

## **The New Responsibility to Secure Coverage: Frequently Asked Questions**

### **Introduction**

The *Patient Protection and Affordable Care Act (PPACA)* includes a much-discussed requirement that people secure health insurance coverage for themselves and their children. This “individual responsibility requirement” is an essential element of the new law, which will play a vital role in increasing the number of people with health insurance and make it possible to adopt a broad range of popular insurance reforms. Community Catalyst and the Georgetown Center for Children and Families prepared this Q & A document to provide policymakers and advocates with a detailed explanation of why the requirement was included in the new law and how it will work.<sup>1</sup>

### **1. In general, what is the new requirement to purchase coverage?**

Under the new law, nearly everyone is expected to secure coverage for themselves and their families through an employer, a public program, or insurance plans offered in the new state-based Exchanges or individual insurance market. Most, but not all, of those expected to secure coverage will face a financial penalty if they fail to do so. The new requirement will go into effect in 2014 at the same time as a number of other far-reaching changes, including a transformation of insurance industry practices, a major expansion of Medicaid, and the creation of state-based Exchanges that will offer private insurance options (subsidized for low- and moderate-income people) to those who otherwise lack a route to coverage.

### **2. Why is the requirement to secure coverage included in the new law?**

A major goal of PPACA is to increase the number of people who are insured and to eliminate deeply unpopular insurance practices that are often used to keep those who need care the most out of coverage. The individual responsibility requirement is essential to these efforts. For example, one of the most popular provisions in the new law requires insurers to offer coverage to everyone who applies regardless of their health status or pre-existing conditions. Since insurers will no longer be permitted to deny coverage to those who are ill, some people might wait until

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<sup>1</sup> This document is not designed to address the litigation challenging the constitutionality of the coverage requirement that has been brought by opponents of the health law. Widely viewed as politically motivated, the litigation is considered by many experts to be unlikely to succeed. For further information, see the [National Health Law Program](#)'s website.

they are sick to purchase coverage. This would drive up premiums, because the pool of people purchasing coverage would be, on average, sicker and need more health services. To ensure that almost everyone is paying their share and to keep costs under control, the law requires everyone – young and old, healthy and sick – to obtain coverage.

### **3. Who will face the requirement to secure coverage?**

Nearly everyone lawfully present in the United States is subject to the requirement to have health insurance coverage. The only people who are entirely exempt are a narrowly defined group who have religious objections<sup>2</sup>, people who are participating in a health care sharing ministry<sup>3</sup>, those who have been convicted of a crime and incarcerated, and people who are not lawfully residing in the United States (and, as a result, are not allowed to secure coverage through Medicaid, CHIP or the Exchanges). However, as described in Question 6 (see below), not everyone subject to the individual responsibility requirement faces a financial penalty for failing to comply.

### **4. What about children? Who is responsible for securing coverage for them?**

The new requirement applies to children<sup>4</sup> as well as adults, which means that parents (or caretakers) are obligated to secure coverage for their children. If they fail to do so, they may face a financial penalty (Question 11). Moreover, the law also includes a provision that requires parents or caretaker relatives<sup>5</sup> to enroll their children under age 19 in Medicaid or another source of coverage as a condition of enrolling themselves in Medicaid.

### **5. What if parents are divorced or have never been married? Who is responsible for securing coverage for children in such cases?**

Under the new law, the parent (or caretaker) who claims the child as a dependent on his or her Internal Revenue Service (IRS) tax form will face a financial penalty if the child is not insured. In most instances, children in divorced or never-married families are the dependents (for IRS purposes) of the custodial parent. But, in cases where a non-custodial parent claims the child as a dependent, the non-custodial parent will face a fine if the child is left uninsured.

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<sup>2</sup> For example, the person must be a member of a recognized religious sect that has been in continuous existence since December 31, 1950 and must be an adherent of established teachings of the sect that reject accepting the benefits of private or public insurance for death, disability, old age, retirement, or medical care.

<sup>3</sup> Health care sharing ministries are non-profit organizations in which members share medical expenses (including for people after they become sick) and share a common set of ethical or religious beliefs. To qualify as a health care sharing ministry for purposes of the coverage requirement, such a ministry must have been in existence at all times since December 31, 1999 and conduct an annual audit that is available to the public upon request.

<sup>4</sup> More specifically, the law requires people to secure coverage for any dependents that they claim on their tax forms. By far, the most common type of dependent is a child, but under IRS rules a dependent also can include other relatives to whom someone provides support for more than half of the year and who lives with them for more than half of the year.

<sup>5</sup> Unlike the individual responsibility requirement, this provision relies on the Medicaid program's definition of "parent" and "caretaker" relative.

## 6. Who is subject to a penalty for failing to secure coverage?

Even though nearly everyone is subject to the individual responsibility requirement, some people will not face a penalty if they fail to have coverage, including those who lack access to affordable options. Specifically, people are exempt from the penalty if they fall under the following categories:

- **Income below tax filing threshold.** Taxpayers with incomes below the filing threshold are exempt from the individual responsibility requirement even if they file a tax return. The tax-filing threshold is adjusted each tax year. For the 2009 tax year the threshold was set at \$9,350 for an individual (86 percent of the federal poverty level (FPL)) and \$18,700 for a family (102 percent FPL for a family of three and 85 percent FPL for a family of four).<sup>6</sup>
- **No access to affordable coverage.** People will not face a penalty if they must spend more than 8 percent of their income on insurance offered by an employer<sup>7</sup> or insurance available in the individual market, including through an Exchange<sup>8</sup>. Under this standard, some subsidy-eligible individuals may still find Exchange-coverage unaffordable and be exempt from penalties. (The tax credits available to help people purchase coverage require people above roughly 250 percent FPL up to 400 percent FPL to contribute between 8 and 9.5 percent of their income to coverage.)
- **Short gap in coverage.** People who experience a short gap in coverage are not subject to a penalty. The gap must be less than three months, and people can only have one such gap each year.
- **Hardship exemption.** The Secretary of Health and Human Services (HHS) has authority to decide that someone “suffered a hardship with respect to the capability to obtain coverage.” This general exemption provides HHS with significant flexibility to identify other circumstances under which it might be appropriate for someone to secure an exemption from the penalty for failing to meet the individual responsibility requirement.
- **Members of tribes.** Members of American Indian tribes are not subject to a penalty for failing to meet the individual responsibility requirement.

## 7. What kind of coverage must people have?

To be considered “insured” under the individual responsibility requirement people must obtain one of the following types of coverage:

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<sup>6</sup> The FPL figures are for 2009 to correspond to the tax year.

<sup>7</sup> For individuals eligible for employer-based coverage, the required contribution is based on the amount that an employee must spend for self-only coverage that meets minimum essential coverage standards. It is unclear how the affordability test will be applied to families.

<sup>8</sup> For people buying coverage through an Exchange, the required contribution is based on the cost to the person of buying the cheapest plan (i.e., the lowest cost bronze plan).

- **A government-sponsored health plan**, such as Medicare, Medicaid, Children’s Health Insurance Program (CHIP), or TRICARE
- **Employer-based coverage**, a plan that an individual or family receives through an employer, including through an Exchange.
- **Individual coverage**, a plan purchased in the individual insurance market, including through an Exchange.

As of 2014, all new individual and small group plans (inside or outside an Exchange) will have to provide an essential health benefits package<sup>9</sup>; meet cost-sharing standards<sup>10</sup>; and provide either a bronze, silver, gold, or platinum level of coverage.<sup>11</sup> Large group plans and “grandfathered health plans” (i.e., plans in which an individual already was enrolled when the law was signed, and subsequently renewed) are exempted.<sup>12</sup>

## 8. What are the consequences if people fail to secure coverage for themselves or their children?

Those who do not secure health insurance coverage for themselves or for their children must pay a financial penalty with their tax return. This penalty is phased in gradually over time, so that those without insurance coverage in the first year of the new requirement will face a relatively small penalty.

Families without coverage will face the following penalties:

- In 2014, the larger of:
  - **\$95 per year per uninsured adult plus \$47.50 per year per uninsured child** under the age of 18, up to a maximum of \$285, or
  - **1 percent of income** above the tax filing threshold
- In 2015, the larger of:

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<sup>9</sup> The broad categories of essential health benefits are ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. The Secretary of Health and Human Services has responsibility for providing more detail on the definition of essential health benefits in the years ahead.

<sup>10</sup> These cost-sharing standards include the requirement that all plans cap annual cost-sharing expenses for all enrollees at amounts specified in law for high deductible plans. They increase every year based on cost-of-living adjustments, but in 2010 these amounts are \$5,950 for an individual or \$11,900 for a family.

<sup>11</sup> A bronze plan must be designed to have an actuarial value of 60 percent, a silver plan must have one of 70 percent, a gold plan must have one of 80 percent, and a platinum plan must have one of 90 percent. (Actuarial value is the share of costs for essential health benefits that an insurer covers on average for a standard population.)

<sup>12</sup> In a recent interim final rule, the Department of Health and Human Services provided a detailed definition of a “grandfathered” plan. The regulation clarifies that employer plans can add family members and new employees to the plans and still retain grandfather status. On the other hand, if an employer makes notable changes to a plan, such as through a significant increase in cost-sharing, the plan will lose its “grandfathered” status. Details are available [here](#).

- **\$325 per year per uninsured adult** plus **\$162.50 per year per uninsured child** under the age of 18, up to a maximum of \$975, or
- **2 percent of income** above the tax filing threshold
- In 2016 and beyond, the larger of:
  - **\$695<sup>13</sup> per year per uninsured adult** plus **\$347.50<sup>13</sup> per year per uninsured child** under the age of 18, up to a maximum of \$2085<sup>13</sup>, or
  - **2.5 percent of income** above the tax filing threshold.

No family will be required to pay a larger penalty than the national average premium for the lowest tier of coverage offered through the Exchange.

If the 2014 penalties were in place this year, a family of four (two parents and two children) without any coverage would be expected to pay a penalty of \$285 per year until its income reached roughly \$47,200 a year (or 214 percent FPL). Then its penalties would increase by \$10 for each additional \$1,000 in income until it hit the maximum limit on the penalty.

## 9. How are the tax penalties enforced?

Although families without health insurance will owe penalties to the IRS, the law protects these families from collection techniques the IRS sometimes uses against those who have not paid their taxes. For example, failure to pay these penalties may not result in criminal prosecution or penalty, and the IRS is prohibited from trying to collect these penalties by placing a lien or levy on the taxpayer's property.

## 10. Will families get help in purchasing coverage?

Many low- and moderate-income families will either be made newly eligible for Medicaid or will qualify for subsidies to help them afford their coverage through the Exchange. In these programs, the amount they will be expected to pay will depend partially on their ability to pay.

- **Almost everyone with income below 133 percent FPL** will qualify for Medicaid.<sup>14</sup> Children above 133 percent FPL will continue to be eligible for Medicaid or CHIP because states are required to maintain their coverage for children in these programs until at least 2019.
- **People with income below 400 percent FPL** who are not offered "affordable" employer-sponsored coverage<sup>15</sup> will qualify for sliding-scale premium subsidies to help

<sup>13</sup> For each year after 2016, these penalty amounts will be adjusted to account for cost-of-living increases.

<sup>14</sup> As under current Medicaid rules, undocumented immigrants are not eligible for coverage, with exceptions for emergency services. Many legal immigrants in this income range also will be excluded from Medicaid eligibility. In general, federal law bans Medicaid and CHIP coverage for most legal immigrants during their first five years in the country, however states - at their option - can elect to cover legal immigrant pregnant women and children during this period if they otherwise meet Medicaid or CHIP eligibility criteria.

<sup>15</sup> "Affordable" employer-sponsored insurance is defined as insurance that would cost less than 9.5 percent of the employee's annual household income.

them afford the coverage of their choice in the Exchange. These subsidies will lower the premium to anywhere from 2 percent to 9.5 percent of their income<sup>16</sup>, depending on how much money they earn. They also will qualify for additional subsidies to lower their cost-sharing obligations.

## 11. What experience has the country already had with a coverage requirement?

Massachusetts is the first state to enforce a requirement for everyone to purchase coverage. In Massachusetts, it was structured somewhat differently than the new individual responsibility requirement – for example, Massachusetts offered more substantial premium subsidies but the national law offers subsidies to people earning higher incomes. Also, Massachusetts extends public coverage to children significantly higher on the income scale even as it exempts them from the requirement. Nonetheless, Massachusetts does provide some valuable lessons about what might happen when the individual responsibility requirement is implemented nationwide in 2014.

- **The new requirement, coupled with generous premium subsidies, can be an effective tool for expanding coverage.** The Massachusetts plan was based on many of the same elements as the new law, including a strong foundation of Medicaid and CHIP coverage, subsidized insurance for the low- to moderate-income uninsured, and a requirement that everyone purchase coverage if affordable. So far, Massachusetts has had tremendous success at improving its coverage rate, including more employer-based coverage when it is offered: the percent of adults under the age of 65 without insurance dropped from 12.5 percent in 2006 to 4.8 percent in 2009.<sup>17</sup>
- **The individual responsibility requirement may prove less controversial in practice than in theory.** Advocates in Massachusetts have dubbed the coverage requirement “the dog that didn’t bark.”<sup>18</sup> When it was first enforced on tax day 2008, contrary to what was expected, there were no public protests, no news stories featuring angry taxpayers, and no attempts to repeal it. In addition, 98.6 percent of taxpayers properly reported their insurance status on their tax forms.<sup>19</sup> The response to the individual responsibility requirement in the national law may well play out differently given the political controversy surrounding the legislation. The Massachusetts experience though is a reminder that most people already have health insurance and are unlikely to find it burdensome to comply with a coverage requirement. They may primarily view the

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<sup>16</sup> These percentages will increase each year after 2014; they will be adjusted to reflect the growth of average premiums over average income in the previous year.

<sup>17</sup> Sharon Long and Karen Stockley, “Sustaining Health Reform In A Recession: An Update On Massachusetts As Of Fall 2009”, *Health Affairs* 29:6, June 2010, p. 1234.

<sup>18</sup> Health Care For All Blog, “Dept. of Non-Barking Dogs — April 15 Has Come and Gone”, [April 17 2008](http://blog.hcfama.org/2008/04/17/dept-of-non-barking-dogs-april-15-has-come-and-gone/).  
<http://blog.hcfama.org/2008/04/17/dept-of-non-barking-dogs-april-15-has-come-and-gone/>

<sup>19</sup> Massachusetts Department of Revenue Press Release, “Most taxpayers in Massachusetts have health insurance”, June 2, 2008.  
[http://www.mass.gov/Ador/docs/dor/News/PressReleases/2008/DOR\\_hc\\_information\\_release\\_FINAL.pdf](http://www.mass.gov/Ador/docs/dor/News/PressReleases/2008/DOR_hc_information_release_FINAL.pdf)

individual responsibility requirement as a means for helping to ensure that others in their communities secure coverage.

## **12. What steps could be taken to promote smooth and fair implementation of the individual responsibility requirement?**

In light of the financial penalties created by the individual responsibility requirement, and its essential role in allowing health insurance reforms and coverage gains to work as intended, it must be implemented smoothly and fairly. There are a number of steps state-based policymakers and advocates can take to ensure smooth and fair implementation of the new requirement, including:

- **Educating the public** about the essential role of the individual responsibility requirement, especially its role in making it possible to adopt popular insurance reforms – such as the ban on insurance companies excluding people from coverage if they have pre-existing conditions – and in increasing the number of insured people.
- **Working with state officials to make it easy for families to enroll in subsidized Exchange plans and public programs**, including eliminating unnecessary paperwork barriers to signing up for Medicaid or CHIP coverage and operating consumer-friendly Exchanges.
- **Ensuring that “hardship” exemptions are available on an appropriate basis** by working with the Secretary of Health and Human Services to fairly define who should be exempt from the penalty for failing to secure coverage due to hardship, and to create a simple, straightforward exemption process.