

From: Heidi Matchett <heidi@mzqconsulting.com>

Sent: Friday, August 28, 2020 12:37 PM

To: Legal, Tax (DOR) <Tax.Legal@tax.ri.gov>

Subject: [EXTERNAL] : Thursday August 20 Conference Call Request: Answer to Questions

Rhode Island Public Hearing - Health Insurance Mandate Info

Thursday, August 20, 2020

2:00 PM EST

Phone Number: 866-880-0098

Participant Code 76251026

QUESTIONS:

When will the RI Health Insurance Mandate schemes be available for review?

Where will the RI Health Insurance Mandate schemes be available for review?

When will the RI Health Insurance Mandate crosswalks/business rules be available for review?

Where will the RI Health Insurance Mandate crosswalks/business rules be available for review?

When will RI Health Insurance Mandate 1094 & 1095 technical specifications be available for review?

Where will RI Health Insurance Mandate 1094 & 1095 technical specifications be available for review?

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

Do we need to apply for an account as a 3rd party RI health mandate form filers?

What is the approval process required to be a 3rd party RI health mandate form filers?

Will there be a testing period available for 3rd party RI health mandate filers?

Is this testing period required for 3rd party RI health mandate filers?

Will there is a separate testing & production environment for 3rd party RI health mandate filers?

Thank you!

Heidi Matchett

Sr. Director, IT

443-213-0972 Office | 443-948-6800 Main | heidi@mzqconsulting.com

www.mzqconsulting.com [mzqconsulting.com]

1700 Reisterstown Rd, Suite 226 | Pikesville, MD 21208

*MZQ is not a law firm and cannot dispense legal advice. Anything contained in this communication is not and should not be construed as legal advice. If you need legal advice please contact your legal counsel. Remember, **you should never email social security numbers or other sensitive personal data.***



From: Colleen Rynne <colleen_rynne@ultimatesoftware.com>
Sent: Friday, August 21, 2020 8:39 AM
To: Legal, Tax (DOR) <Tax.Legal@tax.ri.gov>
Subject: [EXTERNAL] : Questions and Comments on Proposed Regulations

Thank you for the opportunity to speak at the hearing on the proposed regulations on the Implementation of the Rhode Island Individual Health Insurance Mandate. My concerns and questions pertain to 15.9, Reporting Requirements; and 15.12, Enforcement.

15.9, Reporting Requirements

- 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.

15.12, Enforcement

- Will Rhode Island assess any fines or penalties if an employer is late filing or filed with incorrect data?
- Will Rhode Island provide any guidance on the correction process for filing?

Thank you,

Colleen Rynne

Director, Compliance Advisory

Ultimate Software

2250 N. Commerce Parkway

Weston, FL 33326

www.ultimatesoftware.com [ultimatesoftware.com]

Follow US: [LinkedIn \[linkedin.com\]](https://www.linkedin.com) | [Twitter \[twitter.com\]](https://twitter.com) | [People First Blog \[ultimatesoftware.com\]](http://PeopleFirstBlog.ultimatesoftware.com)

This e-mail message and any attachments to it are intended only for the named recipients and may contain legally privileged and/or confidential information. If you are not one of the intended recipients, do not duplicate or forward this e-mail message.

From: [Jacob Moore](#)
To: [Montanaro, Lenore \(DOR\)](#); [Cate, Matthew \(DOR\)](#)
Subject: [EXTERNAL] : Rhode Island Individual Health Insurance Mandate
Date: Friday, August 28, 2020 4:35:34 PM

Hi Lenore and Matthew,

Thank you for returning my call – I'm sorry I missed you. As requested, here is the question I'd hoped to discuss with you:

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?

We've seen other states adopt that form for simplicity and wanted to confirm with you whether you'll be doing the same. Also, if you'd like to talk, I'd be happy to discuss some of the things we've observed when helping our clients submit these kinds of reports on a large scale.

Thanks in advance for your help,
Jacob

Jacob Moore
Counsel
Legal Department

Alight Solutions
4 Overlook Point
Lincolnshire, IL 60069
O +1.224.737.0989
jacob.moore@alight.com
alightsolutions.com [alightsolutions.com]

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized copying, disclosure, distribution, or use of this email, or any of its contents, is strictly prohibited. If you received this email in error, please contact the sender by reply email and destroy all copies of the original message.

From: Janet Andrews <jandrews@cicplus.com>
Sent: Thursday, August 27, 2020 11:59 AM
To: Legal, Tax (DOR) <Tax.Legal@tax.ri.gov>
Subject: [EXTERNAL] : Proposed Health Insurance Mandate

Hello,

Below is a list of questions that we have with regards to the proposed health insurance mandate.

- Is there a minimum number of RI employees required for a company to be required to report?
- Will there be any type of manual reporting (for example, NJ has a fillable form)?
- Is there any type of registration required by employers in order to transmit the files to RI?
- Is there any special way the files have to be transmitted to RI?
- Will there be a way to test file transmissions before the final required filing?
- Will there be some type of acknowledgement that the file has been received by RI (for example a submission receipt via email)?

The questions above are in addition to the ones asked on the hearing call held on 8/20/20:

- 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?
- Will there be a process in place to handle corrections?
- Will the reporting be in an XML file format, similar to what the IRS uses?
- Covered individual reporting requires 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?
- 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?
- 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?

Thank you.

+

Janet Andrews

Client Success, ACA Team

CIC Plus, Inc.®

CIC Plus overview video: <https://www.cicplus.com/compliance-peace-of-mind> [[cicplus.com](https://www.cicplus.com)]

jandrews@cicplus.com

O:847.677.9800 x260

[cicplus.com](https://www.cicplus.com) [[cicplus.com](https://www.cicplus.com)]

Follow CIC Plus

Twitter [twitter.com] | LinkedIn [[linkedin.com](https://www.linkedin.com)]

From: [Kuhn, Lori L](#)
To: [Legal, Tax \(DOR\)](#); [Cate, Matthew \(DOR\)](#); [Montanaro, Lenore \(DOR\)](#)
Cc: [Chrusciel-Desrosiers, Kathleen A](#); [Allison, Linda K](#)
Subject: [EXTERNAL] : RI Individual Health Insurance Mandate Follow Up Questions
Date: Monday, August 31, 2020 1:50:58 PM

Good Afternoon,

As a follow up to the RI Individual Health Insurance Mandate Public Hearing you held on 8/20, we are submitting the following questions on behalf of UnitedHealthcare:

- Q1:** Can the answers for all questions asked at or as a result of the 8/20 public hearing be sent to us?
- Q2:** How will we be notified of any action taken or information published/updated as a result of submitted questions?
- Q3:** Is there an expectation of corrected 1095B information to be provided to the state?
- Q4:** 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?
- Q5:** What is the link to the technical specification documentation?
- Q6:** 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 31st, or slightly later, to greatly reduce the burden to comply?

We appreciate the review of the above and look forward to your responses.

Please let me know if you have any questions and/or need any additional information.

Thank you,

Lori Kuhn

Lori Kuhn
EPO PMO: Regulatory and Large Scale Programs
UnitedHealthcare

○ 717-533-2754

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

**Public Comment
280-RICR-20-55-15**

Matthew Cate
One Capitol Hill
Providence RI 02908

tax.legal@tax.ri.gov

280-RICR-20-55-15

Proposed Rule

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 55 – PERSONAL INCOME TAX

**PART 15 – Implementation of the Rhode Island Individual Health Insurance
Mandate**

Thank you for the opportunity to comment on 280-RICR-20-55-15 Implementation of the Rhode Island Individual Health Insurance Mandate. Our company, Health e(fx), provides health reform compliance reporting software and services to large employers and strategic partners and serves over 22 million individuals. Heath e(fx) has also served as an industry advisor to numerous government associations and are involved in the ongoing review of legislative processes, federal agency guidance and the ACA and its impacts on large employer compliance.

We would like to provide the following information and questions that would be important to consider in implementing the proposed rule: Implementation of the Rhode Island Individual Health Insurance Mandate.

It is apparent that in drafting the statute, that it was the legislature's intent to not unduly burden filers by requiring employers to comply with new and unique provisions that are not already required in the federal scheme.

1. Section 15.9 Reporting Requirements: Deadlines

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.

2. Section 15.9 Reporting Requirements: Reporting to Covered Individuals

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.

3. Section 15.9 Reporting Requirements: Submission Methodology

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.

4. Section 15.9 Reporting Requirements: Dependent TIN Reporting

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.

5. Section 15.9 Reporting Requirements: Coverage Dates

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.

6. Section 15.12 Enforcement: Enforcement & Good Faith Standard

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.

Request for Replies to all Public Comments Submitted

In addition, we are also interested in the Division’s response to public comments and questions provided by others, as that will help us better prepare to meet the needs of our clients in meeting Rhode Island’s regulatory requirements, so we would appreciate it if you would provide that additional information as well.

Thank you for your consideration and please let us know if you have any questions for us or if we can be of any assistance.

Respectfully submitted,

Kyle Scott, AVP Compliance
Compliance@healthefx.us

Kerri Smith, Product Director
Kerri.Smith@healthefx.us

From: Erin Maxwell <erin.maxwell@paycomonline.com>
Sent: Wednesday, September 2, 2020 1:48 PM
To: Legal, Tax (DOR) <Tax.Legal@tax.ri.gov>
Subject: [EXTERNAL] : Proposed regulation 280-RICR-20-55-15

Good afternoon,

I am writing regarding the proposed regulation 280-RICR-20-55-15, regarding the Rhode Island Individual Health Insurance Mandate. I would like to receive copies the replies to various comments submitted on this proposed regulation, once they are available.

Thank you,

Erin A. Maxwell | Senior Attorney
7501 W. Memorial Road | Oklahoma City, OK 73142
800.580.4505 ext. 13399



DISCLAIMER: This email, and any attachments, is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential or privileged and exempt from disclosure under applicable law. If the reader of this email is not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by return email and destroy all copies of the email and any attachments.

From: Ellen Alch <ealch@1199nefunds.org>
Sent: Friday, August 28, 2020 2:58 PM
To: DOR Tax Portal <Tax.Portal@tax.ri.gov>
Cc: DOR Corporate Tax Section <Tax.Corporate@tax.ri.gov>
Subject: [EXTERNAL] : HEALTH INSURANCE MANDATE
Importance: High

Good afternoon,

Hoping to get some guidance on the Health Insurance Mandate beginning Jan 1 2020 for Employers. 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?

Thank you in advance for any help you can provide.

Kind regards,

Ellen Alch
Manager, Accounting Department
NEHCE Welfare & Pension Funds
77 Huyshope Ave.
Hartford, CT. 06106
860-549-8890

This electronic message may contain information that is confidential and/or legally privileged. It is intended only for the use of the individual(s) and entity(s) named as recipients in the message. If you are not an intended recipient of the message, please notify the sender immediately, delete the material from any computer, do not deliver, distribute, or copy this message, and do not disclose its contents or take action in reliance on the information it contains. Thank you."



Matthew Cate
Department of Revenue
One Capitol Hill
Providence, RI 02908

September 4, 2020

Re: Comments in Response to Proposed Rule, Implementation of the Rhode Island Individual Health Insurance Mandate, 280-RICR-20-55-15

Dear Mr. Cate:

Thank you for the opportunity to submit these comments in response to the Department's proposed rule 280-RICR-20-55-15, Implementation of the Rhode Island Individual Health Insurance Mandate. RIPIN recommends two specific revisions to the regulations as currently drafted:

1. Clarify the mandate exemption for individuals whose income falls below the filing threshold; and;
2. 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.

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 could potentially be subject to the 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 believe that the proposed revisions accurately reflect the intent of the legislature in setting the contours of exemptions from the mandate, and will serve to improve administrability for taxpayers, the Health Insurance Exchange, and the Department of Revenue.

RIPIN Proposes Clarifying the Mandate Exemption for Individuals Below the Tax 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).

RIPIN Encourages the Department to Make Eligibility for the "Affordability" Hardship Exemption Streamlined (or Automatic)

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. 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 considered relevant include employer-sponsored plans and qualified health plans (QHPs) sold through the Health Insurance Exchange.

However, Medicaid is not included as a type of affordable coverage that would disqualify an individual from the exemption. Individuals eligible for Medicaid are ineligible for tax credits, and because full-price plans through the Exchange would cost more than 8.05% of the income of a household living at 138% of the Federal Poverty Level, these individuals would be eligible for the “affordability” exemption if they fail to enroll in Medicaid.

We are only aware of two categories of individuals whose incomes are below 138% of the Federal Poverty Level who may 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 Eligibility for the “Affordability” Exemption, Many Households Below 138% of the Federal Poverty Level Paid the Federal Individual Mandate Penalty in Error.

As shown in data presented to the Office of the Health Insurance Commissioner’s Market Stability Workgroup in 2018, about \$1.7M in federal individual mandate penalties was collected in 2016 from 2,993 Rhode Island tax households below 138% of the Federal Poverty Level. This is frequently because it is administratively difficult to claim the “affordability” exemption.

On its face, it is counter-intuitive that Medicaid is not considered “affordable coverage,” so many individuals may not have believed themselves eligible for the exemption.

Additionally, the method of claiming that federal exemption involved reviewing IRS Form 8965 and the complex, 21-page accompanying instructions, including needing to complete three tax jargon-filled worksheets. This process is likely too complicated to expect most tax filers to complete correctly.

It is imperative that, notwithstanding any potential changes to the proposed 280-RICR-20-55-15, the Department undertake to ensure that the eventual Form IND-HEALTH provides sufficient, approachable guidance to these very low-income taxpayers to adequately inform them of their potential eligibility for the affordability exemption and inform them of the requisite steps to make such an election.

The State's Implementation of the Shared Responsibility Payment Penalty Assumed \$0 in Mandate Revenue from Tax Households Below 138% of the Federal Poverty Level

We were informed that Wakely, the actuarial firm that prepared analysis regarding funding for the State's reinsurance program, relied on an assumption of \$0 in revenue from shared responsibility payment penalties from tax households below 138% of the Federal Poverty Level. This analysis supported the State's § 1332 Application to fund the State's reinsurance program.

Streamlining the process by which tax filers may elect the affordability exemption would not negatively impact the expected funds that the program which the Shared Responsibility Payment Penalty exists to fund relies on.

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

Any bureaucratic system can only be as simple as the underlying rules upon which it operates. As the "affordability" exemption, as it stands, is a complex regulatory creation, the implementation of that exemption will also inherently require some level of complexity. Nonetheless, it is possible for a streamlined process to lessen the workload on tax filers, the Department, and the Health Insurance Exchange (in their role approving eligibility for exemptions).

For the reasons discussed above, RIPIN believes that it would be appropriate for individuals whose Modified Adjusted Gross Income falls below 138% of the Federal Poverty Level to be granted an automatic exemption based on their presumed eligibility for the "affordability" exemption. At the very least, RIPIN believes it would be appropriate for individuals whose income falls below that threshold to be automatically flagged, by the Division of Taxation, for evaluation for the "affordability" exemption by the Health Insurance Exchange. In virtually all cases, the determination as to eligibility will not require an individualized demonstration; as such, the Health Insurance Exchange's process may be made easier, the Division of Taxation may simplify its tax forms, and low-income tax filers can be more easily guided through the process of electing an exemption for which they are eligible.

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.

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/

/s/

Shamus Durac
Attorney
(401) 270-0101 ext. 125
SDurac@ripin.org

Sam Salganik
Executive Director
(401) 270-0101 ext. 101
SSalganik@ripin.org



Ernst & Young LLP
155 North Wacker Drive
Chicago, IL 60606-1787

Tel: +1 312 879 2000
Fax: +1 312 879 4000
ey.com

VIA Email to tax.legal@tax.ri.gov

Matthew Cate
Department of Revenue
One Capitol Hill
Providence, RI 02908

2 September 2020

RE: Comment on Proposed Rulemaking
Department of Revenue
Implementation of the Rhode Island Individual Health Insurance Mandate
Rule Identifier: 280-RICR-20-55-15

Dear Mr. Cate:

EY appreciates the opportunity to respond to the above referenced proposed rulemaking. Our firm provides reporting services to Applicable Large Employers (ALEs) to meet their obligations under Internal Revenue Code Sections 6055 and 6056. In that role, our clients have also engaged us to provide services on their behalf with respect to the various states that have adopted an individual mandate provision over the past few years, including Rhode Island. In that light, we have reviewed the proposed rule and have the following comments.

Our biggest concern is that the proposed rule does not seem 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.

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.

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.

Thank you for consideration of our comments.

Respectfully submitted,



Julie A. Gallina and Alan M. Ellenby

From: Tina Stephens <TinaS@tangohealth.com>
Sent: Wednesday, September 2, 2020 7:02 PM
To: Cate, Matthew (DOR) <Matthew.Cate@tax.ri.gov>
Cc: Scott Van Horn <svanhorn@tangohealth.com>
Subject: [EXTERNAL] : Individual Health Insurance Mandate

Hello Mr. Cate,

We missed the public hearing on August 20th related to the Implementation of the Individual Health Insurance Mandate effective January 1, 2020. 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.

Thank you in advance for your assistance.

Best,
--Tina Stephens



Tina Stephens | VP of Finance | Tango Health, Inc.
Phone: 855-468-2646 ext.10009 | Fax: 512-291-7177
9430 Research Blvd Bldg IV, Suite 200, Austin, TX 78759
tinas@tangohealth.com

From: Bemis, Ken <bemisk@csps.com>
Sent: Thursday, August 27, 2020 3:42 PM
To: Cate, Matthew (DOR) <Matthew.Cate@tax.ri.gov>
Cc: Montanaro, Lenore (DOR) <Lenore.Montanaro@tax.ri.gov>
Subject: Re: [EXTERNAL] : Religious Conscience Exemptions to the Rhode Island Individual Health Insurance Mandate

Matt: Thank you for your response last week. It is certainly the sense we got from the proposed regulations that the Department of Revenue would not be involved with making determinations as to who is eligible for a religious conscience exemption. We just wanted to make sure that the enforcement end of this requirement is consistent and were a little concerned when we noticed that the definitions in your proposed regs only referenced the religious conscience exemption under § 26 U.S.C. § 1402(g)(1) and not the other religious conscience exemption acknowledged by HealthSource RI that will be available to RI residents through RI Administrative Code § 220-RICR-90-00-1(1.11(B)(5). 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. It may not be necessary for your regs to reference this other religious conscience exemption prong upon which the HealthSource RI regulation is based, as long as the Department of Revenue plans to recognize such certifications from HealthSource RI. If the assumptions above are correct, then I think that addresses our primary concern.

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. If it just involves identifying one's exemption certificate number from HealthSource RI, that may be the cleanest for everyone involved. But if it gets into requiring the tax filer to identify which type of exemption is being claimed, then the form will need to carefully describe the available classes of exemption in a way that doesn't create confusion, particularly when it comes to the two available religious conscience exemptions which have different requirements associated with them. I only mention this because we have seen some confusion arise in other states on this issue. Another consideration may involve whether the tax form is the place for someone to make the attestation that is required for the second religious exemption prong indicating that medical health services have not been utilized in the applicable tax year. It's not clear whether that is something that HealthSource RI expects to be made to them one time on the initial application, or annually through them or through the DOR tax form. We aren't opposed to a one time attestation on the initial application. Some states, like

California, only require the single application and extend the certification for as long as the individual's circumstances don't change. If annual attestation is desired for this religious exemption prong, it would seem most logical to do that when completing one's tax return, looking back on the year in question, than to file a separate attestation each year first with HealthSource RI sometime after the tax year, but before the tax return is filed. I realize some of this may need to be sorted out with HealthSource RI.

I hope this all makes sense, and I would be happy to discuss further with you and/or HealthSource RI if that would be helpful.

Very truly, Ken



September 4, 2020

Matthew Cate
Department of Revenue
One Capital Hill
Providence, RI 02908

Comments in Response to Proposed Rule, Implementation of the Rhode Island Individual Health Insurance Mandate, 280-RICR-20-55-15

The Protect Our Healthcare Coalition is a group of leading Rhode Island non-profits and consumer groups with a goal to protect and promote quality, affordable healthcare for all. 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). Specifically, RIPIN recommends two revisions to the regulations as currently drafted:

- Clarify the mandate exemption for individuals whose income falls below the filing threshold; and;
- 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.

As RIPIN outlines in their comment letter, these recommended revisions reflect the intent of the legislature on enactment while helping streamline administration by the Department of Revenue. Additionally, **the Coalition believes these revisions would help to ensure that very low-income Rhode Islanders do not carry an undue financial burden in penalty payments to the state.** The fact is that, despite being eligible for an affordability exemption, many households below 138% of poverty have in the past paid the Federal penalty. As RIPIN notes in their comments, “...in 2018, about \$1.7M in federal individual mandate penalties was collected in 2016 from 2,993 Rhode Island tax households below 138% of the Federal Poverty Level. This is frequently because it is administratively difficult to claim the “affordability” exemption.”

For these reasons, we urge the Department of Revenue to implement the recommended revisions outlined by the RI Parent Information Network in their submitted comments. Thank you for your attention to this important matter.

Linda Katz, Chairperson (Policy Director, Economic Progress Institute)
Karen Malcolm, Coordinator

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 Southern New England, SEIU Rhode Island Council, Foster Forward, RI Coalition for the Homeless, Rhode Island Working Families Party, Mental Health Recovery Coalition, Senior Agenda Coalition, RI Community Food Bank, U.S. Pain Foundation, Inc., RI Interfaith Coalition to Reduce Poverty, Substance Use & Mental Health Leadership Council, Rhode Island Coalition for Children and Families, HousingWorks RI, Rhode Island Organizing Project (RIOP), Thundermist Health Center

September 3, 2020

Mr. Matthew Cate
Chief Legal Officer
Division of Taxation
One Capitol Hill
Providence, RI 02908

Via email: matthew.cate@tax.ri.gov

Re: Proposed Rulemaking, "Implementation of the Rhode Island Individual Health Insurance Mandate," (Rule 280RICR205515)

Dear Mr. Cate:

On behalf of ADP¹, thank you for the opportunity to offer comments related to the proposed rule dated August 4, 2020. Below are some suggestions to improve the accuracy of information filed with the Division of Taxation (DOT), and to reduce the burden on applicable entities and individuals. Specifically, we respectfully suggest that the Division clarify that only self-insured employers will need to report; align with IRS due dates for furnishing and filing health coverage statements and consider the furnishing of these forms to responsible individuals based on the related IRS rules to satisfy the Rhode Island requirement as well.

Clarify that only Self-insured Employers will Need to Report

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

¹ ADP is the nation's largest payroll and human resources service provider, paying roughly one out of every six workers in the United States. ADP provides a range of administrative solutions to more than 570,000 U.S. clients, which enable employers of all types and sizes to manage their employment responsibilities from recruitment to retirement, including employment tax administration, human resource management, benefits administration, time and attendance, retirement plans, and talent management. ADP offers Health Care Compliance services including electronic reporting of IRS Forms 1094-C and 1095-C.

employers and their insurance companies would file duplicative health coverage statements and the employer submissions may only have Parts I and II completed.

Align with IRS Furnishing and Filing Deadlines

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.

One Form 1095-B/1095-C Furnished to Each Responsible Individual

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.

Thank you for your consideration. If you have any questions or if we can be of any assistance, please contact me at 877-592-2006 or at alison.duronslet@adp.com.

Sincerely,



Alison Duronslet
Lead Government Compliance Analyst
ADP Agency Relations