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# Biden Administration Proposes Regulations Fixing “Family Glitch” in Eligibility for Exchange Subsidies

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On April 4, 2022, the Biden Administration proposed new regulations that would expand the rules on eligibility for premium tax credits when individuals who have not been offered “affordable coverage” from an employer purchase health care coverage from a public health insurance Exchange (the “public Exchange”).

The proposed regulations, if adopted in final form, would revise the definition of “affordable coverage” to include the cost of family coverage offered by an employer. This Aon bulletin addresses the following:

- Background on the existing requirements;
- What the proposed regulations would do;
- Employer impact; and
- Next steps.

## Background

The Affordable Care Act (ACA) offers an eligible individual a premium tax credit to purchase health care coverage from a public Exchange. Premium tax credits are not available to an individual who has access to affordable coverage with minimum value that is offered through an employer plan. Under current regulations, “affordable coverage” is based on the cost of self-only coverage offered by an employer, not the cost of coverage for any related individuals, such as family coverage. This gap in eligibility is often referred to as the “family glitch.” If an employer offers self-only coverage that is “affordable coverage,” but offers family coverage that is not “affordable coverage,” the individual and family members will not be eligible for a premium tax credit to purchase health care coverage on the public Exchange.

## The Proposed Regulations

The Department of the Treasury and the Internal Revenue Service (IRS) are proposing regulations to address the family glitch. If finalized, these proposed regulations would:

- Allow family members of employees who are offered affordable self-only coverage but unaffordable family coverage to qualify for premium tax credits to purchase coverage in the Exchange for those family members;
- Clarify that an individual with offers of coverage from multiple employers (e.g., as an employee from one employer and as a spouse of an employee from another employer) has been offered “affordable coverage” if at least one of the offers qualifies as “affordable coverage”; and

- Provide that a plan satisfies the minimum value requirement only if the plan satisfies minimum value with respect to both employees and family members (i.e., total allowed cost of benefits is at least 60 percent and includes substantial coverage of inpatient hospital services and physician services).

## Employer Impact

The proposed regulations address the rules for eligibility for premium credits in the public Exchange, but do not appear to impact the affordability analysis for determining an employer's liability for penalties under the Employer Shared Responsibility requirements. Employers who offer affordable self-only coverage options but unaffordable family coverage options could see a shift in plan enrollment, as more individuals become eligible for premium tax credits to purchase coverage in the public Exchange. Additionally, employers should monitor any IRS or Treasury guidance that may affect employer reporting requirements if these regulations become final.

## Next Steps

Comments on the proposed regulations are due by June 6, 2022. A public hearing on the proposed regulations is scheduled for Monday, June 27, 2022, at 10 a.m. EDT. The Treasury and the IRS expect to finalize the proposed regulations no later than the end of 2022 and expect that the public Exchange would be ready to implement changes before open enrollment for 2023 coverage.

## Resources

The proposed regulations are available [here](#).

A White House news release: *Background Press Call by Senior Administration Officials on the Administration's Proposed Rule to Fix "Family Glitch" and Lower Healthcare Costs* is available [here](#).

A White House Fact Sheet: *Biden Harris Administration Proposes Rule to Fix "Family Glitch" and Lower Health Care Costs* is available [here](#).



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