Health Insurance Mandate for Individuals

Tab 1 Topics

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).

Insurance marketplaces. To assist individuals in obtaining health insurance coverage that meets the individual mandate requirements, the ACA provides for state insurance marketplaces. Individuals can purchase health insurance through the state marketplaces. See Tab 2 for further discussion of the state marketplaces.

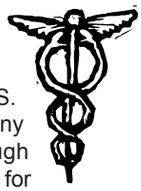
Federal subsidies. Certain low-income and moderate-income individuals and families are able to receive federal subsidies to help pay for premiums and cost-sharing if they purchase coverage through a state insurance marketplace. The ACA also expanded eligibility for Medicaid and amended the Medicare program to reduce the growth in spending. See Tab 3 for further discussion of the premium tax credit and cost-sharing-reduction subsidy.

Individual mandate. Section 1501 of Title I of the ACA 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 1-7. Those who do not may be required to pay a penalty (that is, the individual shared responsibility penalty) for each month of noncompliance.

Taxpayers who have MEC for each month of a year and whose family members have MEC for each month they are part of the tax household can check the box on line 61 of Form 1040 for full-year coverage. If the box on line 61 cannot be checked, the flowchart and worksheets in the Form 8965, *Health Coverage Exemptions*, instructions are used to calculate the amount of the individual shared responsibility payment due with the return because one or more family members did not have the required MEC or did not have an exemption for each month of the year.

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 1-15.

Who Is Required to Have Health Insurance?



Most individuals must ensure that they, and their dependents have MEC for each month of the year or qualify for an exemption. (IRC Sec. 5000A)

Generally, the individual mandate applies to U.S. citizens and permanent residents. Additionally, any foreign nationals residing in the U.S. long enough during a calendar year to qualify as resident aliens for income tax purposes are subject to the mandate.

Individuals Who Are Exempt From the Shared Responsibility Penalty

Generally, applicable individuals who do not maintain MEC are subject to the shared responsibility penalty. However, an individual who does not maintain MEC is not subject to the individual shared responsibility penalty for any month during which he qualifies for one or more of the following exemptions for any day during the month:

- Member of a recognized religious sect who has a religious conscience exemption.
- Member of a health care sharing ministry.
- Incarcerated individual, other than incarcerated pending the disposition of charges.
- Member of a federally recognized Indian tribe.
- Individual qualifying for services through an Indian health care provider or the Indian Health Service.
- Individual with a short coverage gap.
- Individual whose household income or gross income is below the threshold for filing an income tax return.
- U.S. citizen living abroad or noncitizen meeting certain criteria.
- Individual who was born or adopted, or who died during the calendar year.
- Individual ineligible for Medicaid solely because the state of residence did not participate in Medicaid expansion.
- Individual with household income below 138% of the applicable year federal poverty line (FPL) for the family size who resides in a state that did not expand Medicaid coverage.
- Individual enrolled in certain limited benefit Medicaid or CHIP programs.
- Individual eligible to enroll in coverage that qualified for the health coverage tax credit in July–December 2016, but did not enroll in coverage because procedures were not in place.
- Individual who qualifies for a general hardship exemption.
- Individual who could not renew coverage in place before 2014 and considered other available coverage to be unaffordable.
- Individual who could not afford coverage based on actual household income.
- Individual who could not afford coverage based on projected household income.
- Individual in a family where the aggregate cost of self-only coverage for two or more employed individuals is unaffordable and family coverage is unaffordable.

Note: See the chart *Determining Exemptions to the Individual Shared Responsibility Penalty* on the front cover of this *Handbook*.

Religious Exemptions

A religious conscience exemption is only granted to a member of a recognized religious sect or division as described in IRC Sec. 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 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 Sec. 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. The Social Security Administration (SSA) maintains a list of religious sects and divisions that qualify for the religious conscious exemption. An individual who is a member of a sect or group not on the SSA list can file Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits,* with the SSA to request the group be added to the approved list. The exemption cannot be granted to that individual until the SSA has approved the Form 4029 and added the group to the SSA list.

An exemption may not be granted to any individual if any benefit or other payment under Titles II and XVIII of the Social Security 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 1-15.

Health Care Sharing Ministry

A *health care sharing ministry* (HCSM) is an organization described in IRC Sec. 501(c)(3) and exempt from taxation under IRC Sec. 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 must have been shared continuously and without interruption since at least December 31, 1999 and (3) an annual audit must be performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and made available to the public upon request. [Reg. 1.5000A-3(b)(2)]

The health care sharing ministry exemption can be claimed by completing Part III of Form 8965 when filing a federal income tax return. Before September 1, 2016, individuals could also be granted this exemption by a marketplace. Individuals who received this exemption from a marketplace and have an exemption certificate continue to report the exemption in Part I of Form 8965 for as long as the exemption is valid. See a copy of Form 8965 and its instructions starting on Page 1-15.

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 claimed on the individual's federal income tax return filed for the year by completing Part III of Form 8965. Before September 1, 2016, individuals could also be granted this exemption by a marketplace. Individuals who received this exemption from a marketplace and have an exemption certificate continue to report the exemption in Part I of Form 8965 for as long as the exemption is valid. See a copy of Form 8965 and its instructions starting on Page 1-15.

Individuals Who Cannot Afford Coverage

An individual is exempt for a month in which he 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 8.13% in 2016 (8.16% in 2017) 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 1-15.

Household income. *Household income* for purposes of the individual mandate is the taxpayer's modified adjusted gross income (MAGI), plus the aggregate MAGIs of every individual who the taxpayer properly claims as a dependent and who is required to file a tax return for that tax year. [IRC Sec. 5000A(c)(4)(B); Reg. 1.5000A-1(d)(10)]

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

Required contribution for employees eligible for coverage under an employer-sponsored plan. When determining if coverage is considered 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 MEC in which he can enroll. [IRC Sec. 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 individual who may enroll in COBRA coverage required under federal law or coverage under a state law that provides comparable continuation coverage determines affordability based on that coverage only if the individual enrolls in the coverage.

Example: Erin is an unmarried individual with no dependents. During November 2015, Erin was eligible to enroll in self-only MEC under a plan offered by her employer for calendar year 2016. If Erin had enrolled in the coverage, her required contribution, which is her portion of the premium for the lowest-cost self-only MEC in which she could have enrolled, would be $5,000. During 2016, Erin's adjusted household income was $60,000. Erin lacked affordable coverage for 2016 because her required contribution ($5,000) was greater than 8.13% of her adjusted household income ($4,878).

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 Sec. 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 is MEC and 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 2016 adjusted household income is $90,000. The lowest-cost self-only coverage offered by his employer for calendar year 2016 would cost Bill $5,000. Bill has affordable coverage for 2016, because his required contribution ($5,000) does not exceed 8.13% of his adjusted household income ($7,317). Cindy, Danny and Elaine are eligible to enroll in family coverage under the same plan for 2016 at a cost of $20,000 to Bill. Cindy, Danny and Elaine lack affordable coverage for 2016, because their required contribution ($20,000) exceeds 8.13% of their adjusted household income ($7,317).

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 required contribution for self-only coverage offered by that individual's employer and the required contribution for family coverage under each employer's plan. Each may have affordable coverage [because the required contribution under each plan does not exceed 8.13% in 2016 (8.16% in 2017) 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: Marina and Gary are married. Each works for a different employer that has an eligible employer-sponsored calendar year health plan. They have two children, Erin and Samantha. The family's adjusted household income for 2016 is $90,000.

Marina's required contribution (premium for the lowest-cost, self-only MEC offered through her employer's health plan) is $5,000, which is 5.5% of the family's 2016 household income. Therefore, Marina's insurance is affordable for her. Her employer also offers family coverage that will cover all four family members. The required contribution for the family coverage is $10,000.

Gary's required contribution for coverage offered through his employer's health plan is $6,000, which is 6.7% of the family's 2016 household income. Therefore, Gary's insurance is affordable for him. His employer also offers family coverage that will cover all four family members for a required contribution of $12,000.

The combined required contribution for coverage for Marina and Gary is $11,000, which is 12% of their adjusted household income. Therefore, Marina and Gary 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 required contribution for the lowest-cost family coverage available is also more than 8.13% of their adjusted household income, all four family members are considered to have unaffordable coverage for the year and are not subject to the individual shared responsibility penalty.

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 considered 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 (8.13% in 2016; 8.16% in 2017) 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 with a required contribution of $395 per month. 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 with a required contribution of $460 per month. During 2016, Fran's household income is $60,000.

Fran's annualized required contribution for the 6-month period January 2016 through June 2016 is $4,740 ($2,370 paid for premiums in 2016 × 12/6). She has affordable coverage for January 2016 through June 2016 because her annualized required contribution ($4,740) does not exceed 8.13% of her household income ($4,878).

Fran's annualized required contribution for the 6-month period July 2016 to December 2016 is $5,520 ($2,760 paid for premiums in 2016 × 12/6). Fran lacks affordable coverage for July 2016 through December 2016 because her annualized required contribution ($5,520) 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 of the premium tax credit.)

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 tax household for whom a personal exemption is claimed on the taxpayer's tax return and who are not otherwise exempt nor eligible for coverage under an eligible employer-sponsored plan. [Reg. 1.5000A-3(e)(4)(ii)]

An individual's *tax household* is comprised of the taxpayer, the taxpayer's spouse (if filing jointly) and any individual who is claimed (or could be claimed) as a dependent on the taxpayer's federal income tax return.

If the marketplace serving the rating area where the taxpayer resides does not offer a single bronze plan that would cover all such individuals, the premium for the applicable plan is the sum of the premiums for the lowest-cost bronze plans offered through the marketplace serving the rating area where one or more of the individuals reside that would, in the aggregate, cover all such individuals.

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 considered 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:

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

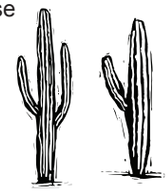
Note: Only full calendar months are included in the computation.

> **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.
>
> If Erin enrolled in the coverage, her premium tax credit for 2016 would be $1,500. Therefore, her net premium cost would be $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 discussion used actual 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 *Determining if Coverage Provides MV* on Page 5-3).

This exemption is granted by the state marketplaces. Individuals generally must apply for this exemption before the last date on which they can enroll in a QHP through the state marketplace and have coverage for the next calendar year (that is, by December 15, 2016 for a 2017 exemption). Taxpayers residing in states that use the federal platform (*www.healthcare.gov*) request the exemption by completing an application for individuals unable to afford coverage, which is available at *https://marketplace.cms.gov/applications-and-forms/affordability-ffm-exemption.pdf.* Some states with a state-based marketplace use the same application. Others use a specific state application. Individuals in states that do not use the federal platform should contact the state marketplace for an application.



Household Income Below the Filing Threshold

An 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 Sec. 5000A(e)(2); Reg. 1.5000A-3(f)]. The *applicable filing threshold* is the amount of gross income that triggers an individual's requirement to file a federal income tax return under IRC Sec. 6012(a)(1). The requirement to file a federal tax return depends on filing status, age and types and amounts of income.

For a table with the threshold income amounts for filing a tax return based on the an individual's age and filing status, 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 7, in Part II of Form 8965. See a copy of Form 8965 and its instructions starting on Page 1-15.

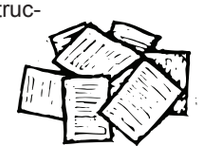
Gross Income Below the Filing Threshold

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(e)(1)]

Gross income generally means money, goods, property and services received subject to income tax [IRC Sec. 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 Sec. 121 (that is, the excluded gain needs to be included as gross income) [IRC Sec. 6012(c)]. Income from sources outside the U.S. and gains, but not losses, that are reported on Form 8949 or Schedule D (Form 1040) 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 also reported by checking the applicable box in Part II, line 7 of Form 8965 when filing a federal income tax return. See a copy of Form 8965 and its instructions starting on Page 1-15.



Individuals Not Eligible for Medicaid in Certain States

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.

A state marketplace can grant this exemption when an individual applies for coverage. If granted by the marketplace, it is reported in Part I of Form 8965. An individual can also claim this exemption when filing a federal income tax return by completing Part III of Form 8965. See a copy of Form 8965 and its instructions starting on Page 1-15.

Birth, Adoption or Death of an Individual During the Year

A taxpayer is subject to the individual shared responsibility penalty for a child born during the year only for the full months that the child is alive. Therefore, the child is an exempt individual for the month of birth. As long as the child has appropriate coverage for all months after the birth month, he is considered to have MEC for the entire year. Similarly, when a child is adopted, the parents are subject to the penalty only for the full months after the date of adoption. As long as the child has appropriate coverage during each full month after the month of adoption, he is considered to have full-year coverage.

Continued on Page 1-6