

# Serving Special Populations: Incarcerated and Recently Released Consumers<sup>1</sup> Facts for Agents and Brokers

## Incarceration and Health Coverage: Overview

The Affordable Care Act expands access to coverage and services that consumers released from incarceration may need. This fact sheet will help you assist incarcerated or recently released consumers and their families.

The rules related to coverage of incarcerated consumers through the Health Insurance Marketplace (Marketplace)<sup>2</sup> are different from the rules that apply to Medicaid or Medicare, and it is important that you understand those differences. The same rules apply to incarcerated juveniles; however, juveniles cannot be determined eligible for the Children's Health Insurance Program (CHIP) while incarcerated.

## Marketplace Coverage

The type of contact consumers have with the criminal justice system determines the type of health coverage they are eligible to receive. The Affordable Care Act states that consumers are not eligible to enroll in a qualified health plan (QHP) through the Health Insurance Marketplace if they are incarcerated, unless they are pending the disposition of charges. For the purpose of determining eligibility, it is important to note the definition of incarceration used by the

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<sup>1</sup> The information provided in this document is intended only to be a general informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, or formal policy guidance that it is based upon. This document summarizes current policy and operations as of the date it was presented. We encourage readers to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information.

<sup>2</sup> Health Insurance Marketplace<sup>SM</sup> and Marketplace<sup>SM</sup> are service marks of the United States Department of Health & Human Services. When used in this document, the term "Health Insurance Marketplace" or "Marketplace" refers to Federally-facilitated Marketplaces (FFMs), including FFMs where states perform plan management functions and State-based Marketplaces on the Federal Platform (SBM-FPs).

Marketplace. In the following three situations, consumers are not considered incarcerated and are still eligible to enroll or continue existing enrollment in Marketplace coverage:

## Marketplace Considers Not Incarcerated

- **Pre-conviction**

This includes consumers who are arrested but not convicted of a crime and consumers who are convicted of a crime pending disposition of charges (i.e., awaiting sentencing), whether confined to a correctional institution, or released on bail, bond, or other conditional release.

Consumers pending disposition of charges can enroll in or continue existing enrollment in a QHP through the Marketplace. However, once convicted and incarcerated, consumers are no longer eligible for Marketplace coverage and should end their existing Marketplace coverage.

- **Probation or Parole**

Consumers who are on probation or parole are not considered incarcerated and may be eligible to enroll or continue existing enrollment in a QHP through the Marketplace. If consumers' probation or parole is revoked, they are no longer eligible to enroll in a QHP through a Marketplace, and if already enrolled, they should end their existing coverage.

- **Post-conviction—Under Limited Supervision or Confinement**

Consumers who have been convicted of a crime and are sentenced to a partial, limited, or alternative form of confinement are not considered incarcerated and may be eligible to enroll in a QHP through the Marketplace if no government entity is required to provide the individual with medical care. Below are examples of what the Marketplace considers limited supervision or confinement:

- Serving a sentence but allowed work release
- Under house arrest or home confinement
- Residing in a halfway house or other similar type of residential community supervision as a result of conviction

## Marketplace Considers Incarcerated

- **Post-conviction—Serving Sentence in Jail or Prison**

For purposes of Marketplace eligibility determination, consumers are considered incarcerated once they are in the custody of a penal authority and confined to a correctional facility, such as a jail, prison, or a mental health institution as a result of a conviction of criminal offense. **Incarcerated consumers are not eligible to enroll or continue enrollment in a QHP through the Marketplace.** Incarcerated consumers who are already enrolled should end their existing Marketplace coverage. Instructions for

ending Marketplace coverage are available at <https://www.healthcare.gov/how-to-cancel-a-marketplace-plan/>.

Incarcerated consumers are exempt from paying the individual shared responsibility payment while serving a sentence. If an incarcerated consumer does not expect to be included in his or her household's tax return and has an income that is below the tax filing threshold, the incarcerated consumer will automatically be exempt from the individual shared responsibility provision for that year and does not need to take any further action to secure an exemption. If the incarcerated consumer is included in the tax household, the tax filer for that household must claim the exemption for the incarcerated consumer when submitting a federal income tax return for that year to avoid having to pay the individual responsibility payment for the incarcerated household member.

After they are released, formerly incarcerated consumers must have minimum essential health care coverage, pay the individual shared responsibility payment, or qualify for another exemption. Consumers released from incarceration have up to 60 days from the date of their release to qualify for a special enrollment period (SEP) and enroll in coverage. After an incarcerated consumer is released, his or her household should report a change in incarceration status, income, or other changes to the Marketplace as soon as possible, within 30 days.

Consumers can find more information about their qualification for an SEP following release from incarceration by visiting [www.healthcare.gov/screener](http://www.healthcare.gov/screener) or calling the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325). Consumers can start a new Marketplace application or update an existing application if they had a Marketplace plan earlier in the year or want to be added to a Marketplace application for other family members already enrolled in Marketplace coverage.

You can help consumers released from incarceration update an application in the following two ways; however, if they are joining their family's plan, they may need authorization from the family member who opened the Marketplace account to make changes.

1. Online: consumers can log in to their Marketplace account on [HealthCare.gov](http://HealthCare.gov), select an existing application, choose "Report a life change" from the menu on the left, and then click on the "Report a life change" button.
2. By phone: consumers can contact the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325).

Detailed instructions on reporting a change are available at [www.healthcare.gov/reporting-changes/why-report-changes](http://www.healthcare.gov/reporting-changes/why-report-changes).

## Marketplace Coverage and Household Members of Incarcerated Consumers

Incarcerated consumers are exempt from the individual shared responsibility payment. However, consumers who have an incarcerated individual in their household must determine whether to include the incarcerated individual on Marketplace applications as a non-applicant.

*Should household members include an incarcerated consumer on the Marketplace application?*<sup>3</sup>

Yes, as a non-applicant	No
<p>If an incarcerated consumer expects to be included in a household's tax return for the year the household is applying for coverage, include the consumer as a non-applicant (e.g., if consumer is sentenced to six months in prison or jail and expects to return to work after release).</p> <p><i>The incarcerated consumer will be denied Marketplace coverage. The rest of the family can continue to enroll in coverage, if eligible.</i></p>	<p>If an incarcerated consumer does not expect to be included in a household's tax return for the year the household is applying for coverage, do not include the consumer (e.g., if the consumer is sentenced to several years in prison).</p>

A member of an incarcerated person's household should terminate any existing Marketplace coverage for that individual as soon as possible after he or she becomes incarcerated, within 30<sup>4</sup> days unless the individual is pending disposition of charges<sup>5</sup> (pre-conviction). The Marketplace does not terminate coverage for incarcerated consumers automatically, so they are responsible for monthly premiums until their Marketplace coverage is terminated.

If the incarcerated consumer has difficulty contacting the Marketplace Call Center or visiting [HealthCare.gov](https://www.healthcare.gov), changes can also be reported through the Marketplace Call Center by:

- An adult age 18 or over who is on the application and applied for Marketplace coverage; or
- An adult age 18 or over listed as a tax filer on the incarcerated consumer's application for Marketplace coverage, even if the tax filer did not apply for coverage.

If neither the incarcerated individual nor any adult on the application is able to contact the Marketplace to report a change and end enrollment through the Marketplace, then an individual

<sup>3</sup> For more information on whom consumers should include in their household on a Marketplace application, visit <https://www.healthcare.gov/income-and-household-information/household-size>.

<sup>4</sup> The change should still be reported even if more than 30 days has passed.

<sup>5</sup> The household does not need to report when a member is incarcerated pending disposition of charges because that household member remains eligible for Marketplace coverage.

authorized to contact the Marketplace on the incarcerated individual's behalf can call the Marketplace Call Center. As a registered agent or broker with a Marketplace, you are able to provide assistance with reporting a change in eligibility. Additionally, individuals can seek help from a Navigator, a certified application counselor (CAC), non-Navigator assistance personnel, or a correctional facility representative.

Incarcerated consumers may continue their enrollment in private health insurance coverage outside the Marketplace through the individual, or non-group, market.

## Scenario

Samantha is 26 years old and is seeking advice on obtaining Marketplace coverage for her mother, Jean, who is currently incarcerated but scheduled to be released in four months. Samantha is aware that her mother will be required to have health coverage to avoid paying the individual shared responsibility payment once she is released from jail.

*What advice would you give Samantha to help Jean apply for Marketplace coverage?*

- Inform Samantha that Jean is exempt from paying the individual shared responsibility payment while serving her sentence. Once released, Jean has up to 60 days from the date of her release to qualify for an SEP and enroll in coverage through the Marketplace.

While incarcerated, Jean can use the Marketplace to apply for Medicaid coverage in her state. Federal Medicaid payment will be limited to certain inpatient services in a medical institution while she is incarcerated. However, if Jean submits an application while incarcerated and is found eligible, she may have timely access to the full array of Medicaid-covered services upon release. If Jean is found not to be eligible for Medicaid, she will have a 60-day SEP to enroll in Marketplace coverage, if otherwise eligible.

*How would you explain to Jean or Jean's household how to claim the exemption from the individual shared responsibility payment for incarcerated consumers?*

- Because Jean is currently incarcerated, Jean or a tax filer in her household on her behalf can claim an exemption from the individual shared responsibility payment for each month in which she is incarcerated for at least one day. She can claim this exemption when she files her federal income taxes.<sup>6</sup> Once Jean is released, she must have minimum essential coverage, be eligible for another exemption, or be subject to the individual shared responsibility payment.

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<sup>6</sup> For more information on how to claim an exemption due to incarceration, go to <https://www.healthcare.gov/exemptions-tool/#/results/2016/details/incarceration>.