

**280-RICR-20-55-15**

## **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

#### **15.1 Purpose**

The purpose of these Rules and Regulations is to implement various provisions of R.I. Gen. Laws Title 44 as they relate to the individual health insurance mandate. Under R.I. Gen. Laws § 44-30-101, Rhode Island residents are required, beginning after December 31, 2019, to maintain minimum essential coverage or be subject to a tax known as the shared responsibility payment penalty. Rhode Island's individual health insurance mandate is based, in part, on the Federal mandate established under the Patient Protection and Affordable Care Act (Pub. Law 111-148). Under R.I. Gen. Laws § 44-30-102, applicable entities providing minimum essential coverage must comply with reporting requirements and make a report whether an applicable individual maintains minimum essential coverage.

#### **15.2 Authority**

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws §§ 44-1-4, 44-30-95(a), and 44-30-101(h), which specifically authorize the Tax Administrator to prescribe Regulations for the proper administration and enforcement of tax laws, certain requirements for qualifying health insurance coverage, and the shared responsibility payment penalty. These Rules and Regulations have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.*

#### **15.3 Application**

These Rules and Regulations shall be liberally construed so as to permit the Tax Division the authority to effectuate the purpose of R.I. Gen. Laws § 44-30-1 *et seq.* and other applicable State laws and Regulations related to the individual health insurance mandate.

#### **15.4 Severability**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the

validity of the remainder of the Rules and Regulations shall not be impaired or affected thereby.

## **15.5 Referenced Materials**

In accordance with R.I. Gen. Laws § 44-30-101(h), for the purposes of determining the process and procedure of shared responsibility payment penalty exemptions, references to Federal law shall be construed as references to Federal law as in effect on December 15, 2017.

## **15.6 Definitions**

- A. “Applicable entity” means any of the following, as defined in R.I. Gen. Laws § 44-30-102:
1. An employer or other sponsor of an employment-based health plan that offers employment-based minimum essential coverage to any resident of Rhode Island.
  2. The Rhode Island Medicaid single State agency providing Medicaid or Children’s Health Insurance (CHIP) coverage.
  3. Carriers licensed or otherwise authorized by the Rhode Island Office of the Health Insurance Commissioner to offer health coverage.
- B. “Applicable individual” has the same meaning as set forth in 26 U.S.C. § 5000A(d), as in effect on December 15, 2017:
1. In general. The term "applicable individual" means, with respect to any month, an individual other than an individual described in §§ 15.6(B)(2), (3), or (4).
  2. Religious exemptions
    - a. Religious conscience exemption. Such term shall not include any individual for any month if such individual has in effect an exemption under § 1311(d)(4)(H) of the Patient Protection and Affordable Care Act (42 U.S.C. § 18031(d)(4)(H)) which certifies that such individual is:
      - (1) A member of a recognized religious sect or division thereof which is described in 26 U.S.C. § 1402(g)(1); and
      - (2) An adherent of established tenets or teachings of such sect or division as described in such section.
    - b. Health care sharing ministry

- (1) In general. Such term shall not include any individual for any month if such individual is a member of a health care sharing ministry for the month.
  - (2) Health care sharing ministry. The term "health care sharing ministry" means an organization:
    - (AA) Which is described in 26 U.S.C. § 501(c)(3) and is exempt from taxation under 26 U.S.C. § 501(a),
    - (BB) Members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,
    - (CC) Members of which retain membership even after they develop a medical condition,
    - (DD) Which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and
    - (EE) Which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.
- 3. Individuals not lawfully present. Such term shall not include an individual for any month if, for the month, the individual is not a citizen or national of the United States or an alien lawfully present in the United States.
- 4. Incarcerated individuals. Such term shall not include an individual for any month if, for the month, the individual is incarcerated, other than incarceration pending the disposition of charges.
- C. "Child" means any individual under the age of eighteen (18).
- D. "Dependent" means any individual who is or may become eligible for minimum essential coverage under the terms of a health insurance plan because of a relationship to a qualified individual or enrollee.
- E. "Division of Taxation" means the Rhode Island Department of Revenue, Division of Taxation, a Rhode Island State agency authorized and empowered to make Rules and Regulations pursuant to R.I. Gen. Laws § 44-1-4.

- F. "Exchange" means the Rhode Island health benefit exchange, known as HealthSource RI, as defined in R.I. Gen. Laws § 42-157-1.
- G. "Minimum essential coverage" has the same meaning as set forth in 26 U.S.C § 5000A(f), as in effect on December 15, 2017:
1. In general. The term "minimum essential coverage" means any of the following:
    - a. Government sponsored programs. Coverage under:
      - (1) The Medicare program under the Social Security Act, 42 U.S.C. § 1395(c) *et seq.*,
      - (2) The Medicaid program under the Social Security Act, 42 U.S.C. § 1396 *et seq.*,
      - (3) The CHIP program under the Social Security Act, 42 U.S.C. § 1397(aa) *et seq.*,
      - (4) Medical coverage under 10 U.S.C. § 1071 *et seq.*, including coverage under the TRICARE program;
      - (5) A health care program under 38 U.S.C. §§ 1701 *et seq.* or 1801 *et seq.*, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary of the Treasury,
      - (6) A health plan under 22 U.S.C. § 2504(e) (relating to Peace Corps volunteers); or
      - (7) The Nonappropriated Fund Health Benefits Program of the Department of Defense, established under the National Defense Authorization Act for Fiscal Year 1995, 10 U.S.C. § 1587 (1995) note.
    - b. Employer-sponsored plan. Coverage under an eligible employer-sponsored plan.
    - c. Plans in the individual market. Coverage under a health plan offered in the individual market within a State.
    - d. Grandfathered health plan. Coverage under a grandfathered health plan.
    - e. Other coverage. Such other health benefits coverage, such as a State health benefits risk pool, as the Federal Secretary of Health

and Human Services, in coordination with the Secretary of the Treasury, recognizes for purposes of this subsection.

2. Eligible employer-sponsored plan. The term "eligible employer-sponsored plan" means, with respect to any employee, a group health plan or group health insurance coverage offered by an employer to the employee which is:
    - a. A governmental plan (within the meaning of the Public Health Service Act, 42 U.S.C. § 300gg-91(d)(8)), or
    - b. Any other plan or coverage offered in the small or large group market within a State.
    - c. Such term shall include a grandfathered health plan described in § 15.6(G)(1)(d) of this Part offered in a group market.
  3. Excepted benefits not treated as minimum essential coverage. The term "minimum essential coverage" shall not include health insurance coverage which consists of coverage of excepted benefits:
    - a. Described in the Public Health Service Act, 42 U.S.C. §§ 300gg-91(c)(1); or
    - b. Described in the Public Health Service Act, 42 U.S.C. §§ 300gg-91(c)(2), (3) or (4) if the benefits are provided under a separate policy, certificate, or contract of insurance.
  4. Individuals residing outside United States or residents of territories. Any applicable individual shall be treated as having minimum essential coverage for any month:
    - a. If such month occurs during any period described in 26 U.S.C. §§ 911(d)(1)((A)) or ((B)) which is applicable to the individual, or
    - b. If such individual is a *bona fide* resident of any possession of the United States (as determined under 26 U.S.C. § 937(a)) for such month.
  5. Insurance-related terms. Any term used in this section which is also used in Title I of the Patient Protection and Affordable Care Act (Pub. Law 111-148) shall have the same meaning as when used in such Title.
- H. "Part-year resident" means an individual who is a Rhode Island resident as defined in R.I. Gen. Laws § 44-30-5 for less than one (1) full calendar year.
- I. "Protected health information" means any personally identifiable health information as defined in Pub. Law 104-191.

- J. “Protected taxpayer information” means any State or Federal tax information that is protected by Rhode Island and/or Federal tax law including, but not limited to, tax returns, tax return information, and/or any other documentation and/or information on file with the Division of Taxation.
- K. “Resident” means an individual who is domiciled in the State of Rhode Island as defined in R.I. Gen. Laws § 44-30-5.
- L. “R.I. Gen. Laws” means the General Laws of Rhode Island, as amended.
- M. “Shared responsibility payment penalty,” as defined in R.I. Gen. Laws § 44-30-101(a)(3), is a tax assessed when a taxpayer fails to maintain minimum essential coverage for each month beginning after December 31, 2019.
- N. “Taxpayer” means any resident as defined in R.I. Gen. Laws §§ 44-30-5 and 44-30-101(a)(4).

## **15.7 Requirement, Filing Process, and Exemptions**

- A. Requirement. The following applies beginning as of January 1, 2020:
  - 1. An applicable individual who is required to file a return pursuant to R.I. Gen. Laws § 44-30-51 shall indicate on the return whether and for what period of time during the relevant tax year the applicable individual and his or her spouse and dependents who are applicable individuals were covered by minimum essential coverage.
  - 2. A shared responsibility payment penalty shall be assessed as a tax on the return if a return submitted pursuant to this subsection fails to indicate that coverage was in force or indicates that any applicable individuals did not have coverage in force.
- B. Filing Process
  - 1. Any taxpayer or part-year resident taxpayer required to have minimum essential coverage must certify on his or her Rhode Island personal income tax return that he or she, and his or her dependents, if applicable, had minimum essential coverage, unless an exemption is listed on Form IND-HEALTH.
  - 2. Any taxpayer who does not certify on his or her RI-1040 or RI-1040NR that he or she had minimum essential coverage will be assessed the shared responsibility payment penalty, plus interest, pursuant to R.I. Gen. Laws §§ 44-30-101 and 102, unless an exemption is listed on Form IND-HEALTH.

3. For the purposes of minimum essential coverage, a dependent under the age of eighteen (18) on January 1<sup>st</sup> of the calendar year is considered a child for the entire calendar year.

C. Exemptions

1. These Rules and Regulations are intended to clarify the procedure for claiming any shared responsibility payment penalty exemptions pursuant to R.I. Gen. Laws §§ 44-30-101 and 42-157-11.
2. Any exemption(s) from the minimum essential coverage requirement and/or shared responsibility payment penalty must be claimed on the Form IND-HEALTH tax form and submitted with the taxpayer's personal income tax filing.
3. Consistent with R.I. Gen. Laws § 42-157-11(b), the Exchange will notify the Division of Taxation whether it has granted an exemption.
4. Any taxpayer who knowingly makes a false statement or false claim for an exemption from the minimum essential coverage requirement and/or the shared responsibility payment penalty may be subject to civil and/or criminal penalties.

## **15.8 Penalty Calculation and Procedure**

- A. The shared responsibility payment penalty shall be calculated as set forth in R.I. Gen. Laws § 44-30-101(d).
- B. Pursuant to R.I. Gen. Laws § 44-30-101, the Division of Taxation will use the statewide average bronze plan premium provided by the Exchange to serve as the penalty cap for the shared responsibility payment penalty calculation. The premium for the statewide average bronze plan will be calculated based on the premium offered through the Exchange for the median-priced bronze plan available to the median-age enrollee in the applicable calendar year. Upon receiving the statewide average bronze plan premium from the Exchange, the Division of Taxation shall update the penalty cap on the Shared Responsibility Worksheet and make the worksheet available to taxpayers.
- C. A taxpayer who owes the shared responsibility payment penalty must remit the penalty with any other taxes due, if applicable.
- D. For purposes of calculating the penalty, a dependent under the age of eighteen (18) on January 1<sup>st</sup> of the calendar year is considered a child for the entire calendar year.
- E. The shared responsibility payment penalty will only be imposed for months during which someone is a resident of Rhode Island.

- 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 is less than the amount of gross income requiring the taxpayer to file a return, as set forth in R.I. Gen. Laws § 44-30-51 and described in § 1412(b)(1)(B) of the Patient Protection and Affordable Care Act (Pub. Law 111-148).

## **15.9 Reporting Requirements**

- A. Pursuant to R.I. Gen. Laws §§ 44-30-102(d) and (e), applicable entities must send reports to both the Division of Taxation and individuals. Applicable entities required to report pursuant to R.I. Gen. Laws §§ 44-30-102(d) and (e) must make reports no later than January 31, 2021, and each January 31<sup>st</sup> thereafter, or by a date as may be determined by the Tax Administrator.
- B. Pursuant to R.I. Gen. Laws § 44-30-102(d), each applicable entity must include the following information in its report(s) to the Division of Taxation:
1. Name, address, and Taxpayer Identification Number (TIN) of the primary insured and TIN of each other individual obtaining coverage under the policy;
  2. The dates during which the individual was covered under minimum essential coverage during the calendar year; and
  3. Such other information as may be required and in a manner prescribed by the Division of Taxation.
- C. Each applicable entity must make a report to individuals by providing a written statement with the following information: the name, address, and contact information of the person required to provide the report to the Division of Taxation and the information included in the report with respect to the individuals listed thereupon.

## **15.10 Protected Information**

- A. Protected Health Information. No individual, entity, agency, or partner of such entity or agency, should send or transfer any protected health information to the Division of Taxation. For the purposes of this Regulation, protected health information shall not include information required under R.I. Gen. Laws § 44-30-102(e) or information provided by the Exchange to the extent it is performing its statutorily authorized functions pursuant to R.I. Gen. Laws § 42-157-11.
- B. Protected Taxpayer Information. Pursuant to R.I. Gen. Laws §§ 44-30-95(c), 44-1-14, and other applicable laws, no Division of Taxation employee may divulge or make known any protected taxpayer information to any person in any manner, unless permitted by law.



## **15.11 Refunds and Hearings**

- A. Refunds. Any taxpayer who believes that he or she erroneously paid the shared responsibility payment penalty may request a refund by filing an amended RI-1040 or RI-1040NR, as applicable, with the Division of Taxation. The request must comply with the requirements set forth in R.I. Gen. Laws § 44-30-87.
- B. Hearings. Any taxpayer who wishes to dispute the shared responsibility payment penalty imposed under R.I. Gen. Laws § 44-30-101 may request a hearing pursuant to R.I. Gen. Laws § 44-30-89.
  - 1. To request a hearing, a taxpayer may file, within thirty (30) days of the date of the deficiency notice, an administrative petition with the Division of Taxation for redetermination of a deficiency related to the shared responsibility payment penalty. An administrative petition may simply be a letter stating why the taxpayer seeks a hearing.
  - 2. Requests for hearings on exemptions determined by the Exchange must be sent to the Exchange.

## **15.12 Enforcement**

The Division of Taxation may take any appropriate action to enforce the requirements of the Rhode Island individual health insurance mandate to the fullest extent allowed by law including, but not limited to, any lawful collections activity, administrative action, or court action.

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**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**

Type of Filing: Refile Capabilities

**Department of State**

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Regulation Effective Date

Original Signing Date

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Department of State Initials

Department of State Date