

**TO:** Board Members, Connect for Health Colorado

**FROM:** Connect for Health Colorado Staff

**DATE:** September 23, 2013

**RE:** **Update: New IRS Regulations: Information Reporting for Insurers and Large Employers; Insurance Market Reforms and HRAs and FSAs**

The Internal Revenue Service (IRS) issued two proposed rules outlining the process and requirements for information reporting of minimum essential coverage (MEC) and health insurance coverage by large employers and insurers. The IRS also released technical guidance about the effects of the health care market reforms and other provisions on health reimbursement arrangements (HRAs), flexible spending arrangements (FSAs) and other types of employer plans.

#### **Information reporting of MEC by large employers and insurers**

The proposed rules restate that the IRS will not impose penalties to insurers or large employers for failure to report coverage in 2014, but encourages voluntary reporting to consumers and IRS. Consistent with previous IRS guidance, both regulations would apply for calendar years beginning after December 31, 2014.

Comments related to both rules are due to the IRS by November 8, 2013. The regulations can be found [here](#) and [here](#). Connect for Health Colorado staff does not believe these proposed rules require comment from the Marketplace.

#### **HRAs and FSAs**

The IRS has provided guidance on applying the insurance market reform provisions, along with other provisions of the health care reform law, to HRAs, FSAs and other employer payment plans for health insurance coverage including Section 125 plans.

The guidance in the notice is largely the same as guidance from the U.S. Department of Labor (DOL), as well as the U.S. Department of Health and Human Services (HHS).

Consistent with earlier IRS guidance and FAQs, the notice limits the ability of employers to provide pre-tax subsidies for coverage that an individual employee might use to purchase through the individual insurance marketplaces with the new tax credits. The guidance also notes that employers who contribute to stand-alone HRAs for retirees may actually disqualify such retirees from the new tax credits if the retirees enroll in the HRA.

The guidance can be found [here](#).