DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

Date: July 19, 2018

Subject: **Enforcement Safe Harbor for Product Discontinuation Notices in Connection with the Open Enrollment Period for Coverage in the 2019 Benefit Year Individual Market**

Under the guaranteed renewability provisions of title XXVII of the Public Health Service Act (PHS Act), as added by the Health Insurance Portability and Accountability Act (HIPAA) and the Patient Protection and Affordable Care Act (PPACA), and their implementing regulations,[1] a health insurance issuer that elects to discontinue offering a particular product (as defined in 45 CFR 144.103) in the group or individual market generally must provide notice of such discontinuation at least 90 calendar days prior to the date of the discontinuation. The purpose of this requirement is to inform consumers that their current health coverage is being terminated and that they have other health coverage options.

Due to the timing of qualified health plan (QHP) certification for the 2015, 2016, 2017, and 2018 benefit years, issuers were in many instances unable to finalize their plan offerings until closer to the start of the annual open enrollment period, after the deadline to meet the 90 day discontinuation notice requirement. This meant consumers could potentially receive product discontinuation notices without being able to take prompt action to shop for new coverage, and issuers would not have been able to suggest replacement coverage options, as explicitly envisioned by these notices. Therefore, in connection with the open enrollment period for coverage in each of these benefit years, the Centers for Medicare & Medicaid Services (CMS) announced that it would not take enforcement action against an issuer failing to meet the 90-day requirement in the individual market, under certain conditions.[2]

Consistent with previous guidance, in connection with the open enrollment period for coverage in the 2019 benefit year, CMS will not take enforcement action against an issuer for failing to send a product discontinuation notice with respect 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. The renewal notice timeframe for non-grandfathered,

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[1] Sections 2712 and 2742 of the PHS Act, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and section 2703 of the PHS Act, as added by the Patient Protection and Affordable Care Act (PPACA), and 45 CFR 146.152, 147.106 and 148.122.

[2] In connection with the open enrollment period for coverage in benefit year 2017, CMS announced the temporary safe harbor in section VII of "Updated Federal Standard Renewal and Product Discontinuation Notices," (September 2, 2016) available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Updated-Federal-Standard-Renewal-and-Product-Discontinuation-Notices-090216.pdf. The Federal standard notices in the September 2, 2016 Bulletin (or where applicable, State-specific standard notices) must be used by issuers in the individual market with respect to product discontinuations, coverage renewals, and terminations based on enrollees' movement outside the product's service area, starting with 2018 policy years.

non-transitional plans is before the first day of the next annual open enrollment period, and for grandfathered health plans and transitional plans is at least 60 days before the date of renewal. States are encouraged to offer similar flexibility to issuers.