

CCIIO Eliminates Qualifying Events

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A FREEBORN & PETERS CLIENT ALERT

ABOUT THIS CLIENT ALERT:

The implementation of the Affordable Care Act continues to evolve. This Client Alert describes the seven “qualifying events” that the Center for Consumer Information and Insurance Oversight (“CCIIO”) eliminated for the 2016 plan year.

The Affordable Care Act (ACA) created a guaranteed issue market prohibiting insurers from refusing coverage based on an individual’s health status. Significant adverse selection can take place in such an environment if individuals can purchase coverage when they need it and drop it when they do not. Adverse selection can undermine a market by, among other things, putting upward pressure on premium rates and making coverage unaffordable.



To protect against adverse selection, ACA requires individuals to obtain coverage during open enrollment periods. Special enrollment periods (SEPs) are also established to address circumstances when, due to a qualifying event, individuals can purchase coverage outside the open enrollment periods. After the close of the annual open enrollment period, individuals are only able to enroll in a health plan during an SEP triggered by a qualifying event.

The challenge in health policy is to appropriately tailor qualifying events to allow individuals to obtain coverage outside an open enrollment period where circumstances warrant without harming the market.

In ACA's first years, the Center for Consumer Information and Insurance Oversight (CCIIO)¹ regulations recognized a broad range of qualifying events that could trigger an SEP allowing qualified individuals (QIs) to sign up for health insurance coverage on an exchange outside the annual open enrollment period. In guidance issued on January 19, 2016, HHS appears to be responding to concerns about adverse selection by tightening SEP exceptions. The guidance eliminates seven qualifying events for the open enrollment period that began on November 1, 2015, and ended January 31, 2016.²

Qualifying events were eliminated for:

1. QIs who were incorrectly auto-reenrolled by an Exchange into a Qualified Health Plan (QHP) for the 2015 benefit year and, because they had more than one policy, received tax credits larger than the amount for which they were eligible.
2. QIs with dependents whose Social Security income was incorrectly included in the calculation of household income to determine eligibility for coverage, subsidies and other cost reductions due to a systems error that has been corrected.
3. Non-citizen applicants who were incorrectly determined not to be eligible for subsidies due to a systems error that has been corrected.
4. Non-citizen applicants with incomes below 100% of the federal poverty level who due to a processing delay were incorrectly determined not to be eligible to purchase subsidized coverage on the Exchange because their income level, without considering their immigration status, appeared to make them eligible to enroll in Medicaid (which is not available to non-citizens).
5. QIs eligible for COBRA who received COBRA notices that did not provide sufficient information about an SEP giving the QI the option to purchase coverage on an Exchange. Models for COBRA notices have been updated to include the necessary information.
6. In coverage for 2015, QIs subject to the individual shared responsibility payment (the tax penalty for not having coverage) in 2014 who were unaware that coverage was mandated until the open enrollment period had closed for 2015 and had not purchased coverage during 2015.
7. QIs who were enrolled in the transitional Pre-Existing Condition Insurance Program (PCIP) that ended in 2014.

After almost six years since passage of ACA, the law's implementation continues to be a fluid and evolving process as regulations are issued, evaluated and modified. While the elimination of the seven qualifying events in the recent guidance may have only limited impact and not resolve issuers' adverse selection concerns, the guidance exhibits HHS's interest in tailoring SEPs based on market conditions. As a further example of this process, in addition to the elimination of the qualifying events listed above, the agency also announced that the CMS Center for Program Integrity will assess enrollments that came through SEPs to evaluate whether consumers properly accessed coverage and pointed out that consumers should be aware that responses to questions that trigger a special enrollment period

¹ CCIIO is the area within the Centers for Medicare and Medicaid Services (CMS), which is in turn within the Department of Health and Human Services (HHS), responsible for implementation of ACA.

² The guidance applies to the federally-facilitated marketplaces and state-based marketplaces using the federal platform, and does not apply to state-based exchanges.

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are made subject to penalty of perjury.

Stakeholders should monitor and consider participating in the regulatory process so they are aware of regulatory requirements as they are proposed and issued and to see that HHS is made aware of concerns so they can be appropriately addressed. If you have any questions regarding this guidance

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