

Testimony to IRS/Treasury Hearing on Minimum Essential Coverage

Dania Palanker

National Women's Law Center

May 29, 2013

Thank you for this opportunity to comment. I am Dania Palanker, Senior Counsel with the National Women's Law Center and I will speak today about Medicaid coverage for pregnancy related services, self-funded student health plans and calculating affordability for related individuals.

Medicaid for Pregnancy-Related Services

In our written comments, we recommend that Medicaid for pregnancy-related services not be considered minimum essential coverage, however, should a woman choose to enroll in Medicaid for pregnancy-related services, there must be a safe harbor so that she not pay a penalty for any months in which she is enrolled in such coverage. I want to emphasize the safe harbor is necessary for pregnant women to not be inadvertently injured by this provision, contrary to intent.

Medicaid for pregnancy-related services is not one national benefit package. Some states offer limited-scope benefits covering only services related to pregnancy and conditions that complicate pregnancy. In fact, some women in California are enrolled in coverage that limits coverage to services related to pregnancy and to obstetrical conditions that may complicate a pregnancy. This coverage is clearly not comprehensive and should not be deemed minimum essential coverage because it should not take away a woman's access to premium tax credits.

In contrast, some states – such as Washington, Massachusetts and Illinois – offer full Medicaid to pregnant women. This coverage is comprehensive and the statute clearly did not intend that women enrolled in such coverage face a penalty for not maintaining coverage.

A safe harbor is necessary because it is not enough to simply classify which states offer comprehensive coverage. First, there is no list delineating which states offer comprehensive coverage. Creating a list has multiple obstacles, including the different definitions each state uses for “conditions that complicate pregnancy.” Does a broken leg, for example, complicate pregnancy? Conditions related to pregnancy are often not defined in statute or regulations.

Second, it is important that women have the choice to remain enrolled in a plan with tax credits. A pregnant woman may have another health condition and losing access to a provider would disrupt her treatment. She may wish to remain enrolled in the same plan as the rest of her family so that they have access to the same providers, in addition to extra services. The temporary aspect of the coverage means there could be disruption twice within a year. Possibly some would say yes and others no.

It is important to remember that Medicaid for pregnancy-related services is meant to provide cost-sharing protections to low income women during pregnancy and a post-partum period. This coverage should add protections, not lead to tax penalties. It will be extremely difficult for women to understand they have access to coverage, but that they must enroll in other coverage or face a tax penalty.

Some eligible women may be previously uninsured and have limited health literacy. Others may have been enrolled in – or have a spouse enrolled in – a limited employer sponsored plan that qualifies for minimum essential coverage and not understand that a limited Medicaid plan would not qualify. Some women will not need coverage beyond the pregnancy related services during the period of Medicaid coverage, further adding to the confusion. To require these women to pay a tax penalty would add to financial insecurity for low income women.

Finally, the coverage is time limited so the safe harbor can be narrowly designed to apply to only the months a woman is eligible for Medicaid for pregnancy-related services.

We want all women to have access to affordable, comprehensive coverage. However, we are concerned that without a safe harbor, pregnant women could be caught between a rock and a hard place – wanting to choose low cost Medicaid coverage for pregnant services yet facing a tax if they do.

Self-Funded Student Health Plans

Self-funded student health plans were not addressed in the IRS and Treasury minimum essential coverage rule, however they were addressed in the HHS rule. We are very concerned about the HHS proposal that all self-funded student health plans automatically be considered minimum essential coverage.

Unlike fully insured student health plans, the self-funded plans are not required to include the protections of Title I of the ACA. As a result, a self-funded student health plan does not need to cover the preventive services or the essential health benefits, can impose lifetime and annual limits, and can exclude coverage for preexisting conditions. We are very concerned that deeming all self-funded student health plans as MEC would have the result of many college and university students being offered plans with minimal coverage and protections with that offer preventing the students and their families from accessing premium tax credits.

There are some self-funded student health plans that are comprehensive or are voluntarily complying within provisions of the ACA. For example, University of California recently decided to lift a lifetime maximum after organized opposition from students. However, students at other colleges or universities may be left at the whims of the school with limits on coverage or plans that do not cover all of the health services women need, such as contraception. The lack of regulations applying to these plans may create incentives for more colleges or universities to shift to self-funding.

Student health plans are offered to undergraduate and graduate students. About one in four full-time students enrolled in higher education are over age 25 – and 60 percent of these students are women. Many students have spouses and children, and the proposed HHS rule could prevent the spouses and children as well as the students from accessing premium tax credits regardless of the cost or benefit level of the student plan.

We recommended to HHS that self-funded student health plans meet certain requirements before being considered as minimum essential coverage. In addition, we recommend that, like continuation coverage – which is another form of private coverage that requires the individual to pay the entire premium – individuals only be deemed eligible for a self-funded student health plan if the individual enrolls in the plan.

Affordability for Related Individuals

Finally, I would like to speak about affordability for related individuals. We support the reading of section 5000A(e)(1)(c), that, for individuals related to employees, the required contribution considered for the affordability determination for the individual responsibility is the contribution to cover all members of the family not otherwise exempt.

However, we are concerned that the proposed rule creates too great a burden for low income families that have multiple offers of coverage that together cost more than 8 percent of household income. The preamble notes that, if the aggregate cost of each employed individual's self-only coverage in one household exceeds 8 percent of the family's household income, then the family would qualify for a hardship exemption under the HHS minimum essential coverage rule. This would require these families to receive an exemption through the Exchange which is an additional step that will result in some families paying a tax penalty even though the aggregate cost of coverage is over 8 percent of income.

We believe that, if the aggregate cost of covering all family members – through employment based coverage as well as other forms of coverage – exceeds 8 percent of income, then the cost of coverage for the family should be deemed unaffordable without requiring a hardship exemption from an Exchange. If an individual chooses to, then Exchanges should be able to help individuals calculate whether the aggregate costs of coverage are unaffordable. However, this should not be a required step as it would be a relatively simple calculation for many families.

Thank you for this opportunity.