



# Health Care Reform

## LEGISLATIVE BRIEF

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## The Hardship Exemption from the Individual Mandate

Beginning in 2014, the Affordable Care Act (ACA) requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. This rule is often referred to as the “individual mandate.” Individuals may be eligible for an exemption from the penalty in certain circumstances.

On June 26, 2013, the Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) issued [guidance](#) on the hardship exemption from the individual mandate. This guidance establishes criteria that federally facilitated Exchanges (FfEs) will use to determine eligibility for the hardship exemption and provides a special enrollment period for individuals who no longer qualify for an exemption.

### THE INDIVIDUAL MANDATE

Under the individual mandate, a penalty will be assessed against an individual for any month during which he or she does not maintain “minimum essential coverage,” beginning in 2014 (unless an exemption applies). A taxpayer is also liable for the penalty for any nonexempt individual whom the taxpayer may claim as a dependent.

Under the ACA, 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;
- Certain types of Veterans health coverage;
- Children's Health Insurance Program (CHIP) coverage;
- TRICARE;
- Coverage for Peace Corps volunteers; and
- Nonappropriated Fund Health Benefit Program of the Department of Defense.

The ACA provides nine categories of individuals who are **exempt from the penalty**. An individual who is eligible for an exemption for **any one day** of a month is treated as exempt for the entire month.

EXEMPTIONS FROM THE INDIVIDUAL MANDATE		
Individuals who cannot afford coverage	Taxpayers with income below the filing threshold	Members of federally recognized Indian tribes
Individuals who experience a hardship	Individuals who experience a short gap in coverage	Religious conscience objectors
Members of a health care sharing ministry	Incarcerated individuals	Individuals not lawfully present in the United States

### HARDSHIP EXEMPTION

The hardship exemption is intended for individuals who have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.



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A hardship exemption is available for a month or months in which:

- An applicant experienced financial or domestic circumstances, including an unexpected natural or human-caused event, that caused a significant, unexpected increase in essential expenses;
- The expense of purchasing minimum essential coverage would have caused the applicant to experience serious deprivation of food, shelter, clothing or other necessities; or
- The applicant has experienced other factors similar to those described above that prevented him or her from obtaining minimum essential coverage.

## ***Enumerated Hardships***

HHS has enumerated several situations that will always be treated as constituting a hardship for purposes of the hardship exemption, including:

- Individuals who turn down coverage because the Exchange projects it will be unaffordable (even if his or her actual income for the year turns out to be higher so that they are not eligible for the affordability exemption);
- Individuals who, in addition to one or more employed members of their families, 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 statutory exemption for those with household income below the filing threshold;
- Individuals who would be eligible for Medicaid under the expansion, but live in a state that chooses not to expand Medicaid eligibility (this exemption is available for households up to 138 percent of poverty, even though those over 100 percent of poverty may qualify for premium tax credits); and
- Individuals who are Indians (as well as their spouses and descendants) who are eligible for services through an Indian health care provider.

## ***Other Types of Hardship***

The hardship exemption will also be available on a case-by-case basis for individuals who face other unexpected personal or financial circumstances that prevent them from obtaining coverage. CMS' guidance established criteria that federally facilitated Exchanges (FFEs) will use to determine eligibility for the hardship exemption. State-based Exchanges have the option of using these criteria.

These criteria include circumstances in which an individual:

- Becomes homeless;
- Has been evicted in the past six months or is facing eviction or foreclosure;
- Has received a shut-off notice from a utility company;
- Recently experienced domestic violence;
- Recently experienced the death of a close family member;
- Recently experienced a fire, flood or other natural or human-caused disaster that resulted in substantial damage to the individual's property;
- Filed for bankruptcy in the last six months;

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- Incurred unreimbursed medical expenses in the last 24 months that resulted in substantial debt;
- Experienced unexpected increases in essential expenses due to caring for an ill, disabled or aging family member;
- Is a child who has been determined ineligible for Medicaid and CHIP and for whom a party other than the party who expects to claim the child as a tax dependent is required by court order to provide medical support (this exemption is only available for the months during which the medical support order is in effect); or
- As a result of an eligibility appeals decision, are determined eligible for enrollment in a QHP through the Exchange, advance payments of the premium tax credit or cost-sharing reductions for a period of time during which he or she was not enrolled in a QHP through the Exchange (this exemption is only available for the period of time affected by the appeals decision).

## **Exemption for Exchange Plan Enrollment during Initial Enrollment Period**

On Oct. 28, 2013, CMS issued a [frequently asked question](#) (FAQ) to create a hardship exemption for individuals who purchase Exchange coverage during the initial enrollment period. The initial open enrollment period runs from Oct. 1, 2013, through March 31, 2014. Without the exemption, individuals who purchase insurance towards the end of the initial enrollment period could be required to pay a penalty based on a gap in coverage that lasts for three months or longer.

Under the new hardship exemption, if an individual enrolls in an Exchange plan during the initial open enrollment period, he or she will be able to claim a hardship exemption from the penalty for the months prior to the effective date of the individual's coverage, without the need to request an exemption from the Exchange. This hardship exemption is claimed when the individual files his or her federal income tax return in 2015. According to CMS, additional detail on how to claim this exemption will be provided in 2014.

## **CLAIMING THE HARDSHIP EXEMPTION**

Certain subcategories of the hardship exemption will be available exclusively through the tax filing process. This means that individuals can forgo obtaining a certificate from the Exchange and, instead, claim the exemption at the time they file their taxes. These include exemptions for:

- Certain individuals who are not required to file an income tax return but who technically fall outside the statutory exemption for those with household income below the filing threshold; and
- Individuals who, in addition to one or more employed members of their families, 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.

However, most categories of the hardship exemption are available exclusively through an Exchange. Individuals must apply for these exemptions by filing an application with the Exchange within three years after the month or months during which the hardship occurred. Exchanges may only receive applications after the end of a calendar year for hardship exemptions.

Once an application is received, the Exchange will verify the hardship claim. If the Exchange is unable to resolve inconsistent information, it must give the applicant 90 days (or longer if necessary) to resolve the inconsistency. However, the applicant is not eligible for the exemption until the inconsistency is resolved.

If the Exchange finds that a hardship exists, it will issue a certificate of exemption to the applicant for the month before, months during and month after the hardship (as well as additional months after the hardship, if necessary). The Exchange will report exemption certifications to the IRS.

Individuals who are denied an exemption will have the right to appeal.

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## **ELIGIBILITY REDETERMINATIONS AND SPECIAL ENROLLMENT**

Individuals with exemption certificates are required to report changes in their eligibility status within 30 days of the change. The Exchange must then do an eligibility redetermination and notify the individual regarding continuing eligibility.

An applicant that no longer qualifies for an exemption after redetermination but is otherwise eligible to enroll in a QHP will be eligible for a special enrollment period.

*Source: U.S. Department of Health and Human Services*

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