



**Date: May 2, 2014**

**Subject: Special Enrollment Periods and Hardship Exemptions for Persons Meeting Certain Criteria**

This guidance provides information related to three types of special enrollment periods (SEPs) for persons seeking to enroll in qualified health plans (QHPs) through the Federally-facilitated Marketplace (FFM). State-based Marketplaces (SBMs) are encouraged to adopt similar special enrollment periods. The document also contains information about two hardship exemptions available for eligible consumers in FFM and SBM states.

A. Background

45 CFR 155.420(d)(9) specifies that an Exchange must provide a special enrollment period when “[t]he qualified individual or enrollee, or his or her dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.”

Section 5000A of the Internal Revenue Code provides that, beginning in January 2014, nonexempt individuals who do not have minimum essential coverage (MEC) or who are not otherwise exempt will make a shared responsibility payment with their federal income tax returns. Pursuant to section 5000A(e)(5), the Secretary of HHS may determine that individuals who have suffered a hardship with respect to the ability to enroll in minimum essential coverage are exempt from the individual shared responsibility provision. *See* 45 CFR 155.605(g).

B. Specific Special Enrollment Periods and Hardship Exemptions

1. Hardship Exemption for Persons who Obtained Coverage that was Effective as of May 1, 2014

On October 28, 2013, HHS issued guidance indicating that individuals who enroll in QHPs through the Marketplace prior to the close of the initial open enrollment period would be eligible for a hardship exemption from the shared responsibility payment for the months prior to the effective date of the individual’s coverage.<sup>1</sup> Further, on March 26, 2014, HHS noted that, consistent with previous guidance, consumers who receive a special enrollment period for being “in line” by March 31 and select new coverage in the FFM, will be eligible for a hardship exemption from the shared responsibility payment for the months prior to the effective date of their coverage, because they were treated as if they had enrolled in coverage by March 31.<sup>2</sup>

<sup>1</sup> <http://www.cms.gov/CCIIO/resources/fact-sheets-and-FAQs/downloads/enrollment-period-faq-10-28-2013.pdf>

<sup>2</sup> <http://www.cms.gov/ccio/Resources/Regulations-and-Guidance/Downloads/in-line-SEP-3-26-2014.pdf>

HHS is concerned that some consumers may not have realized that the relief provided by the guidance above was limited solely to those individuals purchasing QHPs through the Marketplace. HHS recognizes that individuals who obtained other forms of MEC effective as of May 1, 2014 outside of the Marketplace (including individual or group plans) are, to a large extent, similarly situated to those who purchased QHPs through the Marketplace with a May 1, 2014 effective date. Accordingly, HHS will extend a comparable hardship exemption for all months prior to the effective date of coverage for those individuals who obtained MEC effective on or before May 1, 2014 outside of the Marketplace.<sup>3</sup> This hardship exemption is available to consumers in states with a Federally-facilitated Marketplace or a State-based Marketplace. Individuals are not required to submit an exemption application to the Marketplace.

## 2. Special Enrollment Periods for Individuals Eligible for or Enrolled in COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives group health plan participants and beneficiaries the right to choose to continue their group health plan benefits for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. *See* ERISA sections 601-608.

Section 155.420(d)(1) of title 45 of the CFR provides special enrollment periods for QHPs in the Marketplace to persons eligible for COBRA when: (1) such persons initially are eligible for COBRA due to a loss of other minimum essential coverage; and (2) when such persons' COBRA coverage is exhausted. In addition, COBRA beneficiaries are able to choose QHPs in the Marketplace during the annual open enrollment period and if they are determined eligible for any other special enrollment periods outside of the open enrollment period.

HHS is concerned that former Model COBRA Continuation Coverage Election Notices (Model Election Notices) (and substantially similar documents provided by employers) did not address, or did not sufficiently address, Marketplace options for persons eligible for COBRA and COBRA beneficiaries. Thus, persons eligible for COBRA and COBRA beneficiaries may have had insufficient information to understand they only can enroll in QHPs in the Marketplace during the open enrollment period and special enrollment periods as described above.<sup>4</sup> As a result, in accordance with 45 CFR 155.420(d)(9), HHS is providing an additional special enrollment period based on exceptional circumstances so that persons eligible for COBRA and COBRA beneficiaries are able to select QHPs in the FFM.

Affected individuals have 60 days from the date of this bulletin, that is, through July 1, 2014, to select QHPs in the FFM. These individuals should contact the Marketplace call center at 1-800-

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<sup>3</sup> The IRS and Treasury Department intend to publish guidance allowing an individual to claim a hardship exemption from the individual shared responsibility provision for the months in 2014 prior to the effective date of the individual's coverage if the individual enrollment in minimum essential coverage becomes effective on or before May 1, 2014.

<sup>4</sup> Contemporaneous with the release of this bulletin, DOL is releasing updated versions of the Model Election Notice and the Model COBRA Continuation Coverage General Notice. These new model notices reflect that the Marketplace is now open and better describes individuals' coverage options.

318-2596 to activate the special enrollment period. They should inform the Marketplace call center that they are calling about their COBRA benefits and the Marketplace. Once determined eligible for the special enrollment period, consumers can then view all plans available to them and continue the enrollment process over the phone or online through creating an account on healthcare.gov or logging into their existing account.

3. Special Enrollment Periods for Individuals Whose Individual Market Plans are Renewing Outside of Open Enrollment

45 CFR 147.104(b)(2) provides that a health insurance issuer in the individual market must provide a limited open enrollment period beginning on the date that is 30 calendar days prior to the date the policy year ends in 2014. In the Proposed Rule on Exchange and Insurance Market Standards for 2015 and Beyond, HHS proposed amending 45 CFR 155.420(d)(1) to adopt a special enrollment period for the FFM that is aligned with the limited special enrollment period in 45 CFR 147.104(b)(2). HHS is currently reviewing comments submitted for the Proposed Rule on Exchange and Insurance Market Standards for 2015 and Beyond.

In light of 45 CFR 147.104(b)(2), consumers may have reasonably expected to have an option not to renew non-calendar year individual market policies and to receive a special enrollment period in the FFM outside of the open enrollment period. Therefore, at this time, in accordance with 45 CFR 155.420(d)(9), HHS will provide special enrollment periods consistent with 45 CFR 147.104(b)(2).

Affected individual market consumers will be able to report to the FFM that they will not renew their plan up to 60 days before the renewal date, and can get coverage in the FFM effective the first of the month following the renewal date. Consumers will also have 60 days from the renewal date to select QHPs in the FFM. If a QHP is selected after the renewal date, coverage will be prospective based on the date of plan selection. These individuals should indicate “loss of other coverage” on their Marketplace application, if they would like to apply for and enroll in a QHP offered by the Marketplace plan, if otherwise eligible.

4. Special Enrollment Periods and Hardship Exemption for AmeriCorps/VISTA/National Civilian Community Corps Members

The Corporation for National and Community Service (CNCS), a Federal agency, manages and provides grants for the AmeriCorps State and National, VISTA, and National Civilian Community Corps (NCCC) programs. These programs provide funding and other support for individuals engaged in national service. CNCS is required to ensure that the members in these programs have health coverage. *See* 42 USC § 12571 (AmeriCorps); 42 USC § 4955(b)(1) (VISTA); and 42 USC § 12618(d) (NCCC).

CNCS and its AmeriCorps programs do not provide group health plan coverage to members because members do not have an employment relationship with either CNCS or its grantees. Some AmeriCorps State and National grantees currently provide coverage to members through short-term limited-duration coverage, as defined in 45 CFR 144.103. With respect to the VISTA

and NCCC members, CNCS contracts with an entity to administer a self-funded health plan. Neither the short-term limited-duration coverage nor the self-funded coverage is MEC. CNCS currently encourages its AmeriCorps grantees to consider meeting their obligation to ensure coverage by providing reimbursement to members for the purchase of Marketplace QHPs. VISTA and NCCC members are also encouraged to seek coverage through the FFM or SBMs. However, many members begin and end their terms of service outside of the open enrollment period. Further, members who have been receiving short-term limited-duration coverage or self-funded coverage will not be able to access QHP coverage in the Marketplace outside of an open enrollment period upon completion of their service, given that this coverage is not MEC and therefore currently does not qualify members for the loss of MEC special enrollment period.

In accordance with 45 CFR 155.420(d)(9), and in light of the statutory obligation for health coverage to be provided to the participants in the AmeriCorps State and National, VISTA, and NCCC programs, HHS has determined that the following individuals and their dependents,<sup>5</sup> as described in 45 CFR 155.420(a)(2), have experienced “exceptional circumstances” and are eligible for a special enrollment period in the FFM:

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

Affected AmeriCorps State and National, VISTA, and NCCC members have 60 days from their triggering event, defined as either the date they begin service, or the date they lose access to short-term limited duration coverage or self-funded coverage from these programs, to select QHPs through the FFM. Coverage will be prospective based on the date of plan selection. These individuals should contact the Marketplace call center at 1-800-318-2596 to activate the special enrollment period. They should inform the Marketplace call center that they are beginning or concluding service with AmeriCorps State and National, VISTA, or NCCC. Once determined eligible for the special enrollment period, consumers can then view all plans available to them and continue the enrollment process over the phone or online through creating an account on [healthcare.gov](http://healthcare.gov) or logging into their existing account.

In addition, in recognition of the need for a transition period, HHS is exercising its authority to establish an additional hardship exemption for calendar year 2014 for certain individuals engaged in service in AmeriCorps State and National, VISTA, or NCCC programs. Specifically, an individual is eligible to receive a hardship exemption certification for all months in calendar year 2014 that include a day on which the individual is engaged in service in AmeriCorps State and National, VISTA, or NCCC programs and is covered either by short-term limited duration coverage or self-funded coverage provided by these programs during their term of service. This hardship exemption is available to consumers in states with a Federally-facilitated Marketplace or a State-based Marketplace. Consumers in all states except Connecticut will need to request

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<sup>5</sup> This SEP applies to dependents even though coverage is not provided to dependents of members during their AmeriCorps/VISTA/NCC service, to ensure that the entire family has an option to elect coverage.

the hardship exemption certification using the hardship exemption form available at [HealthCare.gov/exemptions](https://www.healthcare.gov/exemptions), selecting reason #14, and filling in “AmeriCorps”, VISTA” or “NCCC” as the reason. Such individuals in the state of Connecticut should contact Access Health CT to apply for this exemption.