

July 14, 2014

CMS Provides Additional Guidance on Coverage Renewal

On June 26, 2014, the Centers for Medicare and Medicaid Services (CMS) released additional information¹ – a proposed regulation and guidance on alternative procedures for plan year 2015 – related to the annual redetermination of eligibility, renewal and re-enrollment in consumers' Marketplace coverage. Existing regulations outline a process for consumers who are enrolled and remain eligible to be re-enrolled in Marketplace coverage for the next plan year without submitting new applications or taking further action. The new proposed regulation and associated guidance expands on this process, provides new flexibility to Marketplaces by creating two new alternative approaches for annual eligibility redeterminations, and adds guidelines for re-enrolling consumers in coverage. CMS additionally released federal standard issuer notices² and implementation instructions³ for the renewal or discontinuance of individual and small group coverage on and off the Marketplace.

The proposed rule is subject to an expedited comment period of 30 days. Comments will be accepted until July 28th. Comments on federal standard issuer notices will be accepted until July 17th.

Additional Options for Conducting Annual Redeterminations

Existing regulations outline the following process for annual redetermination of Marketplace coverage. Marketplaces must:

- Obtain updated tax and MAGI-based income information from data sources and make a preliminary determination of eligibility for any consumer who has been determined eligible for qualified health plan (QHP) enrollment ("qualified individuals") and provided authorization for the Marketplace to access their tax data. This process is for all qualified individuals, not just those are enrolled at the time of annual redetermination ("enrollees");
- Send joint annual renewal and open enrollment notices with a qualified individual's projected eligibility determination between October 1 and November 15, 2014;
- Provide 30 days for the consumer to respond. If the consumer sends updated information, Marketplaces must verify and redetermine eligibility; if not, Marketplaces must redetermine based on the information in the notice; and
- Send an eligibility determination notice to the consumer.

The proposed regulation offers two new alternative options to the procedure above, so that Marketplaces may now choose from three methods for implementing annual redetermination:

¹Proposed rule: <https://federalregister.gov/a/2014-15362>;

Guidance on Annual Redeterminations for 2015: <http://www.CMS.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014-0626-Guidance-on-annual-redet-option-2015-FINAL.pdf>;

² Draft issuer renewal and discontinuance notices: <http://www.CMS.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014-0626-Bulletin-on-Renewal-and-Termination-Notices-FINAL.pdf>

³ Issuer renewal and discontinuance notice instructions: <http://www.CMS.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/0626-2014-Notice-instructions.pdf>

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1. **Current Regulatory Process.** This is the process defined above;
2. **2015 Alternative Process.** Marketplaces may use alternative procedures specified in guidance by CMS for plan year 2015, which CMS indicates it intends to adopt for the Federally facilitated Marketplace (FFM); or,
3. **State Designed Process.** State-based Marketplaces (SBMs) may design their own procedures to be approved by CMS.

The 2015 Alternative Process and the State Designed Process are described in further detail below.

Alternative Procedures Specified by CMS for Plan Year 2015

The alternative procedures for 2015 enable Marketplaces to maintain coverage that is the same as, or closest to, the consumer's coverage in 2014 without requiring the consumer to take any action. If the consumer has provided authorization to review tax data, Marketplaces would conduct a focused review of 2014 tax information (reflecting 2013 tax income). If the 2014 tax information indicates the consumer's income is not significantly over the advance premium tax credit (APTC) eligibility level – above 500% FPL – the Marketplace would continue financial assistance to the consumer at the APTC level s/he elected to receive in 2014, as well as any applicable CSR. An updated eligibility determination will only be triggered if consumers contact the Marketplace to update eligibility information, authorize access to tax data, adjust APTC level or select a new QHP. If the 2014 tax information indicates the consumer's income is above 500% FPL, the Marketplaces will first notify the consumer to take action to renew coverage; and if the consumer fails to act, the Marketplace will discontinue the consumer's APTC and cost-sharing reductions (CSR) for the 2015 coverage year. Under all circumstances APTC will not be re-calculated using 2015 FPL thresholds and 2015 benchmark plan and premium information unless the consumer takes affirmative action to renew.

It is particularly important under this approach that consumers understand they should contact the Marketplace if they have experienced any significant changes in income since their eligibility determination for the 2014 coverage year. If the consumer's income has decreased, s/he would want a re-determination to access a larger APTC, more generous CSR level or a determination or assessment of eligibility for Medicaid or CHIP (and access to even more affordable health coverage). If the consumer's income has increased, s/he would want a re-determination for an accurate representation of his or her available APTC to minimize potential tax liability. Even if the consumer's income has not changed, changes to the cost of the second lowest cost silver plan may impact the amount of assistance for which the consumer is eligible.

CMS requires Marketplaces provide notices to consumers advising of the open enrollment period, the consumer's coverage in 2015 and the opportunity for the consumer to obtain an updated eligibility determination. The new guidance outlines three variations of notices that Marketplaces would send with messaging targeted based on whether the consumer is currently enrolled, is receiving APTC/CSR, has provided a valid tax authorization, and appears to have significant income changes from the prior year or to exceed APTC/CSR eligibility levels.

- **Standard Notice.** Marketplaces would send standard notices to all qualified individuals in 2014. For enrollees receiving APTC/CSR in 2014, both with and without valid tax data authorization, Marketplaces will include additional targeted content.

Audience	Message
All qualified individuals	<ul style="list-style-type: none"> • Description of annual redetermination and annual renewal process • Requirement to report changes and timeframe and channels for reporting • Last day for plan selection for coverage effective January 1, 2015 • Last day for open enrollment (February 15, 2015)
Current QHP enrollees receiving APTC with valid tax data authorization (and not requiring Income-Based Outreach or Special Notices)	<ul style="list-style-type: none"> • Description of reconciliation process • Explanation that APTC amount and CSR level for 2015 will be established at the 2014 level if s/he does not contact the Marketplace for an updated eligibility determination prior to the last day for plan selection for coverage effective January 1, 2015 • Explanation that enrollee should contact Marketplace to obtain most accurate eligibility determination
Current QHP enrollees receiving APTC without valid tax data authorization	<ul style="list-style-type: none"> • Explanation that APTC and CSR will end on December 31, 2015 if s/he does not contact the Marketplace for an updated eligibility determination prior to the last day for plan selection for coverage effective January 1, 2015 • Explanation that Marketplace will renew enrollee coverage for a QHP in 2015 without APTC and CSR

- **Income-based Outreach.** Marketplaces also would send notices to QHP enrollees receiving APTC/CSR in 2014 “for whom taking action to update eligibility information is particularly important due to likely changes in household income since the last eligibility determination.”

Audience	Message
<p>Current QHP enrollees receiving APTC/CSR with valid tax data authorization and:</p> <ul style="list-style-type: none"> • No updated tax information available from IRS • Most recent 2014 Marketplace eligibility determination reflects income > 350% FPL • Updated tax information reflect: <ul style="list-style-type: none"> ○ income > 350% FPL, ○ income change of 50 percent or greater when compared to 	<ul style="list-style-type: none"> • Description of annual redetermination and annual renewal process • Requirement to report changes and timeframe and channels for reporting • Last day for plan selection for coverage effective January 1, 2015 • Last day for open enrollment (February 15, 2015) • Description of reconciliation process • Explanation that APTC amount and CSR level for 2015 will be established at the 2014 level if s/he does not contact the Marketplace for an updated eligibility determination prior to the last day for plan selection for coverage effective January 1, 2015 • Explanation that enrollee should contact Marketplace to obtain most accurate eligibility determination • Explanation that Marketplace strongly encourages the enrollee to contact the Marketplace to obtain an updated eligibility determination.

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Audience	Message
2014 eligibility determination; or <ul style="list-style-type: none"> ○ meet other to-be-determined criteria 	

- **Special Notice.** Finally, Marketplaces would send notices to QHP enrollees receiving APTC/CSR in 2014 with a valid tax data authorization “who are at the highest risk of having 2015 income that would make them ineligible for APTC and CSR.”

Audience	Message
Current QHP enrollees receiving APTC/CSR with valid tax data authorization and whose 2014 tax information reflect income > 500% FPL.	<ul style="list-style-type: none"> • Description of annual redetermination and annual renewal process • Requirement to report changes and timeframe and channels for reporting • Last day for plan selection for coverage effective January 1, 2015 • Last day for open enrollment of February 15, 2015 • Explanation that APTC and CSR will end on December 31, 2015 if s/he does not contact the Marketplace for an updated eligibility determination prior to the last day for plan selection for coverage effective January 1, 2015 • Explanation that Marketplace will renew enrollee coverage for a QHP in 2015 without APTC and CSR

At a minimum, the Marketplaces must coordinate the standard notice with the annual open enrollment notice and send these notices as a single, coordinated notice no later than November 15, 2015. Marketplaces have additional flexibility to consolidate notices or send reminders.

CMS notes that Marketplaces may communicate the premium for the plan in which the enrollee will be renewed. The FFM will not provide plan premium information for 2015; instead, issuers will be expected to provide this information as part of their noticing responsibilities.

Alternative Procedures Specified by States

CMS proposes to allow SBMs to specify alternative redetermination procedures for approval and solicits comments regarding the approval standards it should apply. These alternative procedures must facilitate continued enrollment in coverage for which the enrollee remains eligible, include clear information to the consumer (including any action necessary to obtain the most accurate redetermination), and provide adequate program integrity protections.

Change Reporting

For reporting of changes at annual redetermination or during the plan year, CMS proposes that Marketplaces will no longer be required to accept such changes via mail. CMS argues that eliminating reporting of changes by mail and promoting other reporting modalities of telephone, online and in-

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person would be consistent with the dynamic nature of the eligibility and enrollment process and create administrative efficiency. If finalized, the proposed regulation commentary notes the FFM will not accept changes reported by mail for the foreseeable future.

Re-Enrollment in Coverage

If an enrollee remains eligible for QHP coverage for the next plan year, existing regulations specify that the enrollee “will remain in the QHP selected the previous year unless such enrollee terminates coverage from such plan...”⁴ It had not been clear how Marketplaces should operationalize this requirement, particularly if there are changes to the QHP or if the QHP is no longer offered through the Marketplace. CMS establishes an approach in the proposed regulations for Marketplace coverage that incorporates the framework governing “guaranteed renewability” of health insurance products at 45 CFR 147.106.

Health insurance products are comprised of one or multiple plans with the same covered benefits (including benefit limits), and product network type (HMO, PPO, POS, etc.). Health insurance issuers must guarantee continued availability of their health insurance products with limited modifications from one year to the next or make available other coverage options if they choose to discontinue health insurance products under specified parameters. Elimination of a plan within a product offering would require the individual to be enrolled into an available plan under the same product that is most similar in metal level. Elimination of a product would require the individual be given adequate notice to enroll in a similar plan under a different product of the same issuer.

CMS mirrors this approach and proposes the following hierarchy for continuing QHP enrollment for those who remain eligible from one coverage year to the next. The hierarchy considers QHP issuer, product, plan and metal level and holds at the highest level of that hierarchy the QHP issuer relationship with the consumer. Consistent with the guaranteed renewability provisions, proposed regulations require re-enrollment of the consumer in the QHP issuer’s product to the extent the product remains available. If the QHP issuer’s product is no longer available, proposed regulations provide Marketplaces the option of re-enrollment of the consumer in other coverage offered by the same QHP issuer, including the closest product and plan off the Marketplace if no similar products and plans are available on the Marketplace. This will have implications for a consumer receiving APTC/CSR since that assistance will not be available in off-Marketplace coverage. The order of priority is as follows:

- If the **product and specific plan remain available**, the enrollee will be re-enrolled in that plan.
 - If the plan is no longer available, enrollment in a plan under the product at the same metal level as the enrollee’s current QHP;
 - If the product no longer includes a plan at the same metal level, enrollment in a plan at one metal level higher or lower than the enrollee’s current QHP; and
 - If the product no longer includes a plan one metal level higher or level, enrollment in any other plan offered under enrollee’s current QHP product.

⁴ 45 CFR 155.335(j)

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- If the **product is no longer available**, the enrollee may be re-enrolled in a plan at the same metal level under a different product offered by the issuer on the Marketplace that is most similar to the enrollee's current QHP.
 - If the issuer does not offer a plan at the same metal level as the enrollee's current QHP, enrollment in a plan offered by the issuer on the Marketplace one metal level higher or lower than the enrollee's current QHP;
 - If the issuer does not offer a plan one metal level higher or lower, enrollment in another plan offered by QHP issuer on the Marketplace in which the enrollee is eligible to enroll; and
 - If the issuer does not offer a plan in which the enrollee is eligible to enroll, enrollment in any other plan offered by the issuer off the Marketplace that is most similar to the enrollee's current QHP.

CMS solicits comment on whether it should further prioritize: (1) enrollment of an individual a plan one metal level lower in instances where the same metal level plan either in the same or similar product is not available; and (2) enrollment in plans that have premiums closest to the enrollee's current QHP.

Issuer Notices for Product Renewals or Discontinuances

Issuers must provide written notice to individuals of the continued availability (renewal) or discontinuation of products (discontinuance). Issuers must send renewal notices before the first day of the next annual open enrollment period and discontinuance notices at least 90 calendar days prior to the discontinuation of the product. In the June 26th release, CMS also proposes new regulatory requirements for the content of issuer notices and provides an informational bulletin with implementation instructions and draft notices for comment.

Content Requirements

CMS proposes to require that issuer notices for product renewals or discontinuances contain:

- Premium and premium tax credit information sufficient to notify the enrollee of the expected monthly premium payment under the renewed coverage;
- Explanation of the requirement to report changes and timing and procedures for the enrollee to report changes;
- Description of the APTC reconciliation process for APTC, if enrollee is APTC-eligible; and
- Explanation that the enrollee must be enrolled in a silver level plan to receive CSR, if enrollee is CSR-eligible and re-enrolled in a QHP at a non-silver level.

In the preamble discussion, CMS notes it is considering requiring issuer notices even in certain instances where the issuer may make product changes without triggering a discontinuance and associated notices (e.g., an issuer whose product no longer covers the service area of enrollees may non-renew those enrollees' coverage under that product as long as the issuer's product continues to cover a majority of the same service area). CMS solicits comment on this proposal.

Model Notices

CMS released six federal standard notices for issuers covering the following coverage renewal and discontinuance scenarios:

- Individual market coverage off Marketplace is being renewed
- Individual market coverage on the Marketplace is being renewed
- Individual market coverage off the Marketplace is being discontinued
- Individual market coverage on the Marketplace is being discontinued
- Small group coverage is being renewed (notice to employers)
- Small group coverage is being discontinued (notice to employers)

CMS also provides the flexibility for states to develop their own standard notices for product renewals and discontinuances without obtaining further approval from CMS. However, these state-developed notices must be at least as protective as the federal standard. Issuers must use the state-developed notices if required by the state. CMS solicits comments on this approach.

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