

**Comments 1-12**

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**Comment 1:** “When will the RI Health Insurance Mandate [schemas] be available for review?”

**Response 1:** There are two formats that are permitted for submitting the data. First, filers may use the same schemas that are used for the IRS through its Affordable Care Act Information Returns System (AIRS). A second option for reporting is filing with a flat file (.CSV file). A file format that you may use will be available by November 2020 and details will be posted on the Division of Taxation’s website: (<http://www.tax.ri.gov/healthcoveragemandate/>).

**Comment 2:** “Where will the RI Health Insurance Mandate [schemas] be available for review?”

**Response 2:** A flat file (.CSV) template will be available on the Division of Taxation’s website at <http://www.tax.ri.gov/healthcoveragemandate/>.

**Comment 3:** “When will the RI Health Insurance Mandate crosswalks/business rules be available for review?”

**Response 3:** The Division of Taxation does not have separate crosswalks/business rules.

**Comment 4:** “Where will the RI Health Insurance Mandate crosswalks/business rules be available for review?”

**Response 4:** Please see Response 3.

**Comment 5:** “When will RI Health Insurance Mandate 1094 & 1095 technical specifications be available for review?”

**Response 5:** The Division of Taxation does not have separate technical specifications that will be available for review. A file format that you may use will be available by November 2020 and details will be posted on the Division of Taxation's website:  
(<http://www.tax.ri.gov/healthcoveragemandate/>).

**Comment 6:** "Where will RI Health Insurance Mandate 1094 & 1095 technical specifications be available for review?"

**Response 6:** Please see Response 5.

**Comment 7:** "Will you be following the IRS XML format which mirrors other state health mandate requirements like New Jersey & California?"

**Response 7:** The Division of Taxation will accept the following two options: (1) IRS reporting formats (AIRS); or (2) flat file (.CSV file).

**Comment 8:** "Do we need to apply for an account as...3rd party RI health mandate form filers?"

**Response 8:** No.

**Comment 9:** "What is the approval process required to be...3<sup>rd</sup> party RI health mandate form filers?"

**Response 9:** There is no approval process required.

**Comment 10:** "Will there be a testing period available for 3<sup>rd</sup> party RI health mandate filers?"

**Response 10:** No.

**Comment 11:** "Is this testing period required for 3<sup>rd</sup> party RI health mandate filers?"

**Response 11:** No.

**Comment 12:** "Will there [be] a separate testing & production environment for 3<sup>rd</sup> party RI health mandate filers?"

***Response 12:*** For more information on the submission process, please see the Reporting Requirements FAQ posted on the Division of Taxation's website.

**Comments 13-16**

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***Comment 13:*** “[C]an Rhode Island provide guidance in its regulations if the employer filing requirement is limited to employers who offer self-insured plans or whether both self-insured and fully insured employers need to file the 1095-Cs to the state? New Jersey and California only require self-insured employers to file whereas Washington D.C. requires self-insured and fully-insured employers to file.”

***Response 13:*** Fully insured employers must file the reports required by R.I. Gen. Laws § 44-30-102. The Division of Taxation will not reject a form, including an IRS form, if it contains the information that is required pursuant to R.I. Gen. Laws § 44-30-102(d). If an employer is not self-funded, and the carrier provides the information that is required pursuant to R.I. Gen. Laws § 44-30-102(d), then the Division of Taxation will not require that the non-self-funded employer submit duplicative information; nothing further is expected of the non-self-funded employer for this upcoming year. If a non-self-funded employer still elects to submit an IRS form to the Division of Taxation, such as the 1095-C, that is acceptable, so long as either the carrier or the employer submits the required information.

***Comment 14:*** “Can the deadline of January 31 for applicable entities to provide the 1095-Cs to the Division of Taxation and to individuals be moved to follow the federal filing deadline or later? If so, can any filing extensions also

follow the federal filing extensions that may be announced by the IRS? A state filing deadline after the federal deadline will reduce the number of filing corrections filed, as employers will have the opportunity to correct filing errors after initially submitting the file to the IRS. This request is particularly important for 2020 filing due in 2021, as the filing schemas have not yet been released by Rhode Island, so companies cannot begin to review the scope of work required to file to Rhode Island or begin implementing the system changes. New Jersey and the District of Columbia, which began requiring filing of 1095-Cs from applicable entities this year, had due dates of May 15, 2020 and June 30, 2020, respectively.” You stated during the public hearing on August 20, 2020 that “Rhode Island consider mimicking the same deadline that the federal government allows employers to have.”

***Response 14:*** The statutory state reporting deadline set forth in R.I. Gen. Laws § 44-30-102 is January 31, 2021 and each January 31<sup>st</sup> thereafter.

**However, for Tax Year 2020 only, the Division of Taxation will extend the reporting deadline for applicable entities to report to individuals to March 2, 2021 and for applicable entities to report to the Division of Taxation to March 31, 2021.**

***Comment 15:*** “Will Rhode Island assess any fines or penalties if an employer is late filing or filed with incorrect data?”

***Response 15:*** If applicable entities subject to the statutory legal requirements file late or file incorrect data, then the applicable entities may be in violation of Rhode Island law. Each matter will be reviewed on a case-by-case basis and addressed as its unique facts and circumstances warrant.

***Comment 16:*** “Will Rhode Island provide any guidance on the correction process for filing? For the correction process, what is the timeline for an employer to file a corrected data file?”

***Response 16:*** To correct data, an entity may navigate to the same file upload page on the Division of Taxation’s website listed in Response #2 above and upload a correct file. There will be an opportunity to specify if the file that is uploaded is an original file, a replacement file, or a correction file. To provide a corrected file after December 31<sup>st</sup> of the year in

**which the file is due, please contact the Division of Taxation. The Division of Taxation may be contacted by email at [taxportal@tax.ri.gov](mailto:taxportal@tax.ri.gov) with “Individual Mandate Correction File” as the subject line.**

**Comment 17**

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**Comment 17:** “I attended the public hearing on Rhode Island employer health care reporting requirements today and would like to be provided with the responses to the questions that were asked during the hearing when those become available. Will your department accept the federal Form 1095-C that employers use to report their offer of employer provided health coverage to individuals and the IRS as sufficient to meet its employer reporting obligations under the Rhode Island Individual Health Insurance Mandate?”

**Response 17: Please see Response 13.**

**Comments 18-30**

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**Comment 18:** “Is there a minimum number of RI employees required for a company to be required to report?”

**Response 18: No.**

**Comment 19:** “Will there be any type of manual reporting (for example, NJ has a fillable form)?”

**Response 19:** **There is no online data entry form available, but an acceptable file format is a .CSV for which a template will be available.**

**Comment 20:** “Is there any type of registration required by employers in order to transmit the files to RI?”

**Response 20:** **No.**

**Comment 21:** “Is there any special way the files have to be transmitted to RI?”

**Response 21:** **The Division of Taxation will provide a webpage where you will be able to upload your file(s). A link to this webpage will be available on the Division of Taxation’s website:**  
**(<http://www.tax.ri.gov/healthcoveragemandate/>).**

**Comment 22:** “Will there be a way to test file transmissions before the final required filing?”

**Response 22:** **No.**

**Comment 23:** “Will there be some type of acknowledgement that the file has been received by RI (for example a submission receipt via email)?”

**Response 23:** **Yes. If a file is uploaded successfully, then a filing entity will receive a real-time confirmation on the webpage screen.**

**Comment 24:** “Is there a possibility of an extension to the 1/31/21 reporting date, since file specs have not been released, plus that does not allow time for employers to get corrections completed?”

**Response 24:** **Please see Response 14 above.**

**Comment 25:** “Will there be a process in place to handle corrections?”

**Response 25:** **Please see Response 16 above.**

**Comment 26:** “Will the reporting be in an XML file format, similar to what the IRS uses?”

**Response 26:** Please see Response 7 above.

**Comment 27:** “Covered individual reporting requires [an] SSN. The federal forms allow date of birth, if there is not an SSN. Will date of birth be allowed, or will you be able to report on covered individuals who don’t have an SSN?”

**Response 27:** **R.I. Gen. Laws § 44-30-102(d)(1)(i) requires the name, address, and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy, along with other information. R.I. Gen. Laws § 44-30-102(d)(1)(iii) further allows for “[s]uch other information as the tax administrator may require.” If and only if an individual does not have an SSN, a covered individual may provide a date of birth (DOB) but must otherwise provide a TIN.**

**Comment 28:** “Federal regulations require the employee or primary subscriber to be notified. Will this be the same for RI, or will each covered individual need to be provided a form?”

**Response 28:** **R.I. Gen. Laws § 44-30-102(e)(1) requires that applicable entities providing a return must also provide to each individual whose name is in the return a written statement containing the name, address, and contact information of the person required to provide the return to the Division of Taxation and the information included in the return with respect to the individuals listed. One form sent to the primary subscriber is acceptable, so long as the written statement includes information with respect to the individuals listed on it.**

**Comment 29:** “What penalties will there be and/or what is in consideration for enforcement? Will penalties be waived for year 1? What will the penalties be for not filing? What will the penalties be for late filing? What is the timeline to get corrected data filed?”

**Response 29:** Please see Response 15 above regarding penalties.

**Please see Response 16 above regarding file corrections.**

**Comment 30:** “Will we publish the answers to the questions?”

**Response 30:** Yes, the Division of Taxation will send these responses to everyone who submitted comments during the comment period and will also file the comments and responses with the Secretary of State's Office.

**Comments 31-37**

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**Comment 31:** "Can the answers for all questions asked at or as a result of the 8/20 public hearing be sent to us?" "Will [the Division of Taxation] publish the answers to the questions?"

**Response 31:** Please see Response 30 above.

**Comment 32:** "How will we be notified of any action taken or information published/updated as a result of submitted questions?"

**Response 32:** The Division of Taxation will send the comment responses to everyone who submitted comments during the comment period. Information pertaining to the individual mandate will be posted on the Division of Taxation's website: <http://www.tax.ri.gov/healthcoveragemandate/>. An entity or individual may subscribe to receive general tax newsletters published by the Division of Taxation, which includes information about the mandate and other topics by subscribing on <http://www.tax.ri.gov>. For additional information, an entity may send questions about the individual mandate to [Tax.IndMandate@tax.ri.gov](mailto:Tax.IndMandate@tax.ri.gov).

**Comment 33:** "Is there an expectation of corrected 1095B information to be provided to the state?"

**Response 33:** Yes. For additional information, please see Response 13 and 16 above.



**Comment 34:** “There were four artifacts referenced at the end of the hearing. What were those artifacts and where can we obtain copies of them for review?”

**Response 34:** The Division of Taxation enumerated four (4) exhibits at the end of the regulation hearing that are part of the rulemaking record, which can be obtained either from the Secretary of State’s Office or the Division of Taxation: (1) the hearing notice, called the Public Notice of Proposed Rulemaking, as published on August 4, 2020 on the Secretary of State’s website; (2) the draft regulation as published on August 4, 2020 on the Secretary of State’s website; (3) the Regulatory Analysis as published on August 4, 2020 on the Secretary of State’s website; and (4) the regulation comments submitted during the comment period between August 4, 2020 and September 4, 2020.

**Comment 35:** “What is the link to the technical specification documentation?”

**Response 35:** Please see Responses 5 and 6 above.

**Comment 36:** “The 1/31 date to submit forms to the RI Division of Taxation does not align with the IRS timelines. RI is expecting the 1094/1095B forms submitted to the state to be the same as what is required to submit to the IRS. Will RI revise their date for submission to the state of RI to align with the required IRS deadlines for submissions of March 31<sup>st</sup>, or slightly later, to greatly reduce the burden to comply?”

**Response 36:** Please see Response 14 above.

**Comment 37:** “Will [the Division of Taxation] publish the answers to the questions?”

**Response 37:** Please see Response 30 above.

**Comments 38-48**

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**Comment 38:** “The first question is about employer reporting. January 31, 2021. Will the State consider pushing that date back at all if the federal government does that at all? In the spirit of reducing the volume of data corrections, they expect that many data corrections will be coming in from employers. The lack of alignment may drive an increase of data corrections.”

**Response 38:** Please see Response 14 above.

**Comment 39:** The commenter would like to “confirm that the State is considering using an XML file format that the federal government uses.”

**Response 39:** Please see Response 7 above.

**Comment 40:** “The 1/31 date to submit forms to the RI Division of Taxation does not align with the IRS timelines. RI is expecting the 1094/1095B forms submitted to the state to be the same as what is required to submit to the IRS. Will RI revise their date for submission to the state of RI to align with the required IRS deadlines for submissions of March 31<sup>st</sup>, or slightly later, to greatly reduce the burden to comply?”

**Response 40:** Please see Response 14 above.

**Comment 41:** “With furnishing data out to residents of Rhode Island, do all covered individuals need to be notified? Does that include dependents as well?”

**Response 41:** Please see Response 28 above.

**Comment 42:** “Is Rhode Island considering a penalty for enforcement? Is this for subsequent years or year one?”

**Response 42:** Please see Response 15 above.

**Comment 43:** “The proposed rule provides a Jan 31 deadline for applicable entities to provide reports to both the Division of Taxation and to the Individual. Although this date aligns with the initial federal IRS deadline for furnishing federal reporting (via 1095 form) to the individual employee or coverage subscriber, it precedes the federal filing date of March 31 by 2 months and does not accommodate the automatic IRS form delivery extension to early March or other relief offered by the IRS.

The Division has indicated that it intends to release necessary submission file specifications sometime in the fall, allowing very little time for employers and their vendors to develop and test changes required for electronic submission. We would encourage the Division to align the filing of employer data and form delivery to individuals with the federal requirements, inclusive of extensions and relief periods for the following reasons: a. The state process leverages the federal IRS 1095 reporting process b. Deadlines preceding the federal timeline may greatly increase the volume of data corrections to the state as federal IRS 1095 forms are updated c. To ease the burden of compliance reporting on employer groups either located in the state of Rhode Island or with employees who reside in the state.”

**Response 43:** Please see Response 14 above. Also, the Division of Taxation has provided further information about reporting requirements on its website: <http://www.tax.ri.gov/healthcoveragemandate/>.

**Comment 44:** “The proposed rule provides that each applicable entity must also notify each individual. Health e(fx) asks for clarity around this provision of the proposed rule, as the definitions imply that each covered individual would require notification. The statute below specifies that information that was required under section 6055 of the IRC 1986 as of December 15, 2017 should be sufficient to satisfy the RI law. However, if the Division’s intention is to require that each covered individual, including dependents must be individually notified, that position would not acknowledge or incorporate the statutory requirement and would instead exceed and conflict with the statute.

R.I. Gen. Laws § 44-30-102(e)(2):

(2) Sufficiency of federal statement. Notwithstanding the requirements of paragraph (1), the requirements of this subsection (e) may be satisfied by a written statement provided to an individual under section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on the 15th day of December 2017.

We would encourage the Division to require the delivery of 1095 forms to the employee or subscriber only in effort to ease the financial burden and complexity of forms delivery on the employer as well as to align with state statute and the federal process.”

**Response 44:** Please see Response 28 above.

**Comment 45:** “The proposed rule provides that submission be provided in a manner prescribed by the Division of Taxation. We would encourage the Division of Taxation to align data submission to that of the federal standard, including format of filing submission, correction process and timelines, and file size limitations to allow appropriate time to develop transmissions and test with the Division of Taxation prior to submission deadlines. We also want to offer our assistance to provide consultation, additional feedback, and early testing to the Division, based on our experience with state and federal submission of this type of data as well as our familiarity with employer data challenges.”

**Response 45:** Please see Responses 1 through 6 for filing submissions; Response 16 for corrections; and Responses 10 through 12 for testing. The Division of Taxation states that the file size limit is 100 MB.

**Comment 46:** “The proposed rule provides that the TIN of each individual obtaining coverage under the policy be provided to the Division of Taxation[.]

We would encourage the Division of Taxation required data align to that of the federal process, which allows providing either the dependent TIN or date of birth where SSN or TIN is not available. Our large employer data contains many younger dependents who have not yet obtained an SSN or a TIN at the time of required submission.

The statute below specifies that information that was required on the Form 1095-C as in effect for CY 2017 should be sufficient to satisfy the RI law. However, the proposed regulation does not acknowledge or incorporate that requirement by requiring Dependent TIN Reporting, which exceeds the statute.

R.I. Gen. Laws § 44-30-102(d)(2):

(2) Sufficiency of information submitted for federal reporting. Notwithstanding the requirements of paragraph (1), a return shall not fail to be a return described in this section if it includes the information contained in a return described in section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on the 15th day of December 2017.”

***Response 46:*** Please see Response 27 above.

***Comment 47:*** “The proposed regulation provides that the filing includes “the dates during which the individual was covered under minimum essential coverage during the calendar year”. Under IRC 6055, employers report merely the months in which individuals are enrolled in coverage on the federal form 1095 but are not required to provide specific dates of coverage. Requiring specific dates of coverage exceeds the statutes and the federal process.

We would encourage the Division of Taxation to align to the statute and the federal requirements by incorporating the rules that information required under IRC 6055 are sufficient, in this case the months of coverage, which is consistent with the statutory specification below.

R.I. Gen. Laws § 44-30-102(d)(2):

(2) Sufficiency of information submitted for federal reporting. Notwithstanding the requirements of paragraph (1), a return shall not fail to be a return described in this section if it includes the information contained in a return described in section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on the 15th day of December 2017.”

***Response 47:*** In accordance with R.I. Gen. Laws § 44-30-102(d)(1), applicable entities that provide months of coverage fulfill the requirement for “dates” pursuant to the state statute and regulation.

***Comment 48:*** “The rule provides that the Division of Taxation may take appropriate action to enforce the requirements of the mandate including lawful collections activity, administrative action or court action.

Health e(fx) requests clarity around the rule to communicate to our large employers and partners whether the Division plans to assess fines or penalties for late filing or failure to file, including both initial submissions and correction submissions. Similarly, it would be helpful to understand if the Division will utilize a good-faith standard for year one or for subsequent years.”

***Response 48:*** Please see Response 15 above.

**Comment 49**

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**Comment 49:** “I would like to receive copies [of] the replies to various comments submitted on this proposed regulation, once they are available.”

**Response 49:** Please see Response 30 above.

**Comment 50**

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**Comment 50:** “My Fund provides health insurance for a few people who work and reside in Rhode Island, my business is in CT. Do I need to file anything with the State of Rhode Island showing these people have Health Insurance or just send them a 1095 B form for them to use when they file their taxes?”

**Response 50:** For specific legal or tax advice questions, please contact an attorney or a tax professional. In general, applicable entities must file reports with the Division of Taxation and also provide them to individuals.

**Comments 51-53**

Shamus Durac  
Staff Attorney

Personal Income Tax: Implementation of the Rhode Island Health Insurance Mandate  
280-RICR-20-55-15  
Public Hearing held August 20, 2020  
Summary of Public Comments

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**Comment 51:** “Clarify the mandate exemption for individuals whose income falls below the filing threshold...In the proposed 280-RICR-20-55-15.8(F), the Department establishes (as was established under the federal mandate) an exemption for individuals whose income falls below the tax filing threshold. However, it is unclear as to whether some individuals whose annual income falls below the federal tax filing threshold (as established in 26 U.S.C. § 6012(a)), but who are required to file a Rhode Island return as established in R.I. Gen. Laws § 44-30-51, would be required to pay a shared responsibility payment penalty. It is unlikely that this group is very large; in fact, there may be no taxpayers who would fall into this group and who would not benefit from another exemption. Nonetheless, we believe that this language could be clarified to better protect these very low-income Rhode Island tax filers. We believe that it was the Department’s intent to retain this exemption as it was applied under the federal individual mandate penalty. In service of that ultimate end, we believe that § 15.8(F) would be improved by referencing both the Rhode Island taxpayer’s federal gross income and the federal tax-filing threshold while maintaining the current exemption for individuals not required to file a Rhode Island state return. Our proposed language is as follows:

§ 15.8(F). No shared responsibility payment penalty shall be imposed with respect to any applicable individual for any month during a calendar year if the taxpayer’s household income (as described in § 1412(b)(1)(B) of the Patient Protection and Affordable Care Act (Pub. Law 111-148)) is less than (1) the amount of gross income requiring the taxpayer to file a Rhode Island state return, as set forth in R.I. Gen. Laws § 44-30-51; or (2) the amount of gross income requiring the taxpayer to file a federal income tax return as set forth in 26 U.S.C. § 6012(a).”

**Response 51:** Although the Division of Taxation appreciates this comment, we are bound by the language of the R.I. Gen. Laws §§ 44-30-101 and 44-30-102, which does not provide for an automatic exemption of the type you request.

**Comment 52:** “Make the election of the ‘affordability’ hardship exemption automatic for individuals whose annual modified adjusted gross income (MAGI) falls below 138% of the federal poverty level (FPL), or, at least, ensure that the election process is accessible and streamlined.”

“One of the most widely-available exemptions is for uninsured individuals for whom no affordable coverage is available. This ‘affordability’ exemption is included among the hardship exemptions for which the Health Insurance Exchange is responsible for granting under R.I. Gen. Laws § 44-30-101(e)(2). RIPIN proposes some clarifying additions to the proposed rule to ensure that taxpayers are adequately informed of their eligibility for this ‘affordability’ exemption, and, preferably, to allow for automatic claiming of that exemption by individuals whose household income falls below 138% of the Federal Poverty Level, for several reasons: (1) virtually all individuals below that income are eligible for the ‘affordability’ exemption; (2) many individuals eligible for the ‘affordability’ exemption nonetheless fail to claim the exemption due to complexities in the tax filing process; (3) the State’s implementation of the shared responsibility payment penalty anticipated no penalty payers below 138% of the Federal Poverty Level; and (4) as the affordability exemption is not ‘discretionary,’ a facilitated or automatic election process would be more administrable for the Health Insurance Exchange, the Department, and for taxpayers. The “Affordability” Exemption Covers Virtually All Individuals Below 138% of the Federal Poverty Level. Under the federal mandate model, and as proposed for the Rhode Island model, the ‘affordability’ exemption exempts from the shared responsibility payment penalty any individual for whom no ‘affordable coverage’ is available.”

To effectuate easier access to this exemption for low-income taxpayers, RIPIN proposes adding language conferring automatic eligibility for this exemption for households falling below 138% of the Federal Poverty Level. RIPIN proposes adding a new sub-paragraph after § 15.8(F) of the current proposed rule, to read:

Any applicable individual whose household Modified Adjusted Gross Income (as defined in 42 C.F.R. § 435.603(e)) falls below 138% of the Federal Poverty Level for the calendar year will be presumed eligible for the hardship exemption as described in R.I. Gen. Laws § 42-157-11(a), and no shared responsibility payment penalty shall be imposed upon any such applicable individual for any month during that calendar year.”



Alternatively, RIPIN suggests adding a new sub-paragraph between § 15.7(C)(2) and § 15.7(C)(3) of the current proposed rule, to read: ‘Form IND-HEALTH will inform any taxpayer whose household Modified Adjusted Gross Income (as defined in 42 C.F.R. § 435.603(e)) falls below 138% of the Federal Poverty Level for the tax year of their presumptive eligibility for a hardship exemption, and will communicate to the taxpayer the method by which such exemption may be claimed.’ We believe that either of these exemptions will improve administrability and decrease the number of individuals eligible for the exemption who incorrectly pay the shared responsibility payment penalty, while maintaining the intent of the legislature in establishing the existing exemption framework.”

**Response 52:** Although the Division of Taxation appreciates this comment, we are bound by the language of the R.I. Gen. Laws §§ 44-30-101 and 44-30-102, which does not provide for an automatic exemption of the type you request.

**Comments 53-55**

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**Comment 53:** “Our biggest concern is that the proposed rule does not seem [to] recognize the provision of the R.I. Gen. Laws § 44-30-102(d)(2) which provides:

(2) Sufficiency of information submitted for federal reporting. Notwithstanding the requirements of paragraph (1), a return shall not fail to be a return described in this section if it includes the information contained in a return described in section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on the 15th day of December 2017.

This section covers the information required to be filed with the State of Rhode Island. Based on that provision, an ALE providing the information

that was required on the Form 1095-C as in effect for CY 2017 should be enough to satisfy the reporting requirements of the Rhode Island law. However, the proposed regulation does not acknowledge or incorporate that requirement.”

“There is an equivalent rule for furnishing information returns to recipients. R.I. Gen. Laws § 44-30- 102(e)(2) provides:

(2) Sufficiency of federal statement. Notwithstanding the requirements of paragraph (1), the requirements of this subsection (e) may be satisfied by a written statement provided to an individual under section 6055 of the Internal Revenue Code of 1986, as that section is in effect and interpreted on the 15th day of December 2017.”

**Response 53: Please see Responses 13 and 28 above.**

**Comment 54:** “The proposed regulation provides that the filing includes ‘The dates during which the individual was covered under minimum essential coverage during the calendar year’. Under section 6055 of the Internal Revenue Code of 1986, as that section was in effect and interpreted on the 15th day of December 2017, providers were only required to report on any calendar month in which an individual is enrolled; specific dates of coverage were not required. At this point, many employers are only getting affirmation of the month in which an individual was covered for any day and not necessarily capturing the dates of coverage. Requiring dates of coverage goes beyond the requirements of section 6055. We recommend that any final rule incorporate the provisions quoted above recognizing the sufficiency of the furnishing and filing of Forms 1095-B and 1095-C to meet the Rhode Island requirements.”

**Response 54: Please see Response 47.**

**Comment 55:** “We also note that the proposed rule requires the furnishing and filing of the information on or before January 31. Based on years of experience preparing the information returns on behalf of ALEs, we can tell you that if Rhode Island moves forward with such an early furnishing and filing deadline, the information received will be highly inaccurate and most ALEs will be required to furnish and file corrected forms as it is impossible to get accurate information about coverage in December by January 31 of the next tax year. For example, an individual has up to 45 days to elect COBRA coverage. That means that it is possible to elect in

February to retroactively have COBRA coverage in the preceding December. Moreover, unlike other financial data that is required to be reported by January 31 based on payments by December 31, the information related to health coverage has not been conducive to such timely reporting in an accurate manner.

The IRS has recognized that difficulty. It has extended the furnishing deadline every year (see, e.g. IRS Notice 2019-63) since reporting was required under Section 6055 for calendar year 2015. The federal filing deadline for ALEs that file electronically is March 31 which can be automatically extended for 30 days. These extensions allow for employers to more accurately furnish and file the required forms.

We note that the Rhode Island statute provides full discretion in the ‘tax administrator’ to set the timing for filing and furnishing of the forms. The clear intent of the Rhode Island statute was to not unduly burden filers to have to comply with provisions that are not required in the federal scheme. With that in mind, we recommend that Rhode Island recognize and coordinate with the federal scheme of requiring filing no earlier than March 31 with the ability to automatically extend that deadline by 30 days. It should also provide that any forms that are timely furnished under federal law will be considered timely furnished in the State of Rhode Island.”

**Response 55: Please see Response 14 above.**

**Comment 56**

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**Comment 56:** “Is there additional information available that gives additional guidance on how these reports are to be transmitted to the Division of Taxation? We represent several covered entities and want to ensure that we are prepared to submit the required reports in the appropriate format and through the appropriate channels in compliance with the reporting deadlines.”

***Response 56:*** Please see Responses 1 through 7 above.

**Comment 57**

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***Comment 57:*** “We were concerned that the Department of Revenue proposed regs only mentioned the original ACA religious exemption, and not the 2018 expansion clarified by Congress, which HealthSource RI addressed in its regulations.”

“We understand you are constrained by R.I. Gen. Laws § 44-30-101 to keep the definition of ‘applicable individual’ in your regs consistent with the language in 26 U.S.C. § 5000A(d) that was in effect on December 15, 2017, which at the time only recognized the first religious conscience exemption, and not the second prong which was added in 2018 that relates to members of a religious sect or division who rely solely on a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs.

As I mentioned in my email last week, the only other possible consideration that might need to be made is how this is all addressed in the IND-HEALTH tax form that is submitted with a taxpayer’s personal income tax filing. The proposed regs don’t get into the details about the form, so that might be an issue for later consideration, but one issue to consider is how much detail about the exemption is required in the tax form.”

***Response 57:*** The Division of Taxation does not make determinations about religious conscience exemptions. R.I. Gen. Laws § 42-157-11(a) states that determinations about religious conscience exemptions belong to HealthSource RI pursuant to R.I. Gen. Laws § 44-30-101(e)(3). The Division of Taxation’s proposed regulation states in Sections 15.7(C) (2) and 15.7(C)(3) that any exemptions must be claimed on the IND-HEALTH tax form and are submitted by the taxpayer.

**Comments 58-59**

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**Comment 58:** “Coalition members join in the comment/recommended revisions submitted to the Department of Revenue by the RI Parent Information Network (RIPIN) regarding the proposed rule for implementation of the Rhode Island Individual Health Insurance Mandate (280 RICR-20-55-15). Clarify the mandate exemption for individuals whose income falls below the filing threshold;”

**Response 58:** Please see Response 51.

**Comment 59:** “Make the election of the “affordability” hardship exemption automatic for individuals whose annual modified adjusted gross income (MAGI) falls below 138% of the federal poverty level (FPL), or, at least, ensure that the election process is accessible and streamlined.”

**Response 59:** Please see Response 52 above.

**Comments 60-62**

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**Comment 60:** “Employee, non-employee (retirees, COBRA, etc.) and dependent enrollment information is reported by employers with self-insured plans on Form 1095-C, Part III (or Form 1095-B if not an applicable large employer) or by carriers for employers with fully insured plans on Form 1095-B. This is the information DOT will need to assist with enforcing

the individual mandate. Under Part 15.6, applicable entity is defined as “an employer or other sponsor of an employment-based health plan that offers employment-based minimum essential coverage to any resident of Rhode Island.” Minimum essential coverage is further defined as “coverage under an eligible employer-sponsored plan.” Since carriers are also included under this definition of applicable entity, it would be helpful to clarify that the Division will require employer reporting only when the employer sponsors a self-insured health plan and only for individuals who actually enroll in coverage. Absent a clear rule otherwise, both fully insured employers and their insurance companies would file duplicative health coverage statements and the employer submissions may only have Parts I and II completed.”

***Response 60:*** Please see Response 13 above.

***Comment 61:*** “Under the Reporting Requirements in Part 15.9, ‘applicable entities required to report pursuant to R.I. Gen. Laws § 44-30-102(e) must make any reports no later than January 31, 2021, and each January 31st thereafter.’ The Internal Revenue Service (IRS) requires applicable entities to furnish recipient statements on or before January 31 and file with the Service on or before March 31 if filing electronically (February 28 if filing on paper). Since applicable entities began furnishing Forms 1095-B and 1095-C in 2016 for the 2015 tax year, the IRS has extended the furnishing deadline by 30 days every year (see IRS Notice 2019-63). In the notice, IRS acknowledges that a substantial number of providers of minimum essential coverage need additional time beyond January 31 to gather and analyze the information necessary to populate Forms 1095-B and 1095-C. One major reason is that benefit information including offers and enrollment in coverage continues to be received late into January and even February with retroactive coverage (e.g., COBRA elections) affecting the prior year’s form. For example, an employee whose employment is terminated, or who experiences a reduction in hours, may become ineligible for the benefit plan in November or December, and would have 60 days to elect COBRA coverage, which could then be retroactively effective back to the termination date. Enrollment in COBRA coverage, whether due to a reduction in hours or terminating employment, must also be reported in Part III for self-insured plans.

Consequently, a January 31 furnishing deadline may mean incomplete or incorrect Forms 1095-C for affected employees. Those employees could then unnecessarily pay a shared responsibility assessment for failing to maintain coverage. A furnishing deadline and a filing deadline at the end

of January may result in inaccurate forms being produced, furnished and filed. It would be helpful if DOT could align with the IRS due date for furnishing forms perhaps by adding a clause to follow the IRS due date including any extensions granted. Because Forms 1095-B and 1095-C have been furnished up to 30 days after the January 31 deadline for the past four years, employer guidance is well-established to advise taxpayers that they don't need to wait for Forms 1095-C to file their Individual Income tax return. Taxpayers can also rely on other information from an employer or coverage provider to confirm coverage for each month. In addition, if errors are discovered by employers or form recipients after furnishing, errors can be resolved prior to forms being filed to DOT. Aligning with the IRS filing deadline of March 31 would also be helpful to reduce the need for a significant number of corrections to be filed at a later date. Other states that have enforced individual mandates and associated employer reporting requirements (California, Washington DC and New Jersey) have adopted filing deadlines of March 31 or later. We noted that Public Law No. 2019-88 provides that these reports shall be submitted "at such time as the tax administrator may prescribe, file a form in a manner prescribed by the tax administrator." We urge the Division to permit an employer filing deadline of March 31, at a minimum for returns filed electronically."

**Response 61:** Please see Response 14 above.

**Comment 62:** "Under the Reporting Requirements, the proposed rules state 'each applicable entity must also notify each individual, including dependents with minimum essential coverage.' With regards to notifying each individual, including dependents, our recommendation is that additional Forms 1095-B/1095-C should not be required to be furnished to each covered individual (i.e., dependents), since the applicable entity may not have the address information for each covered individual. The IRS only requires such forms to be furnished to the responsible individual listed in Part I and not individually to each covered individual. See IRS Questions and Answers 22 and 23. If a covered individual that is not the responsible individual in Part I needs to attest to enrollment in coverage, there are other documents they can use to do so as mentioned above. In addition, Rhode Island DOT could easily allow the applicable entities to furnish only one form to meet both the IRS and Rhode Island requirement in order to avoid confusion on the individual's part when more than one identical Form 1095-B/1095-C is received. Other states requiring such health coverage reporting (e.g., DC, NJ, CA) have followed the IRS rule to avoid duplication."

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***Response 62: Please see Responses 17 and 28 above.***