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**Date:** April 9, 2018

**From:** Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services (CMS)

**Subject:** Guidance on Hardship Exemptions from the Individual Shared Responsibility Provision for Persons Experiencing Limited Issuer Options or Other Circumstances

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This guidance describes examples of circumstances that fall under the Federally-facilitated Exchange's (FFE's) hardship exemption policy that will address people facing limited issuer options or other circumstances preventing them from purchasing health insurance. Specifically, this guidance describes circumstances that will support a hardship exemption for people who:

- (1) Live in a county, borough, or parish in which no qualified health plan (QHP) is offered through the FFE;
- (2) Live in a county, borough, or parish in which there is only one issuer offering coverage through the FFE and can show that the resulting lack of choice has precluded them from obtaining coverage under a QHP;
- (3) Have a hardship obtaining coverage because all affordable plans offered through the FFE in the person's county, borough, or parish provide coverage of abortion, contrary to one's beliefs, and the absence of any affordable plan without such coverage causes a hardship in obtaining health insurance; or
- (4) Experience personal circumstances that create a hardship in obtaining health insurance coverage under a QHP, such as when a person needs specialty care by a specialist physician but the affordable plans offered through the FFE in the person's county, borough, or parish do not provide access to such specialty care.

This guidance document expands upon prior guidance documents issued on the FFE's hardship exemption policy by offering new examples of hardships that people may encounter this year or in future years.<sup>1</sup> This guidance does not alter current CMS regulations and does not create any new substantive requirements for people seeking a hardship exemption. The Department of Health and Human Services (HHS) will continue to process exemptions under current

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<sup>1</sup> Under tax reform legislation that was enacted on December 22, 2017 (Pub. L. 115-97, 131 Stat. 2054), the individual shared responsibility payment is reduced to \$0, effective for months beginning after December 31, 2018. However, individuals may still have a need to seek certain exemptions under 26 U.S.C. § 5000A, such as to gain eligibility for catastrophic coverage after 2018.

regulations and in accordance with this guidance, for the FFE and all State Based Exchanges (SBEs) that choose to have exemptions processed through the FFE, which currently includes all SBEs except Connecticut.

## **Background**

The FFE grants hardship exemptions under 26 U.S.C. §5000A(e)(5) (as added by section 1501(b) of the Patient Protection and Affordable Care Act), which provides the Secretary of HHS authority to determine eligibility for an exemption from the individual shared responsibility provision for a person who has “suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.” Under 45 CFR §155.605(d)(1), a person is eligible for a hardship exemption “for at least the month before, the month or months during which, and the month after a specific event or circumstance, if the Exchange determines that:

- (i) He or she experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan;
- (ii) The expense of purchasing a qualified health plan would have caused him or her to experience serious deprivation of food, shelter, clothing or other necessities; or
- (iii) He or she has experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.”

To be exempt from the individual shared responsibility provision due to hardship, people must submit a hardship exemption application to the FFE with a brief explanation justifying the exemption (category 14). When available, the person should provide documentation to support the claim of hardship and to show that the hardship occurred within the current calendar year or up to two calendar years prior. The hardship exemption form is available online at <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>.

## **Examples of Hardship Exemptions**

### **1. People in Bare Counties, Boroughs, or Parishes**

In future plan years, it is possible that a county, borough, or parish may not have a QHP offered through the FFE. CMS will grant a hardship exemption under 45 CFR §155.605(d)(1)(iii) such that a person will receive an exemption from the individual shared responsibility provision for one plan year (plus the month before and after the plan year) when he or she applies for coverage through an FFE and no QHPs are offered in his or her county, parish, or borough.

To apply for this hardship exemption, people should complete the FFE application for health coverage so that the FFE can verify that they live in a county, parish, or borough with no available QHP.

## **2. People in Single Issuer Counties, Boroughs, or Parishes**

In accordance with 45 CFR §155.605(d)(1)(iii), the FFE may grant a hardship exemption when a person lives in a county, borough, or parish in which there is only one issuer offering coverage through the FFE for the current year and the person can show that the resulting lack of choice has precluded him or her from obtaining coverage under a QHP. This exemption would apply for one plan year (plus the month before and after the plan year) if only one issuer in a county, borough, or parish offers coverage through a QHP and if this circumstance renders a person incapable of obtaining the coverage. The FFE will relax the documentary support requirements where documentary evidence is not readily available, and, in such circumstances, a written explanation will be accepted.

To apply for this hardship exemption, people experiencing circumstances that make it a hardship to obtain coverage must complete a hardship exemption application, selecting “Hardship 14 – You experienced another hardship” in Section 2, and provide a brief explanation of how the lack of choice resulting from the FFE having only one issuer has prevented him or her from obtaining coverage under a QHP, along with documentation, when available, to show that this hardship occurred within the current calendar year or up to two calendar years prior.

## **3. People in Counties, Boroughs, or Parishes Where All Plans Include Abortion as a Benefit**

A person may qualify for an exemption in accordance with 45 CFR §155.605(d)(1)(iii) if all affordable plans offered through the FFE in the person’s county, borough, or parish provide coverage of abortions, contrary to one’s beliefs, and the absence of any affordable plan without such coverage causes a hardship in obtaining health insurance.<sup>2</sup>

To apply for this hardship exemption, people experiencing circumstances that make it a hardship to obtain coverage must complete a hardship exemption application, selecting “Hardship 14 – You experienced another hardship” in Section 2, and provide a brief explanation of how the circumstances giving rise to the hardship prevented him or her from obtaining coverage under a QHP, along with documentation, when applicable, to show that this hardship occurred within the current calendar year or up to two calendar years prior.

## **4. People in “Other” Hardship Circumstances**

A person who experiences “other circumstances that prevented him or her from obtaining coverage under a qualified health plan” in accordance with 45 CFR §155.605(d)(1)(iii) may obtain a hardship exemption for personal circumstances that cause a hardship in obtaining health

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<sup>2</sup> Whether a plan is affordable is determined in accordance with standards under 45 CFR §155.605(d)(2).

insurance, such as increased out-of-pocket costs because a person requires specialized care by a specialist physician, but the affordable<sup>3</sup> plans offered through the FFE in the person's county, borough, or parish do not provide access to such specialty care. The FFE will relax the documentary support requirements where documentary evidence is not readily available, and, in such circumstances, a written explanation will be accepted.

To apply for this hardship exemption, people experiencing circumstances that make it a hardship to obtain coverage must complete a hardship exemption application, selecting "Hardship 14 – You experienced another hardship" in Section 2, and provide a brief explanation of how the circumstances giving rise to the hardship prevented him or her from obtaining coverage, along with documentation, when available, to show that this hardship occurred within the current calendar year or up to two calendar years prior.

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<sup>3</sup> Ibid.