



Date: July 27, 2015

Subject: Updated Guidance on Victims of Domestic Abuse and Spousal Abandonment

CMS is committed to addressing the needs of victims of domestic abuse¹ and spousal abandonment,² including an increased need for health care and the ability to enroll in health coverage apart from their abuser or abandoner.

Special Enrollment Periods

45 CFR 155.420(d)(9) specifies that a special enrollment period will be available 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.” In accordance with this provision, CMS has determined that in the Federally-facilitated Marketplaces, an eligible individual who is a victim of domestic abuse or spousal abandonment, and his or her dependents, as described in 45 CFR 155.420(a)(2), have met “exceptional circumstances” qualifying them for a special enrollment period under 45 CFR 155.420(d)(9).

In 2014, CMS provided a special enrollment period for spouses who were victims of domestic abuse and their dependents from March 31 to May 30 of that year. Beginning on the date of this guidance, CMS will provide this special enrollment period permanently and broaden its eligibility to include any member of a household who is a victim of domestic abuse, including unmarried and dependent victims within the household, as well as victims of spousal abandonment, including their dependents. Accordingly, the special enrollment period will be available for 60 days following the individual’s request, during which an eligible individual who is a victim of domestic abuse or spousal abandonment may apply for and enroll in current year coverage for him or herself and his or her dependents through the Federally-facilitated Marketplace. State-based Marketplaces similarly may determine such an individual and his or her dependents eligible for a 60-day special enrollment period.

¹ Also referred to as survivors of domestic violence. Per 26 CFR §1.36B-2T(b)(2)(iii), domestic abuse includes physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim’s ability to reason independently. All the facts and circumstances are considered in determining whether an individual is abused, including the effects of alcohol or drug abuse by the victim’s spouse. Depending on the facts and circumstances, abuse of the victim’s child or other family member living in the household may constitute abuse of the victim. For the purposes of qualifying for this special enrollment period, victims of domestic abuse include unmarried and dependent victims within a household.

² Per 26 CFR §1.36B-2T(b)(2)(iv), a taxpayer is a victim of spousal abandonment for a taxable year if, taking into account all facts and circumstances, the taxpayer is unable to locate his or her spouse after reasonable diligence.

Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions

Victims of domestic abuse or spousal abandonment, who are married to their abuser or abandoner and are applying for coverage separately, may be determined eligible for advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs).

Marketplaces can elect to permit victims of domestic abuse or spousal abandonment who are married to their abuser or abandoner to either attest to an expected filing status of Married Filing Separately or to indicate on the application that they are unmarried without fear of penalty for misreporting marital status, and be determined eligible for APTC and CSRs on that basis. The Federally-facilitated Marketplace will take the latter approach.

We note that to the extent that a consumer's marital situation (including intent to file a joint return) changes after initial application, regulations at 45 CFR 155.330(b) requires him or her to report such changes to the Marketplace within 30 days.

Furthermore, the Internal Revenue Service has clarified that certain victims of domestic abuse and spousal abandonment can claim the premium tax credit on their federal income tax return using the Married Filing Separately filing status.³

³ Treasury Notice 2014-23.