APRIL 10, 2023

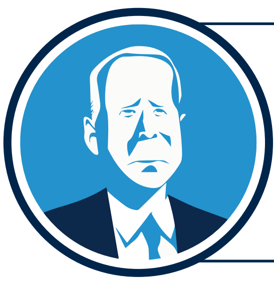
A Glitch in the System: How the Biden Administration Unilaterally Changed Health Care Laws

Jonathan Bain
Senior Research Fellow

KEY FINDINGS

TO QUALIFY FOR SUBSIDIES UNDER OBAMACARE, HOUSEHOLDS MUST FALL WITHIN A CERTAIN INCOME RANGE AND NOT HAVE ACCESS TO AFFORDABLE EMPLOYER COVERAGE.

MORE THAN A DECADE AGO, THE IRS ISSUED A RULE STATING THAT THE AFFORDABILITY OF EMPLOYER COVERAGE IS BASED ON THE COST OF SELF-ONLY PLANS.



BUT PRESIDENT BIDEN'S IRS ISSUED A NEW RULE INCONSISTENT WITH OBAMACARE ON HOW AFFORDABILITY OF EMPLOYER COVERAGE IS DETERMINED.

THE RECENT IRS RULE COULD ADD $45 BILLION IN NEW FEDERAL SPENDING OVER THE NEXT DECADE.

THE BOTTOM LINE:

FEDERAL LAWMAKERS MUST REIN IN PRESIDENT BIDEN'S OUT-OF-CONTROL REGULATORY SPENDING SPREE.

Overview

When the Affordable Care Act—also known as ObamaCare—was signed into law, there were many lofty promises heaped onto the policy. Namely, ObamaCare was sold as a way to make health insurance more affordable for Americans.[1] One way the law sought to do this was by creating subsidies on the exchange.[2] These subsidies were made available to a subset of the population, with income restrictions and other conditions that applied.[3]

One of these restrictions is commonly referred to as the "family glitch," which provides that the affordability of employer-sponsored health insurance is based solely on individual coverage, not family coverage.[4]

> ***WHAT IS THE FAMILY GLITCH?***
> **The family glitch provides that the affordability of employer-sponsored health insurance is based solely on individual coverage, not family coverage.**

While some of these conditions have been subject to much debate, the Internal Revenue Service (IRS) finalized a rule that was consistent with the language of ObamaCare roughly a decade ago.[5] But unsurprisingly, in 2022, President Biden's IRS issued a rule that is inconsistent with ObamaCare, stating that affordability would be based on family plans moving forward.[6] This new IRS rule comes with a massive price tag, as it could cause new federal spending to soar to $45 billion over the next 10 years, as millions more gain subsidies on the exchange.[7]

Fortunately, there is a commonsense solution to increase oversight on costly rules. Federal lawmakers should pass the Regulations from the Executive in Need of Scrutiny (REINS) Act and require congressional approval of major rules before they are implemented.[8]

The law surrounding the so-called "family glitch" is clear—affordability is based on self-only plans

When the ObamaCare exchange was created, households with incomes between 100 and 400 percent of the federal poverty level became eligible for premium tax credits—known as subsidies—to lower the cost of health insurance.[9] While all households that meet the criteria are initially eligible for subsidies, there are additional conditions that must be met. For example, subsidies are only available to those without access to an affordable plan or Medicaid.[10]

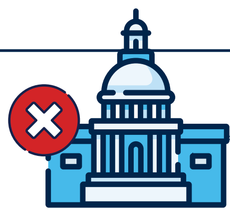
WHEN THE OBAMACARE EXCHANGE WAS CREATED, HOUSEHOLDS WITH INCOMES BETWEEN 100 AND 400 PERCENT OF THE FEDERAL POVERTY LEVEL BECAME ELIGIBLE FOR PREMIUM TAX CREDITS.

Regarding eligibility, a determining factor is whether an employee was offered affordable coverage by their employer. Under ObamaCare, if an employee is offered affordable coverage, the employee and their family are ineligible to receive subsidies through the exchange.[11]

The ObamaCare statute is clear: Affordability of employer coverage is based on self-only plans.[12] And despite the media coverage of the so-called "family glitch," this has been law for the past decade. When ObamaCare became law more than a decade ago, the IRS issued a rule that was consistent with the language of the statute. Upon further review as requested by the Government Accountability Office, the Department of the Treasury reaffirmed the position of the IRS.[13]

Importantly, the "family glitch" is not an accident, and the law has not changed since the IRS rule went into effect.[14] Despite the efforts of welfare expansion advocates over the years, new legislation has never been enacted. In fact, the House of Representatives passed H.R. 1425 in 2020, which would have changed the Internal Revenue Code to make family coverage the metric for affordability, but the bill was rejected by the Senate.[15]

The bottom line is that Congress is aware of the "family glitch," and has not changed the law. But, unsurprisingly, after taking office, President Biden's IRS issued a rule inconsistent with the language of the ObamaCare statute.



CONGRESS IS AWARE OF THE "FAMILY GLITCH," AND HAS NOT CHANGED THE LAW.

The Biden administration's IRS issued a new rule inconsistent with ObamaCare

In 2021, the Biden administration issued an executive order titled, "Strengthening Medicaid and the Affordable Care Act," in which the president instructed the Secretary of the Treasury and other department heads to review policies pertaining to the affordability of coverage.[16]

Unsurprisingly, the president applied political pressure on the IRS to push his preferred policy agenda and do the bidding of special interest groups. In 2022—in response to the executive order—the IRS finalized a rule stating that the affordability of employer coverage would be based on family plans moving forward, which is inconsistent with ObamaCare.[17]

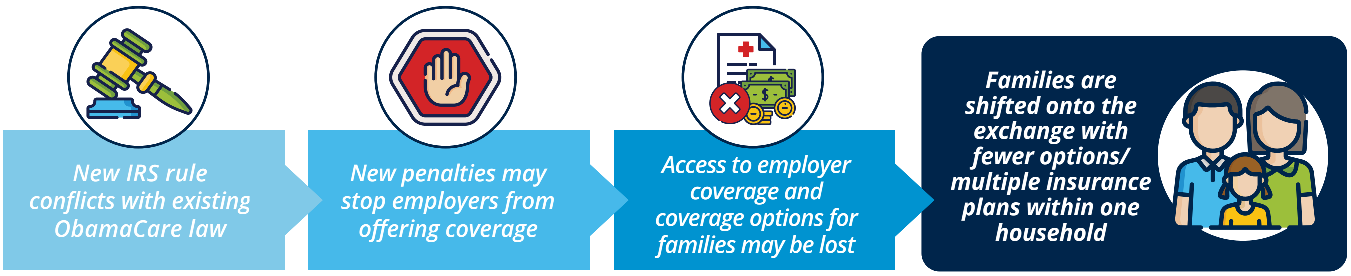
The IRS is creating distrust among Americans, as it appears to be a political wing of the Oval Office rather than an unbiased executive agency.

THE IRS IS CREATING DISTRUST AMONG AMERICANS, AS IT APPEARS TO BE A POLITICAL WING OF THE OVAL OFFICE RATHER THAN AN UNBIASED EXECUTIVE AGENCY.

The new IRS rule will cause widespread ripple effects

While the new IRS rule stating that affordability will now be based on family coverage is in direct opposition to existing law, the negatives do not stop there. In fact, the rule will cause widespread harm across the nation.

For some families, health coverage could become more expensive.[18] Even worse, employers will now be disincentivized from offering coverage options as they navigate new and complex employer penalties. As a result, access to employer coverage with a larger provider pool, expansive options, and affordable cost-sharing will be lost for many families.[19] Instead, these families will be shifted onto the exchange, with far fewer options.[20] Families could be forced to maneuver through multiple insurance plans, each with different providers and benefit structures.[21]



For taxpayers, the implementation of this rule will come with a massive price tag. Indeed, the Congressional Budget Office has estimated that new spending will soar to $45 billion over the next 10 years.[22] **Less than 10 percent of Americans who fall in the "family glitch" lack health insurance—but by implementing this change, millions would be shifted from private insurance to plans on the exchange that are fueled by taxpayer-funded subsidies.**[23] Beyond that, states will face higher costs to operate public programs.

The problems are already clear, but other issues are likely to arise as the impact of this rule becomes more apparent. Finalizing a rule without knowing the potential harm is a disservice to taxpayers and seeks only to create further distrust of the IRS among Americans.

THE BOTTOM LINE: Federal lawmakers must rein in President Biden's out-of-control regulatory spending spree.

President Biden is on a record-breaking regulatory spending spree.[24] In his first year alone, he added more than $200 billion in new regulatory costs.[25] But unfortunately, President Biden's regulatory spree did not end after his first year.

The new IRS rule alone is set to add $45 billion in new federal spending over the next decade.[26] And even worse, the new rule will directly contradict ObamaCare on how affordability of employer coverage is determined.

Without change, things will only get worse. Fortunately, there is a simple solution that federal lawmakers can borrow from states.[27] Federal lawmakers should pass the REINS Act and require congressional approval of major rules before agencies could implement them. This would help rein in the president's record-breaking regulatory spree, all while increasing accountability and oversight.

REFERENCES

1. U.S. Department of Health & Human Services, “About the Affordable Care Act,” U.S. Department of Health & Human Services (2022), https://www.hhs.gov/healthcare/about-the-aca/index.html#:~:text=Make%20affordable%20health%20insurance%20available,below%20138%25%20of%20the %20FPL.
2. Ibid.
3. Ibid.
4. Brian Blase, “Paragon President Brian Blase lays out the case against a ‘fix’ for the ACA family glitch,” Paragon Health Institute (2022), https://paragoninstitute.org/aca-family-glitch-letter.
5. Ibid.
6. President Joe Biden, “Statement by President Joe Biden on ‘family glitch’ final rule,” The White House (2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/11/statement-by-president-joe-biden-on.family-glitch-final-rule.
7. Brian Blase, “A Biden administration regulatory ‘fix’ to the ‘family glitch’ would be illegal and harmful,” Galen Institute (2021), https://galen.org/2021/a-biden-administration-regulatory-fix-to-the-family-glitch-would-be-illegal.and-harmful/.
8. Haley Holik and Alli Fick, “How lawmakers can rein in regulations like the student loan bailout,” Foundation for Government Accountability (2023), https://thefga.org/research/lawmakers-can-rein-in-regulations-like-student-loan.bailout.
9. Centers for Medicare & Medicaid Services, “Subsidized coverage,” U.S. Department of Health & Human Services (2023), https://www.healthcare.gov/glossary/subsidized-coverage.
10. Brian Blase, “To ‘fix’ the ObamaCare ‘family glitch,’ Biden politicizes the IRS,” Wall Street Journal (2022), https://www.wsj.com/articles/obamacare-politicizes-irs-internal-revenue-service-affordable-care-act-subsidies.families-tax-code-healthcare-biden-obama-11649337661.
11. Brian Blase, “Paragon President Brian Blase lays out the case against a ‘fix’ for the ACA family glitch,” Paragon Health Institute (2022), https://paragoninstitute.org/aca-family-glitch-letter.
12. Ibid.
13. Ibid.
14. U.S. Department of the Treasury, “Health insurance premium tax credit,” Federal Register Vol. 78, No. 22 (2013), https://www.govinfo.gov/app/details/FR-2013-02-01/2013-02136.
15. Ibid.
16. President Joe Biden, “Statement by President Joe Biden on ‘family glitch’ final rule,” The White House (2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/11/statement-by-president-joe-biden-on.family-glitch-final-rule.
17. Internal Revenue Service, “Affordability of employer coverage for family members of employees,” Department of the Treasury (2022), https://public-inspection.federalregister.gov/2022-22184.pdf.
18. Brian Blase, “A Biden administration regulatory ‘fix’ to the ‘family glitch’ would be illegal and harmful,” Galen Institute (2021), https://galen.org/2021/a-biden-administration-regulatory-fix-to-the-family-glitch-would-be-illegal.and-harmful/.
19. Ibid.
20. Ibid.
21. Ibid.
22. Congressional Budget Office, “Estimated effect of the deficit of rules committee print 116-56, the Patient Protection and Affordable Care Enhancement Act,” Congressional Budget Office (2020), https://www.cbo.gov/system/files/2020-06/Patient_Protection_and_Affordable_Care_Enhancement_Act_0.pdf.
23. Brian Blase, “A Biden administration regulatory ‘fix’ to the ‘family glitch’ would be illegal and harmful,” Galen Institute (2021), https://galen.org/2021/a-biden-administration-regulatory-fix-to-the-family-glitch-would-be-illegal.and-harmful/.
24. Alli Fick et al., “Congress must rein in President Biden’s regulatory spending spree to tame inflation,” Foundation for Government Accountability (2022), https://thefga.org/research/congress-must-rein-spending-to-tame-inflation.
25. Ibid.
26. Congressional Budget Office, “Estimated effect of the deficit of rules committee print 116-56, the Patient Protection and Affordable Care Enhancement Act,” Congressional Budget Office (2020), https://www.cbo.gov/system/files/2020-06/Patient_Protection_and_Affordable_Care_Enhancement_Act_0.pdf.
27. Haley Holik, “Why Florida is a national model for regulatory reform,” Foundation for Government Accountability (2022), https://thefga.org/research/florida-is-a-national-model-for-regulatory-reform.

15275 Collier Boulevard | Suite 201-279
Naples, Florida 34119
(239) 244-8808

TheFGA.org | @TheFGA | TheFGA | TheFGA