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October 31, 2011

Douglas H. Shulman
Commissioner
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: **Health Insurance Premium Tax Credit**

Dear Commissioner Shulman:

National Patient Advocate Foundation (NPAF) appreciates the opportunity to comment on the proposed rule entitled, "Health Insurance Premium Tax Credit" published in the *Federal Register* on August 17, 2011. NPAF is the voice for millions of patients who have sought care after a diagnosis of a chronic, debilitating or life-threatening illness. Its advocacy activities are informed and influenced by the experience of patients who receive direct, sustained services from its companion organization, Patient Advocate Foundation (PAF), a business that employs 212 people in 9 states. Founded in 1996, PAF is a national non-profit, 501(c)(3) direct patient services organization with a mission "to safeguard patients through effective mediation assuring access to care, maintenance of employment and preservation of their financial stability." PAF provides professional case management assistance to patients with chronic, debilitating or life-threatening conditions.

PAF serves as an active liaison between patients and their insurer, employer and/or creditors to resolve insurance, job retention, and/or debt crisis matters relative to their diagnosis through professional case managers and a national network of health care attorneys. PAF case managers work with patients and their providers to identify local, state, and federal programs that provide assistance for their individual needs, ensure appropriate reimbursement for healthcare services by their insurers and educate them on their employment rights during an illness. In 2010, PAF resolved 82,963 patient cases and received more than four million additional inquiries from patients nationally.

The comments found in the balance of this letter are informed by the collective experiences of patients who have contacted PAF for assistance in accessing quality care. Those experiences have been quantified in the PAF's Patient Data Analysis Report (PDAR) which illustrates the data collected across 260 variables by PAF senior case managers. As noted above, PAF resolved 82,963 patient cases and received more than four million additional inquiries from patients nationally in 2010.

Introduction

NPAF commends the principle behind the Health Insurance Premium Tax Credit. The provision of a tax credit to help consumers pay for the cost of premiums for Qualified Health Plans (QHPs) within Exchanges will help health insurance become more affordable to greater numbers of individuals.

The Congressional Budget Office estimates that, when the Affordable Care Act is fully phased in, the premium tax credit will help 20 million Americans afford health insurance. Premium tax credits seek to reduce the out-of-pocket expenses for those who are eligible through monthly advanced payments to be reconciled at the time of tax submission.

NPAF agrees that this credit has the potential to make a significant impact on health consumers. The aforementioned PDAR reveals medical costs and financial burden as a central barrier to quality care for patients. Medical debt crisis was the largest category of PAF case management patient issues in 2010.¹ It accounted for 62.81% of issues reported by PAF patients. A sufficient credit to help alleviate such a burden is necessary if the goal of the Patient Protection and Affordable Care Act (PPACA) to expand the number of Americans that have health insurance is to be realized.

NPAF is also pleased to note that this tax credit offered through the Exchanges will promote competition and choice. Insurance companies will compete for business on a level playing field in the Exchanges, which will likely drive down costs. The tax credit provides a greater number of health consumers the ability to purchase health insurance plans that fit their needs. These benefits are significant ones for health consumers and address access to care barriers Americans have struggled with for years. The premium tax credit also promotes economic security for families- another important benefit.

While NPAF recognizes the many benefits premium tax credits hold for healthcare consumers, there are sections of this proposed rule that raise concerns. One overall concern regards the sufficiency of the tax credit amount. If its goal is to make health insurance affordable, then the tax credit amount should be determined in light of health insurance premium prices. Moreover, the agencies ought to consider the diversity of opinion regarding the ability of tax credits to encourage the uptake of health insurance for some price-conscious consumers. The remaining concerns can be best summarized in two categories: Eligibility Requirement Concerns, and Credit Computation Concerns.

NPAF Eligibility Requirement Concerns

The first issue of concern to NPAF surrounds the requirements for credit eligibility, particularly for those who are currently paying for employer-sponsored coverage. PAF's PDAR data indicate that the number of patients who lack health insurance while being employed has grown 29.9% from 2009 to 2010, suggesting that employer sponsored health insurance is becoming increasingly unaffordable for employers and employees alike. Moreover, health insurance coverage may not sufficiently protect those covered from financial ruin. The adequacy of health insurance coverage is also an important issue. The PDAR data reveal that of those patients who report medical debt crises, 76.98% have health insurance coverage. Clearly health insurance coverage adequacy is of paramount concern to health consumers. Federal health policies should support health consumers who are currently paying for employer-sponsored coverage, which may not provide the sufficient coverage, in their attempts to avail themselves of the premium tax credit. However, the ability to opt out of employer insurance in favor of the premium tax credit offered through the Exchanges as proposed in the rule, appears to have unintended consequences for employees.

Employees are not eligible for premium tax credits if the employee is eligible for "minimum essential coverage," defined to include Medicare, Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, veterans' health programs, as well as affordable employer-sponsored coverage that has minimum value. Essentially, the Patient Protection and Affordability Care Act (PPACA) amends the *Internal Revenue Code of 1986* to provide that an employee generally is considered eligible for employer-sponsored minimal essential coverage only if the employee's share of the premiums is affordable and the coverage provides

¹ Patient Advocate Foundation, 2010 Patient Data Analysis Report

minimum value. It also identifies the standards for determining whether employer-sponsored coverage is affordable for an employee as well as for other individuals. The relevant corollary of this language is that employers are eligible for premium tax credit if their employer-sponsored premiums are not considered affordable.

HHS has interpreted section 36B(c)(i) of the *Code* which states an employee's employer-sponsored health plan is not affordable if "the employee's required contribution (within the meaning of 5000A(e) (1) (B)) with respect the plan exceeds 9.5 percent of the applicable taxpayer's household income" for the taxable year narrowly. This narrow construction is the result of the agency's reading of section 5000A(e)(1)(B) which defines the term "required contribution" as "the portion of the annual premium which would be paid by the individual . . . for "self coverage" only.

The result of this interpretation is that employees can opt out of minimum value employer insurance in favor of the tax credit only if out-of-pocket payment into an employer's health plan to pay *for individual coverage* exceeds 9.5% of household income. The proposed rule essentially limits the definition of affordability solely to the cost of individual coverage and excludes the cost of family coverage. Pursuant to the regulation text, family coverage that exceeds the 9.5 percent threshold by *any* amount will be rendered affordable. *This outcome is in direct opposition to the aforestated goal of the PPACA- to expand the number of Americans that have health insurance.*

Such a provision surely helps an employer at the cost of certain employees, disadvantaging those who have family plans, which are clearly more expensive than individual plans. For instance, an employee registered in a family plan may otherwise meet the requirement that he or she would not pay more than 9.5% of his or her salary for plan coverage. However, the inclusion of the extra amount necessary to cover that employee's family potentially pushes the actual expense far past the 9.5% out-of-pocket income benchmark, yet is still considered affordable. Drafting the proposed rule in this manner also invites a gaming of the system. Employees in such family plans would fall through the cracks, as they would not be eligible for the tax credit, yet not be able to afford family insurance coverage.

NPAF Recommendation NPAF urges both HHS and the IRS to consider the outcome of this narrow interpretation on the insurance plan affordability for health consumers and revisit this issue. The policy goal should be to assure equity between the family and individual health plans so that one is not advantaged to the detriment of the other.

Another matter of concern to NPAF regards consumer penalties or missed financial opportunities regarding eligibility for the premium tax credit. If consumers are not made sufficiently aware of tax credit eligibility, particularly those related to a consumer's change in circumstances, there exists potential for unfortunate consequences. First, consumers must know that if they make the mistake of enrolling in a health insurance plan through their employer, even if it is determined unaffordable under this proposed regulation, they are then barred from receiving the tax credit. Second, consumers must be made aware of the effects of sharp decreases in their income. If a consumer's financial situation changes to the point where that consumer becomes eligible for Medicaid (income falls below the 133% FPL mark), but chooses not to enroll while continuing to receive tax credits, that consumer will be forced to return a large sum of money after taxes are analyzed. Such one-time repayments have the potential to be substantial and costly to those who already have little money to spend. Consumers must be extremely well informed of requirements to not only avail themselves of the credit, but to avoid unforeseen penalties. NPAF recommends consumers be provided sufficient time to repay tax credit funds. Another recommendation is to allow the opportunity for consumers to have payment made by foregoing future tax returns when appropriate.

The aforementioned examples are not the only ones that illustrate how the requirements can serve as a barrier to credit eligibility. Other examples include the requirement to be enrolled in a Qualified Health Plan (QHP), the forbiddance from being enrolled in a government health program, and the requirement to be an 'applicable taxpayer.' As an 'applicable taxpayer' one must file a tax return even if no taxes are owed. This

requirement will likely confuse, or overwhelm, those who have never filed a tax return before if not properly educated of, and assisted through, the process.

PAF's 2010 PDAR warns of the danger of asymmetric information, especially with a lack of information on the part of consumers. Asymmetric information refers to a wide gap between the information held by one group at the expense of the other. The wide gap between information held by insurers and providers versus the amount of information conveyed to consumers may negatively impact not only consumers but the market. The above issues highlight the importance of a widespread advertising campaign, with the potential for continued guidance for those who don't understand the financial aspect of the proposed rule. Meanwhile, the allowance of a tax credit for a legal alien under 100% of the FPL (as they are not eligible for Medicaid), underscores that such advertising and assistance should be available in a language other than English as well, as some qualified consumers may not be proficient in English enough to understand important information.

NPAF Recommendation The role of educating consumers should rest with the nonprofit, patient advocate community as it has considerable intellectual capital in how best to communicate complex issues to certain groups and more importantly, has the trust of health consumer/patient community. For example, PAF's 15 years of expertise should be leveraged to the benefit of Exchange administration and consumer protection.

Credit Computation

The second category of concern to NPAF surrounds the computation of credits. Previous assistance programs have shown that participants are often fearful of a financial 'cliff' brought about by an income level that signals an abrupt ending to government benefits. That is, when one passes a particular income level and stands to lose a significant financial supplement, he can make his financial situation worse off if the benefit loss is greater than the income increase. Consequently, programs with larger cliffs find participants skeptical or unwilling to increase their income to move out of such an eligibility range, as it will result in less money/benefits. In this case, what may exacerbate this fear of the cliff is that if one's final income exceeds 400% FPL, even slightly, much of the tax credit must be returned, potentially putting a significant financial burden on the household and resulting in a large loss of income all at once. NPAF recommends a more tempered fade out of the provided tax credit. It is ideal to have an increase in income above the 400% FPL be met by a negligible loss in benefits. This can be achieved by making the fade out rate more in line with the 100-400% FPL range, or by expanding the current range utilizing the same rate of benefit reduction.

A related concern is that of 'reconciliation' at the time of tax filing. As the law is written, after taxes are filed, a taxpayer must reconcile the amount he or she has been receiving as a credit through advanced monthly sums with any income changes throughout the year. In addition, there exists a limit to taxpayer liability from overpayments, dependent of FPL and ranging from \$600 to \$2500.

NPAF Recommendation While the theory of not receiving or paying more than one is owed or obligated is sound, and the existence of a limit is admirable, the opportunity for a large all at once payment back to the government still exists. Consequently, it would be beneficial for all parties if exchanges constantly alerted employees to report changes in their family status or income, to avoid such drastic additional payments.

Conclusion

Again, we commend this proposed rule for its ambition in making health insurance more affordable. We further applaud the fact that the tax credit is targeted at those individuals right above the FPL. This increases affordability for those not able to receive public assistance, but who cannot afford private insurance without assistance.

One of the most significant themes of PAF's PDAR is that having health insurance (private, employer, or government) may ameliorate but does not protect patients from experiencing financial difficulties. While

this tax credit should be applauded for helping make insurance less costly, it should be recognized that insurance coverage alone does not fully protect consumers from access to care challenges. However, as noted above, affordable health insurance coverage elevates patients' ability to avail themselves of the number of benefits health insurance coverage offers.

NPAF sincerely appreciates the opportunity to share its views on this matter. If we can be of assistance to the IRS, please do not hesitate to contact us.

Sincerely,



Nancy Davenport-Ennis
Chief Executive Officer



Rene Cabral-Daniels
Executive Vice President of Regulatory Affairs