



CENTER FOR CONSUMER INFORMATION & INSURANCE OVERSIGHT

DATE: August 31, 2023

TO: All Federally-facilitated Exchange (FFE) and State-based Exchange on the Federal Platform (“SBE-FP”) Qualified Health Plan (QHP) and Stand-alone Dental Plan Issuers

FROM: Ellen Montz
Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight

SUBJECT: Major Disaster Declarations by the Federal Emergency Management Agency (FEMA)– Special Enrollment Periods (SEPs), Termination of Coverage, and Payment Deadline Flexibilities, Effective August 8, 2023

This guidance updates and supersedes the guidance on the same subject that was effective August 9, 2018.

Special Enrollment Periods. Exchanges on the Federal platform (FFEs and SBE-FPs) offer SEPs outside of the annual Open Enrollment Period (OEP) to individuals who experience qualifying events. Typically, individuals have 60 days from the date of the qualifying event to enroll in a Qualified Health Plan (QHP). However, if an individual or their dependents are affected by an emergency or major disaster that is recognized with a formal declaration from the Federal Emergency Management Agency (FEMA) and that emergency or major disaster prevents the individual or their dependents from enrolling within 60 days of the qualifying event, the individual and their dependents will be eligible for an Exceptional Circumstances SEP under 45 CFR § 155.420(d)(9) that allows them to complete their Exchange enrollment.

Additionally, an individual or their dependents who are affected by an emergency or major disaster that is recognized with a formal declaration from FEMA and that emergency or major disaster prevents the qualified individual or their dependents from enrolling during the OEP will also be eligible for an Exceptional Circumstances SEP under 45 CFR § 155.420(d)(9).

Individuals will be considered “affected by a FEMA-declared emergency or major disaster” (hereinafter referred to as FEMA-emergency affected) and eligible for an Exceptional Circumstances SEP under 45 CFR § 155.420(d)(9) if they were unable to enroll in an enrollment period for which they were eligible (i.e., either the OEP or a SEP) due to a FEMA-declared emergency or major disaster. To demonstrate this, individuals will be required to attest that they meet the following eligibility requirements: 1) they resided in any of the counties that are eligible to apply for “individual assistance” or “public assistance” by FEMA either during the FEMA-designated incident period of the emergency or major disaster, or at the time of application for enrollment; and 2) they were affected by a disaster, and that it prevented them from completing enrollment. See <https://www.fema.gov/disasters> for all FEMA declarations of emergency and major disasters.

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Length of SEP and Coverage Effective Dates. FEMA-emergency affected individuals with this Exceptional Circumstance SEP will have up to 60 days from the end of the FEMA-designated incident period to select a new QHP, through the Exchange or make changes to their existing QHP enrollment. FEMA-emergency affected individuals can choose to have coverage start on the first day of the month following plan selection,¹ or can request an effective date that would have applied if they had selected a plan during their original enrollment opportunity on or after the FEMA-designated incident start date. Coverage effective date rules may vary based on the date of plan selection and the qualifying event for the enrollment opportunity. For more information regarding coverage effective date rules, see Special Enrollment Period Overview at <https://marketplace.cms.gov/technical-assistance-resources/special-enrollment-periods-.html>.

The following is an example of how the SEP and coverage effective dates would work for a hypothetical FEMA Major Disaster Declaration. On July 7, FEMA announces a Major Disaster Declaration related to a tropical storm and associated flooding, with an incident period of June 20-22. FEMA designates several counties, including the county in which Mary Smith resides, as eligible to apply for public assistance. Mary Smith's employer-sponsored health insurance coverage ended on June 1. Because Mary lost minimum essential coverage (MEC), she qualifies for an SEP under 45 CFR § 155.420(d)(1)(i) and has 60 days from the loss of MEC, through July 31, to select a QHP. However, Mary was unable to complete her Exchange application and QHP selection by July 31 because a severe tropical storm flooded the ground floor of her home. She stayed with relatives nearby for several days until the flood waters receded, and then spent the next several weeks cleaning up the damage.

As such, even though her SEP for loss of MEC has expired, Mary is now eligible for an Exceptional Circumstances SEP under 45 CFR § 155.420(d)(9) and may apply for and select Exchange coverage through August 21 (60 days from June 22^d, the end of the FEMA-designated incident period). Additionally, if Mary selects a plan under this Exceptional Circumstances SEP, she will be eligible to start retroactive coverage on July 1 or August 1 (effective dates that would have been available if she had chosen a plan during the loss of MEC SEP window, but after June 20, the FEMA incident start date), or choose to start coverage in the future, on September 1, consistent with the Exchange's prospective effective date rules.

Table 1 provides additional samples of qualifying events and coverage dates for FEMA-emergency affected individuals.

¹ This is consistent with the approach taken by the Exchanges on the Federal platform under 45 CFR § 155.420(b)(3)(i) to providing earlier effective dates for SEPs for which regular effective dates apply.

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Table 1. Sample SEP Coverage Effective Dates for FEMA-Emergency Affected Individuals

<u>Qualifying Event</u>	<u>Date of Qualifying Event</u>	<u>Qualifying Enrollment Period End Date</u>	<u>FEMA Incident Start Date</u>	<u>FEMA Incident End Date</u>	<u>Exceptional Circumstance SEP End Date</u>	<u>Plan Selection Date Example</u>	<u>Available Coverage Effective Date(s)</u>
Birth or Adoption*	6/1	7/31	6/20	6/22	8/21	8/3	6/1, 7/1, 8/1, or 9/1
Loss of Coverage	6/1	7/31	6/20	6/22	8/21	8/16	7/1, 8/1, or 9/1
Annual OEP	n/a	1/15	11/2	11/15	1/14	12/19	1/1 or 2/1

*Per 45 CFR § 155.420(b)(2)(i), the Exchange is required to ensure that coverage is effective for a qualified individual on the date of birth, adoption, placement for adoption, placement in foster care, or effective date of the child support order or other court order. However, qualified individuals may also call the Marketplace Call Center to alternatively elect a coverage effective date for the first of the month following plan selection.



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How to Enroll in Coverage. To request an Exceptional Circumstances SEP, FEMA-emergency affected individuals must contact the Marketplace Call Center at 1-800-318-2596 or TTY at 1-855-889-4325 and indicate they were eligible for another enrollment window, but were unable to complete their enrollment due to a FEMA-designated emergency or disaster. To expedite the Exceptional Circumstances SEP process, in advance of calling the Marketplace Call Center, FEMA-emergency affected individuals can complete an application on HealthCare.gov directly or with the assistance of a Navigator, Agent/Broker, Certified Application Counselor, Enhanced Direct Enrollment Partner, or Direct Enrollment Partner. The initial eligibility results may show the individual is not eligible to enroll because the OEP or SEP has ended. Each Exceptional Circumstances SEP request must be individually re-evaluated by a caseworker, which may take several days. Caseworkers will review an individual's eligibility for the SEP using available information from Marketplace consumer records and public information on FEMA declarations. Individuals will be notified of the SEP eligibility determination through a Marketplace eligibility determination notice according to their set communication preferences (by mail or electronic). Once an individual receives notice they are eligible for the Exceptional Circumstances SEP, they may visit HealthCare.gov (or call the Marketplace Call Center) to select a plan.

Additional Special Enrollment Period Information. Individuals impacted by natural disasters that do not receive FEMA designations may be individually considered for eligibility for an Exceptional Circumstances SEP under 45 CFR § 155.420(d)(9). For example, if an individual was a victim of a house fire and was displaced during OEP, they may be eligible for an Exceptional Circumstances SEP. Individuals impacted by any natural disaster such that they are unable to enroll during an enrollment opportunity for which they qualify may contact the Marketplace Call Center at 1-800-318-2596 or TTY at 1-855-889-4325 to request enrollment.

Additionally, individuals may experience qualifying events due to a natural disaster that make them eligible for other SEPs allowing them to access a new QHP. For example, an individual who temporarily relocated due to a hurricane and is now residing outside of their current QHP's service area may be eligible for an SEP due to this move. See <https://marketplace.cms.gov/outreach-and-education/special-enrollment-periods-available-to-consumers.pdf> for more information on what circumstances and situations allow for an SEP. Consumers eligible for one of the other SEPs listed at that link can apply for coverage directly through <https://www.healthcare.gov/>.

Termination of Enrollment or Coverage. Exchanges on the Federal platform permit an individual to choose to terminate their coverage through the Exchange for any reason. For more information regarding cancelling a plan: <https://www.healthcare.gov/keep-or-change-plan-info/>.

Consumer Payments and Grace Period Extensions. If issuers comply with a state regulatory authority's request, in reaction to a natural disaster or other emergency disruption within a state, to extend premium payment deadlines and delay cancellations for non-payment of premium, CMS may exercise enforcement discretion with regard to regulatory requirements such as the



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deadline for payment to effectuate coverage and the deadline for payment of premiums under grace periods, including for individuals receiving advance payments of the premium tax credits (APTC).

Relief from Compliance Standards (e.g., enrollment processing). CMS will consider refraining from taking compliance actions in instances where a QHP issuer's failure to comply was the direct result of the conditions created by a FEMA-designated natural disaster, and the issuer could not have taken reasonable steps in advance to prevent the compliance failure.

Please direct any questions to your CMS Account Manager.