Centers for Medicare & Medicaid Services
Questions and Answers
Open Door Forum: Employers
Monday, October 24, 2022

1. Question: If an employee places their family on the marketplace, how will that affect their HSA contributions?
    a. Answer: I think it would depend on what type of HSA they have. Generally, under the current rules, 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.
        i. Question: Okay. So, they wouldn't be able to include their family on the contribution if their family is on marketplace?
            1. Answer: They can. 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.
2. Question: 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?

a. Answer: 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?
    i. Answer from caller: Yes
        1. Answer: 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. 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. At that reconciliation, the PTC is 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.
            a. Answer: 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. 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.

i. Comment: 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. 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.

3. Question: 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?
    a. Answer: 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. 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.

4. 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?
    a. Answer: 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.
        i. Question: So, that's just for the HRA for the form, not for them being able to possibly be approved for coverage through Marketplace.
        ii. Answer: 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.
5. Question: 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.
    a. Answer: 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.

6. Question: 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?
    a. Answer: Yes
        i. Question: 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?
            1. Answer: 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.
7. Question: 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?
    a. Answer: Generally, consumers who lose Medicaid or CHIP, do qualify for a special enrollment period to enroll in Marketplace coverage.
8. Question: 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?
    a. Question back to caller: 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?
        i. Answer: Yes
            1. Follow-up to caller: 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.

a. Question: 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?
    i. Answer: 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. 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.
        1. Comment from caller: 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.

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

i. Comment and question from caller: 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.

ii. Answer: 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.

iii. Question from caller: Okay. But the maximum period should be the full cafeteria plan year. Is that correct?

iv. Answer: 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.

v. Comment from caller: 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. 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.