



Health Care Reform

LEGISLATIVE BRIEF

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The Individual Mandate

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.

On Jan. 30, 2013, the Departments of [Health and Human Services](#) (HHS) and the [Treasury](#) issued two proposed rules relating to the individual mandate. At the same time, the Treasury issued related [questions and answers](#). The proposed rules:

- Outline exemptions from the individual mandate;
- Explain how the penalty will be computed; and
- Establish standards and procedures for designating certain coverage as constituting “minimum essential coverage.”

The proposed standards were finalized by a [final rule](#) issued by HHS on June 26, 2013, and separate [final regulations](#) issued by the Internal Revenue Service (IRS) on Aug. 27, 2013. These final rules generally adopt the proposed standards without significant changes.

In conjunction with HHS’ final rule, the Centers for Medicare & Medicaid Services (CMS) issued [additional guidance](#) specifically on the hardship exemption. In addition, on June 26, 2013, the IRS issued [Notice 2013-42](#) to provide transition relief for individuals who are eligible to enroll in employer-sponsored health plans with a plan year other than a calendar year (non-calendar year plans).

HOW MUCH IS THE PENALTY?

The penalty for not obtaining acceptable health insurance coverage will be phased in over a three-year period, and is the *greater of two amounts*—the “flat dollar amount” and “percentage of income amount.”

The penalty will start at the greater of \$95 per person or 1 percent of income for 2014. Income for this purpose is the taxpayer’s household income minus the taxpayer’s exemption (or exemptions for a married couple) and standard deductions. The penalty amount increases to \$325 or up to 2 percent of income in 2015. In 2016 and thereafter, the penalty increases to \$695 or up to 2.5 percent of income.

2014	\$95 per person/1 percent of income
2015	\$325 per person/2 percent of income
2016 and later years	\$695 per person/2.5 percent of income

The penalty is capped at the national average of the annual bronze plan premium. Families will pay half the penalty amount for children, up to a family cap of three times the annual flat dollar amount per year.

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WHO IS LIABLE FOR A PENALTY?

The 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). The requirement to maintain MEC applies to individuals of all ages, including children. The IRS final rules provide that an individual is treated as having coverage for a month so long as he or she has coverage for **any one day** of that month.

Minimum Essential Coverage

MEC includes coverage under:

- A government-sponsored program, such as coverage under the Medicare or Medicaid programs, CHIP, TRICARE and certain types of Veterans health coverage;
- An eligible employer-sponsored plan (including COBRA and retiree coverage);
- A health plan purchased in the individual market; or
- A grandfathered health plan.

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. Under the ACA, MEC also includes any additional types of coverage that are designated by HHS or when the sponsor of the coverage follows a process outlined in regulations to be recognized as MEC.

HHS’ final rule also designates other types of coverage, not specifically listed by ACA, 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.

The IRS final regulations also provide some further clarification on whether certain specific types of coverage constitute MEC. A number of government programs do not provide full coverage for medical expenses, and thus do not qualify as MEC (for example, Medicaid coverage for pregnant women or Medicaid programs that only cover family planning services, tuberculosis-related services or emergency medical conditions). The IRS stated that it anticipates issuing guidance providing transition relief for some of these issues, which is expected to excuse covered individuals from the penalty for months of coverage in 2014.

Notably, the IRS final regulations specifically decline to address whether arrangements in which employers provide pre-tax dollars to employees to purchase coverage in the individual market qualify as MEC. Although earlier guidance seemed to eliminate these arrangements, the final regulations provide that future guidance will address this issue.

Liability for Dependents

Liability for a dependent’s lack of MEC falls on the taxpayer who may claim the individual as a dependent, regardless of whether the taxpayer actually claims the qualifying individual as a dependent for the taxable year. For this purpose, a dependent includes a taxpayer’s qualifying children and qualifying relatives (such as parents or siblings who are supported by the taxpayer).

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The IRS final regulations clarify that this liability may not be assigned to another taxpayer, even if the other taxpayer has a legal obligation to provide the child's health care. However, Exchanges may grant a hardship exemption to the custodial parent for a child in this situation, if the child is ineligible for coverage under Medicaid or CHIP.

Special rules apply for adopted and foster children. If a taxpayer legally adopts a child and is entitled to claim the child as a dependent for the taxable year when the adoption occurs, the taxpayer is not liable for a penalty with respect to that child for the month of the adoption and any preceding month. Conversely, if a taxpayer who is entitled to claim a child as a dependent for the taxable year places the child for adoption during the year, the taxpayer is not liable for a penalty with respect to that child for the month of the adoption and any following month.

EXCEPTIONS TO THE INDIVIDUAL MANDATE

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 lawfully present in the U.S.

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.

Four categories of exemptions will be available **exclusively through the tax filing process**—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.

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

Individuals who are denied an exemption will have the right to appeal. In addition, an applicant that no longer qualifies for an exemption but is otherwise eligible to enroll in a QHP will be eligible for a special enrollment period.

Transition Relief for Coverage under 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 the IRS' 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.

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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.

HOW IS THE PENALTY ENFORCED?

Starting in 2015, individuals filing a tax return for the previous tax year will indicate which members of their family (including themselves) are exempt from the individual mandate. For family members who are not exempt, the taxpayer will indicate whether they had insurance coverage. For each non-exempt family member who doesn't have coverage, the taxpayer will owe a payment. Spouses who file a joint return are jointly liable for the penalties that apply to either or both of them. Any individual who is eligible to claim a dependent will be responsible for reporting and paying the penalty applicable to that dependent.

The IRS will generally assess and collect penalties in the same manner as taxes. However, the ACA imposes certain limitations on the IRS' ability to collect the penalty. As a result, it is widely believed that any assessable penalty will be subtracted from the tax refund that the individual is owed, if any.

PREMIUM TAX CREDITS FOR LOW-INCOME INDIVIDUALS

The ACA created a premium tax credit to help eligible individuals and families purchase health insurance through an Affordable Insurance Exchange (Exchange). By reducing a taxpayer's out-of-pocket premium costs, the credit is designed to make coverage through an Exchange more affordable. The Exchanges are scheduled to become operational in 2014, with enrollment beginning Oct. 1, 2013.

To be eligible for the premium tax credit, a taxpayer:

- Must have household income for the year between 100 percent and 400 percent of the federal poverty line (FPL) for the taxpayer's family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married.

In addition, to receive the premium assistance, a taxpayer must enroll in one or more qualified health plans through an Exchange. The taxpayer **cannot be eligible for MEC** (such as coverage under a government-sponsored program or an eligible employer-sponsored plan).

To determine an individual's eligibility for a tax credit, ACA provides that employer-sponsored coverage is not considered affordable if the employee's cost for self-only coverage exceeds **9.5 percent** of the employee's household income for the tax year. On Jan. 30, 2013, the IRS released additional final regulations to confirm that an employer-sponsored plan is affordable for related individuals (that is, family members) if the portion of the annual premium the employee must pay for self-only coverage does not exceed 9.5 percent of the taxpayer's household income. Thus, the affordability determination for families is based on the cost of self-only coverage, not family coverage.

Eligibility for Minimum Essential Coverage for Purposes of the Premium Tax Credit

In general, an individual is not eligible for a premium tax credit if he or she is eligible for MEC. On June 26, 2013, the IRS released [Notice 2013-41](#), which provides guidance for when an individual is treated as eligible for certain types of MEC where special circumstances exist.

- **CHIP Waiting Period**—An individual subject to a waiting period before he or she can enroll in CHIP is not treated as eligible for CHIP and therefore may receive a premium tax credit during that waiting period.
- **Coverage Tied to a Certain Condition**—An individual eligible for either (1) Medicaid coverage as a result of disability or blindness or (2) Medicare coverage as a result of disability or illness is considered eligible for MEC under Medicaid or Medicare only upon a favorable determination of eligibility by the responsible agency. As a

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result, an individual with a condition that may make him or her eligible for Medicaid or Medicare may still be eligible for a premium tax credit unless and until the individual is determined to be eligible for Medicaid or Medicare.

- **Other Coverage, Including Coverage that may have a Substantial Premium**—Individuals are considered eligible for certain types of MEC only if they are actually enrolled. These include:
 - Medicare part A coverage requiring payment of premiums;
 - State high risk pools;
 - Student health plans; and
 - Certain TRICARE programs, such as Young Adult and Reserve Select.

MORE INFORMATION

Please contact HUB International Mountain States Limited for more information on the health care reform law or the individual mandate.

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