

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 permit an individual to claim a hardship exemption on their State tax return without obtaining an exemption number from the Exchange if, due to the direct impact of COVID-19, the individual lost minimum essential coverage in 2020 and suffered a hardship with respect to the capability to obtain health coverage during subsequent months in 2020. This exemption may be claimed on a tax return for the 2020 tax year only, and only for the months of April through December 2020.

TESTIMONY AND COMMENTS:

Summary of comments received:

COMMENT: One commenter requested that the Exchange extend the COVID-19 hardship exemption through the end of the public health emergency in order to provide clarity for individuals who may face hardships accessing health coverage in 2021.

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

Given the current uncertainty around the duration of the COVID-19 pandemic and its potential to impact individuals’ health coverage in 2021, the Exchange will assess whether to extend the COVID-19 hardship exemption into 2021 during the next calendar year.

It is also worth noting that individuals who face hardships accessing health coverage in 2021 due to COVID-19 may apply for a general hardship exemption from the Exchange regardless of whether the Exchange extends the COVID-19 hardship exemption into 2021. Accordingly, the Exchange is finalizing the rule as proposed.

COMMENT: One commenter requested that the Exchange revisit the Exchange's 2019 decision regarding implementing a blanket exemption for households with annual modified adjusted gross income ("MAGI") below 138% of the federal poverty level ("FPL"), in the context of the impact of the COVID-19 pandemic.

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

When the Exchange declined to adopt a blanket exemption for households with annual MAGI below 138% FPL in 2019, it explained that it intended to implement the statutory revisions to R.I. Gen. Laws c. 42-157 and 44-30 as closely as possible to the federal framework after which it was designed during the initial year or so of implementation. The Exchange also noted that any expansion of exemption categories would have an impact on revenue.

That Exchange recognized then, as it does now, that the commenter's request merits 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. For the reasons just stated, 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 Rhode Island Health Benefits Exchange ("Exchange") proposes to amend the Rules and Regulations Pertaining to HealthSource RI for the purposes of permitting an individual to claim an exemption from the shared responsibility payment ("SRP") on a state personal income tax return without obtaining an exemption certificate number from the exchange if, due to the direct impact of the 2019 Novel Coronavirus ("COVID-19"), the individual (1) lost minimum essential coverage ("MEC") during 2020 and (2) suffered a hardship with respect to the capability to obtain coverage under a qualified health plan ("QHP") during subsequent months in 2020. 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 R.I. Gen. Laws §§ 42-157-11, 14 and R.I. Gen. Laws § 44-30-101(e)(2).

II. Analysis of Regulatory Alternatives

a. § 1.11 Minimum Essential Coverage Exemptions

1. 1.11(B) Exchange Eligibility Determination

The proposed amendments to 220-RICR-90-00-1(11)(B) permit an individual to claim an exemption from the SRP on a state personal income tax return without obtaining an exemption certificate number from the exchange if, due to the direct impact of COVID-19, the individual (1) lost MEC during 2020 and (2) suffered a hardship with respect to the capability to obtain coverage under a QHP during subsequent months in 2020. The exemption would be available for months from April, the first month after RI's COVID-19 emergency declaration, through December of 2020.

The Exchange has limited capacity to process exemption applications. Prior to the COVID-19 pandemic, the Exchange expected to process less than 300 exemption applications annually, among all categories. Individuals claiming the exemption proposed by this amendment would be those who, due to the direct impact of COVID-19, have lost MEC in 2020 and suffered a hardship with respect to the capability to obtain coverage under a QHP during subsequent months in the 2020 calendar year. It is not known at this time how many Rhode Islanders may be eligible for this exemption, as the public health emergency is still ongoing.

There have been 24,424 diagnosed cases of COVID-19 in Rhode Island to date.¹ As of August 2020, 12.8% of Rhode Islanders were unemployed (which amounts to 14,500 less workers in the workforce than at the same time last year).² If individuals in these categories or those otherwise negatively affected by COVID-19 are uninsured in 2020 for a period of greater than two months, the volume of

1 <https://ri-department-of-health-covid-19-data-rihealth.hub.arcgis.com/> accessed 9/28/2020

2 <https://dlt.ri.gov/lmi/>

general hardship exemption applications filed under 45 C.F.R. 155.605(d)(1) would likely exceed the Exchange's capacity.³

It should be noted that prior to 2020, only 3.7 percent of Rhode Islanders were uninsured. Of the uninsured persons in Rhode Island, some are not subject to the SRP for other reasons unrelated to COVID-19. The current uninsured rate in 2020 is not known. It is not expected that all individuals affected by COVID-19 would need to claim a hardship exemption because they likely have health insurance. For those who are both negatively affected by COVID-19 and uninsured, there have been opportunities this year to enroll in health insurance through the Exchange. In the month of April there was a special enrollment opportunity for any uninsured Rhode Islanders. Additionally, certain life events like loss of health coverage, create a special enrollment period for enrolling through the Exchange. Since March 2020, the Exchange has enrolled about 3,400 individuals in a special enrollment period based on loss of coverage alone.

The Rhode Island Division of Taxation can accommodate the proposed process modification under 220-RICR-90-00-1(11)(B)(6) through a change to their annual tax forms that are currently in development. Permitting individuals to claim the proposed exemption under 220-RICR-90-00-1(11)(B)(6) on their tax return without first obtaining an exemption certificate number from the Exchange should only require additional resources from the Division of Taxation insofar as modifications need to be made to forms or systems which process forms.

The alternative to this proposed amendment is to maintain the status quo by continuing to require all individuals seeking any general hardship exemptions from the SRP under 45 C.F.R. 155.605(d)(1) to apply through the Exchange and obtain an exemption certificate number before claiming it on a tax return. Currently, the Exchange does not have the capacity to process many more general hardship exemption applications than it anticipated processing prior to the COVID-19 pandemic. Under the status quo, each general hardship exemption application is processed by Exchange staff members and approved or denied accordingly.

³ Consistent with R.I. Gen. Laws § 44-30-101(h), for purposes of determining eligibility for an exemption from the shared responsibility payment penalty, references to federal laws and regulations shall be construed as references to federal laws and regulations as in effect on December 15, 2017, including applicable administrative guidance that was in effect as of that date.

Maintaining the status quo would require additional staffing and resources that are not currently available to the Exchange. Additionally, by permitting individuals to claim the exemption proposed under 220-RICR-90-00-1(11)(B)(6) on a tax return without submitting an application to the Exchange, it would increase flexibility and decrease burdens for eligible individuals.

Funds collected from the SRP are deposited into the Health Insurance Market Integrity Fund and used for the State's reinsurance program, as set forth in R.I. Gen. Laws §§ 42-157.1-5(f), (g). It is unknown whether the proposed amendment would increase or decrease the funds collected from the SRP. Individuals eligible for the exemption under the proposed amendment would also be eligible for the general hardship exemption that already exists under 45 C.F.R. § 155.605(d)(1), although claiming the general hardship exemption requires individuals to first obtain an exemption certificate number from the Exchange. While it is conceivable that the number of individuals who claim an exemption would be different in the absence of this proposed amendment, any impact on funds collected from the SRP as a result of this proposed amendment is speculative.

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 COVID-19 Response Data, R.I. DEPARTMENT OF HEALTH
<https://ri-department-of-health-covid-19-data-rihealth.hub.arcgis.com/> (last visited September 28, 2020)

Labor Market Information, R.I. DEPARTMENT OF LABOR AND TRAINING
<https://dlt.ri.gov/lmi/> (last visited September 28, 2020)