

# *New ACA Affordability Rule and Fixing the “Family Glitch”*

Presented by:

Corbin Granger, Senior Vice President of Compliance and

Barbara Jennings, Human Resources Consultant

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 TOWNE BENEFITS




# Legal Stuff

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# What is the ACA “Family Glitch?”



Prohibited family  
members from potential  
financial assistance to  
purchase individual  
health insurance

The “Glitch”



# The Fix

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## What Changed

It added a second definition of affordability for the spouse and tax dependents for family\* coverage

*\*Family coverage can be Employee plus Spouse, Employee plus Child, Employee plus Children, and Family as it applies to the members of the tax household*

## What Didn't Change

It did not change the definition of affordable coverage for the employee or an Applicable Large Employer

# No Change to Applicable Large Employer Penalty Rules

- The final rules do not change the Applicable Large Employer Penalty Rules
- Employee coverage is “affordable” if the lowest cost self-only plan doesn’t exceed 9.12% (for 2023) of the employee's income only (*NOT the household income*)

# Affordability Rules for Marketplace Subsidies:

*Applies to All Size Groups (Small, Mid-Market, and Large)*

# Employee Affordability Definition

## Affordable Coverage – Employee Definition

- Employer-based coverage is affordable if the employee cost for **Employee Only** coverage for the lowest cost plan costs less than 9.12% (2023 adjusted percentage) of the employee's household income.
- The coverage must also meet the “minimum value” standard.



# Family\* Affordability Definition

## Affordable Coverage – Family Definition\*

- Employer-based coverage is affordable for family members if the amount the employee must pay for family coverage is ***less than*** 9.12% (indexed annually) of household income
- Therefore, if family coverage costs more than 9.12% of household income, the family members are eligible for subsidies.

*\*Family means members of your tax household:  
Employee + Spouse x 9.12%, Employee + Child x 9.12%,  
Employee + Children x 9.12%, Family Coverage x 9.12%*



# Impact of Affordability Definitions

- If the employee's cost is affordable, the employee is not eligible for subsidized Marketplace Coverage and their employer's group plan is their option for coverage.

**EMPLOYEE COST AFFORDABLE= NOT ELIGIBLE FOR SUBSIDIES**

- But, if the cost of family coverage on the employee's group health plan is not affordable, the spouse and tax dependents can seek Marketplace subsidies.

**FAMILY COST UNAFFORDABLE = TAX DEPENDENTS ELIGIBLE**

- That means some families will end up with 3 health plans if both spouses work and each have an offer of affordable coverage from their employer.

# What Else is New?

- **Minimum Value Rule**

- Because the ACA only requires minimum essential coverage be provided to spouse and dependents, the IRS finalized a minimum value rule for family members
- Minimum value for a family member means at least 60% of the total allowed costs of benefits that are provided to them and
- The plan benefits include substantial coverage of inpatient hospital services and physician services

# Reduced subsidies through 2025

- Cost for Coverage on Healthcare.gov
  - Household Cost as a % of Income will stay the same in 2023
    - In 2023 the range is still 0% to 8.5% for the second lowest Silver Plan

2022 Federal Poverty Level After American Rescue Plan											
FPL	100%	138%	150%	200%	250%	300%	400%	450%	500%	550%	600%
Household Cost as % of Income	0%	0%	0%	2%	4%	6%	8.50%	8.50%	8.50%	8.50%	8.50%

# *Who Does the Glitch Fix Help?*

Lower income families, with a working spouse who has an offer of job-based affordable (by definition) coverage



# Example #1

## Family of Three



# Family of Three

- Household Income of \$69,090
- Family falls at 300% of Federal Poverty Level (FPL)
- \$525 Affordability Threshold for Family Coverage (9.12% of \$69,090)
- Employer (*Company A*) offers affordable coverage for the employee

Employee Only Coverage	Family Coverage
\$226/month	\$970/month*

*\*does not pass affordability threshold*

- Spouse and dependent can seek subsidized coverage on the Marketplace since the Family rate does not pass the affordability test.





# Federal Poverty Level Chart

2023 Federal Poverty Levels											
FPL	100%	138%	150%	200%	250%	300%	400%	450%	500%	550%	600%
Household Cost as % of Income	0.00%	0.00%	0.00%	2.00%	4.00%	6.00%	8.50%	8.50%	8.50%	8.50%	8.50%
Cost Share Reduction	94%	94%	87%	73%	None	None	None	None	None	None	None
1	\$13,590	\$18,754	\$20,385	\$27,180	\$33,975	\$40,770	\$54,360	\$61,155	\$67,950	\$74,745	\$81,540
Estimated Monthly Cost for 1 person	\$0	\$0	\$0	\$45	\$113	\$204	\$385	\$433	\$481	\$529	\$578
2	\$18,310	\$25,268	\$27,465	\$36,620	\$45,775	\$54,930	\$73,240	\$82,395	\$91,550	\$100,705	\$109,860
Est Monthly Cost for 2 people on HCG	\$0	\$0	\$0	\$61	\$153	\$275	\$519	\$584	\$648	\$713	\$778
3	\$23,030	\$31,781	\$34,545	\$46,060	\$57,575	\$69,090	\$92,120	\$103,635	\$115,150	\$126,665	\$138,180
Est Monthly Cost for 3 people on HCG	\$0	\$0	\$0	\$77	\$192	\$345	\$653	\$734	\$816	\$897	\$979
4	\$27,750	\$38,295	\$41,625	\$55,500	\$69,375	\$83,250	\$111,000	\$124,875	\$138,750	\$152,625	\$166,500
Est Monthly Cost for 4 people on HCG	\$0	\$0	\$0	\$93	\$231	\$416	\$786	\$885	\$983	\$1,081	\$1,179
5	\$32,470	\$44,809	\$48,705	\$64,940	\$81,175	\$97,410	\$129,880	\$146,115	\$162,350	\$178,585	\$194,820
Est Monthly Cost for 5 people on HCG	\$0	\$0	\$0	\$108	\$271	\$487	\$920	\$1,035	\$1,150	\$1,265	\$1,380





# Family of Three



Spouse and  
Dependent on  
Marketplace with  
Subsidy



Employee on  
Company A's  
Plan



Total Monthly  
Cost on 2 Plans





# Family of Three

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Monthly Family Premium on Employer Plan: **\$970**

Monthly Cost on 2 Plans:

- Employee on Company A Plan: \$226
  - Spouse and Dependent on Marketplace Plan: \$345
- \$571**

Total Monthly Savings: (\$970 - \$571) **\$399**

Total Annual Savings: (\$399 x 12 months) **\$4,788**





# Example #2

## Family of 5



# Family of Five

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- Household Income of \$64,940
- Family falls at 200% of Federal Poverty Level (FPL)
- \$494 Affordability Threshold for Family Coverage (9.12% of \$64,940)
- Employer (*Company A*) offers affordable coverage for Employee

Employee Only Coverage	Family Coverage
\$226/month	\$970/month*

*\*does not pass affordability threshold*

- Spouse and 3 dependents can seek subsidized coverage on the Marketplace since the Family rate does not pass the affordability test.



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Est Monthly Cost for 5 people on HCG	\$0	\$0	\$0	\$108	\$271	\$487	\$920	\$1,035	\$1,150	\$1,265	\$1,380



# Family of Five

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Spouse and  
3 Dependents on  
Marketplace with  
Subsidy



Employee on  
Company A's  
Plan



Total Monthly  
Cost on 2 Plans





# Family of Five

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Monthly Family Premium on Employer Plan: **\$970**

Monthly Cost on 2 Plans:

- Employee on Company A Plan: \$226
  - Spouse and dependents on Marketplace Plan: \$108
- \$334**

Total Monthly Savings: (\$970 - \$334) **\$636**

Total Annual Savings: (\$636 x 12 months) **\$7,632**

Additionally, Spouse and Dependents qualify for cost-share assistance on the Marketplace (lower deductibles, co-pays, etc.)



## Example #3

### Same Family of 5

Both Spouses have "affordable" employee-only coverage  
The Family cost is “unaffordable” on both Spouses’ Plans





# Family of Five – 2 Working Spouses



3 Dependents on  
Marketplace with  
Subsidy



Spouse 1 on  
Company A's  
Plan



Spouse 2 on  
Company B's  
Plan



Total Monthly  
Cost on 3  
Plans





# Family of Five - 2 Working Spouses

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Monthly Family Premium for both Spouses on Employer Plans: **\$970**

Monthly Cost on 3 Plans:

• Employee on Company A Plan:	\$226
• Working Spouse on Company B Plan:	\$300 <i>*still meets affordability threshold</i>
• Dependents on Marketplace Plan:	\$108
	<hr/>
	<b>\$634</b>

Total Monthly Savings: (\$970 - \$634) **\$336**

Total Annual Savings: (\$336 x 12 months) **\$4,032**

Additionally, Dependents qualify for cost-share assistance on the Marketplace (lower deductibles, co-pays, etc.)

# Qualifying Family Members For Marketplace Subsidies

- Family members are individuals included on the employee's tax family:
  - the employee
  - a spouse filing jointly
  - tax dependent(s)
- Dependents up to age 26 can remain on the employee's group plan regardless of whether they are a tax dependent but
  - the cost to cover must be excluded from the new family affordability calculation for the Marketplace

## Other Facts on Offers of Coverage

- If an individual is offered coverage from multiple employers (whether as an employee or dependent), only one of those offers must be affordable to bar access for them to Exchange subsidies.
- An offer of affordable family coverage from any employer makes family members ineligible for Exchange subsidies
- The final rule includes a conforming change regarding the “part-year period rule” which governs when an employee has a job for less than the full calendar year. This extends the separate affordability test for employees and family members to those with only partial-year coverage.

# Unintended Consequences to the Employee

- The employee may be tempted to join the subsidized family plan on healthcare.gov even though their offer of job-based coverage is affordable to the employee.
- The IRS has the right and the means to recover either all or a portion of any subsidy the individual isn't entitled to.

Assume the IRS knows everything about an employee's household and will demand repayment in the end.



# Potential Concerns

## Multiple Health Plans Possible

- Employer Plans
  - For the employee with “affordable” employer sponsored
  - For the spouse with "affordable" coverage
- Marketplace (ACA) Plan
  - Eligible family members
- Multiple Deductibles & Out-Of-Pocket Limits



# Potential Concerns

## Communication to Employees

- For an employee to make their coverage decision the employee would need to know:
  - Household size (tax-dependent status)
  - Household income
  - Spouse's coverage (affordable/not affordable)
  - Dependent coverage (affordable/not affordable)



# The Marketplace

The marketplace will ask:

- 1) if an individual, their spouse (if filing jointly) or a tax dependent has an offer of affordable employee-only coverage from their job; and
- 2) whether any of those offers include an affordable offer for family coverage

Even if the employee, spouse or tax dependent is not eligible to enroll in the Marketplace, they will count as a member of the tax household for the subsidy calculation.



## Section 125 (Pre-Tax) Plan Changes

With the new affordability rules, some employees may want to change their election for family coverage to individual coverage.



## Section 125

### Employers Can Amend

Employers can amend their pre-tax plans with the new affordability rules so that employees even in non-calendar year plans can revoke their family (non-health FSA) coverage if:

- At least 1 dependent wants to enroll on the Marketplace during Marketplace Annual Enrollment (November 1 – January 15) or
- The dependent is eligible for a special enrollment period through the Marketplace
- The new coverage must go into effect the day after their original coverage ends

# Section 125

## Employers Can Amend

- It does not allow an employee to revoke their employee only coverage mid-year if the employee isn't eligible to enroll on the Marketplace
- The new rules are effective for elections on or after January 1, 2023
- An employer must amend their plan by the last day of the plan year ending in 2024



No Changes

QSEHRA  
and  
ICHRA

Affordability based on  
Employee Only

- Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) Small employers who don't offer group health coverage to their employees can help employees pay for medical expenses, including premiums on the Marketplace
- Individual Coverage Health Reimbursement Arrangement (ICHRA) is a company-funded health benefit that reimburses employees for healthcare expenses. ICHRA funds cannot be used to purchase subsidized coverage.



# Closing Thoughts

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- The New Affordability Rule benefits lower income families
- Impact of multiple deductibles and out of pocket
- Do you want to amend your Section 125 plan
- Your broker is there to assist you and your employees!



# Questions