

COMPLIANCE ALERT

CMS Extends Transition Policy for Non-ACA Compliant Plans

March 1, 2020

QUICK FACTS

- The Centers for Medicare and Medicaid Services (CMS) recently extended, for an additional year, its transition policy for certain plans that are not compliant with the Affordable Care Act (ACA) for an additional year.
- The extension is available for individual or small group market plans (“grandmothered plans”) that meet certain criteria.
- CMS will not deem such coverage to be out of compliance with the ACA’s market reforms.
- If a state allows it, insurers can (but are not required to) renew non-compliant coverage through 2021.

OVERVIEW

Recently, the Centers for Medicare and Medicaid Services (CMS) [extended an existing transition policy](#) for certain health plans (“grandmothered” plans) that do not comply with the Affordable Care Act (ACA). For policy years beginning on or before October 1, 2021, the extension is available for grandmothered plans as long as the plan is compliant with ACA regulations by January 1, 2022. In states that allow it, health insurers may renew current policies for current enrollees without adopting all of the ACA’s market reforms that took effect in 2014.

BACKGROUND

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

In late 2013, millions of Americans received notices informing them that their plans would be canceled because they did not comply with the ACA’s reforms – contrary to government assurances that if individuals had a plan they liked, they could keep it.

Responding to pressure from consumers and Congress, President Obama announced a transition relief policy for 2014 for non-grandfathered coverage in the small group and individual health insurance markets.

COMPLIANCE ALERT

If permitted by their states, this transition policy gave health insurers the option of renewing current policies for current enrollees without adopting all of the ACA's market reforms for 2014. CMS has extended this relief several times.

THE LATEST EXTENSION

CMS again extended the grandmothers plan transition policy for policy years beginning on or before October 1, 2021, provided that all such policies end by January 1, 2022. Under the extended transition policy, health coverage in the individual or small group market that meets certain criteria will not be deemed out of compliance with ACA market reforms.

Specifically, the extended transition relief policy provides that:

- states may allow insurers that have continually renewed plans under the transitional policy since 2014 to renew that coverage for a policy year starting on or before October 1, 2021; but
- any policies renewed under this transitional policy must not extend past December 31, 2021.

According to CMS, the additional extension is intended to further ease the transition of health coverage in the individual and small group markets into compliance with all applicable ACA requirements.

The extended transition relief applies only to individuals and small businesses with coverage that has been continually renewed since 2014. It does not apply 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.

IMPLEMENTING THE EXTENDED TRANSITION RELIEF POLICY

CMS stated that they will work with insurers 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 start date of January 1, 2021.

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

- for both individual and small group markets;
- for individual markets only; or
- for small group markets only.

COMPLIANCE ALERT

NOTICE TO AFFECTED INDIVIDUALS AND SMALL BUSINESSES

Health insurers that renew coverage under this extended transition policy must notify affected individuals and small businesses. CMS provided two separate versions of the required notice:

- one for when an issuer already has sent a policy cancellation notice; and
- one for when an issuer has not yet sent a cancellation notice.

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

STATE DECISIONS

Because the insurance market is primarily regulated at the state level, state governors or insurance commissioners ultimately will determine whether they will allow for the transition relief in their respective states. Thirty-two states (notably, not California) have allowed the transitional policies to continue as permitted under the federal transition relief and likely will continue to do so under the latest announcement.

SUMMARY

Small employers with non-ACA-compliant policies may be able to keep coverage in place through 2021, depending on the plan or policy year and whether state insurance law permits the latest transition policy extension.

EPIC Employee Benefits Compliance Services

For further information on this or any other topics, please contact your EPIC benefits consulting team.

EPIC offers this material for general information only. EPIC does not intend this material to be, nor may any person receiving this information construe or rely on this material as, tax or legal advice. The matters addressed in this document and any related discussions or correspondence should be reviewed and discussed with legal counsel prior to acting or relying on these materials.