



Date: November 21, 2014

From: Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services

Subject: Guidance on Hardship Exemptions for Persons Meeting Certain Criteria

This guidance provides information about (1) new criteria pertaining to certain types of limited-benefit Medicaid and Children’s Health Insurance Program (“CHIP”) coverage that may be used by the Federally-facilitated Marketplace (“FFM”), State Partnership Marketplaces (“SPM”) and State-based Marketplaces (“SBM”) when determining eligibility for a hardship exemption, and (2) a new hardship exemption that may be claimed through the tax filing process for eligible individuals who reside in a state that did not implement section 2001(a) of the Affordable Care Act and whose household income is below 138% of the Federal Poverty Level (“FPL”).

A. Background

The individual shared responsibility provision under Section 5000A of the Internal Revenue Code (“the Code”) requires individuals to have qualifying health care coverage (known as “minimum essential coverage” or “MEC”), qualify for an exemption, or make a shared responsibility payment when filing their federal income tax returns. Section 5000A(f)(1)(A) of the Code provides that MEC includes coverage through an eligible employer-sponsored plan; the individual market; government-sponsored programs, including the Medicaid program under title XIX of the Social Security Act (“the Act”) and CHIP under title XXI of the Act; and other coverage as designated by the Department of Health and Human Services (“HHS”). The Affordable Care Act provides nine categories of exemptions, including an exemption for individuals who experience a hardship that prevents the individual from enrolling in a qualified health plan due to financial or other constraints.

On July 1, 2013, HHS published a final rule, “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions” (“Exemptions Rule”), governing how Marketplaces (also known as “Exchanges”) will determine eligibility for and grant certificates of exemption from the individual shared responsibility payment. We noted in the Exemptions Rule that we would provide further guidance regarding criteria that the FFM will use for the hardship exemption described in 45 CFR 155.605(g)(1). SBMs that are processing exemptions may use these criteria, or they may develop their own, as long as the criteria meet the requirements of the final regulation. On June

26, 2013, we issued Guidance on Hardship Exemption Criteria and Special Enrollment Periods (available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/exemptions-guidance-6-26-2013.pdf>) to explain additional criteria that a Marketplace may use in determining what circumstances constitute a hardship for purposes of the exemption.

B. Hardship Exemptions

Today's guidance describes additional circumstances that Marketplaces may consider as a hardship under 45 CFR 155.605(g)(1) effective January 1, 2015.

In addition, in today's guidance, the Secretary of HHS ("the Secretary") exercises her authority under 26 U.S.C. 5000A(e)(5) to provide a hardship exemption that may be claimed through the tax filing process for individuals who reside in a state that did not implement section 2001(a) of the Affordable Care Act and whose household income is below 138% of the FPL.

1. Enrollment in Certain Limited-Benefit Medicaid and CHIP Coverage

Although coverage through Medicaid and CHIP is generally considered MEC under section 5000A of the Code, there are some forms of Medicaid and CHIP coverage that provide limited benefits that are not MEC. Internal Revenue Service ("IRS") final regulations exclude Medicaid coverage for pregnant women eligible under section 1902(a)(10)(A)(i)(IV) or 1902(a)(10)(A)(ii)(IX) of the Act from Medicaid coverage recognized as government-sponsored MEC because states are not required to provide a full Medicaid benefits package to these women. The treatment of coverage for low-income pregnant women under the IRS regulation is based on clause (VII) in the matter following section 1902(a)(10)(G) of the Act, which limits Medicaid coverage for low-income pregnant women to services that are "related to pregnancy ... and to other conditions that may complicate pregnancy." In addition, concurrent with the release of this guidance, the IRS is releasing final regulations specifying that coverage for individuals eligible as medically needy under section 1902(a)(10)(C) of the Act and 42 CFR 435.300 et seq. will not be included as government-sponsored MEC under section 5000A(f)(1)(A)(ii) of the Code, because benefits under this authority are not required to be as comprehensive as those provided to categorically needy groups under Medicaid. Under CHIP regulations, states also have the option to cover unborn children as targeted low-income children in their separate CHIP programs, and such coverage includes comprehensive prenatal care for the pregnant mother.¹ While CHIP is MEC under the Code, the unborn child, and not the mother, is classified as the individual enrolled in MEC. A mother receiving this benefit is typically not otherwise eligible for Medicaid and, therefore, is not considered to be enrolled in MEC.

¹ States exercise this option by electing to define a child as including the period from conception to birth per the definition of "child" in 42 CFR 457.10.

HHS believes that requiring individuals enrolled in, or benefitting from, the types of Medicaid or CHIP coverage described above to also obtain MEC is particularly onerous when the non-MEC government-sponsored coverage meets the individual's medical needs. During 2014, individuals enrolled in certain limited-benefit Medicaid coverage qualified for relief from the shared responsibility penalty under IRS Notice 2014-10 (available at <http://www.irs.gov/pub/irs-drop/n-14-10.pdf>), but that relief was available for 2014 only. Therefore, effective January 1, 2015, we determine that an individual may qualify for a hardship exemption under 45 CFR 155.605(g)(1) if the individual is enrolled in, or benefits from, the following types of coverage:

1. Medicaid coverage provided to a pregnant woman that is not included as government-sponsored MEC under IRS regulations and not recognized as MEC by the Secretary in accordance with the CMS SHO #14-002.
2. CHIP coverage provided to an unborn child that includes comprehensive prenatal care for the pregnant mother.
3. Medicaid coverage provided to a medically needy individual eligible for Medicaid under section 1902(a)(10)(C) of the Act that is not included as government-sponsored MEC under IRS regulations and not recognized as MEC by the Secretary in accordance with the CMS SHO #14-002.

In the case of medically needy individuals, Marketplaces may consider an individual eligible for a hardship exemption for the entire budget period in which the spend-down liability is met, regardless of when in the budget period he or she has met the spend-down amount required to receive medically needy coverage.²

The FFM will issue a hardship exemption for an individual enrolled in, or benefitting from, the three types of Medicaid/CHIP coverage listed above for any coverage month or months beginning on or after January 1, 2015. The FFM will also issue this exemption to an eligible individual for a month before or after a coverage month in accordance with 45 CFR 155.605(g)(1).

2. Ineligible for Medicaid Based on State's Decision Not to Expand

In the Exemptions Rule at 45 CFR 155.605(g)(4), we established an exemption for an individual determined ineligible for Medicaid for one or more months during the benefit year solely as a result of a state not implementing the Medicaid expansion under section 2001(a) of the Affordable Care Act. This exemption requires the consumer to reside in a state that did not

² States that elect to cover medically needy individuals must establish a budget period between 1 and 6 months. Individuals whose income is over the income standard for medically needy coverage (commonly referred to as the "medically needy income level," or "MNIL") may establish eligibility by incurring medical expenses in order to "spend down" their income to the MNIL. As soon as the individual has done so, he or she is eligible for medically needy coverage for remaining expenditures within the budget period.

expand Medicaid coverage and to apply for this exemption through the Marketplace. We anticipate that prior to submitting a Federal income tax return for 2014 many individuals eligible for this exemption may not be aware of the requirements to qualify for this exemption. In addition, individuals potentially eligible for this exemption may not be eligible for other exemptions currently available through the tax filing process.

To address the challenges described above that may arise when a consumer seeks an exemption from the Marketplace because the consumer's state did not expand Medicaid eligibility, we determine that, for 2014, an individual is eligible to claim a hardship exemption for the calendar year if, at any time during 2014, the individual resided in a state that did not expand Medicaid coverage and the individual's household income, within the meaning of Section 36B of the Code, is below 138 percent of the applicable FPL for the individual's family size. An "individual" who is eligible for this exemption includes only persons who are under 65 years of age, not entitled to, or enrolled for, benefits under part A of title XVIII (Medicare Part A), or enrolled for benefits under part B of title XVIII (Medicare Part B), and are not members of other groups that state Medicaid programs have historically been required to cover, such as low-income parents and children, pregnant women, or those receiving Supplemental Security Income.³ Accordingly, for 2014, an individual is not required to receive an exemption certificate number from the Marketplace to qualify for this hardship exemption. This hardship exemption will be available through the tax filing process to all individuals who qualify, regardless of whether they reside in a state that has an FFM, SPM or SBM. The IRS and Treasury Department are concurrently publishing guidance allowing an eligible individual to claim this hardship exemption on a 2014 tax return. The Marketplace exemption available under 45 CFR 155.605(g)(4) may still be obtained by submitting an application to the Marketplace.

³ Section 2001(a) of the Affordable Care Act amends § 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. 1396a) and provides that the intended beneficiaries of Medicaid expansion are persons "under 65 years of age, not pregnant, not entitled to, or enrolled for, benefits under part A of title XVIII, or enrolled for benefits under part B of title XVIII, and are not described in a previous subclause of this clause."