

THE BEACON

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PROPOSED REGULATIONS ISSUED TO SUBSTANTIALLY INCREASE ACCESS TO FEDERALLY SUBSIDIZED HEALTH INSURANCE

On April 5, 2022, the Administration issued new proposed regulations changing certain aspects of the affordability and minimum value rules under the Affordable Care Act ("ACA"). Notably, the rules only impact whether an individual is eligible for federally subsidized health insurance; they DO NOT change the affordability requirements for applicable large employers under the ACA's employer mandate. If finalized, the new rules will increase access to federal subsidies beginning January 1, 2023.

Current guidance provides that an individual is ineligible for a federal subsidy (known as the premium tax credit or PTC) if that individual is eligible for affordable, minimum value coverage through an employer-sponsored plan. However, since its inception, concerns have been raised about the "family glitch." Specifically, previously existing rules interpret the ACA to provide that any spouse or dependent offered medical coverage through an employer-sponsored plan was ineligible for the federal subsidy if that coverage was affordable to the employee. This interpretation did not consider whether family coverage was affordable. As a result, many individuals were unable to qualify for the federal subsidy even though the family coverage they were offered through an employer was not in fact affordable.

The new proposed rules change the definition of affordability for purposes of qualifying for the federal subsidy. Under these rules, coverage is affordable for family members only if the premium for family coverage does not exceed 9.5% (as adjusted for inflation) of the family's household income. Where an individual is offered coverage through multiple employer-sponsored plans (i.e., spouses are each eligible for family coverage through separate employers), any offer of affordable coverage will be sufficient to disqualify all members of that family from receiving the federal tax subsidy. The proposed regulations also provide that if a plan offers coverage to an individual who is not a member of the employee's household for tax purposes (such as a child under age 26 who is no longer the employee's tax dependent), the premium attributable for that non-dependent individual will not be considered for affordability purposes.

The proposed rules also adjust the definition of minimum value. As with the affordability rules, these revisions will take into account family coverage when determining if a plan provides minimum value. The rules also formalize existing guidance that provides that any plan that does not provide substantial coverage for inpatient hospital services and physician services cannot, by definition, provide minimum value.



While these proposed rules do not directly impact the employer mandate (i.e., employers are still only required to offer affordable coverage to full-time employees), they could ultimately have a major impact on applicable large employers. Specifically, to administer the new provisions, the IRS will need to collect substantial additional information about the coverage that employers offer. This will presumably require major revisions to IRS Forms 1094-C and 1095-C.

The IRS has indicated it intends to finalize the proposed regulations by the end of 2022, with an official effective date of January 1, 2023, as indicated above. However, we note that these rules are highly likely to be challenged in the courts—particularly because the IRS formerly determined they did not have the regulatory authority to interpret the ACA in this manner. We will continue to monitor these rules and provide updates when they become available.

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