Treasury Proposes Rule to Fix Family Glitch for ACA Marketplace Coverage

Insights
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The Department of Treasury recently issued proposed regulations to alter the rules for how individuals can get a premium tax credit (PTC) to help pay for Marketplace health coverage starting in 2023. The new rules would base PTC eligibility for family members on the employee's share of the cost of covering the employee **and** those family members. The proposed regulations also would add a minimum value rule for an employee's family members based on the benefits provided to the family members.

The affordability and minimum value rules under the Affordable Care Act (ACA) will not change for determining whether an applicable large employer (ALE) must pay an Employer Shared Responsibility Penalty (ESRP). Nor will the proposed rule require different information on an ALE's annual ACA reports.

Background

The ACA provides that individuals who enroll in Marketplace coverage can get a PTC for any month of coverage when the individual is ineligible for minimum essential coverage (MEC), including employer group coverage. The ACA deems an individual ineligible if MEC is unaffordable or does not provide minimum value.

Currently employer coverage is unaffordable if the share of the annual premium the employee must pay for self-only coverage is more than 9.61% of household income in 2022. That also means coverage is unaffordable for related family members if the employee's cost for self-only coverage is unaffordable. The employee's share of the premium for family coverage does not matter.

Employer coverage does not provide minimum value if the plan's share of the total allowed cost of benefits provided to an employee individually is less than 60%. Similar to judging affordability, minimum value analysis does not factor whether employer coverage provides minimum value to a related individual. So, a family member could be disqualified from getting a PTC even if the family coverage they could get from an employee's employer fails to provide minimum value to them.

Summary of New Rule

A January 2021 Executive Order directed the Secretary of the Treasury to review existing regulations, policies, and practices to see if they negatively affect the affordability of health coverage or limit access to financial aid for ACA Marketplace coverage.

The Treasury Department and the IRS have concluded that the current interpretation of ACA affordability and minimum value requirements which look only at the cost and value of an employee's available individual coverage have disadvantaged thousands of families. Thus, they now state that a more appropriate interpretation of the ACA requires separate affordability and minimum value analysis for employees and family members to resolve the so-called family glitch created by the current interpretation.

The new rule interprets the ACA to allow affordability of employer coverage for an employee's spouse and/or tax dependents to be based on the cost of covering the employee **and** those family members. So, an eligible employer-sponsored plan is affordable for related individuals if an employee's required contribution for family coverage does not exceed the then current indexed percentage of an employee's household income (e.g., 9.61% for 2022).

Likewise, the new proposed rule also interprets the ACA to require an eligible employer-sponsored plan to ensure 60% minimum value of coverage not just to employees but also to related individuals. Finally, the proposed rule states that an eligible employer-sponsored plan provides minimum value to a related individual only if, in addition to covering at least 60% of the total allowed costs of benefits provided to the related individual, the plan benefits include substantial coverage of inpatient hospital services and physician services.

Proposed Rule Does Not Apply to ALE Reporting or ESRP

Employers should keep in mind that affordability and minimum value for PTC eligibility is different than the rule for assessing potential penalties under Code Section 4980H(b). The new proposed rule is likely to create confusion given such similar terminology, but the proposed rule will not alter the affordability calculation or minimum value determination for any reason relating to annual ACA reporting or for assessing Code Section 4980H penalties. ALEs should not need to adjust any group health plan design, administrative processes or communications regarding affordability and minimum value, including any affordability safe harbor choice under ESRP rules.

Conclusion

Treasury and the IRS have invited public comments to be submitted by early June and scheduled a public hearing for June 27 at which interested parties can address the proposed rules. We will continue to monitor developments and provide updates as the proposed rule works its way through the rulemaking process, so make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Employee Benefits and Tax Practice Group.

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