From: Glover, Carrie (OS/IEA) [mailto:Carrie.Glover@hhs.gov]
Sent: Thursday, June 27, 2013 11:36 AM
Subject: Final Rule Broadens Exemption from the Shared Responsibility Provision to Individuals Eligible for IHS Services

Sent on behalf of:

Susan Johnson
Region 10 Director – Alaska, Idaho, Washington, Oregon
US Department of Health & Human Services

Dear Colleagues,

Good news! Please see the attached press release and fact sheet on the final rule that was just released regarding the individual shared responsibility provision exemptions. Until now, the exemption for Alaska Natives and American Indians was only for members of federally recognized tribes. This final rule adds a hardship exemption category for American Indians and Alaska Natives who are eligible to receive services through an Indian health care provider, such as the Indian Health Service (IHS) or tribally-operated facilities and Urban Indian clinics.

Regards,

Susan

Indian Health Service
Press Release

June 26, 2013
FOR IMMEDIATE RELEASE
Contact: (301) 443-3593; newsroom@ihs.gov
IHS website: http://www.ihs.gov

Administration renews commitment to American Indians and Alaska Natives

Final policy makes an exemption from the shared responsibility payment available to individuals eligible for IHS services.

The Affordable Care Act permanently reauthorizes the Indian Health Care Improvement Act, provides new opportunities for health insurance coverage, eliminates cost sharing such as copays and deductibles, and provides special monthly enrollment periods for members of federally recognized tribes who enroll in health plans offered through the Health Insurance Marketplace.

Today, the Obama administration issued a final rule allowing all American Indians and Alaska Natives who are eligible to receive services from an Indian health care provider to receive an exemption from the shared responsibility payment if they do not maintain minimum essential coverage under the Affordable Care Act. Prior to development of the final rule, only a portion of the American Indian and Alaska Native population – members of federally recognized tribes – would have access to an exemption from the requirement to maintain minimum essential coverage under the law. The final rule reflects comments and feedback received from Indian Country through rulemaking and the tribal consultation process.

"The administration is taking steps to honor our historical commitment to the rights of American Indians and Alaska Natives and ensure that individuals protected under the Indian Health Care Improvement Act benefit from the special provisions in the Affordable Care Act," said Health and Human Services Secretary Kathleen Sebelius. "Today, we continue to fulfill our responsibility to consult and work with tribal communities."

Today's final rule adds a hardship exemption category for American Indians and Alaska Natives who are eligible to receive services through an Indian health care provider, such as the Indian Health Service (IHS) or tribally-operated facilities and Urban Indian clinics.

"We appreciate our tribal partners who advocated to ensure that all American Indians and Alaska Natives eligible for IHS can receive an exemption from the penalty for not having insurance coverage," said IHS Director Dr. Yvette Roubideaux.

As a result of this final regulation, all American Indians and Alaska Natives who are eligible to receive services from an Indian health care provider will have access to an exemption from the shared responsibility payment.

The final rule is available here: https://www.federalregister.gov/public-inspection

For Immediate Release: Wednesday, June 26, 2013

Contact: CMS Media Relations
202-690-6145

OR

Sabrina Siddiqui
Treasury Office of Public Affairs
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Fact Sheet: HHS Final Rule and Treasury Notices on Individual Shared Responsibility Provision Exemptions, Minimum Essential Coverage, and Related Topics

Under the Affordable Care Act, the federal government, states, insurers, employers, and individuals share the responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States. Starting in 2014, the individual shared responsibility provision calls for each individual to have health insurance coverage (known as minimum essential coverage), qualify for an exemption, or make a shared responsibility payment when filing a federal income tax return. Individuals will not have to make a shared responsibility payment if coverage is unaffordable, if they spend less than three consecutive months without coverage, or if they qualify for an exemption based on hardship, religious beliefs, or certain other factors. In order to help make coverage affordable for millions of American families, the Affordable Care Act also provides a premium tax credit to eligible Americans to help pay for the cost of health care coverage purchased on Health Insurance Marketplaces.

Today, the Centers for Medicare & Medicaid Services at the Department of Health and Human Services (HHS) issued a final regulation explaining the eligibility rules for receiving an exemption from the individual shared responsibility provision through a Health Insurance Marketplace, as well as two subcategories of exemptions that will be available through the tax filing process. HHS' final regulation includes rules that will ease implementation and help to ensure that the shared responsibility payment obligation applies only to the limited group of taxpayers who have ready access to affordable coverage but choose to spend a substantial period of time uninsured.

At the same time, the Treasury Department and Internal Revenue Service are releasing two notices related to minimum essential coverage. The first notice provides guidance on when, for purposes of the premium tax credit, an individual is treated as eligible for specific types of minimum essential coverage (and therefore is not eligible for a tax credit). For example, the guidance provides that an individual subject to a waiting period before he can enroll in the Children's Health Insurance Program (CHIP) is not treated as eligible for CHIP and therefore may receive a premium tax credit during that waiting period. The second notice provides transition relief for individuals offered employer-sponsored coverage that follows a non-calendar plan year. Under this transition relief, employees and dependents eligible for such coverage are generally exempt from the individual shared responsibility provision until the new plan year begins in 2014.

According to the Congressional Budget Office, less than two percent of Americans are expected to owe a shared responsibility payment.

Highlights of the HHS Final Regulation

A principle in implementing the individual shared responsibility provision is that the shared responsibility payment should not apply to any individual for whom coverage is unaffordable, who has other good cause for going without coverage, or who goes without coverage for only a short time. The final regulation largely reflects the proposed rule, with minimal changes, and implements this principle. For example:

- **Hardship Exemption Clarified to Protect Individuals, Address Key Concerns**. The statute gives HHS authority to exempt individuals determined to "have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan." In developing this final regulation, HHS considered circumstances that constitute a hardship in obtaining such coverage. To provide clarity for individuals facing these circumstances, the HHS final regulation enumerates several situations that will always be treated as constituting a hardship and therefore allow for an exemption. Hardship exemptions will be available to the following groups of individuals:

    - Individuals for whom a Marketplace projects that no offer of coverage that meets the minimum value standard will be affordable;

    - Individuals who are ineligible for Medicaid solely based on a state's decision not to implement the Medicaid expansion under the Affordable Care Act. This rule will protect individuals in states that, pursuant to the Supreme Court decision, choose not to expand Medicaid eligibility;

    - Individuals who in addition to one or more employed members of his or her family have been determined eligible for affordable self-only employer-sponsored coverage, but for whom the aggregate cost of employer-sponsored coverage for all the employed members of the family is unaffordable.

    - Certain individuals who are not required to file an income tax return but who technically fall outside the individual shared responsibility provision's statutory exemption for those with household income below the income tax filing threshold;

    - Individuals who are Indians (as well as their spouses and descendants) who are eligible for services through an Indian health care provider.

  The HHS final rule also provides that the hardship exemption will be available on a case-by-case basis for individuals who face other circumstances that prevent them from obtaining coverage under a qualified health plan. Consistent with the preamble to the proposed rule, we are also providing concurrent guidance providing the criteria Federally-facilitated Marketplaces will use to determine eligibility for the hardship exemption. State-based Marketplaces may also use these criteria.

Specific Rules and Process for Receiving an Exemption

The Affordable Care Act specifies nine categories of individuals who are exempt from the shared responsibility payment. These categories are as follows:

- Individuals who cannot afford coverage;
- Individuals with household income below the filing threshold;
- Members of federally recognized Indian tribes;
- Individuals who experience a hardship;
- Individuals who experience a short coverage gap;
- Members of certain religious sects;
- Members of a health care sharing ministry;
- Incarcerated individuals; and
- Individuals who are not lawfully present.

The HHS final regulation provides that the religious conscience exemption and most categories of the hardship exemption are available exclusively through a Marketplace. Four categories of exemptions will be available exclusively through the tax filing process – the exemptions 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 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 federally recognized Indian tribes. Such exemptions could be provided either through a Marketplace or through the tax filing process.

Additional Details about Minimum Essential Coverage

Under the proposed regulation released by the Treasury Department and the final HHS regulation, 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
- Coverage for Peace Corps volunteers
- Nonappropriated Fund Health Benefit Program of the Department of Defense

The final HHS regulation also designates other types of coverage, not specifically listed by statute, as minimum essential coverage:

- Self-funded student health coverage and state high risk pools for plan or policy years that begin on or before December 31, 2014. For plan or policy years that begin after December 31, 2014, sponsors of self-funded student health plans and state high risk pools may apply to be recognized as minimum essential health coverage through a process outlined in the final rule;
- Refugee Medical Assistance supported by the Administration for Children and Families;
- Medicare Advantage plans;
- Any additional coverage that is designated by HHS as minimum essential coverage under future rulemaking; and
- Other coverage that HHS recognizes as minimum essential coverage under the process described in the final regulation.

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.

Highlights of the Treasury Notice on Eligibility for Minimum Essential Coverage

In general, an individual is not eligible for a premium tax credit if he or she is eligible for other minimum essential coverage. This notice provides guidance for when an individual is treated as eligible for certain types of minimum essential coverage where special circumstances exist, including:

- <u>CHIP Waiting Period</u>. 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 minimum essential coverage under Medicaid or Medicare only upon a favorable determination of eligibility by the responsible agency. As a 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 minimum essential coverage only if they are actually enrolled. These include:
    - Medicare part A coverage requiring payment of premiums.
    - State high risk pools.
    - Student health plans.
    - Certain TRICARE programs such as Young Adult and Reserve Select.

Highlights of Treasury Notice Providing Transition Relief to Individuals Eligible for Employer-Sponsored Coverage that Follows a Non-Calendar Plan Year

Many employer-sponsored plans have non-calendar plan years. Generally, eligible employer-sponsored plans do not permit employees to enroll in the plan after the beginning of a plan year unless certain triggering events occur, such as a change in employment status. Without transition relief, therefore, many individuals eligible to enroll in non-calendar employer-sponsored plans would need to enroll in coverage in 2013, when the individual shared responsibility provision does not yet apply, in order to maintain coverage under employer-sponsored plans for months in 2014 when the individual shared responsibility provision applies.

This notice provides that an employee, or an individual with a relationship to the employee, who is eligible to enroll in a non-calendar year employer-sponsored plan with a plan year beginning in 2013 and ending in 2014 will not be liable for the shared responsibility payment until the end of the 2013-2014 plan year. Thus, employees and dependents who choose to wait until the 2014-2015 plan year to enroll in coverage will not be subject to the shared responsibility provision for the months in 2014 that are part of the 2013-2014 plan year.

To read the Treasury notices, visit: http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions.

To read the HHS rule, visit: https://www.federalregister.gov/public-inspection.

For more information about health insurance through the Health Insurance Marketplace, including how to sign up for email updates and tips on how to prepare for open enrollment in October 2013, visit: http://www.healthcare.gov/marketplace/index.html.