REMAPPING DEBATE
Asking "Why" and "Why Not"

Even with the Affordable Care Act, health insurance coverage for many families may remain unaffordable

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Jan. 15, 2013 — Any hopes that large employers would be penalized for failing to offer affordable insurance coverage to the spouses and dependent children of their employees under the Patient Protection and Affordable Care Act (ACA) were recently dashed by a proposed interpretation of the law from the Obama Administration.

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> — Shana Alex Lavarreda, UCLA

The interpretation, which was released by the Internal Revenue Service (IRS) late last month in the form of a proposed rule, related to the "Employer Shared Responsibility Provision" of the ACA, popularly known as the employer mandate. That provision provides that larger employers (those with more than 50 employees) offer insurance coverage not only to their employees, but to the "dependents" of those employees as well. If these employers fail to offer "affordable" coverage, they may be subject to monetary penalties.

But the IRS's definition of dependents in the proposed rule excludes the spouses of employees, regardless of whether the spouse is employed.

Timothy Jost, a law professor at Washington and Lee University and an expert on legal interpretations of the ACA, explained that there is thus nothing in the proposed rule that would incentivize large employers who do not currently offer coverage to spouses to do so. And for employers who do currently offer coverage to spouses, he said, there is no disincentive in the proposed rule against dropping that coverage in the future.

The proposed rule may address the concerns of some employers about the costs associated with offering coverage to their employees' spouses, said Shana Alex Lavarreda, director of health insurance studies at the Center for Health Policy Research at the University of California Los Angeles, "but from an employee's perspective, your spouse is a hugely important part of your family, somebody who you want to be covered, and if they don't have other coverage options this rule isn't going to do anything to address that."

And not affordable for dependent children

The ACA generally defines “affordable” insurance as coverage that costs no more than 9.5 percent of an employee’s household income in employee-paid premiums. The proposed rule *does* require that employers must offer coverage to the dependent children (up to the age of 26) of their employees or pay a penalty, but *does not* require that coverage to meet *any* threshold of affordability.

“Coverage for an employee under an employer-sponsored plan is affordable if the employee’s required contribution for self-only coverage does not exceed 9.5 percent of the employee’s household income,” the proposal says. Since “self-only” coverage — which, as its name implies, does not include coverage for *any* family members — is all that needs to be affordable, that means that dependent coverage need *not* be affordable.

The result is that “an employer could offer insurance to its employees that would cover their kids, but not contribute to the cost of the kids’ coverage at all,” said Robert Hall, the associate director of the Federal Affairs Department at the American Academy of Pediatrics. “No matter what that coverage is going to cost the employee, the employer is off the hook as long as they offer it.”

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Jost said that the proposed rule encourages those employers who do not currently offer coverage to the children of their employees to offer affordable employee-only coverage while contributing only a limited amount for family coverage, putting workers in a position of being able to get family coverage only if they cover a large gap between the employer contribution and the total insurance company premium.

“For some families,” Jost said, “that difference is not going to be affordable.”

Some children will be eligible to receive insurance through the Children’s Health Insurance Program (CHIP), but CHIP eligibility is based on family income and varies from state to state. In most states, children are ineligible if their family’s income is greater than 250 percent of the federal poverty line ($47,725 for a family of three in 2012), though many states have even lower thresholds.

Hall said that, under the proposed IRS rule, many children from middle-income families would be at risk of neither being eligible for CHIP nor having access to affordable insurance through their parents’ employer.

Consequences for families

When all of the provisions of the proposed rule are examined together, many advocates said that they now have further reason to doubt that the Affordable Care Act will live up to its goal of guaranteeing that all families have access to affordable coverage.

Under the proposal, “you can easily imagine a scenario in which a family is spending significantly more than 9.5 percent of its income on premiums,” said JoAnn Volk, a research professor and project director at the Georgetown University Health Policy Institute. She described a scenario known as “premium stacking,” in which the premiums associated with covering each individual family member may seem affordable in isolation, but, when those premiums are stacked on top of each other, the resulting total insurance cost to the family equals a huge percentage of the family’s income.

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— JoAnn Volk, Georgetown University

Because employers would not be incentivized to offer affordable family coverage under the IRS’s interpretation, Volk said, “you may have three family members each getting coverage from three different sources, and paying the premiums associated with all of them.”

For a family of four with a household income of $40,000 a year, for example, individual coverage for each spouse through separate employers could cost as much as $3,800 a year before the employer would be subject to a penalty. When premiums owed for the coverage for any children are added in, the total cost to the family could easily approach $8,000 a year, or 20 percent of family income.

“I don’t know of many families that would call 20 percent of their income an ‘affordable’ amount to pay for health insurance,” Volk said.

Carla Saporta, the health policy director of the Greenlining Institute, a research and advocacy group focusing on racial and economic justice, added that for many families, “even 9.5 percent of income is not a realistic measure of how much people can afford.”

The Administration has yet to announce whether an employer’s failure to offer workers the opportunity to get affordable insurance for their family members means that those family members will be eligible for subsidies to buy individual insurance through an insurance exchange (see box below). Even if they will be deemed eligible, those subsidies would likely not cover the entire cost of purchasing insurance, so families could still end up paying far more than 9.5 percent of their income on insurance premiums.

Conflicting goals

The proposed rule does not represent the Administration's final interpretation of the law, though most advocates do not expect significant changes to the provisions regarding employer coverage of dependents and spouses.

Several officials in the Obama Administration did not respond to requests for comment on the consequences of its proposed rule. Many advocates for expanding health insurance coverage said that the Administration could certainly argue that the employer-sponsored system is being improved insofar as larger employers will have more incentives under the ACA to provide *some* health insurance to workers.

Some families may be stuck "in limbo"

Under the ACA, tax credits to offset the cost of purchasing insurance on the individual market are generally available to employees and their dependents who have a household income of less than $92,200 (400 percent of the current federal poverty line) and who are not offered "affordable" coverage through an employer. Affordable coverage is understood be to coverage that does not exceed 9.5 percent of household income.

But costs attributable to *whose* coverage cannot exceed 9.5 percent of household income? If the Administration defines affordability for tax credit purposes in the same way it defined the scope of required affordability for purposes of the employer mandate, then it will only look at whether a worker's individual insurance cost is no more than 9.5 percent of household income, regardless of how much more expensive the family plan offered by the employer may be.

In that interpretation, the affordability of a worker's "self-only" coverage would render that worker's dependents ineligible for tax credits.

According to Cheryl Fish-Parcham, deputy director of health policy at Families USA, a patient advocacy group in Washington, if the Administration goes that route, millions of dependents could be stuck "in limbo" between an offer of employer-sponsored coverage that they can't afford and insurance on the individual market, for which they will not be eligible for subsidies.

"That could put families in a very bad position," Fish-Parcham said. "Many families may decide not to buy insurance at all because neither option is affordable for them."

A 2011 analysis by the Kaiser Family Foundation found that there are nearly four million non-working dependents in families in which the worker has access to affordable employer-sponsored coverage but the family does not.

Many advocates have argued that the ACA should be interpreted as allowing the dependents of employees to be eligible for tax credits to buy insurance through the exchange if the *family coverage* offered by the employer costs more than 9.5 percent of household income.

"It makes no sense not to apply the [affordability] standard to family coverage," said Ed Walz, the vice president for communications at First Focus, a child advocacy group. "That's like assuming that when a parent goes grocery shopping, they are only going to want to buy groceries for themselves and not their kids."

Allowing tax credits when the family coverage offered by an employer is prohibitively expensive, however, could substantially increase the total cost of the ACA to the government, something some advocates fear the Administration is looking to avoid.

But, according to Shana Alex Lavarreda of UCLA, the questions raised by the IRS's interpretation of the employer mandate demonstrate that the goal of giving all Americans access to quality, affordable insurance is in tension with the Administration's desire to limit the burden that the ACA places on employers.

"The problem," she said, "is that when you try so hard not to put too much of a burden on employers, it increases the risk that some of the gaps in that system won't get filled."