

IRS Issues Final Rules for Family Coverage Affordability Determination

November 1, 2022

Quick Facts

- Starting January 1, 2023, employer plan affordability for family members will be based on the required cost for the entire family to participate in the employer-sponsored plan.
- Affordability for the employee will still be based on the employee's cost for single (employee-only) coverage.
- Applicable large employers (ALEs) can be liable for penalties under section §4980H if the employer plan is unaffordable for full-time employees.
- As part of a new Section 125 rule, a non-calendar year cafeteria plan may allow an employee to prospectively revoke an election of family coverage under a group health plan if certain conditions are satisfied.

Background

The Internal Revenue Service (IRS) has issued [final regulations](#) that change the way employer-sponsored plan affordability is calculated when determining if a family is eligible for a premium tax credit (PTC) when purchasing individual health insurance through a public Exchange. In fixing what is commonly referred to as the "family glitch," affordability for family members will be based on the employee's cost to cover the entire family rather than the cost of employee-only coverage. The change will allow more spouses and dependents to qualify for PTCs applied toward the cost of individual health coverage purchased through a public Exchange.

An individual is eligible for a PTC (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 (CHIP) coverage or Medicare
- The individual is not enrolled in other minimum essential coverage (MEC)
- The individual is not eligible for employer-sponsored group health plan coverage that provides minimum value and is affordable

Individuals who are offered (or are eligible for) minimum value, affordable coverage under an employer-sponsored group health plan are not eligible for a PTC 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 considered "affordable" if the employee contribution for employee-only (single) coverage does not exceed a set percentage (9.12% in 2023) of the employee's household income. Currently, 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.

New Rule

Effective January 1, 2023, employer plan affordability for family members will be based on the required cost for the entire family to participate in the employer-sponsored plan. Affordability for the employee will still be based on the employee's cost for single (employee-only) coverage. Depending on an employer's contribution arrangement, this could create a situation where *family members* are eligible for the PTC purchasing individual coverage, while the *employee* remains ineligible based on the cost of single coverage.

Determining the Cost of Employer-Sponsored Coverage

To determine the cost of coverage for purposes of affordability for family members, the entire employee contribution for family coverage is considered. For example, if an employer charges employees \$150/month to participate in single employee-only coverage and \$600/month for the employee to enroll in family coverage, you would compare the \$600 to the employee's household income to determine affordability for the family member and compare \$150 to the employee's household income to determine affordability for the employee.

Minimum Value

To affect an individual's eligibility for a PTC, an employer-sponsored plan must also provide benefits that meet the definition of minimum value (MV). 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 has formalized this requirement in the final rules.

Employee Election Changes

For employer benefits provided through a Section 125 cafeteria plan, employees are generally not allowed to make changes to their elections midyear unless they experience an allowable election change event as defined by the Section 125 rules. To address situations where an employee may want to drop family coverage on the employer-sponsored plan so that the family can purchase subsidized individual health insurance, the IRS has also issued [notice 2022-41](#) which creates a new election change event for non-calendar year plans under Section 125 rules.

According to this new Section 125 rule, a non-calendar year cafeteria plan may allow an employee to prospectively revoke an election of family coverage under a group health plan provided *all* the following conditions are satisfied:

- A related individual is eligible for a special enrollment period to enroll in a qualified health plan (QHP) through an Exchange, or an already-covered related individual seeks to enroll in a QHP during the Exchange's annual open enrollment period
- The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the related individual or related individuals in a qualified health plan (QHP) through an Exchange for new coverage that is effective beginning no later than the day immediately following the last day of the original employer coverage that is revoked

Employers may rely on the employee or related individual's representation that they plan to enroll in Exchange coverage when revoking the employer coverage.

Employer Considerations

This change in affordability determination raises several important issues for employers.

- No employer penalties for unaffordable family coverage – Applicable large employers (those with at least 50 full time equivalents (FTEs)) can be liable for penalties under section §4980H if the employer plan is unaffordable for full-time employees. This rule remains unchanged, and employer penalties are based only on the cost of single or employee-only coverage. Employers are not required to provide affordable family coverage and will not be penalized in cases where family members receive the PTC when purchasing individual health insurance.
- No change to employer reporting requirements – Form 1094 and 1095 reporting requirements are not changed in any way.
- No specific employee notice or disclosure requirements – The rules do not impose any new employee disclosure or notice requirements. However, language in the “Exchange Notice” that employers provide to all new hires will need to be updated. Some employers may want to voluntarily communicate these changes to employees to help them understand their options regarding the employee’s family’s participation in the employer-sponsored plan versus purchasing subsidized individual coverage.

Summary

Note that the American Rescue Plan Act (ARPA) extended increased PTCs available when purchasing individual coverage to the public Exchange through 2025. The combination of the increased subsidies with the ability for family members to qualify based on the family cost of the employer plan means that, depending on employer contribution policies and an employee’s household income, a significant number of employees may find that family coverage is more affordable through a public Exchange than what is currently offered under their employer's plan.

The new rules are going into effect just in time for the open enrollment period that starts November 1 for Healthcare.gov/federal Exchange-based coverage (state-based Exchanges may have different annual open enrollment periods). This means that employees may want to reconsider elections that they are currently in the process of making for employer-based calendar year plans. Employers will need to understand how this may affect some employees’ enrollment decisions.

It is also likely that this change will face legal challenges. Employers should monitor the situation to see if courts intervene in a way that could change the effective date.

EPIC Employee Benefits Compliance Services

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

EPIC offers this material for general information only. EPIC does not intend this material to be, nor may any person receiving this information construe or rely on this material as, tax or legal advice. The matters addressed in this document and any related discussions or correspondence should be reviewed and discussed with legal counsel prior to acting or relying on these materials.