Segal Consulting

update

Public Sector Benefits Compliance News

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Affordable Care Act Final Rule Confirms that Retirees Have Options Not Available to Actives

The Internal Revenue Service (IRS) issued a final rule regarding whether a retiree may obtain a subsidy in the public Exchanges/Marketplace if he/she has an offer of coverage from an employer-sponsored plan.[1] The rule provides that a retiree may decline retiree coverage and still qualify for a subsidy, if he/she is otherwise eligible based on household income. This *Update* explains the final rule and its importance to sponsors of group health plans that provide retiree health coverage.

Health Compliance News Highlights:

- A retiree may decline retiree coverage under a group health plan and still qualify for a federal subsidy (if otherwise eligible).
- Some retirees may find the premiums for Exchange/Marketplace coverage attractive because the Affordable Care Act limits the amount that older individuals may be charged for coverage.
- Plan sponsors may want to tell retirees about their additional coverage options, particularly if the retirees pay all or a significant portion of the monthly cost for group coverage.

Background

Premium assistance tax credits (also known as "subsidies") are available to help individuals and their families buy health insurance coverage through public health insurance Exchanges, including the federal Marketplace. In general, an employee who is eligible for employment-based health coverage will not qualify for the premium assistance tax credit, unless the group coverage is unaffordable or does not meet the 60 percent minimum value test.[2] Group health plan coverage is unaffordable if the required contribution for employee-only coverage exceeds 9.66 percent of household income.[3] These rules apply even if the employee declines the group coverage.

Different Treatment for Retirees

The final rule carves out a special rule for retirees, and adopts an approach proposed by the IRS in May 2013.[4] A retiree is not considered eligible for employer-sponsored coverage unless the retiree has actually enrolled in the plan. Consequently, a retiree may decline retiree coverage under a group health plan and still qualify for a premium assistance tax credit (if otherwise eligible).[5] Family members who may enroll in retiree coverage based on the retiree's plan are also not considered eligible for employer-sponsored coverage unless they

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[1] The final rule was published in the December 18, 2015 *Federal Register*.

[2] A plan meets the 60 percent minimum value test if it is expected to pay, on average, at least 60 percent of claims costs and provides substantial coverage of inpatient hospital services and physician services.

[3] The indexed amount as of the date of this *Update* is 9.66 percent.

[4] The proposed rule was published in the May 3, 2013 *Federal Register*.

[5] This is the case even if the coverage meets the 60 percent minimum value test and is considered affordable for the retiree.

actually enroll in the plan.[6] The rule is only important to retirees who are not eligible for Medicare. Medicare-eligible individuals cannot enroll in an Exchange or receive subsidized coverage.

Interestingly, the federal Marketplace has been operating in accordance with the proposed rule since 2014.[7] The final rule allows retirees the option to elect the retiree coverage from their former employer or go to the public Exchange/federal Marketplace for coverage, based on their own needs and preferences.

For active employees, the current rules are unchanged: actives who are eligible for group health plan coverage will not qualify for a premium assistance tax credit unless that group health plan coverage is either unaffordable or does not meet the 60 percent minimum value test.

Active employees and retirees who actually enroll in a group health plan do not qualify for a tax credit even if the group plan is unaffordable or does not meet the 60 percent minimum value standard.

Implications for Plan Sponsors

Under the final rule, plan sponsors can continue to offer coverage to retirees, but at the same time, not eliminate any options for retirees. Because the Affordable Care Act limits age rating by insurers to a ratio of 3:1 (*e.g.*, an adult age 64 or older cannot be charged more than three times the premium charged to an adult age 21), some retirees may find the available insurance premiums attractive, at least compared to the premiums charged before the Affordable Care Act.[8] Consequently, some plan sponsors may want to explore the potential strategy and redesign of their retiree health plan offerings if access to premium subsidies and other indirect subsidies from the Affordable Care Act's 3-1 limit on age rating produce lower cost alternatives to what is currently being offered to their retirees. Some retirees may find it advantageous to purchase coverage through a public Exchange or the federal Marketplace, particularly if they qualify for federally subsidized coverage and if they pay a large percentage of the total premium cost for retiree coverage in the employer's plan. The plan sponsor should consider communicating this option to retirees, particularly if the retirees pay all or a significant portion of the monthly cost for retiree coverage. Further, the plan sponsor may want to review eligibility rules for retiree coverage within their plans, as it may be advantageous for the plan sponsor and for the retirees to take advantage of plan options and subsidies for non-Medicare retirees.

"Some retirees may find it advantageous to purchase coverage through a public Exchange or the federal Marketplace, particularly if they qualify for federally subsidized coverage."

Retirees with significant retirement income will not qualify for federal subsidies if their household income (generally, their adjusted gross income on their federal income tax return[9]) exceeds 400 percent of the Federal Poverty Level (FPL). (During 2016, this means $47,080 for a single individual and $63,720 for a family of two in the 48 contiguous states or the District of Columbia.[10]). Subsidies are paid on a sliding scale between 100 and 400 percent of the FPL.

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[6] A similar rule applies to former employees' continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). Only former employees actually enrolled in COBRA are considered to have employment-based coverage.

[7] See the health coverage for retirees page of the HealthCare.gov website.

[8] Some states further restrict or ban age rating. See Market Rating Reforms - Centers for Medicare & Medicaid Services.

[9] To determine eligibility for these federal subsidies, Social Security income, but not Supplement Security Income (SSI), is added to adjusted gross income even when the Social Security income is not taxable income.

[10] Higher levels apply to residents of Alaska and Hawaii.

Plan sponsors that have a substantial number of early retirees on modest fixed incomes and that require substantial retiree premium contributions should plan for potential swings in enrollment among the non-Medicare population because of the new options.

Questions?

For more information about how these new rules may affect your plan, please contact your Segal consultant or the Segal office nearest you. Segal can be retained to work with plan sponsors and their legal counsel on compliance issues.

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