

Marketplace Special Enrollment Period Announced

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On January 28, 2021, in response to the COVID-19 pandemic, President Biden issued an executive order requiring the U.S. Department of Health and Human Services ("HHS") to consider having a mid-year special enrollment period for the federally-facilitated Marketplace ("FFM") to enable uninsured and under-insured consumers to obtain healthcare coverage. As a result, HHS designated February 15 to May 15, 2021, as a special enrollment period for consumers to obtain individual health insurance coverage from the FFM without a qualifying event (such as birth of a child).

The President's executive order also requires federal agencies to review their existing actions for the purpose of protecting and strengthening Medicaid and the Affordable Care Act ("ACA"), and for the purpose of making high-quality healthcare accessible and affordable.

Mid-Year Marketplace Special Enrollment Period

HHS announced that consumers in 36 states served by the FFM have a special enrollment period from February 15 to May 15, 2021 to apply for and enroll in an individual health insurance policy (also called a "qualified health plan") from the FFM. The following rules apply during the mid-year special enrollment period:

- Consumers in any of the 36 states served by the FFM can apply for an individual health insurance policy or plan by accessing the HealthCare.gov platform directly, or by telephoning the FFM's call center, or through direct enrollment channels.
- Consumers are not required to provide documentation of a qualifying event (such as loss of a job or birth of a child), which is typically required to elect coverage during a special enrollment period.
- Consumers have 30 days after they submit their application to choose a plan. Healthcare coverage begins prospectively on the first day of the month after plan selection.
- Current enrollees can change to any available plan in their area without restriction to the same level of coverage as their current plan.

The President's executive order does not apply to the 14 states (which include New York, New Jersey, Pennsylvania and California) and the District of Columbia that have their own state-based Marketplace. However, states with a state-based Marketplace are expected to adopt a similar mid-year special enrollment period. To date, California and New Jersey

have adopted a similar special enrollment period. Each state-based Marketplace may impose different restrictions on the mid-year special enrollment period (for example, regarding whether consumers can switch from one plan to another). Consumers with access to a state-based Marketplace should be advised to contact the Marketplace directly with any questions that they may have.

As a reminder, IRS Notice 2014-55 allows for an optional plan amendment that would permit employees to make a mid-year election under a section 125 cafeteria plan to revoke coverage for the employee and related individuals under a group health plan (other than a health flexible spending arrangement), if the following requirements are met:

1. The employee and related individuals are eligible for a special enrollment period to enroll in an individual health insurance policy or plan from an insurance marketplace; and
2. The employee and related individuals are enrolling in the marketplace plan; and
3. The new coverage from the marketplace constitutes “minimum essential coverage” for purposes of the ACA and is effective beginning no later than the day immediately following the last day of the group coverage that is being revoked.

According to IRS Notice 2014-55, the employer may rely on the employee’s reasonable representation that the above requirements have been met. Cafeteria plan documents must include this permitted election change provision and carrier approval would be necessary.

Review of Past Agency Actions

The President’s executive order directs all federal agencies to review existing regulations, orders, guidance documents, policies, and any other similar agency actions to determine whether they are inconsistent with the policy of protecting and strengthening Medicaid and the ACA and making high-quality healthcare accessible and affordable. The agencies are also directed to consider – as soon as practicable and appropriate – whether to suspend, revise, or rescind past agency actions that are inconsistent with the above policy.

