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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.

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.

Passed by Congress on Dec. 20, 2017, the tax reform bill, the Tax Cuts and Jobs Act, **reduces the ACA's individual mandate penalty to zero, effective in 2019**. As a result, beginning in 2019, individuals will no longer be penalized for failing to obtain acceptable health coverage. The individual mandate continues to be effective for 2017 and 2018.

This ACA Overview provides a summary of the individual mandate.

LINKS AND RESOURCES

The Internal Revenue Service (IRS) adjusts the affordability contribution percentages each year for purposes of the affordability exemption from the individual mandate. Rev. Proc. 2014-37 indexed the percentages for 2015. Rev. Proc. 2014-62 indexed the percentages for 2016. Rev. Proc. 2016-24 indexed the percentages for 2017. Rev. Proc. 2017-36 indexed the percentages for 2018.

HIGHLIGHTS

INDIVIDUAL MANDATE OVERVIEW

Under the individual mandate, an individual will owe a penalty for any month during which he or she does not maintain acceptable health coverage.

- Individuals may be eligible for an exemption from the penalty.
- Individuals are also liable for the penalty for any nonexempt individual they may claim as a dependent.

PENALTY AMOUNT

- 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.

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HOW MUCH IS THE PENALTY?

The penalty for not obtaining acceptable health insurance coverage was 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

The IRS confirmed in Revenue Procedure 2016-55 that the flat dollar amount penalty will remain $695 in 2017, and that no inflation adjustment will apply for 2017.

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): 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): 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).
- **2016 Bronze Plan Premium Cap** (IRS Rev. Proc. 2016-43): The monthly national average bronze plan premium for 2016 is **$223** per individual, and **$1,115** for a family with five or more members (or, annually, **$2,676** for individuals and **$13,380** for a family with five or more members).
- **2017 Bronze Plan Premium Cap** (IRS Rev. Proc. 2017-48): The monthly national average bronze plan premium for 2017 is **$272** per individual, and **$1,360** for a family with five or more members (or, annually, **$3,264** for individuals and **$16,320** for a family with five or more members).

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Penalty Will Be Eliminated in 2019

Once it is signed into law, the tax reform bill will reduce the ACA's individual mandate penalty to zero, effective beginning with the 2019 tax year. **This effectively eliminates the individual mandate penalty for the 2019 tax year and beyond**. As a result, beginning with the 2019 tax year, individuals will no longer be penalized for failing to obtain acceptable health insurance coverage for themselves and their family members.

Although the tax reform bill eliminates the ACA's individual mandate penalty, this repeal does not take effect until 2019. As a result, **individuals continue to be required to comply with the mandate (or pay a penalty) for 2017 and 2018**. A failure to obtain acceptable health insurance coverage for these years may still result in a penalty for the individual.

In addition, keep in mind that individuals who are liable for a penalty for failing to obtain acceptable health coverage in 2018 will be required to pay that penalty when they file their federal income taxes in 2019. As a result, **some individuals may be required to pay the individual mandate penalty in early 2019, based on their noncompliance for the 2018 tax year**.

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.

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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, the Children's Health Insurance Program (CHIP), TRICARE and certain types of veterans health coverage;
- An **eligible employer-sponsored plan** (including a self-funded plan, 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 **health plan purchased in the individual market**; or
- A **grandfathered health plan**.

HHS has also 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 later plan or policy years, sponsors of these programs may apply to be recognized as MEC);
- Refugee Medical Assistance supported by the Administration for Children and Families;

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- Coverage provided to Peace Corps volunteers; and
- Any additional coverage that HHS designates or recognizes as MEC.

MEC excludes any coverage that consists solely of excepted benefits (as defined by HIPAA). MEC also 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.

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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.

ENFORCEMENT POLICY

Effective Feb. 6, 2017, the IRS announced that it would not automatically reject individual tax returns that did not provide this health insurance coverage information for 2016 (known as "silent returns"). Instead, silent returns would still be accepted and processed by the IRS. This enforcement policy was intended to reduce the burden on taxpayers, including those who are expecting a tax refund. The IRS noted that taxpayers filing silent returns could still receive follow-up questions and correspondence from the IRS at a future date.

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However, on Oct. 13, 2017, the IRS reversed its previous enforcement policy on silent returns. **As a result, the IRS will not accept any silent returns for the 2017 tax year that are filed electronically**. In addition, any silent returns that are filed on paper may be suspended pending receipt of additional information, and any refunds due may be delayed.

Therefore, taxpayers should indicate on their 2017 tax returns whether they (and everyone in their family):

- Had health coverage for the year;
- Qualified for an exemption from the individual mandate; or
- Will pay an individual mandate penalty.

The 2018 filing season will be the first time the IRS will not accept tax returns that omit this health coverage information. The IRS reiterated that taxpayers remain obligated to follow the law and pay what they may owe at the point of filing. According to the IRS, identifying omissions and requiring taxpayers to provide health coverage information at the point of filing makes it easier for the taxpayer to successfully file a tax return and minimizes related refund delays.

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