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**Date:** January 31, 2014

**Subject:** Frequently Asked Questions on the Bulletin Entitled *The Sale of Individual Market Policies to Medicare Beneficiaries Under 65 Losing Coverage Due to High Risk Pool Closures*

CMS is working with states in which Medicare beneficiaries are losing supplemental high risk pool coverage to ensure the best possible outcome for the affected beneficiaries. While a non-enforcement policy<sup>1</sup> allows these affected beneficiaries to purchase individual market plans without the imposition of penalties on issuers that would otherwise apply to such purchases, CMS does not have the authority to require issuers to sell policies under such circumstances. This option has been designed as an interim fix to give states time to put in place the necessary state legislation to require Medigap insurers to offer policies to this population, which CMS believes is the best possible outcome for beneficiaries. CMS does not have the authority to require guaranteed issue rights into Medigap for this population.

Additionally, CMS will provide a Special Enrollment Period (SEP) allowing for enrollment into a Medicare Advantage (MA) plan for affected beneficiaries who do not have end stage renal disease (ESRD) and are otherwise eligible to enroll in an MA plan, and CMS will explore with each state the specific options that may be available to affected beneficiaries in their state.

Below are Frequently Asked Questions (FAQs) on the non-enforcement policy. For issuers with specific questions about the impact of high risk pool closures, contact the state in which you offer coverage. For states that do not intend to provide guarantee issue rights into Medigap for the affected population, please contact your state officer at CMS's Center for Consumer Information and Insurance Oversight (CCIIO) no later than 90 days prior to your planned high risk pool closure. The CCIIO state officer can help coordinate state discussions with CMS staff.

**Q1: May an issuer request documentation from an applicant or enrollee to establish that the individual falls within the scope of this bulletin?**

**A1:** Yes. For individuals who identify themselves as Medicare beneficiaries who come within the scope of this bulletin, an issuer may ask for documentation showing that he or she was enrolled in the state's high risk pool as of the last day he or she was able to be enrolled in the high risk pool. Examples of documentation include: (1) a copy of the high risk pool plan identification card; (2) an explanation of benefits; or (3) a letter from CMS or the state high risk pool to the individual stating that he or she is losing high risk pool coverage. In addition, it is possible that some states' high risk pools or insurance departments may be able to verify a person's prior high risk pool enrollment with an issuer directly.

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<sup>1</sup> This CMS bulletin can be found at: <http://cms.hhs.gov/Medicare/Health-Plans/Medigap/Downloads/Sale-of-Individual-Market-Policies-to-Certain-Medicare-Beneficiaries.pdf>.

**Q2: When can Medicare beneficiaries enroll in individual market plans pursuant to the bulletin?**

**A2:** A Medicare beneficiary who falls within the scope of this bulletin will have a 60-day SEP, measured from the date the individual or dependent loses eligibility for high risk pool coverage, to enroll in an individual market plan under 45 CFR 147.104(b)(2) and 155.420(d)(1), which provide a SEP for loss of minimum essential coverage. CMS expects issuers selling coverage to such individuals to accept applications sufficiently in advance of applicants' loss of high risk pool coverage to ensure they do not experience a gap in supplemental coverage.

Under 45 CFR 156.602, state high risk pools are designated as minimum essential coverage for policy years beginning on or before December 31, 2014. With respect to state high risk pool coverage beginning after December 31, 2014, a state will need to apply to CMS to have the high risk pool coverage be recognized as minimum essential coverage under 45 CFR 156.604.

**Q3: When can Medicare beneficiaries enroll in Medicare Advantage or Prescription Drug plans?**

**A3:** Affected beneficiaries who do not have ESRD and are otherwise eligible to enroll in an MA plan will also have a SEP to enroll in a Medicare Advantage plan. This SEP begins two months prior to the loss of high risk pool coverage and ends two months after.

**Q4: Can these Medicare beneficiaries who enroll in individual market plans pursuant to the bulletin receive a tax credit under Code section 36B?**

**A4:** No. These beneficiaries cannot receive a tax credit under Code section 36B because they also are enrolled in Medicare Part A.

**Q5: How will coordination of benefits occur between Medicare and the individual market plan issuer in these circumstances?**

**A5:** Medicare will be the primary payer and the individual market issuer will be the secondary payer. The individual market issuer can accept claims billed via the Medicare crossover process, to the extent there are co-insurance balances remaining.

**Q6: Are issuers required to sell individual market coverage to Medicare beneficiaries in this specific circumstance?**

**A6:** No. While the bulletin allows issuers to sell individual market coverage to Medicare beneficiaries in these circumstances, CMS does not have the authority to require such sales, because the statute still provides that doing so is "unlawful."

**Additional information**

If you have any questions regarding these FAQs, you may contact the CMS Health Insurance Hotline at 877-267-2323 x6-1565 or [phig@cms.hhs.gov](mailto:phig@cms.hhs.gov).