ACA COMPLIANCE BULLETIN

HHS Extends Transition Policy for Non-ACA Compliant Health Plans

On Jan. 19, 2021, 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, 2022**. However, all noncompliant plans renewed under this extended transition policy must come into compliance by Jan. 1, 2023.

In states that allow it, health insurance issuers have the option of renewing current policies for current enrollees without adopting all of the ACA's market reforms that took effect in 2014. Plans renewed under this transition policy are often called **"grandmothered" plans**.

Originally announced in 2013, the transition policy has already been extended several times.

Impact on Employers

Individuals and small businesses may be able to keep their non-ACA compliant coverage through 2022, depending on the plan or policy year.

This latest extension may also mean that ACA compliance is never required for these transitional plans. HHS has been continuously extending this transition policy each year since 2014.

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 noncompliant coverage through 2022.
- Any plans that are renewed under this extended transition policy must comply with the specified requirements by Jan. 1, 2023.

Important Dates

Oct. 1, 2022
Certain non-ACA compliant plans may continue to be renewed for policy years beginning on or before Oct. 1, 2022.

Jan. 1, 2023
All noncompliant plans renewed under this extended transition policy must come into compliance by Jan. 1, 2023.

JP Griffin Group

Background

The ACA includes key reforms that created new coverage standards for health insurance policies, beginning in 2014. For example, 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. Former President Barack Obama received criticism that these cancellations 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, 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. This transition policy was later extended several times. Plans renewed under this transition policy are often called **"grandmothered" plans**.

The Latest Extension

On Jan. 19, 2021, HHS extended this transitional policy for an additional year, **to policy years beginning on or before Oct. 1, 2022**, provided that all policies come into compliance with the specified requirements by **Jan. 1, 2023**. 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, 2022**; but
- Any policies renewed under this transitional policy must come into compliance with the relevant requirements by Jan. 1, 2023.

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.

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 it will work with issuers and states to implement this extended transition policy, including options such as allowing:

- Policy years that are shorter (but not longer) than 12 months; or
- Early renewals with a coverage start date of Jan. 1, 2022.

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 updated April 9, 2018, 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, 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, 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 noncompliant 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.