

# REFORM *Update*

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Over the last few months, various governmental departments issued a number of notices related to the Affordable Care Act (ACA). This *Reform Update* will summarize the recent guidance:

- Extension of transitional relief, allowing the continuation of certain non-compliant medical plans
- Changes to special enrollment rules in the Health Insurance Marketplace
- Repeal of small group deductible limits
- Exemptions from the individual mandate

These are minor changes. However, they bring mostly good news to individuals and employers affected by these rules.

## **Extension of Transitional Relief, Allowing the Continuation of Certain Non-Compliant Medical Plans**

The Centers for Medicare and Medicaid Services (CMS) recently announced a two-year extension of the transitional relief allowing non-compliant health plans to renew without meeting the requirements of the ACA. The initial extension of these non-compliant plans was discussed at [http://www.mcgrawwentworth.com/Reform\\_Update/2013/Reform\\_Update\\_76.pdf](http://www.mcgrawwentworth.com/Reform_Update/2013/Reform_Update_76.pdf).

At the discretion of the states, eligible individual and small group plans that are renewed for a policy year between January 1, 2014 and October 1, 2016 will not be considered non-compliant with the specific requirements of the ACA. These include the following:

- **Section 2701** – Fair health insurance premiums. This section addresses the new rating rules that limit rate factors to age, tobacco use and geography.
- **Section 2702** – Guaranteed availability of coverage. This section addresses the requirement to offer coverage to all eligible applicants and to allow a special enrollment for mid-year change events.
- **Section 2703** – Guaranteed renewability of coverage. This section addresses the requirement that carriers must renew plans each year unless they exit the market.
- **Section 2704** – Prohibitions on pre-existing condition limitations and other discrimination related to health conditions. This section only applies to individual health plans. It addresses tobacco surcharges.
- **Section 2705** – Prohibits discrimination against individual plan participants and beneficiaries. This section contains the rules addressing health-contingent wellness programs.

- **Section 2706** – Relates to non-discrimination in health care. This section addresses the requirement that a health plan cannot discriminate against a health care provider acting within the scope of his or her license.
- **Section 2707** – Concerns the requirements related to essential health benefits. This section includes the requirement to cover essential health benefits in the individual and small group markets. It also includes the maximum out-of-pocket rules and the requirement to accumulate all out-of-pocket costs.
- **Section 2709** – Requirement to cover individuals participating in approved clinical trials.

Insurance carriers that choose to extend non-compliant policies must provide a notice about the right to continue existing coverage. The guidance contained two model notices.

Not all carriers will decide to continue these non-compliant individual and small group plans.

### **Changes to Special Enrollment Rules under the Health Insurance Marketplace**

Over the last several months, as enrollment through the Marketplace has ramped up, the government has identified situations that need to be addressed in terms of special enrollment rights. The Marketplace, similar to group health plans, provides limited enrollment opportunities. First, individuals could enroll during the initial enrollment period (October 1, 2013 – March 31, 2014). If an application was started by March 31, the government allowed the individual one week to complete it. If the application was completed that week, then the individual secured coverage during the initial enrollment period.

The Marketplace will hold open enrollment every year, generally between October 15 and December 7. Because of the challenging launch, the open enrollment period for 2014 was pushed back. For 2014 only, the open enrollment period will run from November 15, 2014 through January 15, 2015.

Individuals also have the opportunity to enroll mid-year if they experience an event triggering special enrollment rights. Initially, the Marketplace allowed special enrollment for the following events:

- Loss of minimum essential coverage
- Gaining a dependent or becoming a dependent through marriage, birth, adoption or placement for adoption
- Newly attaining status as a U.S. citizen, national or lawfully present individual
- A Marketplace error, misrepresentation or inaction of a Marketplace party
- Proof that the qualified health plan (QHP) substantially violated a material provision of its contract with the enrollee
- Becoming newly eligible for an insurance affordability program, regardless of whether or not the individual is currently enrolled in a QHP
- Gaining access to new QHPs because of a permanent move
- Exceptional circumstances as defined by the Department of Health and Human Services (DHHS)

The expanded recognition of certain events allowing special enrollment generally falls under the exceptional circumstance allowance.

#### *COBRA Participants*

Because it was not clearly explained, COBRA-qualified beneficiaries are being granted a special enrollment period for the Marketplace. It is important to understand this issue. If qualified beneficiaries did not enroll for coverage during the initial enrollment period, they have a limited opportunity to elect coverage in the Marketplace. At the point an individual loses group health coverage, he or she will be eligible for mid-year enrollment in the Marketplace. However, once COBRA is elected, the qualified beneficiary can only switch to Marketplace coverage at open enrollment or when the maximum COBRA benefit period expires.

Since this was not well communicated, COBRA-qualified beneficiaries will be granted a special enrollment period. They can elect a qualified health plan in the Marketplace through July 1, 2014. To be eligible for this enrollment opportunity, individuals should contact the Marketplace at 1-800-318-2596. They need to advise that they are calling about their COBRA benefits and the Marketplace.

Employers are not required to notify qualified beneficiaries about this special enrollment period. However, they may want to let qualified beneficiaries know because this could shift risk to the Marketplace.

The DOL did release new model COBRA notices to more thoroughly explain the situation.

#### *Individual Market Plan Renewal (Outside Marketplace Coverage)*

If an individual has an individual policy outside the Marketplace, he or she will be granted a special enrollment period when that policy renews. The individual must notify the Marketplace, 60 days before or after the renewal date that he or she does not intend to renew the current policy. The individual can then apply for Marketplace coverage. The effective date will be prospective.

#### *AmeriCorps/VISTA/National Civilian Community Corps (NCCC) Members*

AmeriCorps/VISTA/National Civilian Community Corps provide funding and other support for individuals engaged in national service. These programs do not extend group health plan coverage to members. Some programs provide limited benefits, but they do not qualify as minimum essential coverage.

This creates issues with mid-year enrollment in the Marketplace. DHHS has determined that this situation creates exceptional circumstances. The following situations will trigger special enrollment rights in the Marketplace:

- Individuals who are beginning service in AmeriCorps State and National, VISTA or NCCC programs
- Individuals who are concluding service in the above organizations and are losing access to their short-term, limited-duration coverage

These individuals have 60 days from the event to enroll for Marketplace coverage.

### Complex Cases after the Initial Open Enrollment Period

CMS is designating a number of limited circumstances that would trigger mid-year special enrollment rights in the Marketplace:

Circumstance	Description	Examples
<b>Exceptional circumstances</b>	A consumer faces exceptional circumstances as determined by CMS, such as a natural disaster, medical emergency, and planned system outages that occur on or around plan selection deadlines.	<ul style="list-style-type: none"> <li>A natural disaster, such as an earthquake, massive flooding or hurricane.</li> <li>A serious medical condition, unexpected hospitalization or temporary cognitive disability.</li> <li>A planned Marketplace system outage such as a Social Security Administration outage.</li> </ul>
<b>Misinformation, misrepresentation or inaction</b>	Misconduct by individuals or entities providing formal enrollment assistance.	<ul style="list-style-type: none"> <li>Navigator enrolled consumer in a plan he or she did not want.</li> </ul>
<b>Enrollment error</b>	Consumer enrolled through the Marketplace but the insurance company didn't get the enrollment information due to technical issues.	<ul style="list-style-type: none"> <li>Applicant's information transferred to carrier but file contained defective information. Application may have been rejected due to missing information.</li> </ul>
<b>System errors related to immigration status</b>	An error in the processing of an application submitted by immigrants caused the consumers to get an incorrect eligibility result when applying for coverage.	<ul style="list-style-type: none"> <li>Immigrants did not receive proper determinations for premium assistance.</li> </ul>
<b>Display errors on Marketplace website</b>	Incorrect plan data was displayed at the time the consumer selected a qualified health plan.	<ul style="list-style-type: none"> <li>Data errors on premiums, benefits or copays or deductibles.</li> <li>Errors that mistakenly indicated applicants resided within a plan's service area.</li> </ul>
<b>Medicaid/Children's Health Insurance Program (CHIP) Marketplace transfer</b>	Consumer was found ineligible for Medicaid or CHIP and that data was not transferred back to the Marketplace in time for the consumer to enroll in a plan.	
<b>Error messages</b>	A consumer was not able to complete enrollment due to an error message.	<ul style="list-style-type: none"> <li>Error or box screen indicating that the data sources were down and the consumer could not proceed with enrollment.</li> </ul>
<b>Unresolved casework</b>	A consumer is working with a caseworker on an enrollment issue that is not resolved prior to March 31, 2014.	

Circumstance	Description	Examples
<b>Victims of domestic violence</b>	A consumer who is married and is a victim of domestic abuse can apply and select a plan through May 31, 2014.	<ul style="list-style-type: none"> <li>Spouses were advised that premium credits were not available because of the lack of a joint tax return.</li> </ul>
<b>Other system errors</b>	CMS will determine what system errors hindered the completion of an application in the Marketplace.	

These special enrollment periods will result in prospective effective dates if a consumer enrolls for coverage.

### **Repeal of Small Group Deductible Limits**

The Protecting Access to Medicare Act of 2014 was recently signed into law. This law provides a one-year delay of the 24 percent reduction in payment rates for physicians participating in the Medicare program.

The law also repealed a provision of the ACA that limited deductibles. The limit only applied to small group health insurance plans. Plan deductibles in 2014 were restricted to no greater than \$2,000 for single coverage and \$4,000 for family coverage.

The repeal of the ACA's deductible rule is retroactive to the date of the ACA's enactment (March 23, 2010). However, insurance carriers will need to determine when they will resume selling higher deductible plans in the small group market.

### **Exemptions from the Individual Mandate**

Recent guidance described situations where penalties associated with the individual mandate may not apply. The government provided an exemption for the first months of 2014 when an individual may not have been covered, as long as the individual elects coverage during the initial enrollment period.

The new guidance addresses an individual who applies for coverage during the initial enrollment period and is subsequently determined eligible for Medicaid or CHIP. Eligibility for Medicaid and CHIP works differently than coverage in the Marketplace:

- The effective date of Medicaid coverage for an individual is generally the date of application. (In some circumstances, the effective date may be up to three months prior to the application date.) As a result of this immediate effective date, anyone who enrolls in coverage by March 31 would be covered by March 31. These individuals will qualify for the three-month coverage gap.
- CHIP's effective date follows private insurance. Typically, if a CHIP application is received in the first 15 days of a month, coverage is effective the first of the following month. If the application is received during the second half of a month, coverage is effective the first of the next following month. As a result, the IRS is extending the exemption for the first four months of 2014 if CHIP coverage is applied for by March 31, 2014.

In addition, recent guidance addressed individuals covered by state high-risk pools. The ACA required states to launch high-risk pools in 2010, which provided coverage to state residents who were uninsurable because of underwriting rules. The ACA required the elimination of medical underwriting, pre-existing condition limitations and rating based on health conditions, beginning in 2014. State high-risk pools were supposed to be eliminated as of January 1, 2014 when the new Marketplace was launched.

Since the Marketplace was almost non-functional in the beginning, the government allowed the continuation of state high-risk pools beyond January 1. As a result, coverage in these pools will be shut down as of June 1, 2014. Loss of this coverage will trigger special enrollment in the Marketplace.

### **Concluding Thoughts**

Most of these requirements have minimal impact on employers. However, they may want to let COBRA-qualified beneficiaries know about their special enrollment right in the Marketplace. Those individuals may consider enrolling now if they understand they will otherwise be prohibited from enrolling for Marketplace coverage until open enrollment or the exhaustion of the maximum COBRA benefit period.

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