



Compliance Brief

FAMILY GLITCH

October, 2022

SUMMARY

EFFECTIVE DATE: January 1, 2023

On October 13, 2022, the IRS published a final rule that seeks to address the long-standing ACA loophole that made coverage for spouses and dependents ineligible for premium tax credits, this loophole is known as the "Family Glitch". Under the final rule, family members who are offered employer-sponsored health coverage that is unaffordable at the family level (ex: employee plus spouse/dependents) will be eligible for premium tax credits if they purchase coverage from the state marketplaces. The new rule will not affect the employer-shared responsibility provisions of the ACA, which are based on the affordability of employee-only coverage and are triggered when the employee (not the family member) obtains a premium tax credit. This rule creates a separate test for minimum value: one for employees and one for family members.

OVERVIEW

In 2010 the Affordable Care Act (ACA) required large employers, defined as any employer or organization who have an average of, at least, fifty (50) full-time employees or full-time equivalents, to provide an offer of health coverage that meets minimum value. An employee who receives an offer of coverage that meets the minimum value standard is not eligible for premium subsidies in the Exchange/Marketplace, by extension, this also applies to spouses and/or dependents of the employee.

The "Family Glitch" refers to the provision in the ACA that allows individuals to receive premium subsidies if an employer requires them to pay more than 9.12% (2023 adjustment) of their household income, toward a health premium. This threshold, however, only applies to the cost for the employee's individual coverage, not to the premium to cover a spouse or dependents. There is no requirement for employers to provide a premium contribution towards dependent coverage and, as such, is less common. The Kaiser Family Foundation¹ estimates that 5.1 million people are not eligible for subsidies because the affordability standards only applied to the employee's individual coverage.



Under this new rule dependents and spouses may be eligible for premium subsidies even if they are eligible to receive coverage through an employer-sponsored group health plan. An offer of coverage to family members will be considered affordable if the portion of the annual premium, paid by the employee, is less than 9.12% of total household income (adjusted for 2023). If an employee pays more than 9.12% of the total household income, family members may be eligible for a premium tax credit. The Treasury rule creates a separate minimum threshold for an entire family. Under the proposed rule the new threshold is whether a plan's contribution does not exceed 9.12% of the total household and family income.

Alongside the 2022, Regulations, the IRS issued [Notice 2022-41](#) regarding cafeteria (Section 125) plan changes. Under current cafeteria plan rules, employees cannot change their election for family coverage mid-plan year unless they have experienced a permitted change in election event. Under the Notice, an employer with a non-calendar year plan can permit employees to drop family coverage under employer-provided plan mid-year if:

- One or more of the family members are eligible for a special enrollment period to enroll in coverage through the Exchange or seeks to enroll during the Exchange's annual open enrollment period; and
- The revocation of the coverage corresponds to the intended enrollment of the family member in coverage through the Exchange for new coverage that is effective beginning no later than the day immediately following the last day of the revoked change.

Employers that want to adopt this provision and permit employees to cancel family coverage mid-year must amend their cafeteria plan on or before the last day of the plan year in which the election changes are allowed, and the amendment may be effective retroactive to the first day of that plan year. For the 2023 plan year, an employer can amend its cafeteria plan at any time on or before the last day of the 2024 plan year. An employer may not, however, allow employees to revoke coverage on a retroactive basis.

WHAT YOU NEED TO KNOW AS AN EMPLOYER

This new rule will have minimal impact on employers and does not change much of the original ACA framework. That said, it is important to understand both what will and won't change for employers.

This rule will not change:

- This rule does not change or effect the employer mandate. Penalties for violating the mandate will continue to be triggered only when an employee receives premium tax credits through the marketplace



- It doesn't make any changes to the employee affordability rule. For ACA compliance, clients should continue to base ACA affordability on employee-only coverage IRS guidelines. The 2023 affordability limit for employers is 9.12%
- This does not require employers to contribute to dependent care coverage
- Employees who are given "Credible Offers" of coverage will continue to be ineligible for premium subsidies/tax credits
- Employer reporting: In the final rule, the IRS stated that "nothing in these final regulations affects any information reporting requirements for employers, including the reporting required...on Form 1095-B and Form 1095C"

Here is what could/will change

- Under IRS Notice 2022-41 (released with the final rule) employers will be permitted to make mid-year changes to their section 125 plans. This may allow employees to prospectively revoke an election of family coverage under a group plan, but only if the following conditions have been met:
 - When one or more related individuals are eligible for a special enrollment period to enroll period or pursuant to guidance issued by HHS AND
 - Revoking coverage under a group health plan corresponds to the intended enrollment of the related individual in the Exchange and that the new coverage is effective no later than the day following the last day the group health plan coverage is revoked.
 - Employers may rely on the employees expressed statements to ensure compliance with the last bullet point, no formal written documentation is necessary.
- Employers must modify/amend their cafeteria Section 125 documents before dependents can make mid-year plan changes. Any Parrott client wishing to allow for this change to be made may do so by notifying your Client Service Representative.
- Employers could see a drop in the number of spouse/dependent enrollments on their group health plan

WHAT'S ON THE HORIZON

It is expected that legal challenges will be brought against this rule. Some organizations, such as the U.S. Chamber of Commerce, argued against the proposed changes in this rule. The IRS responded to these legal arguments in a preamble to the final rule which reflects a more robust legal analysis than the final



rule itself. Perhaps anticipating legislation, the IRS provided additional discussion about the statutory basis for its revised interpretation and the need for consistent interpretations across IRS rules.

FREQUENTLY ASKED QUESTIONS

IF AN EMPLOYER DOES NOT CONTRIBUTE TO SPOUSE OR DEPENDENT PLAN, WHY WOULD THEY HAVE TO MODIFY THEIR SECTION 125 PLAN DOCUMENT?

A Section 125 plan document allows certain cafeteria plans to be given to employees on a pre-tax basis. These written plans must describe all benefits and importantly, they establish the rules for eligibility and benefit elections. In most cases, Section 125 documents do not allow employees to make changes to their plans mid-year unless they have a [qualifying event](#). In this case, employers cannot allow employees to drop spouse or dependent coverage unless their Section 125 plan has been amended to allow this change.

However, employers are not required to adopt these new permitted election changes.

WHEN CAN AN EMPLOYEE DROP THEIR FAMILY COVERAGE?

Employees are permitted to drop or modify their family coverage under the following circumstances:

1. If they have a qualifying event
2. If one or more family members are eligible for a [special enrollment period](#) to enroll in coverage through the exchange or seeks to enroll during the Exchange's annual open enrollment period;
AND
 - a. the effective date of the new Exchange policy is no later than the day immediately following the last effective date of the revoked policy

HOW DO WE AMEND OUR SECTION 125 POLICY?

Please notify your Parrott Client Services Representative if you wish to make this change. Our compliance team will then work to amend your plan documents.

DO EMPLOYERS HAVE TO NOTIFY EMPLOYEES OF THIS CHANGE?

No, there are currently no employer notification requirements.

Sources:

- 1: Cox, Amin, Claxton, McDermitt 2021, [Kaiser Family Foundation](#)



Federal Register, A Rule by the IRS on 10/13/22, [Affordability of Employer Coverage for Family Members of Employees](#)