
October 25, 2013

# Marketplace Enrollment Periods and Issues with Employer-Sponsored Health Plans

Enrollment into the health insurance Marketplaces (health reform “exchanges”) is currently underway. Enrollment began October 1, 2013 and eligible individuals have until March 31, 2014 to enroll. The availability of the Marketplace is intended to help Americans comply with health reform’s “individual mandate” scheduled to take effect January 2014. (For more information on the Marketplace application and the Individual Mandate, please see our legislative update, The Marketplace Application Process and the Employer Coverage Tool.)

The uninsured may not be the only individuals going to the Marketplace to understand insurance options. Individuals eligible for employer-sponsored coverage may also look to the Marketplace for coverage and cost comparisons against their employer-sponsored coverage. Even though most employer-provided plans qualify as "minimum essential coverage," so an individual will not be fined for not having health insurance if they are covered through their job, this new choice of Marketplace coverage raises concerns for many employers about the ability (and frequency) for employees to move from employer-sponsored coverage to Marketplace coverage and vice-versa. This update addresses Marketplace enrollment periods and how these periods may interact with enrollment under an employer-sponsored health plan.

**Marketplace Enrollment Periods**

While millions of Americans may have access to healthcare through the Marketplaces, rules under health care reform and subsequent governmental guidance place restrictions on an individual’s ability to enroll in and disenroll from Marketplace coverage at any time. The Center for Medicare and Medicaid Services (CMS) recently published the Federally Facilitated Marketplace Enrollment Operational Policy & Guidance which provides guidance on many issues that surround Marketplace enrollment such as enrollment periods, premium payments, cancellations, terminations as well as other related topics. The Guide confirms that Marketplace enrollment will be limited to the initial, annual, and special enrollment periods as described in more details below.

**The Initial Enrollment Period** - As noted above, the initial enrollment period started October 1, 2013 and is slated to end March 31, 2014. The effective date of coverage is based on the date a “qualified individual” selects their Marketplace coverage plan – called a “qualified health plan” (or QHP). Generally, coverage will begin based on the QHP selection date as follows:

- Qualified individuals who have selected their QHP by December 15, 2013 will have coverage beginning January 1, 2014.

- Applicants who have selected a QHP by the 15th day of January, February or March, will have coverage beginning the first of the following month. For example, for a QHP selected by February 9, 2014, coverage will begin on March 1, 2014.
- For those applications received between the 16th day and the last day of any month between December 2013 and March 31, 2014, coverage is effective the 1st of the second month. For example, for a QHP selected on March 17, 2014, coverage will begin May 1, 2014.

**Annual Enrollment Period** - The annual enrollment period for 2015 and subsequent years will begin October 15 and extend through December 7 of the preceding calendar year. However the Guide confirms that applications are accepted all-year round and notes "…that the Marketplace must accept an application and make an eligibility determination at any point in time during the year, which will enable individuals to learn whether they are eligible for a special enrollment period (SEP) for Marketplace coverage, or for Medicaid or CHIP, for which there are no restrictions on when an individual can enroll." If it is determined that a qualified individual qualifies for a special enrollment period, Marketplace coverage may begin during the year based on when the individual selects a QHP.

**Special Enrollment Period** - The Marketplace will allow qualified individuals and enrollees to enroll in a QHP or change from one to another as a result of the following triggering events:

- A qualified individual or dependent loses minimum essential coverage (does not include termination or loss due to failure to pay premiums on a timely basis - including COBRA premiums prior to expiration of COBRA coverage - or certain situations allowing for rescission);
- A qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, or placement for adoption;
- An individual, who was not previously a citizen, national, or lawfully present individual gains such status;
- A qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of the Marketplace or HHS;
- An enrollee adequately demonstrates to the Marketplace that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;
- An individual is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions, regardless of whether such individual is already enrolled in a QHP. (The Marketplace must permit individuals whose existing coverage through an eligible employer-sponsored plan will no longer be affordable or provide minimum value for his or her employer's upcoming plan year to access this special enrollment period prior to the end of his or her coverage through such eligible employer-sponsored plan);
- A qualified individual or enrollee gains access to new QHPs as a result of a permanent move;
- A native American may enroll in a QHP or change from one to another one time per month; and
- A qualified individual or enrollee demonstrates to the Marketplace that the individual meets other exceptional circumstances (as defined by the exchange).

Based on the guidance, an individual who did not apply for Marketplace coverage by March 31, 2014, can only gain coverage through the Marketplace (outside of Annual Enrollment) if the individual experiences one of the triggering events noted above.

**Moving Between Employer-Sponsored Coverage and Marketplace Coverage**

Marketplace enrollment restrictions may not be the only healthcare access restrictions placed on individuals. Federal rules, such as the cafeteria plan Code section 125 mid-year change in status event provisions (for pre-tax employee contributions) and HIPPA special enrollment right rules, also impact an individual's ability to make enrollment changes mid-year under an employer-sponsored health plan during the year. It's important to note that the opening of the Marketplace does not remove the requirement to comply with these existing laws that impact enrollment activity.

Considering that there are rules for coming into the Marketplace outside of the Initial and Annual Enrollment Periods, coupled with the fact that the section 125 permitted mid-year change event rules still apply, individuals will have to make mid-year changes from an employer plan to the Marketplace and vice versa in accordance with the Marketplace special enrollment rules and section 125 permitted mid-year change event rules. Thus, employees cannot voluntarily move from one to another without valid events supported by both laws.

**Special Transition Rule for Non-Calendar Section 125 Plans** - To accommodate employees participating in non-calendar-year cafeteria plans (who would otherwise be locked into their elections as of January 1, 2014), the IRS has provided transition relief for purposes of the Marketplace Initial Open Enrollment Period. Under this special rule, a non-calendar-year cafeteria plan can permit certain accident and health plan election changes during the 2013-2014 plan year. An employer may (but is not required to) allow either or both of the following:

- Permit participants who pay for health coverage through a section 125 plan to make one mid-year election change to drop the coverage to enroll in Marketplace coverage.
- Permit employees who previously declined employer coverage to enroll in that coverage through a section 125 plan, even if they had experienced no change in status event.

Employers have until December 31, 2014 to amend their plans to reflect this transition rule, so long as the amendment is effective retroactively to the first day of the 2013 cafeteria plan year.

**Election Lock Issue -** Note too that this special transition rule does not address the situation where an employee continues coverage throughout the employer's 2013 plan year and is seeking Marketplace coverage mid-year (at the employer's 2014 open enrollment). The special transition rule is intended to accommodate election changes related to Marketplace coverage during the Marketplace Initial Enrollment Period only. After the special 2013 transition period described above, the Marketplace rules do not include a special enrollment period which allows employees to elect Marketplace coverage at their employer's non-calendar year open enrollment. This means that employees eligible for employer-sponsored coverage under a non-calendar year plan may have a period of non-coverage or dual coverage if the individual seeks to enroll in Marketplace coverage at their employer's open enrollment.

Example: Employer A maintains a 6/1 – 5/31 plan year for their health plan. Pat has health coverage under the plan for the 6/1/13 – 5/31/14 plan year. Pat wants to discontinue coverage at the end of the plan year and enroll in the Marketplace coverage effective 6/1/14. The loss of employer-sponsored coverage does not appear to be a triggering event that entitles Pat to a Marketplace special enrollment period and election. So if Pat enrolled in the Marketplace and selected a QHP, Pat's coverage would not be effective until 1/1/15. If Pat drops his employer-sponsored coverage as of 5/31/14, Pat would have a gap in coverage between 6/1/14 and

12/31/14 (and Pat may be assessed an individual mandate penalty for not having health insurance.) Conversely, if Pat continued coverage under Employer A's plan for the 6/1/14 – 5/31/15 plan year and also elected Marketplace coverage, Pat would have dual coverage from 1/1/15 to 5/31/15. While this scenario seems peculiar, the current rules do not provide a solution. Further guidance on this issue would be helpful.

Unless more clarification is provided from the government on this election lock issue, it appears that those not in the Marketplace (including those in the employer plan) after the Initial Enrollment, that do not meet one of the triggering events listed under the special enrollment period rules, would have to wait until the following January (Annual Enrollment Period) to elect into the Marketplace.

Note also that employers that manage calendar year plans will have a plan year that aligns with the Marketplace enrollment year, so employees looking to change at their normal open enrollment from employer-sponsored coverage to Marketplace coverage, or vice-versa, will likely not experience any gaps in coverage.

**Next Steps**

With the introduction of Marketplace coverage, several considerations may need to take place as individuals contemplate enrollment choices, changes and limitations. The coordination of Marketplace coverage, employer-sponsored health coverage, and compliance with other laws is important and if necessary, should be considered as election changes are made and administered.

Employers with non-calendar section 125 plans taking advantage of the transition rule should advise employees of the new election change opportunity and amend their section 125 plans to account for the additional mid-year change events. Keep in mind that employers have until December 31, 2014 to amend their section 125 plans as long as the effective date for the newly added change event(s) is the first day of the 2013 plan year.

Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.

connerstrong.com 877-861-3220 news@connerstrong.com
Change My Preferences

CONNER STRONG & BUCKELEW

INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS

Click here to change your email preferences or unsubscribe from all communication.