May 23, 2022

The Honorable Janet Yellen
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Charles P. Rettig
Commissioner of the Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20024

Via regulations.gov

Re: REG-114339-21

Dear Secretary Yellen and Commissioner Rettig:

We write to follow up on our April letter and to provide comments on IRS and Treasury's proposed rule on affordability of employer coverage for family members of an employee. We submit these comments on behalf of the members of the National Association of Insurance Commissioners (NAIC), which represents the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories.

IRS and Treasury have proposed to revise their interpretation of the Affordable Care Act to allow premium tax credits for families when family premiums for employer coverage are unaffordable. As we shared in April, state regulators believe it is time to make this change in eligibility policy. Premiums for family coverage (and self plus one coverage) are significantly more expensive than coverage for an individual, and these higher costs should not be ignored in determining affordability for a family. Under the current interpretation, spouses and dependents of an employee may be unable to access any affordable coverage when the employer focuses its premium contributions on coverage for the employee.

The revised interpretation of premium tax credit eligibility in the proposed rule will allow more people to access affordable coverage and we support it. An offer of employer coverage should not make family members ineligible for assistance with coverage costs when the employer does not make that offer affordable. When income is measured the household level for eligibility and family coverage premiums come out of the household budget, counting only the cost of self-only coverage in determining eligibility leaves a significant number of families without the assistance they need.

As the proposed rule acknowledges, at least two alternative readings of the relevant statute are possible. The proposed interpretation is not only reasonable, it is also the interpretation that would provide greater benefit to consumers and insurance markets. Clarifying the statute would also be helpful and we have requested Congress to update the law to make its intent clear. However, we do not believe regulatory action should wait for Congressional action and thank you for the steps you have taken to improve affordability by proposing revisions to the IRS interpretation and fixing the family glitch.

Regulatory changes to enhance affordability are particularly important due to the expected end of the Covid-19 Public Health Emergency (PHE). With the end of the PHE, up to 15 million Medicaid enrollees are expected to separate from their public health coverage. We want to work with federal officials to ensure those who are eligible can find affordable coverage in state individual health insurance markets. Fixing the family glitch will help more people afford coverage that meets their needs. We urge you to maintain the proposed rule's effective date so that affected families can see benefits in the 2023 coverage year.

As you know, tax policies have significant effects on health insurance markets. We appreciate the opportunity to comment on this regulatory proposal and look forward to working with you on other changes intended to improve coverage and enhance the functioning of insurance markets.

Sincerely,

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