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The Individual Mandate

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, which took effect in 2014, is often referred to as the "individual mandate." Individuals may be eligible for an exemption from the penalty in certain circumstances. This Legislative Brief provides an overview of the ACA's individual mandate.

HOW MUCH IS THE PENALTY?

The penalty for not obtaining acceptable health insurance coverage is being phased in over a three-year period, and is the ***greater of two amounts***—the "**flat dollar amount**" and "**percentage of income amount**." For purposes of calculating the penalty, income is the taxpayer's household income minus the taxpayer's exemption (or exemptions for a married couple) and standard deductions.

The penalty started at the greater of $95 per person or 1 percent of income for 2014. The penalty increased to $325 or 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	$695 per person/2.5 percent of income

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

Bronze Plan Premium Caps

- **2014 Bronze Plan Premium Cap:** IRS Rev. Proc. 2014-46 provides the 2014 national average of bronze plan premiums to be used when calculating the cap. The monthly national average bronze plan premium for 2014 is **$204** per individual, and **$1,020** for a family with five or more members (or, annually, **$2,448** for individuals and **$12,240** for a family with five or more members).
- **2015 Bronze Plan Premium Cap:** IRS Rev Proc. 2015-15 provides the 2015 national average of bronze plan premiums to be used when calculating the cap. The monthly national average bronze plan premium for 2015 is **$207** per individual, and **$1,035** for a family with five or more members (or, annually, **$2,484** for individuals and **$12,420** for a family with five or more members).

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) (unless an exemption applies). The requirement to maintain MEC applies to all individuals of all ages (including children), unless that individual falls within a specific exception or is exempt. An individual is treated as having coverage for a month if he or she has coverage for **any one day** of that month.

Exception for Certain U.S. Citizens Living Abroad

All U.S. citizens who do not qualify for an exemption are subject to the individual mandate, regardless of whether they live in the U.S. or abroad. However, U.S. citizens who are not physically present in the United States for **at least 330 full days within a 12-month period** are treated as having minimum essential coverage for that 12-month period. In addition, U.S. citizens who are **bona fide residents of a foreign country** (or countries) for an entire taxable year are treated as having minimum essential coverage for that year.

In general, these are individuals who qualify for a foreign earned income exclusion under section 911 of the Internal Revenue Code. Individuals may qualify for this rule even if they cannot use the exclusion for all of their foreign earned income because, for example, they are employees of the United States. Individuals that qualify for this rule will not need to take any further action to comply with the individual mandate during the months when they qualify. See Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, for information on the foreign earned income exclusion.

U.S. citizens who meet neither the physical presence nor residency requirements will need to maintain minimum essential coverage, qualify for an exemption or pay a penalty for each month of the year. One exemption that may be particularly relevant to U.S. citizens living abroad for a small part of a year is the exemption for a short coverage gap, which provides that no penalty will be due for a once-per-year gap in coverage that lasts less than three months.

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 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).

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.

WHAT IS 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), defined as any plan offered by an employer to an employee which is a governmental plan or a plan or coverage offered in the small or large group market within a state (a self-funded plan can also qualify as an eligible employer-sponsored plan);
- A **health plan purchased in the individual market**; or
- A **grandfathered health plan**.

MEC also includes any additional types of coverage that are 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);

- Refugee Medical Assistance supported by the Administration for Children and Families; and
- Medicare Advantage plans.

MEC excludes any coverage, whether insurance or otherwise, that consists solely of excepted benefits (as defined by HIPAA). 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.

Government Programs with Limited Benefits

Also, 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 do not qualify as MEC. Similarly, TRICARE "space available care" and "line-of-duty-care" also do not qualify as MEC.

Expatriate Group Health Coverage

Under a federal law enacted in December 2014, coverage under an expatriate health plan (self-insured or fully insured) qualifies as MEC. A health plan must meet a number of requirements to qualify as an expatriate health plan. For example, the plan must:

- Provide significant health coverage (hospitalization, outpatient facility, physician and emergency services) that is not limited to excepted benefits such as dental and vision coverage;
- Satisfy the applicable pre-ACA requirements for health plans, such as HIPAA nondiscrimination, genetic nondiscrimination, minimum maternity stay and mental health parity requirements;
- Meet the ACA's minimum value standard by covering at least 60 percent of the total allowed costs of plan benefits; and
- Cover dependent children until they turn age 26 (if the plan provides dependent coverage).

WHAT ARE THE EXCEPTIONS TO 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 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 are 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 an Exchange plan will be eligible for a special enrollment period.

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 individual mandate 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 likely that any assessable penalty under the individual mandate will be subtracted from the tax refund that the individual is owed, if any.

MORE INFORMATION

Please contact Clarke & Company Benefits, LLC for more information on the ACA or the individual mandate.

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