



VCU Medical Center

Office of Health Innovation

Final Rule: Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage

Summary: This document contains final regulations on the requirement to maintain minimum essential coverage enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111-173. These final regulations provide guidance to individual taxpayers on the liability under section 5000A of the Internal Revenue Code for the shared responsibility payment for not maintaining minimum essential coverage and largely finalize the rules in the notice of proposed rulemaking published in the Federal Register on February 1, 2013.

Major Provisions

Under the Affordable Care Act, individuals who do not comply with all provisions of the act, i.e. get on an insurance plan that provides "minimum essential coverage," will be taxed through the IRS for not doing so. Section 5000A(a) and section 5000A(b) provide that nonexempt individuals must have minimum essential coverage for each month beginning after December 31, 2013, or make an additional payment (the shared responsibility payment) with their Federal income tax return for the taxable year that includes such month.

Minimum Essential Coverage

Minimum essential coverage includes, at a minimum, all of the following statutory categories:

- Employer-sponsored coverage (including COBRA coverage and retiree coverage)
- Coverage purchased in the individual market
- Medicare Part A coverage
- Medicaid coverage
- Children's Health Insurance Program (CHIP) coverage
- Certain types of Veterans health coverage
- TRICARE

Minimum essential coverage does not include certain specialized coverage, such as coverage only for vision care or dental care, workers' compensation, or coverage only for a specific disease or condition. Under the law, minimum essential coverage also includes any additional types of coverage that are designated by the Department of Health and Human Services (HHS) or, as detailed by the regulation, when the sponsor of the coverage follows a process outlined in the regulations to be recognized as minimum essential coverage.

Coverage for a Month

For any calendar month, an individual is treated as having minimum essential coverage if the individual is enrolled in and entitled to receive benefits under a program or plan that is minimum essential coverage for at least one day during the month.

The Treasury Department and the IRS will reconsider this rule if future developments indicate that the rule is being abused, for example, if individuals obtain coverage for a single day in a month over the course of several months in a year.

Liability for Shared Responsibility Payments

Liability for Dependents: For a month when a nonexempt individual does not have minimum essential coverage, if the nonexempt individual is a dependent of another individual for the other individual's taxable year including that month, the other individual is liable for the shared responsibility payment attributable to the dependent's lack of coverage. Whether the taxpayer actually claims the individual as a dependent for the taxable year does not affect the taxpayer's liability for the shared responsibility payment for the individual.

Married individuals who file a joint return for a taxable year are jointly liable for any shared responsibility payment for a month included in the taxable year.

Special Rule for Adopted 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 shared responsibility payment attributable to the child for the month of the adoption and any preceding month.

Exempt Individuals

Consistent with the statute, the final regulations provide nine categories of individuals who are exempt from the shared responsibility payment. These categories are as follows:

- Individuals who cannot afford coverage;
- Taxpayers with income below the filing threshold;
- Members of Indian tribes;
- Hardship;
- Individuals who experience short coverage gaps.
- Religious conscience;
- Members of a health care sharing ministry;
- Incarcerated individuals; and
- Individuals who are not lawfully present.

The statute specifies that the religious conscience exemption and the hardship exemption are available exclusively through a Health Insurance Marketplace or Exchange. Four categories of exemptions are available exclusively from the IRS through the filing process – the exemptions for individuals who are not lawfully present, taxpayers with household income below the filing threshold, individuals who cannot afford coverage, and individuals who experience short coverage gaps. The rule provides a choice to

individuals for the exemptions in the three remaining categories – members of a health care sharing ministry, individuals who are incarcerated, and members of Indian tribes. These exemptions can be obtained either through a Health Insurance Marketplace or through the tax return filing process.

Short Coverage Gap

An individual qualifies for the short coverage gap exemption if the continuous period without minimum essential coverage is less than three full calendar months and is the first short coverage gap in the individual's taxable year. If a taxpayer has multiple short coverage gaps due to extended waiting periods after switching employment or because of other circumstances that prevent the taxpayer from obtaining coverage, the taxpayer may be eligible for a hardship or other exemption available through an Exchange.

Shared Responsibility Payment

A taxpayer must pay the shared responsibility payment for each month that the taxpayer or the taxpayer's dependents lacked minimum essential coverage and did not qualify for an exemption. The amount of the tax is the lesser of the applicable national average bronze plan premium or the sum of the monthly payment amounts.

The monthly payment amount equals one twelfth of the greater of:

- The fixed dollar amounts (**\$95 for 2014, \$325 for 2015, and \$695 for 2016**) times the number of adults in the household and one half the specified amount times the number of children in the household, up to a maximum of three times the flat amount, or
- The amount of the taxpayer's household income in excess of the tax filing threshold times **1 percent** for taxable years beginning in 2013 and 2014, **2 percent** for taxable years beginning in 2014, and **2.5 percent** for years thereafter.