Brown & Brown

EMPLOYEE BENEFITS

Affordability of Employer Coverage for Family Members of Employees – Fixing the "Family Glitch"

November 2022

Background

Under previous rules, a premium tax credit (PTC)[1] was only available to an employee and their family members (termed "related individuals" in the final regulations) if the employee's contribution towards employee-only coverage offered by an employer group health plan was considered "unaffordable" under the Employer Mandate. This meant that so long as an employee's cost for employee-only coverage was considered "affordable" under the Employer Mandate, and regardless of the expense of family coverage (e.g., employee plus spouse/dependent child) to the employee, the employee and family members could not receive a PTC.

The IRS recently released two important sets of guidance resolving the above "Family Glitch" that existed under the ACA's employer shared responsibility penalty (Employer Mandate) rules. The two sets of IRS guidance provide for the ability of family members to now receive a PTC if employer-sponsored family coverage is considered "unaffordable" to the employee and also allow an employee to make a mid-year election change in a Section 125 cafeteria plan to allow family members to enroll in exchange/marketplace coverage.

Premium Tax Credits for Family Members

On October 13, 2022, the IRS published final regulations regarding the eligibility for premium tax credits (PTC) for an employee's family members. As noted in our previous article discussing the proposed regulations, the regulations aim to fix what has been referred to as the ACA's "Family Glitch." The new rules adopted by the IRS on October 13th, 2022, expand the ability for an employee's family members to receive a marketplace PTC if an employee's cost for family coverage under an employer's health plan is considered "unaffordable" to the family members, even if the plan's employee-only coverage is considered affordable to the employee. The final regulations apply to taxable years beginning after December 31, 2022.

Affordability Rule

The final regulations resolving the "Family Glitch" implement the proposed regulations with no significant changes. Under the final regulations, employer-sponsored coverage for certain spouses and dependents (i.e., family members) is considered affordable for PTC purposes if the employee's annual cost of family coverage does not exceed 9.5% (indexed for inflation each year) of the employee's household income.

[1] *A premium tax credit is used to reduce an individual's cost for coverage within a state's or the federal exchange/marketplace.*

Minimum Value Rule

The affordability of family coverage will be based on the lowest-cost Minimum Value plan offered by the employer. This is to ensure that the affordable coverage offered by an employer meets a minimum standard. The final regulations state that "an eligible employer-sponsored plan provides minimum value for related individuals only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60% and the plan benefits include substantial coverage of inpatient hospital services and physician services."

Considerations for Employers:

- The IRS and Treasury Department confirmed that the final regulations do not affect employer information reporting requirements, including Form 1095-C and 1095-B reporting under sections 6055 and 6056.
- Because employer shared responsibility penalties may only be assessed against an Applicable Large Employer (ALE) for failing to offer affordable employee-only coverage to its full-time employees (and not taking into account the cost of family coverage), the expansion of the ability for employees' family members to receive a PTC does not expose an ALE to any additional potential penalties under the Employer Mandate. The final regulations also do not require ALEs to offer affordable family coverage.

Section 125 Cafeteria Plan Permitted Election Changes

Simultaneous with the issuance of the above final regulations, the IRS and Treasury Department also issued Notice 2022-41, expanding the application of permitted status change events that allow for a mid-year election change for health coverage under a section 125 cafeteria plan. Existing cafeteria plan rules generally prohibit individuals from revoking their elections related to coverage under an employer-sponsored group health plan during the plan year, except in limited circumstances in which the employer's cafeteria plan permits the election change. Under the previous rules, an employee was not permitted to revoke an election for family health coverage and elect self-only health coverage solely to allow one or more related individuals enrolled in the plan to enroll in Exchange coverage instead.

Notice 2022-41 modifies the existing rules under section 125 to allow cafeteria plans to permit employees to prospectively revoke an election for family coverage under the employer-sponsored group health plan (excluding a health FSA) that provides minimum essential coverage for either a calendar year or non-calendar year plan year, provided the following conditions are satisfied:

1. One or more related individuals are eligible for a special enrollment period to enroll in a Qualified Health Plan (QHP) through an Exchange, or one or more already-covered related individuals seek to enroll in a QHP during the Exchange's annual open enrollment period; and

2. The revocation of the election corresponds to the intended enrollment of the related individual(s) in a QHP through an Exchange (must be effective no later than the day immediately following the last day of the original coverage that is revoked). If the employee is not also enrolling in the QHP, they must elect self-only coverage (or family coverage including one or more already-covered related individuals) under the group health plan.

According to the guidance, "a cafeteria plan may rely on the reasonable representation of an employee that the employee and/or related individuals have enrolled or intend to enroll in a QHP through an Exchange for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked."

The cafeteria plan election change rules in Notice 2022-41 apply to elections effective on or after January 1, 2023. An employer must amend its cafeteria plan to allow election changes in this circumstance. Notice 2022-41 provides that the plan must generally be amended on or before the last day of the plan year in which the election changes are allowed, in which case it can be effective retroactively back to the first day of the plan year. However, if an employer wishes to implement the new election change rule for the plan year that begins in 2023, it has until the last day of the plan year that begins in 2024 to adopt the plan amendment.

How Brown & Brown Can Help

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