Article

Article Title:	Employer-Sponsored Affordability Test (9.5%)		
Domain	SHOP Market: Eligibility and Enrollment	Subject:	Eligibility for Small Businesses and Employers
Topic:	Eligibility for Covered California	Subtopic:	Eligibility for Financial Assistance
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Introduction *1 or 2 paragraphs that can be used to set context or be used as talking points*

"Affordable" plans and the 9.5% standard

A job-based health plan is considered "affordable" if the employee's share of premiums for the lowest cost **self-only** coverage that meets the minimum value standard is less than 9.5% of their family's income.

In other words, if your share of your premiums for a plan that covers only you (the employee)--not your family--is less than 9.5% of your family's income, the plan is considered affordable.

You may pay more than 9.5% of your income on premiums for spouse or family coverage from your employer. But affordability is determined only by the amount you'd pay for self-only coverage from your employer.

Employer Shared Responsibility Provision: Under the Affordable Care Act, most large employers are required to provide health care coverage that is both affordable and comprehensive. If large employers do not offer coverage at all or coverage that is not affordable and comprehensive, then their employees can apply for coverage with premium assistance (tax credit) through Covered California. If an employee enrolls in a Covered California plan and does receive this tax credit then the employer may be subject to penalties.

Key Points *3-5 bullet points*

- **Affordability Premium Assistance**: Employer sponsored coverage is considered affordable if the employee's share of the annual premium for **self-only coverage** is no greater than 9.5% of annual household income after employer contribution.
- **Household Income**: Household income for this purpose is defined as the modified adjusted gross income of the employee and any members of the employee's family for whom the employee properly claims a tax deduction for a personal exemption for the taxable year (which would include any spouse and dependents) and who are required to file an income tax return.
- **Employer Safe Harbor**. Under the Employer Shared Responsibility provisions of the Affordable Care Act (ACA) (which have now been postponed until 2015), no penalty can be imposed on an employer who offers group health plan coverage to at least 95% of employees who work on average at least 30 hours per week, and their dependents, if that coverage meets ACA requirements for "affordability" and "minimum value."
- **Affordability "Glitch":** The affordability test is based on the affordability of self-only coverage available to the employee and does not consider the premium rate for a family or other dependents. Therefore, the spouse or other dependent's rate is not included in the calculation for affordability and has no effect on the determination that coverage is "affordable". This also means that the spouse and dependents would be ineligible for any type of financial assistance through Covered California or the federally facilitated marketplace. This is only applicable to individuals that have an offer of coverage from their spouse's employer. Additionally, the Affordable Care Act requires coverage to be offered to minor dependents; almost all children may be affected by the kid's glitch and is not dependent on the optional offer of coverage like it would be for spouses.

Details *Elaborate key points*

Affordability: Coverage is "affordable" if no employee is required to pay more than 9.5% of his/her "household income" for self-only coverage under the employer's lowest-cost option that provides minimum value. The proposed regulations on Employer Shared Responsibility (issued 12/28/2012) established three "safe harbors" an employer can meet to comply with the Affordability test. See below for an explanation of the three safe harbors.

Minimum Value: Coverage meets "minimum value" requirements if the plan pays at least 60% of the actuarial value or total allowed costs of benefits covered under the plan. This means that the employee pays—via deductibles, coinsurance, copayments and other out-of-pocket

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Details *Elaborate key points*

amounts, excluding the premiums—not more than 40% of the actuarial value of benefits under the plan. Based on statements by HHS (in the preamble to the proposed regulations on Essential Health Benefits and Actuarial Value), most group health plans currently meet the 60% actuarial value requirement. An example of an employer plan that probably would not meet the 60% requirement is a "mini-med" or catastrophic plan.

Also note that the Affordability test is based on the employee cost for self-only coverage even if the employee in fact has a family and needs family coverage. This point is significant because it affects family members' eligibility for a subsidy if they buy insurance in the Exchange/Marketplace. If employer-provided coverage is available – even if not affordable—family members will not be eligible for a subsidy.

The Three Affordability Safe Harbors: In response to employers' comments that they will not know their employees' household incomes (i.e., their modified adjusted gross income (MAGI) from their prior year's federal tax return), the proposed regulations on Employer Shared Responsibility include three safe harbors employers can use instead of household income. Compliance with a safe harbor means that an employer will be deemed compliant with the law and cannot be subject to penalties. Use of any of the safe harbors is optional, and an employer may apply the safe harbors for any reasonable category of employees provided it applies the safe harbor on a uniform and consistent basis for all employees in a category. Thus, the Affordability test is that the employee cost for self-only coverage under the employer's lowest-cost option that provides minimum value cannot be more than 9.5% of one of the following amounts:

- W-2 income: The employee's W-2 income (Box 1) from the employer for the year
- Rate of Pay (Monthly): The hourly rate of pay times 130 hours per month, or monthly salary for salaried employees
- Federal Poverty Line: 100% of the Federal Poverty Line (FPL) for an individual

Additional Information about Each Safe Harbor

- **W-2 income:** The employee's W-2 income (Box 1) from the employer for the *current* year
  - **Disadvantages:**
    - Box 1 income does not include pre-tax contributions for 401(k) or cafeteria plans,
    - This is calculated on an employee-by-employee basis, and
    - The employer will not know the exact amount until after the end of the year. The proposed regulations provide that the employee's required contribution generally must remain a consistent amount or percentage of W-2 wages during the year, so an

Details *Elaborate key points*

employer cannot "frontload" the monthly employee cost and then reduce it late in the year. Employers who select this safe harbor may need to define the employee contribution as "9.5% of W-2 wages, but not more than $XX per month."

- **Advantages:**
  This includes all hours the employee actually worked and hours for which no work was performed but the employee was paid or entitled to payment (e.g., paid holidays and vacation, paid leave and disability). It is not limited to 130 hours/month, as is the Rate of Pay safe harbor below.
- **The maximum amount:**
  Based on $8/hour and 40 hours/week and 52 weeks/year, the maximum employee contribution (for self-only coverage) per month would be $131 (could be more if employee worked overtime but less if employee made pre-tax 401(k) or cafeteria plan contributions).

- **Rate of Pay (Monthly):** The rate of pay as of the first day of the plan year for each employee who is eligible to participate in the health plan as of the beginning of the plan year. For hourly employees, this is defined as 130 hours times the hourly rate of pay as of the first day of the plan year. For salaried employees, employers will use the monthly salary regardless of hours on which it is based. Note that if an employer uses the rate of pay of the *lowest-paid* employee and multiplies this by 9.5%, the resulting monthly amount will meet the test for all employees.
  - **Disadvantages:**
    - The employer can only multiply the hourly amount by 130 hours per month, even if employees actually work more hours.
    - This safe harbor can only be used if the employer does not reduce employees' rates of pay during the plan year.
  - **Advantages:**
    - Although technically this is calculated on an employee-by-employee basis, it can also be a "fail-safe" design-based safe harbor because if the Affordability test is met for the lowest-paid employee, then it will also be met for all other employees.
    - The employer can calculate the maximum amount for affordability as of the beginning of the plan year and need not wait until after the end of the year to determine it.
  - **The maximum amount:**
    Based on $8/hour and 130 hours per month, the maximum employee contribution (for self-only coverage) per month would be $98.80. (Based on $7.25/hour, the federal minimum wage, the maximum monthly amount would be only $89.54.)
- **Federal Poverty Line:** 100% of the Federal Poverty Line (FPL) for an individual. For 2013, this amount was $11,490. This will apply for the 2014 calculation.
  - **Disadvantages:**

Details *Elaborate key points*

- **The Maximum Amount:** Based on $11,490, the maximum employee contribution (for self-only coverage) per month would be only $90.96.

- **Advantages:**
  - This is not a separate calculation for each employee. It is a “fail-safe” safe harbor that will apply even if the amount is less than an employee’s actual income for the month or year.
  - This safe harbor may be most useful for employers who use the look-back measurement period to determine if variable hour or seasonal employees have full-time status.

Scenarios *2-5 scenarios*

Affordability Test Example 1:

In 2014, Rev. Ryan has MAGI of $47,000 (total compensation of $60,000, less $10,000 under the housing exclusion and $3,000 that Ryan contributes pre-tax to the United Methodist Personal Investment Plan [UMPIP]). Ryan is an “employee” (for this purpose) of First United Methodist Church (FUMC), which offers its employees’ health coverage through its annual conference plan and requires Ryan to contribute $1,800 annually for self-only coverage for 2014 (this is 3.8% of Ryan’s MAGI). Because Ryan’s required contribution for self-only coverage does not exceed 9.5% of MAGI, FUMC’s plan is defined as affordable for Ryan; therefore Ryan is eligible for “minimum essential coverage” in 2014. This means that if Ryan decided to seek health insurance coverage on his state’s Exchange, he would be denied premium assistance toward that coverage, even if he might otherwise qualify based on MAGI.

An earlier final regulation on the premium tax credit (PTC), however, had left open the question of what would happen if an employed individual can afford self-only coverage for 9.5% of MAGI or less, but cannot afford the higher-priced family coverage. Would the family, or at least the family members other than the employee, be able to forgo the employer coverage and qualify for PTCs?

Update: The February 1 IRS final rule determined when an employer-sponsored plan is considered affordable for an individual related to the employee, i.e., spouses and dependents, for purposes of the APTC. The final rule clarifies that beginning January 1, 2014, “an eligible employer-sponsored plan is affordable for related individuals if the portion of the annual premium the employee must pay for self-only coverage (the required contribution percentage) does not exceed 9.5% of the employee’s [MAGI].”

Essentially, the rule requires only that employers pay a significant portion of the cost to cover the employee. The rule allows employers to charge employees higher amounts for covering

Scenarios *2-5 scenarios*

dependents without worrying that the employee will opt out of the employer coverage and seek PTCs for Exchange coverage (which could cause a penalty to accrue to the employer under the employer mandate in some circumstances).

Affordability Dependent's Glitch Example 2:
In 2014, Reverend Beverly has MAGI of $47,000. Beverly is an "employee" of FUMC, which offers employees health coverage through the annual conference plan. Beverly is married to Gerry. FUMC's plan covers dependents of employees and requires Beverly to contribute $6,000 for coverage of herself and Gerry. This amount is equal to 12.8% of Beverly's MAGI (household income). However, FUMC's plan would require Beverly to contribute only $2,400 for self-only coverage. Because the $2,400 required contribution for self-only coverage does not exceed 9.5% of MAGI ($2,400 is 5.1% of Beverly's MAGI), FUMC's plan is considered affordable for Beverly and Gerry (despite that the actual cost of covering both individuals is 12.8% of MAGI). Therefore, Beverly and Gerry are considered eligible for minimum essential coverage from the FUMC employer plan, and both are precluded from obtaining a PTC on an Exchange. This is true even if Beverly declines coverage for Gerry because he was offered affordable employer-sponsored coverage under the ACA's APTC affordability rule.

FAQs *Frequently asked Questions and Answers. This will be used for a variety of different uses including Certification Exam Questions, Marketing/Communications, etc.*

Affordability Q &As

- Does the 9.5% income threshold apply to Individual Family Plans or employer group plans?

Employer-sponsored coverage is considered affordable if the employee's share of the annual premium for self-only coverage is no greater than 9.5% of annual household income after employer contribution.

- Can someone who currently has health insurance coverage through their employer change to Covered California?

If you already have health insurance provided by your employer that is affordable and provides minimum value, you will not be eligible for financial assistance through a Covered California plan. However, if you are paying more than 9.5 percent of your household income toward your employer-sponsored insurance premiums or your employer-sponsored health plan does not

cover at least 60% of the total allowed costs of benefits provided to you, then you may be eligible for financial assistance available through Covered California. If that coverage is determined to be affordable and adequate, then you cannot receive premium assistance for new insurance purchased through Covered California.

- Can you opt out of employer provided insurance?

If you already have health insurance provided by your employer that is affordable and provides minimum value, you do not need to do anything. If you are paying more than 9.5 percent of your household income toward insurance premiums, then you may be eligible for financial assistance available through Covered California. If you have insurance from your employer and apply for a tax credit, it will be determined whether your employer-sponsored plan is affordable and provides adequate coverage. If that coverage is determined to be affordable and adequate, then you cannot receive a government tax credit for new insurance.

- If husband and wife are in the family affordability glitch, can the unemployed husband simply apply for Medi-Cal based on low own income, or does Medi-Cal also require filing jointly and therefore catch him through wife's (and therefore household) higher income?

No. The wife's income, so long as they are legally married, will always count in the total household income regardless of tax filing status. If the husband and the wife's combined income exceed the income requirements to receive Medi-Cal then the husband would not be eligible for Medi-Cal.

- If my employer-provided insurance does not include spousal and dependent coverage will my spouse and dependents qualify for a subsidized Covered California plan?

Yes, your family may qualify for a subsidized Covered California plan if your employer-provided insurance does not include or offer spousal and dependent coverage. Their eligibility for subsidies would be based on your household size and income.

Article

Supporting Materials *Please include the title and all relevant links to Scripting; step action table; charts/visuals; helpful hints; flowcharts; publications or materials. (The majority of Covered California developed materials should be stored in SharePoint)*
Supporting News Article: http://thehill.com/blogs/floor-action/senate/290537-wyden-healthcare-laws-family-glitch-leaves-dependents-without-coverage

Bibliography/Reference Material *(Links and citations to law/regs; advocates' material; CovCA formal background)*
Affordability Regulation IRS http://www.irs.gov/PUP/newsroom/TD%209611.pdf **IRS Safe Harbor Provision/Regulation**: http://www.irs.gov/pub/irs-drop/n-11-73.pdf **Healthcare.gov:** https://www.healthcare.gov/what-if-i-have-job-based-health-insurance/ **Dependent Coverage Affordability Rule under Employer Plans**: http://www.gbophb.org/assets/1/7/4523.pdf

Key Words (*Top Search words to find article)*
9.5%, affordability, affordability test, kid's glitch, family glitch, employer sponsored coverage, ESI