

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



**Date:** March 31, 2014

**Subject:** Shared Responsibility Provision Question and Answer

**Q:** Will any individual who submits an application during the open enrollment period for 2014 and is found eligible for Medicaid or the Children’s Health Insurance Program (CHIP) have to make a shared responsibility payment in 2015 for the months prior to the effective date of the individual’s coverage?

**A:** Starting in 2014, the individual shared responsibility provision requires each individual to maintain health coverage (known as minimum essential coverage), qualify for an exemption from the requirement to maintain minimum essential coverage, or make a shared responsibility payment when filing a federal income tax return. To help make coverage affordable for millions of individuals and families, the Affordable Care Act provides, among other things, a premium tax credit to eligible individuals and families to help pay for the cost of health insurance coverage purchased through Health Insurance Marketplaces.

The shared responsibility payment generally applies to people who have access to affordable coverage during a taxable year but who choose to spend a substantial portion of that year uninsured. To ensure that the shared responsibility payment generally applies only to the limited group of people who have access to affordable coverage during a year but who nonetheless choose to spend a substantial portion of that year uninsured, the Affordable Care Act provides nine statutory exemptions relating to the individual shared responsibility provision within the Internal Revenue Code, including exemptions for hardship and an exemption for a short coverage gap.<sup>1</sup> Hardship exemptions apply to individuals who “have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan [QHP].”<sup>2</sup> Under this authority, HHS has enumerated several situations that constitute such a hardship.<sup>3</sup> The short coverage gap exemption specifies that an individual is exempt for “[any] month the last day of which occurred during a period in which the applicable individual was not covered by minimum essential coverage for a continuous period of less than 3 months.”<sup>4</sup>

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<sup>1</sup> 26 USC 5000A(d) and (e). These categories of exemptions are: individuals who do not have access to affordable coverage; individuals with household income below the federal income tax filing threshold; members of federally recognized Indian tribes; individuals who experience a hardship; individuals who experience a short coverage gap; members of certain religious sects; members of a health care sharing ministry; incarcerated individuals; and individuals who are not lawfully present.

<sup>2</sup> 26 USC § 5000A(e)(5).

<sup>3</sup> “Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions”, published on June 26, 2013, at 45 CFR 155.605(g).

<sup>4</sup> 26 USC 5000A(e)(4)(A). This statutory provision is implemented in final Treasury regulations entitled “Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage” and published on August 30, 2013, at 26 CFR 1.5000A-3(j)(2)(i).

The Affordable Care Act provides the Secretary of HHS the authority to determine the initial open enrollment period for individuals to enroll in coverage through the Marketplaces for 2014.<sup>5</sup> Pursuant to this authority, the final rule entitled “Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers” and published on March 27, 2012, at 45 CFR 155.410(b) (“Exchange Final Rule”) specifies that the initial open enrollment period for individuals begins on October 1, 2013, and extends through March 31, 2014.

The length of the initial open enrollment period and the coverage effective dates for enrollment in a QHP through the Marketplace, in tandem with the terms of the short coverage gap exemption, created the possibility that an individual who enrolled in coverage through a Marketplace during the initial open enrollment period could nonetheless be liable for a shared responsibility payment for months prior to the effective date of that coverage, if the individual were not otherwise exempt. Accordingly, on October 28, 2013, HHS specified that, “if an individual enrolls in a plan through the Marketplace prior to the close of the initial open enrollment period, when filing a federal income tax return in 2015 the individual will be able to claim a hardship exemption from the shared responsibility payment for the months prior to the effective date of the individual’s coverage, without the need to request an exemption from the Marketplace.”<sup>6</sup>

The October 28, 2013 guidance did not address an individual who applies for coverage during the initial enrollment period and is determined eligible for Medicaid or CHIP. This guidance addresses that situation.

- First, in accordance with 42 CFR 435.915, the effective date of coverage for an individual who is determined eligible for Medicaid is the date of his or her application (and may be up to three months before the month the individual filed his or her application, in some circumstances). Accordingly, an individual who applies for coverage on or before March 31, 2014 and is found eligible for Medicaid based on that application will have Medicaid on or before March 31, 2014. Under these circumstances, even if such an individual did not have coverage before March 31<sup>st</sup>, he or she will qualify for a short coverage gap exemption for the period of time before his or her Medicaid coverage was not yet effective, back to January 1, 2014.
- Second, because CHIP effective dates typically follow the same rules as private insurance (meaning that an application date of March 31<sup>st</sup> may not yield a March 31<sup>st</sup> effective date), HHS is exercising its authority to extend the hardship exemption described in the October 28, 2013 guidance, to include individuals who apply for coverage during the initial open enrollment period and are found eligible for CHIP based on that application. The IRS and Treasury Department intend to publish guidance allowing an individual to claim a hardship exemption from the individual shared responsibility payment for the months in 2014 prior to the effective date of the individual's CHIP coverage if the individual submits a coverage application prior to the close of the open enrollment period and is found eligible for CHIP.

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<sup>5</sup> § 1311(c)(6)(A) of the Affordable Care Act.

<sup>6</sup> <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/enrollment-period-faq-10-28-2013.pdf>