



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Review of New Final Rule Addressing Affordability of Employer-Sponsored Health Insurance for Family Members of Employees (TD 9968)¹

October 13, 2022

This brief provides information to Tribes and Tribal organizations (TTOs) on a new final rule² that amends federal regulations regarding eligibility for Health Insurance Marketplace (Marketplace) premium tax credits (PTCs) to fix the so-called “family glitch,” which has prevented family members of employees from accessing PTCs despite not having an offer of affordable employer-sponsored coverage. With the implementation of the rule, about five million additional individuals, likely including many American Indians and Alaska Natives (AI/ANs), will qualify for PTCs, beginning in 2023.³ The White House estimates that the rule will extend health insurance to about 200,000 individuals and reduce premium costs for almost one million individuals.⁴

BACKGROUND

The Marketplace, established by the Affordable Care Act (ACA), allows consumers to compare available health plans, determine eligibility for federal financial assistance (such as PTCs), and enroll in comprehensive health insurance coverage. Federal regulations stipulate that an individual with an offer of affordable employer-sponsored (or other) health insurance that provides minimum value does not qualify for PTCs if obtaining coverage through the Marketplace, even if otherwise eligible.^{5,6}

Under federal regulations, an individual offered health insurance through an employer is considered to have an offer of affordable coverage if the cost of *self-coverage* under the least-expensive available plan does not exceed a certain percentage of *total* household income (9.61% in 2022). In addition, when an individual

¹ This brief is for informational purposes only and is not intended as legal advice.

² See TD 9968, “Affordability of Employer Coverage for Family Members of Employees,” at <https://public-inspection.federalregister.gov/2022-22184.pdf>.

³ See the Kaiser Family Foundation report titled “The ACA Family Glitch and Affordability of Employer Coverage” and dated April 7, 2021, at <https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/>; see also the Urban Institute report titled “Changing the ‘Family Glitch’ Would Make Health Coverage More Affordable for Many Families” and dated May 11, 2021, at <https://www.urban.org/research/publication/changing-family-glitch-would-make-health-coverage-more-affordable-many-families>.

⁴ See the White House fact sheet titled “Biden Harris Administration Proposes Rule to Fix ‘Family Glitch’ and Lower Health Care Costs” and dated April 5, 2022, at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/05/fact-sheet-biden-harris-administration-proposes-rule-to-fix-family-glitch-and-lower-health-care-costs/>.

⁵ See 26 CFR §1.36B-3.

⁶ Individuals who meet the ACA definition of “Indian” and enroll in health insurance through the Marketplace qualify for comprehensive cost-sharing protections regardless of whether they qualify for PTCs.

(e.g., a spouse or dependant⁷) is offered health insurance through the employer of a family member, he or she is considered to have an offer of affordable coverage if *self-coverage for the employee is considered affordable*, even though family coverage would require a larger (often significantly larger) contribution of household income (i.e., the “family glitch”).

Federal regulations stipulate that employer-sponsored health insurance provides minimum value if the plan covers at least 60% of the total allowed costs of the benefits provided to the employee.

PROVISIONS OF NEW FINAL RULE

Affordability

The new final rule, issued on October 13, 2022, by the Department of Treasury, Internal Revenue Service (IRS), will change the determination of whether an offer of employer-sponsored health insurance is considered affordable for the family members of employees. Under the rule, beginning in 2023, an individual offered health insurance through the employer of a family member is considered to have an offer of affordable coverage only if *family coverage is considered affordable* for the household.

- **A spouse and dependents offered health insurance coverage through the family member of an employer are considered to have an offer of affordable coverage if the cost of family coverage under the least-expensive available plan(s) does not exceed a certain percentage of total household income (in 2022, the percentage would have been 9.61% if this rule were in effect).**⁸

If family coverage is considered unaffordable, the individual, if otherwise eligible, would qualify for PTCs if obtaining health insurance through the Marketplace. The rule will not change the determination of whether the employee is considered to have an offer of affordable employer-sponsored health insurance (i.e., whether self-coverage for the employee is considered affordable for the household).

See Attachment 1 for examples from the IRS of the determination of whether an offer of employer-sponsored health insurance is considered affordable under the new final rule.

Minimum Value

The new final rule stipulates that employer-sponsored health insurance must provide substantial coverage of inpatient hospital services and physician services to an employee to meet the minimum value standard (in addition to the existing requirement to cover at least 60% of the total allowed costs of benefits provided to the employee). The rule also will establish a separate minimum value standard for employer-sponsored health insurance offered to family members of an employee, beginning in 2023. Under the rule, to provide minimum value, employer-sponsored health insurance offered to family members of an employee must:

- Meet the same standard that applies to coverage offered to an employee; or
- If the offer is considered to provide minimum value to an employee, include the same scope of benefits and cost-sharing as those offered to the employee.

⁷ IRS defines “dependent” as a child who will not turn 19 (or a student who will not turn 24) during the tax year.

⁸ It is important to note that the premium cost (and income) of individuals who are eligible to enroll in family coverage but are not part of the tax household (e.g., non-dependent children younger than age 26) is not counted when determining affordability of employer-sponsored health insurance. Non-tax household individuals who are eligible to enroll, but do not enroll, in the employer-sponsored health insurance of a family member are not considered to have an offer of affordable coverage.

Attachment 1

The examples below show the calculations used to determine whether employer-sponsored health insurance is considered affordable under the new final rule, for an employee (example 1) and a family member of the employee (example 2).

(1) Example 1: Basic determination of affordability. For all of 2023, taxpayer C works for an employer, X, that offers its employees and their spouses a health insurance plan under which, to enroll in self-only coverage, C must contribute an amount for 2023 that does not exceed the required contribution percentage of C's 2023 household income. Because C's required contribution for self-only coverage does not exceed the required contribution percentage of C's household income, under paragraph (c)(3)(v)(A)(1) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.

(2) Example 2: Basic determination of affordability for a related individual. (i) The facts are the same as in paragraph (c)(3)(v)(D)(1) of this section (Example 1), except that C is married to J, they file a joint return, and to enroll C and J, X's plan requires C to contribute an amount for coverage for C and J for 2023 that exceeds the required contribution percentage of C's and J's household income. J does not work for an employer that offers employer-sponsored coverage.

(ii) J is a member of C's family as defined in § 1.36B-1(d). Because C's required contribution for coverage of C and J exceeds the required contribution percentage of C's and J's household income, under paragraph (c)(3)(v)(A)(2) of this section, X's plan is unaffordable for J. Accordingly, J is not eligible for minimum essential coverage for 2023. However, under paragraph (c)(3)(v)(A)(1) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.

(1) Employee ("C") -or- (2) Family ("C&J") Premium Contribution	≤	9.61% of household income	=	"Affordable Coverage"
Total (C&J) Household Income				

1. Employee Coverage

$\frac{\$108/\text{month}}{\$50,000}$	=	2.6%	≤	9.61%	=	"Affordable" for employee
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2. Family Coverage

$\frac{\$500/\text{month}}{\$50,000}$	=	12%	>	9.61%	=	"Unaffordable" for family members
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