HAYS COMPANIES

# ARPA'S ACA Provisions – Increased Marketplace Subsidies & Potential Employer Issues

The American Rescue Plan Act of 2021 (ARPA), signed into law by President Biden in March 2021, made important changes affecting the Affordable Care Act (ACA) Marketplace contained in Section 9661. In light of these changes, employers may want to review their compliance with the ACA's shared employer responsibility provision, as mentioned in the discussion below.

## Cap on Marketplace Subsidies Eliminated – Increased Subsidies for Individuals Previously Eligible

Section 9961 of ARPA expands access to Marketplace subsidies (premium tax credits) by eliminating the 400% poverty level income cap. Premiums are now capped, regardless of income, at 8.5% of an individual's modified-adjusted gross income (MAGI) (i.e., if a plan's premium is more than 8.5% of an individual's MAGI, a subsidy will cover the difference). For reference, 400% of the poverty level for a single individual is $51,040 for 2021.

This section of ARPA also increases the value of subsidies for those making between 100% and 400% of the federal poverty level. While these individuals would have previously been eligible for subsidies prior to ARPA, the subsidies are now more generous, possibly encouraging greater enrollment in an Exchange plan.

The changes are retroactive to January 1, 2021 and in effect for both 2021 and 2022.

ARPA's ACA provisions complement earlier efforts by the Biden Administration to increase individual access to the Marketplace. Previously, the Administration opened the Marketplace's Special Enrollment Period (SEP) to all Americans (rather than only to those with qualifying life events) with an initial expanded enrollment end date of May 15, 2021 (later extended to August 15, 2021).

The Biden Administration's efforts to increase access to the Marketplace have been highly successful – CMS estimates over 200,000 Americans signed up for coverage in the Marketplace in February 2021 during the expanded SEP and prior to the passage of ARPA.

With ARPA's passage, increased access to Marketplace subsidies means we may continue to see significant enrollment numbers in Exchange plans, which may impact employers.

## What This Means for Employers – Increased Exposure to ACA Penalties

One clear risk expanded access to the Marketplace and Marketplace subsidies poses for employers is exposure to possible penalties under the ACA's employer shared responsibility rules.

As you may recall, the ACA requires applicable large employers offer affordable, minimum value coverage to full-time employees or potentially pay one of two penalties. The Section 4980H(a) penalty applies where an ALE does not offer coverage to "substantially all" full-time employees (and dependents). The Section 4980H(b) penalty applies when an ALE does not offer coverage to all full-time employees or the ALE's coverage is unaffordable or does not provide minimum value. **Both penalties are triggered only if one or more full-time employees receives a subsidy for purchasing coverage through the Marketplace.**

As a result of elimination of the 400% poverty level income cap on Marketplace subsidies, the expanded SEP, and more favorable subsidies for previously eligible individuals, more full-time employees may go to the Exchange and qualify for subsidized coverage - the key trigger for the employer shared responsibility penalties under the ACA.

Accordingly, we advise employers to review their compliance with the employer shared responsibility portion of the ACA, as well as reassess and understand their penalty risk and exposure as a result of these changes under ARPA.
**Note: If the employer has offered an employee minimum essential coverage that satisfies the minimum value requirement and is using an affordability safe harbor, the employer will not be subject to a penalty for that employee.**

**As always, the Hays Companies Research and Compliance team will share any updates or further insights regarding this issue as they become available.**



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