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BY ELECTRONIC DELIVERY

Mandy Cohen, M.D., MPH
Acting Director, Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market

Dear Dr. Cohen:

The Biotechnology Industry Organization (BIO) is pleased to submit the following comments on the notices issued by the Center for Consumer Information and Insurance Oversight (CCIIO) on June 26, 2014, entitled "Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market (the 'Draft Standard Notices')." ¹

BIO represents more than 1,000 biotechnology companies, academic institutions, state biotechnology centers, and related organizations across the United States and in more than 30 other nations. BIO's members develop medical products and technologies to treat patients afflicted with serious diseases, to delay the onset of these diseases, or to prevent them in the first place. In that way, our members' novel therapeutics, vaccines, and diagnostics not only have improved health outcomes, including productivity and quality of life, but also have reduced healthcare expenditures due to fewer physician office visits, hospitalizations, and surgical interventions. ²

The Patient Protection and Affordable Care Act (ACA) provided many uninsured individuals with the ability to purchase affordable health insurance through the health insurance Marketplaces, thus providing them with access to meaningful coverage and care for the first time. It is critical that these new enrollees are both well informed about the coverage options they have through the Marketplaces and about any changes that occur to their health plans during and between each coverage year.

BIO believes that requiring Qualified Health Plans (QHPs) offered through the Marketplaces to distribute standardized notifications when they discontinue or renew coverage is an important step to ensure that all enrollees receive clear, accurate, and consistent information about their coverage options, ³ and believes that CCIIO is furthering the goal of ensuring that consumers are adequately informed by issuing the Draft Standard Notices. However, we still have concerns that the notifications contained in the Draft Standard Notices would leave enrollees vulnerably uninformed in critical ways, and therefore urge CCIIO to consider the comments below. Our comments address our general concerns

¹ Center for Consumer Information and Insurance Oversight (CCIIO), Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), Insurance Standards Bulletin Series: Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market (2014).

² See, e.g., Congressional Budget Office, Offsetting Effects of Prescription Drug Use on Medicare's Spending for Medical Services (Nov. 2012).

³ See 79 Fed. Reg. at 15,817.

regarding the format and information included in the Draft Standard Notice documents and respond to two questions posed to stakeholders by CCIIO in the accompanying guidance. We also address our concerns about the current lack of information, particularly comparative information, for consumers who seek to enroll in a new plan or switch between plans.

I. BIO Supports the Use of Standardized Notices and Encourages CCIIO to Further Strengthen the Standard Renewal and Discontinuation Notices with Additional Information Helpful to Consumers

BIO strongly supports the use of standardized notifications and appreciates CCIIO's efforts to create a uniform federal template for this purpose through its Draft Standard Notices. The information presented in these draft templates is concise, easy to follow, and beneficial to a consumer's basic knowledge of his or her renewal or discontinuation of health coverage. The format of these draft notices is also easily adaptable and transferrable so that other entities, such as issuers participating in state-based Marketplaces and in U.S. Territory Marketplaces, are able to utilize and distribute the same standard notices across all plans. We believe, however, that the Draft Standard Notices that CCIIO has proposed require some further clarification, and that consumers need additional information when selecting a new plan or switching between plans.

A. BIO Urges CCIIO to Make Certain Modifications to the Renewal and Discontinuation Notice Documents

Each draft Renewal and Discontinuation Notice included in the Draft Standard Notices contains sections entitled, "Changes We're Making to Your Current Health Plan" or "Options from [Issuer Name]."⁴ These sections provide information about "significant" changes in a plan's premium, ID number, benefits, and cost-sharing, but noticeably do not define what constitutes a "significant" change in any of these categories.⁵ For instance, within the category of "benefits," the draft notices do not expressly require the provision of any information about a plan's changes to its formulary, or coverage policies for drugs covered under the medical benefit—or the applicable cost-sharing rates for these benefits. There is similarly no express requirement that plans provide a notification regarding changes in their provider networks. Indeed, the recommendation that consumers contact their plans on a case-by-case basis to obtain this information suggests that plans would not be required to notify consumers directly about these changes as proposed.⁶

Yet, these are aspects of a plan's design that are absolutely crucial for consumers to be aware of and any changes in these areas can significantly affect whether a given plan continues to be appropriate for a particular consumer. This is especially true for consumers facing complex diseases, who rely on continued, affordable access to certain specialists and therapies. BIO therefore encourages CCIIO to define the term "significant" in its final standard notices to include any changes made to a plan's formularies, coverage policies for drugs covered under the medical benefit, and provider networks, at a minimum. BIO also urges CCIIO to consider notifying consumers of any changes to their current plans at the

⁴ CCIIO, CMS, HHS, Insurance Standards Bulletin Series: Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market (2014), Attachments 1-6.

⁵ CCIIO, CMS, HHS, Instructions for Draft Standard Notices of Product Discontinuation and Renewal (2014).

⁶ Specifically, each draft renewal notice included in the Draft Standard Notices contains a clause entitled, "What else should I look at before deciding to keep or change my plan?" This section directs consumers to call or visit their plan's website to ensure that their healthcare provider will be in the plan's network and that their prescription medications will continue to be covered in the next plan year.

time that the changes occur to better ensure that they are well informed of their plan's coverage throughout the coverage year.

B. BIO Believes That Clear, Informative, and Comparative Plan Information Must Be Provided to Consumers Who are Choosing a New Plan or are Switching Between Plans

BIO strongly believes that all consumers must have access to meaningful information about the differences between QHP offerings in the health insurance Marketplace to be able to choose or switch to a plan that meets their needs and is affordable. However, for consumers who have not been automatically enrolled in new plans following the discontinuation of their old plans, or for consumers who wish to enroll in different plans, the applicable notices merely advise them to visit HealthCare.gov or their state exchange website for more information. Yet, information about QHP prescription drug coverage generally has not been readily accessible through HealthCare.gov or on state insurance Marketplace websites during the 2014 open enrollment period. Indeed, despite CCIIO's 2015 Final Letter to Issuers in the Federally-facilitated Marketplaces (FFMs)—which states that issuers in the FFMs must provide consumers with a URL link to direct them to "an up-to-date formulary where they can view . . . covered drugs, including tiering" on HealthCare.gov⁷—searching for information and finding a full picture of a plan's health coverage through HealthCare.gov can be burdensome and time consuming.

Searching for coverage on state-based Marketplace websites is even more difficult for consumers, and is, in some cases, impossible. To illustrate, BIO has a dedicated researcher examining Marketplace websites, and through an analysis of the California State Exchange website, www.coveredca.com—a state-based Marketplace—we have found:

- The State Exchange website does not provide direct links to a summary of benefits, plan brochure, provider directory, and list of covered drugs. These are very helpful when comparing plans and are provided on the HealthCare.gov website.
- The State Exchange website does provide a summary of benefits; however, these do not include more detailed cost-sharing information, such as the costs not included in an out-of-pocket maximum. This information is provided in the summary of benefits and coverage (SBC), which is often directly linked on the HealthCare.gov website.
- To find more information regarding formularies, cost-sharing, provider networks, and drugs covered under the medical benefit, we had to look up each plan on their issuer's website. We found that:
 - Of 36 bronze and silver QHPs offered on the State Exchange website, 20 plans did not provide an easy-to-find link to a formulary on their own website.
 - Five plans did not provide detailed cost-sharing information (i.e., they did not provide SBCs).
 - Five plans did not provide easily accessible provider network information.
 - No plans provided the cost-sharing or coverage policies for drugs covered under the medical benefit.
 - It was difficult to find ANY of this information for five plans.⁸

⁷ CCIIO, CMS, HHS, Final Letter to Issuers in the Federally-facilitated Marketplaces (2014)..

⁸Kaiser Permanente, Individual and Family Plans, <https://individual-family.kaiserpermanente.org/healthinsurance/#2-viewplans>; Contra Costa Health Coverage, <http://cchealth.org/insurance/>.

These observations track the consumer experience across the country. A nationwide consumer experience analysis conducted by Avalere Health found that formularies were difficult, very difficult, or impossible to access in 48 percent of QHPs reviewed.⁹ The analysis also found that 38 percent of QHPs reviewed had no prescription drug formulary data available, and that while provider directories were more easily accessible than drug formularies, only 50 percent included a tool allowing consumers to search for a provider by name.¹⁰

Based on our experience to date, BIO strongly urges CCIIO to establish more specific and robust requirements for plans to display current formularies, cost-sharing amounts, provider network information, and coverage policies for drugs covered under the medical benefit on HealthCare.gov and on state Marketplace websites. CCIIO should ensure that these lists are up-to-date, easily identified by plan name, searchable, and organized. Moreover, this information should be available to consumers year-round to facilitate plan choices among consumers who qualify for one of the special enrollment periods.

We have also found that consumers need better mechanisms on both the HealthCare.gov and on state-based Marketplace websites to compare plan networks and drug lists when weighing their health care insurance options. The sheer amount of information that consumers must sift through when comparing plans on the present HealthCare.gov site and state exchange websites is overwhelming and extremely time-consuming to examine, and a comparison tool would aid consumers through this process. CCIIO should therefore create mechanisms for consumers to compare plan networks and drug coverage policies easily, which could be modeled on the existing Medicare Part D Plan Finder. As with the underlying information, this comparative tool should be available to consumers year-round.

II. BIO Believes that States Should Model Their Renewal and Discontinuation Notices Based on the Format of the Federal Standard Notices

With respect to the Draft Standard Notices, CCIIO asked stakeholders to comment on whether its approach to state-developed notices provides sufficient flexibility for states while ensuring that issuers provide sufficient information for consumers. CCIIO stated that three factors would have to be considered in determining whether a state-developed form of the required notices is as protective as the federal standard notices: (1) the notice clearly explains the options for the employer or individual obtaining or renewing health insurance coverage, (2) the notice is written in a clearly understandable manner, and (3) the notice contains all of the same information outlined in the federal standard notices.¹¹ BIO supports these requirements for state-developed notices and emphasizes that it is imperative that these notices be at least as clear and include as much information as the federal standard notices—modified as described in our above comments—to ensure that beneficiaries across the nation are equally informed about their coverage. In sum, while we believe that states should be free to require issuers to provide *additional* information, in a format that is clear and useful for consumers, the federal standard notices should serve as a minimum standard and template for issuers in the U.S. states, to ensure that all consumers have access to the same information in the same format and to avoid confusion among consumers. We believe

¹¹ CCIIO, CMS, HHS, Insurance Standards Bulletin Series: Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market (2014).

that the same standard should apply in the U.S. Territories as well, for those Territories that have opted to establish a Marketplace.¹²

III. BIO Believes that Renewal and Discontinuation Notices for Coverage Offered Through the SHOP Marketplace Should Contain the Same Information as the Federal Standard Notices for the Individual Market

CCIIO also solicited comment on whether to develop a different form and manner for renewal and discontinuation notices for coverage offered through the Small Business Health Options Program (SHOP) Marketplace from the form and manner of the draft notices included in the Draft Standard Notices. BIO recognizes the unique nature of the SHOP Marketplace and its differences from the individual market. Accordingly, it makes sense that there would be small variations in the content of the standardized notices between these marketplaces. That said, BIO believes that the standardized notices used in the context of the SHOP exchanges should provide the same amount of information with the same degree of clarity as the notices used in the individual market—modified as described in our above comments. We appreciate that the formats of the draft Renewal and draft Discontinuation Notices for employers in the SHOP Marketplace are very similar to those for consumers in the individual market, and that they contain the same content. We believe that streamlining the format of the federal notices eliminates confusion for all stakeholders and ensures that consumers and small businesses participating in the SHOP exchanges will be equally well informed as consumers in the individual market. We again advocate that the federal notices for the SHOP Marketplace contain as much information about plan options for an employer as possible so that all employers are well informed about the healthcare coverage decisions they are making for themselves and for their employees.

I. Conclusion

BIO appreciates the opportunity to comment on the “Draft Standard Notices When Discontinuing or Renewing a Product in the Small Group or Individual Market.” We look forward to continuing to work with CCIIO and interested partners to ensure that consumers are well-informed when making decisions about their health insurance coverage. Please feel free to contact me at (202) 962-9220 if you have any questions or if we can be of further assistance. Thank you for your attention to this very important matter.

Sincerely,

/s/

Laurel L. Todd
Managing Director
Reimbursement and Health Policy

¹² CCIIO solicited comment on whether federal standard notices should be modified to be applicable to issuers in the U.S. Territories, or whether issuers in the U.S. Territories should be permitted to use any form and manner otherwise permitted by applicable laws and regulations.