



Date: September 26, 2017

Subject: Enforcement Safe Harbor for Renewal Notices in Connection with the Open Enrollment Period for Non-Grandfathered Coverage in the 2018 Individual Market Benefit Year

Under the guaranteed renewability provisions of title XXVII of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act, and their implementing regulations,¹ a health insurance issuer that renews coverage in the individual market generally must provide notice of such to its policyholders before the date of the first day of the next open enrollment period, which, for the 2018 benefit year, begins on November 1, 2017. See 45 CFR 147.106(f)(1). The purpose of this notice requirement is to inform consumers that their current health coverage is being renewed for the following calendar year and that they have the option to remain in the coverage or to choose other health coverage options.² Among the pieces of information to be included in the notice is the applicable premium for the renewed product. Issuers are permitted to provide an estimated monthly premium if the new monthly premium for the following benefit year has not yet been finalized at the time of providing the notice.

On August 10, 2017, CMS announced a revised rate review timeline for the 2018 benefit year with later dates for submission of modified rate filings and final determinations for coverage in the individual and small group markets.³ The last date for issuers to file their rates was September 5, 2017; the last date for States to submit final rates was September 20, 2017. CMS understands that the later rate filing timeline may make it problematic for issuers to meet the deadline for issuing product discontinuation and renewal notices.

Given the later deadline for filing of 2018 rates, CMS believes it is appropriate to provide flexibility in the deadline for issuance of renewal notices for non-grandfathered and non-transitional coverage in the individual market beyond the deadline of providing such notice before November 1, 2017, which is the first day of the individual market open enrollment period for the 2018 benefit year. In connection with the open enrollment period for coverage in the

¹ Section 2703 of the PHS Act, as added by the Patient Protection and Affordable Care Act, and 45 CFR 147.106.

² Model Renewal Notices are found in CMS's September 2, 2016 Guidance titled "Updated Federal Standard Renewal and Product Discontinuation Notices" which can be found here: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Updated-Federal-Standard-Renewal-and-Product-Discontinuation-Notices-508.pdf>.

³ The FAQ with the revised timeline can be found here: https://www.regtap.info/uploads/library/QHP_FAQ_5CR_081117.pdf.

2018 benefit year, CMS will not take enforcement action against an issuer for failing to send a renewal notice with respect to individual market coverage in time to be delivered by October 31, 2017, as long as the issuer provides such notice shortly thereafter, as reasonably possible. CMS encourages States to provide the same flexibility and will not determine a State to be failing to substantially enforce the renewal notice deadline if it does so. The deadline for renewal notices for coverage in the small group market and for grandfathered and transitional coverage in the individual market, which is at least 60 days before the date of renewal, remains unchanged.

CMS has already provided for flexibility in the timeline for product discontinuance notices in connection with the 2018 benefit year. On June 1, 2017, CMS issued guidance establishing an enforcement safe harbor with respect to the requirement for issuers to send individual market product discontinuation notices at least 90 days prior to the discontinuation, as long as the issuer provides such notice consistent with the timeframes applicable for renewal notices.⁴ Notwithstanding this September 26, 2017, bulletin, issuers must still provide product discontinuation notices with respect to non-grandfathered, non-transitional individual market coverage such that they are delivered by no later than October 31, 2017.

For questions about this guidance, e-mail CMS at marketreform@cms.hhs.gov.

⁴ See CMS Bulletin dated June 1, 2017, which can be found here: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Enforcement-Safe-Harbor-2018.pdf>.