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Individual Mandate Exemptions

Beginning in 2014, the Affordable Care Act (ACA) requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. This rule is often referred to as the "individual mandate." Individuals may be eligible for an exemption from the penalty in certain circumstances.

OVERVIEW OF THE INDIVIDUAL MANDATE

Under the individual mandate, a penalty will be assessed against an individual for any month during which he or she does not maintain "minimum essential coverage" (MEC), beginning in 2014 (unless an exemption applies). A taxpayer is also liable for the penalty for any nonexempt individual whom the taxpayer may claim as a dependent.

MEC includes the following:

- Employer-sponsored coverage (including COBRA coverage and retiree coverage);
- Coverage purchased in the individual market;
- Medicare Part A coverage and Medicare Advantage;
- Most Medicaid coverage;
- Children's Health Insurance Program (CHIP) coverage;
- Certain types of veterans health coverage administered by the Veterans Administration;
- TRICARE;
- Coverage provided to Peace Corps volunteers; and
- Coverage under the Nonappropriated Fund Health Benefit Program.

MEC also includes any additional types of coverage designated by HHS or when the sponsor of the coverage follows a process to be recognized as MEC. HHS has designated the following other types of coverage as MEC:

- Self-funded student health coverage and state high risk pools for plan or policy years that begin on or before Dec. 31, 2014. For plan or policy years that begin after Dec. 31, 2014, sponsors of self-funded student health plans and state high risk pools may apply to be recognized as MEC through a process outlined in the final rule;
- Refugee Medical Assistance supported by the Administration for Children and Families;
- Medicare Advantage plans; and
- Any additional coverage that HHS designates or recognizes as MEC.

In addition, a proposed rule from March 17, 2014, addresses when foreign group health coverage would qualify as MEC. Foreign group health coverage is group health coverage that is not insured by an issuer regulated by a state and is for expatriates who are U.S. citizens or nationals residing abroad, or is for expatriates who are not U.S. citizens or nationals residing in the United States.

MEC does not include specialized coverage, such as coverage only for vision or dental care, workers' compensation, disability policies, or coverage only for a specific disease or condition.

Individual Mandate Exemptions

EXEMPTIONS FROM THE INDIVIDUAL MANDATE

The ACA provides nine categories of individuals who are **exempt from the penalty**. An individual who is eligible for an exemption for **any one day** of a month is treated as exempt for the entire month.

EXEMPTIONS FROM THE INDIVIDUAL MANDATE		
Individuals who cannot afford coverage	Taxpayers with income below the filing threshold	Members of federally recognized Indian tribes
Individuals who experience a hardship	Individuals who experience a short gap in coverage	Religious conscience objectors
Members of a health care sharing ministry	Incarcerated individuals	Individuals not residing in the U.S. (expatriates)

Exemption for Individuals Who Cannot Afford Coverage

Under the ACA, individuals who lack access to affordable MEC are exempt from the individual mandate. For purposes of this exemption:

- Coverage is affordable for an employee if the required contribution for the lowest-cost, **self-only coverage** does not exceed **8 percent of household income**.
- For family members, coverage is affordable if the required contribution for the lowest-cost **family coverage** does not exceed **8 percent of household income**.

This required contribution percentage is to be adjusted annually after 2014. On July 24, 2014, the Internal Revenue Service (IRS) released **Revenue Procedure 2014-37** (Rev. Proc. 2014-37) to index the ACA's affordability contribution percentage for 2015. For plan years beginning in 2015, coverage is unaffordable for purposes of the individual mandate exemption if it exceeds **8.05 percent of household income**.

For 2016, a proposed rule from HHS provides that, if an individual must pay more than **8.13 percent** of his or her household income for MEC, the individual is exempt from the individual mandate penalty.

For purposes of this exemption, household income takes into account employer contributions or premium tax credits. IRS final regulations specify that household income will be increased for any amount of the premium paid for through a salary reduction agreement excluded from gross income. In addition, IRS proposed regulations issued on Jan. 27, 2014, provide the following rules for determining affordability:

- *HRA contributions*—An employer's new contributions to an HRA are taken into account in determining (in other words, they reduce) an employee's required contribution if the HRA is integrated with an employer-sponsored plan and the employee may use the amounts to pay premiums. Amounts in an HRA that may be used only for cost-sharing are not taken into account when determining affordability because they cannot affect the employee's out-of-pocket cost of acquiring MEC.
- *Contributions to a section 125 cafeteria plan*—If an employer offers a 125 cafeteria plan and an employee may elect to use tax-exempt salary reduction contributions to pay for premiums, those contributions are treated as employee contributions, and the employee's household income is increased by the amount of the contributions. The IRS is requesting comments on how employer contributions to a section 125 cafeteria plan should be treated for purposes of the individual mandate when employees cannot opt to receive the employer contributions as a taxable benefit, such as cash.

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- *Wellness program incentives*—If an individual is eligible for employer-sponsored coverage, the affordability of an employer-sponsored plan is determined by assuming that each employee fails to satisfy the wellness program's requirements, unless the wellness program is related to tobacco use.

  If an individual is not eligible for employer-sponsored coverage, affordability is measured based on the cost of the lowest-cost bronze plan available through the Exchange in the individual's area that would cover all members of the individual's family who are not exempt from the individual mandate (reduced by any premium tax credit that the individual may be eligible for). The IRS has not yet determined how individual market wellness demonstration programs will affect affordability, since these demonstration programs have not yet been implemented. If no single bronze plan in the Exchange would cover an individual's family, affordability is based on the sum of the premiums for the lowest cost bronze plans available in the Exchange that provide coverage for all members of the individual's family. The IRS requests comments on alternative methods for determining affordability where a single bronze plan does not cover all family members.

If a taxpayer's income is too low to afford health insurance early in a year, but increases later in the year so that insurance is affordable, the taxpayer may be liable for a penalty if no other exemption applies. However, the IRS final regulations allow a taxpayer to apply for a hardship exemption prospectively if it appears that health insurance is unaffordable. The hardship exemption will protect the taxpayer against subsequent penalties for months in which coverage was unaffordable, even if it turns out that coverage was affordable considering the entire year's income.

Hardship Exemption

The hardship exemption is intended for individuals who have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan. A hardship exemption is available for a month or months in which:

- An applicant experienced financial or domestic circumstances, including an unexpected natural or human-caused event, that caused a significant, unexpected increase in essential expenses;
- The expense of purchasing MEC would have caused the applicant to experience serious deprivation of food, shelter, clothing or other necessities; or
- The applicant has experienced other factors similar to those described above that prevented him or her from obtaining MEC.

HHS final regulations enumerate several situations that will always be treated as constituting a hardship and therefore allow for an exemption. For example, hardship exemptions can be available for:

- Individuals who an Exchange projects will have no offer of affordable coverage; and
- Individuals who would be eligible for Medicaid but for a state's choice not to expand Medicaid eligibility.

HHS regulations also provide that the hardship exemption will be available on a case-by-case basis for individuals who face other unexpected personal or financial circumstances that prevent them from obtaining coverage. CMS' additional guidance on the hardship exemption establishes criteria that federally facilitated Exchanges (FFEs) will use to determine eligibility for the hardship exemption. State-based Exchanges have the option of using these criteria.

Under the 2014 proposed regulations, if additional situations are identified where an individual should be allowed to claim a hardship exemption without obtaining a hardship exemption certification from an Exchange, HHS and the IRS will issue further guidance.

Hardship Exemption for Individuals Who Enrolled During the Initial Enrollment Period

On Oct. 28, 2013, CMS issued a frequently asked question (FAQ) to create an **additional hardship exemption** for individuals who purchase Exchange coverage during the initial enrollment period (Oct. 1, 2013, through March 31, 2014). Under the exemption, if an individual enrolls in an Exchange plan during the initial open enrollment period, he or she will be able to claim a hardship exemption from the penalty for the months prior to the effective date of the individual's coverage, without the need to request an exemption from the Exchange.

Without the exemption, individuals who purchase insurance towards the end of the initial enrollment period could be required to pay a penalty based on a gap in coverage that lasts for three months or longer. This hardship exemption is claimed when the individual files his or her federal income tax return in 2015. According to CMS, additional detail on how to claim this exemption will be provided in 2014.

In addition, individuals who received a special enrollment period for being "in line" for Exchange enrollment on March 31, 2014, and who selected QHPs on time, are treated as if they had enrolled by March 31, 2014. Thus, these individuals will be able to claim a hardship exemption from the individual mandate for the months prior to their coverage effective date.

On March 31, 2014, CMS issued an FAQ to provide the following guidance on this hardship exemption with respect to individuals determined to be eligible for Medicaid or CHIP.

- First, the coverage effective date for an individual who is determined eligible for Medicaid is the date of his or her application (and may be up to three months before the month the individual filed his or her application, in some circumstances). Accordingly, an individual who applied on or before March 31, 2014, and is found eligible for Medicaid, will have Medicaid on or before March 31, 2014. Under these circumstances, even if the individual did not have coverage before March 31, he or she will qualify for a short coverage gap exemption for the period before his or her Medicaid coverage was effective, back to Jan. 1, 2014.
- Second, because CHIP effective dates typically follow the same rules as private insurance (meaning that a March 31 application date may not yield a March 31 effective date), HHS is extending the hardship exemption to include individuals who apply for coverage during the initial open enrollment period and are found eligible for CHIP. The IRS intends to publish guidance allowing an individual to claim a hardship exemption for the months in 2014 prior to the CHIP coverage effective date if the individual submits an application prior to the close of the open enrollment period and is found eligible for CHIP.

On May 2, 2014, CMS issued a bulletin that provides a hardship exemption from the individual mandate's penalties for all months prior to the effective date of coverage for all individuals who obtained MEC effective on or before May 1, 2014, **even for individuals who purchased coverage outside of the Exchange**.

Members of a Health Care Sharing Ministry

Under the ACA, members of health care sharing ministries are exempt from the individual mandate penalties. A health care sharing ministry is an organization:

- Which is described in Code (Code) section 501(c)(3) and exempt from tax under Code section 501(a);
- Members of which share a common set of ethical or religious beliefs and share medical expenses among themselves in accordance with those beliefs, and regardless of the state in which a member resides or is employed;
- Members of which retain membership even after they develop a medical condition;
- Which has itself (or a predecessor of which has) been in existence at all times since Dec. 31, 1999;
- Members of which have continuously and without interruption shared medical expenses since at least Dec. 31, 1999; and
- Which conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles, and makes the report available to the public upon request.

Eligibility for this exemption will be determined on a monthly basis. HHS will develop a list of recognized health care sharing ministries, although it is possible for entities that have not yet been identified to be eligible for this exemption.

Taxpayers with Income Below the Filing Threshold

Under this exemption, taxpayers whose income falls below the tax filing threshold will not be liable for an individual mandate penalty. This exemption covers individuals whose income is low enough that they are not required to file federal income taxes. An individual will not be required to file an income tax return to claim this exemption. If a taxpayer who qualifies for this exemption does, in fact, file a tax return, it does not affect eligibility for the exemption. In this case, the taxpayer may claim the exemption on his or her tax return.

Short Gap in Coverage

This exemption covers individuals who lack MEC only for one continuous period in a given year of less than three full calendar months. If there is more than one period in which an individual goes without coverage in a single year, this exemption will apply only to the first period without coverage. However, if a taxpayer has multiple short coverage gaps due to extended waiting periods after switching employment or because of other circumstances that prevent the taxpayer from obtaining coverage, the taxpayer may be eligible for a hardship or other exemption available through an Exchange.

Any month in which an individual is covered for one day will not count for purposes of calculating the period without coverage. Additionally, any month in which a taxpayer is otherwise exempt from the individual mandate will not be treated as a gap in coverage.

If a taxpayer's gap in coverage straddles two separate tax years, the months in the second year will not be counted in determining eligibility for the exemption in the first year. As a result, the individual can claim the short coverage gap exception for the first year even if the period continues for more than three calendar months into the next year. However, months without coverage in the first year will be counted in determining whether the individual lacked coverage for more than three months in the second year.

Incarcerated Individuals

Individuals who are incarcerated after final disposition of charges are exempt from the individual mandate. The IRS' final regulations clarify that an individual confined for at least one day in a jail, prison or similar penal institution or correctional facility after the disposition of charges is exempt for the month that includes the day of confinement. However, individuals who are incarcerated while awaiting final disposition of charges will not be exempt.

Members of Federally-recognized Indian Tribes

For purposes of this exemption, the IRS defines what constitutes a federally recognized Indian tribe. Because this definition is very limited, the final rule creates a separate hardship exemption for Indians who do not meet the IRS' definition but are eligible for services through the Indian Health Service or through Indian health care providers. If a member of a non-recognized Indian tribe does not obtain a hardship exemption, that individual may not claim an exemption to the individual mandate on their tax return.

Religious Conscience Objectors

Applicants are eligible for the religious conscience exemption if they are members of, and subscribe to the tenets of, religious groups that object to having insurance coverage (including Medicare and Social Security) on religious grounds. Qualification for the religious conscience exception can be established by proof of Social Security and Medicare tax exemption or by attestation of membership in a group recognized by the Social Security Administration (SSA) as exempt.

Parents can apply for this exemption for their families as well as themselves. An HHS proposed rule required children of families with an exemption certificate to apply on their own behalf at age 18. However, HHS' final rule recognizes that most groups covered by this exemption (mainly Mennonite and Amish groups) recognize the age of adulthood as age 21. As a result, the final rule raises the age to reapply on one's own behalf to age 21. Once an eligible family member reaches age 21, the Exchange will send notice of their need to apply on their own behalf.

Individuals Not Residing/Present in the United States

An individual / U.S. citizen or national is exempt from the individual mandate if the individual is not lawfully present in the U.S. in that year. For purposes of this exemption, an individual / U.S. citizen or national is treated as not lawfully present in the U.S. if the individual is either:

- An expatriate residing outside of the U.S. for that taxable year; or
- Has residence overseas and has international insurance coverage not subject to ACA-laws

Because all individual mandate exemptions are applied on an individual basis, the exemption for individuals not lawfully present in the U.S. will not apply to all members of a taxpayer's family if the taxpayer qualifies unless they also are residing overseas.

CLAIMING AN EXEMPTION

Four categories of exemptions will be available **exclusively through the tax filing process**—those for individuals who are not lawfully present, individuals with household income below the filing threshold, individuals who cannot afford coverage and individuals who experience a short coverage gap. In addition, certain subcategories of the hardship exemption will be available exclusively through the tax filing process.

Three exemptions—for members of a health care sharing ministry, individuals who are incarcerated and members of federally recognized Indian tribes—are available either through an Exchange or through the tax filing process.

The religious conscience exemption and most categories of the hardship exemption are available **exclusively through an Exchange**. Individuals must apply for these exemptions by filing an application with the Exchange. Individuals can apply for multiple exemptions simultaneously, but will generally be required to submit a new application for exemptions each year. The Exchanges will not send applicants notice of their obligation to reapply.

Once an application is received, the Exchange will determine eligibility and will issue certificates of exemption for each eligible applicant. Exchanges will grant certificates of exemption regardless of whether the applicant seeks coverage through the Exchange or not.

Exemption certificates for membership in a health care sharing ministry and for incarceration can only be granted retrospectively, since the Exchange cannot know prospectively how long the applicant will remain incarcerated or with the sharing ministry. Certificates for the religious conscience exemption and for members of Indian tribes can be applied for prospectively and retrospectively and can last indefinitely, since qualification for these exemptions persists from year to year.

Individuals who have been denied an exemption have the right to appeal. In addition, an applicant who is no longer qualified for an exemption but is otherwise eligible to enroll in a QHP will be eligible for a special enrollment period. Further guidance on claiming exemptions will be provided in IRS forms, instructions, publications or other guidance.

TRANSITION RELIEF FOR COVERAGE UNDER NON-CALENDAR YEAR PLANS

IRS Notice 2013-42 provides **transition relief** from the individual mandate penalty for certain months in 2014 for individuals who are eligible to enroll in eligible employer-sponsored health plans with plan years other than the calendar year (non-calendar year plans).

Many employer-sponsored plans have a non-calendar plan year. In general, most employer-sponsored plans do not permit employees to enroll after the beginning of a plan year unless certain triggering events occur, such as a change in employment status. According to the IRS in Notice 2013-42, without transition relief, many individuals eligible to enroll in non-calendar year plans would need to enroll in 2013 (before the individual mandate becomes effective) in order to maintain MEC for months in 2014.

Under this transition relief, an employee (or an individual having a relationship to the employee) who is eligible to enroll in a non-calendar year eligible employer-sponsored plan with a plan year beginning in 2013 and ending in 2014 (the 2013-2014 plan year) will not be liable for the individual mandate penalty for certain months in 2014. The transition relief begins in January 2014 and continues through the month in which the 2013-2014 plan year ends.

Also, any month in 2014 for which an individual is eligible for this transition relief will not be counted in determining a continuous period of less than three months for purposes of the short coverage gap exemption.

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