ACA COMPLIANCE BULLETIN

HHS EXTENDS TRANSITION POLICY FOR NON-ACA COMPLIANT HEALTH PLANS

OVERVIEW

On Feb. 29, 2016, the Department of Health and Human Services (HHS) extended an existing transition policy for certain health plans that do not comply with the Affordable Care Act (ACA) for an additional year, **to policy years beginning on or before Oct. 1, 2017**.

In states that allow it, this transition policy gives health insurance issuers the option of renewing current policies for current enrollees without adopting all of the ACA's market reforms that took effect in 2014. Originally announced on Nov. 14, 2013, the transition policy was intended to apply in 2014 only. However, it was previously extended for two years, to policy years beginning on or before Oct. 1, 2016.

As a result of this most recent extension, **individuals and small businesses may be able to keep their non-ACA compliant coverage into 2018**, depending on the plan or policy year.

HIGHLIGHTS

- HHS' existing transition policy for non-ACA compliant plans has been extended for an additional year.
- If the state allows it, issuers can renew non-compliant coverage into 2018.
- The extended transition policy is intended to smoothly bring all non-grandfathered coverage in the individual and small group markets into compliance with the ACA by 2018.

IMPORTANT DATES

October 1, 2017

Certain non-ACA compliant plans may continue to be renewed for policy years starting on or before Oct. 1, 2017.

December 31, 2017

All non-compliant plans renewed under this extended transition policy cannot extend past Dec. 31, 2017.

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Background

The ACA includes key reforms that create new coverage standards for health insurance policies, beginning in 2014. For example, effective for 2014 plan years, the ACA imposes modified community rating standards and requires individual and small group policies to cover a comprehensive set of benefits.

Late in 2013, millions of Americans received notices informing them that their plans would be canceled because they did not comply with the ACA's reforms. President Barack Obama received criticism that these cancelations went against his assurances that if consumers had a plan they liked, they could keep it.

Responding to pressure from consumers and Congress, on Nov. 14, 2013, President Obama announced a transition relief policy for 2014 for non-grandfathered coverage in the small group and individual health insurance markets. If permitted by their states, this transition policy gave health insurance issuers the option of renewing current policies for current enrollees without adopting all of the ACA's market reforms for 2014.

On March 5, 2015, HHS extended the transition relief policy for two years, to policy years beginning on or before Oct. 1, 2016.

Additional One-year Extension

On Feb. 29, 2016, HHS extended this transitional policy for an additional year, **to policy years beginning on or before Oct. 1, 2017**, provided that all policies end by Dec. 31, 2017. Under the extended transitional policy, health coverage in the individual or small group market that meets certain criteria will not be considered to be out of compliance with the ACA's market reforms.

Specifically, the extended transition relief policy provides that:

- States may allow issuers that have continually renewed policies under the transitional policy since 2014 to **renew that coverage for a policy year starting on or before Oct. 1, 2017**; but
- Any policies renewed under this transitional policy **must not extend past Dec. 31, 2017**.

Health coverage in the individual or small group market that meets certain criteria will not be considered to be out of compliance with the ACA's market reforms.

According to HHS, the additional one-year extension is intended to smoothly bring all non-grandfathered coverage in the individual and small group markets into compliance with all applicable ACA requirements **no later than 2018**.

The extended transition relief only applies with respect to individuals and small businesses with coverage that has been continually renewed since 2014, under the previous transition guidance. It does not apply with respect to individuals and small businesses that obtained new coverage in 2014 or after. All new plans must comply with the full set of ACA reforms.

Also, as required under the previous transition policy guidance, health insurance issuers that renew coverage under this extended transitional policy must, for each policy year, **provide a notice to affected individuals and small businesses**.

Implementing the Extended Transition Relief Policy

HHS has stated that they will work with issuers and states to implement this extended transition policy, including options such as allowing:

- ✓ Policy years that are shorter than 12 months; or
- ✓ Early renewals with a start date of Jan. 1, 2017.

According to HHS, this approach will facilitate smooth transitions from transitional coverage to ACA-compliant coverage, which requires a calendar year policy year in the individual market.

States can elect to extend the transitional policy for shorter periods than outlined above, but may not extend it beyond these periods. Also, states may choose to adopt the extended transitional policy:

- For both the individual and the small group markets;
- For the individual market only; or
- For the small group market only.

All transitional policies that have rate increases subject to review under the ACA should use the rules and processes for submission to states and HHS that were in place prior to April 1, 2013, and updated April 1, 2015, to ensure compliance with the ACA.

Notice to Affected Individuals and Small Businesses

As required under the previous transition policy guidance, health insurance issuers that renew coverage under this extended transitional policy must, for each policy year, **provide a notice to affected individuals and small businesses**.

HHS included two separate versions of the notice that must be used for this purpose in its guidance:

- ✓ One for use when a cancellation notice **has already been sent** and the issuer is providing an option to the policyholder to continue the existing coverage; and
- ✓ One for use when a cancellation notice has **not yet been sent** and the issuer is providing an option to the policyholder to continue the existing coverage.

According to HHS, **these are required standard notices that cannot be modified**. Issuers renewing coverage under the extended transition policy must use one of the notices provided by HHS, as applicable.

State Decisions

Because the insurance market is primarily regulated at the state level, state governors or insurance commissioners have to allow for the transition relief in their state.

A number of states decided against permitting insurers to use the original transition policy, including California, Connecticut, Washington, Minnesota, New York, Indiana, Vermont and Rhode Island. Some states, such as Maryland, are allowing renewals with specific provisions.

Application to Large Employers

HHS' previous guidance also included transition relief for large employers that had previously purchased insurance in the large group market but that, as of Jan. 1, 2016, would have been redefined by the ACA as small employers purchasing insurance in the small group market. At the option of the states and health insurance issuers, these large employers had the option of renewing their current policies through policy years beginning on or before Oct. 1, 2016, without their policies being considered to be out of compliance with the specified ACA reforms that apply to the small group market but not to the large group market.

However, on Oct. 7, 2015, President Obama signed into law the Protecting Affordable Coverage for Employees (PACE) Act, which repealed the ACA's small group market expansion requirement. As a result, states now have the option, but are not required, to expand their small group markets to include businesses with up to 100 employees.

Under HHS' extended transition guidance for non-compliant plans, states that elect to expand the definition of "small employer" to up to 100 employees may, under state law authority, choose to provide transition relief to these employers, as appropriate.