Do Employers Now Have to Offer Affordable Family Coverage?

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In furtherance of the Biden Administration's January 28, 2021, Executive Order 14009 and April 5, 2022, Executive Order 14070 to protect and strengthen the ACA, the Treasury Department and IRS published a proposed rule on April 7, 2022, advancing an alternative interpretation of Internal Revenue Code Section 36B. Employers can breathe a sigh of relief as the proposed changes do not alter the Employer Shared Responsibility Payment (ACA penalty) construct. Employers can continue to offer affordable employee-only coverage and spousal or dependent coverage that is unaffordable. However, the potential indirect effects of the proposed regulations on employers are noteworthy.

At its core, the proposed regulation eliminates the current regulatory concept that the cost of coverage for a spouse and dependent children is deemed affordable if the lowest-cost silver plan for employee-only coverage is affordable. Citing studies addressing the "family glitch" that disqualifies employees from subsidized Marketplace coverage if the employee-only coverage is affordable and finding this inconsistent with the purpose of the ACA of expanding access to affordable care, the Treasury Department and IRS have reinterpreted Section 36B as permitting a Premium Tax Credit to individuals if the only coverage available to them is unaffordable spousal or dependent coverage.

Allaying employers' concerns that this proposed rule will affect their cost-sharing schedules, the Preamble to the proposed rule notes:

The proposed regulations would make changes only to the affordability rule for related individuals; they would make no changes to the affordability rule for employees. As required by statute, employees continue to have an offer of affordable employer coverage if the employee's required contribution for self-only coverage of the employee does not exceed the required contribution percentage of household income. Accordingly, under the proposed regulations, a spouse or dependent of an employee may have an offer of employer coverage that is unaffordable even though the employee has an affordable offer of self-only coverage.

The proposed rule also modifies the minimum value regulations to include the entire family and addresses multiple offers of coverage.

Although not directly affecting employer-sponsored plans, employers may experience indirect effects of the changes if the proposed rule is finalized. For example, in order for the Internal Revenue

Service to make Premium Tax Credit determinations involving family coverage, they may require further information reporting from employers. The IRS Forms 1094 and 1095 might be modified to require separate affordability reporting regarding both employee-only coverage and other coverage offers.

Further, employer-sponsored plans may see an uptick in enrollment if the Premium Tax Credit becomes available to families when employer-sponsored coverage is unaffordable for spouses and dependent children. The Premium Tax Credit would help offset the high cost of coverage in employer-sponsored plans.

With the protection and strengthening of the Affordable Care Act being a focus of the current Administration, employers should prepare for further changes.

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