BLOG

IRS Proposed Rule Corrects ACA "Family Glitch"

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On April 7, 2022, the IRS issued a proposed rule that would change the eligibility standards for an Affordable Care Act (ACA) premium tax credit (PTC) based on the affordability of health plan coverage for family members of employees who are offered coverage by their employers.

The proposed rule, if finalized, is intended to provide greater access to PTCs for family members of employees who are eligible for employer-sponsored coverage.

ACA Affordability Background

The ACA created PTCs for individuals who enroll in a qualified health plan through a marketplace Exchange. However, an individual is not eligible for a PTC if they are eligible for affordable, minimum value coverage under an employer-sponsored health plan. Affordability under employer-sponsored health plans is determined by ensuring that the required employee contribution for self-only coverage does not exceed 9.61%[1] of the employee's household income. Minimum value coverage is determined by ensuring that plan's share of the total allowed costs of benefits provided to the employee must be at least 60 percent and the plan must provide substantial coverage of inpatient hospital services and physician services.

The current ACA affordability determination provides that if self-only minimum value coverage under an employer-sponsored plan is affordable for an employee (and only the employee), then it's also considered affordable for an employee's spouse (if taxes are filed jointly) and any tax dependents of the employee who are eligible to enroll in the employer-sponsored health plan. This current interpretation of the ACA affordability standards results in a so called "family glitch", an obscure issue buried deep in the ACA's law language, where the spouse and tax dependents of an employee are not eligible for PTCs if the coverage offered to that employee by their employer is considered affordable based on self-only coverage but still not affordable on a family household income basis.

IRS Proposed Rule to Correct "Family Glitch"

The proposed rule seeks to correct the "family glitch" and provide a separate affordability test in 2023 for an employee's family members based on the cost to the employee for family coverage. If the family coverage cost doesn't meet the statutory affordability standard, an employee's family members could be eligible for PTCs, even if the employee is not eligible for a PTC based on their own affordable offer of self-only coverage by their employer.

The proposed rule also would add a minimum value rule for family members of employees based on the benefits provided to the family members. The current minimum value standard for employees would still hold. To be considered a minimum value plan, the plan's share of the total allowed costs of benefits provided to the employee must be at least 60 percent and the plan must provide substantial coverage of inpatient hospital services and physician services. The proposed rule would adopt a separate minimum value test for family members. As proposed, a plan would provide minimum value for family members if the plan's share of total allowed costs of benefits provided to family members is at least 60 percent and the plan provides substantial coverage of inpatient hospital services and physician services.

The White House estimates that correcting the "family glitch" under the proposed rule would extend coverage to 200,000 uninsured people and result in more affordable coverage for nearly 1 million Americans. This proposed rule would be the most significant administrative action to the ACA since its enactment.

The IRS is accepting comments on the proposed rule until June 6, 2022 and will hold a hearing on June 27, 2022. If the rule is finalized as proposed, family members who are offered unaffordable coverage under an employer-sponsored plan could be eligible for PTCs under a more affordable marketplace plan beginning on January 1, 2023.

Impact To Employers

This proposed rule to correct the ACA "family glitch" is not expected to change the employer mandate rules and liability since the employer mandate requires certain large employers to offer coverage to employees and family member dependents. However, penalties for violating the employer mandate are triggered only when an employee receives a PTC through the marketplace, rather than the employee's family members receiving a PTC. This proposed rule would extend PTCs to only the family members of employees who are not offered affordable, minimum value employer-sponsored family coverage but would not affect the eligibility of employees. It does not change the current employer obligation for affordable, minimum value self-only coverage; it simply provides employees' family members a more affordable option through PTCs if employer-sponsored coverage is not affordable or minimum value for them. Further, no changes are expected to the ACA affordability calculations for employees or the safe harbors under the proposed rule.

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[1] ACA affordability threshold for the 2022 tax year.

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