

Hi Ben,

I know you've received these comments already, but I wanted to flag what we believe to be a rather big technical omission (not related to a policy judgment).

The proposed rule incorporates the exemptions outlined at 45 CFR 155.605, but does not mention the exemptions from 26 USC 1-5000A (or 26 CFR 1-5000A-3). The list of exemptions in the two places is not identical. For example, the "short coverage gap" exemption is contained in the 26 CFRs, not the 45 CFRs. I'm 100% sure that the intention of the workgroup was to include all of the federally-available exemptions, certainly the short coverage gap exemption. I'm pretty sure the statute reflects that intention.

Of course our comments contain other suggestions that are more rooted in policy judgements. Those are important too, but I wanted to make sure this technical issue didn't get lost in the shuffle!

Thank you for pushing this forward,  
Sam

***Samuel Salganik, JD***  
Executive Director



**Rhode Island Parent Information Network**



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*Via Email to* Pamela.Lennon@exchange.ri.gov

November 15, 2019

Re: Comments in Response to Proposed Amendment  
Rules and Regulations Pertaining to HealthSource RI, 220-RICR-90-00-1

Dear Mr. Gagliardi:

Thank you for the opportunity to submit these comments in response to the Department's proposed changes to 220-RICR-90-00-1, Rules and Regulations Pertaining to HealthSource RI. RIPIN recommends four specific revisions to the regulations, as described in more detail below:

1. Deem that all individuals within households with annual modified adjusted gross income (MAGI) below 138% of the federal poverty level (FPL) are eligible for the already-existing "affordability exemption;"
2. Clarify that the State will interpret the federal hardship exemption (45 CFR 155.605(d)) at least as beneficially to taxpayers as the federal government did by mentioning specific federal subregulatory guidance as setting a floor for State implementation;
3. Clarify that hardship exemptions will be granted to individuals who make good faith efforts and yet are unable to enroll (or are terminated) due to errors of State enrollment systems beyond their control (e.g. UHIP), as was the practice during the period when HSRI processed federal hardship exemption requests; and
4. Clarify that hardship exemptions will be granted to individuals who affirm that they did not apply for or enroll in insurance coverage due to a good-faith fear of immigration consequences.

Specific draft regulatory language is included as Appendix A, with revisions tracked against the published proposal. Though this comment letter is long, the proposed revisions are relatively modest.

The Rhode Island Parent Information Network (RIPIN) helps thousands of Rhode Islanders to navigate the healthcare system every year. We operate an all-payer consumer assistance program (in partnership with OHIC) that helped clients save \$2.25 million in 2018. We also operate numerous other programs that help Rhode Islanders, especially those with disabilities and special needs, to



access the care they need. In this capacity, RIPIN supports many individuals who access their health insurance through the individual market, as well as individuals who could potentially be subject to the proposed shared responsibility payment penalty.

In RIPIN's role as Rhode Island's designated health insurance consumer-assistance program, we have had the opportunity to participate in several stages of the process through which Rhode Island has established a state-based individual mandate. We support the proposed mandate as a tool to effectuate market stability by incentivizing healthy individuals to purchase healthcare and thereby improve carrier risk pools, especially in the individual market.

We believe that the exemption for individuals below 138% of FPL will improve administrative simplicity, provide a higher degree of predictability in the face of federal uncertainty, and protect very low income individuals from unintended and inequitable consequences of a complex and difficult-to-navigate exemption system, while having little or no impact on the actuarial analysis supporting the State's § 1332 application and the reinsurance program that will be funded by the proceeds generated by the mandate. More details regarding each recommendation follows, and draft revised regulatory language is included as Appendix A.

### **RIPIN Proposes Creating a Blanket Exemption for Households Below 138% of the Federal Poverty Limit**

In the Department's Notice of Proposed Rulemaking, the Department specifically inquired as to whether a blanket exemption should be made available for individuals in households earning less than 138% of the Federal Poverty Limit (FPL). RIPIN believes that such a change can be structured in regulation as a clarification of which individuals are deemed eligible for the already-existing "lack of affordable coverage" exemption. RIPIN strongly supports such a clarification of the Proposed Rule for several reasons, particularly: 1) most individuals in households below 138% of FPL already qualify for an exemption from the shared responsibility payment penalty due to their "lack of affordable coverage"; 2) many individuals eligible for the "lack of affordable coverage" exemption fail to claim the exemption due to complex tax forms; 3) a blanket exemption for households below 138% of FPL would be easier for the State to implement; 4) the State's reinsurance program and § 1332 application do not rely on (or even anticipate) penalty payers below 138% of FPL; 5) the policy goals of the individual mandate do not apply in the Medicaid context; and 6) exempting extremely low-income individuals from the mandate is the societally equitable thing to do. These rationales are discussed in greater detail below.

#### *The "Lack of Affordable Coverage" Exemption Already Covers Most Individuals Below 138% of FPL*

Under the federal mandate model, and as already proposed for the Rhode Island model, the "lack of affordable coverage" exemption exempts from the shared responsibility payment penalty any individual for whom no "affordable coverage" is available. *See* 45 C.F.R. § 155.605(d)(2); 26 C.F.R. § 1.5000A-3(e). Coverage is defined as "affordable" if it costs less than 8.05% of household income (indexed annually). The types of coverage relevant include employer-sponsored plans and qualified



health plans (QHPs) sold through the exchange, including plans with advance premium tax credits (APTCs).

Interestingly, though, coverage through Medicaid is not included in the types of affordable coverage that would disqualify an individual from the exemption. Individuals eligible for Medicaid are not eligible for tax credits, meaning that the vast majority of individuals eligible for Medicaid, should they have failed to enroll, would be eligible for the “lack of affordable coverage” exemption.

We are only aware of two categories of individuals whose incomes are below 138% FPL that might not be eligible for the “lack of affordable coverage” exemption: 1) individuals with access to “affordable” employer-sponsored coverage; and 2) non-citizens who are lawfully present (and therefore eligible for tax credits) but who are ineligible for Medicaid, particularly Lawful Permanent Residents who have not yet met the five-year bar. Neither of these groups is likely to be particularly large.

*Despite Access to the “Lack of Affordable Coverage” Exemption, Many Households Below 138% of FPL Pay the Shared Responsibility Payment Penalty in Error*

As reflected in data presented to the Market Stability Workgroup on November 18, 2018, about \$1.7M in shared responsibility payment penalties was collected in 2016 from 2,993 Rhode Island tax household below 138% of FPL. That represents 15% of the total of the \$11.3M collected from all Rhode Island taxpayers that year.

While analytics are not available to confirm how many of these households were ineligible for the “lack of affordable coverage” exemption and were therefore truly liable for the penalty, this group (as discussed above) is very unlikely to represent a significant portion of these very low-income penalty payers.

Instead, many of these very low-income individuals paid the penalty because it was administratively difficult to claim the “lack of affordable coverage” exemption. On its face, it is counter-intuitive that Medicaid coverage is not considered “affordable coverage” for the purposes of this exemption, so many individuals likely did not realize they were eligible for the exemption on that grounds. Additionally, the method of claiming that exemption involved reviewing IRS Form 8965 and the complex, 21-page accompanying instructions, including potentially needing to complete three tax jargon-filled worksheets. This process is likely too complicated to expect most tax filers (and, potentially, many tax *professionals*) to complete correctly, and many individuals could have simply determined that it was easier to pay the penalty than to spend hours trying to determine whether they were truly liable.

*A Blanket Exemption Would Be Far Simpler to Communicate and Implement in Tax Forms*

Any bureaucratic system will include some number of false positives and false negatives; in this case, these are individuals eligible for an exemption who instead pay the penalty, and individuals who are ineligible but are incorrectly granted an exemption. While no solution will totally eliminate this



problem, a bright-line rule that lessens the administrative burden on exemption-filers can decrease the frequency of these errors.

It should be stressed that the complexity was not the result of bad form drafting by the IRS. The “affordability” exemption rule is just very complicated. It exempts nearly everyone below the Medicaid limit, with byzantine exceptions. As the rule stands, we are confident that no easy form or process can be created to effectively reduce the wrongful overpayment by low income taxpayers.

Draft regulatory language to effectuate this proposed change, along with RIPIN’s other proposed changes, is included as Appendix A to these comments. Additionally, while we understand that proposed tax forms and instructions have not yet been issued, we anticipate that the State will likely use existing federal forms as a starting place. The 2018 version of Form 8965 included a blanket exemption for households “claiming a coverage exemption because [their] household income or gross income is below the filing threshold;” *see* Part II, “Coverage Exemptions Claimed on Your Return for Your Household,” Line 7. A Rhode Island version of this form could add a second blanket exemption for households whose household income is below 138% FPL. In addition, the shared responsibility payment calculation worksheet (part of the Form 8965 instructions at the federal level) can make clear that the penalty level is zero for tax households below 138% of FPL.

#### *A Blanket 138% of FPL Exemption Should Not Impact Actuarial Analysis Supporting § 1332 Application*

In their actuarial analysis prepared to support Rhode Island’s § 1332 Application to fund a reinsurance program, we were informed by HSRI that Wakely relied on an assumption of zero mandate revenue from tax households below 138% of FPL. Our understanding is that this decision was made because the vast majority of tax filers below 138% of FPL would be eligible for the affordability exemption, and HSRI did not want to base their reinsurance program funding calculations on an assumption that some individuals would wrongly overpay the penalty.

This means that the actuarial analysis that was used as the basis for determining the projected size of the State’s reinsurance program would not be impacted by the creation of a blanket exemption for households below 138% of FPL.

#### *Policy Goals of the Mandate Do Not Apply in the Context of Medicaid-Eligible Individuals*

RIPIN, as noted above, is a firm supporter of the State’s enactment of an individual mandate. However, and while the main focus of our argument in support of a blanket exemption for households below 138% of FPL is administrative simplicity and improved system fairness, it is worth noting that the policy goals of the individual mandate are not implicated in the context of the Medicaid-eligible population.

In the individual market, the inclusion of additional healthy lives in the market improves the risk pool and decreases the average premium paid by enrollees; this is the main reason behind the



individual mandate (and other aspects of the Affordable Care Act, including the establishment of a unified Open Enrollment window). However, this logic breaks down in the Medicaid-eligible population; additional healthy lives do not impact premiums paid by sicker Medicaid enrollees because Medicaid enrollees do not pay a premium, and additional enrolled lives, even healthy lives, do not save the State money. This rationale is also why there is no limitation on when during the year Medicaid-eligible individuals can enroll in Medicaid.

While universal coverage is, of course, a laudable goal and one that RIPIN firmly supports, it was not the main rationale behind the individual mandate. Instead, the mandate existed primarily to bring healthy people into the commercial market, thereby keeping premiums stable in an environment with guaranteed issue and no pre-existing condition exclusions. These considerations do not apply in a Medicaid context.

### *Exempting this Extremely Low-Income Population Is the Right Thing to Do*

In addition to the administrative goals that can be accomplished through the establishment of a blanket exemption for households below 138% of FPL, the creation of such a blanket exemption would be, simply put, the societally equitable thing to do.

In 2019 dollar terms, an individual making 138% of FPL is making \$17,236 per year. A family of three (one adult, two children) at 138% of FPL is making \$29,435. Households at those income levels frequently struggle with balancing the competing claims of housing, food, transportation, child care, education, utilities, and basic day-to-day expenses on their already-limited resources.

For that individual, paying the base shared responsibility payment penalty of \$695 would constitute losing 4% of their income; the family of three described above, paying a penalty of \$1,390, would be giving up 4.7% of their income. Very few of these households could comfortably do without that amount of money; the economic injustice of such an outcome is exacerbated by the fact that the vast majority of these households are eligible for an exemption but are not able to utilize it due to an unnecessarily complex bureaucratic structure.

For the reasons detailed above, RIPIN believes that the State should implement a blanket exemption for all individuals who are members of households earning 138% of FPL or less in a given taxable year. We believe that such an exemption will increase administrative simplicity and decrease unnecessary burdens on low-income individuals, while having minimal or no impact on State financial calculations and the overarching goals behind the passage of the individual mandate.

### **RIPIN Supports Codifying Existing Subregulatory Hardship Exemptions in State Regulations**

RIPIN appreciates the State's decision to mirror the federal exemptions as closely as possible. In the context of the hardship exemption, though, simply citing to the federal regulation (45 CFR 155.605(d)) is likely insufficient. Some exemptions created in the Affordable Care Act are not referenced in that regulation, and exist instead at 26 U.S.C. § 5000A. We would therefore recommend



incorporating that section of the U.S. Code, as it existed in 2018, into Section 1.3 of the Proposed Rule, and adding a reference thereto in Section 1.11 where the exemptions to the State mandate are enumerated.

Additionally, the federal regulation itself is vague, and much of the federal implementation was guided by subregulatory documents, especially the “Guidance on Hardship Exemption Criteria and Special Enrollment Periods” issued by CMS on June 26, 2013 (enclosed as an attachment). This guidance laid out specific circumstances for consideration when evaluating a hardship exemption request, for example when the individual has been evicted, become homeless, been a victim of domestic violence, experienced a natural disaster, etc. We recommend that this subregulatory guidance also be incorporated, at least by reference, as a minimum list of circumstances that the State must consider (a regulatory “floor”), while allowing the State to build on this list later if needed.

Furthermore, as a matter of drafting, RIPIN would recommend explicitly delineating these exemptions rather than citing to federal regulations in existence as of 2018. While the federal exemptions in existence in 2018 are still codified at 26 U.S.C. § 5000A(d)(2) and (e), and in regulation at 45 C.F.R. § 155.605(d), and could be tracked down if federal law or regulation is later changed, it would be administratively simpler to restate them in State regulation. Federal uncertainty is sufficiently threatening that the existence of the same language in a State authority is desirable.

To facilitate the Department’s work, RIPIN has included, in Appendix A, draft regulatory language that includes reference to the above-referenced section of the U.S. Code and the June 26, 2013 subregulatory guidance. Though it may be a somewhat arduous task, RIPIN would further recommend copying the federal exemptions in existence in federal law, regulation, and regulatory guidance in existence as of the “sunset” of the federal individual shared responsibility payment (beginning tax year 2019) directly into State regulation.

### **RIPIN Supports Creating an Exemption for Coverage Gaps Caused by State Systems Issues**

In our role as Rhode Island’s designated health insurance consumer-assistance program, RIPIN has assisted individuals whose applications for Medicaid or Qualified Health Plans (QHPs) have been incorrectly delayed or rejected, or whose health insurance coverage has been wrongfully terminated, due to technical issues caused by the State’s benefits eligibility system, UHIP. RIPIN believes that it would be unfair for individuals to be imposed a shared responsibility payment penalty for months during which their health coverage was inactive due to these technical issues. RIPIN would therefore support the clarification that the already-existing “hardship exemption” applies to individuals who have been adversely affected by State technical systems issues.

#### *Affected Individuals and Alternative Exemptions*

RIPIN assists consumers affected by State systems issues in a wide variety of ways. Some individuals apply for Medicaid or QHP coverage but are incorrectly denied, or have their enrollment incorrectly terminated, due to problems with UHIP’s treatment of their income, household status, or



other eligibility criteria. Other individuals enroll in a QHP but are incorrectly terminated when the State system improperly processes payment data. RIPIN is frequently successful in resolving these incorrect coverage determinations, but when relief is granted, it is frequently granted prospectively, not retroactive to the original, incorrect termination. And retroactive resolution, when available, is not always a fair outcome: consumers should not be required to pay premiums for already-past coverage months during which they avoided care (didn't refill prescriptions, cancelled appointments) merely to avoid a mandate penalty.

While some individuals affected by these systems issues could potentially find relief through the short coverage gap exemption described at 26 U.S.C. § 5000A(e)(4), or the proposed exemption for individuals below 138% of FPL (or, in the alternative, the lack of affordable coverage exemption), some affected individuals may have a longer coverage gap or may have taxable income high enough that the affordability exemption(s) are inapplicable. Further, while these individuals may already be able to claim an exemption under the "general hardship" grounds described at 26 U.S.C. § 5000A(e)(5) and 45 C.F.R. § 155.605(d)(1)(iii), most consumers would not be able to intuitively determine that these grounds are applicable to their circumstance. We would therefore recommend the creation of an exemption specific to these individuals.

RIPIN believes that the language of 26 U.S.C. § 5000A(e)(5) is sufficiently broad to permit granting a hardship exemption for individuals affected by systems issues outside their control. That section indicates that a hardship exemption may be granted for "any month [that an applicable individual has] suffered a hardship with respect to the capability to obtain coverage under a qualified health plan." Subregulatory guidance has not interpreted "qualified health plan" to be exclusive of Medicaid coverage in this context. We believe that State systems issues would constitute a "hardship with respect to the capability to obtain coverage" in this context. Creating a specific exemption category for individuals whose lack of coverage was due to a State system-caused error would be a clarification of already-existing authority, not the creation of new authority.

### **RIPIN Supports Creating an Exemption for Individuals Who Forewent Coverage Due to a Good Faith Fear of Immigration Consequences**

After recent changes in federal immigration law and rulemaking (made more uncertain by ongoing legal challenges and threatened executive action), many immigrants find themselves in a situation where they feel that they must choose between obtaining health insurance coverage to which they believe themselves entitled (and for which they are eligible) and potentially jeopardizing their immigration status, or forgoing coverage in order to avoid immigration consequences. While many of these immigrants may be eligible for coverage which would not impact their immigration status, and while many others may be eligible for an exemption from the SRP on other grounds, some immigrants will likely pay the SRP because of a fear that doing so is less problematic than enrolling in qualifying coverage. This will compound the difficulties that immigrants already face in obtaining access to needed health services, and RIPIN therefore supports an exemption for individuals who choose not to apply for or enroll in coverage due to a good-faith fear of immigration consequences.





RIPIN argues that the same broad hardship exemption authority at 26 U.S.C. 5000A(e)(5), as discussed above, would grant the Department the authority to grant exemptions for individuals whose non-enrollment was due to a bona fide fear of immigration consequences. The fear of a negative decision on a petition for adjustment of immigration status would constitute a “hardship with respect to the capability to obtain coverage.” As such, the Department would not be creating new authority with such an exemption, it would simply be clarifying the authority it has already been granted.

Thank you for the opportunity to provide these comments. Should you have any further questions or wish to discuss these proposed recommendations further, please do not hesitate to contact us.

Sincerely,

/s/

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/s/

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## Appendix A Draft Revised Regulatory Language

All changes recommended in these comments can be achieved through very minor revisions of Sections 1.3 and 1.11(A)(3), and further revision of only Section 1.11(B)(5). Please find below a revision of those sections. The language in the proposed rule is taken as the clean starting point, and revisions are marked against that.

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### 1.3 Incorporated Materials

These regulations hereby adopt and incorporate [26 U.S.C. § 5000A \(Oct. 24, 2018\)](#), 45 C.F.R. Parts 155, 156 and 157 (2018) and 26 C.F.R. § 1.36B (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

### 1.11 Minimum Essential Coverage Exemptions

#### A. In General . . .

...

3. The Exchange must determine an individual's eligibility for an exemption from the shared responsibility payment penalty in accordance with the applicable standards specified in [26 U.S.C. § 5000A](#) and 45 C.F.R. § 155.605, incorporated above at §§ 1.3 and [with](#) 1.11(B)(5) of this Part.

...

#### B. Exchange Exemption Eligibility Determination . . .

...

5. In addition to the applicable eligibility standards defined in 45 C.F.R. § 155.605, incorporated above at § 1.3 of this Part:
  - a. an individual may also be eligible for an exemption from the shared responsibility payment if he or she 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.

- i. Medical health services defined: For purposes of § 1.11(B)(5)(a) of this Part, the term “medical health services” does not include routine dental, vision and hearing services, midwifery services, vaccinations, necessary medical services provided to children, or services required by law or by a third party.
- ii. Attestation required: § 1.11(B)(5)(a) of this Part shall apply to an individual for months in a taxable year only if the information provided by the individual under § 1.11(A)(5) of this Part includes an attestation that the individual has not received medical health services during the preceding taxable year.

b. An individual will be deemed eligible for the exemption outlined at 45 C.F.R. § 155.605(d)(2) and 26 C.F.R. § 1.5000A-3(e) (commonly referred to as the “affordability exemption”) for the entire tax year if their tax household’s modified adjust gross income (as defined at 26 U.S.C. § 36B(d)(2)(B), 42 C.F.R. § 935.603(e), and 210-RICR-30-00-5(5.5)) for the tax year was below 138% of the FPL published during that tax year. [NOTE – These definitions of MAGI are not 100% identical. The definition at 26. U.S.C. § 36B(d)(2)(B) is likely the most administrable in taxation]

c. With respect the exemption outlined at 45 C.F.R. § 155.605(d) (commonly referred to as the “hardship exemption”), the Exchange will consider at least those factors and circumstances, without limitation, outlined in the “Guidance on Hardship Exemption Criteria and Special Enrollment Periods” issued on June 26, 2013 by the Center for Consumer Information and Insurance Oversight (CCIIO), Center for Medicare and Medicaid Services (CMS). In addition:

- i. The Exchange shall grant a hardship exemption to any individual who has made documented good faith efforts to obtain or maintain coverage and has been prevented from doing so due to errors in government-maintained eligibility and enrollment systems and processes. Such exemption shall be granted for the months during which the systems errors prevented enrollment.
- ii. The Exchange shall grant a hardship exemption to any individual who affirms that they failed to enroll due to a bona fide fear of negative repercussions with respect to their immigration status or a potential future adjustment of their immigration status.

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information & Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



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**Date:** June 26, 2013

**From:** Gary Cohen, CMS Deputy Administrator and Director  
Center for Consumer Information and Insurance Oversight

**Subject:** Guidance on Hardship Exemption Criteria and Special Enrollment Periods

**Purpose and Scope:**

In the final regulation titled, “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions”, and published on June 26, 2013, (“Exemptions/MEC final rule”), the Department of Health and Human Services (HHS) finalized provisions concerning how Marketplaces (also known as “Exchanges”) will determine eligibility for and grant certificates of exemption from the individual shared responsibility payment described in section 5000A of the Internal Revenue Code.

We noted in the Exemptions/MEC final rule that we would provide further guidance regarding criteria that Federally-facilitated Marketplaces will use for the hardship exemption described at 45 CFR 155.605(g)(1). While State-based Marketplaces may use these criteria, they have the flexibility to develop their own as long as the criteria meet the requirements of the final regulation. We also specified that we would address an individual’s ability to enroll in a qualified health plan (QHP) during a special enrollment period in situations in which he or she loses eligibility for an exemption within a coverage year. This guidance is intended to describe the circumstances that Marketplaces may use in determining what constitutes a hardship if they prevent an individual from obtaining coverage under a QHP. It also specifies situations for Marketplaces to consider in determining whether an individual experienced exceptional circumstances that provide eligibility for a special enrollment period.

**Hardship**

In the Exemptions/MEC final rule, HHS specified at 45 CFR 155.605(g)(1) that a Marketplace must grant a hardship exemption to an applicant if the Marketplace determines that:

1. He or she experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan;
2. The expense of purchasing a qualified health plan would have caused him or her to experience serious deprivation of food, shelter, clothing, or other necessities;

3. He or she experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.

We clarify that Marketplaces may consider the following circumstances in determining what constitutes a hardship under 45 CFR 155.605(g)(1) if they prevent an individual from obtaining coverage under a QHP, which include an individual who--

- 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 6 months;
- 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 him or her as a tax dependent is required by court order to provide medical support. We note that this exemption should only be provided for the months during which the medical support order is in effect; or
- as a result of an eligibility appeals decision, is determined eligible for enrollment in a QHP through the Marketplace, 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 Marketplace, noting that this exemption should only be provided for the period of time affected by the appeals decision.

### **Special Enrollment Periods**

In the proposed regulation titled, "Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing; Proposed Rule" (78 FR 4647), and published on January 22, 2013, 45 CFR 155.420(d)(9) proposes a special enrollment period when:

- The qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.

In accordance with this provision, HHS provides the following guidelines for Marketplaces to use in determining whether an individual meets such exceptional circumstances and is thus entitled to receive a special enrollment period:

1. If an individual receives a certificate of exemption from the Marketplace based on the eligibility standards described in 45 CFR 155.605(g)(1) for a month or months during the coverage year, and based on the circumstances of the hardship attested to, he or she is no longer eligible for a

hardship exemption within a coverage year but outside of an open enrollment period described in 45 CFR 155.410, the Marketplace will determine the individual and his or her dependents, as proposed in 45 CFR 155.420(a)(2), eligible for a special enrollment period if otherwise eligible for enrollment in a QHP; and

2. If an individual with a certificate of exemption reports a change with respect to the eligibility standards for an exemption as required under 45 CFR 155.620(b), and the Marketplace implements a change resulting from a redetermination, the certificate provided for the month in which the redetermination occurs, and for prior months, remains effective. If the Marketplace notifies the individual that he or she is no longer eligible for an exemption, the Marketplace will determine the individual and his or her dependents, as proposed in 45 CFR 155.420(a)(2), eligible for a special enrollment period if otherwise eligible for enrollment in a QHP.

We appreciate the ongoing partnership with State-based Marketplaces to ensure the effective implementation of the Affordable Care Act. We will update State-based Marketplaces with any additional guidance regarding the hardship exemption and special enrollment periods. Please feel free to contact your CCIIO State Officer with any questions regarding this guidance.



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Via E-mail

November 17, 2019

Re: Comments to Proposed Rules implementing a 'state shared responsibility payment penalty'. (Title 220, Chapter 90, Subchapter 00)

Dear Mr. Gagliardi:

The Protect Our Healthcare Coalition is a group of 23 leading Rhode Island non-profit and consumer organizations with a shared goal of protecting and promoting quality, affordable healthcare for all Rhode Islanders. The Coalition also includes hundreds of community members around the state who support the Coalition's mission.

The Coalition joins in the comments submitted by RIPIN regarding the proposed rules. We urge HealthSource RI to adopt the new regulatory language submitted by RIPIN (but as expanded as discussed below) that will (1) deem that individuals in households with annual income below 138% of the federal poverty level (FPL) are eligible for the 'affordability exemption'; clarify that the state will interpret the federal hardship exemption at least as beneficially to taxpayers as the federal government did by mentioning subregulatory guidance as a floor for state implementation; clarify that 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 beyond their control and also available to individuals who attest that they did not enroll in insurance due to a good-faith fear of immigration consequences.

The Coalition has the following additional comments:

**Include the eligibility criteria for an exemption from the penalty payment.** HSRI should include in the final regulations, not merely references to federal statutes, regulations and subregulatory guidance pertaining to the eligibility for an exemption from the payment penalty, but include the specific criteria in the rules. The state is implementing its own 'shared responsibility payment penalty' and Rhode Islanders should be able to refer to the state regulations to learn about exemptions available to them. It is cumbersome and confusing for readers to seek the federal regulations and guidance to know what rules the state is applying.

**Create an exemption for households with income below 138% of the federal poverty level (FPL).**

Most of the organizations that participate in the Coalition work everyday with low-income Rhode Islanders who are seeking help meeting basic needs. We know that individuals and families with income below 138% FPL struggle to pay rent and utilities, put food on the table and pay other expenses, and would qualify for a hardship exemption from the shared responsibility payment due to lack of affordable coverage. As RIPIN cogently argues in its comments, there are a number of policy, administrative and humane reasons for incorporating an exemption at this income level. Moreover, setting the exemption at this level will not impact the financing for the state's reinsurance program and the 1332 waiver. Finally, we note that in neighboring Massachusetts, the threshold for the shared responsibility payment is 150% FPL, acknowledging that families with income below this even-higher amount should not be penalized for failing to include health insurance in their tight budgets.

**Clarify that hardship exemptions will be granted to individuals who attest that they did not enroll in insurance coverage due to a good-faith fear of immigration consequences.**

As explained in the comments submitted by RIPIN, the proposed federal changes to the public charge rules have had a chilling effect on applications for public benefit by immigrants. A recent issue brief from the Kaiser Family Foundation, summarizing the results of interviews with community health centers found that: nearly half (47%) of health centers reported that many or some immigrant patients declined to enroll themselves in Medicaid; nearly one-third (32%) said many or some immigrant patients disenrolled or declined to renew Medicaid. More than a third (38%) of health centers reported that many or some immigrant patients were declining to enroll their children in Medicaid while nearly three in ten (28%) reported many or some immigrant patients were disenrolling or deciding not to renew Medicaid coverage for their children.

<https://www.kff.org/report-section/impact-of-shifting-immigration-policy-on-medicaid-enrollment-and-utilization-of-care-among-health-center-patients-issue-brief/>

Sadly, there are likely to be many Rhode Islanders (lawful permanent residents, lawfully present immigrants who do not have green cards, citizen children living with undocumented parents) who will not have health insurance coverage because of the fear that has been generated about the impact on their or family members' immigration status. These residents should not be further punished by our state government by imposing a financial penalty on them.

Thank you for your consideration of our comments. We look forward to your response

Linda Katz, JD  
for the Protect Our HealthCare Coalition

***Protect Our Healthcare Coalition partners include:*** Economic Progress Institute, RI Health Center Association, Mental Health Association RI, RI NOW, RI Parent Information Network, NAACP Providence Branch, United Way of Rhode Island, Planned Parenthood RI, SEIU Rhode Island Council, East Bay CAP, West Bay Cap, Foster Forward, RI Coalition for the Homeless, Rhode Island Working Families Party, Mental Health Recovery Coalition, Senior Agenda Coalition, RI Community Food Bank, Substance Use & Mental Health Leadership Council, Rhode Island Coalition for Children and Families, HousingWorks RI, Rhode Island Organizing Project (RIOP), Thundermist Health Center

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c/o the Economic Progress Institute, 600 Mt. Pleasant Avenue, Building #9, Providence, RI 02908



William A. Farrell, Esq.  
[wfarrell@wafarrell.com](mailto:wfarrell@wafarrell.com)  
401.529.4616

November 12, 2019

Via Regular Mail and Email: [Pamela.lennon@exchange.ri.gov](mailto:Pamela.lennon@exchange.ri.gov)

Benjamin B. Gagliardi, Esq.  
RI Department of Administration  
501 Wampanoag Trail, Suite 400  
East Providence, RI 02915

Re: Proposed Regulation pertaining to Health Source R.I. (220-RICR-90-00-1)

Dear Mr. Gagliardi:

Enclosed please find comment letter submitted on behalf of the Alliance of Health Care Sharing Ministries pertaining to the above-captioned proposal. In the event a public hearing is scheduled on the proposed regulation, we would request notification of the time and place of the hearing.

If you have any questions, please advise.

Very truly yours,

**WILLIAM A. FARRELL & ASSOCIATES LLC**



William A. Farrell

Enclosure

Cc: John Cucco, Strategy Director, HealthSource RI  
The Honorable David Weldon

William A. Farrell, Esq.  
[wfarrell@wafarrell.com](mailto:wfarrell@wafarrell.com)  
401.529.4616

November 12, 2019

Via Email: [John.Cucco@exchange.ri.gov](mailto:John.Cucco@exchange.ri.gov)

John Cucco  
Director of Strategy  
HealthSource RI  
501 Wampanoag Trail  
East Providence, RI 02915

Re: Proposed Regulation pertaining to Health Source R.I. (220-RICR-90-00-1)

Dear John:

I'm a bit late in expressing my thanks for the time you have taken to discuss the proposed regulations pertaining to the Health Benefit Exchange.

Since the proposed regulation mirrors the definition of "applicable individual" in the ACA, we will not be requesting an oral hearing on the proposal; however, if an formal hearing is scheduled, we would appreciate information on the time and place of the hearing.

Attached is a copy of my client's comment letter which was delivered to Attorney Gagliardi.

If you know the name of the individual from the Division of Taxation who is working on this issue, it would be greatly appreciated if you could provide his/her contact information.

Sincerely,

**WILLIAM A. FARRELL & ASSOCIATES LLC**



William A. Farrell

Attachment

## Rhode Island Department of Administration

Re: Rules and Regulations Pertaining to Health Source Rhode Island (220-RICA-90-00-1)

### Response of Alliance Health Care Sharing Ministries

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The Alliance of Health Care Sharing Ministries represents some of the oldest and largest sharing ministries in America. These ministries have been serving their members in Rhode Island for many years and today we estimate that there are approximately 1,0000 Rhode Islanders who are using a sharing ministry.

In 2010, the Alliance worked to include language in the ACA exempting members of sharing ministries from having to pay the individual mandate tax penalty. Following its enactment, 104 Christian ministries nation-wide registered and received letters of certification for the exemption from Health and Human Services. Most of these ministries were small Mennonite congregations but several were larger national ministries to include our members.

The Alliance was pleased that with the enactment of H5151 in Rhode Island that the language governing the new Shared Responsibility Payment referenced the ACA exemption language. Specifically, the RI law defines "applicable individual" as the same as defined in 26 U.S.C. §5000A(d) of the ACA. The ministries and their participants are exempted in the ACA via 26 U.S.C. §5000A(d)(2). Since the Health Care Sharing exemption is in §5000A(d)(2), that means that HCS members are not considered as "applicable individuals" and are exempt in the RI mandate.

The Alliance was also pleased that the proposed regulations released by the exchange last month pertaining to the administration and enforcement of the new Shared Responsibility Payment was consistent with H.R. 5151 and referenced the ACA exemption language.

The Alliance would like to work with you as you further develop these regulations and processes. We encourage to you to make this process for any state resident who is a participant of a CMS certified sharing ministry as simple and convenient as possible, void of unnecessary duplication. The Alliance or HHS / CMS can assist you with determining which health care sharing ministries are certified for exemption.

We recommend a process aligned with current federal tax procedure for religious exemptions. Specifically, health care sharing participants may on tax form 1040 on page 1, check the box in the section titled, "Full-year health care coverage or exempt" if they had qualifying health care coverage exemption that covered all of 2018 or a combination of qualifying health care coverage and coverage exemptions for every month of 2018. Otherwise, a participant would file federal tax form 8965.

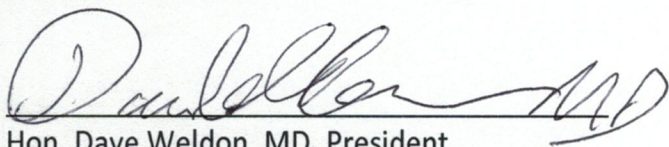
Likewise, compliance for the mandate exemption in NJ is similarly aligned. If you qualify for an exemption, you can claim the exemption when you file your New Jersey Income Tax return (Form NJ-1040) using Schedule NJ-HC. Current health care sharing participants' federal tax filings should be sufficient to demonstrate qualification for exemption in RI.

We would be pleased to meet with you soon to discuss this in more detail. Many of our ministry members consider their membership in the ministry as part of their personal religious expression, practice and preference. Many are clergy and some are missionaries. America has a long tradition of accommodating religious

practice. Our ministries have a long record of successfully sharing in the payment of medical needs for Christians who prefer to have their medical expenses and spiritual needs addressed compassionately through a Christian ministry.

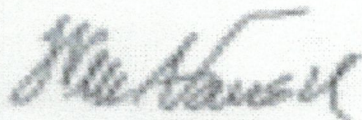
We look forward to working with you in the future.

ALLIANCE OF HEALTH CARE SHARING MINISTRIES



Hon. Dave Weldon, MD, President

Submitted on behalf of  
Alliance of Health Care Sharing Ministries  
By its attorney,



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William A. Farrell, Esq.  
William A. Farrell & Associates LLC  
50 Park Row West, Suite 100  
Providence, RI 02903  
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[wfarrell@wafarrell.com](mailto:wfarrell@wafarrell.com)

Dated: November 7, 2019

## State Exemptions From “Shared Responsibility Payment”

On 7-5-2019, the governor of Rhode Island signed into law appropriations bill – H5151. Article 11 of the new law created an individual mandate, also known as a “shared responsibility payment,” to purchase health insurance with certain exemptions.

The RI law is tied to the Affordable Care Act (ACA). Further, the RI law defines “applicable individual” as the same as defined in 26 U.S.C. §5000A(d) of the ACA. Health care sharing ministries (HCSMs) and their participants are exempted in the ACA via 26 U.S.C. §5000A(d)(2) Religious Exemptions.

What may be significant to this reference by the RI law is that §5000A(d)(1) states that “applicable individual” means, with respect to any month, an individual other than an individual described in paragraph (2), (3), or (4). Since the Health Care Sharing (HCS) exemption is in §5000A(d)(2), that means that HCS members are not considered as “applicable individuals” and are exempt in the RI mandate.

Moreover, the RI law makes provision for the RI Health Benefit Exchange to make determinations as to whether an individual shall be certified for exemption from the individual responsibility requirement by reason of religious conscience.

The relevant sections of the law applying to HCSMs are listed below.

*SECTION 3. Chapter 42-157 of the General Laws entitled "Rhode Island Health Benefit Exchange" is hereby amended by adding thereto the following section:*

*42-157-11. Exemptions from the shared responsibility payment penalty.*

*(a) Establishment of program. The exchange shall establish a program for determining whether to grant a certification that an individual is entitled to an exemption from the Shared Responsibility Payment Penalty set forth in section 44-30-101(c) of the general laws by reason of religious conscience or hardship.*

*42-157.1-7. Program contingent on federal waiver.*

*If the state innovation waiver request in § 42-157.1-6 is not approved, the director shall not implement the program or provide reinsurance payments to eligible carriers.*

*SECTION 5. Chapter 44-30 of the General Laws entitled “Personal Income Tax” is hereby amended by adding thereto the following sections:*

***44-30-101. Requirements concerning qualifying health insurance coverage.***

*(a) Definitions. For purposes of this section:*

*(1) “Applicable individual” has the same meaning as set forth in 26 U.S.C. § 5000A(d).*

*(b) Requirement to maintain minimum essential coverage. Every applicable individual must maintain minimum essential coverage for each month beginning after December 31, 2019.*

*(e) Exceptions.*

*(3) Religious conscience exemption determinations. Determinations as to religious conscience exemptions shall be made by the exchange under section 42-157-11 of the general laws.*

*(h) Application of Federal law. The Shared Responsibility Payment Penalty shall be assessed and collected as set forth in this chapter and, where applicable, consistent with regulations promulgated by the federal government, the exchange and/or the tax administrator. Any federal regulation implementing section 5000A of the Internal Revenue Code of 1986, as amended, and in effect on the 15th day of December 2017, shall apply as though incorporated into the Rhode Island Code of Regulations. Federal guidance interpreting these*

*federal regulations shall similarly apply. Except as provided in subsections (j) and (k), all references to federal law shall be construed as references to federal law as in effect on December 15, 2017, including applicable regulations and administrative guidance that were in effect as of that date.*

The relevant sections of other state laws (CA, DC & NJ) applying to HCSMs and the individual mandate are listed in the following pages.

## **California**

In June of 2019, CA Senate Bill 78, was *signed* by the governor. The CA law specifically exempts Health Care Sharing Ministries (HCSMs) and its participants from the state individual mandate to purchase insurance. The law references 26 U.S.C. §5000A(d)(2)(B) of the ACA.

The relevant sections of the law applying to HCSMs are listed below.

### **SEC. 10.**

*Title 24 (commencing with Section 100700) is added to the Government Code, to read:*

#### **TITLE 24. Minimum Essential Coverage Individual Mandate**

**100700.** *The Legislature finds and declares all of the following:*

*(a) The individual mandate imposed by this title, and the penalty imposed by Part 32 (commencing with Section 61000) of the Revenue and Taxation Code, are necessary to protect the compelling state interests of:*

- (1) Protecting the health and welfare of the state's residents.*
- (2) Ensuring access to affordable health care coverage in this state.*
- (3) Ensuring a stable and well-functioning health insurance market in this state.*

*(b) There is compelling evidence that, without an effective mandate on individuals to secure health coverage, there would be substantial instability in health insurance markets, including higher prices and the possibility of areas without any insurance available.*

*(c) Ensuring the health of insurance markets is a responsibility reserved for states under the federal McCarran-Ferguson Act (15 U.S.C. Sec. 1011 et seq.) and other federal law.*

### **100705.**

*(a) For each month beginning on or after January 1, 2020, a California resident shall be enrolled in and maintain minimum essential coverage for that month, except as provided in subdivision (c).*

*(b) For each month beginning on or after January 1, 2020, a California resident shall ensure and maintain minimum essential coverage for any person who qualifies as that California resident's applicable spouse or applicable dependent, except as provided in subdivision (c).*

*(c) The following individuals shall be exempt, with respect to any month, from the requirements imposed by subdivisions (a) and (b):*

*(1) An individual who has in effect a certificate of exemption for hardship or religious conscience issued by the Exchange under Section 100715 for that month.*

*(2) An individual who is a member of a health care sharing ministry for that month. "Health care sharing ministry" has the same meaning as the term was defined in § 5000A(d)(2)(B) of the Internal Revenue Code on January 1, 2017.*

*(3) An individual who is incarcerated for that month, other than incarceration pending the disposition of charges.*

*(4) An individual who is not a citizen or national of the United States and is not lawfully present in the United States for that month.*

*(5) An individual who is a member of an Indian tribe, as defined in Section 45A(c)(6) of the Internal Revenue Code of 1986, during that month.*

*(6) An individual for whom that month occurs during a period described in subparagraph (A) or (B) of Section 911(d)(1) of the Internal Revenue Code of 1986 that is applicable to the individual.*

(7) An individual who is a bona fide resident of a possession of the United States, as determined under Section 937(a) of the Internal Revenue Code of 1986, for that month.

(8) An individual who is a bona fide resident of another state for that month.

(9) An individual who is enrolled in limited or restricted scope coverage under the Medi-Cal program or another health care coverage program administered by and determined to be substantially similar to limited or restricted scope coverage by the State Department of Health Care Services for that month.

(d) The requirements of subdivisions (a) and (b) shall be referred to as the Minimum Essential Coverage Individual Mandate.

(e) An Individual Shared Responsibility Penalty shall be imposed for failure to meet the requirement of the Minimum Essential Coverage Individual Mandate pursuant to Part 32 (commencing with Section 61000) of the Revenue and Taxation Code.

## **Washington, District of Columbia**

Law 22-168, [<https://code.dccouncil.us/dc/council/laws/22-168.html>] the “Fiscal Year 2019 Budget Support Act of 2018,” was introduced in the DC Council and assigned Bill No. 22-753 which was referred to the Committee of the Whole. The bill was adopted on first and second readings on May 15, 2018, and June 26, 2018, respectively. After mayoral review, it was assigned Act No. 22-442 on Sept. 5, 2018, and transmitted to Congress for its review. D.C. Law 22-168 became effective Oct. 30, 2018.

Note the DC law is specifically tied to the Affordable Care Act (ACA). Further, the DC law defines “applicable individual” as the same as defined in 26 U.S.C. §5000A of the ACA. HCSMs and their participants are exempted in the ACA via 26 U.S.C. §5000A(d)(2) Religious Exemptions. This has been further verified by the DC governments Department of Treasury.

“CHAPTER 51. INDIVIDUAL TAXPAYER HEALTH INSURANCE RESPONSIBILITY REQUIREMENT.

“§ 47-5101. Definitions.

“For the purposes of this chapter, the term:

“(2) “Applicable individual” shall have the same meaning as provided in section 5000A of the Internal Revenue Code of 1986, as the section and its implementing regulations were in effect on December 15, 2017; provided, that:

“(C) An individual shall not be considered an applicable individual if the individual is a member of a religious sect or division that is recognized by the United States Social Security Administration as conscientiously opposed to accepting any insurance benefits, including Social Security and Medicare; and ....

“§ 47-5102. Requirement to maintain minimum essential coverage; exemptions.

“(a) Beginning for tax years after December 31, 2018, and except as provided in subsection (b) of this section, an applicable individual shall, for each month, ensure that the applicable individual, and any dependent of the applicable individual who is also an applicable individual, maintains minimal essential coverage.

“(b) Except as provided in paragraphs (1) and (2) of this subsection, the exemptions available from the federal requirement to maintain minimum essential coverage under section 5000A of the Internal Revenue Code of 1986 and its implementing regulations, as such section and its implementing regulations were in effect on December

15, 2017, shall also be available as exemptions from the requirement to maintain minimum essential coverage contained in subsection (a) of this section, with the following modifications: ....

## New Jersey

In May of 2018, NJ Assembly bill A 3380, an act requiring insurance coverage was *passed* and *signed* by the governor.

The law is specifically tied to the Affordable Care Act (ACA). Further, the NJ law defines “applicable individual” as the same as defined in 26 U.S.C. §5000A(d)(1) of the ACA. HCSMs and their participants are exempted in the ACA via 26 U.S.C. §5000A(d)(2) Religious Exemptions.

What is significant to this reference by the NJ law is that §5000A(d)(1) states that “applicable individual” means, with respect to any month, an individual other than an individual described in paragraph (2), (3), or (4). Since the Health Care Sharing (HCS) exemption is in §5000A(d)(2), that means that HCS members are not applicable individuals and would be exempt from the NJ mandate.

Moreover, the NJ law makes provision for the State Treasurer’s office to certify for exemption from the individual responsibility requirement by reason of religious conscience.

The relevant sections of the law applying to HCSMs are listed below.

*C.54A:11-2 Definitions relative to required health insurance coverage.*

*2. As used in this act:*

*“Affordable Care Act” means the federal “Patient Protection and Affordable Care Act,” Pub.L.111-148, as amended by the federal “Health Care and Education Reconciliation Act of 2010,” Pub.L.111-152, and any federal rules and regulations adopted pursuant thereto. “Applicable individual” means the same as defined in 26 U.S.C. s.5000A(d)(1).*

*“Carrier” means any entity that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a hospital or health service corporation, a multiple employer welfare arrangement, an entity under contract with the State Health Benefits Program or the School Employees’ Health Benefits Program to administer a health benefits plan, or any other entity providing a health benefits plan.*

*“Minimum essential coverage” means the same as defined in 26 U.S.C. s.5000A(f)(1).*

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*C.54A:11-7 Program to determine eligibility for exemption.*

*7. a. The State Treasurer shall establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement pursuant to subsection a. of section 3 of this act or the tax imposed pursuant to subsection b. of section 3 of this act by reason of religious conscience or hardship.*

*b. The State Treasurer shall make the determination whether to grant an exemption pursuant to this section and shall notify the individual granted an exemption.*

Regarding Tax Compliance: Concerning the 2020 NJ tax filing on the HCS member’s 2019 state tax, please refer



to this page on the NJ Treasury website [<https://nj.gov/treasury/njhealthinsurancemandate/exemptions.shtml>]. Please note that in the first paragraph it states: “If you qualify for an exemption, you can claim the exemption when you file your 2019 New Jersey Income Tax return (Form NJ-1040) using Schedule NJ-HC in early 2020.” Then scroll down the page to the subject bar titled “Health Care Sharing Ministry – C2.”

November 15, 2019

Director Micheal DiBiase  
c/o Lindsay Lang  
Rhode Island Department of Administration  
1 Capitol Hill  
Providence, R.I. 02908

Dear Director DiBiase:

Neighborhood Health Plan of Rhode Island (Neighborhood) appreciates the opportunity to provide comments to the Department of Administration and the Rhode Island Health Benefits Exchange (Healthsource RI) concerning the proposed changes to regulation 220-RICR-90-00-1 *Healthsource RI*. Neighborhood offers its support for the changes supporting the implementation of a state based individual mandate and wishes to provide suggestions regarding the implementation of the exemption process.


Neighborhood supports the amendments as presented for the implementation of a state based individual mandate. We have always and will continue to endorse policies that drive for greater engagement in health coverage and improve the health of Rhode Island in the long-term.

Neighborhood strongly supports the inclusion of a blanket exemption for populations below 138% of the federal poverty level (FPL). A simple exemption is the right policy given the obligation to protect low-income Rhode Islanders and keep the program administratively simple to administer. A blanket exemption will be easy to communicate and is likely to include individuals already exempted under federal law, avoid payments in error, and is unlikely to impact the financial stability of the program. We further recommend that Department of Administration leverage any interactions through this process to connect and offer to these individuals available coverage options such as Medicaid, if available to them. These policies will ensure Rhode Island retains its high percentage of coverage and protects its most vulnerable financial citizens.

Additionally, Neighborhood would seek inclusion of language that corresponds to the state law clarifying the timeframes for the special enrollment period (SEP) is 60 days upon receipt of the penalty. Neighborhood recommends the sun-setting of this SEP after a few years as consumers adjust to the penalties existence in law. Ensuring this portion of the law is clarified through regulation will help guide consumers to access coverage in a manner consistent with the principles of sustainable insurance policy.

Please contact me at (401) 459-6679 or [EMcClaine@nhpri.org](mailto:EMcClaine@nhpri.org) with any questions regarding these comments. Thank you for your consideration.

Sincerely,



Elizabeth McClaine  
Vice President of Commercial Products