Individual Penalty Regulation
78 FR 53646 (August 30, 2013)

Beginning on January 1, 2014, individuals must have health insurance or they will be fined under the individual mandate (i.e., individual penalty) as set out at 26 USC §5000A.

Below is a summary of the final regulation published on August 30, 2013. It finalizes the proposed regulation published on February 1, 2013 with few changes.

I. Maintenance of Minimum Essential Coverage (MEC)
    a. Coverage for a Month: If an individual has coverage for at least one day during a month, there is coverage for the whole month.
    b. Liability for Dependents: The taxpayer who may claim a child as a tax dependent is liable for the penalty owed by the dependent.
        i. Divorced parents: penalty paid by the parent who can claim the child as a tax dependent – even if the other (non-custodial) parent fails to provide health care when legally obligated to do so
        ii. Adoptions: adoptive parent is not liable for a penalty in the adoption month or any preceding months in that tax year. A parent placing a child for adoption is not liable for a penalty in the adoption month or any later months during that tax year.
    c. <u>Household income</u> means: the modified adjusted gross income (MAGI) of the taxpayer plus the modified MAGI of all members of the taxpayer's family required to file a tax return.
        i. A parent may include a dependent child's income in the parent's income under §1(g)(7) of tax code.

II. Minimum Essential Coverage
    a. Government sponsored coverage
        i. Medicaid for pregnant women: Not MEC, but in 2014 no woman will owe a penalty for the months in which she has this coverage.
        ii. Section 1115 (demonstration projects): IRS reserves final decision on whether this is MEC
        iii. Medicaid Premium Assistance programs: MEC
        iv. Medicaid for Medically Needy: (people who are otherwise eligible for Medicaid and "spend down" their income to qualify) IRS reserves final decision on whether this is MEC
        v. TRICARE: MEC, unless it's a limited benefit plan which is not MEC
    b. Eligible Employer-sponsored coverage
        i. Self-insured group health plan (GHP): is MEC (employer size irrelevant)
        ii. Employer-subsidized coverage in Individual Market: (employer provides subsidies or funds pre-tax arrangement for employees to buy coverage in the individual market): IRS reserves final decision on whether this is MEC

        iii. Former employees: retiree coverage in a GHP is MEC
        iv. Plans offered on behalf of employers: GHP's offered by unions or by professional employer organizations (PEO's) or leasing companies are MEC
        v. Government sponsored programs that "eligible employer-sponsored plans": this refers to a program for civilian Dept. of Defense employees that is deemed to be MEC
    c. Individual Market Plan: includes QHP's offered via the Exchange that are MEC
    d. Foreign issuer coverage
        i. US citizens with a tax home outside the US and lives there for at least 330 days during a 12 month period: apparently deemed to have MEC if have expatriate coverage
        ii. US Territory: a territory electing to establish an Exchange is treated like a state

III. Exempt Individuals
    a. Religious Sects or Divisions of those sects: granted a religious conscience exemption by HHS. Children turning 21 must re-assert this religious conscience
    b. Health-care Sharing Ministries: eligibility for this exemption is determined monthly
    c. Non-citizens: meaning a non-resident alien or illegal alien exempt in months when "not lawfully present". IRS will provide guidance & forms on how to claim this exemption
    d. Incarcerated Individuals: exempt in each month with at least one day of confinement. For those with Medicaid coverage that is suspended pending disposition of charges are deemed to have MEC
    e. Individuals who Can't Afford Coverage:
        i. Affordability is based on increasing taxpayer's household income by the amount of the pre-tax contributions to health coverage. Salary reduction arrangements (pre-tax contributions) include amounts that an employee pays pre-tax into a cafeteria plan. Hardship exemption based on a lack of affordable coverage is determined based on projected household income
        ii. Required Contribution Percentage (no notable points)
        iii. Required Contribution
            1. Health Reimbursement Accounts (HRA's) that are integrated with the employer's GHP: new amounts made available are counted toward the employee's required contribution in determining affordability if the employee can only use for premiums or for premiums and/or cost sharing
            2. Required contribution for individuals not eligible for an employer's GHP: required contribution is based on the applicable plan's lowest cost bronze plan minus any credit allowed under 36B
            3. Wellness program incentives: not addressed in this regulation

f. Household Income below Return Filing Threshold: not required to file an income tax return in order to claim the exemption
g. Indian Tribe Members: must be a member of a federally-recognized tribe. There is also a hardship exemption for individuals who aren't tribal members but are eligible for services via an Indian healthcare provider
h. Short Coverage Gap: exemption for people without MEC for less than three full calendar months and is the first short coverage gap in that individual's taxable year.
    i. Multiple short coverage gaps due to extended waiting periods after switching jobs may be eligible for a hardship or other exemption.
    ii. If a coverage gap straddles two taxable years, part of it ends on the last day of the taxable year so that the individual can timely file a tax return
i. Additional Hardship Exemptions: There is a hardship exemption for individuals who can't afford the aggregate cost for family coverage in the employer's GHP. (i.e., self-only may be affordable, but covering dependents under the family coverage is not affordable)

Do you have questions about the information in this paper? Would you like to know more about this important topic?

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