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Prepared for meeting with OIRA regarding Family Glitch rule
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When Congress was debating the Affordable Care Act (ACA) in 2010, one of voters' key concerns was protecting their current coverage. The proposed rule not only would violate the specific language of the law but also its spirit and intent by causing people to lose the coverage they have now to be moved into taxpayer-supported policies.

The proposed rule is bad policy, and filling the family glitch would create a cascade of disruptions.

1. **The rule would mostly displace private spending with government spending.** The Kaiser Family Foundation and the Urban Institute estimate that about five million people are affected by the glitch. Nine in 10 of them currently are covered by a spouse's or parent's private employer plan.

   Although the ACA does not require employers to contribute to dependent coverage, most do. According to the Kaiser Family Foundation, companies that offered health benefits in 2021 paid on average 83% of the premium for self-only coverage and 72% for family coverage.

   Making dependents eligible for government-subsidized coverage in the exchange would incentivize employers to reduce or eliminate their contributions. The agencies themselves acknowledge that the proposed rule "would likely lead to a decrease in the total amount employers are spending on health insurance as the federal government increases spending on PTCs," premium tax credits.

   An illegal administrative fix would lead to displacing private spending with government spending for subsidized exchange coverage. Providing employers an incentive to drop dependent coverage is a clear violation of congressional intent with the ACA and would harm dependents who lose their private employer coverage.
2. **Exchange coverage also would be inferior coverage in most cases, further harming dependents**. Those who migrate from employment-based to public coverage will have less comprehensive insurance with fewer choices of medical providers.

   The Bureau of Labor Statistics has estimated that ESI has an average actuarial value of 85%. That is much richer than exchange coverage, where the most popular plans have an actuarial value of 60% to 70%. These narrow network plans subject families to greater risk that their health care spending will not be covered by their plan as they provide sparse coverage for out-of-network providers.
3. **Creating separate affordability tests for workers and their dependents will lead to "split coverage," which the agencies acknowledge.** The worker would remain in her employer's plan, but her dependents would be covered under an exchange-based policy (or Medicaid or CHIP).

   Consequently, family members would have different provider networks and drug formularies, be required to meet deductibles in two separate policies, and have separate caps on out-of-pocket spending. This will increase administrative hassle, confusion and out-of-pocket medical spending. Another clear harm for many families.

4. **Employers would be forced to collect information on TOTAL household income**, a serious privacy invasion. The massive added paperwork burden for employers would certainly lead to errors, subjecting employers to penalties. Some would be expected to bring suit regarding the harm done to them, emphasizing the illegality of the rule.

5. **States also would also be harmed as they would face significant new costs from the rule.** Dependents who migrate from ESI to the exchanges may find that they qualify for Medicaid and CHIP. States contribute financially to these programs. Moving people from employer supported policies, where states bear little or no cost, to public programs will impose new burdens on states. Many of these states will likely sue the agency if it the rule were to be finalized.
6. **Taxpayers face significant new costs without measurably expanding coverage**. As mentioned earlier, nine in ten of the 5 million people in the glitch already have coverage. The White House projects there will be only 200,000 fewer people with health insurance if this rule were to be implemented. In 2020, the Congressional Budget Office estimated that the "fix" to the "family glitch" would increase the federal deficit by $45 billion over ten years. This is an enormously inefficient use of federal resources.

In addition to lacking a basis in statute, the rule would:

- harm many of the families it proposes to help
- place new paperwork requirements on employers
- impose new financial burdens on states, and
- increase the federal debt and inflation without appreciably expanding health insurance coverage.

The rule should be withdrawn.

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