

Health Insurance Mandate for Individuals



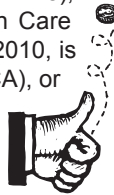
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OVERVIEW

Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (P.L. 111-148), signed March 23, 2010, as amended by the Health Care and Education Reconciliation Act, signed March 31, 2010, is collectively referred to as the Affordable Care Act (ACA), or simply as *federal health care reform*.



Marketplaces. Among its many provisions, the ACA restructured the private health insurance market, set minimum standards for health coverage, created a mandate for most U.S. residents to obtain health insurance coverage and established state insurance exchanges (that is, marketplaces) for the purchase of private health insurance. Many states decided not to set up a state insurance marketplace so the federal government set up a marketplace for individuals and small businesses to use in those states. See Tab 2 for further discussion.

Federal subsidies. Certain low-income and moderate-income individuals and families are able to receive federal subsidies to help pay for premiums and cost-sharing if they purchase coverage through a state insurance marketplace. The new law also (1) expanded eligibility for Medicaid; (2) amended the Medicare program to reduce the growth in spending; (3) imposed an excise tax on insurance plans found to have high premiums; and (4) made numerous other changes to the Internal Revenue Code, Medicare, Medicaid, the State Children's Health Insurance Program (CHIP) and many other federal programs. See Tab 3 for further discussion.

Individual mandate. Considerable attention has been paid to Section 1501 of Title I of the ACA, which requires most individuals to have health insurance coverage that meets certain standards or pay a penalty. Under this provision, individuals must maintain minimum essential coverage (MEC) for themselves and their dependents. See *Minimum essential coverage (MEC)* on Page 1-2. Those who do not may be required to pay a penalty (that is, the individual shared responsibility penalty) for each month of noncompliance.



Applicable individuals with MEC for the entire calendar year check the box on line 61 of Form 1040 for full-year coverage. If all family members do not have coverage for each month of the year, the worksheet in the Form 8965, *Health Coverage Exemptions*, instructions is used to calculate the amount of the individual shared responsibility payment.

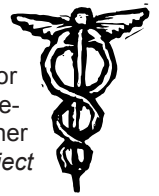
Exemptions. Some individuals are eligible for an exemption from the requirement to maintain MEC. An individual is not subject to the individual shared responsibility penalty for any month that he qualifies for an exemption. Exempt individuals complete Form 8965 to show they are not subject to a penalty for some or all months of the year. See a copy of Form 8965 and its instructions starting on Page 10-67.

WHO IS REQUIRED TO HAVE HEALTH INSURANCE?

Most individuals (that is, applicable individuals) must ensure that they, and their dependents are covered under MEC for each month of the year or qualify for an exemption. (IRC §5000A)

Applicable individuals are all individuals who do not meet one of these statutory exemptions: [IRC §5000A(d); Reg. §1.5000A-3]

- 1) An individual with a religious exemption,
- 2) An individual not lawfully present or
- 3) An incarcerated individual.



Applicable individuals who do not have MEC for each month of the year are subject to the shared responsibility penalty unless they meet one of the other exemption criteria (see *Other Individuals Not Subject to the Shared Responsibility Penalty* on Page 1-2).

Religious Exemptions

Religious exemptions include individuals with a religious conscience exemption and members of a health care sharing ministry. [IRC §5000A(d)(2)]

Religious conscience exemption:

- A religious conscience exemption is only granted to a member of a recognized religious sect or division as described in IRC Section 1402(g)(1), and an adherent of established tenets or teachings of such a sect or division because he is conscientiously opposed to acceptance of the benefits of any private or public insurance that makes payments in the event of death, disability, old-age or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). [IRC §5000A(d)(2)(A); Reg. §1.5000A-3(a)]
- Such an exemption may be granted only if the application contains or is accompanied by evidence of an individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof and his waiver of all benefits and other payments under Titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all benefits and other payments to him on the basis of the wages and self-employment income of any other person. This is only true if the Commissioner of Social Security finds that the sect or division has the established tenets or teachings referred to in the preceding sentence, it is the practice, and has been for a period of time that he deems to be substantial, for members of the sect or division thereof to make reasonable provision for their dependent members in view of their general level of living, and such sect or division thereof has been in existence at all times since December 31, 1950.
- An exemption may not be granted to any individual if any benefit or other payment under Titles II and XVIII of the Social Security

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Act became payable or, but for Section 203 or 222(b) of the Social Security Act, would have become payable at or before the time of the filing of such waiver.

- A religious conscience exemption certification is only issued by a state insurance marketplace and not by the IRS. [Reg. §1.5000A-3(a)(2)]



A religious conscience exemption issued for an adult age 21 or older is valid until the individual notifies the marketplace that he is no longer a member of the religious sect [HHS Reg. 45 CFR 155.605(c)(2)]. Therefore, an individual does not need to reapply for this exemption each year. Exemptions issued for children are valid until the month after their 21st birthday. At that time, the individual must submit a new application as an adult to maintain the exemption.

An individual must report the religious conscience exemption each year in Part I of Form 8965 when filing a federal income tax return. The Exemption Certificate Number (ECN) received from the marketplace when the exemption was granted is entered in column c of Part I. See a copy of Form 8965 and its instructions starting on Page 10-67.

Health care sharing ministry. A *health care sharing ministry* (HCSM) is an organization described in IRC Section 501(c)(3) and exempt from taxation under IRC Section 501(a) whose members share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the state in which a member resides or is employed.

- The members must retain membership even after they develop a medical condition.
- The organization (or a predecessor of the organization) (1) must have been in existence at all times since December 31, 1999, (2) medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999 and (3) conducts an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public upon request. [Reg. §1.5000A-3(b)(2)]

The health care sharing ministry exemption can be granted during the year by a state insurance marketplace and reported in Part I of Form 8965. The individual must provide proof of membership in the HCSM to obtain the exemption. Alternatively, the exemption can be claimed by completing Part III of Form 8965 when filing a federal income tax return. See a copy of Form 8965 and its instructions starting on Page 10-67.

Individuals Not Lawfully Present

An *individual not lawfully present* includes any individual who is not a citizen or national of the U.S. and is either a nonresident alien or someone who is unlawfully present in the U.S. on any day in the month. [Reg. §1.5000A-3(c)(2)(ii)(B)]

This exemption is claimed in Part III of Form 8965 filed with the individual's tax return. See a copy of Form 8965 and its instructions starting on Page 10-67.

Incarcerated Individual

An individual is an exempt individual for a month that includes a day on which the individual is incarcerated. The term *incarcerated* means confined, after the disposition of charges, in a jail, prison or similar penal institution or correctional facility [Reg. §1.5000A-3(d)(2)]. This exemption can be granted by a marketplace during the year the individual is incarcerated. Individuals can apply for the exemption for the months incarcerated in the current year after being released from



incarceration. The application to apply for an exemption due to incarceration and instructions for the application are available at <https://marketplace.cms.gov/applications-and-forms/exemption-applications.html>. The marketplace provides an exemption certificate with an ECN when it grants the exemption. Exemptions granted by the marketplace are reported in Part I of Form 8965 when filing a federal income tax return. Alternatively, this exemption can be claimed on the federal income tax return filed for the year by completing Part III of Form 8965. See a copy of Form 8965 and its instructions starting on Page 10-67.

OTHER INDIVIDUALS NOT SUBJECT TO THE SHARED RESPONSIBILITY PENALTY

Generally, applicable individuals who do not maintain MEC will be subject to the shared responsibility penalty (see *Applicable individuals* on Page 1-1 for statutory exemptions from being classified as an applicable individual). However, an applicable individual who does not maintain MEC is exempt from the shared responsibility penalty if any of the following apply: [IRC §5000A(d) and (e); Reg. §1.5000A-3]

- The individual cannot afford coverage.
- The individual's household income is below the filing threshold.
- The individual is a member of an Indian tribe.
- The individual has a short coverage gap.
- The individual lives in a state that did not expand Medicaid coverage and would have qualified for Medicaid coverage if the state had expanded Medicaid.
- The individual has suffered a hardship as determined by HHS.

See *Types of Coverage Exemptions* on Page 1-7 for a summary of the coverage exemptions available.

Individuals Who Cannot Afford Coverage

An individual is exempt for a month in which the individual lacks affordable coverage [Reg. §1.5000A-3(e)]. An individual lacks affordable coverage in a month if the individual's required contribution (determined on an annual basis) for MEC for the month exceeds 8.05% for 2015 (8.13% in 2016) of the individual's household income. An individual's household income is increased by any amount of the required contribution made through a salary reduction arrangement that is excluded from gross income. This is referred to as *adjusted household income*. [Reg. §1.5000A-3(e)(1)] The exemption for unaffordable coverage is claimed in Part III of Form 8965 filed with an individual's income tax return. See a copy of Form 8965 and its instructions starting on Page 10-67.

Household income. *Household income* with respect to any taxpayer for any tax year is the amount equal to the sum of the taxpayer's modified adjusted gross income (MAGI), plus the aggregate MAGIs of all other individuals who were considered in determining the taxpayer's family size and were required to file a tax return for that tax year. [IRC §5000A(c)(4)(B); Reg. §1.5000A-1(d)(10)]

Modified adjusted gross income. *MAGI* means AGI increased by any amount excluded from gross income under IRC Section 911 (the foreign earned income exclusion) and any amount of tax-exempt interest received or accrued by the taxpayer during the tax year. [IRC §5000A(c)(4)(C)]

Family size. The taxpayer's family size equals the number of individuals for whom the taxpayer is allowed a deduction under IRC Section 151 (relating to the allowance of deductions for personal exemptions) for the tax year. [Reg. §1.5000A-1(d)(4)]

Required contribution for employees eligible for coverage under an employer-sponsored plan. When determining if coverage is affordable, the required contribution for an employee eligible

for coverage through an eligible employer-sponsored plan is the portion of the annual premium that the employee would pay for the lowest cost self-only coverage in which he can enroll. [IRC §5000A(e)(1)(B)(i); Reg. §1.5000A-3(e)(3)(ii)(A)]

In general, an employee or related individual is treated as eligible for coverage under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for any day in that month during an open or special enrollment period, regardless of whether the employee or related individual is eligible for any other type of MEC. [Reg. §1.5000A-3(e)(3)(i)(A)]



An employee eligible for coverage under an eligible employer-sponsored plan is not treated as eligible as a related individual for coverage under a plan (for example, a plan offered by the employer of the employee's spouse) for any month included in the plan year of the eligible employer-sponsored plan offered by the employer.

An individual who may enroll in continuation coverage required under federal law or a state law that provides comparable continuation coverage is eligible for coverage under an eligible employer-sponsored plan only if the individual enrolls in the coverage.

Example: Erin is an unmarried individual with no dependents. During November 2014, Erin is eligible to enroll in self-only coverage under a plan offered by her employer for calendar year 2015. If Erin enrolls in the coverage, she is required to pay \$5,000 of the total annual premium. During 2015, Erin's adjusted household income is \$60,000 and her required contribution is \$5,000, the portion of the annual premium she pays for self-only coverage. Erin lacks affordable coverage for 2015 because her required contribution (\$5,000) is greater than 8.05% of her adjusted household income (\$4,830).

For an individual who is eligible for coverage under an eligible employer-sponsored plan because of a relationship to an employee and for whom a personal exemption deduction under IRC Section 151 is claimed on the employee's federal income tax return (related individual), the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest-cost family coverage that would cover the employee and all related individuals who are included in the employee's family and are not otherwise exempt. [Reg. §1.5000A-3(e)(3)(ii)(B)]



Example: Bill and Cindy are married and have two dependent children, Danny and Elaine. The family's 2015 adjusted household income is \$90,000. Bill is eligible to enroll in self-only coverage under a plan offered by his employer for calendar year 2015 at a cost of \$5,000 to him. Bill has affordable coverage for 2015, because his required contribution (\$5,000) does not exceed 8.05% of his adjusted household income (\$7,245). Cindy, Danny and Elaine are eligible to enroll in family coverage under the same plan for 2015 at a cost of \$20,000 to Bill. Cindy, Danny and Elaine lack affordable coverage for 2015, because their required contribution (\$20,000) exceeds 8.05% of their adjusted household income (\$7,245).

Two or more family members employed. If two or more family members are employed and their respective employers offer self-only and family coverage under eligible employer-sponsored plans, each employed individual determines the affordability of coverage using the premium for self-only coverage offered by that individual's employer and the cost of family coverage under each employer's plan. Each may have affordable coverage [because it does not exceed 8.05% in 2015 (8.13% in 2016) of their adjusted household income]; although in aggregate the premiums for the lowest-cost self-only coverage or family coverage exceed the applicable percentage. In such a situation, the family qualifies for an unaffordability exemption.

Example #1: Marina and Gary are married. Each works for a different employer that has an eligible employer-sponsored calendar year health plan. The family's adjusted household income for 2015 is \$90,000.

Marina's required contribution for the lowest-cost, self-only coverage offered through her employer's health plan is \$5,000, which is 5.5% of the family's 2015 household income. Therefore, Marina's insurance is affordable.

Gary's required contribution for the lowest-cost, self-only coverage offered through his employer's health plan is \$6,000, which is 6.7% of the family's 2015 household income. Therefore, Gary's insurance is affordable.

Together, the premiums total \$11,000, which is 12% of their adjusted household income. Therefore, both are considered to have unaffordable coverage based on the aggregate cost of the lowest-cost self-only coverage available. The lowest-cost family coverage available is from Marina's employer and her share of premiums is \$10,000. Because the lowest-cost family coverage available is also more than 8.05% of their adjusted household income, they are considered to have unaffordable coverage for the year and neither is subject to the individual shared responsibility penalty.

Example #2: Assume the same facts as in Example #1, except the couple also has two children, Erin and Samantha.

The lowest-cost family option available through either employer that would provide coverage for one adult and two children costs \$20,000. It is available through Marina's employer, so the additional cost is \$15,000 (\$20,000 – \$5,000 self-only coverage for Marina). This additional required contribution is 16.6% of the family's 2015 adjusted household income. Therefore, Gary, Marina, Erin and Samantha qualify for the unaffordable coverage exemption for 2015.

Part-year coverage. The required contribution for part-year coverage is determined separately for each employment period that is less than a full calendar year or for the portions of an employer's plan year that fall in different tax years of the individual. Coverage under an eligible employer-sponsored plan is affordable for a part-year period if the annualized required contribution for self-only coverage (in the case of the employee) or family coverage (in the case of a related individual) under the plan for the part-year period does not exceed the required contribution percentage of the individual's household income for the tax year.

The annualized required contribution is calculated as follows:

$$\text{Required contribution for the part-year period} \times \frac{12}{\text{Number of months in the part-year period during the calendar year}}$$

Note: Only full calendar months are included in the computation. [Reg. §1.5000A-3(e)(3)(ii)(C)]

Example: Fran is an unmarried individual with no dependents. During June 2015, Fran is eligible to enroll in self-only coverage under a plan offered by her employer for the period July 2015 through June 2016 at a cost to her of \$4,750. During June 2016, Fran is eligible to enroll in self-only coverage under a plan offered by her employer for the period July 2016 through June 2017 at a cost to her of \$5,500. During 2016, Fran's household income is \$60,000.

Fran's annualized required contribution for the period January 2016 through June 2016 is \$4,750 (\$2,375 paid for premiums in 2016 × 12/6). She has affordable coverage for January 2016 through June 2016 because her annualized required contribution (\$4,750) does not exceed 8.13% of her household income (\$4,878).

Fran's annualized required contribution for the period July 2016 to December 2016 is \$5,500 (\$2,750 paid for premiums in 2016 × 12/6). Fran lacks affordable coverage for July 2016 through December 2016 because her annualized required contribution (\$5,500) exceeds 8.13% of her household income (\$4,878).

Required contribution for an individual who is ineligible for coverage under an eligible employer-sponsored plan. For an individual who is ineligible for coverage under an eligible employer-sponsored plan, the *required contribution* is the premium for the applicable marketplace plan, reduced by the maximum amount

of any allowable premium tax credit for the tax year, determined as if the individual was covered for the entire tax year by a QHP offered through the marketplace serving the rating area where the individual resides [Reg. §1.5000A-3(e)(4)(ii)(C)]. (See Tab 3 for further discussion.)

The *applicable plan* means the single lowest-cost bronze plan available in the individual market through the marketplace serving the rating area in which the individual resides that would cover all individuals in the individual's nonexempt family [Reg. §1.5000A-3(e)(4)(ii)(B)]. An individual's *nonexempt family* means the family that includes the individual, excluding any family members who are otherwise exempt or are treated as eligible for coverage under an eligible employer-sponsored plan.

If the marketplace serving the rating area where the taxpayer resides does not offer a single bronze plan that would cover all individuals included in the taxpayer's nonexempt family, the premium for the applicable plan is the sum of the premiums for the lowest-cost bronze plans that are offered through the marketplace serving the rating area where one or more of the individuals reside and that would, in the aggregate, cover all the individuals in the taxpayer's nonexempt family. [Reg. §1.5000A-3(e)(4)(ii)(B)(2)(i)]

Annualized required contribution. For each individual, affordability is determined separately for each period described that is less than a 12-month period. Coverage under a plan is affordable for a part-year period if the annualized required contribution for coverage under the plan for the part-year period does not exceed the required contribution percentage of the individual's household income for the tax year.

The annualized required contribution is calculated as follows:

$$\text{Required contribution for the part-year period} \times \frac{12}{\text{Number of months in the part-year period during the calendar year}}$$

Note: Only full calendar months are included in the computation.

The following examples illustrate the provisions for individuals who are ineligible for coverage under an eligible employer-sponsored plan. To fully understand the following example, which includes the reduction of the maximum premium tax credit allowable under IRC Section 36B for the tax year, see the calculation of the premium tax credit in Tab 3.

Example: Erin is an unmarried individual with no dependents. Erin is ineligible to enroll in any MEC other than coverage in the individual market for all months of 2016. The annual premium for the lowest-cost bronze self-only plan in Erin's rating area (her applicable plan) is \$5,000. During 2016, Erin's household income is \$40,000.

Assume Erin's premium tax credit for 2016 would be \$1,500. Therefore, her net premium cost is \$3,500 (\$5,000 – \$1,500). Because this amount is more than 8.13% of her 2016 household income (\$3,252), Erin is eligible for the unaffordable coverage exemption for 2016. The premium tax credit is discussed in Tab 3.

Using projected household income instead of actual household income. The previous discussions used actual 2015 (or 2016) household income to determine if insurance was affordable. Actual household income, of course, is not available until the individual is filing his income tax return. However, the decision to enroll in employer-sponsored insurance or in an individual policy generally is made before the beginning of the calendar year, when actual household income is not known. HHS and the IRS allow taxpayers to apply for an unaffordability exemption from the marketplace based on an affordability determination using projected income.

When using projected income to determine affordability, the employer-sponsored coverage must provide more than MEC. It must be a plan that provides minimum value (see Tab 4 for further discussion). Individuals apply for this exemption using a hardship exemption application.

Household Income Below the Filing Threshold

An applicable individual is exempt from the shared responsibility penalty for any tax year for which the individual's household income is less than the applicable filing threshold [IRC §5000A(e)(2); Reg. §1.5000A-3(f)]. The *applicable filing threshold* is the amount of gross income that would trigger an individual's requirement to file a federal income tax return under IRC Section 6012(a)(1). The requirement to file a federal tax return depends on filing status, age and types and amounts of income.

The applicable filing threshold for an individual who is properly claimed as a dependent by another taxpayer equals the other taxpayer's applicable filing threshold. See *Minimum Income Required to File an Income Tax Return* on Page 1-5.

An individual does not have to file an income tax return to qualify for this exemption. However, if a tax return is filed, Form 8965 should be completed with the exemption claimed on line 7a, in Part II of Form 8965. See a copy of Form 8965 and its instructions starting on Page 10-67.

Gross Income Below the Filing Threshold

Any individual who cannot be claimed as a dependent by another individual and whose gross income for a tax year is below the filing requirement threshold to file a federal income tax return is an exempt individual for the entire tax year. [HHS Reg. 45 CFR 155.605(g)(3)]

Gross income generally means money, goods, property and services received subject to income tax [IRC §61(a)]. It does not include nontaxable income (such as tax-exempt interest). Only the taxable portion of Social Security benefits is included. For sales of property, gross income is the amount realized in excess of basis [Reg. §1.61-6(a)]. Gross income also includes gain from the sale of a principal residence that is otherwise excluded under IRC Section 121 (that is, the excluded gain needs to be included as gross income) [IRC §6012(c)]. Income from sources outside the U.S. and gains, but not losses, that are reported on Form 8949 or Schedule D also are included in an individual's gross income.

Income from a business [which includes income reported on Schedule C (Form 1040), line 7, or Schedule F (Form 1040), line 9] is included in gross income. When calculating gross income, income is not reduced by any losses, including any loss on Schedule C, line 7, or Schedule F, line 9.

An individual's gross income may not be the same as his household income. This exemption is reported by checking the box in Part II, line 7b of Form 8965 when filing a federal income tax return. See a copy of Form 8965 and its instructions starting on Page 10-67.

Certain Individuals Ineligible for Medicaid

Some states did not expand Medicaid coverage to all individuals whose income is less than 138% of the applicable year federal poverty line (FPL). Generally, individuals residing in these states, who would have been eligible for Medicaid had the state expanded Medicaid coverage, are exempt from the individual mandate. The exemption applies for the entire tax year, and is claimed in Part III of Form 8965 when filing a federal income tax return.

Members of Indian Tribes

An applicable individual is exempt from the shared responsibility penalty for any month that includes a day on which the individual is a member of an Indian tribe [Reg. §1.5000A-3(g)]. The term *Indian tribe* means any Indian tribe, band, nation, pueblo or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians under IRC Section 45A(c)(6).

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