

## e-Alert

11.21.22

# IRS Issues Final “Family Glitch” Rule

## Background

On October 13, 2022, the IRS issued a final rule that expands premium tax credit eligibility for families of employees with employer-sponsored health coverage. This change fixes the so-called “family glitch” by making family members who are offered unaffordable employer-sponsored coverage newly eligible for subsidized marketplace coverage. The final rule takes effect on January 1, 2023.

With the final rule, there are no new additional requirements for employers. It does not require employers to change their contribution levels and does not impact the employer’s affordability calculation, the affordability safe harbors, or Form 1095 reporting. For the purposes of the employer-shared responsibility requirements, affordability will continue to be based on the cost of employee-only coverage for the least expensive plan offered.

## Summary

For individuals who enroll in a qualified health plan through an Exchange, the ACA established premium tax credits or subsidies. However, an individual is not eligible for a subsidy if they are eligible for affordable, minimum-value coverage under an employer-sponsored plan. In 2022, employer-sponsored coverage is deemed to be affordable

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coverage if the cost of employee-only coverage for the employer's lowest-cost plan is less than 9.61% of household income. This threshold is scheduled to decrease to 9.12% of income for 2023.

Under current regulations, employees and family members are equally barred from a subsidy if the employee has an offer of affordable employee-only coverage. The newly finalized rule will adopt a separate test for family members so that for the purposes of the subsidy, affordability will be based on the employee's contribution towards family coverage of their employer-sponsored plan.

Specifically, an offer of employer-sponsored coverage will be affordable for family members if the employee's required contribution towards the cost of family coverage is less than the specified percentage of household income. The exchange will make separate affordability assessments to determine whether the employee has an offer of affordable employee-only coverage, whether the family members have an offer of affordable family coverage, and whether any of those family members have an offer of affordable coverage from another employer. The employer will not be penalized for dependents and spouses who qualify for a subsidy and employees will remain ineligible for the subsidy as long as they are offered affordable coverage by the employer.

### **Related IRS Guidance**

In addition to publishing the final rule expanding access to the PTC for families, the IRS published Notice 2022-41, which allows participants in non-calendar year cafeteria plans to revoke their election for family coverage to allow one or more family members to enroll in a subsidized health plan. Under the new guidance, employees may prospectively change their coverage level from family to employee-only, or any other coverage tier, as long as:

- At least one of their dependents are eligible for a special enrollment period to enroll in an exchange-based plan, or they want to enroll in such a plan during the exchange's annual open enrollment period; and
- The dependent(s) intend to enroll in exchange-based coverage starting no later than the day after their coverage under the employer-sponsored plan ends. If the employee does not enroll in an exchange-based plan, they and any enrolled dependents who are not enrolling in exchange coverage must remain enrolled in the group health plan.

This guidance is effective for elections effective on or after January 1, 2023. Employers may rely on an employee's attestation as proof their dependent(s) have enrolled or will

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enroll in exchange-based coverage.

Employers are not required to adopt this new election change qualifying event for their cafeteria plan. However, if they opt to incorporate this provision, they:

- Need to inform participants of their new right to make this midyear election change; and
- Must adopt a formal plan amendment on or before the last day of the plan year in which the election changes are allowed. Changes for plan years beginning in 2023 may be adopted at any time on or before the last day of the plan year that begins in 2024. The amendment may be made effective retroactively to the first day of that plan year. However, election changes in coverage may not be made on a retroactive basis.

## Employer Next Steps

- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policy, please [email us](#).

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