

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information & Insurance Oversight  
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**Date:** June 26, 2013

**From:** Gary Cohen, CMS Deputy Administrator and Director  
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**Subject:** Guidance on Hardship Exemption Criteria and Special Enrollment Periods

**Purpose and Scope:**

In the final regulation titled, “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions”, and published on June 26, 2013, (“Exemptions/MEC final rule”), the Department of Health and Human Services (HHS) finalized provisions concerning how Marketplaces (also known as “Exchanges”) will determine eligibility for and grant certificates of exemption from the individual shared responsibility payment described in section 5000A of the Internal Revenue Code.

We noted in the Exemptions/MEC final rule that we would provide further guidance regarding criteria that Federally-facilitated Marketplaces will use for the hardship exemption described at 45 CFR 155.605(g)(1). While State-based Marketplaces may use these criteria, they have the flexibility to develop their own as long as the criteria meet the requirements of the final regulation. We also specified that we would address an individual’s ability to enroll in a qualified health plan (QHP) during a special enrollment period in situations in which he or she loses eligibility for an exemption within a coverage year. This guidance is intended to describe the circumstances that Marketplaces may use in determining what constitutes a hardship if they prevent an individual from obtaining coverage under a QHP. It also specifies situations for Marketplaces to consider in determining whether an individual experienced exceptional circumstances that provide eligibility for a special enrollment period.

**Hardship**

In the Exemptions/MEC final rule, HHS specified at 45 CFR 155.605(g)(1) that a Marketplace must grant a hardship exemption to an applicant if the Marketplace determines that:

1. 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;
2. 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;

3. He or she experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.

We clarify that Marketplaces may consider the following circumstances in determining what constitutes a hardship under 45 CFR 155.605(g)(1) if they prevent an individual from obtaining coverage under a QHP, which include an individual who--

- becomes homeless;
- has been evicted in the past six months, or is facing eviction or foreclosure;
- has received a shut-off notice from a utility company;
- recently experienced domestic violence;
- recently experienced the death of a close family member;
- recently experienced a fire, flood, or other natural or human-caused disaster that resulted in substantial damage to the individual's property;
- filed for bankruptcy in the last 6 months;
- incurred unreimbursed medical expenses in the last 24 months that resulted in substantial debt;
- experienced unexpected increases in essential expenses due to caring for an ill, disabled, or aging family member;
- is a child who has been determined ineligible for Medicaid and CHIP, and for whom a party other than the party who expects to claim him or her as a tax dependent is required by court order to provide medical support. We note that this exemption should only be provided for the months during which the medical support order is in effect; or
- as a result of an eligibility appeals decision, is determined eligible for enrollment in a QHP through the Marketplace, advance payments of the premium tax credit, or cost-sharing reductions for a period of time during which he or she was not enrolled in a QHP through the Marketplace, noting that this exemption should only be provided for the period of time affected by the appeals decision.

### **Special Enrollment Periods**

In the proposed regulation titled, "Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing; Proposed Rule" (78 FR 4647), and published on January 22, 2013, 45 CFR 155.420(d)(9) proposes a special enrollment period when:

- The 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, HHS provides the following guidelines for Marketplaces to use in determining whether an individual meets such exceptional circumstances and is thus entitled to receive a special enrollment period:

1. If an individual receives a certificate of exemption from the Marketplace based on the eligibility standards described in 45 CFR 155.605(g)(1) for a month or months during the coverage year, and based on the circumstances of the hardship attested to, he or she is no longer eligible for a

hardship exemption within a coverage year but outside of an open enrollment period described in 45 CFR 155.410, the Marketplace will determine the individual and his or her dependents, as proposed in 45 CFR 155.420(a)(2), eligible for a special enrollment period if otherwise eligible for enrollment in a QHP; and

2. If an individual with a certificate of exemption reports a change with respect to the eligibility standards for an exemption as required under 45 CFR 155.620(b), and the Marketplace implements a change resulting from a redetermination, the certificate provided for the month in which the redetermination occurs, and for prior months, remains effective. If the Marketplace notifies the individual that he or she is no longer eligible for an exemption, the Marketplace will determine the individual and his or her dependents, as proposed in 45 CFR 155.420(a)(2), eligible for a special enrollment period if otherwise eligible for enrollment in a QHP.

We appreciate the ongoing partnership with State-based Marketplaces to ensure the effective implementation of the Affordable Care Act. We will update State-based Marketplaces with any additional guidance regarding the hardship exemption and special enrollment periods. Please feel free to contact your CCIIO State Officer with any questions regarding this guidance.