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**Date:** March 20, 2015

**From:** Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services

**Subject:** Guidance on Hardship Exemptions for Persons Meeting Certain Criteria

This guidance provides information about (1) hardship exemption criteria pertaining to enrollees in Children’s Health Insurance Program Buy-In coverage and Elite Athlete Health Insurance, which are not classified as minimum essential coverage (MEC), that will be used by Federally-facilitated Marketplaces (FFMs) (including State Partnership Marketplaces (SPMs)), and may be used by State-based Marketplaces (SBMs) that are processing their own exemptions; (2) hardship exemption criteria pertaining to individuals who seek categorical Medicaid eligibility under section 1902(f) of the Social Security Act (the Act) for “209(b)” states that will be used by FFMs (including SPMs) and, may be used by SBMs; and (3) clarification of November 21, 2014 hardship exemption guidance regarding consumers enrolled in Medicaid coverage provided to medically needy individuals under section 1902(a)(10)(C) of the Act that is not MEC.

## **I. Background**

Section 5000A of the Internal Revenue Code, as added by the Patient Protection and Affordable Care Act, provides that individuals must maintain MEC, pay the individual shared responsibility payment, or qualify for an exemption.

The Affordable Care Act provides nine categories of exemptions from the requirement that individuals must maintain MEC or pay the individual shared responsibility payment, including hardship exemptions under Internal Revenue Code § 5000A(e)(5). Under this authority, the Department of Health and Human Services (HHS) promulgated 45 C.F.R. 155.605(g)(1)(iii), which provides for a hardship exemption when an individual “has experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.” HHS final regulations, *Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions*, published July 1, 2013 explained how Marketplaces (also known as “Exchanges”) will determine eligibility for, and grant certificates of exemption from, the individual shared responsibility payment. We noted in these final regulations that we would provide further guidance regarding criteria that the

FFMs will use to provide the hardship exemptions. SBMs that are processing exemptions may use these criteria, or they may develop their own, as long as the criteria meets the requirements of the final regulation. The Centers for Medicare & Medicaid Services (CMS) has published a number of guidance documents establishing hardship criteria under 45 C.F.R. 155.605(g)(1)(iii).

## **II. Hardship Exemption**

This guidance describes circumstances that FFMs will, and SBMs may, consider as a hardship under 45 C.F.R. 155.605(g)(1)(iii). This guidance also clarifies the eligibility criteria established in November 21, 2014 guidance for a hardship exemption due to limited-benefit Medicaid coverage provided to medically needy individuals, under section 1902(a)(10)(C) of the the Act, that is not MEC.

### **A. Enrollment in Children’s Health Insurance Program Buy-In Coverage**

CMS has recently become aware of certain situations in which individuals may be subject to the shared responsibility payment because they had health coverage through Children’s Health Insurance Program (CHIP) “Buy-In” programs<sup>1</sup> (also known as ‘full-cost’ CHIP) in 2014 that is not considered to be MEC<sup>2</sup>. In many states offering CHIP Buy-In programs, the state, as well as the CHIP Buy-In enrollees, were unaware that the Buy-In program is not recognized as MEC by the Internal Revenue Service (IRS) since it is not a CHIP program authorized under Title XXI of the Act (26 C.F.R. 1.5000A-2(b)(iii)) and has not been otherwise recognized as MEC by the IRS or CMS.

Therefore, a hardship exemption from the tax penalty under 45 C.F.R. 155.605(g)(1)(iii) will be granted by FFMs (and may be granted by SBMs) to enrollees in CHIP Buy-In programs for the months during 2014 they were enrolled in that coverage because the individuals may have reasonably believed their coverage was MEC, and therefore would reasonably not have sought coverage that is actually MEC.

We note that enrollees in the State of Pennsylvania’s CHIP Buy-In program are eligible for an exemption for 2014 and January through June 2015. This was communicated in a letter issued by the State of Pennsylvania to CHIP Buy-In enrollees in February 2015.

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<sup>1</sup> The states that currently offer CHIP Buy-In programs are Connecticut, Florida, New York, North Carolina, Maine, and Pennsylvania.

<sup>2</sup> Section 5000A(f) of the Internal Revenue Code defines MEC as any of the following: (1) coverage under a specified government sponsored program; (2) coverage under an eligible employer-sponsored plan; (3) coverage under a health plan offered in the individual market within a State; and (4) coverage under a grandfathered health plan. In addition, section 5000A(f)(1)(E) of the Code authorizes the Secretary of HHS, in coordination with the Secretary of the Treasury, to designate other health benefits coverage as MEC. On February 13, 2015, the Centers for Consumer Information and Insurance Oversight published guidance regarding the standard of review for the MEC application process (<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/MEC-Guidance-final-2-13-15.pdf>).

To apply for a hardship exemption due to enrollment in a CHIP Buy-In program, consumers in states in which the FFM is processing exemptions must submit a hardship exemption application to the Marketplace (available at <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>). Under Step 2: Question 9 of the hardship application, the individual should indicate that they are requesting “hardship #14”, list any months in January through December 2014 (and January-June 2015 for PA CHIP Buy-In enrollees) that he or she was enrolled in CHIP Buy-In, and write “[*Name of person who had coverage*] had CHIP Buy-In coverage in [*state*], which was not MEC in 2014.” The individual does not need to provide any documentation about the coverage with this application, but will sign the application under penalty of perjury. The attached Appendix A contains sample language about this exemption for impacted organizations to share with their enrollees. Individuals who live in Connecticut should contact the Connecticut Health Insurance Marketplace ([Access Health CT](#)) and individuals who live in Rhode Island should contact the Rhode Island Health Insurance Marketplace ([Health Source RI](#)) to apply for this hardship exemption.

#### **B. Enrollment in Elite Athlete Health Insurance Coverage**

CMS has also recently become aware of certain situations in which individuals may be subject to the shared responsibility payment because they had health coverage through the U.S. Olympic Committee, called Elite Athlete Health Insurance (EAHI), in 2014 that is not considered to be MEC. Administrators and enrollees of EAHI may have been unaware that EAHI is not recognized as MEC by the IRS under 26 C.F.R. 1.5000A-2 and has not been otherwise recognized as MEC by the IRS or CMS.

Therefore, a hardship exemption from the tax penalty under 45 C.F.R. 155.605(g)(1)(iii) will be granted by FFMs (and may be granted by SBMs) to enrollees in EAHI for the months during 2014 they were enrolled in that coverage because the individuals may have reasonably believed their coverage was MEC, and therefore would reasonably not have sought coverage that is actually MEC.

To apply for a hardship exemption due to enrollment in EAHI in 2014, consumers in states in which the FFM is processing exemptions must submit a hardship exemption application to the Marketplace (available at <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>). Under Step 2: Question 9 of the hardship application, the individual should indicate that they are requesting “hardship #14”, list any months in January through December 2014 that he or she was enrolled in EAHI, and write “[*Name of person who had coverage*] had Elite Athlete Health Insurance coverage in 2014, which was not MEC in 2014.” The individual does not need to provide any documentation about the coverage with this application, but will sign the application under penalty of perjury. The attached Appendix A contains sample language about this exemption for impacted organizations to share with their enrollees. Individuals who live in Connecticut should contact the Connecticut Health Insurance

Marketplace ([Access Health CT](#)) and individuals who live in Rhode Island should contact the Rhode Island Health Insurance Marketplace ([Health Source RI](#)) to apply for this hardship exemption.

### **C. Enrollment in Categorical Medicaid in 209(b) States**

Categorically needy coverage under Medicaid is MEC. However, in states electing the eligibility option described in section 1902(f) (209(b) states) of the Act, under which a state may apply more restrictive eligibility criteria than the Supplemental Security Income program to determine Medicaid eligibility for individuals who are 65 years old or older or who are blind or have disabilities,<sup>3</sup> such individuals must be permitted to qualify as categorically needy even if their income is above the categorical eligibility income limit by meeting a spend-down. The state may establish a budget period for the spend-down between one and six months, and the individual is not eligible for Medicaid in any budget period unless the individual meets the spend-down. This would mean that prior to meeting the spend-down requirement in a budget period, and for any budget periods in which the spend-down is not met in a given year, the individual could have gaps in MEC coverage. Unless the individual enrolls in other MEC or qualifies for an exemption, the consumer would be subject to the shared responsibility payment during these gaps in Medicaid coverage.

As discussed further below, CMS has already provided a hardship exemption for individuals seeking coverage in medically needy Medicaid coverage under 1902(a)(10)(C) that includes a spend-down period. Similarly, CMS believes that an individual eligible for categorical Medicaid eligibility through a spend-down in a 209(b) state should be able to elect such coverage in lieu of enrollment in other MEC without risking liability for the tax penalty if their spend-down is not met in a given budget period. As such, individuals who seek categorical Medicaid eligibility under section 1902(f) in 209(b) states through a spend-down may qualify for a hardship exemption for the entire calendar year if they meet their spend-down for at least one budget period in that calendar year. For example, if an individual is in a state that has a three-month budget period and the individual meets the spend-down in at least one budget period in the calendar year, but fails to meet the spend-down in the three other budget periods, the individual will qualify for a hardship exemption for the entire calendar year.

The FFM's will (and SBMs may) issue this hardship exemption effective January 1, 2014 for an entire calendar year to an individual who meets the spend-down requirement in at least one budget period in the calendar year.

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<sup>3</sup> The 209(b) states are Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.

To apply for this exemption, consumers in states in which the FFM is processing exemptions must submit a hardship exemption application to the Marketplace (available at <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>). Under Step 2: Question 9 of the application, the individual should indicate that they are requesting “hardship #14”. In addition, in the row for hardship #14 under Question 9, the individual must list any months in the calendar year that the consumer was enrolled in Medicaid coverage under section 209(b) (because they met at least one spend-down requirement in the year) and any other months during that same calendar year that they did not meet the spend-down amount and write in the open explanation box that “[Name of person who had coverage] had “209(b)” Medicaid coverage because [he/she] met the spend-down amount in at least one budget period during [year].” Individuals who live in Connecticut should contact the Connecticut Health Insurance Marketplace ([Access Health CT](#)) and individuals who live in Rhode Island should contact the Rhode Island Health Insurance Marketplace ([Health Source RI](#)) to apply for this hardship exemption.

#### **D. Enrollment in Certain Limited-Benefit Medicaid Coverage**

HHS issued guidance on November 21, 2014 that established a hardship exemption, effective January 1, 2015, for consumers enrolled in Medicaid coverage provided to medically needy individuals under section 1902(a)(10)(C) of the Act that is not included as government-sponsored MEC under IRS regulations and not designated as MEC by the Secretary in accordance with the CMS State Health Official Letter #14-002 issued November 21, 2014 (<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Hardship-Exemption-Guidance-11-21-14-final.pdf>). In this guidance, HHS established that the FFM will, and SBMs processing their own exemptions may, consider an individual eligible for a hardship exemption for the entire budget period in which the spend-down liability is met, regardless of when in the budget period he or she has met the spend-down amount required to receive medically needy coverage.

To bring the November 21, 2014 guidance in line with the hardship exemption criteria established in today’s guidance for individuals eligible for Medicaid coverage after meeting a spenddown in 209(b) states, we clarify that individuals will qualify for a hardship exemption for the entire calendar year if they meet their spend-down for at least one budget period in that calendar year for medically needy Medicaid coverage under section 1902(a)(10)(C) of the Act.

FFMs will (and SBMs may) issue this hardship exemption effective January 1, 2015 for an entire calendar year to an individual who meets the spend-down requirement in at least one budget period in the calendar year.

To apply for this exemption, consumers in states in which the FFM is processing exemptions must submit a hardship exemption application to the Marketplace (available at

<https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>). Under Step 2: Question 9 of the application, the individual should indicate that they are requesting “hardship #14”. In addition, in the row for hardship #14 under Question 9, the individual must list any months in the calendar year that the consumer was enrolled in Medicaid coverage as a medically needy individual in a state which such coverage is not recognized by IRS or HHS as MEC (because they met at least one spend-down requirement in the year) and any other months during that calendar year that they did not meet the spend-down amount and write in the open explanation box that “[*Name of person who had coverage*] had non-MEC Medicaid coverage because [*he/she*] met the spend-down amount in at least one budget period during [*year*].” Individuals who live in Connecticut should contact the Connecticut Health Insurance Marketplace ([Access Health CT](#)) and individuals who live in Rhode Island should contact the Rhode Island Health Insurance Marketplace ([Health Source RI](#)) to apply for this hardship exemption.

## **Appendix A: Sample language for CHIP Buy-In Programs and Elite Athlete Health Insurance**

As of January 1, 2014 everyone must have health coverage that qualifies as minimum essential coverage (MEC), qualify for an exemption, or pay a fee with your federal tax return. The health coverage you were enrolled in, [INSERT NAME OF COVERAGE, example “CHIP Buy-In Coverage” or “EAHI”] during 2014 did not qualify as minimum essential coverage (MEC). However, for the 2014 coverage year [or “through June 2015” for Pennsylvania Full-Cost CHIP], you may apply for an exemption from the federal government for the months you and/or your family were covered.<sup>4</sup> If you apply for and receive the exemption, you will not need to pay the fee when you file your taxes.

### **How do I get an exemption for the months in 2014 [ “and through June 2015” for PA CHIP Buy-In] that I did not have MEC?**

You can apply for an exemption from the federal government to avoid paying a fee with your federal tax return for any months in 2014 [“and through June 2015” for Pennsylvania Full-Cost CHIP] during which you were enrolled in (INSERT NAME OF COVERAGE). In order to qualify for this exemption, you must submit a “hardship” application to the federal Health Insurance Marketplace. You should submit this application to the federal Health Insurance Marketplace, even if you live in a state which has its own Marketplace.<sup>5</sup> You can find the application here: <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>. When completing the application, under Step 2: Question 9 for each person that was enrolled be sure to:

- 1) Check hardship number 14,
- 2) In the open explanation box under hardship number 14, write
  - i. For CHIP Buy-In: “[Name of person who had coverage] had CHIP Buy-In coverage in [state], which was not MEC in 2014 [“and Jan-June 2015” for PA],” or
  - ii. For EAHI: “[Name of person who had coverage] had Elite Athlete Health Insurance coverage in 2014, which was not MEC in 2014.”
- 3) Under hardship number 14, list any months from January 2014 through December 2014 [or “through June 2015” for PA CHIP Buy-In] that you and/ or your family were enrolled in the coverage. You do not need to provide any documentation about your coverage with the application.

The Marketplace will send you a letter with an Exemption Certificate Number (ECN) for each person eligible for this exemption. To claim this exemption with your tax return, you will use the Exemption

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<sup>4</sup> Individuals who live in Connecticut should contact the Connecticut Health Insurance Marketplace (Access Health CT) and individuals who live in Rhode Island should contact the Rhode Island Health Insurance Marketplace (Health Source RI) to apply for this hardship exemption.

<sup>5</sup> Individuals who live in Connecticut should contact the Connecticut Health Insurance Marketplace (Access Health CT) and individuals who live in Rhode Island should contact the Rhode Island Health Insurance Marketplace (Health Source RI) to apply for this hardship exemption.



Certificate Number to complete IRS Form 8965 and include the form with your tax return. If you want to file your tax return before you hear back from the Marketplace, you may still claim this exemption by writing on IRS Form 8965 that your exemption application is “pending” with the Marketplace.

Please note that this exemption is only available for the 2014 coverage year [or “through June 2015” for Pennsylvania Full-Cost CHIP]. Your health coverage provider must work to make sure it meets the “minimum essential coverage” standard going forward for 2015 or you should immediately seek other coverage options through the Health Insurance Marketplace at [healthcare.gov](http://healthcare.gov). The deadline to file taxes is April 15, 2015.

**What is the fee for not having coverage?**

The federal Internal Revenue Service has information to help you determine the tax penalties your family may face: <http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Individual-Shared-Responsibility-Provision>.

Be sure to submit a “hardship” exemption application to the federal Health Insurance Marketplace so that you are not responsible for a tax penalty for any months in 2014 (“and through June 2015” for Pennsylvania Full-Cost CHIP) that you and/or your family had coverage that was not MEC. You can find the application here: <https://marketplace.cms.gov/applications-and-forms/hardship-exemption.pdf>.