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Proposed Regulations to Fix ACA's Affordability “Family Glitch”

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The Treasury Department and the Internal Revenue Service (“IRS”) recently proposed regulations that would expand the availability of premium tax credits in the Marketplace. For purposes of eligibility for a premium tax credit, the proposed rule provides that:

- Affordability of employer-sponsored coverage for family members would be determined based on the employee’s cost to cover the employee and the family members.
- The determination of whether employer-sponsored coverage for family members provides minimum value would be based on the family coverage.

If finalized in their current form, the proposed rules are expected to take effect in the 2023 tax year.

While these proposed changes would not affect the affordability determination for purposes of the Affordable Care Act’s (“ACA”) employer mandate, they would indirectly impact employer plans as more family members may qualify for premium tax credits and choose to enroll in coverage through the Marketplace.

Background

Under the current rules, individuals are not eligible for premium tax credits in the Marketplace if they are offered employer-sponsored group health plan coverage that is “affordable” and provides minimum value. For this purpose, employer-sponsored coverage is considered “affordable” if an employee is not required to pay more than 9.5% of household income for self-only coverage (9.61% for 2022 - the applicable percentage for 2023 has not yet been announced). If this is the case, then the coverage is considered affordable for both the employee and the employee’s family members, regardless of how much the employee must pay to cover those family members. This is known as the “family glitch.”

An employer-sponsored plan provides minimum value if the plan's share of the total allowed cost of benefits provided is at least 60%. Under current rules, as long as self-only coverage offered by an employer provides minimum value to an employee, then coverage offered to the employee's family members is also considered to provide minimum value.

Proposed Rule

Affordability

The proposed rule would refine the definition of affordable coverage to make it easier for family members to qualify for premium tax credits. Employer-sponsored coverage would be considered affordable for family members (thereby disqualifying them from eligibility for premium tax credits) only if the portion of the annual premium the employee must pay for family coverage does not exceed 9.5% of household income (as indexed).

As a result, when assessing whether an individual has received an affordable offer of employer-sponsored coverage, the Marketplace would look separately at the employee's cost of self-only coverage (to determine the employee's eligibility for premium tax credits), and at the employee's cost to cover the family (to determine the family members' eligibility for premium tax credits). There will likely be scenarios where an employee has an offer of self-only coverage that is affordable, but the offer of coverage to the family members is considered unaffordable (thus potentially qualifying those family members for premium tax credits).

For this purpose, family coverage means all employer plans that cover any related individual other than the employee, including a self-plus-one plan for an employee enrolling one other family member in the coverage. The proposed rule details scenarios that may arise to determine whether employer coverage is affordable, including situations where an individual has offers of coverage from multiple employers or where covered family members are not part of the employee's tax family (e.g., a non-tax dependent child, or a spouse filing separately).

Minimum Value

The proposed rule would also amend the premium tax credit eligibility rules related to minimum value. An employer-sponsored plan would be considered to provide minimum value for family members if the plan's share of the total allowed costs of benefits provided to family members is at least 60%, and the plan includes substantial coverage of inpatient hospital services and physician services.

Employer Action

The proposed rule does not impact the determination of whether employer-sponsored coverage is affordable for purposes of avoiding a shared responsibility penalty under the ACA's employer mandate. Whether coverage is affordable for this purpose continues to be based solely on the cost of self-only coverage in the lowest-cost plan that provides minimum value.

However, should the rule take effect as currently written, employers may see employees more closely evaluate options for family members in the Marketplace. Employees may find Marketplace coverage more cost effective than the employer plan and move their family members off the group health plan coverage.

Further, it is possible the Form 1095-C will be revised with new offers of coverage codes, since the IRS will need to understand whether affordable and minimum value offers of coverage were made to family members who otherwise may obtain a premium tax credit in the Marketplace.