



September 17, 2013

APPLICATION OF FEDERAL RULE 45 CFR SECTION 156.70(d) REGARDING GRACE PERIOD: HARMONIZING FEDERAL AND STATE LAW

Overview and Current Status

Regulators and Covered California have been working with the federal Center for Consumer Information and Insurance Oversight (CCIIO) to address the apparent conflict between some provisions of the federal grace period rule and existing state law regarding the length of the grace period, required notices to members when premium payments are delinquent claims payment and coverage requirements. CCIIO has been contacted by plans, providers and others on how these conflicts might be addressed and there has been pressure to resolve these conflicts to allow plans and providers to prepare for 2014 enrollment. Covered California has actively participated in these discussions seeking to promote alignment between federal and state law, and assuming that consumers are fully informed of their rights and potential obligations.

Based on a communication from CCIIO staff received in late August, DMHC sent an email¹ to the QHPs offered through Covered California that are regulated by DMHC explaining how to harmonize the differences between the federal grace period provisions and the California law. The harmonized approach allows for the following:

- Reinstatement Rights: For enrollees who are actively receiving Advanced Premium Tax Credit (APTC) and who have paid at least one month's premium in full, a three month grace period which begins on the first day of the first month allows the enrollee to reinstate coverage by paying the entire outstanding amount of premium due by the last day of the third month.
- Coverage during First Month: Enrollees in the 3 month grace period must be covered under their plan contract or policy only during the first month of unpaid premium.

¹ Dated September 3, 2013 from Gary Baldwin.

- Coverage Suspended during Second and Third Months: If an enrollee who is receiving APTC has not paid all premium due by the end of the first month of the three month grace period, plans must “suspend” coverage during the second and third months of the 3 month grace period for eligible enrollees. Once coverage is suspended, a plan’s network providers are not obligated under their contract with the plan to provide covered services to an enrollee while coverage is suspended. Enrollees may receive services from their providers, but are financially responsible for the cost of those services unless their coverage is reinstated on or before the end of the 3rd month of the grace period.
- Notice Requirements under State Law and Federal Rules : Plans must meet state and federal notice requirements to enrollees regarding payment due and overdue, prospective termination and the like for the above-stated timelines to apply.
- Notice Requirements under Covered California Contract: Covered California contracts with QHP issuers require notice to providers regarding enrollee’s grace period status. (Paragraph 3.25) Under a harmonized approach as described in this memorandum, Plans must provide a written or telephonic notice within 15 days of the start of the second month of the grace period to certain network providers (as defined in this paragraph) that an enrollee is in the second month of a three month grace period. This notice is only required to be provided to network providers who have submitted claims for services to this enrollee within the previous two months and to the enrollee’s assigned PCP. This notice should inform the network providers that the Plan is “suspending” coverage until the enrollee has made their required premium payments. It would be wise to advise the provider to contact the plan to verify if coverage has been reinstated before providing services.
- Termination of Coverage Due to Nonpayment of Premium if the Grace Period is Exhausted: Assuming proper advance written notice of delinquent premium was provided to the enrollee, a Covered California plan may terminate an enrollee’s coverage if the full amount of outstanding premium is not paid by the last day of the third month of the grace period. If this termination occurs outside of the regular enrollment period and the enrollee does not otherwise qualify for a special enrollment, the individual’s coverage is terminated and they have lost their right to reinstate coverage.

More details about how the grace period is applied within Covered California:

- Plans must pay claims for covered services when coverage is in force during the first month of the grace period, even if premium is ultimately not paid for that month. Medically necessary services must be approved and covered when coverage is in force including during the first month of the grace period.
- Covered California enrollees who are not actively receiving APTC are not subject to the three month grace period; they are subject to state law grace period of “at least 30 days.” Enrollees who are eligible for APTC but elect not to receive it currently are not eligible for the three month grace period.
- Enrollees who are not current with premium due and make a partial payment of premium to the plan in an effort to restore coverage have not restored coverage and have not exited the three month grace period unless the full outstanding amount is paid by the last day of the three month period. The plan may retain payment for the first month of the grace period when coverage was in force but must return any coverage if the enrollee exhausts the grace period.
- Plans must continue to collect APTC for the entire three months of the grace period and may retain APTC received for the first month of the grace period. If the enrollee’s grace period is exhausted, the plan must return APTC received for months two and three.
- Covered California contract provisions, including the definition of grace period, will be interpreted and applied flexibly consistent with the changes described in this memorandum.
- An enrollee who reinstates coverage returns to normal coverage status and could trigger another grace period during the plan year if that enrollee again fails to pay premium later in the year. The same timing and rules would apply to subsequent grace period(s).
- If an enrollee receives care during the second and third months of the grace period and fails to reinstate coverage by paying the full premium due before the grace period is exhausted, the enrollee assumes financial responsibility for the cost of that care.
- If an enrollee receives care during the second and third months of the grace period and reinstates coverage by paying the full premium due, the enrollee’s plan is responsible for payment for covered services received by the enrollee during those two months. Enrollee owes applicable cost-sharing, if any.