June 6, 2022

Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

SUBMITTED ELECTRONICALLY at www.regulations.gov

RE: Affordability of Employer Coverage for Family Members of Employees (REG-114339-21)

Commissioner Rettig,

The American Society of Hematology is pleased to offer comments on the notice of proposed rulemaking, Affordability of Employer Coverage for Family Members of Employees. The Society strongly supports this proposal from the Internal Revenue Service (IRS) and appreciates that the agency is addressing this flawed policy which has kept millions of Americans from accessing affordable health care.

ASH represents more than 18,000 clinicians and scientists worldwide who are committed to the study and treatment of blood and blood-related diseases. These disorders encompass malignant hematologic disorders such as leukemia, lymphoma, and multiple myeloma, as well as non-malignant conditions such as sickle cell anemia, thalassemia, bone marrow failure, venous thromboembolism, and hemophilia. In addition, hematologists are pioneers in demonstrating the potential of treating various hematologic diseases and continue to be innovators in the field of stem cell biology, regenerative medicine, transfusion medicine, and gene therapy.

ASH is a strong advocate for access to affordable, high quality health care for all Americans and is committed to ensuring that all individuals who need the services of a hematologist have access to one. Delayed care due to lack of health insurance coverage leads to poorer clinical outcomes, avoidable complications, and potentially preventable visits to the emergency department. Many hematologic diseases and disorders are rare, are diagnosed through cognitive care services involving thorough evaluations and complex decision-making processes. ASH also advocates for policies that facilitate access to treatment, including insurance parity for all approved evidence-based cancer treatments and opposing private health insurance plans from instituting specialty tiers. Comprehensive, affordable coverage is vital to ensure appropriate, timely care and access to effective testing and treatment options.

Affordability of Employer Coverage for Family Members

ASH supports the IRS proposal to fix what is known as the “family glitch” and make coverage more affordable for many families.

Under the Affordable Care Act (ACA), an individual is generally not allowed a premium
tax credit (PTC) if they are eligible for non-individual market minimum essential coverage (MEC), including employer coverage. The employer coverage, however, must be considered affordable and provide minimum value. Coverage is considered not affordable for an employee if the portion of the premiums required to be paid by the employee for self-only coverage exceeds 9.5 percent of household income.

In a 2013 IRS regulation, the agency interpreted the ACA statute regarding affordability to mean that this affordability rule applied even if an employee is providing coverage for a spouse and/or dependents – meaning if self-only employer coverage is affordable for an employee, then coverage is deemed affordable for a spouse and any dependents, regardless of the amount the employee must pay to cover the spouse and dependents. Ultimately, this regulation prohibits children and other family members who are offered unaffordable employer-sponsored coverage from obtaining subsidized coverage through the ACA marketplaces, in cases where the cost of covering the employee, alone, has been deemed affordable. This decision, often known as the “family glitch,” was contrary to both the text and purpose of the ACA.

ASH thanks the IRS for recognizing that the current regulation has undermined the law by preventing children and other family members who lack access to affordable coverage from obtaining financial assistance to purchase a marketplace plan and strongly supports finalizing this proposed rule to make coverage more affordable for many families.

**Minimum Value of Employer Coverage for Family Members**

The second part of determining whether a person should have access to subsidies on the marketplace relates to whether an employer’s plan offers minimum value. Accordingly, ASH also supports the IRS proposals to clarify regulations in this area. The value provided by self-only coverage and by family coverage may differ, and compliance with minimum value standards must be determined separately. ASH, therefore, supports the proposal to clarify that employer-sponsored family coverage is itself subject to the minimum value standard and compliance with minimum value must be determined separately – for self-only coverage and for family coverage. Additionally, ASH supports the proposal to adopt the minimum value rule specifying that employer coverage meets the minimum value test if it covers at least 60 percent of total allowed costs of provided benefits and includes substantial coverage of inpatient hospital services and physician services.

ASH also encourages the IRS to evaluate other ways to assess the adequacy of insurance coverage; for example, by assessing the value of the plan’s prescription drug benefit. Many plans are structuring their pharmacy benefits in a way that shifts significant costs to the enrollee and his/her family, which is challenging for people living with blood cancer, hemophilia, and other hematologic conditions. This will make it more likely that employer-sponsored coverage meets the needs of patients, and if it does not, that they can qualify for subsidized coverage on the marketplaces.

The Society thanks the IRS for the opportunity to provide input on this proposed rule. Please reach out to ASH Chief Policy Officer, Suzanne Leous (sleous@hematology.org), with any questions or clarifications regarding our comments.

Sincerely,

Jane N. Winter, MD
President