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**Date:** February 5, 2016

**Subject:** Guidance on the Special Enrollment Period for Consumers without Marketplace Coverage due to Failure to File and Reconcile

The Centers for Medicare & Medicaid Services (CMS) is committed to helping Marketplace consumers understand and meet the requirement to file a federal income tax return and reconcile advance payments of the premium tax credit (APTC) during the initial year of implementation. Consistent with this commitment, in the first coverage year in which the requirement is in effect, CMS is providing a special enrollment period for consumers who:

- are not currently enrolled in 2016 coverage through the Federally-facilitated Marketplace (FFM),
- are not receiving APTC in 2016 because they failed to file a tax return for 2014 and reconcile their APTC, and
- subsequently filed their 2014 tax return and reconciled their 2014 APTC.

This special enrollment period will only be available to consumers after they restore their eligibility for APTC by filing a 2014 tax return, reconciling APTC paid on their behalf in 2014, and returning to the Marketplace to update their application and attest to having filed and reconciled 2014 APTC.<sup>1</sup> Eligibility for this special enrollment period is limited to those who have previously attempted to enroll in 2016 coverage.

#### Failure to Reconcile Background

As specified in CMS regulations at 45 CFR 155.305(f)(4), a Marketplace may not determine a consumer eligible for APTC or income-based cost-sharing reductions (CSRs) if APTC was previously paid for the tax filer or on behalf of a member of the tax household, but the tax filer did not file a federal income tax return and reconcile the APTC for the year in which APTC was provided.

Coverage year 2016 is the first year in which the requirement to file a tax return and reconcile previously paid APTC is in effect and many consumers who received APTC in 2014 may not have been required to file a tax return in previous years. Consumers who were enrolled in coverage for 2015 for whom the FFM did not have information by December 15, 2015 indicating that their tax filer(s) filed and reconciled APTC for 2014, have been re-enrolled in 2016 coverage without APTC and income-based CSRs. As a result, such enrollees may choose to end their Qualified Health Plan (QHP) coverage through the FFM

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<sup>1</sup> Note that a special enrollment period is not necessary for consumers who are determined ineligible for APTC due to FTR and remain enrolled in coverage. After filing their 2014 tax return and reconciling their APTC, such consumers may return to the Marketplace to update their application and attest to having filed and reconciled. Such consumers will receive an updated eligibility determination and APTC may be applied to their current or new plan prospectively, if they are otherwise eligible.

because it is unaffordable without financial assistance. Consumers who end coverage while they complete a 2014 tax return and submit IRS Form 8962 to reconcile 2014 APTC may not be able to do so in time to re-enroll in Marketplace coverage with APTC prior to the end of the Open Enrollment Period.

Similarly, consumers who were enrolled in Marketplace coverage with APTC in 2014, were not enrolled in Marketplace coverage in 2015, and return to create a new Marketplace application for 2016 coverage will be determined ineligible for APTC in 2016 if they failed to file a 2014 tax return. Consumers who file and reconcile after receiving a determination of ineligibility may end Marketplace coverage while they complete a 2014 tax return and reconcile 2014 APTC.

### Special Enrollment Period

If consumers wish to enroll in 2016 coverage with APTC, they must comply with the requirement to file and reconcile APTC for 2014 and attest to having done so prior to the end of the Marketplace Open Enrollment Period on January 31, 2016 or they must qualify for a special enrollment period. Because the 2016 coverage year is the first year for which the requirement to file and reconcile will be enforced, and in order to minimize potential gaps in coverage for affected consumers, CMS will offer a time-limited special enrollment period (following the end of the Marketplace Open Enrollment Period—from February 1, 2016 through March 31, 2016) for individuals previously determined to be ineligible by the Marketplace to receive APTC in 2016 resulting from a failure to file and reconcile.

As discussed above, in order to access this special enrollment period, consumers must not be enrolled in 2016 QHP coverage through the FFM as of the end of open enrollment. Consumers must have been determined ineligible for APTC for 2016 due to IRS indicating that they failed to file and reconcile APTC for 2014, and they must subsequently file and reconcile APTC for 2014 and attest to having done so on their 2016 Marketplace application.

The effective date of coverage under this special enrollment period will be the first of the month following plan selection and, for consumers who enroll under this special enrollment period, issuers will receive an enrollment code of EX. Eligible consumers will have access to this special enrollment period through their online applications at HealthCare.gov. Consumers will need to return to the Marketplace to update their 2016 application, including attesting to having filed a tax return and reconciling APTC for 2014. Consumers who meet the special enrollment period eligibility criteria will be granted a special enrollment period and will be provided with instructions to select a plan and complete enrollment.