

# legislative update

## Affordable Care Act Plan Cancellation Update

On November 14, 2013, the Centers for Medicare and Medicaid Services (“CMS”) issued a notice to the various state Insurance Commissioners as a follow up to the President’s press conference earlier in the day. This notice provides more details on the President’s suggestions to address the issue of policies in the individual market that have been cancelled due to changes required by the Affordable Care Act (“ACA”). The notice expands the scope of the President’s speech by extending new policy that affects both individual **and** small group health insurance plans.

The notice acknowledges that, in some cases, health insurance carriers are terminating or cancelling these policies because they would not comply with certain market reforms that are scheduled to take effect for plan or policy years starting on or after January 1, 2014, such as the new modified community rating and essential health benefits package standards. It goes on to discuss that although affected individuals and small businesses may access quality health insurance through the new Health Insurance Marketplaces, potentially including federal subsidies to offset a portion of the premium expenses, some people and businesses are finding that the coverage offered would be more expensive than their current coverage, thus dissuading them from immediately transitioning to such coverage.

The new policy allows health insurance carriers the ability to continue coverage that would otherwise be terminated or cancelled as required by the ACA, and allows affected individuals and small businesses to re-enroll in such coverage if they so choose. Under this transitional policy, health insurance coverage in the individual or small group market that is renewed for a policy year starting between January 1, 2014 and October 1, 2014 and associated group health plans of small businesses, will not be considered to be out of compliance with the market reforms specified below under the conditions, also specified below.

The specified market reforms that will not be taken into consideration in regards to plan compliance are:

- Fair health insurance premiums
- Guaranteed availability of coverage
- Guaranteed renewability of coverage
- Prohibition of pre-existing condition exclusions or other discrimination based on health status, with respect to adults, except with respect to group coverage
- Non-discrimination in health care
- Comprehensive health insurance coverage
- Coverage for individuals participating in approved clinical trials

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To qualify for this relief, the following conditions must be met:

- Coverage had to be in effect on October 1, 2013
- The health insurer must send a notice to all individuals and small businesses that received a cancellation or termination notice or those that would otherwise receive such a notice, that informs them of the following:
  - Any changes in the options available to them
  - Which market reforms will not be reflected in the coverage
  - Their potential right to enroll in a qualified health plan through the Marketplace and possibly qualify for a subsidy
  - How to access such coverage through the Marketplace
  - Their right to enroll in health insurance coverage outside of a Marketplace that complies with specified market reforms.
- The carrier must get this notice out to individuals and small businesses that received cancellation or termination notices as soon as reasonably possible. For individuals and small businesses that would have received a cancellation or termination notice, the carrier must send this notice by the time it would have otherwise sent the cancellation or termination notice.

**It is important to know that these are recommended changes and carriers are not required to abide by them. It is up to each state to decide whether or not to allow these changes and then up to each carrier to decide if they want to implement the changes.** At this time, these regulations have no effect on mini-med plans, large group health plans, or self-funded plans.

Finally, while these are recommendations that are being provided by the Administration, both the House and Senate are working on separate “fixes” with respect to the cancellation of policies due to the ACA requirements. Assurance will continue to monitor developments related to these proposals and will send out updates as necessary.