BREAKING NEWS

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Proposed Regulations Released on Health Care Reform's Individual Mandate Provision

On January 30, 2013, the Departments of the Treasury and Health and Human Services (HHS) released regulations on the Individual Mandate (IM), Minimum Essential Coverage (MEC), and Eligible Employer Sponsored Plans (EESPs) under health care reform. While these are not final regulations, employers may rely on these proposed regulations for guidance pending the final regulations or further guidance. Highlights are below:

BACKGROUND

Subject to the Affordable Care Act (ACA), beginning January 1, 2014, every nonexempt individual will face a penalty payment if they fail to maintain health coverage (i.e., Minimum Essential Coverage (MEC)). A taxpayer may also face a penalty for failing to provide health coverage for his/her nonexempt dependents. Married taxpayers filing joint returns are jointly liable for any penalties.

INDIVIDUALS EXEMPT FROM THE INDIVIDUAL MANDATE

Certain individuals will be exempt from the Individual Mandate, and therefore not subject to a penalty for failing to have MEC. An individual may be exempt from the penalty because of their religious beliefs or because minimum essential health coverage may be unaffordable. Certificates of exemption will be issued to qualified individuals who are exempt from the Individual Mandate.

RELIGIOUS EXEMPTION

An individual may be exempt from the Individual Mandate if that individual belongs to a qualified religious sect, and if the Commissioner of Social Security finds that all of the following apply:

- The teachings and beliefs of the religious sect:
  - Are conscientiously opposed to the acceptance of private or public insurance; and
  - Have been in existence since December 31, 1950
- Members have provided for the reasonable needs of dependent members (for a substantial amount of time)

HEALTH CARE SHARING MINISTRY

Individual members of a health care sharing ministry may be exempt from penalty if all of the following apply:

- The ministry is a tax-exempt entity (non-profit)
- The ministry shares a set of common ethical or religious beliefs on sharing medical expenses among the members
- Membership is retained even after a medical condition

- The ministry (or predecessor) has been in existence since December 31, 1999
- An annual audit is done with the ministry by an independent certified public accounting firm

CITIZENSHIP STATUS AND INCARCERATION

An individual may also be exempt from the Individual Mandate if that individual is:

- Not a citizen or national of the United States (U.S.)
- Not a resident alien that is lawfully present
- Incarcerated (except incarceration pending disposition of charges)
- A certain member of a Federally recognized Indian Tribe
- A non-citizen (legal resident) who is not lawfully present in the United States

MINIMUM ESSENTIAL COVERAGE IS UNAFFORDABLE

An individual may also be exempt from the Individual Mandate based on the following standards related to hardship or affordability of coverage:

- MEC is more than 8% of that individual's household income[1] (as of the most recent taxable year; this does NOT include Social Security Benefits, but will include any salary reductions excluded from gross income)
- MEC for a *related individual* (related to an employee) is more than 8% of that related individual's household income for the employee's contribution for the coverage of that related individual[2]
    - If a related individual is not eligible for coverage under the employee's EESP, then the 8% unaffordability threshold for the plan is:
        - Based upon the annual premium for the lowest cost bronze plan available through the Exchange, minus
        - The premium credit the related individual would receive through the Exchange
- If an individual's household income does not meet the threshold requirements for filing a Federal income tax return
- An individual suffered a hardship that prevented them from obtaining health coverage[3]

SHORT COVERAGE GAPS

If an individual does not have MEC for a period of three months or less during a tax year, the individual would be exempt from the Individual Mandate penalty.[4]

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1 Household income is defined as a taxpayer's Modified Adjusted Gross Income (MAGI) (MAGI is defined as Adjusted Gross Income increased by amounts excluded from gross income under certain tax sections) and any other MAGI of any individual the taxpayer properly claims as a personal exemption deduction (e.g., themselves, spouse, and each dependent).

2 The required contribution for a related individual (e.g., spouse and/or dependents) is the premium that the employee would pay for the lowest cost coverage for the employee, the spouse, and the claimed dependents. In the case of where the employee self-only coverage is affordable to the employee, and is not affordable for the household, the employee would not be exempt from the Individual Mandate, but the spouse and dependents would be exempt.

3 This could include an individual who may not have sufficient gross income to trigger a return filing (i.e., the taxpayer does not meet the minimum threshold requirement), but may have household income that exceeds the return filing threshold (where filing may occur to claim certain tax benefits (i.e., an earned income credit or additional child tax credit)).

4 If more than one coverage gap occurs, the exemption only applies to the earliest of the coverage gaps. When the three month gap in coverage overlaps more than one taxable year, only the portion occurring in the applicable taxable year will be counted towards the three month coverage gap.

PENALTIES FOR INDIVIDUALS WHO ARE NONEXEMPT

AMOUNT OF PENALTY

Typically, the monthly penalty for an individual that fails to have MEC is equal to the *greater* of 1/12 of:

- The flat dollar amount for all nonexempt individuals in the household[5] (up to a maximum of 300% of the flat dollar amount, which may include a spouse or dependents)[6]
- The applicable percentage of income amount[7]

HOW THE PENALTY IS PAID

An individual would pay the assessed penalty on his/her Federal income tax return for the taxable year the payment was being made.[8]

LIABILITY FOR PENALTY ASSOCIATED WITH DEPENDENTS

An individual is responsible for the tax penalty associated with a related individual if:

- The nonexempt individual can be claimed as his/her dependent; or
- The taxpayer may claim a personal exemption deduction for the individual

An exempt taxpayer is still liable for a penalty for a nonexempt dependent who does not have MEC. If a taxpayer files a joint return, that taxpayer's spouse is jointly liable for the penalty, even if one of the spouses is exempt.

DEFINING MINIMUM ESSENTIAL COVERAGE

MINIMUM ESSENTIAL COVERAGE

So long as a nonexempt individual has MEC, that individual will not be subject to an Individual Mandate penalty.

- MEC is defined as the following:
  - Coverage under a government sponsored plan (e.g., Medicare, Medicaid, Children's Health Insurance Programs (CHIP), TRICARE programs, veteran's health care programs)
  - Coverage under an EESP (group health plan or group health insurance coverage through an employer, including coverage to former employees (i.e., retirees and COBRA qualified beneficiaries)
  - Coverage offered in the individual market within a State
  - Coverage under a grandfathered health plan (health insurance coverage on or before March 23, 2010)
  - Other health benefits recognized by the Secretary of Health and Human Services

The following individuals are treated as having MEC, if they are:

- Bona fide residents of a United States possession
- A U.S. citizen who has a tax home outside the U.S, and is a bona fide resident of a foreign country/countries for an uninterrupted period during an entire taxable year

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5 The flat dollar amount is $95 in 2014, $325 in 2015, and $695 in 2016; future years to be increased by the Cost-of-Living Adjustment.

6 If the individual is not 18 as of that month, the applicable dollar amount is one-half of the flat dollar amount.

7 Calculated as the excess of the taxpayer's household income, minus the taxpayer's Federal income tax return filing threshold, multiplied by the percentage of income amount (i.e., 1% in 2014, 2% in 2015, and 2.5% in 2016)

8 If the individual does not pay such penalty, the Secretary of the Treasury may not assess a tax lien or levy against that individual, nor may the individual be subject to a criminal penalty for failing to pay the penalty.

WHAT IS *NOT* MINIMUM ESSENTIAL COVERAGE

Certain HIPAA excepted benefits do *not* count as MEC. These benefits include:

- Accidental death and dismemberment coverage, disability insurance, general liability insurance, workers' compensation, coverage for employer-provided on-site medical clinics
- Stand-alone dental or vision benefits, long-term care benefits, benefits provided under certain health flexible spending arrangements
- Coverage offered that is only for a specified disease or illness, or fixed indemnity insurance, if offered under a contract of insurance *separate from* a group or individual health plan by the same plan sponsor
- Medicare supplemental policies, TRICARE supplemental policies, and similar supplemental coverage, if offered under a contract of insurance *separate from* a group or individual health plan by the same plan sponsor

PREMIUM TAX CREDIT FOR APPLICABLE TAXPAYERS

In general, a premium tax credit is available for any Exchange coverage that occurs in a taxable year in which the taxpayer files taxes (if taxpayer's household income is 100% to 400% of the Federal Poverty Line (FPL)).

CALCULATION OF THE PREMIUM ASSISTANCE AMOUNT

The premium assistance amount is calculated by treating the family as a single, aggregated unit, and is the lesser of the following:

- The monthly premium cost, for one or more Qualified Health Plans (QHP) offered through the Exchange, for the taxpayer or a member of the taxpayer's family; or
- The adjusted monthly premium for the second lowest cost silver plan for the taxpayer, minus:
    - The applicable percentage of income contribution by a household, times the taxpayer's household income, divided by 12

No premium tax credit is allowable for an individual who is eligible for MEC (other than coverage in the individual market). NOTE: Although the regulations state that a premium tax credit is only available to individuals who are not eligible for MEC, subsidies will still be available to employee's who are offered MEC, but that MEC is not affordable or does not provide minimum value.

ADDITIONAL INFORMATION

Barney & Barney is dedicated to helping clients understand health care reform. These regulations mainly effect employees, but the above information may be helpful for employers who want to relay information and educate their employees regarding the Individual Mandate and premium tax credits offered through the Exchange. These are not final regulations, and until final regulations are released from the Departments of Labor, HHS and the Treasury, these proposals can only be used as temporary guidance.

Complete details on the above proposed regulations can be found at the links below.

Individual Mandate regulations from the Department of the Treasury, available at: http://ofr.gov/OFRUpload/OFRData/2013-02141_PI.pdf

Individual Mandate regulations from HHS, available at: http://ofr.gov/OFRUpload/OFRData/2013-02139_PI.pdf

FAQs on the Individual Mandate from the Internal Revenue Service (IRS), available at: http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision

You may submit written comments on these regulations via mail to: CC:PA:LPD:PR (REG-148500-12), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions *may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-148500-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.*

Comments may be submitted electronically via the Federal eRulemaking Portal at http://www.regulations.gov (Indicate IRS REG–138006–12 in the subject line) or individuals may call Sue-Jean Kim or John B. Lovelace, at (202) 622-4960.

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