

Biden Announces Fix to ACA’s “Family Glitch”

On April 5, 2022, the *Internal Revenue Service* (IRS) proposed a rule change to its eligibility requirements for families to receive premium tax credits toward purchasing high-quality health coverage on the insurance marketplaces established by the *Patient Protection and Affordable Care Act* (ACA).¹ This proposed change comes on the heels of two Biden Administration executive orders calling for improvements to the ACA and Medicaid. This Health Capital Topics article will discuss the proposed solution to a decade-long problem and how it will affect millions of Americans.

The ACA, which was passed in 2010 by then-President Barack Obama, was the most extensive change to the U.S. healthcare system since the establishment of Medicare/Medicaid in 1965, offering numerous rights and protections to consumers to help make healthcare coverage more fair and attainable.² The law also provides subsidies, tax credits, and cost-sharing reductions for consumers looking to purchase high-quality health coverage.³ However, the law contains a clause intended to keep people with employer-provided insurance out of the ACA marketplaces, keeping the system fair and affordable for those without any coverage. The unintended consequences of this overly-restrictive clause has earned it the name “the Family Glitch.”⁴

The Family Glitch clause states that individuals with employer-provided insurance are not eligible for tax credits or other subsidies to purchase high-quality health coverage.⁵ The problem is that the definition of “affordable” refers only to the employed individual’s self-coverage, not the cost of a family plan for his/her spouse and/or children (the cost of which can significantly differ from the employee’s self coverage, depending on the amount of the premium that is subsidized by the employer).⁶

In an effort to fix some of the unintended results of various ACA provisions, President Biden signed an executive order in January 2021 calling for improvements to the ACA and Medicaid. In response, federal agencies took a number of actions, including:

1. “[F]acilitating the expansion of Medicaid in Missouri and Oklahoma”;
2. “[E]xtending Medicaid eligibility...in order to allow pregnant individuals to retain their Medicaid coverage for up to 1 year postpartum” through a number of state initiatives;

3. Opening up a Special Enrollment Period “that allowed 2.8 million Americans to newly enroll in coverage under the ACA”;
4. “[E]xtending the length of the HealthCare.gov Open Enrollment Period by 1 month and operating the most successful Open Enrollment Period ever, with a historic 14.5 million Americans enrolling in coverage through the ACA Marketplaces and an additional 1 million people enrolling in Basic Health Program coverage, resulting in a 20 percent increase over the prior year”;
5. “[L]owering maximum out-of-pocket costs for consumers with employer and ACA coverage by \$400 in 2022.”⁷

Fifteen months later, on April 5, 2022, President Biden signed an additional executive order to continue strengthening access to affordable and high-quality health coverage.⁸ Specifically, the order directs agencies to review agency actions and “identify ways to continue to expand the availability of affordable health coverage, to improve the quality of coverage, to strengthen benefits, and to help more Americans enroll in quality health coverage,” including examining policies or practices that:

1. “[M]ake it easier for all consumers to enroll in and retain coverage, understand their coverage options, and select appropriate coverage”;
2. “[S]trengthen benefits and improve access to healthcare providers”;
3. “[I]mprove the comprehensiveness of coverage and protect consumers from low-quality coverage”;
4. “[E]xpand eligibility and lower costs for coverage in the ACA Marketplaces, Medicaid, Medicare, and other programs”;
5. “[H]elp improve linkages between the healthcare system and other stakeholders to address health-related needs; and,
6. “[H]elp reduce the burden of medical debt on households.”⁹

On the same day that President Biden signed this newest healthcare executive order, the Treasury Department and the IRS announced a proposed rule amending the Family Glitch, as well as adding a minimum value rule for the family members of an individual who receives workplace coverage.¹⁰ By revising the Family Glitch, the IRS intends to update the definition of “affordability” to mean an employee’s share of the cost to cover additional family

members, not an employee's individual coverage, as the definition states currently.¹¹ The proposed minimum value rule is intended to aid in defining "affordability" by lowering the percent threshold on what the ACA deems affordable. The new minimum value rule would reduce the percentage of household income spent on family coverage deemed affordable from 10% to 9.5%.¹² This means that any employee who has insurance through their workplace may be eligible for premium tax credits if the cost for family coverage through their workplace exceeds 9.5% of the employee's income.

The proposed elimination or revision of the Family Glitch would be the most significant change to the ACA since it was passed in 2010. This change would mean 200,000 currently-uninsured Americans would be able to gain coverage, while an additional 5 million Americans would see a reduction in the costs of coverage for plans purchased through the ACA's marketplaces.¹³ The proposed rule change is particularly significant because an estimated 2.8 million children will be direct beneficiaries from increased access and reduced cost of marketplace health coverage.¹⁴

The reaction from healthcare industry stakeholders in response to the administration's announcement has been largely positive. The president of the American Hospital Association stated that "Hospitals and health systems strongly support the Biden Administration's efforts to help more Americans secure affordable health insurance by proposing to eliminate the 'family glitch.'"¹⁵ Additionally, the president of the American Medical Association stated:

"[T]he Biden Administration has taken a crucial step in the campaign to cover the five million uninsured people who fall into the family glitch. The family glitch is inconsistent with the goals of

the Affordable Care Act and unfairly penalizes family members of lower-income workers. The American Medical Association has repeatedly asked Congress and administrations to fix the glitch, and the Biden Administration has made good on its promise to make healthcare coverage more affordable."¹⁶

Similarly, the president of the AHIP (formerly America's Health Insurance Plans) indicated the trade association's support for "proposals to fix the 'family glitch' in the ACA, and affordability and access both in the employer and individual markets will remain our core values as we review this proposed rule."¹⁷

The timing of this proposed rule is likely no coincidence, as the Biden Administration is most likely seeking changes to the Family Glitch now to allow for a sufficient comment and modification period prior to the next marketplace open enrollment period in December 2022.¹⁸ In addition to the time constraint for the next enrollment period, the COVID-era open-enrollment policies expire at the end of 2022, meaning up to 2.8 million Americans will lose access to the marketplaces' coverage options in the absence of any new policy modifications.¹⁹ As such, this newly-announced proposal could help keep hundreds of thousands of Americans eligible for marketplace coverage.²⁰

The IRS has scheduled a public hearing for June 27, 2022, to hear commenters.²¹ Further, any written comments must be received by June 6, 2022, whether or not they are to be included in the public hearing.²² Pending approval, the proposed rule would take effect January 1, 2023, but Americans could sign up for financial assistance prior to that date, during the next open enrollment period.²³

1 "Biden Administration Proposes To Fix The Family Glitch" By Katie Keith, Health Affairs, April 6, 2022, <https://www.healthaffairs.org/doi/10.1377/forefront.20220405.571745> (Accessed 4/7/22).

2 "Biden unveils proposed fix for ACA's 'family glitch'" By Associated Press, Modern Healthcare, April 5, 2022, <https://www.modernhealthcare.com/politics-policy/biden-unveils-proposed-fix-acas-family-glitch> (Accessed 4/7/22).

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

6 Associated Press, Modern Healthcare, April 5, 2022.

7 "Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage" The White House, April 5, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/05/executive-order-on-continuing-to-strengthen-americans-access-to-affordable-quality-health-coverage/> (Accessed 4/7/22).

8 *Ibid.*

9 *Ibid.*

10 Keith, Health Affairs, April 6, 2022.

11 *Ibid.*

12 *Ibid.*

13 "FACT SHEET: Biden Harris Administration Proposes Rule to Fix "Family Glitch" and Lower Health Care Costs" The White House, April 5, 2022, [https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/05/fact-sheet-biden-harris-](https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/05/fact-sheet-biden-harris-administration-proposes-rule-to-fix-family-glitch-and-lower-health-care-costs/)

[administration-proposes-rule-to-fix-family-glitch-and-lower-health-care-costs/](https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/05/fact-sheet-biden-harris-administration-proposes-rule-to-fix-family-glitch-and-lower-health-care-costs/) (Accessed 4/7/22).

14 *Ibid.*

15 "Treasury Department proposed rule would fix the 'family glitch' in the ACA" By Susan Morse, Healthcare Finance, April 5, 2022, <https://www.healthcarefinancenews.com/news/treasury-department-proposed-rule-would-fix-family-glitch-aca> (Accessed 4/20/22).

16 *Ibid.*

17 *Ibid.*

18 "Treasury to propose new rule to fix Obamacare 'family glitch'" By Justin Gomez, ABC News, April 5, 2022, <https://abcnews.go.com/Politics/treasury-propose-rule-fix-obamacare-family-glitch/story?id=83875914> (Accessed 4/7/22).

19 Keith, Health Affairs, April 6, 2022.

20 *Ibid.*

21 "Affordability of Employer Coverage for Family Members of Employees" Federal Register, April 7, 2022, <https://www.federalregister.gov/documents/2022/04/07/2022-07158/affordability-of-employer-coverage-for-family-members-of-employees> (Accessed 4/7/22).

22 *Ibid.*

23 "Treasury to propose new rule to fix Obamacare 'family glitch'" By Justin Gomez, ABC News, April 5, 2022, <https://abcnews.go.com/Politics/treasury-propose-rule-fix-obamacare-family-glitch/story?id=83875914> (Accessed 4/7/22).



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[Todd A. Zigrang](#), MBA, MHA, CVA, ASA, FACHE, is the President of HEALTH CAPITAL CONSULTANTS (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "[The Adviser's Guide to Healthcare – 2nd Edition](#)" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); American Health Lawyers Associate (AHLA); the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).



[Jessica L. Bailey-Wheaton](#), Esq., is Senior Vice President and General Counsel of HCC. Her work focuses on the areas of Certificate of Need (CON) preparation and consulting, as well as project management and consulting services related to the impact of both federal and state regulations on healthcare transactions. In that role, Ms. Bailey-Wheaton provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.

Additionally, Ms. Bailey-Wheaton heads HCC's CON and regulatory consulting service line. In this role, she prepares CON applications, including providing services such as: health planning; researching, developing, documenting, and reporting the market utilization demand and "need" for the proposed services in the subject market service area(s); researching and assisting legal counsel in meeting regulatory requirements relating to licensing and CON application development; and, providing any requested support services required in litigation challenging rules or decisions promulgated by a state agency. Ms. Bailey-Wheaton has also been engaged by both state government agencies and CON applicants to conduct an independent review of one or more CON applications and provide opinions on a variety of areas related to healthcare planning. She has been certified as an expert in healthcare planning in the State of Alabama.

Ms. Bailey-Wheaton is the co-author of numerous peer-reviewed and industry articles in publications such as: *The Health Lawyer*; *Physician Leadership Journal*; *The Journal of Vascular Surgery*; *St. Louis Metropolitan Medicine*; *Chicago Medicine*; *The Value Examiner*; and *QuickRead*. She has previously presented before the ABA, the NACVA, and the NSCHBC. She serves on the editorial boards of NACVA's *QuickRead* and AHLA's *Journal of Health & Life Sciences Law*.



[Janvi R. Shah](#), MBA, MSF, serves as Senior Financial Analyst of HCC. Mrs. Shah holds a M.S. in Finance from Washington University Saint Louis. She develops fair market value and commercial reasonableness opinions related to healthcare enterprises, assets, and services. In addition she prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services and applies utilization demand and reimbursement trends to project professional medical revenue streams and ancillary services and technical component (ASTC) revenue streams.