



August 21, 2012

Internal Revenue Services
Department of the Treasury
CC:PA:LPD:PR (REG-131491-10)
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Commissioner Shulman:

AARP appreciates the opportunity to comment on the rule on "Health Insurance Premium Tax Credit". The rule discusses the affordability of employer-sponsored coverage and more specifically, it authorizes further guidance on the effect of wellness incentive programs on the premium affordability determination. AARP is a strong supporter of evidence-based wellness programs as long as the appropriate consumer safeguards are in place and incentives do not create barriers to coverage and are not discriminatory. We recognize that prevention and wellness can be very beneficial to health and we support ways to help people achieve healthy lifestyles and behaviors. However, it is important to guard against strategies that are punitive, unduly burdensome, unfair, a subterfuge for discrimination based on a health factor, or that might have unintended consequences, such as making access to health insurance coverage unaffordable.

The primary goals of the Patient Protection and Affordable Care Act (ACA) are to expand coverage to the uninsured and improve the affordability and quality of health insurance coverage. The ACA gives employers the right to provide premium discounts, rebates, or rewards in wellness program/incentives of up to 30 percent of the cost of the employer and employee premiums. The law also creates a mechanism to increase these penalties/incentives to 50 percent. AARP believes that the implementing regulations should prohibit them from doing so if they violate the affordability standard and/or effectively undermine access to coverage. AARP believes that the regulations and any future guidance related to determining eligibility for health insurance premium tax credits should assure that the burdens of evidence-based wellness programs do not increase employee cost burdens in relation to income, do not become de facto barriers to enrolling in employer sponsored health coverage. AARP also believes that increasing the penalty to up to 50 percent of the combined premium costs should not be automatic.

The Administration must identify rigorous criteria for allowing increases in penalties with the primary objective of preventing individuals from losing access to affordable employer-sponsored insurance coverage. Although strong evidence is not required for going to a 30 percent penalty/reward, AARP believes that the Administration has the discretion to tie any further increases in penalties/rewards to scientific evidence, and we urge you interpret the regulation in a way that allows you to impose more stringent requirements, the larger the penalty.

Other Consumer Protections

Other consumer protections that AARP asks the Administration to consider the following:

- The regulations should include *hardship* exemptions not related to health status. One example of a *hardship* is where a single mother is unable to find or afford child care in order to participate in a wellness activity. Another is where an individual is a primary caregiver for an older adult.
- In cases where there is a reward, the regulation should make it clear that the effect of offering rewards should not overly disadvantage the individual who does not qualify for the reward (e.g., reward a person with a 50 percent discount in their premium and pass the 50 percent on to a person who could not achieve a pre-determined health status factor).
- The regulations need to include a robust appeals process that is accessible and transparent for employees and protects them from employer retaliation. Wellness program managers should be required to provide easily understandable written information about the appeals process in plan materials and should be required to make available independent agents to help people navigate the appeals process. Information about the appeals process should be required to be culturally and linguistically appropriate.
- The regulations should ensure that wellness interventions are culturally sensitive and linguistically appropriate for the target population.
- The regulations should ensure that wellness programs develop meaningful and reliable ways to track program participation.
- The regulations need to ensure a strong firewall between the personal health information collected for purposes of the wellness program and employers.
- The regulations should ensure that individual privacy rights are fully protected in accordance with Title 11 of the Health Insurance Portability and Accountability Act of 1996. In addition, the regulations need to ensure that wellness programs do not operate in ways that violate individual rights under other laws.

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- If family members are subject to penalties and/or rewards of a wellness program requirement because they are covered dependents, they should receive all of the protections set forth in the regulations.

To better understand the design of these wellness programs, the structure and timing of incentives, and the impacts on health outcomes, it would be helpful if the departments were able to collect information on employers' programs as part of its survey efforts or a special study. Finally, we suggest that you consider offering an employer a *safe-harbor* wherein the wellness program would be subject to less stringent regulatory review if penalties for failure to participate in a wellness program do not exceed a threshold percentage.

Thank you for the opportunity to comment on this important issue. If you have any questions, please feel free to contact Leah Cohen Hirsch on our Government Affairs staff at (202) 434-3770.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs