

TO: Connect for Health Colorado Board Members

FROM: Patty Fontneau, Executive Director and CEO, Christa McClure, Director of Partnership Engagement & Appeals, Connect for Health Colorado

DATE: July 31, 2013

RE: **Individual Responsibility Exemption Appeals Process**

Should Connect for Health Colorado handle individual responsibility exemption (“exemption”) appeals requests?

Goals/Objectives:

- Provide quality customer service to individuals and families appealing their shared responsibility exemption request decision.
- Resolve questions/concerns individuals and families have with their exemption request decisions prior to their initiating the appeals process, to the extent possible.
- Leverage efficiencies of processes already in place to handle individual/family shared responsibility exemption requests.
- Promote procedural timeliness in applicable areas of the appeals process.

Appeals Procedures

Federal:

Section 1311(d)(4)(H) of the Affordable Care Act

- Outlines exemptions from the individual responsibility penalty.

45 CFR § 155.635

- Outlines the broad categories of individual responsibility exemptions and clarifies that they may appeal any determination or redetermination for an exemption and that the marketplace will include notice of the right to appeal and instructions for how to appeal in any notification issued.

45 CFR § 155.505 - § 155.535; § 155.545 - § 155.550

- Clarifies that individuals can appeal an eligibility determination for an exemption and the appropriate appeals procedures that either the Marketplace or HHS should follow.

Background

Proposed federal regulations clarify that determinations and redeterminations of individual responsibility exemptions are appealable and outline the broad procedures that should be followed by whichever entity processes such appeals (Marketplace or HHS). Federal regulations suggest that the Marketplace could defer individual responsibility exemption determinations and redeterminations to HHS, along with appeals associated to those determinations.

On June 11, 2012, Connect for Health Colorado's Board unanimously voted for the staff recommendation of using HHS' federal exemption service as the default system for certifying individual shared responsibility exemptions and the Marketplace's systems for October 1, 2013 are setup to accommodate that policy.

Considerations

Advantages to delegating individual shared responsibility exemption appeals to HHS:

- Ensure compliance with federal law
- Reduce implementation workload and risk
- Eliminate need for technology to send and receive exemption case information between the marketplace and HHS

Disadvantages to delegating individual shared responsibility exemption appeals to HHS:

- The level of coordination is unknown as Marketplace action will be required based on federal determinations.

Unknown:

- Office of Marketplace Eligibility and Appeals (OMEA) policies and procedures on individual shared responsibility appeals, and capacity¹

¹ HHS has indicated that it handles individual exemption appeals they will also be responsible for noticing appellants, collecting any relevant evidence, and conducting formal hearings.

Recommendation

Given that Connect for Health Colorado is using the HHS Federal Exemption Service as the default system for certifying individual shared responsibility exemptions and the Marketplaces systems, staff recommends that Connect for Health Colorado delegate the appeals processes for individual responsibility exemption appeals to HHS as well.

Next Steps

If Connect for Health Colorado leadership accepts the staff recommendation, C4HCO will need to indicate (in a process to be determined by federal guidance) its delegation of this appeal to the federal government. Prior to guidance being released, C4HCO staff should inform their CCIIO State Officer of the decision.