

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



CENTER FOR CONSUMER INFORMATION & INSURANCE OVERSIGHT

DATE: August 26, 2020

SUBJECT: Enforcement Safe Harbor for Qualified Health Plan Termination Notices
During the 2020 Benefit Year

In the HHS Notice of Benefit and Payment Parameters for 2021 (2021 Payment Notice),¹ the Centers for Medicare & Medicaid Services (CMS) finalized a requirement at 45 CFR 156.270(b)(1) that if a qualified health plan (QHP) issuer terminates an enrollee's coverage or enrollment in a QHP through the Exchange, issuers must promptly and without undue delay send termination notices to enrollees, including the termination effective date and reason for termination, regardless of the reason for the termination or who initiated it. The purpose of this requirement is to help streamline issuer operations and reduce issuer and consumer confusion. It also helps promote continuity of coverage by ensuring that enrollees are aware that their coverage is ending, as well as why and when, so that they can take appropriate action to enroll in new coverage, if eligible. This policy became effective with the majority of the 2021 Payment Notice on July 13, 2020.

Due to the timing of the effective date of this policy, issuers were in many instances unable to implement Information Technology (IT) changes to support the new notice requirement, particularly due to competing priorities such as focusing on responses to COVID-19. CMS understands that for some issuers, systems modifications to accommodate notices for all terminations would require manual workarounds and months of IT builds. To provide sufficient time for these builds, CMS will not take enforcement action against an issuer using the Federal platform for failure to meet the new QHP termination notice requirements for terminations effectuated prior to February 1, 2021, provided that the issuer complies with the requirements under 45 CFR 156.270(b)(1) applicable prior to the effective date of the amendments made by the 2021 Payment Notice. Under that provision, if a QHP issuer terminates an enrollee's coverage or enrollment in a QHP through the Exchange, the issuer must promptly and without undue delay send termination notices to enrollees, including the termination effective date and reason for termination, in one of the following circumstances: (1) the enrollee is no longer eligible for coverage in a QHP through the Exchange; (2) non-payment of premiums for coverage of the enrollee, after the exhaustion of the applicable grace period; or (3) the enrollee's

¹ HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans, 85 FR 29164, 29238 (May 14, 2020).

coverage is rescinded in accordance with § 147.128, after a QHP issuer demonstrates, to the reasonable satisfaction of the Exchange, if required by the Exchange, that the rescission is appropriate. As we noted in the 2021 Payment Notice, for this purpose, we considered termination of a consumer's coverage because the enrollment would violate the anti-duplication provision of section 1882 of the Social Security Act to be a termination because the enrollee is no longer eligible for QHP coverage under § 155.430(b)(2)(i),² and therefore, under such circumstances, issuers are already required to send a termination notice under § 156.270(b)(1). State-Based Exchanges are encouraged to offer similar flexibility to issuers.

² 2021 Payment Notice, 85 FR29164, 29238 (citing 3.4.8 Medicare Enrollment and Nonrenewals of the 2019 Federally-facilitated Exchanges [FFE]s and Federally-facilitated Small Business Health Options Program [FF-SHOP] Enrollment Manual at https://www.regtap.info/reg_librarye.php?i=1761).