

The Affordable Care Act and the Military Health System

Congress enacted the Patient Protection and Affordable Care Act, or ACA for short, in 2010 with the goal to increase the number of Americans covered by health insurance and decrease the cost of health care. It is cited as Public Law 111-148.

One key provision in the ACA is its individual mandate, which requires most Americans to maintain “minimum essential” health insurance coverage, or MEC for short, for themselves and their dependents. For those who are not exempt, and who do not receive health insurance through an employer **or a government program**, the means of satisfying the requirement is to purchase insurance from a private company, typically via a state-run exchange or marketplace. Beginning in 2014, those who do not comply with this mandate must make a “shared responsibility payment” to the IRS for each month of noncompliance.

My comments to follow will address two questions that have surfaced as we look at the ACA’s interface with the Military Health System.

The first question is whether the TRICARE health plans met the ACA’s MEC requirement. As a refresher, TRICARE offers three basic options for non-Medicare eligible beneficiaries: TRICARE Prime, TRICARE Standard, and TRICARE Extra. Additionally, individuals who **are** eligible for Medicare, and otherwise eligible for TRICARE, may enroll in Medicare Part B and receive wrap around TRICARE coverage through the TRICARE For Life plan.

It was accepted that each of the major TRICARE plans was part of **a government program**; however, among them only the TRICARE For Life (TFL) plan was expressly mentioned in ACA’s original list of MEC examples. Congress responded by passing Public Law 111-159, the TRICARE Affirmation Act of 2010. That Act amended the ACA’s list at 26 U.S.C. §5000A (f)(1)(A)(iv) to say more broadly that **all** medical coverage under Chapter 55 of Title 10 of the United States Code, including coverage under the TRICARE program, meets MEC. Therefore, our large, commonly-known TRICARE plans do count as MEC, and the vast majority of our beneficiaries will already be ACA-compliant. Please be aware that the TRICARE and IRS websites

suggest there MAY be exceptions for isolated cases that might not qualify as MEC. This could be where there is only a direct MTF benefit as in the case of a dependent parent or a TFL-eligible beneficiary who has not yet purchased Medicare Part B.

The second question, primarily voiced by our retirees, concerns what effect OCONUS residency has on the mandate.

To preface, according to IRS guidance, all U.S. citizens living in the U.S., along with all permanent residents and all foreign nationals who are in the U.S. long enough during a calendar year to qualify as resident aliens for tax purposes, are subject to the mandate.

U.S. citizens living abroad are still subject to the mandate, unless they meet one of two sets of criteria. Meeting criterion “deems” the citizen as having MEC and thus he is not subject to the penalty. The rationale behind these criteria is thought to be because most citizens living abroad would not be able to find insurance on the CONUS-based state exchanges that would be accepted by providers in their foreign locales.

The first criterion is for U.S. citizens who are not physically present in the U.S. for at least 330 full days within a 12-month period. If met, such citizens are deemed MEC-compliant **for those 12 months**. The alternative criterion is for U.S. citizens who are bona fide residents of a foreign country for an entire taxable year. If met, such citizens are deemed MEC-compliant **for that year**.

U.S. citizens who meet neither the physical presence nor residency criteria will need to secure MEC (which they can do merely by maintaining TRICARE coverage), qualify for an ACA exemption, or make the shared responsibility payment for each month of the year.

The key provisions to review when addressing OCONUS questions are 26 U.S.C. §5000A(f)(4) and 26 U.S.C. §911(d)(1). As this is a complicated issue, U.S. citizens living abroad who have questions should be encouraged to consult with a CPA for specific tax guidance based on their particular circumstances.