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Connect for Health Colorado should establish a state-based eligibility appeals process in the Office of Administrative Courts

FACT SHEET
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Developing a Connect for Health Colorado (C4HCO) appeals process through the Colorado Office of Administrative Courts (OAC) would streamline the appeals process, reduce administrative burdens and protect consumers from undue delays.

Federal law requires C4HCO to provide a formal eligibility appeals process for individuals, families and small businesses applying for coverage that adheres to federal constitutional due process requirements. C4HCO may establish its own state-based appeals process or delegate appeals authority to the federal government. Handing the appeals structure to the federal government would limit C4HCO's authority over appeals and potentially lead to administrative inefficiencies for C4HCO and undue delays for consumers.

C4HCO should develop its own eligibility appeals in the Colorado Office of Administrative Courts for the following reasons:

- **Observe Significant Constitutional Protections.** The OAC, which already handles Medicaid appeals, is equipped to meet the very stringent constitutional due process protections (discussed below) required for those appealing exchange eligibility determinations.
- **Reduce Procedural Burdens.** Exchange eligibility appeals also trigger an automatic appeal of Medicaid eligibility. Managing both C4HCO and Medicaid appeals in the OAC would reduce the serious threat of dueling hearings, conflicting decisions and needlessly confusing procedures for the consumer.
- **Leverage Existing Infrastructure.** The OAC has the necessary infrastructure to process such appeals – it manages the case records pursuant to HIPAA and due process requirements; it manages all client correspondence; it has access to foreign language and disability services; and it has developed rules of procedure governing fair hearings.
- **C4HCO Retains Authority.** C4HCO would retain authority over its appeals process by contracting with the OAC.
- **Improve Administrative Efficiencies.** There would be considerable efficiencies in having one adjudicator review evidence submitted to the OAC for Exchange and Medicaid eligibility appeals.
- **Reduce Consumer Frustration.** Handling C4HCO appeals through the OAC would reduce the likelihood of consumers getting lost in multiple appeals processes with differing rules of procedure and multiple points of contact.
- **Tailor to Colorado's Unique Structure.** A state-based appeals process can be streamlined to fit within Colorado's unique structural framework.

Background

The U.S. Department of Health and Human Services issued proposed regulations governing exchange eligibility appeals and appeals coordination with Medicaid on January 14, 2013. A substantial portion of these regulations have yet to become final and are subject to change. The proposed regulations provide that exchange eligibility appeals may be conducted by the exchange or handed over to the federal government, either upon exhaustion of the state-based appeals process or if the Exchange has not established an appeals process.¹ Individuals shall have the right to appeal the following:

- An initial determination of eligibility for Advance Premium Tax Credits (APTC) and Cost Sharing Reductions (CSR), including the amount of APTC/CSR.²
- A redetermination of eligibility for Advance Premium Tax Credits (APTC) and Cost Sharing Reductions (CSR), including the amount of APTC/CSR.³
- A failure by the Exchange to provide timely notice of an eligibility determination.⁴
- An eligibility determination for an exemption made pursuant to §1311(d)(4)(H) of the Affordable Care Act.⁵

Strict Due Process Requirements

The Colorado OAC is equipped to handle the strict due process requirements for exchange appeals. The January 14, 2013 HHS proposed regulations provide that exchange appeals must comply with the standards set forth for conducting fair hearings for Medicaid appeals.⁶ These standards have become known as the *Goldberg v. Kelly* standards, which are based on a landmark 1970 Supreme Court decision, and are afforded the highest level of constitutional protection.⁷ These standards include:

- Right to a face-to-face, pre-termination evidentiary hearing.
- Right to timely and adequate notice detailing the reasons for action.
- Right to an effective opportunity to defend by confronting adverse witnesses.
- Right to present arguments and evidence orally before the adjudicator.
- Right to retain legal representation.
- Requirement that adjudicator explain the basis of her/his determination and indicate the evidence relied on.
- Requirement that adjudicator must be impartial – shall not have participated in initial determination.

Additionally, the HHS proposed regulations require the exchange appeals process to comply with accessibility requirements set forth in 45 CFR § 155.205(c).⁸ These requirements include providing language access services and other requirements pursuant to the Americans with Disabilities Act.⁹ The Colorado OAC already adheres to these strict due process requirements for Medicaid appeals and is therefore equipped to do so for exchange appeals.

Required Coordination of Exchange and Medicaid Appeals

The federal government requires coordination between exchange and Medicaid eligibility appeals. This is essential because eligibility for APTC/CSR in the exchange is dependent on receiving a formal denial for Medicaid—in other words, the decisions are integrally linked. The January 14, 2013 HHS proposed regulations require the state Medicaid agency to treat an appeal of APTC/CSR eligibility in the exchange

¹ 45 CFR § 155.505(c).

² 45 CFR § 155.505(b)(1)(i).

³ 45 CFR § 155.505(b)(1)(ii).

⁴ 45 CFR § 155.505(b)(3).

⁵ 45 CFR § 155.505(b)(2).

⁶ 45 CFR § 155.505(d), which requires compliance with Medicaid fair hearing rules at 42 CFR 431.10(c)(2).

⁷ *Goldberg v. Kelly*, 397 U.S. 254 (1970). For reference to *Goldberg* in the exchange appeals regulations, see, Federal Register Vol. 78, No. 135 July 15, 2013, at 42167.

⁸ 45 CFR § 155.505(f).

⁹ 45 CFR § 155.205(c).

also as an appeal of Medicaid.¹⁰ This is important because if the dispute is over an applicant’s income, the outcome of the appeal could result in the applicant being eligible for either Medicaid or APTC/CSR in the exchange. For example, if an applicant named Joan attests to an income of 100% of the federal poverty level (Medicaid eligible) but the system’s data-verified income for Joan is 150% FPL (APTC/CSR eligible), then the outcome of an appeal could send Joan to either system. Federal law requires the exchange and Medicaid agency to facilitate Joan’s seamless transition between the systems so that Joan is enrolled in the appropriate system and is not asked to provide duplicative information or documentation that she already provided.¹¹

Colorado has two choices regarding how to coordinate Medicaid and C4HCO appeals: integrate or bifurcate. A bifurcated approach (handing exchange appeals over to the federal government or a third party) could result in applicants like Joan facing two appeals processes, with differing and burdensome procedural requirements. Under this approach, C4HCO would likely face additional administrative burdens in order to reconcile appeals decisions between C4HCO and Medicaid. An integrated approach using the Colorado OAC, however, would ensure that applicants like Joan would not have to navigate two separate appeals processes. It would also result in administrative efficiencies by using an existing infrastructure that is equipped to handle these types of appeals.

Integrated Appeals (OAC)¹²	Bifurcated Appeals
One channel & one point of contact	Two channels & two points of contact (OAC and Exchange/federal govt.)
One appeal, one determination, one judge, one decision	Individual could go through two appeals processes to issue separate, and potentially conflicting, decisions (i.e., income, household composition, etc.)
Lower volume	Mixed families on different tracks; confusion over where to appeal
Efficient for consumers	Possibility of “dueling” appeals hearings
Efficient for state	

¹⁰ 45 CFR § 431.221(e).

¹¹ 45 CFR § 155.510(a)(1).

¹² This chart is based on a presentation by the Rhode Island Health Benefits Exchange, available at: http://www.governor.ri.gov/healthcare/interest/documents/Appeals%20Experts%20Advisory%206%207%2013%20v3_.pdf