General Board
Pension and Health Benefits

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# Health Care Reform: The Individual Mandate

The Department of Health and Human Services (HHS) and Internal Revenue Service (IRS) issued **proposed rules** governing the "individual mandate" under the Patient Protection and Affordable Care Act (PPACA or ACA). The regulations define ***minimum essential coverage***, i.e., health coverage that every American must have in 2014 unless they qualify for an exemption from the mandate, or else pay a ***shared responsibility payment*** (a Penalty in the form of an excise tax), as described **here**.

Starting in 2014, individuals will pay the Penalty if they do not have qualifying government health coverage (such as Medicare or Medicaid), employer-sponsored health coverage or an individual health insurance plan, and if they are otherwise not exempted (explained below). The Penalty (excise tax) would first be due in 2015 when individuals file tax returns for 2014.

HHS and the IRS also published a **fact sheet** and a **question and answer sheet** covering the proposed rules.

## Minimum Essential Coverage

Beginning January 1, 2014, individuals who are not exempt as explained below have the choice between: (1) maintaining minimum essential coverage for themselves and their nonexempt dependents, or (2) paying the Penalty with their income taxes. The requirement applies to adults, children (who are the responsibility of whomever claims them as tax dependents), seniors (most of whom have minimum essential coverage through Medicare), and legal resident aliens. Married persons who file a joint tax return are jointly liable for the Penalty.

The vast majority of Americans will have minimum essential coverage and therefore do not need to worry about the Penalty. Minimum essential coverage includes:

- **Government-sponsored programs** [including Medicare, Medicaid, CHIP (Children's Health Insurance Program), TRICARE, and certain veterans' health coverage programs];
- **Employer-sponsored coverage** (including fully-insured, self-insured, grandfathered and government employee health plans, COBRA and other continuation coverage, and retiree health coverage). HealthFlex and other annual conference health plans would provide minimum essential coverage to covered participants and dependents;
- **Individual market plans** [e.g., purchased on the health insurance exchanges (Exchanges)]; and
- **Other health benefit plans** recognized by HHS.

The ACA gives HHS discretion to recognize forms of minimum essential coverage not listed in the statute. HHS is proposing to exercise this discretion by recognizing as minimum essential coverage: self-funded student health plans, coverage of foreign nationals from their country of citizenship (e.g., the British National Health Service), refugee medical assistance, Medicare Advantage plans, state high-risk pools and AmeriCorps coverage.

Although large employers must offer "adequate" coverage (i.e., 60% of actuarial value) to avoid the penalty associated with the employer mandate, the minimum essential coverage rule curiously does not expressly provide that employer-sponsored coverage must be adequate to qualify as minimum essential coverage for compliance with the individual mandate.

An individual who is covered only by an "excepted benefits" plan (for example, a plan that covers only dental, vision, long-term care or a specified disease) or an individual with fixed-indemnity coverage would not meet the minimum essential coverage requirement and thus would have to pay the Penalty. Certain other types of coverage are not considered minimum essential coverage, including: accidental death and dismemberment coverage, disability insurance, general liability insurance, automobile liability insurance, workers' compensation, coverage through employer-provided on-site medical clinics, and policies separate from primary health coverage, e.g., Medicare-supplemental policies (Medigap or MedSupp insurance), TRICARE-supplemental policies and similar supplemental coverage under a group health plan.

## The Shared Responsibility Tax (Penalty)

A taxpayer must pay the shared responsibility payment (Penalty) for each month that the taxpayer or the taxpayer's dependents lacked minimum essential coverage and did not qualify for an exemption (explained below). The Penalty is the *greater of*:

1. A flat dollar amount (set by the ACA) on each taxpayer and dependent:
   - For 2014: $95 for an adult, $47.50 for dependents under the age of 18
   - For 2015: $325 for an adult, $162.50 for dependents under 18
   - For 2016 and beyond: $695 for an adult, $347.50 for dependents under 18
   - Limited for a household to three times the fixed dollar amount for adults

   *or*

2. A percentage of household income (MAGI) that exceeds the income tax filing threshold (e.g., $9,750 for a single individual for the 2012 tax year):
   - For 2014: 1.0%
   - For 2015: 2.0%
   - For 2016 and beyond: 2.5%

The Penalty cannot be greater than the national average premium for "Bronze" level coverage in an Exchange. The Penalty must be paid when an individual's tax return is otherwise due, e.g., **April 15** of the following year. The Penalty is assessed and collected like most other taxes, except that taxpayers who fail to pay the Penalty are subject neither to criminal penalties nor liens nor levies. However, the IRS may reduce the amount of the individual's tax refund in the future.

## Exemptions from the Penalty

If an individual does not have minimum essential coverage in any month, the individual must pay the Penalty unless the individual qualifies for an exemption. There are nine exemption categories.

- **Religious objection:** members of religious groups that are conscientiously opposed to public or private insurance benefits, e.g., the Amish, some Old Order Mennonites, and similar groups.
- **Health care sharing ministries:** members of health care sharing ministries.
- **Incarceration:** individuals who are confined after a final disposition of charges.
- **Undocumented individuals:** aliens not lawfully present in the United States.
- **Indian tribes:** members of federally-recognized Indian tribes.
- **Low income:** individuals whose household income is below the income tax filing threshold ($9,750 for a single individual) for the taxable year for which the exemption is claimed (meaning the individual's income is low enough that he or she is not obligated to file a tax return).
- **Short coverage gaps:** an individual is not subject to the Penalty if he or she lacks minimum essential coverage only for one period in a year that does not exceed three full calendar months. If an individual is covered for one day during a calendar month, the month does not count toward the gap.

- **No access to affordable coverage**: individuals who lack access to *affordable minimum essential coverage*. Specifically, an individual is not subject to the Penalty if his or her cost of coverage, including employer coverage and coverage through an Exchange with the aid of federal assistance in the form of a premium tax credit (PTC), exceeds 8% of his or her household income. An employee (or former employee) is treated as having affordable coverage under the individual mandate if the lowest-cost health coverage the employee is offered does not cost the employee more than 8% of household income for self-only coverage. This is a slightly different definition of affordable employer coverage than the rule that determines eligibility for a PTC or whether an employer is assessed a penalty. Affordability for this exemption for dependents of an employee is determined based on the cost of the lowest-cost family coverage plan. If self-only coverage is affordable for the employee but family coverage is not, the employee must purchase self-only coverage to be exempt from the Penalty, but the family members would be exempt even though family coverage is not purchased. An individual not offered employer coverage is not exempt from the Penalty if he or she can purchase the lowest-cost Bronze-level plan available on an Exchange for 8% or less of household income, taking into account any PTC available.
- **Hardship**: financial or domestic circumstances, including unexpected natural or human-caused events (e.g., homelessness, utility shut-offs, natural disasters or similar circumstances) that cause significant and unexpected increases in essential expenses such that the individual must choose between health insurance and food, shelter, clothing or other necessities. Individuals determined ineligible for Medicaid in states that do not expand Medicaid under the ACA to cover all adults with incomes not exceeding 138% of the federal poverty level are also exempt.

## Exemption Process

In order to claim an exemption based on religious beliefs or on hardship, the taxpayer must apply to and receive an exemption certification from the Exchange in their state or from a federal Exchange where a state Exchange is not available. Additionally, exemption certificates can be obtained from the Exchange for American Indians, incarcerated individuals and members of health care sharing ministries during, but not after, the calendar year for which the exemption is claimed. Alternatively, members of these three groups may wait until they file their tax returns to claim the exemption retrospectively. Exemptions for short coverage gaps and for lack of affordable coverage can only be claimed on an individual's tax return. Undocumented aliens can also identify themselves as such through the tax filing process. The exemption for income below the filing threshold can be claimed by filing a tax return, but taxpayers are not required to file a return solely for this purpose. The Exchange will provide the IRS a list of individuals to whom it has granted exemptions.

## Questions and Information

If you have questions or would like additional information, please send your inquiries to **healthcarereform@gbophb.org**. General information about health care reform is available from the federal government at **www.healthcare.gov**.

## The Individual Mandate

### Do you have insurance through any of the following?

- Federal government (e.g., Medicare, Medicaid, TRICARE)
- Employer-sponsored coverage
- Individual coverage
- Grandfathered health plan
- Self-funded student plan
- Foreign national plan
- Refugee medical assistance
- Medicare Advantage plan
- State high-risk pool
- AmeriCorps coverage

— Yes → You have minimum essential coverage; there is no penalty

No ↓

### Are you an exempt individual?

- Undocumented immigrant
- Incarcerated individual
- Part of a religious group opposed to health insurance
- Member of an Indian tribe
- Coverage will cost more than 8% of your household income
- Household income < income tax filing threshold
- Health care sharing ministry member
- Short coverage gap (>3 months)
- Hardship

— Yes → You are exempt; there is no penalty

No ↓

There is a penalty

↓

### Penalty = greater of:

**2014:** \$95 per adult OR 1% of household income

**2015:** \$325 per adult OR 2% of household income

**2016 and beyond**: \$695 per adult OR 2.5% of household income