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October 24, 2011

LEGAL PROCESSING DIVISION  
PUBLICATION & REGULATIONS  
BRANCH

CC:PA:LPD:PR (REG-131491-10)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington D.C. 20044

Re: Proposed Rules on Premium Tax Credits announced August 17, 2011

Commissioner Shulman:

I am writing as Bargaining Coordinator for Service Employees Union Local 49 to comment on the proposed rules issued August 17, 2011 regarding health insurance premium tax credits. I specifically address section 1.36B-2(c)(3), which would deny tax credits to individuals who could be enrolled in a family member's employer-sponsored plan, regardless of the amount of the required contribution for covering them.

The ACA generally provides tax credits for individuals with incomes between 100 and 400% of the federal poverty level unless they are eligible for government or employer-sponsored minimum essential coverage that is affordable. The ACA quite clearly says that coverage for the employee herself is affordable only if the employee's required contribution is less than 9.5% of the employee's household income. It goes on to say, with respect to family members, "This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee."

This provision relating to the employee taxpayer's dependents could be interpreted in three different ways. The proposed rule has adopted the only one of the three possible interpretations that is clearly at odds with the approach of the rest of the bill, which bases eligibility and premium and cost-sharing subsidies on considerations of both household income and family size.

A rule could be adopted providing that coverage for each related individual is deemed affordable under the same standard applied to the employee—i.e., if it costs less than 9.5% of household income. Alternatively, a rule could provide that employees who are offered coverage for their dependents are not eligible for premium tax credits

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for the dependents if the cost for covering the entire family is under 9.5% of household income. Instead, the proposed rule would disqualify all family members under a rule supposedly addressing affordability of coverage of employee-only coverage, no matter what family coverage costs.

The results are outrageous from a human and a policy standpoint.

I coordinate bargaining for SEIU Local 49, a union that represents many low wage workers in building services, health care, and light manufacturing. In these industries it is quite common for employers to provide no health insurance coverage at all. In the unionized sector, most employers offer fully-paid coverage for full-time employees and coverage for dependents that employees may choose to purchase with little or no employer contribution. Few buy the dependent coverage because they cannot afford it. The effect of this rule will be to deny these unionized workers tax credits to help them buy affordable coverage for their families. Pretending the coverage is affordable won't make it so.

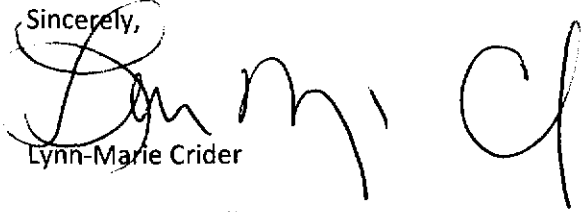
A newly hired janitor working in downtown Portland for an employer signatory to our union's master janitorial agreement earns \$10.70 per hour. If he is fortunate enough to work forty hours a week (and many are not), he earns \$1,854.66 per month. His employer makes contributions to a trust that provides him high quality coverage at no cost to him. The Trust is using employer contributions and reserves to allow him to purchase coverage for his two children at \$40 per month, but to cover his wife he must pay the full cost of the coverage--\$400.60 or 22% of his gross wages. If his wife is working full-time at a job that pays a comparable wage but provides no insurance, their combined incomes leave them below 200% FPL—so low that they would receive very substantial premium tax credits for purchasing coverage if he didn't work for a union firm that provides affordable coverage for him. But family coverage through the employer will cost them nearly 12% of their family income. Under the proposed rule, the spouse will probably continue to go without coverage because the coverage available to her is unaffordable, even though both adults in the family are working full-time.

This problem is not unique to the building services industry. Consider a lead clinic assistant for an ambulatory health clinic whose employees just joined our union. By virtue of her experience, she's paid \$17.57 per hour. She works 30 hours per week. Her employer offers her individual coverage for 20% of premium or \$78.59 per month. That coverage costs only 3.4% of her monthly income of \$2,280, so she is not eligible for premium tax credits. But if wished to cover a child, she would be required to pay the full cost of that coverage--\$314.36 per month. She wouldn't do it because paying for her own coverage plus that of the child would eat up 17.2% of her income. Under this rule, however, the child's coverage is deemed affordable and the mother is not entitled to premium tax credits to help her purchase coverage.

These workers should be able to look to the ACA for premium assistance for their families. They won't be able to get it unless Treasury adopts a rule that takes family size and the cost of family coverage into account in determining affordability. The Secretary's suggestion that these factors will be taken into account in rules relating to the obligation to purchase coverage is no consolation. It won't buy these workers coverage for their families or get them the health care they need.

The effect of the inequity in treatment of family members of workers who have employer-provided employee-only coverage is patent. It may cause some workers to legally separate so their spouses or their kids can get affordable health care coverage. And it may mean that employers must drop dependent coverage in order to protect their employees' access to premium assistance. None of this makes sense. A more equitable and humane rule should be substituted for the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Marie Crider". The signature is fluid and cursive, with the first name "Lynn" and last name "Crider" clearly distinguishable.

Lynn-Marie Crider

Bargaining Coordinator

Copies:

Meg Niemi, SEIU Local 49

Felisa Hagins, SEIU Local 49

Anna Roberts, SEIU Local 49

Dania Palanker, SEIU