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Health Policy Brief

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The Family Glitch. Some low-to-moderate-income families may be locked out of receiving financial assistance to purchase health coverage through the Marketplaces.

WHAT'S THE ISSUE?

The Affordable Care Act's (ACA's) "family glitch" bears no relationship to the early technology deficiencies that dominated the news and plagued the rollout of healthcare.gov and the state-based Marketplaces. Instead, it refers to how some low-to-moderate-income families may be locked out of receiving financial assistance to purchase health coverage through the new health insurance Marketplaces.

Eligibility is not solely determined by income. It is also subject to whether a family has access to affordable employer-sponsored insurance. The problem is that the definition of "affordable"—for both an individual employee and a family—is based only on the cost of individual-only coverage and does not take into consideration the often significantly higher cost of a family plan.

This shortcoming is a trouble spot in how the ACA is being implemented. As its name clearly conveys, the law was intended to make coverage more affordable, and for millions of Americans, it has. Families caught up in this glitch, however, cannot qualify for premium tax credits to reduce the cost of a Marketplace plan or for cost-sharing reductions to lower their out-of-pocket payments for health services, even if the family cannot afford coverage otherwise.

While a large number of children in these families are eligible for coverage through Medicaid or the Children's Health Insurance Program (CHIP), spouses and some children will remain uninsured without a path to affordable insurance if the family glitch is not fixed. However, many more children could be affected if Congress does not act to extend funding for CHIP after the current appropriation ends in September 2015.

WHAT'S THE IMPACT?

Under the ACA, an individual worker and family members who can enroll in "affordable" job-based health insurance cannot get financial help to lower the costs of Marketplace coverage. Based on the way eligibility for premium tax credits is determined under current Internal Revenue Service (IRS) regulations, employer-sponsored insurance, for both the employee and his or her family members, is deemed affordable if the cost of self-only coverage—that is, a plan that covers only the individual worker—is less than 9.50 percent of household income. This measure is adjusted annually and will increase to 9.56

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$4,565

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percent of household income in 2015. Defining eligibility in this way ignores the cost of a family plan, which is frequently much more expensive than self-only coverage.

In 2013 the average worker contribution for self-only, employer-sponsored coverage was $999 annually, while the average contribution for family coverage was $4,565, although there is considerable variation in both single and family plans. Therefore, the employer-sponsored coverage would be considered affordable for a family of four with a household income of $33,000 (just over 140 percent of the federal poverty level), even though buying a plan for the entire family would cost 13.8 percent of their household income, well above the current 9.5 percent threshold.

In contrast, this same family, if all members were eligible for premium tax credits, would pay 3.4 percent of household income as their premium contribution toward the second-lowest-cost silver plan in the Marketplace. (Policies offered through the Marketplaces are divided into four tiers—bronze, silver, gold, and platinum—based on the actuarial value of the coverage they offer. Silver plans, on average, cover 70 percent of a patient's costs, with the enrollee responsible for the remaining costs in the form of deductibles, copays, and coinsurance. Actual cost sharing varies based on individual health care needs, and income-eligible families may qualify for higher-value coverage through cost-sharing subsidies.)

In the situation described above, none of the family members qualify for premium tax credits or cost-sharing reductions; however, they may be exempt from the individual mandate—that is, the ACA requirement to purchase insurance—if the lowest-price coverage available to them costs more than 8 percent of their household income. Although the penalty (called the individual responsibility payment) for being uninsured may be waived for these families, a large number of people are at risk of being uninsured.

Estimates of the number of dependents (spouses and children) affected vary widely from two to four million, so additional research is needed to more accurately assess the impact. One fact is clear—many more low-to-moderate-income children would be affected if not for Medicaid and CHIP. Still, despite the availability of public coverage, the family glitch affects nearly half a million children, according to estimates by the Government Accountability Office (GAO).

Low-income families are hit the hardest by this glitch. Workers in the lowest 25 percent wage category contribute a much higher proportion of their income to secure coverage. What is more, their compensation in general, including employer-provided coverage, is typically less generous. They pay a higher monthly premium and larger percentage of the cost of employer coverage than workers in the highest 25 percent wage category. On average, workers in the lower-wage group are required to pay 44 percent of the cost of employer-based coverage, or an annual average of $6,324, while higher-wage earners pay only 30 percent, or $4,980.

The number of adults affected will be even higher in the twenty-three states that have yet to take advantage of federal funding to expand Medicaid to low-income people. In these states, people with a household income just above the poverty level (100–138 percent) will not have access to Medicaid or to premium tax credits if they fall into the family glitch. While children with family income in this range qualify for Medicaid in all states, their parents will be faced with paying the full premium for a Marketplace or private plan or going without coverage.

WHAT'S THE BACKGROUND?

This issue is a consequence of how the eligibility provisions related to the premium tax credits are being implemented for families that are offered employer-based coverage. While rooted in the ambiguity of the ACA with respect to affordability for family members, the problem emerges from a narrow interpretation of "affordable" by the Joint Committee on Taxation (JCT) and adopted in regulations issued by the IRS.

The definition of "affordable employer coverage" applies to two different provisions of the law, both intended to support the continuation of a strong private employer–based insurance market. First, the law encourages employers with more than fifty workers to offer affordable coverage to employees by assessing a fee (called the employer shared responsibility payment) on firms that do not offer coverage. Second, it blocks people from opting for tax-funded subsidies by limiting financial assistance to only those who do not have access to affordable employer coverage.

While the law sets a clear standard for affordable employee coverage and requires employers to allow dependent children to enroll

0.5 million

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in a family plan, Congress deferred to business interests in limiting an employer's responsibility for providing "affordable" coverage to individual workers. As a result, there is no explicit standard of affordability for family members of an employee offered job-based family coverage. Moreover, the law neglects to clearly spell out how family members should be treated for purposes of eligibility for premium tax credits or the individual mandate.

The IRS initially proposed regulations using the cost of self-only coverage to define "affordability" for the other family members with respect to premium tax credits, primarily referencing the JCT's interpretation in its original analysis of the ACA. After receiving dissenting comments on the proposed rule, the IRS delayed the final regulation as it relates to family members.

During that time the GAO urged the Department of Treasury and the IRS to examine the impact of its proposed rule on eligible family members and determine whether it would be consistent with the ACA to adopt an approach that would consider the cost of family-based coverage. Given that the law set no standard requiring employers to offer affordable coverage to a worker's family or pay a penalty, the potential cost to the federal government emerged as the key determinant in limiting access to premium tax credits for family members.

The primary concern was that employers would raise the employee's share of family coverage, driving even more families to opt for premium tax credits. Ultimately, these concerns overrode other legal interpretations and fairness arguments when the IRS finalized the rule as proposed and actualized the family glitch.

WHAT'S THE DEBATE?

Legal and health policy experts believe there is a better reading of the law, which would align the definition of "affordability" with respect to both the individual penalty and access to premium tax credits for family members. The statute includes a special rule stating that the determination of affordability "shall be made by reference to the required contribution of the employee," which has been interpreted to mean "the required contribution of the employee for coverage of family members." The IRS regulations apply this special rule to the individual penalty but ignore it for the purposes of determining eligibility for premium tax credits for dependents who lack access to reasonably priced employer coverage.

Whether an oversight or a drafting error, experts at every point along the political spectrum agree that the current interpretation unfairly penalizes families. However, there is no consensus on fixing the problem. Few legislative proposals are perfect, and technical corrections are a common part of the process of fine-tuning laws, particularly when there are unintended consequences such as the family glitch.

Unfortunately, the current political polarization in Washington calls into question the probability of such action, especially when it comes to the highly contentious health reform law. While a statutory change would send a clear message to the administration to take action through rulemaking or guidance, legal and policy experts believe the problem can be addressed by the administration without amending the law.

WHAT'S NEXT?

Sen. Al Franken (D-MN) has introduced legislation (S. 2434), the Family Coverage Act, to ensure that working families have access to affordable health insurance coverage. The bill would amend the underlying law to determine affordability based on the cost of family-based (and not self-only) coverage with respect to a worker's family members.

However, the act also conveys the "sense of Congress" that the secretary of health and human services and the secretary of the treasury have the administrative authority to apply the affordability provision fairly as it relates to working families without a statutory change. Whether Congress will pass the bill or the administration will act remains to be seen. As is often the case, fixing the problem through the legislative process comes with a price tag, which would further fuel political rancor over the health reform law.

Without either congressional or administrative action, many low-income families are likely to remain uninsured. Currently, a much larger number of adults are affected than children, because Medicaid and CHIP offer a strong foundation of children's coverage. The median income eligibility level for Medicaid and CHIP coverage for children is 255 percent of poverty, about $60,000 for a family of four, and nineteen states provide CHIP up to 300 percent of poverty.

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23 states

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However, Congress must act to extend CHIP funding past September 2015, or that option may no longer be available to families as states quickly run out of the annual allotment of federal matching funds that sustain at least two-thirds of the cost of CHIP coverage. Although states could choose to fund CHIP on their own, it is not likely that they would do so without the federal match, which covers a minimum of 65 percent of the cost of CHIP.

If the family glitch remains unresolved, it is likely to become a critical issue as Congress considers the future of CHIP. Without CHIP, the GAO ups the number of children impacted by the family glitch from its estimate of 460,000 to 1.9 million. The Medicaid and CHIP Payment and Access Commission (MACPAC), which provides policy and data analysis and advises Congress and the secretary of health and human services, estimated the impact on children to be even higher. It projects that more than half (56 percent) of the 5.3 million children enrolled in separate CHIP programs could be subject to the family glitch.

In its June 2014 report to Congress, MACPAC recommended funding CHIP for two additional years but cautioned that further extensions will be necessary if crucial reforms, including fixing the family glitch, are not enacted. Legislation recently filed in both houses of Congress would extend CHIP for four years, a provision that is strongly supported by children's advocates and the pediatric community.

The scope of the problem may also be highlighted in an upcoming report, as the ACA requires the US Comptroller General to conduct a study on the affordability of health insurance coverage no later than March 23, 2015 (five years after the law's enactment). The study is expected to look specifically at whether the percentage of household income used to determine the affordability of employer-sponsored insurance is appropriate.

Families that are affected and cannot afford coverage will have a last opportunity to claim an exemption from the tax penalty if they have not already done so when they file taxes for 2014. If the issue remains unsettled after the 2014 tax-filing period, there should be a concerted effort to measure and publicly report the full impact of the family glitch by conducting an independent analysis of the exemptions granted and commissioning additional studies such as surveys and focus groups of affected people.

Those who support a more equitable definition of "affordability" emphasize that the current interpretation is inconsistent with the ACA's goal of increasing access to affordable health insurance, as it does not consider the much higher cost of family coverage. Although fewer children are impacted (as long as they can get CHIP), leaving parents and spouses uncovered prevents these families from realizing the broader benefits that result from health coverage.

Insured adults have greater access to needed care and better health than uninsured adults do, which enhances their ability to work, support their families, and care for their children. Moreover, insured families have enhanced economic security by minimizing the financial impact of an injury or illness. Almost a quarter of uninsured people have medical bills they are unable to pay, and medical debt contributes to half of the bankruptcies in the United States.

"The notion that Congress wrote the law in a manner that would exclude many families from access to more affordable coverage...is simply incongruent," is often quoted from a letter sent to the Department of Treasury from lawmakers who played key roles in drafting and passing the law.

No one seems to disagree with this. Nonetheless, policy makers have yet to find consensus on fixing the problem. ■

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