**Proposed Regulations: Exemptions from Individual Mandate, Minimum Essential Coverage, Shared-Responsibility Payments for Individuals, and Affordability for Employer-Sponsored Insurance**

February 1, 2013 CMS and the IRS issued a joint release in the federal register covering exemptions from the individual mandate, shared responsibility payments for individuals, and minimum essential coverage provisions. In the same edition of the register the IRS issued a final rule on affordability of employer-sponsored insurance for related individuals.

**Minimum Essential Coverage**

The Affordable Care Act designated certain types of coverage as minimum essential coverage and provided the Secretary of Health and Human Services in coordination with the Secretary of the Treasury the ability to designate other coverage as minimum essential coverage. With the noted exceptions, the proposed regulations recognize the below types of coverage as minimum essential coverage.

- Coverage under a government-sponsored program
  - The Medicare Program
  - The Medicaid Program – with exceptions
  - The CHIP Program
  - Veterans Health Care
  - Coverage for Peace Corps Volunteers
- Coverage under an employer-sponsored health plan
- Coverage under a health plan offered in the individual market within a State
- Coverage under a grandfathered health plan
- Additional coverage as specified
  - Self-funded student health coverage
  - Foreign health coverage
  - Refugee medical assistance
  - Medicare advantage plans
  - State high risk pool coverage
  - Coverage for AmeriCorps volunteers

Sponsors of other coverage types may apply to HHS to have their coverage recognized as minimum essential coverage under the additional coverage as specified category. In general, individuals with access to minimum essential coverage other than coverage in the individual market are not eligible for tax subsidies on the Exchange. However, for coverage types not named in ACA but recognized by both the Secretary of HHS and the Secretary of the Treasury as minimum essential coverage additional guidance will be issued on if access to these types of coverage exclude individuals from eligibility for premium tax credits. HHS will maintain a public list of the types of coverage recognized as minimum essential coverage.

Certain types of Medicaid coverage are not considered minimum essential coverage. These include:

- Coverage for optional family planning services
- Coverage for optional tuberculosis-related services
- Coverage of pregnancy-related services
- Coverage of emergency-only medical services

In addition to the above mentioned Medicaid exceptions, four categories of coverage of excepted benefits specified in section 2791(c) of the Public Health Service Act are not considered minimum essential coverage. These coverage categories include:

- Accidental death and dismemberment coverage, disability insurance, general liability insurance, automobile liability insurance, workers' compensation, credit-only insurance, and coverage for employer-provided on-site medical clinics.
- Limited-scope vision benefits, long-term care benefits, and benefits provided under certain health flexible spending arrangements.
- Separate policies for coverage of only a specified disease (example: cancer only policies) or fixed indemnity insurance
- If offered on a separate policy from primary health coverage: Medicare supplemental policies, TRICARE supplemental policies, and similar supplemental coverage for a group health plan

**Exemptions**

Individuals are required to maintain minimum essential coverage for themselves and their dependents unless they qualify for an exemption. There are nine types of exemptions, two types may only be granted by the Exchange, three types may be granted by the Exchange or by the IRS, and four types may only be granted by the IRS. Depending on the type of exemption it may be granted on a monthly, annual, or multi-year basis. An individual may be eligible for multiple exemptions at the same time. If an individual applies for multiple exemptions the Exchange or IRS will be required to assess eligibility for each exemption requested by an individual. Exemptions can be granted for a month if the individual is eligible for the exemption for at least one day of the month.

**Table 1: Types of Exemptions**

| # | Exemption | Exemption Qualifications | Through Agency | Other |
|---|---|---|---|---|
| 1 | Religious Conscious | Be a practicing member of recognized religious sect or division (established pre-1950) with recognized ethical or moral objections to health insurance. Must also waive Social Security benefits. | Exchange | • Exemption may be granted for more than one year<br>• Exemption will be granted prospectively or retrospectively<br>• Child turning 18 has to re-submit exemption application |
| 2 | Hardship | Individual who is determined to | Exchange | Details of Hardship |



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| | | have suffered a hardship with respect to the capability to obtain coverage under a QHP | | Exemptions discussed below |
| 3 | Indian Tribe | Be a member of a federally recognized tribe | Exchange or IRS through tax filing process | • Exchange must grant eligibility exemption on continuing basis<br>• Granted until Exchange notified no longer in effect by applicant<br>• May be granted prospectively or retrospectively |
| 4 | Health Care Sharing Ministry | Member of Health Care Sharing Ministry 503(c) registered organization | Exchange or IRS through tax filing process | • Reapply every year<br>• Only eligible if a member of ministry at time application submitted; will not be provided based on probable future membership<br>• Exchange will only grant in year it applies<br>• Exemption for previous year must go through tax filing process |
| 5 | Incarceration | Incarcerated at least one day in a month after the disposition of charges | Exchange or IRS through Tax filing process | Exchange can only grant exemption if requested in applicable calendar year, IRS can grant retrospectively |
| 6 | Household income below filing limit | Individuals below the filing limit | IRS through tax filing process | Requires assessment of actual household income to be completed after year end through tax filing process |
| 7 | Inability to afford coverage | Lowest cost Minimum Essential Coverage costs more than 8% of household income | IRS through tax filing process | Requires assessment of actual household income and cost of coverage to be completed after year end through tax filing process |
| 8 | Not-lawfully present | Individuals not lawfully present not required to be covered | IRS through tax filing process | Exemption implemented exclusively through tax filing |
| 9 | Short coverage gaps | One gap of less than 3 months permitted without penalty | IRS through tax filing process | Exemption may not be granted until year concludes |

Individuals receiving a hardship exemption may be granted such an exemption in five separate categories. These exemptions may only be granted by the Exchange and can be processed retrospectively or prospectively.

**Table 2: Hardship Exemptions**

| # | Hardship Exemption | Description | Other |
|---|---|---|---|
| 1 | Personal Circumstances | • Significant unexpected increase in essential expenses due to financial or domestic circumstances including unexpected natural or human-caused events.<br>• Expense of purchasing health insurance would have caused individual to experience serious deprivation of food, shelter, clothing or other necessities.<br>• Individual has experienced other factors similar to the above and this prevented obtaining minimum essential coverage. | Comments requested on if this type of hardship exemption should be granted month to month or for entire year – proposed rule is for a month to month exemption. |
| 2 | Affordability | • Cost of coverage is greater than 8% of income for individual or dependent.<br>• Exemption is only available from the Exchange as a hardship exemption through the end of the open or special enrollment period.<br>• Retrospective affordability exemptions granted by IRS through tax filing process. | • Same as IRS affordability exemption but may be awarded prospectively.<br>• Individuals awarded this exemption may enroll in catastrophic plan.<br>• Unclear if there will be a reconciliation process between IRS and Exchange. |
| 3 | Below filing threshold | Individual exempt if not required to file because gross income below filing threshold; but individual files and dependent income bumps above filing threshold. | |
| 4 | Medicaid Expansion population | Individual exempt if determined ineligible for Medicaid solely because state did not expand Medicaid. | |
| 5 | Employer-sponsored coverage exception | Individuals exempt if multiple members determined eligible for affordable self-only employer sponsored coverage but the combined cost of coverage exceeds 8% of income. | Lack of affordable coverage for related individuals is under IRS coverage exemption. |

Individuals receiving an affordability exemption either prospectively through the Exchange or retrospectively through the IRS must demonstrate that the lowest cost minimum essential coverage exceeded 8% of income. Unlike determinations for insurance affordability programs, determinations for exemptions based on affordability income do not include non-taxable social security benefits as income but are increased by any amount of employer salary reduction agreement[1]. Affordability exemptions can be conducted retrospectively by the IRS and would be based on taxable income for the most recent year tax data available or they can be conducted prospectively by the Exchange and would be based on projected annual income.

**Table 3: Affordability Exemptions**

| Type | Description | Other |
|---|---|---|
| Affordability for employer-sponsored coverage – self | For the purpose of an exemption, self-only coverage affordability is based on the lowest cost self-only coverage. Coverage that exceeds 8% of income is unaffordable and the individual may receive exemption. | |
| Affordability for employer sponsored coverage-related individual | Affordability for related individuals is determined based on the lowest cost employer-sponsored plan that covers both the employee and related individuals. If the cost of coverage for the family is greater than 8% of income then the related individuals are eligible for an exemption. | If cost of coverage for self-only is less than 8% of income then the employee is not exempt even if cost of coverage for family coverage is greater than 8% of income. |
| Affordability for coverage in individual market | For individuals only eligible in the individual market, affordability is based on the lowest cost bronze plan that covers the applicable individuals; or the taxpayer may elect to base the affordability on the lowest cost bronze plan that would cover a similar group (i.e. an aunt and two nieces could base affordability on lowest cost Adult +2 plan). Any advanced payments of the premium tax credit that the individual(s) would be eligible for are taken into account. If contribution for the lowest cost bronze plan less the value of PTCs is greater than 8% of income then individuals are exempt. | Unknown if cost coverage under this exemption would be additive with cost of employer sponsored coverage. For example, the cost of self-only employer-sponsored coverage or employer and applicable family coverage is less than 8% but with addition of cost of individual market coverage for dependent not eligible on employer sponsored plan aggregate cost is greater than 8%. It is unclear if there would be an exemption in this case. |

There is a discrepancy between the affordability provisions and the premium tax credit provisions. Individuals and families who have access to minimum essential coverage where the cost exceeds 8% of

[1] Comments are requested on how to determine the amount of income to add when individual has a salary reduction arrangement with employer as part of receiving insurance.

income but is less than 9.5% of income will be eligible for an exemption but not eligible for a premium tax credit. For related individuals in an employer-sponsored plan, eligibility for a premium tax credit is only based on the contribution for self-only coverage so if the employee's contribution for self-only coverage costs less than 9.5% of income, none of the employee's dependents eligible for employer-sponsored coverage could receive premium tax credits in the Exchange regardless of the cost of family coverage. Additionally, premium tax credits for individuals between 250% and 400% FPL[2] only come into effect after the individual or family has spent 8.05% to 9.5% of their income to purchase insurance. Individuals in this income range could potentially be eligible both for a premium tax credit and an affordability exemption. The exemption is not guaranteed in these circumstances because the amount of the premium tax credit is based on the cost of the second lowest cost silver plan and qualification for the exemption is based on the lowest cost bronze plan.

**Exemption Processing**

Individuals may apply for an exemption through the Exchange or with the IRS during the tax filing process. Exemptions processed by the Exchange may use the single streamlined application or a separate exemption application dependent on the timing and type of exemption request. Any information collected on the single streamlined application may not be requested again for the purposes of verifying an exemption. The Exchange is required to verify eligibility for exemptions through processes similar to those used to verify eligibility for insurance affordability programs. Individuals have the right to appeal exemptions. State exchanges may defer eligibility for exemptions to HHS. Further guidance is expected on separate applications for exemptions and on the appeal process for exemptions.

**Shared-Responsibility Payments**

Individuals not granted exemptions are responsible for maintaining minimum essential coverage for themselves and their non-exempt dependents for each month in the year. Any month where the individual or his or her dependents are covered by minimum essential coverage or eligible for an exemption for at least one day counts as a covered month. For months where the non-exempt individual or his or her non-exempt dependents were not covered by minimum essential coverage for at least one day, a shared-responsibility payment is owed for that month. Individuals owe shared responsibility payments for themselves and any dependents that - for any month - are not covered by minimum essential coverage or granted an exemption.

Individual shared-responsibility payments are assessed on a monthly basis and individuals must pay for each month they are without coverage or an exemption for at least one day of the month. Penalties will be calculated for each non-exempt individual in the household without coverage. Penalties may not be greater than the national average premium for a QHP bronze plan that would cover the applicable individual(s). Under this ceiling amount, the penalty is the greater of the dollar amount penalty or the percentage of taxable income amount penalty. Dollar amount penalties are charged to every individual

[2] $28,725 for and individual and $58,875 for a family of 4 based on 2013 federal poverty level

without coverage in the household and the maximum dollar amount penalty is 300% of the individual dollar amount penalty.

**Table 4: Shared-responsibility payments amounts[3]**

| | 2014 | 2015 | 2016 |
|---|---|---|---|
| Annual % Shared-responsibility payment | 1% of taxable income[4] | 2% of taxable income | 2.5% of taxable income |
| Annual $ Penalty- Individual | $95 | $325 | $695 |
| Monthly $ Penalty- Individual | $8 | $27 | $56 |
| Annual Maximum $ Penalty Family[5] | $285 | $975 | $2085 |
| Annual Maximum $ Penalty Family | | | |
| Maximum $ Penalty <18 | $48 | $163 | $348 |
| Income level where % penalty applies -Individual | >$9,500 taxable income | >$16,500 taxable income | >$27,800 taxable income |
| Income level where % penalty applies –Family with max $ penalty [6] | $28,500 | $48,750 | $83,400 |

Unlike calculation of the affordability determination, it does not appear that payments of the shared-responsibility payment are reduced by amounts that an individual would have been eligible for under a premium tax credit. The maximum amount an individual or family could pay is the national average cost of bronze plans for the applicable individuals; and it is possible that this would be greater than the amount they would pay for the lowest cost bronze plan with the premium tax credit applied.

Shared-responsibility payments are assessed when individuals file taxes. Unlike assessment of other taxes, the IRS may not file notice of lien or levy on the taxpayer's property for failure to pay an assessed shared-responsibility payment; and the taxpayer cannot be subject to criminal prosecution or penalty for failing to pay the assessed payment in a timely manner. However, the IRS may collect shared-responsibility payments by deducting the owed amount from individuals' overpayment returns.

[3] Penalty is the greater of the amounts show in the table, but may not be greater than the average national QHP bronze plan premium.

[4] Income for the purposes of exemptions is income in the year the exemption is requested, 1/12 of applicable percentage for the year per month with a coverage gap

[5] Maximum dollar amount for a family

[6] Family is 3 to 6 individuals dependent on ages of applicable family members