Treasury Proposes Rule to Alter ACA Affordability and Minimum Value for Marketplace Premium Tax Credit Eligibility

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The Department of Treasury recently issued proposed regulations to modify the rules for individuals to qualify for premium tax credits (PTCs) to help pay for Marketplace health coverage effective for tax years beginning on or after January 1, 2023. The new rules, if finalized, will base PTC eligibility for an employee's family members on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. 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.

As explained below, the proposed rule will *not* change the affordability and minimum value analysis for purposes of whether an applicable large employer (ALE) must pay an Employer Shared Responsibility Penalty (ESRP) and will not require any different information on an ALE's annual ACA reports.

Background

Under the Affordable Care Act (ACA), 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 considers an individual ineligible for employer coverage if it is unaffordable or does not provide minimum value.

Employer coverage is unaffordable for an employee 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. Under current rules, employer coverage is unaffordable for related individuals eligible to enroll due to their relationship to an employee if the employee's cost for self-only coverage is unaffordable. The employee's share of the premium for family coverage does not matter in determining whether employer coverage is affordable for related individuals.

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%. As with the affordability component, the minimum value component does not factor whether employer coverage provides minimum value to a related individual. So, a related individual could be disqualified from getting a PTC even if their available coverage does not provide minimum value to them.

Finally, Treasury and the IRS proposed regulations in 2015 to require, for PTC purposes, plans to include substantial benefits for hospitalization and physician services on top of covering at least 60% of total allowed plan costs to be deemed to provide minimum value. Those rules were never finalized for purposes of PTC eligibility.

Summary of New Rule

The new proposed rule follows a January 2021 Executive Order directing 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 assistance for Marketplace coverage, including for dependents. Treasury and the IRS have completed their review and have withdrawn their 2015 proposed minimum value rule and substituted a new proposed rule to address that point.

The Treasury Department and the IRS state that the current interpretation of the 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. Hence, Treasury and the IRS now believe that a second, and in their view better, interpretation of the ACA requires separate affordability and minimum value analysis for employees and family members. Treasury believes the new view will better address 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 family members (e.g., spouse and 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 – 9.61% for 2022.

The new 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.

For purposes of the proposed rule, family coverage means all employer plans that cover any related individual other than the employee, including a self-plus-one plan for an employee enrolling one other family member. Additionally, if an individual is eligible for more than one plan, for example as an employee and as a related individual to a family member with employer coverage, the individual will be deemed to have affordable coverage if at least one plan is affordable.

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 for purposes of potential penalties under Code Section 4980H(b). No doubt the new proposed rule will create some confusion given the similar terms. However, the proposed rule will not change the affordability calculation or minimum value determination for any reason relating to annual ACA reporting or for assessing Code Section 4980H penalties. So, ALEs should not have to change 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, 2022, 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.

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