

Updates to Affordable Care Act: Law, Regulatory Explanation and Analysis, 2018

Chapter 2. Individuals

205. Individual Health Insurance Mandate

Congress zeroed out the individual shared responsibility payments for months beginning after December 31, 2018 (Tax Cut and Jobs Act (P.L. 115-97)). Going forward after that date, individuals without minimum essential coverage will not owe a shared responsibility payment. Nevertheless, large employers that fail to offer minimum essential coverage to their full-time employees will continue to owe shared responsibility payments. In addition, individuals will still need to have minimum essential coverage to qualify for the premium tax credit.

Minimum essential coverage does not include short-term, limited duration coverage, and such plans do not have to comply with consumer protections the ACA imposes on individual market plans. The maximum term for such coverage under Obama-era regulations is less than three months, but the Trump administration has expanded that period to less than 12 months. This move coupled with elimination of individual shared responsibility payments, means that starting in 2019 insurers may offer inexpensive short-term plans that do not have to comply with the pre-existing condition ban or other consumer protections (Reg. 9801-2, amended by T.D. 9837).

For purposes of the affordability exemption, if an individual resides in a rating area served by a Marketplace that does not offer a bronze plan, the individual generally should use as his or her applicable plan the lowest cost metal-level plan available in the Marketplace serving the rating area in which the individual resides that would cover all nonexempt members of the individual's family (Notice 2017-74).

Chapter 3. Businesses

345. Tax on High-Cost Employer Coverage

Congress postponed the start date for this tax until 2022 (Act. Sec. 4002, HR 195).

350. Excise Tax on Sales of Medical Devices

Congress extended the moratorium on this tax through 2019 (Act. Sec. 4001, HR 195).

Chapter 5. Health Care Exchanges and Other Provisions Governing Health Care Plans

510. Exchange Requirements

For the benefit years beginning on or after January 1, 2018, the annual open enrollment period begins on November 1 and extends through December 15 of the calendar year preceding the benefit year (HHH Final Reg. 155.410, as amended).

520. Cost-Sharing Reduction Payments

The Trump Administration announced in October 2017 that it will cease making cost-sharing reduction payments.

540. Market Reforms and Improved Coverage

The Departments of the Treasury, Health and Human Services, and Labor have issued identical proposed and interim final contraceptive mandate rules that are effective on October 6, 2017. The new regulations exempt objecting nongovernment employers from the general requirement to provide contraceptive coverage at no cost to participants in their group health plans

as a part of the preventive services mandate under the ACA. The new rules provide that any nongovernment employer that has religious or moral objections to providing coverage for some or all forms of birth control can simply not provide the coverage. These rules also apply to colleges and universities providing student health insurance coverage. Although there has been a limited accommodation for employers that have a religious objection, the exemption on the basis of a moral objection is entirely new. The religious exemption is open to any nongovernment employer, including both nonprofit and for-profit employers. The same holds true for the moral exemption, except the religious exemption is available for publicly traded employers, but the moral objection is not. The government expects corporations to express their objections through the normal state law rules of corporate governance (T.D. 9827, and T.D. 9828),

541. Qualified Small Employer Health Reimbursement Arrangements (New Section)

The IRS has issued guidance on the requirements for providing a qualified small employer health reimbursement arrangement (QSEHRA), the tax consequences of the arrangement, and the requirements for providing written notice of the arrangement to eligible employees. The guidance covers eligible employers and employees, the "same terms" requirement, the statutory dollar limits, written notice requirement, the minimum essential coverage requirement, reimbursements, reporting, and coordination with the premium tax credit and health saving account requirements. The guidance applies for plan years beginning on and after November 20, 2017 (Notice 2017-67).

543. Fee on Health Insurance Providers

Congress provided a moratorium on this fee for 2017 and has extended it for 2018 (Act Sec. 201, Consolidated Appropriations Act of 2016 (Div. P of P.L. 114-113), and Act Sec. 4003, HR 195)).

The IRS finalized temporary regulations defining "covered entity" without making any changes (Reg. 57.2(b)(3), (c)(3)(ii). T.D. 9830). Under these regulations, an entity qualifies for an exclusion if it qualified for an exclusion either for the entire data year ending on the prior December 31st or the entire fee year beginning on January 1. The regulations impose a consistency requirement, and provide controlled group reporting rules.

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