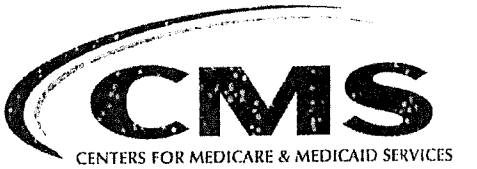
DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



November 14, 2013

Dear Insurance Commissioners,

Some individuals and small businesses with health insurance coverage have been notified by their health insurance issuers that their coverage will soon be terminated. We understand that, in some cases, the health insurance issuer is terminating or cancelling such coverage because it would not comply with certain market reforms that are scheduled to take effect for plan or policy years starting on or after January 1, 2014, such as the new modified community rating and essential health benefits package standards.[1] Although affected individuals and small businesses may access quality health insurance coverage through the new Health Insurance Marketplaces, in many cases with federal subsidies, some of them are finding that such coverage would be more expensive than their current coverage, and thus they may be dissuaded from immediately transitioning to such coverage.

In light of this circumstance, under the following transitional policy, health insurance issuers may choose to continue coverage that would otherwise be terminated or cancelled, and affected individuals and small businesses may choose to re-enroll in such coverage. Under this transitional policy, health insurance coverage in the individual or small group market that is renewed for a policy year starting between January 1, 2014, and October 1, 2014, and associated group health plans of small businesses, will not be considered to be out of compliance with the market reforms specified below under the conditions specified below.[2] We will consider the impact of this transitional policy in assessing whether to extend it beyond the specified timeframe.

The specified market reforms are the portions of the following provisions of the Public Health Service Act that are scheduled to take effect for plan or policy years starting on or after

[1] Health plans that are grandfathered pursuant to section 1251 of the Affordable Care Act and its implementing regulations are not subject to most market reforms. Because there is no need for transitional relief for such plans, the transitional relief afforded in this document is not applicable to grandfathered health plans.

[2] The Department of Health and Human Services has conferred with the Departments of Labor and the Treasury with respect to those market reforms with respect to which there is shared jurisdiction. With respect to those market reforms, the Departments of Labor and the Treasury concur with the transitional relief afforded in this document.

January 1, 2014, and any corresponding portions of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code):

- Section 2701 (relating to fair health insurance premiums);
- Section 2702 (relating to guaranteed availability of coverage);
- Section 2703 (relating to guaranteed renewability of coverage);
- Section 2704 (relating to the prohibition of pre-existing condition exclusions or other discrimination based on health status), with respect to adults, except with respect to group coverage;
- Section 2705 (relating to the prohibition of discrimination against individual participants and beneficiaries based on health status), except with respect to group coverage;[3]
- Section 2706 (relating to non-discrimination in health care);
- Section 2707 (relating to comprehensive health insurance coverage);
- Section 2709, as codified at 42 U.S.C. § 300gg-8 (relating to coverage for individuals participating in approved clinical trials).

The specified conditions are the following:

- The coverage was in effect on October 1, 2013;[4]
- The health insurance issuer sends a notice to all individuals and small businesses that received a cancellation or termination notice with respect to the coverage, or sends a notice to all individuals and small businesses that would otherwise receive a cancellation or termination notice with respect to the coverage, that informs them of (1) any changes in the options that are available to them; (2) which of the specified market reforms would not be reflected in any coverage that continues; (3) their potential right to enroll in a qualified health plan offered through a Health Insurance Marketplace and possibly qualify for financial assistance; (4) how to access such coverage through a Marketplace; and (5) their right to enroll in health insurance coverage outside of a Marketplace that complies with the specified market reforms. Where individuals or small businesses have already received a cancellation or termination notice, the issuer must send this notice as soon as reasonably possible. Where individuals or small business would otherwise receive a cancellation or termination notice, the issuer must send this

[3] We note that sections 702 of ERISA and 9802 of the Code remain applicable to group health plans.

[4] In light of this condition, the transitional relief afforded in this document is not applicable to newly obtained health insurance coverage. It applies only with respect to individuals and small businesses with coverage that was in effect on October 1, 2013; it does not apply with respect to individuals and small businesses that obtain new coverage after October 1, 2013.

notice by the time that it would otherwise send the cancellation or termination notice.

State agencies responsible for enforcing the specified market reforms are encouraged to adopt the same transitional policy with respect to this coverage.

Though this transitional policy was not anticipated by health insurance issuers when setting rates for 2014, the risk corridor program should help ameliorate unanticipated changes in premium revenue. We intend to explore ways to modify the risk corridor program final rules to provide additional assistance.

Sincerely,

/Signed, GC, November 14, 2013/

Gary Cohen
Director
Center for Consumer Information and Insurance Oversight