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: September 1, 2021

Subject: **Enforcement Safe Harbor for Individual Market Product Discontinuation Notices in Connection with the Open Enrollment Period for Coverage in the 2022 Benefit Year**

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 Affordable Care Act (ACA), 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 each of the 2015 through 2021 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]

[1] Sections 2712 and 2742 of the PHS Act, as added by HIPAA, and section 2703 of the PHS Act, as added by the ACA, implemented at 45 CFR 146.152, 147.106 and 148.122.

[2] For the most recent such announcement, see "Enforcement Safe Harbor for Individual Market Product Discontinuation Notices in Connection with the Open Enrollment Period for Coverage in the 2021 Benefit Year" (August 10, 2020), available at https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/2021-Enforcement-Safe-Harbor-Product-Discontinuation-Notices.pdf.

Consistent with previous guidance, in connection with the open enrollment period for coverage in the 2022 benefit year, CMS will not take enforcement action against an issuer for failing to provide 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.[3] The renewal notice timeframe for non-grandfathered, non-transitional plans[4] 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. CMS will not consider a state to have failed to substantially enforce the guaranteed renewability requirements because the state adopts such an approach.

[3] To view the updated Federal standard notices that must be used for policy years beginning on or after January 1, 2021 (that is, beginning with notices required to be provided in connection with enrollment for coverage in policy years that start in 2021) in order to meet the Secretary's specification regarding the form and manner of the required notices, see https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-Federal-Standard-Notices-for-coverage-beginning-in-the-2021-plan-year.pdf.

[4] For the requirements to qualify as a grandfathered plan, see 45 CFR 147.140. For the requirements to qualify as a transitional plan, sometimes known as a grandmothered plan, as well as the most recent guidance with respect to such plans, see "Insurance Standards Bulletin Series – INFORMATION – Extension of Limited Non-Enforcement Policy through 2022" (January 19, 2021), available at https://www.cms.gov/files/document/extension-limited-non-enforcement-policy-through-calendar-year-2022.pdf.