COMPLIANCE ALERT

IRS Issues Proposed Rules to Fix the Affordability "Family Glitch"

EPIC Insurance Brokers & Consultants

May 2, 2022

Quick Facts

- The Internal Revenue Service (IRS) has issued proposed rules that would change the way employer-sponsored coverage would be treated when determining if a family is eligible for premium tax credits (PTC) when purchasing individual health insurance through a public Marketplace.
- Proposed rules would allow for the affordability of coverage provided under an employer-sponsored plan to be determined for the employees' spouses and dependents by the employees' required contribution for family coverage.
- The new proposed rules would not affect rules for the employer shared responsibility mandate under the Affordable Care Act (ACA) Section 4980H.

Background

The IRS has issued **proposed rules** under Internal Revenue Code (IRC) Section 36B that would change the way employer-sponsored coverage would be treated when determining if a family is eligible for premium tax credits (PTC) when purchasing individual health insurance through a public Marketplace. The proposed rules would fix the so-called "family glitch" that currently requires employer plan affordability to be based on the employee-only cost for coverage, while not taking into consideration the cost for the employee's family to participate. The change would allow more spouses and dependents to qualify for premium tax credits toward the cost of individual health coverage purchased through a public Exchange.

Current Rules and Proposed Changes

An individual is eligible for a premium tax credit (or tax subsidy) to help pay the monthly premiums for individual coverage purchased on a public Exchange if all of the following are true:

- The individual is not eligible for Medicaid, Children's Health Insurance Program coverage (CHIP) or Medicare;
- The individual is not enrolled in other minimum essential coverage; and
- The individual is not eligible for employer-sponsored group health plan coverage that provides minimum value and is affordable.

Individuals who are offered (or eligible for) minimum value, affordable coverage under an employer-sponsored group health plan are not eligible for a tax subsidy when purchasing individual health insurance through a public Exchange. In general, a plan provides "minimum value" if the actuarial value of the benefits provided is at least 60%. Coverage is "affordable" if the employee contribution for employee-only (single) coverage does not exceed a set percentage (9.61% in 2022) of the employee's household income. If the employee-only coverage is affordable, the coverage is considered affordable for spouses and dependents as well, regardless of the required employee contribution amount for family coverage.

On January 28, 2021, President Biden issued an Executive Order called Strengthening Medicaid and the Affordable Care Act, directing the Secretary of the Treasury to review all existing regulations to determine whether any are inconsistent with the policy to protect and strengthen the Affordable Care Act (ACA). The Secretary of the Treasury was also directed to examine policies or practices that may reduce the affordability of coverage or financial assistance for coverage, including for dependents. While performing this review, it was tentatively determined that the rules around affordability for family coverage under an employer-sponsored group health plan are inconsistent with the overall purpose of the ACA to expand access to affordable healthcare coverage.

Therefore, the IRS has proposed making changes to what coverage is considered to provide minimum value and what coverage is affordable for purposes of determining eligibility for premium tax credits for coverage purchased through a public Exchange.

Affordability Proposed Changes

The proposed rules would allow for the affordability of coverage provided under an employer-sponsored plan to be determined for the employees' spouses and dependents ("related individuals") by the employees' required contribution for family coverage. The coverage for related individuals would be affordable only if the employees' cost for enrolling the employee and family members does not exceed 9.61% (in 2022) of an employee's household income. An individual with offers of coverage from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers is affordable. The proposed regulations include examples to illustrate how the change would impact affordability.

IRS Example

Under the proposed regulations, an individual with offers of coverage from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers is affordable. Assume X is married and files a joint return with X's spouse, Y. If X has offers of coverage from X's employer and Y's employer, X has an offer of affordable coverage if the self-only cost of X's employer coverage is affordable or if the family cost of Y's employer coverage is affordable. In this example, X is eligible for affordable employer coverage if one or both of the offers of coverage to X is affordable.

NOTE: It is possible that a spouse or dependent of an employee may have an offer of employer coverage that is unaffordable even though the employee has an affordable offer of self-only coverage.

Minimum Value Proposed Changes

In addition to providing 60% or better actuarial value, previous guidance indicated that plan benefits must also include substantial coverage of inpatient hospital services and physician services. This was previously set forth in proposed rules by the IRS, but not finalized. The IRS is proposing the same requirements here and hoping to formalize them once these rules are finalized.

Section 4980H Employer Shared Responsibility Rules and Employer Penalties

Employers are not required to offer affordable coverage to spouses and dependents. The proposed changes will not affect current rules that determine if an employer is offering affordable coverage to their employees for purposes of employer penalties under the Section 4980H employer shared responsibility rules (commonly referred to as the "employer mandate"). Employers will continue to use the employees' cost for single coverage to determine "affordable" employer contribution rates for compliance with the IRS employer affordability safe harbors.

Summary

The proposed changes would significantly increase the number of people eligible for subsidized individual coverage under the public Marketplace. It will principally impact spouses and dependents of employees who are eligible for affordable employer-sponsored single coverage, where the family contribution is deemed unaffordable under the new rules. The changes are not effective until finalized and published in the federal register. Until that time, affordability will continue to be determined based on the employees' cost of self-only coverage, but it appears the rules would go into effect in time for the 2023 tax year.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.