

**Date:** July 7, 2015

**Subject: Guidance on Federal Standard Notices of Product Discontinuation and Renewal in Connection with the Open Enrollment Period for the 2016 Coverage Year**

## **I. Notice of Product Discontinuation**

Under the guaranteed renewability provisions of title XXVII of the Public Health Service Act and their implementing regulations,<sup>1</sup> in any case in which a health insurance issuer decides to discontinue offering a particular product (as defined in 45 CFR 144.103) offered in the group or individual market, that product may be discontinued by the issuer in accordance with applicable state law in such market only if, among other things, the issuer provides notice in writing, in a form and manner specified by the Secretary of Health and Human Services, to each plan sponsor or individual, as applicable, provided that particular product in that market (and to all participants and beneficiaries covered under such coverage) of such discontinuation at least 90 calendar days prior to the date of the discontinuation.

On September 2, 2014, the Centers for Medicare & Medicaid Services (CMS) released a bulletin providing guidance and Federal standard notices of product discontinuation and renewal.<sup>2</sup> In the bulletin, CMS announced a temporary safe harbor from enforcement of the 90-day requirement in the individual market under certain conditions.<sup>3</sup>

Specifically, the bulletin stated that, in connection with the open enrollment period for the 2015 coverage year, CMS will not take enforcement action against an issuer for failing to provide a discontinuance notice related to individual market coverage at least 90 days prior to the discontinuance, as long as such notice is provided consistent with the timeframes applicable to renewal notices in the individual market, which for non-grandfathered, non-transitional plans is before the first day of the next annual open enrollment period, and for grandfathered and transitional plans is at least 60 days before the date of renewal.<sup>4</sup> States were encouraged to take a similar approach for the 2015 coverage year.

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<sup>1</sup> Sections 2703 and 2741 of the Public Health Service Act and 45 CFR 146.152, 147.106 and 148.122.

<sup>2</sup> Form and Manner of Notices When Discontinuing or Renewing a Product in the Group or Individual Market (Sept. 2, 2014), available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Renewal-Notices-9-3-14-FINAL.PDF>.

<sup>3</sup> Health insurance issuers that elect to entirely cease offering products in a particular market in a state (market withdrawal) are subject to certain requirements under the guaranteed renewability statute and regulations, including the requirement to provide notice of the discontinuation at least 180 days prior to the date coverage will be discontinued. The enforcement policy described in this document is not applicable in a market withdrawal situation.

<sup>4</sup> The bulletin stated that “Pursuant to 45 CFR 156.80(d)(3)(ii), issuers in the small group market are permitted to update their single risk pool index rate and make plan-level adjustments on a quarterly basis. Issuers in the large group market are not subject to the single risk pool requirement. Because issuers of such group plans have more

In granting this temporary relief, CMS stated:

“The purpose of the statutory requirement to provide a discontinuance notice 90 days prior to the end of coverage is to inform consumers that their current health coverage is being terminated and that they have other health coverage options. In the case of a 2014 policy issued on a calendar year basis, this means that the notice would be sent by October 3, 2014. However, in many instances, issuers will not finalize their 2015 plan offerings until closer to the start of the 2015 annual open enrollment period, which begins on November 15, 2014, particularly in the case of [qualified health plans] offered through the Federally-facilitated Marketplace. This means that, in connection with the 2015 open enrollment period, consumers potentially could receive discontinuance notices without being able to take prompt action to shop for new coverage, and issuers may not be able to suggest replacement coverage options as explicitly envisioned by these Federal standard notices.”<sup>5</sup>

For the 2016 coverage year, the deadline for finalizing QHP offerings is in October 2015 and open enrollment period will begin on November 1, 2015—after a 90-day discontinuation notice would be required to be sent with respect to a product discontinuation effective December 31, 2015. Therefore, for the reasons stated above, CMS will exercise the same enforcement discretion again this year. Accordingly, in connection with the open enrollment period for coverage in benefit year 2016, CMS will not take enforcement action against an issuer that fails to provide a discontinuance notice related to individual market coverage at least 90 days prior to the discontinuation, as long as the issuer provides such notice consistent with the timeframes applicable to renewal notices, which for non-grandfathered, non-transitional plans is before the first day of the next annual open enrollment period, and for grandfathered and transitional plans is at least 60 days before the date of renewal. CMS encourages states to take a similar approach.

## **II. Form and Manner of Notices of Product Discontinuance and Renewal**

CMS does not anticipate releasing updated Federal standard notices for product discontinuations or renewals in connection with policy years ending on or before December 30, 2016.

Accordingly, until further guidance is issued, the Federal standard notices provided in the September 2, 2014 bulletin should continue to be utilized, subject to the additional information provided in the CMS guidance released on June 12, 2015.<sup>6</sup> The September 2, 2014 bulletin is available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Renewal-Notices-9-3-14-FINAL.PDF>. The June 12, 2015 guidance is available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-on-Distribution-of-Information-Regarding-APTC-and-CSR-061215.pdf>.

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flexibility than issuers of individual market plans with regard to when a product may be discontinued, the enforcement policy described in this document is not applicable to group market plans.” *Id.* at 2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Distribution of Information Regarding Advance Payments of the Premium Tax Credit (APTC) and Cost-Sharing Reductions (CSR) in Federal Standard Notices for Coverage Offered through the Federally-facilitated Marketplaces (June 12, 2015), available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-on-Distribution-of-Information-Regarding-APTC-and-CSR-061215.pdf>.

[Guidance/Downloads/Guidance-on-Distribution-of-Information-Regarding-APTC-and-CSR-061215.pdf](#).

**Where to get more information:**

If you have questions about this guidance, please e-mail CCIIO at [marketreform@cms.hhs.gov](mailto:marketreform@cms.hhs.gov).