

# PROGRAM MEMORANDUM INSURANCE COMMISSIONERS INSURANCE ISSUERS

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Title: Insurance Standards Bulletin Series — INFORMATION

Subject: How to Apply the "Product Withdrawal" and "Market Exit" Exceptions to the Guaranteed Renewability Requirements of Title XXVII of the PHS Act

Markets: Group and Individual

## **I. Purpose**

This bulletin clarifies that title XXVII of the Public Health Service Act (PHS Act) does not require a health insurance issuer either to maintain, or to terminate, existing blocks of business when the issuer decides it will no longer offer a specific type of policy ("product withdrawal"), or will no longer offer any policies in a market ("market exit"). Rather, state law determines the issuer's options with respect to existing blocks of business (also commonly known as "in force" business).

This bulletin also clarifies that state law may determine the manner in which existing business is to be terminated following product withdrawal or market exit, provided the issuer satisfies all other applicable requirements of title XXVII. For example, a state might permit the issuer to discontinue all coverage on a uniform date, or it might require coverage to be discontinued on a rolling basis, in which policies remain in force for their full term, and then are not renewed. However, for the reasons discussed in section IV of this bulletin, we encourage states that permit or require issuers to discontinue existing contracts upon market exit, to require issuers to nonrenew coverage as its term expires.

## **II. Termination of Existing Coverage Following Product Withdrawal**

The PHS Act requires health insurance issuers to guarantee the renewal of coverage unless at least one of several listed exceptions applies. (See sections 2712(a) (group market) and 2742(a) (individual market)). One exception to the guaranteed renewability requirement permits an issuer to cease offering a product in the market and to discontinue existing blocks of business with respect to that product. This may be done, in accordance with applicable state law, as long as certain other requirements are met. (See sections 2712(c)(1) and 2742(c)(1).)<sup>1</sup>

Under federal law provisions in sections 2712(c)(1) and 2742(c)(1), while issuers are permitted to discontinue existing blocks of business, they are not required to do so. However, state law could require or prohibit discontinuance of existing policies. To the extent state law permits or requires issuers to discontinue existing coverage after withdrawing a particular product from the market, issuers must also comply with the provisions of section 2712(c)(1) or 2742(c)(1),<sup>ii</sup> respectively, and any other state law provisions that might provide consumers additional protections. In addition, state law would determine whether, if the issuer elects to cancel existing contracts, it must do so at the time the product is withdrawn, or may do so later.

### **III. Termination of Existing Coverage Following Market Exit**

Another exception to the guaranteed renewability requirement permits an issuer to entirely cease offering products in a particular market and to discontinue existing blocks of business in that market, in accordance with applicable state law, as long as certain requirements are met. (See PHS Act sections 2712(c)(2) and 2742(c)(2).)<sup>iii</sup>

As with product withdrawal, sections 2712(c)(2) and 2742(c)(2) neither require nor prohibit issuers that cease offering products in a market to terminate existing contracts for products in that market. Rather, state law controls this issue. To the extent state law permits or requires issuers to terminate existing coverage upon market exit, issuers must comply with the provisions of section 2712(c)(2) or 2742(c)(2)<sup>iv</sup>, and any other state law provisions that might provide consumers additional protections.<sup>v</sup>

### **IV. Timing of Discontinuation of Coverage**

A question has been raised concerning how termination of existing coverage is to be accomplished if an issuer that withdraws a product or leaves the market wishes to terminate existing blocks of business. The issue is whether the termination must occur on a uniform date for all contracts, or whether, following the end of the required notice period, termination is to be accomplished on a rolling basis throughout the year, as contracts come up for renewal.

With respect to withdrawal of a particular type of coverage, sections 2712(c)(1) and 2742(c)(1) state that coverage of that type "may be discontinued" by the issuer if the issuer complies with other requirements of those sections, including the requirement for 90 days notice, as well as with any applicable state law.

With respect to market exit, subsections 2712(c)(2)(A) and 2742(c)(2)(A) also provide that coverage in the particular market "may be discontinued by the issuer," but require, in addition, that all health insurance policies that have been issued or delivered in that market, "are discontinued and coverage under such health insurance coverage in such market (or markets) is not renewed." Subsections 2712(c)(2)(B) and 2742(c)(2)(B) also prohibit reentry into the market for 5 years beginning on the date of the discontinuation of "the last health insurance coverage not so renewed."

We believe that because the market exit provision, but not the product withdrawal provision, specifically refers to coverage that is "not renewed," the better view of the statute is that Congress intended that existing blocks of business in a market exit situation can only be discontinued by nonrenewing coverage as its term expires. Unlike a product withdrawal, there is no requirement that an issuer offer other coverage to individuals and employers when coverage ceases following a market exit. Therefore, it makes sense to afford such individuals and employers at least the lesser protection of being able to keep their existing coverage through the end of the contract period. We encourage states to adopt this interpretation.

## Where to get more information

The statutory cites found in this bulletin are found in title 42 of the U.S. Code (42 U.S.C. sections 300gg-12(c), 300gg-42(c)). Information about the PHS Act is also available on CMS's Web site at <http://www.cms.hhs.gov/hipaa1>

If you have any questions regarding this bulletin, call the HIPAA Insurance Reform Help Line at (410) 786-1565.

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<sup>i</sup> Section 2712(c)(1) reads in part: "In any case in which an issuer decides to discontinue offering a particular type of group health insurance coverage offered in the small or large group market, coverage of such type may be discontinued by the issuer in accordance with applicable state law in such market..." (emphasis added). Similarly, section 2742(c)(1) reads in part: "In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of such type may be discontinued..." (emphasis added). In each of these two provisions, the word "offering" appears in the first clause before the word "coverage," but does not appear in the second clause before the word "coverage." This establishes that the first clause refers to the discontinuance of offering coverage, while the second clause refers to the discontinuance of existing coverage. The use of the word "may" in the second clause establishes that under title XXVII, issuers that choose to no longer offer a particular product are permitted, but not required, to terminate existing contracts for that product (subject to state law).

<sup>ii</sup> Section 2712(c)(1) reads as follows:

- (1) PARTICULAR TYPE OF COVERAGE NOT OFFERED – In any case in which an issuer decides to discontinue offering a particular type of group health insurance coverage offered in the small or large group market, coverage of such type may be discontinued by the issuer in accordance with applicable state law in such market only if –
- (A) the issuer provides notice to each plan sponsor provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;
  - (B) the issuer offers to each plan sponsor provided coverage of this type in such market, the option to purchase all (or, in the case of the large group market, any) other health insurance coverage currently being offered by the issuer to a group health plan in such market; and
  - (C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage.

Section 2742(c)(1) reads as follows:

- (1) PARTICULAR TYPE OF COVERAGE NOT OFFERED – In any case in which an issuer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of

such type may be discontinued by the issuer only if –

- (A) the issuer provides notice to each covered individual provided coverage of this type in such market of such continuation at least 90 days prior to the date of the discontinuance of such coverage;
- (B) the issuer offers to each individual in the individual market provided coverage of this type, the option to purchase any other individual health insurance coverage currently being offered by the issuer for individuals in such market; and
- (C) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph (B), the issuer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.

<sup>iii</sup> Subsection 2712(c)(2)(A) reads in part: “In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the small group market or in the large group market or in both markets, in a State, health insurance coverage may be discontinued by the issuer only in accordance with applicable state law...” (emphasis added). Similarly, subsection 2742(c)(2)(A) reads in part: “...in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in a State, health insurance coverage may be discontinued by the issuer only if...” In each of these two provisions, the word “offering” appears in the first clause before the word “coverage”, but does not appear in the second clause before the word “coverage”. This establishes that the first clause refers to the discontinuance of offering coverage, while the second clause refers to the discontinuance of existing coverage. The use of the word “may” in the second clause establishes that under title XXVII, issuers that choose to no longer offer any products in a given market are permitted, but not required, to terminate existing contracts for that product (subject to state law).

<sup>iv</sup> Section 2712(c)(2) reads as follows:

(2) DISCONTINUANCE OF ALL COVERAGE –

- (A) IN GENERAL – In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the small group market or the large group market, or both markets, in a State, health insurance coverage may be discontinued by the issuer only in accordance with applicable State law and if –
  - (i) the issuer provides notice to the applicable State authority and to each plan sponsor (and participants and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the date of the discontinuation of such coverage; and
  - (ii) all health insurance issued or delivered for issuance in the State in such market (or markets) are discontinued and coverage under such health insurance coverage in such market (or markets) is not renewed.
- (B) PROHIBITION ON MARKET REENTRY – In the case of a discontinuation under subparagraph (A) in a market, the issuer may not provide for the issuance of any health insurance coverage in the market and State involved during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

Section 2742(c)(2) reads as follows:

(2) DISCONTINUANCE OF ALL COVERAGE –

- (A) IN GENERAL – subject to subparagraph (C), in any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the individual market in a State, health insurance coverage may be discontinued by the issuer only if—
  - (i) the issuer provides notice to the applicable State authority and to each individual of such discontinuation at least 180 days prior to the date of the expiration of such coverage, and
  - (ii) all health insurance issued or delivered for issuance in the State in such market are discontinued and coverage under such health insurance coverage in such market is not renewed.
- (B) PROHIBITION ON MARKET REENTRY – In the case of a discontinuation under subparagraph (A) in the individual market, the issuer may not provide for the issuance of any health insurance coverage in the market and State involved during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

<sup>v</sup> For example, upon market exit, state law might require an issuer to cede its existing contracts to other issuers.