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Date: September 12, 2018

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

Subject: Guidance on Claiming a Hardship Exemption through the Internal Revenue Service (IRS)

This guidance provides information about claiming a hardship exemption from the individual shared responsibility payment for 2018 on a federal income tax return without obtaining an exemption certificate number (ECN) from the Exchange.

#### **A. Background**

Hardship exemptions are authorized under 26 U.S.C. §5000A(e)(5) (as added by section 1501(b) of the Patient Protection and Affordable Care Act), which provides that the Secretary of the Department of Health and Human Services (HHS) may determine persons who have “suffered a hardship with respect to the capability to obtain coverage under a qualified health plan” eligible for an exemption from the individual shared responsibility payment. The Federally-facilitated Exchange (FFE) processes applications for hardship exemptions in accordance with 45 CFR §155.605(d).

Under 45 CFR §155.605(d)(1), a person is eligible for a hardship exemption for at least the month before, the month(s) during, and the month after the specific event or circumstance that creates the hardship, 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.

#### **B. Claiming a Hardship Exemption on a Federal Income Tax Return**

Certain categories of hardship exemptions already may be claimed on a federal income tax return without obtaining an ECN from an Exchange, pursuant to §155.605(e). This guidance makes no changes to these categories of hardship exemptions, which include exemptions available to persons with income below the tax filing threshold; family members whose combined cost of self-only coverage is considered unaffordable; persons who are eligible for services through an Indian health care provider; and persons ineligible for Medicaid based on a State's decision not to expand.

To provide additional flexibility for those in need of a hardship exemption for 2018, CMS is announcing that consumers may claim all hardship exemptions available under §155.605(d)(1) either by obtaining an ECN through the FFE using the existing application process, or on a federal income tax return without presenting the documentary evidence or written explanation generally required for hardship exemptions. Consumers should keep with their other tax records any documentation that demonstrates qualification for the hardship exemption. A description of the hardship exemptions available under §155.605(d)(1) that CMS intends to add to the list of exemptions currently described in §155.605(e) can be found here:

<https://www.healthcare.gov/health-coverage-exemptions/hardship-exemptions/>.<sup>1</sup>

This change would apply to 2018 only; thus consumers will only be able to claim the hardship exemptions under §155.605(d)(1) on a federal income tax return for tax year 2018. For more information on claiming a hardship exemption when filing a tax return for 2018, please visit <https://www.irs.gov/affordable-care-act/individuals-and-families/aca-individual-shared-responsibility-provision-exemptions>.

For all eligible years, consumers can still apply for hardship exemptions available under §155.605(d)(1) through the FFE. HHS will continue to process these exemptions under the current regulations for exemptions applied for through the FFE and for all State-based Exchanges (SBEs) that choose to have exemptions processed by HHS, which currently includes all SBEs except Connecticut. The form to apply for a hardship exemption through the FFE is available online at <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>.

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<sup>1</sup> In addition, CMS recently announced several new categories of hardship exemptions under 45 CFR 155.605(d)(1): <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2018-Hardship-Exemption-Guidance.pdf>.