Centers for Medicare & Medicaid Services

Employers Open Door Forum

Moderator: Jill Darling

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Coordinator: Welcome, and thank you for standing by. At this time, all participants are in a listen-only mode. This call is being recorded. If you have any objections, you may disconnect at this time. I will now turn the meeting over to your host, Jill Darling. Jill, you may begin when ready.

Jill Darling: Great. Thank you, (Erin). Good morning, good afternoon, folks, and welcome to our Employer's Open Door Forum. It has been quite some time since we've reached you guys. So, welcome, and thank you for your patience in entering today's call. I'm Jill Darling in the CMS Office of Communications. Again, welcome.

I have one brief announcement before we get into today's agenda. This Open Door Forum is open to everyone, but if you are a member of the press, you may listen in, but please refrain from asking questions during the Q&A portion of the call. If you do have any inquiries, please contact CMS at press@cms.hhs.gov. And I would like to hand the call over to our chair, Felicia Verrett.

Felicia Verrett: Thank you, Jill. Good afternoon, everyone, and good morning to those on the west coast. My name is Felicia Verrett. I am the Chair of the Open Door

Forum. The purpose of this call today is to hear an overview of the affordability of employer coverage for family members of employees.

Our presenters today hail from the CMS Center for Consumer Information and Oversight, the Department of the Treasury, and the Internal Revenue Service. We ask that you hold all questions until the Q&A portion of the call. You will be on mute.

And I'd like to say thank you to all that are speaking and all that have joined. And now, we'll have our first presenter, Miss Dena Nelson.

Dena Nelson: Hi. Thanks so much. Yep. So, my name's Dena, and I work on the Eligibility and Enrollment Group at the Centers for Consumer Information and Oversight at CMS. And so, we're going to talk a little bit today about the change in the new rule as it impacts employers and their employees and the process for enrolling with insurance through the Health Insurance Marketplace for 2023.

And so, the big takeaway I want to start with today is that families who have offers of employer health coverage, may have new opportunities for savings when they come to HealthCare.gov, even if in the past they weren't eligible. And so, if you can help us with spreading that message, that will be great.

And it's really an exciting change that could really help more people access affordable coverage. And this is happening because of a change in the rules. And it will still be true that a consumer doesn't qualify for savings on a Marketplace plan if they are offered affordable employer coverage that meets

the minimum value standard, but we're changing a little bit of how we decide whether an offer is affordable for family members.

So, until now, the way that it's worked is that job-based coverage, an offer that an employee has, has been considered affordable for all the members of that family of the employee to whom the employer's offer extends, if the premium that the employee would have to pay for self-only coverage, was considered affordable.

And the premium required to cover the family members, so the amount that the employer would ask the employee to pay for a family plan, was not actually taken into account at all in determining whether the employer plan would be considered affordable, which again, that's crucial because it determines whether or not that household member can qualify for savings on a Marketplace plan.

If they have affordable employer coverage, they don't qualify for the savings. So, how we decide whether something's affordable is really important. And what happened is that the Internal Revenue Service, IRS, issued new regulations recently this month that apply starting in our plan year 2023.

And what those say is that if a consumer has an offer of employer coverage that extends to their family members, the affordability of employer coverage for those family members will be based on the family premium amount, not the self-only employee premium cost.

And so, that's the reason why there may be people who in the past were found not to be able to get a tax credit to get help paying for coverage for a Marketplace plan. But now, if we are taking a look at how much the employee would have to pay for a family plan, and that's not affordable, then those household members who their only way to get coverage through the employer, would be through that family plan option, those household members may now be eligible to get savings on a Marketplace plan through the tax credit and our cost-sharing reduction.

So, how do people go about getting - taking advantage of these change is that consumers will need to submit a Marketplace application to find out whether they can get savings on a Marketplace plan, or whether their employer's offer may actually still be considered affordable for themselves or their family.

And so, that means that we don't expect employers or the people who are on health coverage, the employees, to have to go through the affordability calculation themselves. All they have to do is click through the application on HealthCare.gov, or through their State Marketplace, or through an enhanced direct enrollment partner - a certified partner application.

And the questions on there will collect the information that's needed to have the outcome at the end. The eligibility results will tell the consumer whether or not their employer offer is considered unaffordable, and therefore they're able to get coverage on that Marketplace plan with the tax credit to help pay for it, or whether they don't actually qualify because of their employer coverage offer.

So, I definitely know there may be questions on all of this, and I'm going to just go into a bit more detail on the changes that were made in the rule so that we all understand. And I may be just repeating a little bit, but hopefully, it'll be helpful to understand exactly what employees can expect this year.

The IRS for 2023 has finalized a new rule, and they did that finalization just earlier this month. And again, that changed the way affordability is determined for the members of an employee's family.

So, beginning in 2023, if a consumer has an offer of employer coverage that extends to the employee's family members, the affordability of that offer of coverage for the family members of the employee, will be based on the family premium amount, not the amount the employee must pay for self-only coverage.

So, under the prior rules, the affordability standard for all the family members, so that's the employee, the employee's spouse, if they're married and filing a joint return, and the employee's tax dependents, that's how we define who counts as a family member for purposes of being offered an employer coverage plan, and whether or not that is going to impact your eligibility for help paying for coverage on the Marketplace, it's just the people who are on the tax return together.

So, those family members in terms of defining it based on the tax return to whom the employer's offer extends, their affordability was based only on the amount that the employee would pay for self-only coverage. And that was true

for 2022, and we didn't look at the amount that the employee would need to pay to cover both the employee and those family members.

And how are we actually determining what is counted as affordable in terms of the calculation? It's that in 2022, so this is sort of getting at now another change, in 2022, if the amount an employee had to pay for that self-only coverage was less than 9.61% of their household income, then the coverage was considered affordable for both the employee and the employee's family members.

And so, that meant for 2022, that no one in the family would qualify for savings on a Marketplace plan, even if the amount for a family plan cost - would cost much more than 9.61% of the household income. And that sort of outcome where the family plan could cost more, but still be considered affordable, that was what was referred to as the family glitch.

And so, that's what this rule is actually fixing and why it's going to allow more people to qualify for help paying for coverage. And so, then the other change that is helping more people qualify is actually the percentage amount. So, the percentage number was updated. The IRS issued guidance to index the percentage for the 2023 plan year.

And so, for 2023, instead of being 9.61% of the employee's household income, we're looking at 9.12% of the household income. And so, that means that in 2023, an employer plan is considered unaffordable if the amount the employee must pay for the employer coverage, is more than 9.12% of household income.

So, that's the big changes. But so now let's talk a little bit about what a consumer should do if they have an offer of coverage, or are maybe currently enrolled in employer coverage, because they'll need to take some steps.

So, first, consumers will need to submit a Marketplace application to find out whether they can get savings on a Marketplace plan, or whether their employer's offer may be considered affordable for themselves or for their family.

And the HealthCare.gov application and our certified partner applications, will include new questions starting on November 1st, which is when we start applications for our 2023 plan year, to collect information about employer coverage premium costs for the entire family, as well as the cost for just that individual employee self-only offer.

And how are consumers going to have that information? That's where you all can come in as well, is that before completing their applications, consumers should find out what that lowest cost premium option is from their employer, both for the lowest cost option for self-only coverage, and for the lowest cost option for family coverage.

And that's if there are multiple options. If there's just one, then that's the one that you can consider the lowest option. And so, how do consumers get that information? We do publish a PDF worksheet that's called the employer coverage tool, that consumers can use to find out what they need to get from their employer, and actually fill out that worksheet.

Their employer can give them the answers that the consumer can then take to their application when they're filling it out. And as a consumer is clicking through the application, there's a link in there to that worksheet. It's also posted on Marketplace.cms.gov. If you want to see it in advance, you'll be able to find a link to that employer coverage tool here: https://marketplace.cms.gov/applications-and-forms/employer-coverage-tool.pdf

And we are updating that tool this week so that it includes the updated questions so that all the information that the consumer needs to answer the questions about employer coverage that will come up on the Marketplace application, they'll be able to answer by getting the information from their employer that's on that worksheet.

So, what does that worksheet ask? Basically, it collects the contact information from the employer - so it would be helpful for you to determine who's the right person, or what's the right email address or phone number related to employer coverage that's the right contact information for your company to find out about employee offers of health insurance, because the consumer will need to actually input that contact information on the application as well.

And principally, the employer phone number and address are key. And then the actual information that helps determine the affordability is, first, there's a question that asks whether for each member of the employee's household,

listing them out by name, is that person eligible for health insurance through the employer?

And then for the people who are offered coverage, do the plans offered by the employer meet the minimum value standard? And the employer can offer - can answer either yes, no, or in the case which we expect isn't often, but it's possible that maybe the employee coverage offer, the self-only offer, meets the minimum value standard, but the family offer does not, there's an option to say that as well.

So, you'll see, there's sort of three-answer options for that question. And if all your plans meet the minimum value standard, you can easily just say yes. If none of them do, you can say no. If it's just the employee offer, but not the family offer, then you can have a separate check box for that.

And then the key questions on this updated form are - that we still are asking, how much would the employee pay for themselves for the lowest cost plan that meets the minimum value standard, not including a family plan?

And then the next question that's the new one asks, how much would the employee pay for the lowest cost plan that covers the employee and the household members who are offered that coverage? And so, for that, you would put the amount that they would need to pay the employee, as well as the frequency.

So, you can put in the monthly premium amount, if that's what you use or something else. And just, we're noting that because this is a new question,

even consumers who maybe have been enrolled in Marketplace coverage for years, may need to answer this as they go back to re-enroll on their new coverage for 2023.

So, it's possible that they'll need help filling out this form so that they have all the information they need to re-enroll, as well as consumers who now want to explore the new options for savings. So, I just wanted to draw out one piece about the self-only offers and the fact that they do still matter for the employees themselves.

As you noticed, I said that there's still a question about that self-only offer, both on the employer coverage tool and on the actual application. And we still are asking about the amount of the self-only premium, because under the new affordability rules, an employee's self-only premium for their own coverage may be considered affordable, and that's what is going - that would block the employee from eligibility for savings on their Marketplace plan, even if the family coverage is considered unaffordable.

So, for the person who is the employee, when the Marketplace is deciding whether they qualify for savings on the Marketplace plan for their own health insurance coverage, that will be determined, the affordability of the employer coverage, just by looking at that self-only offer.

So, because of that, some families will probably end up in a situation where the self-only offer is still considered affordable, meaning that the employee can't get savings on their Marketplace plan, but if the family coverage offer is

unaffordable, then the family members other than the employee, may be eligible to reduce the cost of their Marketplace coverage.

And so, in that case, the family does need to make a choice around, should they then enroll just in the employer coverage or in the Marketplace coverage, or split up and do separate options, sort of split up the family between the employer coverage and the Marketplace coverage?

So, that's something that your employees may be wrestling with a little bit, and you could provide some guidance to them. The way we've been thinking about it is that the option for splitting coverage is basically like this, that the employee could enroll in their, what's considered affordable employer coverage, while the family members meanwhile, enroll in a Marketplace plan with savings.

And when doing that, families should keep in mind that that may mean they have to meet multiple deductibles because there are separate plans. They'll have to pay, you know, separate premiums and have separate out-of-pocket maximums for each policy.

Also, if they're enrolling in different plans through different insurers that will likely have different provider networks, maybe different coverage to keep in mind for things like prescription drugs, and the family should ensure that both those plans, both the Marketplace and the employer plans, are really going to best meet the anticipated medical needs for those people enrolling.

So, just like anytime you're choosing health insurance, that's the thing to keep an eye out for. But affordability-wise, that might be the best option for families to best take advantage of the Marketplace. The family also does have the option to enroll the employee in Marketplace coverage, along with their family members, even though the family would pay full price for the employee's portion of the Marketplace plan premium if the employee's self-only plan is considered affordable, their employer offer.

So, it could be that situation where some people in the family are going to qualify for that tax credit to help pay for their coverage through the Marketplace, that even the people in the family, the employee in this case, who doesn't qualify, they can enroll together with their other family members who will have a lower premium because of that tax credit.

We'd recommend just checking out whether the cost for a premium for the whole family is something that works for that family in that case where part of it is subsidized and part of it isn't. And then the other option is the employer coverage only where the whole family could choose to enroll in the employee's offer of that family plan, if that works for them.

So, those are basically what we see as the three options. I'm just going to recap some of the next steps for consumers and employers, and then I am very glad to take questions that you may have. We are going to have a question-and-answer section shortly.

So, the application for 2023 coverage, this is our next step for consumers, is that it will include the new question about family plan premiums. And that

application for 2023 coverage will be available beginning November 1st. Some people with employer coverage still won't be eligible for savings on a Marketplace plan.

So, we recommend people fill out that application. And particularly, for people who are enrolled currently in employer coverage, they should first fill out the application before dropping their employer coverage, because they need to find out whether they will be able to get savings on a Marketplace plan.

More people will be eligible, but not everybody. And then consumers who are currently enrolled in employer coverage and wish to drop it and enroll in a Marketplace plan, should also first confirm with you, their employer, that they'll be eligible to actually terminate their employer coverage before their Marketplace plan would start.

So, there may be some date issues for people who are actually applying, you know, before the beginning of the new plan year, and consumers eligible for Marketplace coverage need to pick their plan and enroll generally by December 15th to ensure their coverage will start on January 1st.

So, if the employer coverage year also follows that calendar year cycle, then that will just work together well. If the employer coverage is ending December 31st, and the Marketplace coverage starts January 1st, that's great.

But if it's going to be a different timing for either ending the employer coverage or starting the Marketplace coverage, we just would need to make

sure that the employee is - has that worked out with their employer for dropping it, as well as attesting to the accurate dates around that when they're filling out their Marketplace application so that we're starting their coverage on the right date.

And consumers can also update their application after Marketplace open enrollment ends. For example, if their company's benefit year runs on a non-calendar year cycle, and consumers who are enrolled in a job-based plan may qualify for a special enrollment period if it's after open enrollment, but they've been on their employer's non-calendar year plan, if that calendar year is coming to an end, and they want to drop that employer coverage.

Consumers enrolled in a job-based plan may also qualify for a special enrollment period if they're determined newly eligible for savings on a Marketplace plan, because their job-based plan no longer offers affordable coverage, and they're going to be dropping their employer coverage.

And this applies to consumers whose coverage is no longer affordable due to the change in the IRS rules we've been talking about today. It doesn't have to be due to a change in what the employer is offering. So, consumers can access a special enrollment period if they are in the employer coverage and meet one of these scenarios by attesting yes to the question on the application that asks about losing qualifying health coverage, and then they'll have to provide the date that they can end their employer coverage, or that the date that it's ended, if it already has.

So, I think that about wraps up the overview that I was planning to provide today about our new final rule that is fixing the family glitch and enabling more consumers access to affordable coverage through HealthCare.gov, as well as State-based health insurance Marketplaces. So, I'm going to pass it over to Kevin for our next portion, and I'll be around for question-and-answer as well. Thank you.

Kevin Knopf: Thank you. My name is Kevin Knopf. I work for the IRS in the Office Of Chief Counsel in the Health and Welfare Branch. They were just talking about the timing of making the changes and special issues that arise for people who are covered by non-calendar employer plans.

One of the comments we received on the proposed regulations before they were finalized is, you know, what happens if someone who - they're covered through a cafeteria plan, who would be eligible for the PTC, except for the fact that they're covered by an employer plan, how can they drop the coverage and move in the middle of the year?

As you may know, the general rule is that salary reduction for health coverage provided through a cafeteria plan must be elected before the start of a plan year, and generally cannot be changed during the plan year, except for certain exceptions. Those exceptions are found generally at 26 CFR 1.125-4, with a couple of exceptions that have not been put into the regs yet, but they've been issued in other guidance.

Now, for calendar year cafeteria plans, when electing for the 2023 year, which is when the new rule goes into place, when the new regs are put in effect, the

open season lines up with the annual special enrollment period for the qualified health plan. So, if you're in a calendar year plan, it won't be an issue.

At the end of the year, you do not elect coverage for the coming year. Instead, you would elect whatever you're going to elect and sign up for a qualified health plan with the premium tax credit.

In particular, you would be able to just have the employee - if the best choice is for the employee to stay in the employer plan, but everyone else who has unaffordable coverage to move off onto the qualified health plan with the PTC, they can just do that at the end of the plan year.

However, that isn't the case for employees covered by a non-calendar year cafeteria plan. There are a number of situations under the rules I noted at 1.125.-4 that allow employees to drop coverage to enroll in other coverage, but none really that cover being newly eligible for premium tax credit, at least not that would allow the employee to remain in the employer plan, but the family members to be dropped.

In 2014, as part of the different rules and guidance implementing the Affordable Care Act, the IRS issued notice 2014-55. One of the new exceptions provided in notice 2014-55 addressed an employee who was eligible to enroll in the qualified health plan through the exchange.

Specifically, the cafeteria plan can allow an employee to revoke prospectively an election for group health plan coverage, one, if the employee is eligible for a special enrollment period, which the annual election period at the beginning

of the year is, to enroll in the qualified health plan, and also that the revocation of the election under the group health plan corresponds to enrollment by the employee and any related individuals who cease coverage due to revocation in a qualified health plan through the exchange for new coverage that's effective beginning no later than the day immediately following the last day of the employer coverage that's being revoked.

In particular, when we've worked on these rules with making cafeteria plan changes, we generally have avoided creating situations where people can drop coverage and go without coverage. However, when people drop coverage and want to change to something else, we've tried to make that as possible as often as we can.

Then the one thing about notice 2014-55 in relation to the present case is that it did not allow the revocation of election for the group health plan coverage when only related individuals and not the employee became eligible to enroll in a QHP through the exchange.

So, that guidance, while it would allow the employee to change with their family members over, it wouldn't allow the employee to make election where they would stay in, and the family would move over. So, that is why we issued notice 2022-41 to address this.

It was published in the IRS internal revenue bulletin today. It was released the same day the regulations were. The cite in the internal revenue bulletin will be 2022-43 IRB 304. This notice provides that a cafeteria plan may allow an

employee to revoke prospectively - again, anytime we allow these elections, they're always going forward.

You can't say, “oh, I've been covered for three months. I'd like to go back to the beginning of the year “- no, it always has to be prospective. Anyway, it would allow an employee to revoke prospectively an election of family coverage under a group health plan that's not a health FSA.

Again, this is for the group health plan, not for a family FSA. There are usually special rules about when you can make changes to health FSA elections. And again, the following conditions have to be satisfied in order to allow that.

One, you have to - one or more related individuals must be eligible for a special enrollment period to enroll in the qualified health plan through the exchange pursuant to guidance issued by the Department of Health and Human Services.

And again, the annual election period at the beginning of the year, would be one of those periods. And two, the revocation of the election of coverage under the group health plan has to correspond to enrollment of the related individual or individuals in the qualified health plan through the exchange for new coverage that's effective, again, beginning no later than the day immediately following the last day the original coverage is revoked.

Again, we don't - aren't creating the situation so people can drop coverage, but rather drop coverage with the employer plan and move over to a qualified

health plan. If an employee does not enroll in a qualified health plan through the exchange, again, if the employee isn't switching with the family, the employee has to elect self-only coverage, or maybe they're electing family coverage with - maybe they're keeping one or two people on the employer plan. That's another possibility.

For these purposes, the cafeteria plan can rely on the reasonable representation of an employee, that the employee or - and/or related individuals have enrolled or intend to enroll in the qualified health plan through an exchange for new coverage that's effective beginning no later than the day immediately following the last day of the original coverage.

What this means is, for example, if you had a June - a July through June plan year, those employees could make new plan elections in December for January, where the employee would remain in the plan, but the family members would not, with the family members enrolling into a qualified health plan.

The notice also provides rules about how the plan needs to be amended to allow this change. Again, cafeteria plans have to have a written plan document, and they need to follow the plan document. So, if the plan wants to allow these sort of elections, the plan has to be amended.

The timing for making those elections to allow the permitted changes under the notice, an employer must amend the cafeteria plan. - The general rule is they have to adopt the amendment on or before the last day of the plan year in which the elections are allowed, and the amendment may be effective

retroactively to the first day of the plan year, provided the cafeteria plan operates in accordance with the guidance, and if the employer informs the participants of the amendments.

In addition to that, because this is - because it's a new rule, the notice provides that they can amend a cafeteria plan to adopt the new permitted elected changes for the plan year that begins in 2023 at any time on or before the last of the plan year that begins in 2024.

But again, as I mentioned, these always have to be prospective. So, in no event can an employer amend a cafeteria plan to allow election to revoke coverage on a retroactive basis. Since we've issued the guidance, we've got several questions about whether the relief is limited to non-calendar year plans.

It is not limited to non-calendar year plans. I myself have a hard time thinking about when you have a calendar year plan where the situation would come up of the ability to change over to the qualified health plan doesn't match up with the plan's normal election period, but a plan could allow a change if a family member becomes eligible for special enrollment in a qualified health plan during the plan year.

One scenario was suggested is that a family member's residency somehow changes in a way that they weren't eligible for a qualified health plan before, but now they have become eligible for a qualified health plan in the middle of the plan year, other than the annual election period, in which case the plan could be amended to allow those changes, the employee to change their

election, to allow their family member to drop off or move to the qualified health plan, while the employee stays in the plan.

This doesn't mean that the plan can allow unlimited changes throughout the year. Again, you have to be able to point to a special election period into the qualified health plan in order to sort of implement - in order to provide an opportunity for an election under this notice. So, that's my discussion of the notice, and I think now, Jill Darling, is going to return.

Jill Darling: Yes. Thank you, Kevin, and thank you, Dena. Now, we will open the lines for Q&A, please.

Coordinator: Thank you. If you would like to ask a question, please press Star 1 at this time. Please unmute your phone and record your name clearly when prompted. Your name is required to introduce your question. To cancel your request, you can press Star 2. Again, to ask a question, please press Star 1 at this time. Speakers, please stand by. Speakers, our first question comes from (Deney). Your line is open.

(Deney): So, I'm wondering how - if an employee places their family on the Marketplace, how will that affect their HSA contributions?

Kevin Knopf: This is Kevin Knopf. I think it would depend, first of all, on what type of HSA they have. Generally, I mean, under the current rules, as long as you're covered by - as long as one individual is an eligible individual, and they're covered by a high deductible health plan, they're able to contribute to an HSA

based on their type of coverage, whether it's single coverage or family coverage.

And if a person has family coverage, and they're an eligible individual, and they don't have any disqualifying coverage, the fact that the other members of their family would not be able to contribute to HSAs because they're not covered by - because they have disqualifying coverage, does not prevent the family member who's covered by the HSA and this eligible individual from contributing the maximum amount for their type of coverage.

(Deney): Okay. So, they wouldn't be able to include their family on the contribution if their family is on Marketplace?

Kevin Knopf: No, I did not say that. They can - if - under the current rules, and they've been this way for a long time, if you're covered by a high deductible health plan, and you don't have any disqualifying coverage, and it's family coverage that covers your family, you could make family contribution.

However, if you're covering your family, your family isn't going to be able to be covered under the high deductible - under the qualified health plan. So, you probably - if you're switching to single coverage, you will be required to make only single - you'll only be allowed to make single coverage contributions to your HSA, if you're now covered by a single-family high-deductible health plan.

My understanding is, there would be high deductible health plan coverage on the exchanges. So, one possibility is for the family members, if they also are

under a high deductible health plan, then one of them would be able to contribute to an HSA at a family rate.

(Deney): Okay, perfect. Thank you.

Coordinator: The next question comes from Sue Shock. Your line is open.

Sue Shock: Thank you. I have several clients already in the situation I'm about to describe. So, the employee's coverage is deemed affordable under the employer group plan, and the other - and the spouse is a self-employed person, and they guess their family income because of self-employment, we know how a crystal ball guess, but they guess their family income is 80,000.

And based on that family income, the dependents would not be eligible under the group plan as far as what's considered affordable. So, they would be eligible to go to the Marketplace, get a tax credit. But at the end of the year, when that self-employed person's income, instead of being, let's say 80,000, is 100,000, and therefore then at tax time, it shows that that family, those dependents, therefore had they known they were going to make $100,000, would have not had the ability to go to the Marketplace and get a tax credit.

Then is that going to - at tax reconciliation time, is the Marketplace going to come back and claw back all the full 100% of that dependent's tax credit, that tax credit on the Marketplace? Or are they just going to do what they currently do, which is just reconcile it against the difference in income?

Steve Toomey: Yes, this is Steve Toomey, IRS counsel. Do you want me to address that, Dena?

Dena Nelson: Yes, that would be great. Thanks.

Steve Toomey: Okay. Sure. Yes, so, I mean, just to be sure I have this right, you're describing a situation where at enrollment, the family projects their income to be below 400% of the FPL. And therefore, they get APTC, but at tax time, the income's higher than forecast. And so, that the household income is above 400%. Are those the facts?

Sue Shock: Yes.

Steve Toomey: Yes. Right. So, nothing's changed, you know, regarding that rule. It's still - taxpayers - well, I mean, there's the rule for 2022 and 2020. There's the rule that you could potentially get a credit if your household income is above 400% that was enacted in the CARES Act and extended in the Inflation Reduction Act.

But the - regardless of the change in income, the employer coverage will still be considered to be affordable, or I'm sorry, unaffordable, because the Marketplace made that determination, you know, based on a good faith estimate that the coverage was unaffordable for the family members.

But, you know, if the - at that reconciliation, the PTC is, you know, less than the advanced payments, then, you know, notwithstanding affordable - the unaffordable determination, there would be excess APTC, and that would

result in a tax liability. So, I'll pause there and, you know, let me know if I answered the question or if I confused the question or.

Sue Shock: No, I understood, but I just I want to make, of course, very clear to myself and my clients, because I'm giving them some advice based on this answer, is that yes, I certainly understand the reconciliation as far as the difference in the tax credit, but I was just concerned that my client before would get a zero-tax credit, and we're going from zero to some people to maybe getting let's say a $600 must-tax credit.

And because it's the final reconciliation on the tax return, if that change -if they would have known that person was going to make higher amount of income at that point, then they would've gotten a zero tax credit.

And so, we're talking about a big reconciliation there, if you all going to come back and claw back the whole entire tax credit, but you're saying you're not. You're just going to stay within just because of the difference in income and just use the good faith estimate only.

Steve Toomey: Yes. I mean, I guess the point - I mean, there's two things. Yes. The determination, the Marketplace determination that the coverage is unaffordable for the family members, you know, stands. That doesn't change as a result of the higher-than-expected income.

Sue Shock: Okay.

Steve Toomey: So, the taxpayers, when computing their PTC for the year, can, you know - still can take advantage of that unaffordable determination, but they still have to do the APTC versus PTC reconciliation, as do all taxpayers.

Sue Shock: Thank you.

Coordinator: Our next question comes from Deb Nelson. Your line is open.

Deb Nelson: Hi. My question is regards to the cost share reduction. If a family qualifies for a cost share reduction, and the employee is found to have affordable coverage through the employer, but chooses to enroll with the family, will the entire family lose that cost share reduction, or the employee lose that, or will they all be granted that cost share reduction?

Dena Nelson: That's a great question. So, right. Just like the tax credit, the family members would qualify for the cost-sharing reduction if they qualify based on their income. But the employee would not if they have an affordable offer of coverage.

And so, they can still all enroll through the Marketplace, but in order for the family members to actually get the cost-sharing reduction on their plan, they would need to do separate enrollment groups. So, when - after the application is submitted and they get their eligibility results, and they click the button to choose their plan, they can choose whether they want to enroll everyone altogether or split up into different groups.

And if the family members are eligible for a cost-sharing reduction, we would highly recommend they actually split into separate enrollment groups, because that will be what would enable the family members to get the cost-sharing reductions on their plan.

Whereas the employee, because they're not eligible, will not get the cost-sharing reductions on their plan. If they enrolled all together, then no one would get the cost-sharing reductions. So, yes, I'm glad that you pointed that out. That's an important consideration if the family does choose to enroll everyone on Marketplace coverage.

Deb Nelson: Thank you.

Coordinator: Our next question comes from (Jenny). Your line is open.

(Jenny): Hey, good afternoon, everybody. I just had a question. I'm looking at the employer coverage tool form on the Web site, and there's a spot that says don't use this form if someone works for a business that offers the health reimbursement arrangement to reimburse for medical expenses. So, would they no longer be allowed to try to apply for separate coverage through the Marketplace because we have an HRA?

Dena Nelson: They can still apply for coverage through the Marketplace. This change in rules does not impact HRAs. –The employer coverage tool is just saying, this isn't a worksheet that's designed to collect information about HRAs. It's just collecting information about traditional offers of employer coverage, if that makes sense.

(Jenny): Okay. So the form was just for - okay. So, that's just for the HRA for the form, not for them being able to possibly be approved for coverage through Marketplace.

Dena Nelson: Right. They definitely can still apply for coverage through the Marketplace if they are offered an HRA, and there are still questions on the HealthCare.gov applications that ask about what that HRA is that their employer offers.

(Jenny): Okay. Thank you.

Coordinator: Our next question is from (Michelle). Your line is open.

(Michelle): Hi. Good morning. Good afternoon. I just want to be sure. This is for - I think he said his name is Kevin. I just want to be sure I'm understanding the special enrollment period as it applies to the group plans. So, if my group plan is not calendar year, say December, and there is a cafeteria plan of some sort in place.

If I'm in December, then I can then allow those employees with families, because they're going to be in the open enrollment period, to move over to the exchange. But if my plan say is June 1st to May 31st, they will have to wait till their open enrollment. Can you just - I need to get this straight in my head.

Kevin Knopf: All right. The notice specifically allows what you just said they can't do. The notice specifically allows the plan to allow - if there's a special enrollment period into the qualified health plan, you can allow the non-calendar year plan

to allow a change in election in order to take advantage of the special enrollment plan period for the qualified health plan.

So, the non-calendar year plan can - even though normally you can't make a change in the middle of the year, they could make a change if what they want to do is move the family over to a qualified health plan as of January 1, even though that's not the cafeteria plan's normal open season. You can have a special - you can allow elections to make that change. You just have to amend the plan to allow them.

(Michelle): Okay, great. Thank you.

Coordinator: The next question comes from (Maurice). Your line is open.

(Maurice): Yes. Good afternoon. I'm in New York. I wanted to find out two things. One, New York State of Health, all these rules apply to the New York State of Health. Is that correct?

Dena Nelson: Yes.

(Maurice): Okay. And the second question is this. I'd assume that it applies to all sizes of businesses, because generally speaking, the companies that would get coverage through - the employers that would get coverage through the health exchange, would be 100 or less employees, but companies that have greater than 100 employees would also be able to have their employees' family members participate in the exchanges, assuming that it would be financially beneficial for them to do so. Is that correct also?

Dena Nelson: Right. The questions that get asked on the application for health coverage through the exchange, do not ask about the size of the employer, and that's not taken into consideration when determining someone's eligibility for tax credits, and it's not taken into consideration when assessing the affordability of the employer coverage offer.

(Maurice): Thank you much for the clarification. Appreciate it.

Coordinator: And our next question comes from Jimmy. Your line is open. Jimmy, you may be on mute. If you can try unmuting your line, please.

Jimmy Borders: Was that for Jimmy Borders?

Coordinator: Yep. That's you. Yep.

Jimmy Borders: Okay. Sorry. My question was, with the pending sunset of the Medicaid PHE where folks have been allowed to stay on Medicaid, that will open up a step for the Marketplace, If I'm correct. Is there a time limit on how long that step will last, is my question.

Dena Nelson: So, I think we'll need to follow up with you on that, since we're not prepared to cover that on today's call. But generally, consumers who lose Medicaid or CHIP, do qualify for a special enrollment period to enroll in Marketplace coverage.

Jimmy Borders: Okay. Thanks.

Coordinator: And our next question comes from Sue. Your line is open.

Sue Shock: Thank you. I have one more question regarding a special election period in the off-calendar year cafeteria plan. Since open enrollment actually ends January 15th for the 2/1 effective date, is the special election period - would it be for 1/1 and 2/1 as well, and that's just it, or is it just for 1/1, since that's the first time and - that the special election period came open?

Dena Nelson: Are you asking specifically about someone who now has - is eligible to enroll with a tax credit for Marketplace coverage because they have a family plan offer that's no longer considered affordable?

Sue Shock: Yes, ma'am

Dena Nelson: Yes. So, if that consumer was enrolled in employer coverage, and is going to be ending their enrollment in employer coverage, then they can qualify for a special enrollment period on that basis that gives them 60 days after the end of their employer coverage. So, they can - if their employer coverage is ending December 31st, they can enroll in January for a February 1st effective date.

Sue Shock: So, you're saying that someone whose cafeteria plan runs, let's say, from October 1 to September 30th, they're on their employer's plan, their family members are, and in April they decide, oh, I think I'm going to get off my group plan because I know I'm eligible for the tax credit on the Marketplace - I'm talking about their dependents.

Then they can do that, even though they could have done that at the special - the first day was January 1. You're saying they have all of their plan year to decide to make this decision. They've got a special election period every month of the year, or just when it was first eligible?

Dena Nelson: No.

Kevin Knopf: No. The rule for cafeteria plans is limited to when there's a special enrollment period into the qualified health plan. You can't just - they can't just sort of wait till they want to move in and then switch over to the qualified health plan. There has to be a special enrollment period in the qualified health plan for some reason, at which point the plan can allow them to change their election in the employer plan.

Sue Shock: Okay. And my question ...

((Crosstalk))

Dena Nelson: Right, and starting - you know, the change in rules happens January 1st. So, if the consumer was - you know, there hasn't been a change in affordability in April that opens up a special enrollment period for them, if they - they could have dropped their coverage anytime earlier, I guess.

Sue Shock: I understand. So, I'm just saying that since the Marketplace open enrollment for the Marketplace goes through February - I mean, January the 15th this year, in that scenario that we just described, is my only - my - those people on

that plan, that cash care plan that started 10/1, is their only date as far as what we are talking about, you know, today, is the 1/1 date.

Dena Nelson: No, they could - so, my understanding of the special enrollment period is that they would be eligible to drop their plan and qualify for a special enrollment period because of the newly unaffordable employer coverage offer in January or February, sort of the 60 days after that January 1st change in the affordability rules.

Sue Shock: Okay. So, January and February are the ...

Dena Nelson: So, that could get them a February 1st start date, or a March 1st start date, even after open enrollment ends.

Sue Shock: Well, I'm still not clear. I feel like I'm getting conflicting answers from each of you, but maybe I'm apparently not understanding and - or maybe I'm probably not getting ...

Dena Nelson: I think that - yes, the issue is that they're sort of two different things. There's - one, there's the rule that's, when is the employer allowed to terminate - to allow the employee to drop their coverage? And I think that's what Kevin's answering. And part of Kevin's answer is that, in order to be allowed to drop their coverage, the consumer has to qualify for a special enrollment period.

And so, I'm trying to jump in a little bit with what would qualify someone for the special enrollment period. So, I know that they are - it's confusing and a

little messy because those two different things that have to - that the consumer has to be eligible for, sort of reflect back on each other too.

Sue Shock: Okay. Well, I don't know the answer to my question, so I'll probably get an answer, right?

Dena Nelson: Okay. Well, I'm sorry. Let me try to just repeat it one more time that I think you're asking whether a consumer could enroll for February 1st. That was what I heard your question. And based on them being newly eligible for a premium tax credit or an advanced APTC, because their family coverage offer is newly unaffordable.

And as long - as from the Marketplace perspective, as long as they can drop their employer coverage that they were previously enrolled in, they can - the answer is yes, they can get a special enrollment period to qualify to enroll.

You know, as long as they pick their plan by January 31st, they would get a February 1st enrollment date. And if they are able to drop their plan, let's say January 31st, and they fill out a Marketplace application during February, they can get a March 1st date.

Sue Shock: Yes, I understand that from the Marketplace perspective, that's been the way it had been for - ever since it opened up eight years ago. What I'm trying to find out is, from the new - from the cafeteria plan status mid-year plan election, is January 1 going to be a goal for these people, and is February 1 going to be a go too? Are those the only dates, or just one of those days?

January 1, since that's the first time that - and if somebody had a cafeteria plan that runs from October 1 to September 30th, they've got, of course, October 1, every year to make changes. And because of this newly special election period that's going to qualify their family for tax credits, and it happens to be OEP, of course, then is January 1 the date, and October 1, or is February 1 also a date for that? Because February 1 is not the first date that they could do it. January 1 is the first date. That's their true date of a special election period under these new rules.

Kevin Knopf: It may be that either one date is possible. Another thing that's factored into this is it's going to depend on how the plan is amended and how the employer wants to manage how the plan is amended. The employer doesn't have to provide this opportunity, and if they do provide it, they may restrict it in some way where they only allow it for a certain period, then they don't allow it the maximum period.

Sue Shock: Okay. But the maximum period should be the full cafeteria plan year. Is that correct?

Kevin Knopf: Well, they can't just say you can change any time during the year. There has to be a special enrollment period provided under the HHS rules. So, I don't know how other than - I'm aware of the annual period at the beginning of the year. I'm not aware of where it would pop up otherwise, that wouldn't otherwise relate to this.

Sue Shock: Okay. So, January - with January 1 and February 1 both relate to this, since January 1 is the first election period that's changed. And of course, February 1

is when OEP stops. That's all right. I'm trying to be - I'm just trying to make sure I can get - help these people get as many - because this is a lot of people to work with in a short amount of time on this, people that have off-year calendars - off calendar year cafeteria plans.

So, I've got - you know, we've got a lot of people to talk to for January 1, for sure, in addition to regular people. And then I was just trying to find out if February 1 was in that mix because OEP ends then, but maybe not. Thank you.

Coordinator: And our next question.

Jill Darling: Well, thank you. I'm sorry. Yes. We're over our time. We appreciate everyone's questions, and if we - I'll hand the call off to Felicia for closing remarks.

Felicia Verrett: Good afternoon, everyone. Thank you to Miss Dena Nelson and Mr. Kevin Knopf, and all of our speakers for sharing information and answering questions on the family glitch final regulation. We appreciate your time given to share this important topic, and we thank all of our attendees for calling in.

And if you have any additional questions, please email us at partnership@cms.hhs.gov. Again, that's partnership@cms.hhs.gov. And thank you for attending the call. Good afternoon.

Coordinator: That concludes today's conference. Thank you all for participating. You may now disconnect, and have an amazing day. [End]