CHANGES TO ADDRESS THE ACA “FAMILY GLITCH” WILL TAKE PLACE IN 2023

The IRS has finalized a rule change to address an Affordable Care Act (“ACA”) implementation rule known as the “family glitch.” This rule based eligibility for a family’s premium subsidies on whether available employer-sponsored insurance was affordable for the employee only, even if it was not actually affordable for the whole family. This change takes place a few weeks before the start of the open enrollment period for 2023 individual/family health coverage.

What Are the Current Regulations?

Currently, employer-based health insurance is defined as “affordable” if the coverage solely for the employee (and not for family members) is affordable, and in that case, the employee’s family members would be ineligible for a premium tax credit.

The original rule was published in 2013 and had two main points:

1. An employer-sponsored plan is deemed affordable as long as the employee’s required contribution doesn’t exceed 9.5% of the employee’s income (this percentage is indexed annually – in 2022 it is 9.61%)
2. The required contribution is that which must be paid for *self-only* coverage. The cost to add family members is not taken into account. The affordability determination is then applied to all members of the family who could be added to the employer-sponsored health plan.

As a result, many families were deemed ineligible for premium subsidies in the marketplace since their employer-sponsored coverage was considered “affordable” regardless of whether it was actually affordable for the whole family. For example, according to this rule, the cost to add one’s family to their employer-sponsored coverage could end up being 25% or more of their household income, and they would not have access to any premium subsidies in the individual market, so, potentially, neither employer-sponsored coverage nor marketplace coverage would be financially realistic for that family.

What will it Look Like Now for Employees?

The rule, which was proposed by the Biden administration earlier this year, revises the definition of “affordability” of employer-sponsored coverage as it applies specifically to family members of the employee. Instead of basing the affordability determination for a family's employer-sponsored health insurance on just the employee's own cost for coverage, the determination will now be made based on the cost to cover the employee plus family members, if applicable. This affordability determination is separate from the affordability determination for the employee which will still be based on self-only coverage.

Now, many families will be newly eligible for marketplace premium subsidies. Most of the rule goes into effect for the 2023 tax year, meaning those family members who qualify can enroll in subsidized marketplace coverage for 2023.

If a family has to pay more than a certain percentage of household income (9.12% in 2023; this percentage will likely also be indexed each year) for the employer-sponsored plan, they will potentially be eligible for premium tax credits in the marketplace. The same would be true if the employer-sponsored coverage does not provide the minimum value, which is at least 60% of average costs for a standard population and includes "substantial coverage" for inpatient care and physician services (HealthCare.gov has an employer coverage tool you can use to determine whether a plan is considered affordable and provides the minimum value). If the coverage is considered affordable but does not provide minimum value, the family members would potentially be eligible for a subsidy to buy a marketplace plan.

What will it Look Like Now for Employers?

The ACA already requires large employers (with 50 or more full-time equivalent employees) to offer coverage to their employees and to their employees' children (but not to spouses, although it's relatively rare for companies to exclude spouses). This is still the case, and there will still be no affordability requirements as far as the coverage that is offered to dependents. Employers may face penalties only if an employee's coverage is deemed unaffordable based on their sole cost and they (just the employee, not the employee's family) receive a premium tax credit in the marketplace and/or if the coverage does not provide the minimum value.

The IRS has also clarified that employers are permitted to allow employees to make a cafeteria plan coverage election change if an employee wants to remove family members from their employer-sponsored plan as of January 2023 so those family members can utilize any newly-available premium subsidies in a marketplace plan. If an employer-sponsored plan does not follow the calendar year, employers can allow employees to switch their family members to a marketplace plan during open enrollment, and remove them from the employer-sponsored plan when the marketplace plan takes effect. Employers are not required to allow either option, but this new rule allows them the ability to do so if they choose.

As always, please feel free to reach out to our team with any questions or concerns.

For More Information

For more information or assistance, please contact our Employee Benefits team at **210–640–1789**, toll-free at **1–888–757–2104**, or **EmployeeBenefits@BFGonline.com**.

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