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HEALTH ISSUES

Alert No. 2022-H-3

April 12, 2022

Biden Administration Issues Proposed Rule to Fix "Family Glitch"

On April 5, 2022, the U.S. Department of the Treasury released a proposed rule that, if finalized, would eliminate the Affordable Care Act's (ACA) "family glitch" which prevents certain lower or middle income individuals from receiving premium tax credits (PTCs) to purchase ACA exchange coverage.

Background

The ACA provides that individuals do not qualify for premium tax credits if they are eligible for another source of minimum essential coverage, including employer-sponsored plans. For employer-sponsored coverage, two exceptions to this rule are if the coverage is not "affordable" or not of "minimum value". (As described below). If the coverage is not affordable or not of minimum value, individuals can receive PTCs for ACA exchange coverage.

The "affordable" test is whether coverage currently costs equal to or less than 9.61% (adjusted annually for inflation) of an employee's household income. The "minimum value" test is whether the plan pays 60% or more of the total costs of coverage.

In previously finalized regulations, the IRS promulgated that the affordability threshold (tied to self-only coverage) also applies to related individuals (spouses filing joint tax returns and dependents) that are eligible for employer coverage. This regulatory interpretation effectively disregarded the premium costs of family coverage, which is usually greater than self-only coverage. This interpretation is often referred to as the "family glitch".

The ACA's statutory language for minimum value only considers whether the total cost of allowed benefits to an employee is at least 60%. Up until last week, there was no regulatory language pertaining to a separate test for related individuals.

Potential Impact

If finalized, the proposed rule would take effect in 2023 and could make more related individuals eligible for PTCs for exchange coverage. It would also lead to increased government spending. To the extent that family members enroll in exchange coverage and employees maintain employer coverage, it could lead to greater liability for cost-sharing and out-of-pocket limits since they will be covered by separate plans. The proposed rule has a 60-day comment period.

Although not addressed directly in the rule, employer liability through the employer mandate should not be impacted as the proposed rule pertains to related individuals and not the eligibility of employees. For more information on the ACA's employer-shared responsibility provisions see here.

According to the Biden Administration's Executive Order the family glitch affects approximately 5 million Americans. The Biden Administration estimates that through this proposed change, 200,000 uninsured individuals would gain health coverage, and around 1 million Americans would have more affordable health insurance.

Executive Order

In addition to the proposed rule announced by President Biden, he issued an Executive Order at the same time, directing "executive departments and agencies (agencies) with authorities and responsibilities related to Medicaid and the ACA to review existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) to determine whether such agency actions are inconsistent with this policy." The new Executive Order, *Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage*, expands on Executive Order 14009 which he signed in January 2021.

If you have any questions regarding this ***Academy Alert***, please contact Marietta Richman, Legislative and Regulatory Analyst (richman@actuary.org; 202 617-9011).