



American Indian Health Commission for Washington State *“Improving Indian Health through Tribal-State Collaboration”*

AI/AN AND INDIAN HEALTH CARE PROVIDER USER TAX PENALTY EXEMPTION GUIDANCE

Overview

Health care is a treaty right of American Indians and Alaska Natives (AI/AN). The Patient Protection and Affordable Care Act (ACA) provides new health care benefits and protections to AI/AN in recognition of this treaty right. One of those protections includes exempting AI/AN enrolled in a federally-recognized tribe from the tax penalty that most Americans will have to pay starting in 2014 for not having adequate health care coverage. This tax penalty is referred to as the **“Individual Shared Responsibility Payment.”** In addition to AI/AN, other individuals will not be subject to the tax penalty if they apply for an exemption. These exemptions include individuals eligible for services provided by an Indian health care provider. In addition, individuals who do not file tax returns because their income is below the filing threshold will not be subject to the tax penalty.

Unfortunately, this exemption is not entirely simple, nor automatic. Individuals will need to file Form 8965 with the Internal Revenue Service (IRS) to report an exemption. The positive aspect of the requirement to file Form 8965 is that individuals who are not Indian cannot fraudulently claim the exemption. While certain individuals are required to first obtain a certification exemption number through the Federal Health Insurance Marketplace, AI/AN and individuals eligible for services through Indian health care provider **are not required** to apply through the Federal Health Insurance Marketplace. These individuals are now able to claim an exemption directly with the IRS.

Frequently Asked Questions

1. Who is eligible for an exemption from the Individual Shared Responsibility Payment / “Tax Penalty”?

A number of exemptions exist to the tax penalty. To find the complete list of exemptions, go to <https://www.healthcare.gov/exemptions>. This guidance addresses only two types of exemptions: AI/AN and individuals eligible for services from an Indian health care providers.

2. How does an individual apply for an exemption from the Shared Responsibility Payment / “Tax Penalty”?

Federally-recognized AI/AN and/or individuals eligible for services through an Indian health care provider will need to use IRS Form 8965 to claim an exemption OR to report a certification exemption number already granted by the Federal Health Insurance Marketplace. Individuals who previously applied through the Federal Health Insurance Marketplace and received an exemption certification number will provide that number on IRS Form 8965.

3. What if the individual does not file a tax return?

Individuals who do not file tax returns because their income is below the filing threshold do not need an exemption. However, many tribes and other Indian health care organizations are advising anyone who is eligible to apply for an exemption if they are unsure of their tax status and in case of a change in future circumstances. An individual should seek professional tax assistance or visit the IRS website at <http://www.irs.gov/Individuals/Do-You-Need-to-File-a-Federal-Income-Tax-Return%3F>.

4. If an individual already received a certification exemption number from the Federal Health Insurance Marketplace, how long does the exemption last?

So long as an individual's membership or eligibility for services from an Indian health care provider remains unchanged, he or she does not have to reapply for an exemption with the Health Insurance Marketplace.

5. What happens to an individual who does not qualify for an exemption and does not have health coverage?

First, it will be important to determine whether the individual is eligible for one of the many available exemptions aside from the ones listed in this document. Individuals can go to <https://www.healthcare.gov/exemptions> to make that determination. If an individual does not qualify for an exemption and does not have health care coverage that meets the federal requirements (such as Medicare, most Medicaid and Veteran's Administration coverage, or qualifying individual policies), he or she will have to pay the "Individual Shared Responsibility Payment." It is important to note that health care provided by an Indian health provider does not meet the federal requirement for health care coverage. So non-Indians who do not fall under the categories listed in Question 1 above will be responsible to make this payment (unless they are not required to file a tax return).

In 2014, the fine/penalty for an individual is the greater of

- \$95 for each adult and \$47.50 for each child, up to \$285 per family, or
- 1% of family income minus the federal tax filing threshold, which is \$10,000 for a person who files singly, \$20,000 for somebody who files jointly

In 2015, the penalty is the greater of

- \$325 for each adult and \$162.50 for each child, up to \$975 per family, or
- 2% of family income above the federal tax filing threshold

In 2016, the penalty is the greater of

- \$695 for each adult and \$347.50 for each child, up to \$2,085 per family, or
- 2.5% of family income above the federal tax filing threshold

The penalty is assessed based on "coverage months." This means that each month an individual is uninsured, he may owe 1/12th of the annual penalty. However, individuals are exempt from the tax penalty if they went without coverage for less than three consecutive months during the year. For more helpful information on this topic, visit http://kaiserfamilyfoundation.files.wordpress.com/2013/04/requirement_flowchart_3.pdf.

6. Are individuals who are not eligible for an exemption required to enroll in the health care exchange to avoid the tax penalty?

No. Individuals are not required to enroll through the federal exchange or the Washington Healthplanfinder in order to avoid the tax penalty. Enrolling in health care coverage through an exchange such as the Washington Healthplanfinder is just one of many ways to obtain health care coverage and avoid the tax penalty. For example, individuals can obtain qualifying health care coverage in the form of private insurance, employer-sponsored plans, VA, Medicare, etc.

APPENDIX B
Legal References

45 CFR 155.605(f)

(f) *Membership in an Indian tribe.*

(1) The Exchange must determine an applicant eligible for an exemption for any month if he or she is a member of an Indian tribe, as defined in section 45A(c)(6) of the Code, for such month, as provided in section 5000A(e)(3) of the Code.

(2) *Duration of exemption for membership in an Indian tribe.* The Exchange must grant the exemption specified in this paragraph to an applicant who meets the standards specified in paragraph (f)(1) of this section for a month on a continuing basis, until such time that the applicant reports that he or she no longer meets the standards provided in paragraph (f)(1) of this section.

IRS Code 45A(c)(6)

Indian tribe defined. The term “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](#) et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

IRS Code 5000A(e)(3)

(3) Members of Indian tribes. Any applicable individual for any month during which the individual is a member of an Indian tribe (as defined in section [45A \(c\)\(6\)](#)).

45 CFR 155.605(g)(6)

Eligible for services through an Indian health care provider. (i) The Exchange must determine an applicant eligible for an exemption for any month if he or she is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.50 and not otherwise eligible for an exemption under paragraph (f) of this section, or an individual eligible for services through the Indian Health Service in accordance with 25 USC 1680c(a), (b), or (d)(3).

42 CFR 447.50(2)

Indian health care provider means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act ([25 U.S.C. 1603](#)).

25 USC 1680c(a)

Children

Any individual who—

- (1) has not attained 19 years of age;
- (2) is the natural or adopted child, stepchild, foster child, legal ward, or orphan of an eligible Indian; and
- (3) is not otherwise eligible for health services provided by the Service, shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service.

If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until 1 year after the date of a determination of competency.

25 USC 1680c(b)

Spouses

Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but is not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all such spouses or spouses who are married to members of each Indian tribe being served are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe or tribal organization providing such services. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

25 USC 1680c(d)(3)

The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other provision of law in order to provide care to **non-Indian women pregnant** with an eligible Indian's child for the duration of the pregnancy through postpartum;

25 USC 1680c(c)(2)

ISDEAA programs

In the case of health facilities operated under a contract or compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the governing body of the Indian tribe or tribal organization providing health services under such contract or compact is authorized to determine whether health services should be provided under such contract or compact to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the consideration described in paragraph (1)(B). Any services provided by the Indian tribe or tribal organization pursuant to a determination made under this subparagraph shall be deemed to be provided under the agreement entered into by the Indian tribe or tribal organization under the Indian Self-Determination and Education Assistance Act. The provisions of section 314 of Public Law 101-512 (104 Stat. 1959), as amended by section 308 of Public Law 103-138 (107 Stat. 1416), shall apply to any services provided by the Indian tribe or tribal organization pursuant to a determination made under this subparagraph.

45 CFR 155.615(g)-(h)

(g) Inability to verify necessary information. Except as otherwise specified in this subpart, for an applicant for whom the Exchange cannot verify information required to determine eligibility for an exemption, including but not limited to when electronic data is required in accordance with this subpart but data for individuals relevant to the eligibility determination for an exemption are not included in such data sources or when electronic data is required but it is not reasonably expected that data sources will be available within the time period as specified in §155.315(f), the Exchange—

(1) Must make a reasonable effort to identify and address the causes of such inconsistency, including typographical or other clerical errors, by contacting the application filer to confirm the accuracy of the information submitted by the application filer;

(2) If unable to resolve the inconsistency through the process described in paragraph (g)(1) of this section, must—

(i) Provide notice to the applicant regarding the inconsistency; and

(ii) Provide the applicant with a period of 90 days from the date on which the notice described in paragraph (g)(2)(i) of this section is sent to the applicant to either present satisfactory documentary evidence via the channels available for the submission of an application, as described in §155.610(d), except for by telephone, or otherwise to resolve the inconsistency.

(3) May extend the period described in paragraph (g)(2)(ii) of this section for an applicant if the applicant demonstrates that a good faith effort has been made to obtain the required documentation during the period.

(4) During the period described in paragraph (g)(1) and (g)(2)(ii) of this section, must not grant a certificate exemption based on the information subject to this paragraph.

(5) If, after the period described in paragraph (g)(2)(ii) of this section, the Exchange remains unable to verify the attestation, the Exchange must determine the applicant's eligibility for an exemption based on any information available from the data sources used in accordance with this subpart, if applicable, unless such applicant qualifies for the exception provided under paragraph (h) of this section, and notify the applicant of such determination in accordance with the notice requirements specified in §155.610(i), including notice that the Exchange is unable to verify the attestation.

(h) *Exception for special circumstances.* For an applicant who does not have documentation with which to resolve the inconsistency through the process described in paragraph (g)(2) of this section because such documentation does not exist or is not reasonably available and for whom the Exchange is unable to otherwise resolve the inconsistency, the Exchange must provide an exception, on a case-by-case basis, to accept an applicant's attestation as to the information which cannot otherwise be verified along with an explanation of circumstances as to why the applicant does not have documentation.