



# Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

## Applicable Percentages, Thresholds, and Payments:

### Indexing Adjustments Related to Certain Affordable Care Act Provisions for 2015-2024<sup>1</sup>

Updated February 26, 2024

This brief seeks to provide guidance to Tribes on current and historical indexing adjustments associated with provisions in the Affordable Care Act (ACA) for (1) calculating the amount of premium tax credits (PTCs), (2) establishing the maximum out-of-pocket amounts for individuals and families, (3) determining eligibility for cost-sharing protections, (4) determining whether employer-sponsored health insurance is considered affordable; (5) determining the amount of any shared responsibility payment owed by employers; (6) determining the amount of any shared responsibility payment owed by individuals; and (7) determining whether individuals qualify for an income-based exemption from the shared responsibility payment.

#### Applicable Percentage Contribution (for PTC Calculations)

Under the ACA, individuals who have an income between 100% and 400% of the federal poverty level (FPL) and meet other requirements can obtain PTCs to help pay for Marketplace coverage. Beginning in calendar/coverage year (CY) 2021, the 400% FPL cap on eligibility for PTCs was removed (at least through 2025). Section 36B of the Internal Revenue Code (Code) (as added by the ACA) set the required household income contribution percentages – the amount the enrollee has to pay for coverage – for 2014 and authorized IRS to adjust these percentages annually to reflect the excess of the rate of premium growth for the preceding calendar year<sup>2</sup> over the rate of income growth for the preceding calendar/coverage year.<sup>3</sup>

**Table 1: Applicable Percentage Contribution; CY 2014-CY 2024**

HH Income (% FPL)	2014		2015		2016		2017		2018		2019	
	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End
< 133%	2.00	2.00	2.01	2.01	2.03	2.03	2.04	2.04	2.01	2.01	2.08	2.08
133%-150%	3.00	4.00	3.02	4.02	3.05	4.07	3.06	4.08	3.02	4.03	3.11	4.15
150%-200%	4.00	6.30	4.02	6.34	4.07	6.41	4.08	6.43	4.03	6.34	4.15	6.54
200%-250%	6.30	8.05	6.34	8.1	6.41	8.18	6.43	8.21	6.34	8.1	6.54	8.36
250%-300%	8.05	9.50	8.1	9.56	8.18	9.66	8.21	9.69	8.1	9.56	8.36	9.86
300%-400%	9.50	9.50	9.56	9.56	9.66	9.66	9.69	9.69	9.56	9.56	9.86	9.86
HH Income (% FPL)	2020		2021		2022		2023		2024			
	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End	Low End	Top End		
< 133%	2.06	2.06	0.00	0.00	0.0	0.00	0.00	0.00	0.00	0.00		
133%-150%	3.09	4.12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
150%-200%	4.12	6.49	0.00	2.00	0.00	2.00	0.00	2.00	0.00	2.00		
200%-250%	6.49	8.29	2.00	4.00	2.00	4.00	2.00	4.00	2.00	4.00		
250%-300%	8.29	9.78	4.00	6.00	4.00	6.00	4.00	6.00	4.00	6.00		
300%-400% (401%+)*	9.78	9.78	6.00	<b>8.50</b>	6.00	<b>8.50</b>	6.00	<b>8.50</b>	6.00	<b>8.50</b>		

Source: IRS, Rev. Proc. 2014-37, Rev. Proc. 2014-62, Rev. Proc. 2016-24, Rev. Proc. 2017-36, Rev. Proc. 2018-34, and Rev. Proc. 2019-29.

\* Note: For CY 2021 and CY 2022, the ARP expanded PTC eligibility to Marketplace enrollees with a household income higher than 400% FPL. The Inflation Reduction Act extended this provision through CY 2025. As such, for CY 2021-CY 2024, the applicable percentage contribution figure for the top end of the 300%-400% FPL income band also applies to Marketplace enrollees with a household income higher than 400% FPL.

The American Rescue Plan Act (ARP), enacted in March 2021, reduced the amount of the required household contribution to Marketplace plan premiums for PTC-eligible enrollees for CY 2021 and CY 2022. The Inflation Reduction Act, enacted in August 2022, extended this provision through CY 2025. The applicable percentage contribution amounts for each calendar year/coverage year are shown in Table 1 above.

Repayment of Excess Advance PTCs

The Marketplace determines eligibility for PTCs, and the amount of any PTCs, based on the information that individuals applying for coverage provide about their expected household income and family size for the year. Individuals who receive advance PTC payments over the coverage year must reconcile these payments with the amount of PTCs for which they qualify based on their actual income for the year reported on their federal tax return.<sup>4</sup> If individuals receive advance PTC payments that are less than the amount of PTCs for which they qualify based on their actual income, they will receive the difference as a reduction in their tax bill or an increase in their refund. However, if individuals receive advance PTC payments that exceed the PTCs for which they ultimately qualify based on their actual income, they will have to repay the excess amount, subject to certain limits (see Table 2 below).

Household Income (% FPL)	2014		2015		2016		2017		2018		2019	
	(2013 tax year)		(2014 tax year)		(2015 tax year)		(2016 tax year)		(2017 tax year)		(2018 tax year)	
	Single	Other	Single	Other	Single	Other	Single	Other	Single	Other	Single	Other
0%-200%	\$300	\$600	\$300	\$600	\$300	\$300	\$300	\$600	\$300	\$600	\$300	\$600
201%-300%	\$750	\$1,500	\$750	\$1,500	\$750	\$750	\$750	\$1,500	\$750	\$1,500	\$775	\$1,550
301%-400%	\$1,250	\$2,500	\$1,250	\$2,500	\$1,275	\$1,275	\$1,275	\$2,550	\$1,275	\$2,550	\$1,300	\$2,600
401%+	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap

  

Household Income (% FPL)	2020		2021		2022		2023		2024	
	(2019 tax year)		(2020 tax year)		(2021 tax year)		(2022 tax year)		(2023 tax year)	
	Single	Other	Single	Other	Single	Other	Single	Other	Single	Other
0%-200%	\$300	\$600	\$0	\$0	\$325	\$650	\$325	\$650	\$350	\$700
201%-300%	\$800	\$1,600	\$0	\$0	\$800	\$1,600	\$825	\$1,650	\$900	\$1,800
301%-400%	\$1,325	\$2,650	\$0	\$0	\$1,350	\$2,700	\$1,400	\$2,800	\$1,500	\$3,000
401%+	No Cap	No Cap	\$0	\$0	No Cap	No Cap	No Cap	No Cap	No Cap	No Cap

Source: IRS, Instructions for Form 8962, 2013-2023.

Note: For tax year 2020, section 9962 of the American Rescue Plan Act eliminated the requirement to repay excess advance PTCs.

Annual Limitations on Cost-Sharing

The ACA established maximum annual limitations on cost-sharing<sup>5</sup> for individual (self-only) and family (non-self-only) health insurance coverage. In May 2013, IRS set these limitations at \$6,350 and \$12,700, respectively, for plan year (PY) 2014.<sup>6</sup> For plan years after 2014, 45 CFR 156.130(a)(2) granted HHS the authority to adjust the limitation on cost-sharing; cost sharing for self-only coverage cannot exceed the dollar limit for calendar year 2014 increased by an amount equal to the product of that amount and the premium adjustment percentage,<sup>7</sup> and for family coverage, the limit is twice the dollar limit for individual coverage.<sup>8</sup> HHS annually issues regulations updating the limitations on cost-sharing for each plan year (see Table 3a below).

**Table 3a: Annual Limitations on Cost-Sharing; PY 2014-PY 2024**

2014		2015		2016		2017		2018		2019	
Individual	Family	Individual	Family	Individual	Family	Individual	Family	Individual	Family	Individual	Family
\$6,350	\$12,700	\$6,600	\$13,200	\$6,850	\$13,700	\$7,150	\$14,300	\$7,350	\$14,700	\$7,900	\$15,800
2020		2021		2022		2023		2024			
Individual	Family	Individual	Family	Individual	Family	Individual	Family	Individual	Family		
\$8,150	\$16,300	\$8,550	\$17,100	\$8,700	\$17,400	\$9,100	\$18,200	\$9,450	\$18,900		

Source: IRS, Rev. Proc. 2013-25; CMS, CMS-9949-F, CMS-9944-F, CMS-9937-F, CMS-9930-F, CMS-9926-F, CMS-9916-F, CMS-9914-F2, CMS-9911-F, and CMS-9899-F.

Eligibility for Cost-Sharing Protections

Under the ACA, American Indians and Alaska Natives (AI/ANs) who meet the definition of Indian (*i.e.*, enrolled Tribal members), when enrolling in health insurance coverage through a Marketplace, pay no deductibles, co-insurance, or copayments when receiving essential health benefits (EHBs). Tribal members who enroll in Marketplace coverage are eligible for one of two types of Indian-specific cost-sharing protections, depending on their income level and eligibility for PTCs.<sup>9</sup> Tribal members who have a household income between 100% and 300% FPL and qualify PTCs are eligible for “zero” cost-sharing variation (Z-CSV or CSV-02) plans. All other Tribal members are eligible for “limited” cost-sharing variation (L-CSV or CSV-03) plans. Both of these cost-sharing variations provide comprehensive protections.<sup>10</sup> Other Marketplace enrollees who have a household income at or less than 250% FPL—including AI/ANs who are eligible for services through the Indian Health Service (other IHS-eligible individuals)—can obtain general (partial) cost-sharing protections (CSV-04, CSV-05, or CSV-06) if they enroll in a silver plan, as shown in Table 3b below.<sup>11</sup>

**Table 3b: Marketplace Cost-Sharing Variation Types and Requirements**

Cost-Sharing Variation Type	Enrollee Cost-Sharing Level	Indian Status Requirement	Household Income Requirement	PTC Eligibility Requirement	Marketplace Enrollment Requirement
CSV-02 (Z-CSV)	0%	Yes	100%-300% FPL	Yes	Any plan
CSV-03 (L-CSV)	0%	Yes	No	No	Any plan
CSV-04	27%	No	201%-250% FPL	Yes	Silver plan
CSV-05	13%	No	151%-200% FPL	Yes	Silver plan
CSV-06	6%	No	100%-150% FPL	Yes	Silver plan

Source: 42 U.S.C. § 18071.

Required Employee Contribution Percentage (for Calculating Affordability of Employer Offer of Coverage)

Under section 4980H of the Code, as added by the ACA, applicable large employers (ALEs)—those with at least a certain number of employees (generally 50 full-time employees or a combination of full-time and part-time employees equivalent to 50 full-time employees)—might have to make a shared responsibility payment if they do not offer affordable health insurance to their full-time employees.<sup>12</sup> The required contribution percentage (*i.e.*, the percentage of *household* income an *employee* must contribute for *self-only* coverage) is used to determine whether employer-sponsored insurance is considered affordable. (For 2023 and subsequent years, federal regulations changed the calculation for determining “affordability” of an offer of employer-sponsored insurance to family members of employees.<sup>13</sup>)

Section § 36B of the Code set the affordability percentage at 9.5% for 2014 and authorized IRS to adjust this percentage annually to reflect the excess of the rate of premium growth for the preceding calendar year over

the rate of income growth for the preceding calendar year. Beginning in 2014, IRS has released guidance updating the required contribution percentages annually (see Table 4 below).

<b>Table 4: Required Contribution Percentage; CY 2014-CY 2024</b>						
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Required Contribution %	9.50	9.56	9.66	9.69	9.56	9.86
	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	
Required Contribution %	9.78	9.83	9.61	9.12	8.39	

Source: IRS, Rev. Proc. 2014-37, Rev. Proc. 2014-62, Rev. Proc. 2016-24, Rev. Proc. 2017-36, Rev. Proc. 2018-34, Rev. Proc. 2019-29, Rev. Proc. 2020-36., Rev. Proc. 2021-36, Rev. Proc. 2022-34, and Rev. Proc. 2023-29.

### Employer Shared Responsibility Payments

ALEs subject to a shared responsibility payment must make one of two types of payment, but not both. The first type of payment applies if, for any month in 2016 and subsequent years, an ALE does not offer minimum essential coverage to at least 95% of its full-time employees (and their dependents) and if at least one full-time employee receives a PTC for purchasing health insurance through the Marketplace. In this case, the ALE must make an annual payment of \$2,160 (for 2016; calculated at 1/12th per applicable month) for each full-time employee (without regard to whether each employee received a PTC), after excluding the first 30 full-time employees from the calculation. Since 2015, IRS has indexed this figure annually (see Table 5 below).<sup>14</sup> In 2014 and 2015, certain transition rules lessened the requirements on employers.<sup>15</sup>

Even if an ALE offers minimum essential coverage to a sufficient number of full-time employees (and their dependents) to avoid liability for the first type of shared responsibility payment (referred to as § 4980H(a) payments), the ALE generally still will have to make the second type of payment (referred to as § 4980H(b) payments) for each full-time employee (if any) who receives a PTC for purchasing health insurance through the Marketplace. In this case, the ALE must make an annual payment of \$3,240 (for 2016; calculated at 1/12th per applicable month) for each full-time employee who received a premium tax credit or cost-sharing assistance. Since 2015, IRS has indexed this figure annually (see Table 5 below).<sup>16</sup>

<b>Table 5: Applicable Payment Amount (Employer Shared Responsibility); CY 2014-CY 2024</b>						
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Payment Amount (1st Type) [§ 4980H(a)]	\$2,000	2,080	\$2,160	\$2,260	\$2,320	\$2,500
Payment Amount (2nd Type) [§ 4980H(b)]	\$3,000	3,120	\$3,240	\$3,390	\$3,480	\$3,750
	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	
Payment Amount (1st Type) [§ 4980H(a)]	\$2,570	\$2,700	\$2,750	\$2,880	\$2,970	
Payment Amount (2nd Type) [§ 4980H(b)]	\$3,860	\$4,060	\$4,120	\$4,320	\$4,460	

Source: IRS, Notice 2015-87 and IRS, "Employer Shared Responsibility Provisions."

### Individual Shared Responsibility Payments for Lack of Health Insurance Coverage

Under the ACA as originally enacted, individuals who neither have qualifying health insurance (minimum essential coverage) for each month nor qualify for an exemption owe a "shared responsibility payment" (i.e., the "individual mandate"). The ACA does not exempt AI/ANs from the requirement to have minimum essential coverage. However, under the ACA and federal regulations, AI/ANs who are enrolled Tribal members and other individuals eligible for services from an Indian health care provider (IHP), including any dependents, qualify for an exemption from the shared responsibility payment.<sup>17</sup> Other individuals and families who (1) cannot afford minimum essential coverage because their premiums would exceed a certain percentage of household income

or (2) do not have income that meets the minimum threshold for having to file a federal income tax return qualify for an income-based exemption (see more discussion below).

<b>Table 6: Individual Shared Responsibility Annual Payment Amounts; 2014-2024</b>							
<i>Household (HH) pays greater of:</i>	Formula	2014	2015	2016	2017	2018	2019-2024
<b>Non-Exempt Individuals</b>							
Percentage amount	Specified % of HH income above tax filing threshold	1.0%	2.0%	2.5%	2.5%	2.5%	\$0
	<i>With amount not exceeding:</i>	\$2,448/person \$12,240/HH of 5+	\$2,484/person \$12,420/HH of 5+	\$2,676/person \$13,380/HH of 5+	\$3,264/person \$16,320/HH of 5+	NA	
Flat amount	Specified per person \$ figure	\$95/adult \$47.50/child	\$325/adult \$162.50/child	\$695/adult \$347.50/child	\$695/adult \$347.50/child	\$695/adult \$347.50/child	\$0
	<i>With amount not exceeding:</i>	\$285/HH	\$975/HH	\$2,085/HH	\$2,085/HH	\$2,085/HH	
<b>AI/ANs and Other Exempt Individuals</b>							
Shared responsibility payment amount		\$0	\$0	\$0	\$0	\$0	\$0

Source: Healthcare.gov; IRS, “Individual Shared Responsibility Provision—Reporting and Calculating the Payment,” Rev. Proc. 2015-15, Rev. Proc. 2016-43, and Rev. Proc. 2016-55.

Notes: See Table 8 below for tax filing thresholds for determining the percentage amount. For the flat amount, IRS in 2017 and 2018 based the dollar figures on the 2016 figures plus a cost-of-living adjustment. Actual payment amounts are 1/12th the amounts shown for each month individuals do not have minimum essential coverage or an exemption during the tax year.

It is important to note that a federal tax law enacted in 2017 reduced the shared responsibility payment amount applicable to the general population to zero, effectively repealing the individual mandate as of CY 2019.<sup>18</sup> (Some states, however, have re-imposed shared responsibility payment requirements for their residents.<sup>19</sup>) The information below details the history of the individual mandate under the ACA.

Prior to CY 2019, as shown in Table 6 above, the amount of the annual shared responsibility payment for individuals who did not qualify for an exemption generally equaled *the greater of*: (1) a percentage of household income, with a cap at the national average premium for the bronze plan available through the Marketplace that provides coverage for the applicable family size involved, or (2) a flat dollar amount, with a maximum flat amount per family of three times the adult amount. Federal regulations set the percentages of household income used to determine the percentage amount at 1.0% in 2014, 2.0% in 2015, and 2.5% in 2016 and subsequent years. For 2014, 2015, and 2016, federal regulations set the flat amount per adult at \$95, \$325, and \$695, respectively, and for 2017 and subsequent years \$695 plus cost-of living adjustments. Ultimately, the \$695 figure was held constant for 2017 and 2018. Federal regulations set the flat amount per child at half the amount per adult.

### *Eligibility for Income-Based Exemption*

Individuals and families who cannot afford minimum essential coverage because their premiums would exceed a certain percentage of household income (*i.e.* the affordability percentage) qualify for an exemption from the shared responsibility payment. As noted above, a federal tax law enacted in 2017 reduced the shared responsibility payment amount to zero, beginning in CY 2019; however, *the affordability percentage still is used to determine whether individuals older than age 30 qualify for an exemption that would allow them to enroll in catastrophic coverage.* Section 5000A of the Code set the affordability percentage at 8% for 2014 and authorized HHS to adjust this percentage annually to reflect the excess of the rate of premium growth between

the preceding calendar year and 2013 (premium adjustment percentage) over the rate of income growth for that period.<sup>20</sup> The affordability percentages are shown, by calendar year, in Table 7 below.

<b>Table 7: Affordability Percentage; CY 2014-CY 2024</b>						
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Affordability %	8.00	8.05	8.13	8.16	8.05	8.30
	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	
Affordability %	8.24	8.27	8.09	8.17	7.97	

Source: CMS, CMS-9949-F, CMS-9944-F, CMS-9937-F, CMS-9934-F, CMS-9930-F, CMS-CMS-9926-F, CMS-9916-F, CMS-9914-F2, CMS-9911-F, and CMS-9899.

In addition to the income-based exemption discussed above, individuals who do not have gross income that meets the minimum threshold for having to file a federal income tax return qualify for an exemption from the shared responsibility payment, provided that no one can claim these individuals as a dependent.<sup>21</sup> IRS determines the tax filing threshold annually (see Table 8 below).

<b>Table 8: Federal Income Tax Filing Threshold; 2014-2024 (Ages 0-64)</b>						
<b>Tax Filing Status</b>	<b>2014 (2013 tax year)</b>	<b>2015 (2014 tax year)</b>	<b>2016 (2015 tax year)</b>	<b>2017 (2016 tax year)</b>	<b>2018 (2017 tax year)</b>	<b>2019 (2018 tax year)</b>
Single	\$10,000	\$10,150	\$10,300	\$10,350	\$10,400	\$12,000
Head of Household	\$11,500	\$13,050	\$13,250	\$13,350	\$13,400	\$18,000
Married Filing Jointly	\$20,000	\$20,300	\$20,600	\$20,700	\$20,800	\$24,000
Married Filing Separately	\$3,900	\$3,950	\$4,000	\$4,050	\$4,050	\$5
Qualifying Widower w/Dependent	\$16,100	\$16,350	\$16,600	\$16,650	\$16,750	\$24,000
<b>Tax Filing Status</b>	<b>2020 (2019 tax year)</b>	<b>2021 (2020 tax year)</b>	<b>2022 (2021 tax year)</b>	<b>2023 (2022 tax year)</b>	<b>2024 (2023 tax year)</b>	
Single	\$12,200	\$12,400	\$12,550	\$12,950	\$13,850	
Head of Household	\$18,350	\$18,650	\$18,800	\$19,400	\$20,800	
Married Filing Jointly	\$24,400	\$24,800	\$25,100	\$25,900	\$27,700	
Married Filing Separately	\$5	\$5	\$5	\$5	\$5	
Qualifying Widower w/Dependent	\$24,400	\$24,800	\$25,100	\$25,900	\$27,700	

Source: IRS, Publication 501, 2013-2023.

<sup>1</sup> This brief is for informational purposes only and is not intended as legal advice.

<sup>2</sup> “Premium growth for the preceding calendar year” for this and the other measures refers to the quotient determined by dividing the projected per enrollee spending for employer-sponsored private health insurance for the preceding calendar year by the projected per enrollee spending for employer-sponsored private health insurance for the calendar year two years prior. The projections are the National Health Expenditure Projections published by the CMS Office of the Actuary.

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<sup>3</sup> In years after 2018, an additional adjustment will be made, which is to reflect the excess (if any) of the rate of premium growth for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar years.

<sup>4</sup> For example, an individual might enroll in Marketplace coverage effective January 1, 2016. The federal government might pay PTCs to the Marketplace health plan in which the individual is enrolled each month during the 2016 coverage year (advance payments), reducing the amount of the premium that the enrollee pays to the plan each month. The individual by April 15, 2017, must file a federal income tax return that calculates the amount of PTCs “earned” for the 2016 coverage year.

<sup>5</sup> Cost-sharing includes deductibles, co-insurance, and copayments but excludes “balance billing” amounts.

<sup>6</sup> See IRS, Rev. Proc. 2013-25, at <https://www.irs.gov/pub/irs-drop/rp-13-25.pdf>.

<sup>7</sup> “Premium adjustment percentage” for this and other measures refers to the percentage (if any) by which the average per capita premium for health insurance for the preceding calendar year exceeds the average per capita premium for health insurance for 2013. See 45 CFR 156.130(e).

<sup>8</sup> See 45 CFR 156.130(a)(2).

<sup>9</sup> See 42 U.S.C. § 18071(d).

<sup>10</sup> The practical difference between the two types of Indian-specific cost-sharing protections is whether a Tribal member must obtain a referral from an Indian health care provider (IHCP) to avoid cost-sharing when receiving covered health services from non-IHCPs under a Marketplace plan. Tribal members who enroll in a Z-CSV plan do not need a referral in order for these protections to apply when receiving health services from non-IHCPs. However, Tribal members who enroll in an L-CSV plan *must obtain a referral* in order for these protections to apply when receiving services from non-IHCPs.

<sup>11</sup> See 42 U.S.C. § 18071(c).

<sup>12</sup> A description of the employer requirements under the Affordable Care Act, and subsequent amendments, is available at <https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>. Tribal employers have not received an exemption from the employer shared responsibility requirements.

<sup>13</sup> Federal regulations stipulate that an employee offered health insurance through an employer is considered to have an offer of affordable coverage if the cost of *self-coverage* under the least-expensive available plan does not exceed the required contribution percentage. For *family members of employees*, a final federal rule issued in October 2022 changed the determination of whether an offer of employer-sponsored health insurance is considered affordable, beginning in 2023. Under the rule, an individual (*e.g.*, a spouse or dependent) offered health insurance through the employer of a family member is considered to have an offer of affordable coverage only if the cost of *family coverage* (rather than self-coverage) does not exceed the required contribution percentage. It is important to note, however, that this rule will have no impact on whether an ALE must make a shared responsibility payment, as the determination of whether an employee is considered to have an offer of affordable employer-sponsored health insurance will remain unchanged. See TD 9968 at <https://public-inspection.federalregister.gov/2022-22184.pdf>. See also the TSGAC memo titled “Review of New Final Rule Addressing Affordability of Employer-Sponsored Health Insurance for Family Members of Employees (TD 9968)” and dated October 13, 2022, at <https://www.tribalselfgov.org/wp-content/uploads/2022/10/TSGAC-Brief-Family-Glitch-Fix-Rule-2022-10-13a.pdf>.

<sup>14</sup> As required by section 4980H of the Code, IRS will increase this figure by an amount equal to the product of the figure and the premium adjustment percentage for the calendar year.

<sup>15</sup> For 2014, IRS did not require any ALEs to make a shared responsibility payment. For 2015, IRS provided several forms of transition relief to ALEs that (1) offered employer-sponsored health insurance with a plan year different from the calendar year (*i.e.*, a plan year that began in 2015 and ended in 2016) and (2) met other requirements. See IRS Notice 2013-45 and TD 9655, section XV.

<sup>16</sup> *Ibid.*

<sup>17</sup> Federal regulations at 45 CFR 155.605(e)(3) stipulate that the “IRS may allow an applicant to claim the exemption specified in HHS Guidance published September 18, 2014, entitled, ‘Shared Responsibility Guidance—Exemption for Individuals Eligible for Services through an Indian Health Care Provider,’ and in IRS Notice 2014-76, section E.” Notice 2014-76 specifies that an “individual is eligible for a hardship exemption if the individual is eligible for services through an Indian health care provider (as defined in 42 CFR 447.50) or is eligible for services through Indian Health Service in accordance with 25 U.S.C. 1680c(a), (b), or (d)(3).”

<sup>18</sup> Technically, the law did not eliminate the ACA requirement to have minimum essential coverage, but the revised law eliminated the financial penalty if someone fails to have minimum essential coverage. See H.R. 1, section 11081.

<sup>19</sup> California, Massachusetts, New Jersey, Rhode Island, and the District of Columbia have implemented their own individual mandates with shared responsibility payment requirements. At least one of these states, California, includes an exemption to

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the shared responsibility payment requirements for Tribal members (although not for other IHS-eligible individuals). Vermont has implemented an individual mandate but does not require a shared responsibility payment for failure to obtain health insurance coverage. See <https://www.kff.org/health-reform/issue-brief/state-actions-to-improve-the-affordability-of-health-insurance-in-the-individual-market/>. See also <https://healthcareinsider.com/states-with-individual-mandate-177178>.

<sup>20</sup> CMS substituted personal income (PI) for per capita gross domestic product (GDP) as the measure of income growth in CMS-9937-F, “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017.” See <https://www.gpo.gov/fdsys/pkg/FR-2016-03-08/pdf/2016-04439.pdf>.

<sup>21</sup> See CCIIO, “Shared Responsibility Guidance—Filing Threshold Hardship Exemption,” at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Filing-Threshold-Exemption-Guidance-9-18-14.pdf> and IRS, Notice 2014-76, at <https://www.irs.gov/pub/irs-drop/n-14-76.pdf>.