

Publications

Fixing the “Glitch” – The IRS Releases Final Rule Addressing the “Family Glitch”

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Amin

kamin@groom.com

202-861-2604

Patrick D. O’Neil

poneil@groom.com

202-861-6601

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On Tuesday, October 11, Treasury and IRS issued [final regulations](#) amending the regulations under the Affordable Care Act (“ACA”) regarding the affordability determination for an employee’s family members of employer-sponsored health coverage (the “2022 Regulations”). The 2022 regulations are effective beginning with the 2023 tax year. On October 11, the IRS also issued Notice 2022-41, which addresses the cafeteria plan change in election rules.

Individuals are generally ineligible for premium tax credits (“PTCs”) to purchase subsidized health insurance on the Exchange if they receive an offer of affordable employer-sponsored coverage. Under the existing regulations from 2012 (the “[2012 Regulations](#)”), the affordability of employer-sponsored coverage for a family member is determined based on the affordability of self-only coverage, rather than the affordability of family coverage—this has come to be known as the “family glitch.” The 2022 Regulations fix this “glitch” by basing the affordability of employer-sponsored coverage for a family member on the cost of family coverage, rather than self-only coverage.

Background

Code section 36B defines an affordable plan for PTC purposes as a plan with the employee’s required contribution that is less than 9.5% of household income (indexed; this percentage will be 9.12% in 2023). Code section 36B cross-references part of the individual mandate provision in Code section 5000A, stating that an employee’s required contribution for coverage is determined by the cost of self-only coverage. In the 2012 Regulations, the IRS used this cross-reference to determine that affordability of coverage for both employees and their family members should be determined based on the cost of self-only coverage. However, as many commenters to the 2012 Regulations pointed out, Code section 5000A also includes a provision for individuals related to employees indicating that their affordability standard should be determined by the employer’s required contribution for family coverage, not self-only coverage. Nevertheless, the IRS finalized the 2012 Regulations as originally proposed, rendering family members ineligible for PTCs where the self-only coverage is affordable, regardless of the cost of family coverage.

In January 2021, President Biden issued [Executive Order 14009](#), “Strengthening Medicaid and the Affordable Care Act,” which directed the Secretary of Treasury to reconsider previous regulations that limit access to affordable coverage. This was generally interpreted as opening the door to reconsideration of the “family glitch.”

On April 5, 2022, Treasury and IRS issued proposed regulations, followed by a 60-day comment period and a public hearing held in June. The preamble to the 2022 Regulations states that the IRS received 3,888 comments, “the overwhelming majority of which were in support” of revising the rule.

Impact on Insurance Markets

The Treasury Department’s Office of Tax Analysis estimates that this regulatory change will likely result in about one million new enrollees in PTC-subsidized Exchange coverage. The reason for the estimate of just one million new subsidized enrollees compared to the more than five million people estimated to fall in the family glitch is likely because many families will choose to keep all family members in one employer-based plan, rather than split the family between two plans.