

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Department of Administration (“DOA”)

DIVISION: HealthSource RI (“Exchange”)

RULE IDENTIFIER: Part 220-RICR-90-00-1

RULE TITLE: Rules and Regulations Pertaining to HealthSource RI

TYPE OF RULEMAKING: Amendment

REASON FOR RULEMAKING: The Rules and Regulations Pertaining to HealthSource RI (“rule”) govern the eligibility requirements for enrollment in a Qualified Health Plan, exemptions, premium tax credits and cost sharing reductions, operation of a SHOP Exchange, and establishment of a trust to facilitate the collection and payment of premiums to qualified health plan issuers, among other requirements.

The Exchange is amending this rule to implement the recent statutory revisions to R.I. Gen. Laws c. 42-157 and 44-30 under Article 11 of H5151, titled “Relating to Healthcare Market Stability” (“Article 11”).

TESTIMONY AND COMMENTS:

Summary of comments received:

COMMENT: One commenter expressed support of the State of Rhode Island’s (“State”) adoption of the federal definition of “applicable individual” under 26 USC 5000A(d). The commenter noted that members of health care sharing ministries were exempted from that definition under federal law and therefore not subject to the Shared Responsibility Payment Penalty under R.I. Gen. Laws § 44-30-101(c) (“SRP”). The commenter suggested the State seek the assistance of the commenter and/or the United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services regarding determination of health care sharing ministries certified for exemption, based on past experience at the federal level. This serves to keep the process of claiming exemptions for members of certified ministries as streamlined as possible, a desire expressed by the commenter. The commenter proposed no specific changes to the rule.

RESPONSE: Under R.I. Gen. Laws § 44-30-101(e), the Exchange’s jurisdiction is limited to hardship exemption determinations and religious conscience exemption determinations. Exemptions for members of health care sharing ministries under R.I. Gen. Laws § 44-30-101 will fall under the jurisdiction of the Rhode Island Division of

Taxation. The commenter did not request any specific changes to the rule, and, accordingly, the Exchange is finalizing the rule as proposed.

COMMENT: Three commenters expressed support for creating an exemption for Rhode Island residents with income below 138% of the federal poverty level (“FPL”). Commenters noted a variety of reasons for their support, including that: (1) many will qualify under another type of exemption that is more complex to understand and apply for, and in general should not be penalized; (2) this exemption would be simpler to implement and easier for the filer; (3) it was not anticipated that revenue from the Shared Responsibility Payment Penalty would be collected from this group; and (4) choices made by those under 138% FPL generally do not have an impact on the individual market risk pool and therefore adopting this exemption would not undercut the policy goals of Article 11. These commenters suggested incorporating this exemption into the individual income tax return process.

RESPONSE: The Exchange appreciates the thoughtful comments provided on this topic.

The Exchange seeks to implement the statutory revisions to R.I. Gen. Laws c. 42-157 and 44-30 under Article 11 of H5151 as closely as possible to the federal framework after which it was designed. Doing so is intended to simplify compliance for Rhode Island residents, building off current understanding of the federal Affordable Care Act. While there are bound to be nuances or small changes at the state level as compared to the federal level during any new state-level enactment, it is our goal to minimize those in the initial year or so of implementation. Additionally, HealthSource RI notes that any expansion of exemption categories will have an impact on revenue.

That said, the commenters have raised concerns that merit close attention and analysis as the state gains experience operationalizing this new state law. The Exchange intends to collect data about how the state’s approach to implementation is working at the state level before considering whether to add an exemption for individuals with income below 138% FPL. The Exchange also notes that changes made at the federal level that made it easier to claim the affordability exemption have improved the process for consumers. The Exchange has learned from these improvements and may replicate this approach at the state level. For the reasons just stated, the Exchange is finalizing the rule as proposed.

COMMENT: One commenter suggested that, in addition to the exemptions outlined at 45 CFR 155.605, the rule incorporate the exemptions from 26 USC 1-5000A (or 26 CFR 1-5000A-3).

RESPONSE: The Exchange will process exemptions under its authority at R.I. Gen. Laws § 42-157-11 and 44-30-101(e)(2) and (3), which authorize the Exchange to make determinations as to hardship and religious conscience exemptions. Other exemptions under 26 USC 1-5000A (or 26 CFR 1-5000A-3) will fall under the

jurisdiction of the Rhode Island Division of Taxation. Accordingly, the Exchange is finalizing the rule as proposed.

COMMENT: Some commenters requested clarification that the State intends to treat certain federal subregulatory guidance interpreting eligibility criteria for the hardship exemption as a floor or minimum for state implementation. Commenters noted that the State's criteria for the hardship exemption should be at least as consumer-friendly as the federal criteria.

RESPONSE: Under R.I. Gen. Laws § 44-30-101(h), applicable federal regulations implementing section 5000A of the Internal Revenue Code of 1986, as amended and in effect on the 15th day of December 2017, apply as though incorporated into the Rhode Island Code of Regulations. Additionally, per R.I. Gen. Laws § 44-30-101(h), applicable federal guidance interpreting these federal regulations applies. Accordingly, the Exchange will interpret the hardship exemption in accordance with applicable federal regulations and guidance, including, without limitation, "Guidance on Hardship Exemption Criteria and Special Enrollment Periods" issued on June 26, 2013 by the Center for Consumer Information and Insurance Oversight, Center for Medicare and Medicaid Services. The Exchange is finalizing the rule as proposed.

COMMENT: Some commenters requested that the Exchange clarify that the hardship exemption is available to individuals who made a good faith effort to enroll but were unable to do so due to errors of the State enrollment system that are beyond their control.

RESPONSE: 45 C.F.R. 155.605(d)(1)(iii) requires the Exchange to grant a hardship exemption where it determines that an applicant experienced circumstances that prevented him or her from obtaining coverage under a qualified health plan. Pursuant to that requirement, the Exchange will assess individuals' eligibility for a hardship exemption on a case-by-case basis and in accordance with applicable rules and guidance. The Exchange invites individuals who believe that they experienced circumstances that prevented them from obtaining coverage under a qualified health plan to apply for a hardship exemption. The Exchange will continue to grant these exemptions on a case-by-case basis in accordance with existing regulatory eligibility standards and associated guidance. Accordingly, the Exchange is finalizing the rule as proposed.

COMMENT: Commenters requested that the Exchange clarify that the hardship exemption is available to individuals who attest that they did not enroll in insurance due to a good-faith fear of immigration consequences.

RESPONSE: 45 C.F.R. 155.605(d)(1)(iii) requires the Exchange to grant a hardship exemption where it determines that an applicant experienced circumstances that prevented him or her from obtaining coverage under a qualified health plan. Pursuant to that requirement, the Exchange will assess individuals' eligibility for a hardship exemption on a case-by-case basis and in accordance with applicable rules and guidance. The Exchange invites individuals who believe that they experienced circumstances that prevented them from obtaining coverage under a qualified health plan to apply for a hardship exemption. The Exchange will continue to grant

these exemptions on a case-by-case basis in accordance with existing regulatory eligibility standards and associated guidance. Accordingly, the Exchange is finalizing the rule as proposed.

COMMENT: Some commenters suggested that the Exchange copy and paste the applicable federal law, regulations and regulatory guidance directly into the rule.

RESPONSE: Under R.I. Gen. Laws § 44-30-101(h), applicable federal regulations implementing 5000A of the Internal Revenue Code of 1986, as amended and in effect on the 15th day of December 2017, apply as though incorporated into the Rhode Island Code of Regulations. Additionally, per R.I. Gen. Laws § 44-30-101(h), applicable federal guidance interpreting these federal regulations applies. Eligibility criteria is defined within these federal regulations and the rule. The Exchange will consider publishing applicable federal regulations and guidance on its website in order to make this information more easily accessible to the public. Additionally, the Exchange has published an FAQ on its website, which contains information about the eligibility criteria for exemptions. The Exchange does not believe it is in the public's interest to copy and paste voluminous federal regulations and guidance into the Rhode Island Code of Regulations because such materials are already applicable in accordance with R.I. Gen. Laws § 44-30-101(h). Accordingly, the Exchange is finalizing the rule as proposed.

COMMENT: One commenter requested inclusion of language that corresponds to the State law clarifying that the timeframe for the special enrollment period ("SEP") is sixty days upon receipt of the SRP.

The commenter also suggested sun-setting this SEP after a few years as consumers adjust to the SRP's existence in law.

RESPONSE: The SEP for qualified individuals assessed a SRP was established by statute under R.I. Gen. Laws § 42-157-12. R.I. Gen. Laws § 42-157-12(d) states that a qualified individual has sixty days from the date he or she is assessed a penalty in accordance with R.I. Gen. Laws § 44-30-101 to complete enrollment in a qualified health plan through the Exchange. The rule references this section of the general laws, and accordingly it is not necessary to restate the general laws in the rule.

This SEP was established by statute and does not include a sunset provision. The Exchange does not have authority through the promulgation of this rule to sunset the SEP. Accordingly, the Exchange is finalizing the rule as proposed.

CHANGES TO TEXT OF THE RULE: No changes were made between the text of the proposed rule contained in the notice of proposed rulemaking and the text of the final rule.

REGULATORY ANALYSIS:

I. Introduction

The Exchange is amending the Rules and Regulations Pertaining to HealthSource RI for the purposes of implementing the recent statutory revisions to

R.I. Gen. Laws c. 42-157 and 44-30 under Article 11. Pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.9 (“APA”), the Exchange has conducted a regulatory analysis for the proposed amendments. The Exchange used the best available information at the time of publication to estimate the benefits and costs of the proposed regulatory provisions. The following analysis examines the costs and benefits of a reasonable range of regulatory alternatives reflecting the scope of discretion provided by Article 11.

II. Analysis of Regulatory Alternatives

a. § 1.11 Minimum Essential Coverage Exemptions

1. 1.11(B) Exchange Eligibility Determination

Application

The proposed amendments to §1.11(B)(1) clarify that the Exchange may require an applicant to submit a separate exemption application if the individual is requesting an exemption from the SRP. Additionally, the application may request information that is duplicative of the information the applicant provided in their application for health coverage. Federal rules prohibit the Exchange from requesting duplicate information to process exemptions from the IRP where the applicant is applying for health coverage. (45 CFR § 155.610(c)). Federal rules also restrict the use of personally identifiable information (PII) collected for the purposes of applying for health coverage to the functions described in 45 CFR § 155.200 or to other functions that the Secretary of the U.S. Department of Health and Human Services (HHS) determines to be in compliance with § 1411(g)(2)(A) of the Affordable Care Act and for which an individual provides consent. (45 CFR §155.260(a)).

Processing exemptions from the SRP is not a function described in 45 CFR § 155.200, and the Secretary of HHS has not determined this use to be in compliance with § 1411(g)(2)(A) of the Affordable Care Act. Accordingly, in order to comply with federal law, the Exchange is proposing to revise this section so that it may require applicants seeking an exemption from the SRP to submit information that is duplicative of the information in their application for health coverage.

Exemptions

The proposed amendments to §1.11(B)(5) would establish an exemption from the SRP that closely mirrors an exemption from the IRP added to federal law in 2018. This exemption would apply to an individual who is a member of a religious sect or division thereof which is not described in 26 U.S. Code § 5000A, who relies solely on a religious method of healing, and for whom the acceptance of medical health services would be inconsistent with the religious beliefs of the individual. The population that may be eligible for this exemption is believed to be less than one hundred Rhode Island residents. As such, it would have a minimal financial impact to anticipated tax revenue from collection of the SRP.

Exemption Alternative: Status Quo

The alternative to the proposed amendments to §1.11(B)(5) is to not establish this exemption. The Exchange has considered this, as it would serve the policy goal of market stability by keeping as many Rhode Islanders insured and in the risk pool as possible. Additionally, not establishing an exemption could reduce uninsured individuals seeking medical care, and therefore decrease uncompensated care for medical providers and facilities.

The religious beliefs of many members of these religious groups guide them to rely only on their religious based system of health care. Some government entities, like Medicare, reimburse for services provided in certain religious health facilities. However, most insurance carriers do not. Therefore, requiring members of these religious groups to purchase health insurance creates a financial burden on the members because their religious care is not, in many instances, covered by health insurance. To mitigate risks of uncompensated care, applicants for this exemption would be required to attest that they have not used medical health services in the preceding tax year. Accordingly, the Exchange is proposing to establish an exemption from the SRP for a member of a religious sect or division that is not described in 26 U.S. Code § 5000A, who relies solely on a religious method of healing, and for whom the acceptance of medical health services would be inconsistent with the religious beliefs of the individual.

The Exchange estimates that around 100 individuals would qualify and apply for this exemption. Given that the individual health insurance marketplace is made up of approximately 34,600 customers in 2019, the impact on uncompensated care

and health insurance premiums is expected to be de minimis. There is a potential fiscal impact to the State in the form of reduced SRP revenue, which is discussed in the fiscal note that accompanies this rulemaking.

Exemption Alternative: 138% FPL

The Exchange considered an additional alternative: an exemption for individuals and/or households with income less than 138% Federal Poverty Level (FPL)¹. In 2016², federal mandate penalties collected from 16,777 Rhode Island taxpayers totaled \$11.3 million. Of that total, taxpayers with earnings under 138% FPL made 2,993 payments – totaling \$1.7 million. The average payment made was \$569 per tax household.³ 45% of uninsured Rhode Islanders fell into this income bracket⁴, but only a small portion paid a penalty.

Two relevant exemptions already exist. One for taxpayers below the RI tax filing threshold, which is typically near 100% FPL but varies depending on family size. A second is the affordability exemption. Most taxpayers under 138% FPL are eligible for Medicaid, and if they are, they typically do not have access to an affordable employer plan or to a qualified health plan through the Exchange. Since 2016, an increased filing threshold and streamlined IRS forms for requesting affordability exemptions are expected to reduce the total tax payments made by those under 138% FPL. The State intends to adopt similarly streamlined forms. To adjust for these changes and to be conservative, the expectation of mandate penalty revenue in 2020 is \$9.55 million. The baseline projections for Rhode Island's 2020 mandate revenue assumes many individuals and households under 138% FPL will no longer pay penalties.

If half the \$1.7 million in revenue in 2016 from those under 138% FPL is no longer collected due to changes already made, then the revenue impact of creating a new broad exemption based on income under 138% FPL will be \$850,000 per year.

While this alternative would simplify the filing process and reduce the burden on some RI taxpayers, this is a deviation from the federal exemption model that RI

¹ In 2016, 138% FPL = \$16,394 for an individual, or, \$33,534 for a family of 4

² This is the most recent year for which federal tax data is available.

³ RI Division of Taxation analysis

⁴ HIS 2016

is implementing. Adding this exemption would increase the likelihood that projections for available funding for the reinsurance program are not met. Additionally, the existence of a penalty for those who are uninsured may encourage them to find out about their coverage options and enroll. The Exchange did not elect to include this new exemption in the proposed regulation.

PII Disclosure

The proposed revisions to §1.11(B)(7) define the types of PII the Exchange may transmit to the Rhode Island Division of Taxation. This disclosure would help ensure that the Rhode Island Division of Taxation has the information it needs to verify the accuracy of a tax filer's return that claims an exemption from the SRP. Alternatively, if the Exchange does not include this PII in its transmission of SRP data to the Rhode Island Division of Taxation, it would be difficult for the Rhode Island Division of Taxation to verify whether a tax filer received an exemption from the SRP without auditing the tax filer's return. Audits may have a burdensome impact on tax filers, and transmitting the data described in §1.11(B)(7) has the potential of reducing the likelihood of an audit. Accordingly, the Exchange is proposing to revise §1.11(B)(7) to authorize it to transmit certain PII of applicants granted exemptions from the SRP to the Rhode Island Division of Taxation.

III. Determinations

Upon review of all the costs and benefits, the Exchange has determined that the benefits of the proposed rule justify the costs of the proposed rule. Further, the proposed rule will achieve the objectives of the authorizing statutes in a more cost-effective manner, or with greater benefits, than other regulatory alternatives.

IV. Supporting Documentation

Rhode Island Health Insurance, HEALTH INSURANCE.ORG,
<https://www.healthinsurance.org/rhode-island/> (last visited October 15, 2019).

2016 Health Insurance Survey data compendium, HealthSource RI
<https://healthsourceri.com/surveys-and-reports/> (last visited October 16, 2019)

Tax Year 2016: RI Historic Table 2, Internal Revenue Service

<https://www.irs.gov/statistics/soi-tax-stats-historic-table-2> (last visited October 16, 2019)

Market Stability Workgroup Meeting 4 Presentation, HealthSource RI

<http://healthsourceri.wpengine.com/market-stability-workgroup/> (last visited October 16, 2019)