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Exchange Eligibility Rules for Medicare Beneficiaries

Beginning in 2014, the Affordable Care Act (ACA) requires online competitive marketplaces, or Exchanges, to be available in each state for individuals and small businesses to purchase health insurance coverage. Individuals may purchase coverage for themselves and their families through the Exchanges' individual market, while small businesses may purchase coverage for their employees through the Exchanges' Small Business Health Options Program (SHOP).

The first open enrollment period for plans offered through the ACA's Exchanges began on Oct. 1, 2013, for coverage starting **Jan. 1, 2014**.

The ACA provides basic eligibility criteria for individuals to enroll in "qualified health plans" (QHPs) through the Exchanges. On Oct. 4, 2013, the Centers for Medicare & Medicaid Services (CMS) issued [Exchange enrollment guidance for Medicare beneficiaries](#), which provides that Medicare beneficiaries are ineligible for coverage through the Exchanges' individual market.

This Legislative Brief summarizes CMS' guidance regarding Exchange eligibility rules for Medicare beneficiaries.

BASIC ELIGIBILITY CRITERIA

Beginning in 2014, all individuals who meet basic eligibility criteria may enroll in a QHP through the Exchange of the state where they reside. An individual will be eligible for enrollment in a QHP if he or she:

- Is a citizen, national or non-citizen lawfully present in the United States, and is reasonably expected to remain so for the entire period for which enrollment is sought;
- Is not incarcerated; and
- Resides in the state covered by the Exchange.

Household income is not taken into account when determining whether an individual is eligible to enroll in a QHP through an Exchange. Likewise, an individual may be eligible to enroll in a QHP through the Exchange even if he or she is eligible for other minimum essential coverage (such as coverage under an eligible employer-sponsored plan).

SPECIAL RULES FOR MEDICARE BENEFICIARIES

Individual Market

The CMS guidance provides that, consistent with the longstanding prohibitions on the sale and issuance of duplicate coverage to Medicare beneficiaries, it is **illegal to knowingly sell or issue a QHP to a Medicare beneficiary**. This prohibition applies only to QHP coverage in the individual market; it does not apply in the SHOP.

Thus, agents and brokers are prohibited from knowingly selling a QHP to a Medicare beneficiary. According to CMS, agents and brokers may wish to protect themselves by asking each applicant about his or her Medicare status. The Department of Health and Human Services (HHS) will be updating the training materials provided to agents and brokers to reflect the special rules for Medicare beneficiaries.

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Also, CMS is planning to update its Medicare outreach materials to help individuals with Medicare understand that Exchange coverage is not appropriate for them. If individuals are seeking supplemental coverage for their Medicare, and do not have retiree coverage, they should consult Medicare.gov about enrolling in a Medicare Advantage plan or purchasing a Medigap policy.

SHOP

Medicare beneficiaries whose employer purchases SHOP coverage are treated the same as any other person with employer coverage. Thus, these **Medicare beneficiaries may be enrolled in a SHOP QHP**. The prohibition described above only applies to coverage sold by an issuer to an individual. SHOP coverage is sold to the employer.

In addition, the Medicare Secondary Payer (MSP) rules apply to employers with **20 or more employees** and include anti-discrimination provisions to prevent working Medicare beneficiaries from receiving less group health plan coverage than their co-workers. Under the MSP rules, employers are required to offer the same coverage to their Medicare-entitled employees (and to Medicare-entitled spouses) that they offer to other employees and spouses. These anti-discrimination rules apply to any employer with 20 or more employees that offers coverage to its employees through the SHOP.

Source: Centers for Medicare & Medicaid Services

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.