



For your information

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IRS Issues Additional Guidance on the Affordability Test for Employer-Sponsored Coverage under PPACA

The Internal Revenue Service (IRS) issued final regulations on the premium tax credit that will subsidize the cost of individual coverage in Exchanges. These regulations provided further guidance on determining whether employer-sponsored coverage will be considered “affordable” in regard to the application of an employer penalty.

Background

Beginning in 2014, individuals will be able to purchase individual health insurance coverage through the Affordable Insurance Exchanges (Exchanges). To make that coverage more affordable, the Patient Protection and Affordable Care Act (PPACA), created a refundable health insurance premium tax credit (premium tax credit) that will subsidize the cost of individual coverage in an Exchange. Generally, the premium tax credit will be available only to individuals:

- Whose household income for a taxable year is between 100% and 400% of the federal poverty line for the taxpayer’s family size, and
- Who are not eligible for other “minimum essential coverage.”

Minimum essential coverage includes government-sponsored coverage such as Medicare, Medicaid, the Children’s Health Insurance Program, and Tricare. It also generally includes employer-sponsored coverage. However, minimum essential coverage for purposes of the premium tax credit does not include employer-sponsored coverage that is “unaffordable” or that “fails to provide minimum value.”

- Coverage is considered “unaffordable” if the required employee contribution towards the cost of self-only coverage exceeds 9.5% of the employee’s household income.
- Coverage “fails to provide minimum value” if it fails to pay at least 60% of the total allowed cost of benefits provided under the plan.

Under PPACA, employers who employ at least 50 full-time-equivalent employees will be assessed a penalty – commonly called the “shared responsibility penalty” – for each month in which they have full-time employees who enroll for health coverage through an Exchange and receive the premium tax credit. The monthly penalty for an employer who does not offer health coverage to its full-time employees and their dependents will be equal to the number of its full-time employees (i.e., generally those who work at least 30 hours per week) minus 30, multiplied by one-twelfth of \$2,000. The monthly

penalty for an employer who offers coverage that is deemed to be unaffordable or fails to provide minimum value will be one-twelfth of \$3,000 multiplied by the number of full-time employees who receive the premium tax credit.

On August 17, 2011 the IRS issued proposed regulations on the premium tax credit. On May 23, 2012 the IRS issued [final regulations](#). The final regulations detail the premium tax credit that an individual may claim based on his or her household income. The premium tax credit will be an important factor for employees and retirees who consider Exchange coverage as an alternative to employer coverage. This *For Your Information* focuses on the implications of this guidance for the determination of whether employer-sponsored coverage is considered “affordable” under PPACA.

Affordability Test

For the purpose of determining individual eligibility for the premium tax credit, the proposed regulations define employer coverage as unaffordable if the required employee contribution toward the cost of self-only coverage exceeds 9.5% of the employee’s household income.

Although the final regulations do not change this definition, they do “reserve” how the determination of unaffordable coverage will be made for individuals who enroll in an employer-sponsored plan because of their relationship to an eligible employee.

INSIGHT

The preamble to the final regulations states that commentators suggested that the determination of affordability for coverage of related individuals should be based on what the employee must pay for family coverage, and not for self-only coverage. If that change is made, significantly more individuals will be eligible for the premium tax credit. However, that change could also subject many more employers to the shared responsibility penalty.

The preamble to the regulations also discusses the impact of employer contributions to a health savings account (HSA) or a health reimbursement account (HRA). Employer contributions to an:

- HSA will not affect the determination of affordability because HSA contributions cannot be used to pay the health care coverage premiums.
- HRA that can be used only to reimburse medical expenses, and not the employee’ share of the cost of coverage, will not affect the determination of affordability.

Future guidance will address how other types of HRAs will be treated with respect to the determination of affordability. Also, future guidance will address the impact on the determination of affordability of wellness incentives that increase or decrease an employee’s share of premiums.

Conclusion

Whether an employer-sponsored plan is considered “affordable” will determine if employees will be eligible for a premium tax credit to purchase Exchange coverage and if the plan sponsor will be subject to penalties under PPACA. If future guidance bases affordability for family coverage on the employee contribution rate for family coverage, significantly more employers could be subject to this penalty.

Buck Can Help

- Review the implications of the affordability requirements on the employer contribution strategy
- Evaluate the impact of the individual premium tax credit on the employer program