage is minimum essential coverage that allows individuals to be eligible for the premium tax credit if the employee's contribution to the employer coverage is so high that it is considered unaffordable. Unaffordable is defined by the statute as more than 9.5% of household income.

Treasury proposes determining affordability for family members based on the cost of self-only coverage. This means that if self-only coverage (what most plans refer to as individual coverage or employee-only coverage) costs the employee less than 9.5% of household income, then the plan is deemed affordable for the employee and all eligible family members. The actual cost of covering the entire family does not play a role in the affordability determination. Imagine then a situation where it costs an employee 5% of household income to enroll in insurance but costs an additional 20% of household income to add a spouse to the coverage. That spouse is deemed to have affordable coverage and is not eligible for a premium tax credit.

For many working Americans, the cost of covering the family through employment based coverage is prohibitive. Family coverage is often expensive—especially for low-wage workers. According to the Employer Health Benefits 2011 Survey conducted by the Kaiser Family Foundation and Health Research & Education Trust, almost one-third of small firms, with 3-199 workers, require workers to pay more than half of the premium for family coverage. With average annual premiums for family coverage of $15,073 in 2011, that means many workers could be facing family premiums of over $7,500 a year. The average annual worker contribution across employer size in 2011 was $4,129. Of particular importance for determining eligibility for premium tax credits is that workers in firm with higher numbers of lower-wage workers contribute a greater percentage of premium for family coverage than workers in firms with fewer numbers of lower-wage workers. Just because a worker's self-only coverage is affordable does not mean that coverage for the family will be affordable.

Many family members of working Americans who do not now have access to affordable health insurance are likely to remain uninsured. The Kaiser Family Foundation estimates that there are 3.9 million non-working dependents in families where coverage is under 9.5% of family income for the worker but not for other family members. There are likely even more people in families where both spouses are working, but only one has an offer of employer-sponsored coverage and that offer is over 9.5% of family income for family coverage. Many of these individuals will be left without access to affordable coverage in 2014. As a result, many will remain uninsured.

More uninsured individuals means continued stress on our healthcare system. The uninsured will continue to need health care, but many will be unable to pay for that care. The result will be continued uncompensated care. State and local governments will continue to need to provide funding to hospitals and community health centers to help pay for the costs of the uninsured. Insurance rates will continue to be higher in order to cover costs of care to the uninsured that are never compensated elsewhere. As the uninsured become disabled due to lack of access to healthcare, there will be continued pressure on Medicaid and Medicare to pick up costs of serious health conditions that could have been prevented if the individuals had access to health care.

The Treasury interpretation goes against many federal and state policies that aim to strengthen families, and instead creates a family penalty. Many couples may come to the conclusion that it is better to not marry and maintain access to affordable health insurance for themselves and their children. This could also increase adverse selection in the exchanges as healthier individuals are less likely to make the decision to not marry and maintain eligibility for premium tax credits. For those with expensive health conditions, the economic reality of not having access to affordable insurance is more likely to outweigh the benefits of marriage.

Recommendation: The final rule should reflect a policy whereby the eligibility of an employee to switch from an employer-sponsored plan to the health exchange is based on the coverage sought by the worker, not just the premium cost of a single worker policy. If a worker certifies that he or she wants to enroll in a family plan (i.e., a plan that will cover at least one dependent in addition to the worker) and the cost of such a plan would require more than 9.5 percent of the worker's income, than he or she should be deemed eligible to transfer to the exchange.

Sincerely,

Chris Hansen
President