



Department of Commerce

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Caller Box 10007 CK, Saipan, MP 96950

Telephone: (670) 664-3064 Fax: (670) 664-3067

Website: <http://www.commerce.gov.mp/>

OFFICE OF THE INSURANCE COMMISSIONER

Transitional Policy FAQ

For the purposes of this FAQ, policies which are eligible for reinstatement and renewal under the transitional policy are referred to as “reinstated” or “transitional” policies.

Which policies are eligible to be reinstated and renewed with complying with all of the provisions of the PPACA?

Non-grandfathered policies in the individual and small group markets** that were (1) in effect as of October 1, 2013, AND (2) have received or would otherwise receive a cancellation or termination notice from the issuer. No new sales of these reinstated policies are allowed.

Are these transitional policies grandfathered?

No. These policies are not “grandfathered” as defined in the ACA¹.

Will these reinstated “transitional” policies be exempt from the entirety of the Patient Protection and Affordable Care Act?

No. This policy only exempts the renewed policies from Public Health Service Act sections:

- 2701 (relating to fair health insurance premiums);
- 2702 (relating to guaranteed availability of coverage);
- 2703 (relating to guaranteed renewability of coverage), however, plans or policies sold in the individual or group markets must still comply with the renewability provisions of the Health Insurance Portability and Accountability Act of 1996 and can only be nonrenewed under specific enumerated circumstances;
- 2704 (relating to the prohibition of pre-existing condition exclusions or other discrimination based on health status), with respect to adults, except with respect to group coverage;
- 2705 (relating to the prohibition of discrimination against individual participants and beneficiaries based on health status), except with respect to group coverage*;
- 2706 (relating to non-discrimination in health care);
- 2707 (relating to comprehensive health insurance coverage);
- 2709 (relating to coverage for individuals participating in approved clinical trials);

Please also note that the policies subject to transitional policy are not considered out of compliance with section 1312(c) of the Affordable Care Act (relating to the single risk pool requirement).

*Please note that sections 702 of ERISA and 9802 of the Code remain applicable to group health plan coverage.

May we adopt some of the exempted provisions to reinstated policies?

¹ See 45 C.F.R. § 147.140(a)(1) for the full definition of “grandfathered” as it is used in the ACA.

Yes. Issuers may choose to adopt one or more of the exempted provisions in their renewed policies without losing eligibility for the transitional policy. However, coverage which has already been converted to ACA compliance cannot be retroactively made non-ACA compliant.

Can we issue new business under reinstated plans?

No. However, if the plan covers a small employer, all eligible employees may enroll in the plan, even if they had not been enrolled prior to the disenrollment. No new employer groups may be offered the reinstated coverage.

Do issuers have to offer reinstated plans?

No. Issuers may choose whether to exercise this option.

In what cases does §2704 (prohibition on preexisting conditions) apply to reinstated plans?

Issuers must comply with §2704 for all reinstated small group plans**.

Which plans qualify for the transitional policy?

The following must be true for plans to qualify for this relief.

- The plan was in effect and in compliance with applicable market reforms on October 1, 2013;
- The plan was discontinued or planned to be discontinued in accordance with federal and state law; and
- The health insurance issuer sends a notice to individuals and small businesses* that received a cancellation or termination notice with respect to the coverage, **or** sends a notice to all individuals and small businesses** that would otherwise receive a cancellation or termination notice with respect to the coverage.

The model notices are included in with the Administrative Notice 2014-03. These notices may not be modified.

Administrative notice 2014-03 indicates that certain documents must be provided to the CNMI Insurance Section. Why?

The Insurance Commissioner is responsible for enforcing local and federal health insurance laws, and insurance issuers are responsible for complying with these laws, including provisions of the Affordable Care Act. When reviewing the compliance of plans with these laws, the Commissioner must know which laws a certain plan is subject to in order to make an accurate and fair determination of compliance.

These notification filings are purely for informative reasons and do not require approval.

What documentation must be filed with the CNMI Insurance Section?

At a minimum, proof that appropriate notices were sent, the plan name, the rates, the current number of covered lives under the plan, and the attestation confirming compliance with Administrative Notice 2014-03, although these are notice filings only and not subject to prior approval.

If the issuer's premium adjustment on the reinstated plans is greater than 10 percent, must the issuer submit a URRT?

No, a URRT does not apply to these plans. A reinstated Preliminary Rate Justification form may be required. All transitional policies that have rate increases subject to review under PHS Act section 2794 should utilize the rules and processes for submission to States and CMS that were in place prior to April 1, 2013, to assure compliance with PHS Act section 2794 requirements. Importantly, the issuer must identify the base rate, premium calculated, and a narrative justifying the increase.

What language must be included in the model notice to the enrollee?

The required notice is attached as an addendum to Administrative Notices 2014-03 and 2013-05. These are the same notice and are slightly different from the model notices sent out by CCIIO, as the CNMI's modified version was approved by CCIIO.

Are issuers permitted to modify the CCIIO reinstatement notices?

No. The notices must be delivered to enrollees as they were issued by CCIIO, but States were given the option to submit modified versions of this notice for approval from CCIIO. The CNMI's slightly modified notice was approved by CCIIO in November 2013, so CNMI carriers should use the model notices attached to the Administrative Notices issued by the CNMI Insurance Commissioner. These notices satisfy the notice requirement outlined in the November 14, 2013 letter to State Insurance Commissioners.

Issuers can include a cover letter with the notices providing additional information regarding the renewals, such as issuer contact and premium information.

There are two different model notices attached to the Administrative Notice. How do issuers know which one to send to enrollees?

One model notice is designed for enrollees that have already been sent a cancellation notice for existing coverage. The other model notice is designed for enrollees that have not yet been sent a cancellation notice for the existing coverage.

Can issuers include the model notice with other plan material?

No. The appropriate notice must be delivered to the enrollee separately from any other plan material. However, issuers can include a cover letter with the notices providing additional information regarding the renewals. In addition, issuers can include material related to any premium changes associated with the renewal along with the required notices.

According to guidance issued by CMS on December 19, 2013, individuals whose policies are cancelled because the coverage is not compliant with the Affordable Care Act qualify for a hardship exemption if they find other options to be more expensive, and are able to purchase catastrophic coverage. What if a CNMI resident simply can't find other coverage, can they apply for a hardship exemption in order to purchase catastrophic coverage?

Yes. Residents in the territories without any available options are eligible to obtain a hardship exemption under this guidance to gain eligibility for coverage under a catastrophic plan. The hardship exemption form must be completed as specified in the guidance and must include a copy of the cancellation notice.

Issuers are welcome to refer enrollees who receive cancellations to the CNMI Consumer Assistance Program for assistance with this application.

If our plan was a guarantee issue product, can we now underwrite new enrollees?

No. Changes in terms of the contract, including underwriting a previously guaranteed issue product, constitute changes to the contract and would make the contract ineligible for reinstatement.

Coverage which has already been converted to ACA compliance cannot be retroactively made non-ACA compliant.

Do mental health parity requirements apply to transitional plans?

The mental health parity requirements do not apply to non-grandfathered individual and small group “transitional” plans. However, the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) still applies to plans sponsored by private and public sector employers with more than 50 employees, including self-insured as well as fully insured arrangements. MHPAEA also applies to health insurance issuers who sell coverage to employers with more than 50 employees.

Within the context of transitional plans, is "renewal" defined as the policy anniversary date of the original effective date?

The renewal date is the date on which the policy year ends and the new policy year begins.

When must the model notices be sent to enrollees who are affected by this transitional policy?

Issuers that reinstate or continue transitional plans must, as soon as practicable, send the applicable standard notice supplied by the CNMI Insurance Commissioner to all individuals and/or small businesses that received or would have otherwise received a cancellation or termination notice. Proof that notices were sent out must be filed with the CNMI Insurance Section by the deadline specified in Administrative Notice 2014-03 and this proof is subject to review but not to prior approval by the CNMI Insurance Section

Do transitional plans meet the definition of "minimum essential coverage" under the individual mandate requirement?

Yes. For the 2014 plan renewal year, transitional plans qualify as minimum essential coverage that satisfies the individual mandate requirement. However, all bona fide CNMI residents are considered having “minimum essential coverage”² under the ACA even without formal health insurance coverage.

Can issuers retract some cancellation notices but not others? If so, can the decision whether to retract the cancellation or maintain it be based on health status?

No. Retracting cancellations by health status or claims experience is not allowed.

Issuers may retract cancellation notices by product and it must be done uniformly. (Termination is allowed by product³.)

What options does the consumer have if they have already switched to another plan or have been auto enrolled in another plan?

The consumer may:

Keep the plan

Terminate the plan and re-enroll in their previous plan

Enroll in another plan during open enrollment

Will plans subject to the new transition policy be considered as part of the single risk pool?

No. Transitional plans are not required to be part of the single risk pool referred to in section 1312 of the Affordable Care Act.

² 26 U.S.C. §5000A(f)(4)

³ For more information on how to cancel or terminate a product, see 45 CFR §§ 146.152 and 148.122

May issuers modify the terms of an in-force plan or contract in order to be eligible to offer enrollees the right of transitional policy relief?

No. Any modification of plan terms after October 1, 2013, including term length, will be deemed to create a "new plan," thereby disqualifying the plan.

The plan must be renewed at its natural expiration date to qualify for this transitional relief. Any plan that is amended to provide for an early renewal date to occur before October 1, 2014 will not qualify.

When the transitional policy ends in 2016, will there be a special enrollment period for consumers to purchase coverage that meets the ACA requirements?

Yes. The transitional plans will have the portability rights required by HIPAA.

Will transitional plans be required to eliminate annual dollar limits that apply to Essential Health Benefits?

Yes, 45 CFR 147.126(a)(2) prohibits the imposition of "any annual limit on the dollar amount of benefits for any individual." This applies only to Essential Health Benefits. Note: reinstated plans do not have to offer Essential Health Benefits, but any Essential Health Benefits that are offered cannot be subject to annual dollar limits.

**Including large groups which will be redefined as small group beginning January 1, 2016 per section 1304(b) of the Affordable Care Act