Indian-specific Exemptions from ACA Tax Penalty for Not Maintaining Minimum Essential Coverage

Current Status

October 22, 2014

Presented by Doneg McDonough, Technical Advisor
Tribal Self-Governance Advisory Committee (TSGAC)
Agenda

• In today’s Webinar –
  – Review Affordable Care Act (ACA) coverage requirements and calculation of tax penalty for not maintaining coverage
  – Review Indian-specific and other exemptions from tax penalty
  – Review avenues for securing Indian-specific exemptions from tax penalty
• Information is presented to assist Tribes and Tribal organizations (re-)consider options for assisting members in securing exemptions
Two Indian-specific Exemptions from Tax Penalty

- Member of Indian tribe
  - Defined as members of federally-recognized tribes, including Alaska Native Claims Settlement Act (ANCSA) Corporation shareholders (regional or village)
  - Referred to as “Indian-exemption”
  - Contained in the ACA, therefore a “statutory” exemption
  - Internal Revenue Service is the lead agency for claiming an exemption

- Eligible for services from an Indian health care provider (IHCP)
  - Referred to as “IHCP-eligible exemption” (or “IHS-eligible exemption”)
  - Established by Secretary of HHS as a “hardship” exemption
  - HHS is lead agency when applying through Market
Recent Changes

• Both Indian-specific exemptions may be secured either –
  – By applying for an exemption through Marketplace using a paper application
  – By claiming an exemption on federal income taxes (draft form and instructions are available)

• YEAH!!!!!!

• Having or claiming an exemption does not prevent someone from enrolling in coverage through a Marketplace and receiving federal assistance for premiums and cost-sharing
**Form 8965**

**Health Coverage Exemptions**

Complete this form if you have a Marketplace-granted coverage exemption or you are claiming a coverage exemption on your return.

### Part I

**Marketplace-Granted Coverage Exemptions for Individuals:** If you and/or a member of your tax household have an exemption granted by the Marketplace, complete Part I.

<table>
<thead>
<tr>
<th></th>
<th>Name of Individual</th>
<th>a SSN</th>
<th>b Exemption Certificate Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jennifer Dew</td>
<td>XXX-XX-XXXX</td>
<td>XXX-XXXXXXXX</td>
</tr>
<tr>
<td>2</td>
<td>Michael Crow</td>
<td>XXX-XX-XXXX</td>
<td>XXX-XXXXXXXX</td>
</tr>
</tbody>
</table>

### Part II

**Coverage Exemptions for Your Household Claimed on Your Return:**

7a. Are you claiming an exemption because your household income is below the filing threshold? [ ] Yes  [ ] No

### Part III

**Coverage Exemptions for Individuals Claimed on Your Return:** If you and/or a member of your tax household are claiming an exemption on your return, complete Part III.

<table>
<thead>
<tr>
<th></th>
<th>Name of Individual</th>
<th>a SSN</th>
<th>b Exemption Type</th>
<th>c Exemption Full Year</th>
<th>d Exemption Jan</th>
<th>e Exemption Feb</th>
<th>f Exemption Mar</th>
<th>g Exemption Apr</th>
<th>h Exemption May</th>
<th>i Exemption June</th>
<th>j Exemption July</th>
<th>k Exemption Aug</th>
<th>l Exemption Sept</th>
<th>m Exemption Oct</th>
<th>n Exemption Nov</th>
<th>o Exemption Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Jacob Dew</td>
<td>XXX-XX-XXXX</td>
<td>E</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>9</td>
<td>Jerry Crow</td>
<td>XXX-XX-XXXX</td>
<td>E</td>
<td>✓</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Guidance to Beneficiaries

• Keep things simple

• Primary task is to just get protected from penalty...
  – Easiest way to get protected from penalty is to claim exemption on federal income tax forms
  – If someone wants to have an Exemption Certificate Number (ECN), it may be best to wait to file an application through Marketplace until after processing of applications is improved

• If not required to file a tax return, tax household is exempt from the shared responsibility payment and no need to file a return to claim the coverage exemption
Questions on the Basics of Indian-specific Exemptions?
Why do American Indians and Alaska Natives need an exemption from the tax penalty?

ACA CORE REQUIREMENTS AND EXEMPTIONS
Terms and Abbreviations

• ACA: Patient Protection and Affordable Care Act
• HHS: Department of Health and Human Services
• CMS: Centers for Medicare and Medicaid Services (in HHS)
• CCIIO: Center for Consumer Information and Insurance Oversight (in CMS)
• IRS: Internal Revenue Service
• IRC or Code: Internal Revenue Code
• ECN: Exemption Certificate Number
• MEC: Minimum Essential Coverage
• “Indian” : IRC § 45A(c)(6)
• IHCP: Indian Health Care Provider
Core ACA Provisions

• ACA requires most Americans to have health insurance ("minimum essential coverage" or MEC)
  – For each month that an individual is without coverage, 1/12\textsuperscript{th} of the annual tax penalty is owed

• To avoid penalty for not having health insurance –
  – Buy health insurance
    • Eligibility for services from an Indian health care provider not considered insurance
  – Get an "exemption"

• Technically, (1) some exemptions are from requirement to have insurance and (2) some exemptions are from having to pay penalty for not having insurance
Minimum Essential Coverage (MEC)

The following counts as minimum essential coverage (MEC) –

• Any Marketplace plan (referred to as “Qualified Health Plan”), or any “grandfathered” individual insurance plan you already have

• Employer provided plans, including COBRA
  – This includes “grandfathered” employer plans and retiree plans

• Medicare (Part A Hospital Insurance)

• Medicaid and Children’s Health Insurance Program (CHIP)

• TRICARE and Veterans health care programs (including Veterans Health Care Program and VA Civilian Health and Medical Program (CHAMPVA))

• Self-funded health coverage offered to students by universities for plan or policy years that begin on or before Dec. 31, 2014

• Other plans the Secretary of the federal Department of Health and Human Services (HHS) may designate as MEC
Non-MEC

Minimum essential coverage does **not** include –

• Eligibility for IHCPs (I/T/U services)
• Disease-specific coverage
• Dental-only coverage
• Other private plans not QHPs or grandfathered
Characteristics of Indian-specific Exemptions

- Indian-specific exemptions are permanent (unless there is a change in eligibility) and apply prospectively and retrospectively without time limit.
- Receiving an exemption from the tax penalty does not prevent someone from applying for coverage on a Marketplace.
- To get Indian-specific exemption from penalty:
  - **Check a box on federal income tax return**
    - If you are not required to file an income tax return, you are not liable for ACA tax penalty for not having insurance.
  - **Submit a paper application with Marketplace**
    - Then, report on federal income taxes.
Other Exemptions

• For non-American Indian and non-Alaska Native family members, securing another type of exemption may be needed
  – Page 2 of IRS Form 8965 instructions lists exemptions

• Other exemptions have limited terms
  – “The majority of hardship exemptions that HHS granted to individuals in 2014 will expire on December 31, 2014, and consumers cannot use them to enroll or re-enroll in catastrophic coverage in 2015, with the exception of the hardship exemption for individuals eligible for services through IHS”
  – Indian-specific exemptions are generally permanent
# List of Exemptions (Part I)

<table>
<thead>
<tr>
<th>Coverage Exemption</th>
<th>Granted by Marketplace</th>
<th>Claimed on tax return</th>
<th>Code for Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coverage is considered unaffordable</strong> — You cannot afford coverage because the minimum amount you must pay for premiums is more than 8% of your <em>household income</em>.</td>
<td></td>
<td>✓</td>
<td>A</td>
</tr>
<tr>
<td><strong>Short coverage gap</strong> — You went without coverage for less than 3 consecutive months during the year.</td>
<td></td>
<td>✓</td>
<td>B</td>
</tr>
<tr>
<td><strong>Citizens living abroad and certain noncitizens</strong> — You are:</td>
<td></td>
<td>✓</td>
<td>C</td>
</tr>
<tr>
<td>• a U.S. citizen or resident who spent at least 330 full days outside of the U.S. during a 12–month period,</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>• a U.S. citizen who is a bona fide resident of a foreign country or U.S. territory, or</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• neither a U.S. citizen or U.S. national nor an alien lawfully present in the U.S.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Household income below the filing threshold</strong> — Your household income is below the minimum threshold for filing a tax return.</td>
<td>✓</td>
<td></td>
<td>No Code See Part II</td>
</tr>
<tr>
<td><strong>Members of a health care sharing ministry</strong> — You are a member of a health care sharing ministry.</td>
<td>✓</td>
<td>✓</td>
<td>D</td>
</tr>
<tr>
<td><strong>Members of Federally-recognized Indian tribes</strong> — You are a member of a Federally-recognized Indian tribe.</td>
<td>✓</td>
<td>✓</td>
<td>E</td>
</tr>
<tr>
<td><strong>Incarceration</strong> — You are in a jail, prison, or similar penal institution or correctional facility after the disposition of charges.</td>
<td>✓</td>
<td>✓</td>
<td>F</td>
</tr>
<tr>
<td><strong>Members of certain religious sects</strong> — You are a member of a recognized religious sect.</td>
<td>✓</td>
<td></td>
<td>No Code See Part I</td>
</tr>
<tr>
<td><strong>Limited benefit Medicaid and TRICARE programs</strong> — You are enrolled in certain types of Medicaid and TRICARE programs that are not minimum essential coverage. (Available only in 2014.)</td>
<td>✓</td>
<td></td>
<td>H</td>
</tr>
<tr>
<td><strong>Fiscal year employer-sponsored plan</strong> — You were eligible, but did not purchase, coverage under an employer plan with a plan year that started in 2013 and ended in 2014. (Available only in 2014.)</td>
<td>✓</td>
<td></td>
<td>H</td>
</tr>
</tbody>
</table>
List of Exemptions (Part II)

**Hardships:**

- Two or more family members' aggregate cost of self-only employer-sponsored coverage is more than 8% of household income, as is the cost of any available employer-sponsored coverage for the entire family.

- You purchased insurance through the Marketplace during the initial enrollment period but have a coverage gap at the beginning of 2014.

- You applied for CHIP coverage during the initial open enrollment period and were found eligible for CHIP based on that application but have a coverage gap at the beginning of 2014.

- You are an American Indian, Alaska native, or a spouse or descendent of either who is eligible for services through an Indian health care provider.

- Your gross income is below the filing threshold.

- You are experiencing circumstances that prevent you from obtaining coverage under a qualified health plan.

- You do not have access to affordable coverage based on your projected household income.

- You are ineligible for Medicaid solely because the state in which you live does not participate in the Medicaid expansion under the Affordable Care Act.

- You have been notified that your health insurance policy will not be renewed and you consider the other plans available unaffordable.
Questions on Core ACA Requirements?
So, what do I need to do to get that exemption thing?

CLAIMING INDIAN-SPECIFIC EXEMPTIONS
Two Ways to Secure Exemption

• “Claim” exemption on federal income taxes
  – One step

• “Apply” for exemption through Marketplace and then report ECN (Exemption Certificate Number) through federal income tax filing process
  – Two steps
## Steps and Processing Times

### Comparison of Steps and Processing Times for Two Avenues to Secure Exemption

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>Marketplace</th>
<th>Federal Tax Filing Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Claiming Exemption</td>
<td><strong>ACTIVITY</strong></td>
<td>Claim Exemption (&quot;E&quot;)</td>
</tr>
<tr>
<td></td>
<td>Print and fill out paper application; mail to Marketplace</td>
<td>Fill out Form 8965</td>
</tr>
<tr>
<td></td>
<td>Marketplace processes application; mails ECN</td>
<td>File Form 8965 with Federal Income Taxes</td>
</tr>
<tr>
<td>2. Applying for Exemption</td>
<td><strong>ACTIVITY</strong></td>
<td>Report Exemption Certificate Number (ECN)</td>
</tr>
<tr>
<td></td>
<td>Apply for Exemption through Marketplace</td>
<td>then</td>
</tr>
<tr>
<td></td>
<td>then</td>
<td></td>
</tr>
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<td></td>
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</tr>
<tr>
<td>TIMEFRAME</td>
<td>4 weeks to 6 months</td>
<td>Instantaneous</td>
</tr>
</tbody>
</table>
What Documentation Is Needed?

➢ “Claiming” exemption through federal income tax filing process
  – Documentation is not submitted with tax filing
  – Retain documentation in case of IRS audit
  – “Individuals intending to claim [IHCP-eligible] exemption through the tax filing process should retain the same documentation that they would otherwise submit to the Marketplace as part of their exemption application.”
    – CMS/CCIIO, Shared Responsibility Guidance, September 18, 2014

➢ “Applying” for exemption through Marketplace
  – Submit with application copies of documents indicating member of Indian tribe or eligibility for IHCP
  – Step 5 (page 4 of 4) in Marketplace paper application provides a partial list of documentation types
Filing IRS Tax Exemption Form (Form 8965)

• Use Form 8965 to report Marketplace-issued ECN and/or to claim IRS exemption
  – Individuals can apply for or claim one or more exemptions
• Form 8965 can be attached to IRS Forms 1040, 1040A, 1040EZ
• File only one Form 8965 per tax household
• If you can be claimed as a dependent by another tax payer, you do not need to file Form 8965 and you do not owe a tax penalty
IRS Exemption Form (Form 8965)

Bottom half of form (draft):

<table>
<thead>
<tr>
<th>Part II</th>
<th>Coverage Exemptions for Your Household Claimed on Your Return:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Are you claiming an exemption because your household income is below the filing threshold?</td>
<td>Yes</td>
</tr>
<tr>
<td>b. Are you claiming a hardship exemption because your gross income is below the filing threshold?</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>Part III</th>
<th>Coverage Exemptions for Individuals Claimed on Your Return: If you and/or a member of your tax household are claiming an exemption on your return, complete Part III.</th>
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<tr>
<td>b</td>
<td></td>
</tr>
<tr>
<td>s</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
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## Indian-specific Exemption Code

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<tr>
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### Hardships:

- Two or more family members' aggregate cost of self-only employer-sponsored coverage is more than 8% of household income, as is the cost of any available employer-sponsored coverage for the entire family. | ✓ | G |
- You purchased insurance through the Marketplace during the initial enrollment period but have a coverage gap at the beginning of 2014. | ✓ | G |
- You applied for CHIP coverage during the initial open enrollment period and were found eligible for CHIP based on that application but have a coverage gap at the beginning of 2014. | ✓ | G |
- You are an American Indian, Alaska native, or a spouse or descendent of either who is eligible for services through an Indian health care provider. | ✓ | E |
IRS Exemption Form (Form 8965)

Top half of form (draft): Enter Marketplace-granted exemptions

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### Part 1

<table>
<thead>
<tr>
<th></th>
<th>Marketplace-Granted Coverage Exemptions for Individuals: If you and/or a member of your tax household have an exemption granted by the Marketplace, complete Part I.</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Name of Individual</td>
</tr>
<tr>
<td>b</td>
<td>SSN</td>
</tr>
<tr>
<td>c</td>
<td>Exemption Certificate Number</td>
</tr>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

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*DO NOT FILE*
Experiences to Date with Securing Exemptions

Tax-filing process:
• Not yet started: January 1, 2015 – April 15, 2015, tax-filing period for 2014
• Forms for tax-filing process not yet finalized

Marketplace applications:
• To date, paper application process for exemptions has been inconsistent
• Difficulty communicating with Marketplace exemption processing center
  – Currently, verification of “Indian” status for exemption does not provide automatic verification of Indian status for Indian-specific cost-sharing reductions (or vice versa)
Guidance to THO Staff

• Keep things simple

• Primary task is to just get protected from penalty...
  – Easiest way to get protected from penalty is to claim exemption on federal income tax forms
  – If someone wants to have an Exemption Certificate Number (ECN), it may be best for them to wait to file an application through Marketplace until after processing of applications is improved

• Direct available staff resources to helping AI/ANs apply for health insurance coverage through Marketplace
Questions on How to Claim or Apply for an Exemption?
What happens if you don’t have MEC and you don’t have an exemption?

TAX PENALTY FOR NOT HAVING MINIMUM ESSENTIAL COVERAGE
Calculating Tax Penalty

• The penalty for not maintaining MEC is referred to as a fee, a shared responsibility payment, or a tax penalty
  – The tax penalty is phased-in over 2014 – 2016
  – For each month that an individual is without coverage, 1/12\textsuperscript{th} of the annual tax penalty is owed

• The tax penalty is calculated one of two ways, with the individual/family paying whichever amount is higher
  – Penalty is calculated as a percentage of household income that is in excess of a “tax filing threshold”
    • 2013 filing threshold: $10,000 for individual; $12,850 for head-of-household
    • Penalty is capped at the national average yearly premium for a bronze plan (approximately $4,000 in 2014)
  – Penalty is calculated as a per person / family amount
    • Penalty is capped at 3 times the per person amount

• Taxpayer is the person responsible for paying tax penalty (for self and dependents)
ACA Tax Penalty Schedule

• The tax penalty is calculated as a percentage of household income or a per person amount, whichever is greater

<table>
<thead>
<tr>
<th>Tax Penalties for Not Maintaining Minimum Essential Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater of --</td>
</tr>
<tr>
<td>a. Percentage of household income (capped at national average bronze premium; approximately $4,000 in 2014)</td>
</tr>
<tr>
<td>1.0%</td>
</tr>
<tr>
<td>b. Per person amount</td>
</tr>
<tr>
<td>Per child amount (&lt;18 years-old; one-half adult amount)</td>
</tr>
<tr>
<td>Maximum per household amount (3 times per person amount)</td>
</tr>
</tbody>
</table>

• For the % calculation, the formula is: [(total household income) – (filing threshold amount)] x applicable percentage
  – Filing threshold amounts can be found at http://www.irs.gov/publications/p501/ar01.html
  – Example (family of 2): $31,850 - $12,850 = $19,000 x .01 = $190 (2014 cut-off)
  – Example (family of 2): $45,350 - $12,850 = $32,500 x .02 = $650 (2015 cut-off)
ACA Tax Penalty Examples - 2014

• For calendar year 2014, tax penalty is the greater of --
  – 1% of your yearly household income in excess of filing threshold amount (up to national average annual bronze premium)
    • If $30,000 in household income, penalty of $171.50
      ($30,000 - $12,850 = $17,150 x .01 = $171.50)
    • If $41,350 in household income, penalty of $285
    • If $412,850 in household income, penalty of $4,000
  – $95 per person for the year ($47.50 per child under 18)
    • Maximum is 3 times the per person amount
    • Maximum penalty per family in 2014 using this method is $285

• Household income is calculated under “modified adjusted gross income” (MAGI) formula
Questions on Calculating Tax Penalty?
Who exactly is eligible for the Indian-specific exemptions?

ELIGIBILITY CATEGORIES:
DETAIL ON DEFINITIONS
Who Is Eligible for Indian-specific Exemptions

Indian exemption

• For purposes of the “Indian exemption” from the tax penalty for not having MEC:
  – ACA section 1501 created IRC section 5000A(e)(3)
    • IRC section 5000A(e)(3) references the (pre-ACA) IRC section 45A(c)(6)
      – IRC section 45A(c)(6) contains the definition of Indian used to define eligibility for Indian-exemption

IHCP-eligible exemption

• The HHS Secretary, through regulations, established this “hardship” category and defined eligibility for this exemption under the Code of Federal Regulations (CFR) at 45 CFR 255.605(g)(6)
Indian-exemption

• For purposes of the “Indian exemption” from the tax penalty for not having MEC, IRC section 5000A(e)(3) defines “member of an Indian tribe”:
  – “(3) MEMBERS OF INDIAN TRIBES.—Any applicable individual for any month during which the individual is a member of an Indian tribe (as defined in section 45A(c)(6)).”

• IRC section 45A(c)(6) defines “Indian tribe”:
  – “IRC § 45A(c)(6). ‘The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”
Text of HHS regulations on Indian-specific exemptions

• For Indian exemption, HHS *restated the provisions* in the ACA at 45 CFR 255.605(f):
  
  “(f) Membership in an Indian tribe. (1) The Exchange must determine an applicant eligible for an exemption for any month if he or she is a member of an Indian tribe, as defined in section 45A(c)(6) of the Code, for such month, as provided in section 5000A(e)(3) of the Code.”

• For IHCP-eligible exemption, HHS *established this exemption* in regulations at 45 CFR 255.605(g)(6):
  
  “(6) Eligible for services through an Indian health care provider. (i) The Exchange must determine an applicant eligible for an exemption for any month if he or she is an Indian eligible for services through an Indian health care provider, as defined in 42 CFR 447.50 and not otherwise eligible for an exemption under paragraph (f) of this section, or an individual eligible for services through the Indian Health Service in accordance with 25 USC 1680c(a), (b), or (d)(3).”

[http://www.ecfr.gov/cgi-bin/text-idx?SID=392b957ca865de9881087d81a9a6a0ec&node=se45.1.155_1605&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=392b957ca865de9881087d81a9a6a0ec&node=se45.1.155_1605&rgn=div8)
IHCP-eligible Exemption

- **IHCP-Eligible Persons:** Persons eligible for services from Indian health care providers (who are not included under the Indian exemption)
  - 42 CFR 447.51: General eligibility for services from Indian health care providers (used to define eligibility for cost-sharing protections under Medicaid)
    - Includes references to “any individual defined at 25 U.S.C. 1603(13), 1603(28), or 1679(a)”
  - 25 U.S.C. 1680c(a): Children
  - 25 U.S.C. 1680c(b): Spouses
  - 25 U.S.C. 1680c(d)(3): Other Services, including non-Indian women pregnant with an eligible Indian’s child for the duration of the pregnancy through postpartum
Indian-specific Exemptions

Text of HHS Marketplace application instructions on Indian-specific exemptions:

“Instructions for Completing the Application for Exemption for American Indians and Alaska Natives and Other Individuals Who are Eligible to Receive Services from an Indian Health Care Provider

Use this application to apply for an exemption if you or anyone in your tax household is:

• A member of an Indian tribe, which includes members of federally recognized tribes and Alaska Natives who are members of an Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act.

• An American Indian or Alaska Native or other individual who is eligible for health services through the Indian Health Service, tribes and tribal organizations, or urban Indian organizations (referred to as “Indian Health Care Providers” or “I/T/Us”), as described below:

Indians
Individuals of Indian descent belonging to the Indian community served by the local facilities and program of the Indian Health Service are eligible for services. An individual may be regarded as within the scope of the Indian Health Service program if he or she is regarded as an Indian by the community in which he or she lives as seen by such factors as tribal membership, enrollment, residence on tax-exempt land, ownership of restricted property, active participation in tribal affairs, or other relevant factors in keeping with general Bureau of Indian Affairs practices in the jurisdiction. Eligibility based on one’s status as a California Indian, Eskimo, Aleut, or other Alaska Native is included within this framework.”
Indian-specific Exemptions

Text of HHS Marketplace application instructions on Indian-specific exemptions: (continued)

“Non-Indians
Additionally, the following non-Indians are eligible for services from the Indian Health Service:
(A) A child under the age of 19 who is the natural child, adopted child, stepchild, foster child, legal ward, or orphan of an eligible Indian,
(B) Spouses of an eligible Indian, if the tribe passed a tribal resolution that makes spouses eligible to receive services from the Indian Health Service, or
(C) Non-Indian women who are pregnant with the child of an eligible Indian.

Urban Indians
The Indian Health Service also contracts with urban Indian organizations to provide services to urban populations for which special statutory eligibility criteria apply. To be eligible for the exemption as an urban Indian, an individual must reside in an urban center where an IHS funded urban Indian health program is located and meet one or more of the following four criteria:
(A) Be a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendant, in the first or second degree, of any such member,
(B) Be an Eskimo or Aleut or other Alaska Native,
(C) Be considered by the Secretary of the Interior to be an Indian for any purpose; or,
(D) Be determined to be an Indian under regulations promulgated by the Secretary.”
**IRS Abbreviated Definitions are Sometimes Imprecise: IRS Website Description**

“6. What are the statutory **exemptions** from the requirement to obtain minimum essential coverage? 

- **Religious conscience.** You are a member of a religious sect that is recognized as conscientiously opposed to accepting any insurance benefits. The Social Security Administration administers the process for recognizing these sects according to the criteria in the law.

- **Health care sharing ministry.** You are a member of a health care sharing ministry.

- **Indian tribes.** You are (1) a member of a [federally recognized Indian tribe](http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision) or (2) an individual eligible for services through an Indian care provider.

- **Income below the income tax return filing requirement.** Your income is below the [minimum threshold for filing a tax return](http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision). The requirement to file a federal tax return depends on your filing status, age and types and amounts of income. To find out if you are required to file a federal tax return, use the IRS [Interactive Tax Assistant](http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision) (ITA).

- **Short coverage gap.** You went without coverage for less than three consecutive months during the year. For more information, see question 22.

- **Hardship.** You have suffered a [hardship](http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision) that makes you unable to obtain coverage, as defined in final regulations issued by the Department of Health and Human Services. See question 21 for more information on claiming hardship exemptions.

- **Affordability.** You can’t afford coverage because the minimum amount you must pay for the premiums is more than eight percent of your household income.

- **Incarceration.** You are in a jail, prison, or similar penal institution or correctional facility after the disposition of charges against you.


Indian-specific Exemptions: Who, What and When

• **Who should apply for / claim exemption –**
  – Individuals seeking exemption from coverage requirement
  – Parents / guardians apply / are liable for dependents
  – “Authorized Representatives” may be designated

• **What to do –**
  – Submit application to Marketplace with necessary documentation, and / or
  – Claim exemption on federal income tax forms

• **When –**
  – To claim exemption through IRS: During federal income tax filing process (starting after January 1, 2015)
  – To apply through Marketplace: Anytime

• **Indian-specific exemptions are in almost all cases permanent and apply retrospectively and prospectively**
And finally...

• **For exemption from tax penalty:**
  – Two types of exemptions
  – Two avenues for claiming or applying for exemptions
  – Use of IRS Form 8965 with federal income taxes

• **To claim *premium tax credit***:
  – A separate IRS form is used (Form 8962)
  – Separate eligibility requirements apply
  – A household may file both a tax penalty exemption form (8965) and a premium tax credit form (8962) in the same year
Where can I access the government forms, instructions and other documents, and the great TSGAC materials?

MATERIALS AND WEB LINKS
References:

Government Web Links

• HealthCare.gov Website link to “How do I get an exemption from the fee for not having health coverage?”
  – https://www.healthcare.gov/exemptions/

• Requirement to maintain minimum essential coverage is in the Affordable Care Act (ACA) at section 1501 which established section 5000A of the Internal Revenue Code
  – http://www.law.cornell.edu/uscode/text/26/5000A

• HHS/CMS/CCIIO (Department of Health and Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight) regulations establishing exemptions
  – http://www.ecfr.gov/cgi-bin/text-idx?SID=392b957ca865de9881087d81a9a6a0ec&node=se45.1.155_1605&r

• IRS Web site contains Frequently Asked Questions on topic

• Draft forms on IRS Website
  – IRS draft Form 8965 and the draft instructions are posted on the IRS Web site at:
  – http://apps.irs.gov/app/picklist/list/draftTaxForms.html;jsessionid=v2W4bKGzVy4zIDH7NlkDv__?value=8965&criteria=formNumber&submitSearch=Find
References:
TribalSelfGov.org Website

• Today’s Power Point presentation is posted on TSGAC Website
  http://www.tribalselfgov.org

• All the Web links from prior slide are posted on the TSGAC Website

• In addition, on August 23, 2013, TSGAC released a report on ACA exemptions,
titled “Establishing and Implementing Indian-specific Exemptions from the ACA’s
Tax Penalty for Not Securing Health Insurance Coverage”
  – The TSGAC Exemption report is on the TSGAC Website
Questions on Eligibility or Other Issues?