Helping Consumers Find Exemptions to Avoid the Fee

Some consumers who could not afford coverage, or who lived in a state that did not expand Medicaid, could end up owing a fee for not having health insurance. Advocates can help many lower-income consumers avoid this fee by helping them apply for coverage exemptions from the IRS or from the Marketplace (www.Healthcare.gov.)

If consumers had a gap in coverage in 2015, or if they will have a gap in 2016, here are some basic facts about how exemptions work, who they cover and how to apply for them.

Why exemptions are important	If a consumer or any member of their household does not have health insurance and they make enough income so that they must file taxes, they will owe a fee unless they can get a coverage exemption. **Exemptions can help consumers avoid all or part of the fee!**
How do exemptions work? Who is covered?	Most exemptions have eligibility criteria that each person in the family must meet individually, but a few exemptions cover everyone in the household. Most exemptions cover a limited time, but some cover the entire calendar year. A person can apply and qualify for multiple exemptions at the same time. The goal is to have an exemption for each household member for every month that they didn't have coverage – otherwise the taxpayer can owe the fee.
Who qualifies for exemptions?	Consumers can qualify for an exemption if they had difficult financial or family circumstances that prevented them from enrolling, affording or maintaining their coverage; or if they meet specific criteria for each exemption.
When can they get them?	Consumers can and should apply for any Marketplace exemptions they can as soon as they meet the specific criteria for each exemption. In contrast, consumers can claim the IRS exemptions when they file their taxes. However, consumers must continue to meet the criteria for the IRS exemptions for the entire tax year – so if their income goes up, they can lose the chance for some IRS exemptions.
How can assisters help consumers?	Assisters should help consumers apply for the Marketplace exemptions as soon as they qualify (especially exemptions #18-#20 below). If a consumer waits, they may lose their eligibility for these three Marketplace exemptions. Assisters can also help educate consumers on how to apply for the IRS exemptions (#1-#14, below) when they file their 2015 taxes.

Additional resources on coverage exemptions:

- IRS: Instructions at https://www.irs.gov/pub/irs-pdf/i8965.pdf;
  Other info at http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/ACA-Individual-Shared-Responsibility-Provision-Exemptions
- Marketplace Applications from CMS: https://marketplace.cms.gov/applications-and-forms/exemption-applications.html; Other info at https://www.healthcare.gov/health-coverage-exemptions/exemptions-from-the-fee/

Here is a list of coverage exemptions available from IRS when consumers file their taxes:

		Name of Exemption	Eligibility Criteria	Months covered by Exemption	Additional Notes
Tax Return	1	**Short-term coverage gap**	Having a gap in coverage less than 3 full months	1 - 2 months without insurance or another exemption	• First gap in the year only • Looks back to prior year
	2	**Household income** too low	Household income <2015 tax filing threshold	Full calendar year	• Covers entire household • Use if filing for a refund or EIC
	3	**Gross income** too low	Gross Income of a non-dependent <2015 tax filing threshold	Full calendar year	Covers entire household
	4	**ESI unaffordable**	ESI premium > 8.05% of 2015 income	Months during ESI plan year	Income includes any 'salary reduction agreement' amount
	5	**Aggregate ESI unaffordable**	Combine costs for ESI for one *month* > 8.05% of actual income	Full calendar year	• Two family members with ESI offers • Covers entire household
	6	**QHP unaffordable**	(premium – APTCs) > 8.05% of 2015 MAGI	Full calendar year	Use only if no offer of ESI coverage
	7	**Medicaid Gap** (retrospective)	2015 MAGI < 138% FPL, *AND* lived in non-expansion state	Full calendar year	Even if lived in a non-expansion state for a short time
	8	U.S. citizen **living abroad**	Abroad at least 330 days	Months abroad	See full IRS criteria
			Bona fide resident of foreign country or U.S. territory	Full calendar year	See full IRS criteria
	9	Certain **non-citizens....**	Not lawfully present;	Months eligible	Not lawfully present includes DACA
			Resident Alien w/ tax treaty and resident of foreign country; Others	Full calendar year	See IRS criteria
	10	Household member is **born, adopted or dies**		Months before birth/adoption; or after death	New for 2015
Tax Return or MP	11	**Incarcerated**	In jail or prison after a conviction	Months in jail or prison after a conviction	Any day incarcerated covers the entire month
	12	**Health care sharing ministry**	Membership	Months while a member	Must be officially recognized
	13	**Native American or Indian** tribe		Lifetime exemption is ongoing, **from one year to the next**, until circumstances change	No need to re-apply, but must claim this exemption on tax return if they file a return
	14	In **Indian Health Care** service	Having such coverage		

Here is a list of exemptions consumers can apply for through the Marketplace (MP):

		Name of Exemption	Eligibility Criteria	Months covered by Exemption	Additional Notes
Marketplace	15	**General hardship**	Personal or financial hardships prevented enrollment	Months during hardship, plus extra month before & after	Apply when hardship starts, or up to three years after hardship ends. Hardship may extend into next calendar year.
	16	Certain **Medicaid or CHIP coverage** that is not MEC	Medicaid or CHIP for pregnant women	While enrolled	
			Spend-Down enrollee meets spend-down amount once	Full calendar year	Spend down periods vary by state, between 1-6 months
	17	**Religious sect** opposed to insurance	membership	Months while a member	Children must re-apply when they turn 21
	18	**ESI Unaffordable** (projected)	premium > 8.13% of projected 2016 income	Month applied for, and rest of the ESI plan year	• **Covers consumer prospective** only, **so apply ASAP!** • Protects consumer even if future income goes up!
	19	**QHP Unaffordable** (proj. income)	(premium – APTCs) > 8.13% of projected 2016 income	Month applied for, and rest of the calendar year	
	20	**Medicaid-GAP** (determination)	Current determination in Medicaid GAP	Full calendar year	Covers household members. Get automatically with a Marketplace application, or apply using a Medicaid denial letter

How to calculate income for various exemptions:

Income used for exemption purposes is not always the same – **pay close attention to which types of income that are counted for each exemption.**

Household income: If the dependent income amount meets the IRS threshold 'Filing Requirements for Children and Other Dependents' on page four at https://www.irs.gov/pub/irs-pdf/i8965.pdf, then add the dependent's income to the taxpayer's income to determine the taxpayer's household income.

Special rules for counting a day as a full month –

A person who has coverage or an exemption for at least one day of a month is considered to have that coverage or exemption for the entire month, and will not owe any fee for that month. For instance, if a person lost coverage on their employer-sponsored insurance (ESI) plan on April 7, they are considered to have coverage for the entire month of April.

Exemptions available only from IRS on a tax return

Note: For all the following exemptions, assisters should refer consumers with complicated income and tax situations to a tax professional for assistance.

1. Short-term coverage gap:

A person had one gap in coverage that is *less than* three full calendar months.

- If the consumer has more than one coverage gap of at least a full month in a year, this exemption can only be used for the first-occurring gap in the calendar year.
- If a gap is three or more full calendar months, the person cannot use this exemption to cover any month of that coverage gap.
- A coverage gap *looks back*, meaning it includes any continuous months without coverage in the prior calendar year, but it doesn't look forward to the next year. Example: A person with coverage gap from Nov. 2014 to Feb. 2015 counts as a two month gap for 2014 taxes, but a four month gap for their 2015 taxes.
- Remember the *covered-for-a-day – covered-for-a-month* rule – if a consumer had coverage (or an exemption) for any single day in a month, then that counts as having coverage for the entire month. Do not count any month that a consumer had coverage or another exemption as part of a coverage gap.

2015 IRS TAX-FILING THRESHOLD AMOUNTS, PERSONS UNDER AGE 65, BY FILING STATUS

Single	$10,300
Married Filing Jointly	$20,600
Married filing separately	$4,000
Widower w dependent child	$16,600
Head of Household	$13,250

2. Household Income for 2015 is below the tax-filing threshold:

The entire household gets this exemption if the actual 2015 household income is less than their 2015 tax-filing threshold amount (see Chart).

- Household income means income for the tax filer (and for any dependent who has enough income that they must file taxes), calculated as adjusted gross income (AGI), plus tax-exempt interest income, plus foreign income/housing excluded on IRS form 2555(-EZ).
- Consumers with such low income do not need to file taxes or pay any fee. But if they want to file taxes (in order to claim a refund or an Earned Income Credit) they must claim this exemption on their tax form.
- This exemption covers everyone in the tax household for the entire year.

3. Individual gross income for 2015 is below the tax-filing threshold:

A person who cannot be claimed as a dependent by another tax filer and who has an individual *gross income*, as calculated for their 2015 tax return, below the tax filing threshold amounts. (See chart.) This exemption covers everyone in this person's tax household for the entire year. This is true even if the person must file taxes for 2015 because their *household income* (i.e. combined income from all household members) is above the tax-filing threshold.

4. ESI coverage for 2015 was unaffordable, based on actual 2015 income:

An employee with an offer of ESI qualifies for themselves only if the employee's premium cost for the cheapest self-only ESI plan in 2015 was greater than 8.05 percent of their actual 2015 household income.

A ***related family member*** who is eligible for ESI coverage ***as a spouse or dependent of an employee*** qualifies if the employee's premium cost for the cheapest ESI family plan in 2015 that would have covered all household members without an exemption is more than 8.05 percent of the actual 2015 household income.

- The '2015 household income' includes AGI, tax-exempt interest income, foreign income/housing excluded on IRS form 2555(-EZ), plus any amount of their premium that is paid through a salary reduction arrangement and excluded from gross income.
- The employee's premium cost includes any amount the consumer pays for their ESI premium, including any amounts paid through a salary reduction agreement, plus any amount of employer contribution to a health flex account.

5. Aggregate ESI self-only coverage for two or more employees was unaffordable, for any month, based on actual 2015 income:

If two or more employed members in a tax household do not have a lowest-cost self-only plan that costs more than 8.05 percent of their household income, *AND* all ESI family plans that would cover the entire household cost more than 8.05 percent of household income, *THEN* the employed tax household members and their tax-dependents may qualify for this exemption if the combined or aggregate costs for the cheapest self-only ESI plans for any single month for any two or more employed household members cost more than 8.05 percent of the household income.

- Calculate the *combined monthly employee costs* by adding the monthly premium costs paid by the employees for any month, including any amount paid on a pre-tax basis through a salary reduction agreement, and then multiply by 12. Calculate actual household income as in exemption #4 above.
- This exemption covers the employees and their tax household members *for the calendar year*.

6. QHP coverage for 2015 was unaffordable, based on actual 2015 income:

The cost for the premiums, after any discount for available through APTCs, for the lowest cost bronze plan available in the consumer's market service that would cover all family members was greater than 8.05 percent of their actual 2015 household modified adjusted gross income (MAGI). Find the consumer's bronze plan at https://www.healthcare.gov/taxes/tools/bronze/.

7. Medicaid-GAP (retrospective):

A consumer and their dependents qualify for this exemption if, in 2015, they lived (any amount of time) in a non-expansion state *AND* their actual 2015 household MAGI was below 138 percent of the federal poverty level (FPL.)

Duration: This exemption covers the person and their dependents for the full calendar year.

8. U.S. citizens living abroad:
Any months during the tax year that a consumer lived at least 330 days outside the U.S. in a consecutive 12-month period; OR any months consumer was a bona fide resident of a foreign country; OR the entire year if a consumer was a resident of a U.S. territory.

9. Non-citizens who were:
- Not lawfully present, including DACA (Deferred Action for Childhood Arrivals). This includes any status not listed at https://www.healthcare.gov/immigrants/immigration-status/;
- Nonresident aliens, as defined at https://www.irs.gov/Individuals/International-taxpayers/Nonresident-Aliens.
- Resident aliens exempt from U.S. taxes because they were a bona fide resident of a foreign country that has an income-tax treaty with the U.S.

Assisters should refer complicated cases to a tax or immigration expert.

10. Birth, adoption, or death:
Covers the months before a dependent child was born or adopted, or the months after a household member died.

Exemptions available on a tax return or from the Marketplace

11. A person who was incarcerated:
In a jail, prison, or similar penal institution or correctional facility **after a conviction**. This exemption covers the incarcerated individual and their tax dependents in their household. (Advice – consumers should apply to the Marketplace for a general hardship exemption to cover a person or their dependents for any months before the conviction that a person was held in jail awaiting trial.)

12. A member of a health care sharing ministry:
The ministry must have been in existence since 12/31/1999 and its members must have a common ethical belief in sharing their medical expenses.

13. A member of federally recognized Native American or Indian Tribe:
Including an Alaska Native Claims Settlement Act (ANCSA) Corporation Shareholder (regional or village). This exemption from the Marketplace continues from year to year until the person becomes no longer eligible. Or this exemption can be granted annually by the IRS. Either way, it must be claimed on the tax return any year that the consumer files taxes.

14. Eligible for services through an Indian health care program:
For example, a health care program operated by the Indian Health Service or by an Indian Tribe, Tribal Organization or Urban Indian Organization. This exemption from the Marketplace continues from year to year until the person becomes no longer eligible. Or this exemption can be granted annually by the IRS. Either way, it must be claimed on the tax return any year that the consumer files taxes.

Exemptions available only through the Marketplace

The following six exemptions can only be granted by the Marketplace. Some are available for a coverage gap for 2015, but most are prospective, meaning they only prevent the fee for the months starting on the date that the consumer applies for the exemption.

Consumer's ongoing duty to report changes to the Marketplace

If a consumer receives a Medicaid-Gap, General Hardship, Medicaid-CHIP program or Religious Sect hardship exemptions from the Marketplace (see #15, 16, 17 or #20, outlined below) but then has a change in circumstances so that they would no longer be eligible for that exemption, they must report this change of circumstances to the Marketplace within 30 days.

15. General hardship exemptions for 2015 or 2016:

If the consumer faced significant financial or personal circumstances that reasonably prevented them from affording, enrolling in, or keeping their coverage, assisters should help them apply for a *general hardship* exemption. The following circumstances are officially recognized as a qualifying for this 'general hardship' exemption:

- being **homeless**;
- receiving a **shut-off notice** from a water, electric, gas or other utility company;
- getting an **eviction or foreclosure notice** within the last six months;
- having **medical bills** that could not be paid in last 24 months;
- having increased living or other necessary expenses due to **caring for an ill, disabled or elderly family member;**
- **death** of a close family member;
- being the victim of **domestic violence**;
- having a fire, flood or natural disaster that caused **serious damage to their property**;
- filing **bankruptcy** in the last six months;
- winning a **Marketplace appeal** about *a time period when the consumer was not enrolled in a QHP*, where the appeal decision found the consumer eligible for either (i) enrollment in the QHP, (ii) lower costs on their monthly premiums or (iii) cost-sharing reductions (CSR) in the QHP;
- Expecting to claim a child as a tax dependent who's been denied coverage in Medicaid and the Children's Health Insurance Program (CHIP), and another person is required by **court order to give medical support to the child**.

Other circumstances – consumers should also apply for this exemption if they faced **any other circumstance that made it unreasonably hard to afford, enroll, or remain enrolled in, health insurance**. A few recommended circumstances are: (i) a health plan or Marketplace error or glitch that caused the consumer not to be able to enroll, to lose their enrollment or caused coverage to be too expensive; (ii) a household family member being held in jail on pending charges *before a conviction*; (iii) having multiple gaps in coverage due to or frequently switching jobs in a year, or having multiple 90-day waiting periods before ESI coverage started.

- Duration – general hardship exemptions last while the hardship continues, plus an additional month before and a month after the hardship ends.
- How to prove a general hardship – the types of documents needed to prove a hardship are listed at https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf.

- *Note:* When this hardship ends, a consumer with a hardship exemption in place can ask for a Special Enrollment Period (SEP).

16. Certain Medicaid/CHIP programs that are not minimum essential coverage:

Consumers can get a special hardship exemption for:

- any month they had coverage under Medicaid or CHIP programs that provide coverage for pregnancy-related services, but which are not Minimum Essential Coverage (MEC);
- the entire year if the consumer has coverage under Medicaid for the medically needy, aka Medicaid Spend-down, AND they meet their spend-down amount during any budget period in that year. The budget period varies from one month to six months, depending on the state.

See CMS Guidance, page 4, fn #3, at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Hardship-Exemption-Guidance-3-20-15-FINAL.pdf.
Apply using #14 on https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf.

17. Member of a religious sect:

Such a religious sect must have been in existence since 12/31/1950 *AND* must be officially recognized as conscientiously opposed to accepting insurance benefits, including benefits like Medicare and Social Security.

> *The two Marketplace exemptions below (#18-19) for coverage offers that are unaffordable only work prospectively so advocates or assisters should help consumers apply for these as soon as possible to help these consumers lock in their rights and avoid the fee.*

18. ESI coverage for 2016 is unaffordable, based on projected 2016 income:

- **An employee** with an offer of employer-sponsored insurance (ESI) qualifies for this exemption for themselves only if the employee's premium cost for the cheapest self-only ESI plan in 2016 is greater than 8.13 percent of their projected household income.
- A ***related family member who is eligible for ESI coverage as a spouse or dependent of an employee*** *can get this exemption if* the employee's premium cost for the cheapest ESI family plan in 2016 that would cover the entire household is more than 8.13 percent of the projected household income for 2016.

Additional tips:

- Prospective protection – this exemption will cover the month the consumer applies and the subsequent months in the calendar year, even if their income goes up. So don't wait – help consumers apply ASAP!
- Calculate *projected household income* by adding the household's projected AGI, tax-exempt interest income, foreign income/housing to be excluded on IRS form 2555(-EZ), *plus* any amount of the premium paid as through a salary reduction agreement and excluded from gross income.
- Calculate the employee's premium cost as *any amount the employee would pay*, including payments through a salary reduction agreement (which can be estimated based on the prior year amounts.)

- When assessing the affordability of the lowest cost ESI family plan:
  - Don't consider any ESI plan that does not meet the Minimum Value standard, such as 'skinny plans' that don't offer coverage for hospital or doctor visits.
  - Include any children eligible for Medicaid or CHIP as part of the household but don't include household members that have already been granted another Marketplace exemption.
- Deadline – The federal rules are unclear about the deadline to apply for this exemption. Please let us know if consumers encounter difficulty applying for this exemption.

19. QHP coverage for 2016 is unaffordable, based on projected 2016 income:

An individual or family who has no offer of ESI qualifies for this exemption for 2016 if their premiums cost (after subtracting any APTCs they can get) for the cheapest bronze plan offered for 2016 in their market service area that would cover all household members is greater than 8.13 percent of their projected 2016 household income.

- Only look at bronze plans that would cover all household members and include any children eligible for Medicaid or CHIP as part of the household, but don't include any family members that have already been granted another Marketplace exemption.
- The projected 2016 income includes their projected AGI, plus your best estimate of projected tax-exempt interest income, and foreign income/housing to be excluded on IRS form 2555(-EZ).
- Deadline – The federal rules are unclear about the deadline to apply for this exemption. Please let us know if consumers encounter difficulty applying for this exemption.
- *Prospective protection* – this exemption will cover the month the consumer applies and the following months in the calendar year, even if their income goes up. So don't wait – help consumers apply ASAP!

20. In the Medicaid-GAP (determination) for 2016:

To qualify for this exemption, a person must live in a non-expansion state, and receive a 'determination' that they did not qualify for Medicaid that they were ineligible because their income was too low (below 138 percent of FPL).

Note: Consumers who complete a Marketplace application for eligibility and who meet the criteria above should automatically receive this exemption. It will show up as an Exemption Control Number (ECN) listed with their eligibility determination from the Marketplace. Consumers should be informed to save this ECN for their future tax filing for 2016.

Consumers who applied for Medicaid directly to their state Medicaid program (not through the Marketplace website) should receive a written determination directly from their Medicaid office. They must then apply for this Medicaid-Gap exemption through the Marketplace while their Medicaid determination is current. (See #12 at https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf.)

This exemption covers each person who qualifies for the entire calendar year **even if their household income goes up in 2016** or they move to a state that has expanded Medicaid. That's why it's good to help lower-income consumer plan ahead and apply for this exemption right away.

Why apply for some exemptions from the Marketplace when it's easier to wait and try to get them on a tax return?

Some of the Marketplace exemptions are better because they lock in the consumer's rights even if the consumer's household or income changes.

For instance, if a consumer is in the Medicaid Gap they should apply get the Marketplace's Medicaid-Gap exemption right away. Once they get it they are covered for the entire calendar year, even if they have an unexpected change in circumstances. For instance, they could get a job, a raise or a dependent could move out. All these kinds of changes can affect their household income. If their household income ends up being more than 138 percent of FPL then the consumer and their household members will no longer be eligible to claim the IRS's version of the Medicaid-GAP exemption when they file their taxes. But if they applied and got it already from the Marketplace they are all set, even if their income goes up or someone leaves their household.

And getting one Marketplace exemption can also help a consumer have an opportunity to enroll in new coverage if their circumstances change. Applying for and receiving the Marketplace's general hardship exemption when the consumer experiences such a hardship (see #15, listed above) can also help the consumer qualify for a SEP when this hardship ends.