ACA Marketplace Coverage

The Department of the Treasury recently issued final regulations to make the premium tax credit (PTC) for Marketplace health coverage available to more individuals starting in 2023. The new rule changes the IRS's interpretation of group health coverage affordability for determining PTC eligibility for family members. Whereas the IRS previously only considered the affordability of employer-offered individual health coverage, the new rule looks at the affordability of family coverage to decide whether spouses and dependents can elect Marketplace coverage and receive a PTC. The Biden Administration estimates that the change will result in more than one million individuals qualifying for a PTC for the first time.

Employers should understand, however, that the new rule will not change the affordability and minimum value rules under the Affordable Care Act (ACA) for determining whether an applicable large employer (ALE) must pay an Employer Shared Responsibility Penalty (ESRP). Similarly, the new rule does not alter the information an ALE must report to the IRS annually under the ACA.

Background

The ACA states that individuals who enroll in Marketplace coverage can get a PTC for any month of coverage when they are ineligible for minimum essential coverage (MEC), including employer group coverage. An individual is considered 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. That also means coverage is unaffordable for related family members if the employee's cost for self-only coverage is unaffordable – the employee's cost for family coverage does not matter.

Additionally, employer coverage does not provide minimum value if the plan's share of the total allowed cost of benefits provided under individual coverage is less than 60%. As with affordability, the IRS judges minimum value without considering whether employer coverage provides minimum value to an individual's spouse or dependents. So, a family member could not receive a PTC even if the family coverage they could get through an employer-sponsored plan fails to provide minimum value to them.

Summary of the New Rule

Following a January 2021 Executive Order to review existing regulations, policies, and practices to see if they limit access to financial aid for ACA Marketplace coverage, the Treasury Department and the IRS concluded that their current interpretation of ACA affordability and minimum value requirements 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 base affordability of employer coverage for an employee's spouse or tax dependents on the cost of covering the employee and their family members. So, for 2023, an eligible employer-sponsored plan will be deemed affordable for related individuals only if an employee's required contribution for family coverage does not exceed the then-current indexed percentage of an employee's household income (that is, 9.12% for 2023).

Likewise, the new rule interprets the ACA to require an eligible employer-sponsored plan to ensure a plan provides 60% minimum value coverage to related individuals. Finally, the rule directly 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.

Rule Does Not Apply to ALE Reporting or ESRP

Under the ACA, affordability and minimum value for PTC eligibility is different than for assessing ALE penalties under Code Section 4980H(b). The new rule is likely to create confusion given such similar terms, but it will not alter the affordability calculation or minimum value determination for any reason relating to annual ACA reporting or for assessing shared responsibility penalties. ALEs will 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

Many advocacy groups welcome the final rule and point to the projected increase in the number of individuals who are likely to enroll in the Marketplace and receive a PTC for the first time. However, some observers read the preamble to the rule, especially its detailed statutory analysis, to signal that there could be litigation looming. In either event, the IRS plans to provide educational materials to consumers through healthcare.gov ahead of the upcoming Marketplace enrollment period. Employers should direct individuals to the site for more information.