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WESTERN CENTER ON LAW & POVERTY

Health Care Practice Tip - November 2022

Fixing the Family Glitch

On the cusp of open enrollment, the Biden Administration published the final rule that fixes the Affordable Care Act's "family glitch" problem, thereby making subsidies to family members for whom employer-sponsored insurance is either unaffordable or inadequate. The new rule, which goes into effect on December 12, 2022, in time for the 2023 plan year, says that federal subsidies will be available to the spouse and children of an employee whose employer does not offer affordable coverage to family members.

This practice tip gives the essentials about what you need to know about the family glitch and its elimination.

Defining key terms

- Employer Sponsored Insurance (ESI): The health insurance an employer offers its employees and their dependents. ESI must be affordable and provide minimum value to be considered minimum essential coverage.
- Affordable: An offer of employer sponsored insurance is affordable if it is less than the required contribution amount. The IRS sets the required contribution amount each year, and for **plan year 2023 the required contribution amount was decreased to 9.12%** of household income. The definition of affordability is found at 26 CFR § 1.36B-2(c)(3)(v)(C)
- Minimum value: For employer sponsored insurance to be considered minimum essential coverage it must provide minimum value. The ESI must cover at least 60% of the cost of benefits and must cover standard health care services, including hospital stays, to be considered minimum value. 26 CFR § 1.36B–6.

What is/was the family glitch?

The family glitch problem occurred for families who were ineligible for premium subsidies because an employer's offer of spouse or dependent coverage was considered "affordable" based on the cost of the employee's *self-only* coverage.**[1]** In other words, if the premium for the employee's self-only ESI coverage was affordable, then the entire family became ineligible for Covered CA subsidies, even if the dependent coverage was higher than the affordability standard or did not provide minimum value.

What does the new rule say about subsidies for family members who have an offer of ESI?

The final rule provides a separate affordability test for related individuals based on the cost to the employee of family coverage.**[2]** That means premium subsidy eligibility takes a separate look at the affordability of the employee's offer of ESI on the one hand and the affordability of ESI for to the employee's family members on the other. In other words, family members offered coverage that costs more than 9.12% of household income would be eligible for premium subsidies, even if coverage for the employee-only is affordable. If an individual has offers of coverage from multiple employers, either as an employee or a related individual, they do not qualify for premium subsidies if at least one of the offers of coverage is affordable.

What does the new rule look like in practice?

Let's look at Alex and Sol's family. Alex and Sol have two kids, Jen and Mona. They have a combined monthly income of $7,000, which is about 302% of the federal poverty level. Alex's employer offers insurance to the whole family; Sol is self-employed and doesn't have insurance. Alex's premium contribution is $350 per month as an employee, and it costs an additional $1,050 to cover Sol and their two kids. Alex's expected contribution is 5% of the household income and is considered affordable because it is below 9.12%. To cover the whole family of four, Alex would have to pay $1400, or 20% of the family's income.

- *Under the family glitch:* Alex does not qualify for premium subsidies because the employer insurance is affordable for him. Sol and the kids also do not qualify for premium subsidies because the cost of Alex's insurance alone is affordable.

- *Under the new rule:* Alex does not qualify for premium subsidies because the employer insurance is affordable for him as the individual employee. Sol and the kids DO qualify for premium subsidies through Covered CA because the cost to insure them is not affordable (i.e., it costs more than the affordability threshold of 9.12%).

What if Sol gets an offer of ESI? Sol begins working for a company that offers insurance. The family's income is the same. Sol's employer offers insurance that requires no contribution from Sol. Alex has the same employer and ESI, and the cost to cover the two children is $700, which is 10% of the family's income. Sol's employer offers insurance to the kids that costs $800, which is 11.4% of the household income.

- *Under the family glitch:* Alex and Sol do not qualify for premium subsidies because their respective employer's insurances are affordable to each of them. The kids also do not qualify for premium subsidies because the cost of Alex's and Sol's insurances are affordable to each of them alone.

- *Under the new rule:* Alex and Sol do not qualify for premium subsidies because their respective employer insurances are affordable to each of them. The kids DO qualify for premium subsidies because the cost to insure them under either Alex's or Sol's insurance is not affordable (i.e., it costs 10% or 11.4% respectively of the family's monthly income to insure them).

How many Californians will the new rule help?

The UC Labor Center issued a **fact sheet** on the new rule that estimates that 615,000 are in the family glitch. However, not all of the people in the family glitch will choose to change their insurance. The UC Labor Center predicts that 149,000 Californians will take up subsidized insurance through Covered CA.

If you have any questions about the family glitch, or are seeing issues with related eligibility determinations, contact us at **cracela@wclp.org**.

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[1] See Western Center's healthcare eligibility guide "**Getting and Keeping Health Coverage for Low-Income Californians: A Guide for Advocates**" (Mar. 2016), p. 4.146
[2] 87 Fed. Reg. 61998