

Individual Shared Responsibility Payment Hardship Exemptions that May Be Claimed on a Federal Income Tax Return Without Obtaining a Hardship Exemption Certification from the Marketplace

Notice 2014-76

PURPOSE

This notice identifies the hardship exemptions from the individual shared responsibility payment under § 5000A of the Internal Revenue Code that a taxpayer may claim on a Federal income tax return without obtaining a hardship exemption certification from the Health Insurance Marketplace (Marketplace).

BACKGROUND

For each month beginning after December 31, 2013, § 5000A requires individuals to have minimum essential health coverage for themselves and any nonexempt family member whom the taxpayer may claim as a dependent, qualify for an exemption, or include an individual shared responsibility payment with their Federal income tax return.

Section 5000A(e)(5) and § 1.5000A-3(h) of the Income Tax Regulations, as finalized concurrently with this notice, provide that, in general, an individual is exempt from § 5000A for a month if he or she has in effect a hardship exemption certification issued by the Marketplace certifying that the individual has suffered a hardship (as that term is defined in 45 CFR 155.605(g)) affecting the individual's capability to obtain minimum essential coverage in that month. Section 1.5000A-3(h)(3), as finalized

concurrently with the issuance of this notice, provides that an individual may claim a hardship exemption on the individual's Federal income tax return without obtaining a hardship exemption certification from the Marketplace if the individual is eligible for a hardship exemption described in guidance released by the Department of Health and Human Services (HHS) and the exemption is allowed pursuant to guidance published by the Treasury Department and the Internal Revenue Service (IRS). As discussed in the preamble to the final regulations released concurrently, this notice provides a complete list of hardship exemptions that may be claimed on a Federal income tax return without obtaining a hardship exemption certification, rather than listing specific exemptions in the regulations.

DISCUSSION

In several pieces of published guidance, HHS has identified hardships affecting an individual's ability to obtain minimum essential coverage, which, pursuant to guidance issued by the Treasury Department and the IRS, permits a qualifying individual to claim a hardship exemption on a Federal income tax return without obtaining a hardship exemption certification from the Marketplace. This notice recognizes the following hardships identified by HHS and allows a qualifying individual (or the taxpayer who may claim a qualifying individual as a dependent) to claim a hardship exemption on a Federal income tax return without obtaining a hardship exemption certification from the Marketplace. Individuals seeking a hardship exemption that is not on this list can apply for an exemption through the Marketplace.

A. Two or more members of a family whose combined cost of employer-sponsored coverage is considered unaffordable. In 45 CFR 155.605(g)(5), HHS

provides that an individual is eligible for a hardship exemption if the individual satisfies the following requirements: (1) the individual's required contribution for self-only coverage does not exceed the required contribution percentage of household income in § 5000A(e)(1)(A), (2) the combined required contribution for self-only coverage for two or more employed members of the individual's family exceeds the required contribution percentage of household income, and (3) the required contribution for family coverage that the employed members of the individual's tax household could enroll in through an employer exceeds the required contribution percentage of household income. An individual meeting these requirements for any month in a taxable year may claim a hardship exemption on a Federal income tax return for the taxable year without obtaining a hardship exemption certification. This hardship exemption was identified previously by the Treasury Department and the IRS in final regulations published on August 30, 2013 (TD 9632, 78 FR 53646).

B. Gross income below the applicable return filing threshold. In guidance released on September 18, 2014, HHS provides that that all individuals with gross income below their applicable filing threshold (as specified in § 6012(a)(1)) are entitled to a hardship exemption. See HHS Centers for Medicare & Medicaid Services, Shared Responsibility Guidance--Filing Threshold Hardship Exemption (Sept. 18, 2014) (available at www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Filing-Threshold-Exemption-Guidance-9-18-14.pdf). See also 45 CFR 155.605(g)(3). HHS intends to release additional guidance clarifying that this hardship exemption applies only to an individual who may not be claimed as a dependent by another individual. An individual eligible for this hardship exemption who

files a Federal income tax return may claim a hardship exemption on the return for the taxable year without obtaining a hardship exemption certification.

C. Individuals who obtained minimum essential coverage during the 2014 open enrollment period.

1. In guidance released on October 28, 2013, HHS provides that an individual is eligible for a hardship exemption if the individual enrolled in coverage through the Marketplace prior to the close of the initial open enrollment period (Mar. 31, 2014). See HHS Centers for Medicare & Medicaid Services, Shared Responsibility Provision Question and Answer (Oct. 28, 2013) (available at www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/enrollment-period-faq-10-28-2013.pdf). This hardship exemption was identified previously by the Treasury Department and the IRS in proposed regulations published on January 27, 2014 (REG-141036-13, 79 FR 4302).

2. In guidance released on March 26, 2014, HHS provides that an individual who was “in line” to enroll in coverage through the Marketplace on March 31, 2013, will be treated as having enrolled in coverage by March 31, 2014. For purposes of the March 26, 2014, HHS guidance, the term “in line” refers to individuals for whom HHS had received paper applications by April 7, 2014, or who tried to enroll during the open enrollment period but did not complete the process by March 31, 2014. Accordingly, individuals in that situation are eligible for the hardship exemption described in the HHS letter of October 28, 2013. See HHS Centers for Medicare & Medicaid Services, Guidance for Issuers on People “In Line” for the Federally-facilitated Marketplace at the end of the Initial Open Enrollment Period (Mar. 26, 2014) (available at

www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/in-line-SEP-3-26-2014.pdf).

3. In guidance released on May 2, 2014, HHS provides that an individual is eligible for a hardship exemption if the individual enrolled outside the Marketplace in minimum essential coverage for 2014 that is effective on or before May 1, 2014. See HHS Centers for Medicare & Medicaid Services, Special Enrollment Periods and Hardship Exemptions for Persons Meeting Certain Criteria (May 2, 2014) (available at www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/SEP-and-hardship-FAQ-5-1-2014.pdf).

4. An individual meeting the requirements in paragraph C.1, C.2, or C.3 of this notice may claim a hardship exemption on a Federal income tax return without obtaining a hardship exemption certification for months in 2014 before the month when the individual's coverage became effective.

D. Certain individuals who applied for CHIP coverage during the open enrollment period for 2014. In guidance released on March 31, 2014, HHS provides that an individual is eligible for a hardship exemption if the individual applied for coverage under the Children's Health Insurance Program (CHIP) during the open enrollment period for 2014 and was found eligible for CHIP but had a gap in coverage prior to the effective date of the CHIP coverage. See HHS Centers for Medicare & Medicaid Services, Shared Responsibility Provision Question and Answer (Mar. 31, 2014) (available at www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/shared-responsibility-FAQ-3-30-2014.pdf). An individual meeting these requirements may claim a hardship exemption on a Federal income tax return

without obtaining a hardship exemption certification for months in 2014 before the month in which the individual's CHIP coverage became effective.

E. Individuals eligible for services through an Indian Health Care Provider. In guidance released on September 18, 2014, HHS provides that an individual is eligible for a hardship exemption if the individual is eligible for services through an Indian health care provider (as defined in 42 CFR 447.50) or is eligible for services through Indian Health Service in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3). See HHS Centers for Medicare & Medicaid Services, Shared Responsibility Guidance--Exemption for Individuals Eligible for Services through an Indian Health Care Provider (Sept. 18, 2014) (available at www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/guidance-exemption-certain-AIAN.pdf). See also 45 CFR 155.605(g)(6). An individual meeting the requirements described above may claim a hardship exemption on a Federal income tax return for a month in a taxable year that includes a day on which the individual is eligible for services through an Indian health care provider or the Indian Health Service without obtaining a hardship exemption certification.

F. Certain individuals residing in a state that did not expand Medicaid eligibility under section 2001(a) of the Affordable Care Act. In guidance released on November 21, 2014, HHS provides that an individual is eligible for a hardship exemption for 2014 if at any time during 2014 the individual resided in a state that did not expand Medicaid coverage and the individual's household income, within the meaning of § 36B, is below 138 percent of the applicable federal poverty level for the individual's family size. See HHS Centers for Medicare & Medicaid Services, Guidance on Hardship Exemptions for

Persons Meeting Certain Criteria (Nov. 21, 2014) (available at www.cms.gov). An individual meeting the requirements of this hardship exemption may claim an exemption on a 2014 Federal income tax return without obtaining a hardship exemption certification.

EFFECTIVE DATE

This notice applies to taxable years beginning after December 31, 2013.

DRAFTING INFORMATION

The principal author of this notice is John B. Lovelace of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Mr. Lovelace at (202) 317-7006 (not a toll-free call).