



Date: March 14, 2014

Subject: CMS Bulletin to Marketplaces on Availability of Retroactive Advance Payments of the Premium Tax Credit and Cost Sharing Reductions in 2014 Due to Exceptional Circumstances, and Related SHOP Issues - Frequently-Asked Questions (FAQs)

Clarifications to CMS' February 27, 2014 Bulletin to Marketplaces on Availability of Retroactive Advance Payments of the Premium Tax Credit (PTC) and Cost-sharing Reductions (CSRs) in 2014 Due to Exceptional Circumstances¹

1. Does the February 27th bulletin apply to all Marketplaces or only State-based Marketplaces?

While the concepts discussed in the February 27th bulletin apply to all individual market Marketplaces, the primary audiences for this guidance are State-based Marketplaces (SBMs) which, due to significant technical issues, have had difficulty in providing timely eligibility determinations to individuals wishing to enroll in Qualified Health Plan (QHP) coverage through the Marketplace during open enrollment. The Federally-facilitated Marketplace (FFM) has already established a process for individuals that have experienced these types of exceptional circumstances while attempting to enroll in an FFM QHP. Guidance to issuers offering plans in the FFM on this process was included in a set of bulletins published by CMS on February 6, 2014². The February 6th bulletins provided detail on Enrollment and Termination Policies and Processes for the FFM and State Partnership Marketplace (SPM) Issuers. The February 27th bulletin does not apply to Small Business Health Options Programs (SHOPs).

¹ Posted February 27, 2014 at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/retroactive-advance-payments-ptc-csrs-02-27-14.pdf>

² CMS Bulletins on Enrollment and Termination Policies and Processes for FFM and SPM Issuers, posted on February 6, 2014, include the following: Bulletin #2: Functionality for Consumer-Initiated Application and Enrollment Changes; Bulletin #3: Special Enrollment Periods Effective Dates and Processes; Bulletin #4: Enrollee-Initiated Terminations; Bulletin #5: Flexibility During the Initial Open Enrollment Period to Change Plans by the Same Issuer at the Same Metal Level; Bulletin #6: Clarifications of the Instructions Presented in the December 12, 2013 Interim Final Rule and Bulletin #001

2. Are State-based Marketplaces required to implement the options discussed in the February 27th bulletin?

No, SBMs are not required to implement either of the options discussed in the February 27th bulletin. SBMs that, due to technical difficulties, have not been able to provide a timely eligibility determination or enrollment in a Qualified Health Plan (QHP) to individuals during open enrollment, have the option to establish retroactive coverage effective dates in either, or both, of the consumer coverage scenarios discussed in the bulletin. If an SBM chooses to establish retroactive coverage effective dates in either, or both, consumer situations, CMS will make advance payments of the premium tax credit (PTC) and cost sharing reductions (CSRs), as applicable, to the Marketplace QHP issuer on a retroactive basis based on the coverage effective date established by the Marketplace. As described in the bulletin, the QHP issuer will also be required to adjudicate or re-adjudicate, as applicable, the enrollee's claims incurred during the retroactive period, and refund or credit to the enrollee any excess cost sharing or premium paid, and ensure the provision of refunds or credits of any excess payments made by or for the enrollee for covered benefits and services incurred during the retroactive coverage period.

In electing to implement any of these options, a Marketplace must ensure it does not discriminate among issuers participating in the Marketplace, and is consistent in its treatment of issuers when applying effective date rules. The Marketplace must also treat enrollees in similar circumstances in a consistent manner and comply with 45 CFR 155.120(c) and 45 CFR 155.205(c).

3. Is the February 27th bulletin intended to apply to specific State-based Marketplaces, and if so, which?

While some SBMs have experienced relatively more difficulty than other SBMs in providing timely eligibility determinations and/or enrollments into QHPs, this guidance is applicable to all SBMs. Each SBM should consider the extent to which it has experienced (or is experiencing) technical difficulties that prevent timely eligibility determinations and/or QHP enrollments by the SBM, and the nature of those technical difficulties. Each SBM must determine the extent to which the bulletin applies to its specific situation and, if applicable, how it wishes to implement retroactive coverage effective dates for the situations discussed in the bulletin. CMS does not intend to establish a formal process whereby SBMs request CMS approval to implement these options. CMS will work closely with, and provide consultation to, SBMs as they assess their individual situations and scope of their technical difficulties, and as they make determinations on how they intend to implement these options should they choose to do so.

4. When is the last date that a State-based Marketplace may retroactively enroll an individual in the Marketplace under the February 27th bulletin?

Should an SBM elect to establish retroactive coverage effective dates for individuals in the exceptional circumstances discussed in the bulletin, the SBM must act no later than the last day

prior to the start of the open enrollment period for plan year 2015 to establish retroactive coverage effective dates. It is CMS' expectation that the technical difficulties that prevent an SBM from providing a timely eligibility determination or enrollment into a QHP in the Marketplace in coverage year 2014 will be corrected by the time of the open enrollment period for coverage year 2015. Thus, an SBM must establish retroactive coverage effective dates for individuals in these exceptional circumstances by November 14, 2014. CMS will make advance payments of the premium tax credit (PTC) and cost sharing reductions (CSRs), as applicable, to the Marketplace QHP issuer on a retroactive basis based on the coverage effective date established by the Marketplace.

5. If the QHP in which the individual was enrolled in outside of the Marketplace was not a silver metal level QHP, would the individual receive retroactive cost-sharing reductions upon being retroactively enrolled in the Marketplace?

If the QHP in which an individual was enrolled in outside of the Marketplace was not a silver metal level QHP, the individual generally cannot receive retroactive cost-sharing reductions upon being retroactively enrolled in the Marketplace. However, special rules apply for eligible Indians.

For non-Indians, if an individual was enrolled in a QHP outside of the Marketplace, and was later determined eligible to have enrolled in that QHP through the Marketplace, retroactive cost-sharing reductions would apply only to the extent a cost-sharing reductions plan variation is available for that QHP. For example a non-Indian with household income at 200 percent of the FPL enrolled in a silver plan outside the Marketplace would be eligible for cost-sharing reductions under the 87 percent silver plan variation. If the QHP in which the individual was enrolled did not offer a cost-sharing reduction plan variation for which the individual was eligible (for example, because the QHP was not a silver metal level plan), retroactive cost-sharing reductions would not be available.

For Indians, 45 CFR 156.420(b) requires a QHP issuer to submit a zero cost sharing plan and limited cost sharing plan variation for each of its health plans (at each level of coverage) an issuer offers, or intends to offer in the individual market on a Marketplace.³ Therefore, an Indian enrolled in a metal-level QHP outside the Marketplace would be eligible for retroactive cost-sharing reductions in a zero cost-sharing plan variation (if the QHP is offered as a zero cost-sharing plan variation) or limited cost-sharing plan variation of the metal-level QHP upon being determined eligible to enroll through the Marketplace in that plan variation.

If an individual was enrolled in a QHP outside of the Marketplace, upon making an eligibility determination for the individual, the Marketplace will need to provide a special enrollment period (SEP) under 45 CFR 155.420(d)(6) or (9) to allow these individuals the opportunity to change QHPs prospectively. An individual determined by the Marketplace to be eligible for cost-sharing reductions may select, pursuant to that SEP, a QHP with a plan variation for which the individual is eligible in order to obtain cost-sharing reductions prospectively.

³ The 2014 HHS Notice of Benefit and Payment Parameters clarifies that a Marketplace is adequately enforcing this requirement if, within a set of standard plans offered by an issuer that differ only by the cost-sharing or premium, it allows an issuer to submit one zero cost sharing plan variation for only the standard plan with the lowest premium within the set. (78 FR 15511)

6. Can an individual who enrolls outside of the Marketplace in a plan that is similar to a QHP later be determined eligible to have enrolled through the Marketplace?

In order for the Marketplace to deem an individual to have been enrolled in the QHP through the Marketplace retroactively, upon a determination of eligibility for coverage in the Marketplace for that individual, the plan offered outside of the Marketplace in which the individual is enrolled must be identical to the QHP offered through the Marketplace.

Flexibilities for Small Business Health Options Programs

7. Can State-based Small Health Options Programs (SHOPs) allow direct enrollment for 2014 under an approach similar to the one announced for the Federally-facilitated Small Business Health Options Program (FF-SHOP⁴)? Can employers who use direct enrollment to purchase a SHOP QHP in such circumstances access the Small Business Tax Credit, if they are otherwise eligible?

Yes. CMS will consider requests from states that are not yet able to provide for enrollment through their online SHOP portals to utilize the same direct enrollment approach through QHP issuers that the Federally-facilitated SHOP implemented for 2014, as a transitional measure. However, outside of a transition period to a fully functioning online SHOP portal, direct enrollment in SHOP is not permitted.

States taking this option should work with CMS and the Department of the Treasury to ensure that small employers who directly enroll in a state-based SHOP will be able to receive an eligibility determination in order to access the Small Business Health Care Tax Credit, if eligible. States should also make clear to both employers and issuers that enrollment in advance of the SHOP's formal eligibility determination is an option, not a requirement, and that in doing so, an employer could risk losing access to the Small Business Healthcare Tax Credit if the employer is later determined ineligible to participate in the SHOP. State-based SHOPs without a fully functioning online SHOP portal should contact CMS to determine how to establish direct enrollment as a transition policy to ensure eligible small businesses may claim the expanded small business healthcare tax credit for the 2014 tax year. State-based SHOPs should not implement such a policy absent CMS approval.

8. What should issuers tell small employers about direct enrollment in SHOP?

In a state using SHOP direct enrollment during a transition period, small employers who wish to claim a Small Business Health Care Tax Credit will enroll in SHOP qualified health plans directly with SHOP issuers or by working with their agent or broker. SHOP health insurance issuers in a state where SHOP direct enrollment is permitted during a transition period can assist small employers in

⁴ Information and guidance on direct enrollment in the Federally-facilitated SHOP can be found at: <http://www.hhs.gov/healthcare/facts/blog/2013/11/direct-new-path-to-shop-marketplace.html>; and <http://marketplace.cms.gov/getofficialresources/publications-and-articles/faqs-on-shop-enrollment.pdf>

accessing the Small Business Health Care Tax Credit by making it clear which qualified health plan offerings are available through SHOP and providing information to inform small employers who enroll in SHOP qualified health plans of the next steps to access the tax credit. For additional information, please visit: <https://www.healthcare.gov/will-i-qualify-for-small-business-health-care-tax-credits/>.