

November 27, 2017

**BY ELECTRONIC DELIVERY**

Centers for Medicare and Medicaid Services,  
Department of Health and Human Services  
Attention: CMS-9930-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Re: HHS Notice of Benefit and Payment Parameters for 2019**

Dear Administrator Verma:

The staff of Connect for Health Colorado, the state-based health insurance marketplace (SBM) for Colorado, greatly appreciates the opportunity provided by the Centers for Medicaid and Medicare Services (CMS) to comment on the proposed “HHS Notice of Benefit and Payment Parameters for 2019.” The proposed regulations that would have a particular impact on the Colorado Marketplace are listed below according to the order in which they appear in the Code of Federal Regulations.

**A. Flexibility for State-Based Exchanges and State-Based Exchanges on the Federal Platform**

*Connect for Health Colorado supports the proposal to promote innovation by State Based Exchanges through increasing flexibility. Simplified regulations on state-specific design and operation of eligibility systems, including streamlined eligibility verifications, would reduce the most costly and burdensome elements of existing regulations, while maintaining program integrity and improving customer experience. Additionally, regulatory changes to allow for accelerated processing of appeals and timely closure of appeals would reduce costs and use of limited Exchange resources.*

Modifications in 42 CFR part 435 and 45 CFR part 155 to allow greater flexibility for state-specific design and operation of eligibility systems would improve timely and seamless processing of applications, reduce “churn” for populations that cycle between APTC eligibility and Medicaid eligibility, and improve access to real-time eligibility determinations. Connect for Health Colorado supports flexibility for states to assess state-specific solutions to these issues, and to continue to refine timely processing methods for eligibility determinations for multiple insurance affordability programs.

Connect for Health Colorado respectfully requests reform in the construction of eligibility verification regulations found in 45 CFR §§ 155.315 and 320 by simplifying use of electronic data sources and streamlining inconsistency triggers. Eased utilization of the Federal Data Services Hub, including increased access to tailored commercial platform services, would allow for more accurate and timely eligibility determinations. Moreover, simplified inconsistency triggers would greatly improve construction of eligibility systems, effectively reducing eligibility determination errors. This would result in reduced time and resources spent by both consumers and Exchanges in processing unnecessary verifications, and a more seamless coverage experience for consumers and Insurance Carriers. Overall, this approach improves program integrity and accuracy of determinations, reduces customer confusion, and reduces burden and cost for Exchanges.

Connect for Health Colorado also supports increased regulatory flexibility to address unresponsive appellants and reduce time spent by consumers, Exchange staff, and Administrative Courts in processing and responding to appeals which have otherwise been resolved. Specifically, we request additions to 45 CFR § 155.530 to allow for administrative closure of appeals, other than by withdrawal or hearing, in cases where appellants are unresponsive for extensive periods.

Currently, when an appellant is unresponsive despite repeated contact attempts over extensive timelines, Exchange staff schedules a hearing with the Office of Administrative Courts (notwithstanding that the appellant is unlikely to respond or appear) and waits until the future hearing date in order to finally dismiss or resolve the appeal. Because staff has already attempted multiple contact methods and waited through a lengthy period, the topic of the appeal may now be either incapable of resolution or may have already been otherwise resolved, effectively draining time and resources from both Exchanges and Administrative Courts. Here, allowing an Exchange to dismiss or administratively close an appeal when an appellant has been unresponsive for a lengthy period, despite multiple contact attempts using various forms of communication, would reduce time and resources spent.

Connect for Health Colorado also respectfully requests amended regulations, perhaps added to 45 CFR part 155, to address the “family glitch” found in 26 CFR § 1.36B-2(c)(3)(v)(A)(2) which requires that “affordability” for employer-sponsored coverage be calculated on the basis of self-only coverage alone (irrespective of the premium cost for covering an entire family). Under this provision, families who are offered coverage with annual premiums that exceed the required contribution percentage may be deemed to have access to “affordable” coverage. This provision results in widespread confusion and financial strain for many Coloradans. As such, Connect for Health Colorado respectfully requests that the required contribution percentage be applied on the basis of premiums that will actually be paid for the entire tax household, and not merely on an individual-coverage-only basis.

## **B. Navigator Program Standards (45 CFR § 155.210)**

*Connect for Health Colorado continues to work to increase access, affordability, and choice for Coloradans through its Navigator program, and through other assistance and insurance literacy programs.*

Connect for Health Colorado has developed a strong enrollment assistance network with a team of trusted, local experts who are available across the state. We contract with 22 community-based

organizations who employ around 100 Navigators (called “Health Coverage Guides”). This network ensures that Coloradans in both urban and rural areas have access to free, local assistance with their health coverage application. Our Health Coverage Guides are an integral part of Connect for Health Colorado’s efforts to increase access, affordability, and choice for Coloradans across the state. This network displays a high level of professionalism and provides excellent customer service. We are proud to have them serve as the face of our organization in their communities.

### **C. Income Inconsistencies (45 CFR § 155.320(c)(3))**

*Connect for Health Colorado opposes the proposed revisions in 45 CFR § 155.320(c)(3) to create new inconsistencies for cases where a consumer’s attested income is greater than the amount represented by income data returned by IRS and the SSA and current income data sources; or where consumers attest to projected annual income between 100 and 400 percent of the Federal Poverty Line (FPL), the Exchange has data from IRS and SSA that indicates income is below 100 percent FPL, the Exchange has not assessed the consumer to have income within the Medicaid or CHIP eligibility standard, and the consumer’s attested projected annual income exceeds the income reflected in the data available by a reasonable threshold. Connect for Health Colorado also opposes inclusion of a fixed dollar amount in the calculation of a reasonable threshold.*

Overall, Connect for Health Colorado is concerned that this proposal would likely form a needless barrier to enrollment, possibly resulting in coverage gaps. This proposed change is also highly costly and burdensome for both consumers and Exchanges, and would only amount to a marginal benefit for a small percentage of consumers. Those marginally benefitted consumers would also already receive this benefit in the form of a positive reconciliation experience when they file their taxes under the current regulations.

Moreover, the addition of a fixed dollar amount trigger for this inconsistency would be exceedingly burdensome to implement. The population that meets the four requirements in the proposed rule is especially vulnerable. As such, exposing this population to verification requirements that require time and effort to resolve will likely result in gaps in eligibility, and possible uncovered claims.

In light of the administrative and technological burden caused by this proposal’s effects, Connect for Health Colorado requests that States have the flexibility to implement a simplified approach to verifications of increases in attested projected annual income. Specifically, it requests that self-attestation be allowed as the sole verification method of this issue until CMS and SBMs are able to identify and agree to a more efficient solution for verifying this information.

### **D. Alternative Verification Process to Check for Eligibility for Employer Sponsored Insurance (45 CFR § 155.320(d)(4))**

*Connect for Health Colorado supports the proposal allowing Exchanges to establish HHS approved alternative processes to verify enrollment in and eligibility for employer sponsored plans, including the option to use sampling as an alternative process of verification under paragraph (d)(4) to allow SBEs maximum flexibility. Connect for Health Colorado also supports the proposed ability to seek HHS*

*approval for an alternative approach for verifying enrollment in or access to employer sponsored insurance in accordance with §§ 155.315(h) and 155.320(a)(2).*

Connect for Health Colorado supports the ability to allow Exchanges to establish HHS approved alternative processes to verify eligibility for or enrollment in Employer Sponsored Insurance (ESI). This proposal would assist us in obtaining more accurate eligibility determinations. Additionally, we support State flexibility on this issue so that we might evaluate other methods of performing ESI verification.

**E. Eligibility Redetermination During a Benefit Year (45 CFR § 155.330)**

*Connect for Health Colorado supports various methods of increasing enrollee reporting of individual changes in circumstances within 30 days of the change.*

Connect for Health Colorado has spearheaded several activities to encourage and increase individual reporting within the required 30-day timeframe. Among those activities are noticing, prompting customers to report changes upon login, and Service Center outreach for simultaneous enrollment situations.

Connect for Health Colorado also features reminder language on its website throughout the year; and reminds consumers, our assistance network, and our broker partners regularly via e-mail and via social media campaigns. This work is augmented by additional marketing and outreach projects throughout the year.

**F. Annual Eligibility Redetermination (45 CFR § 155.335)**

*Connect for Health Colorado opposes HHS's proposal to amend the length of time, currently a maximum of five years, that an individual can authorize the Exchange to obtain updated tax return information.*

Connect for Health Colorado opposes this proposal and instead seeks state flexibility to choose the appropriate length of time that an individual can authorize the Exchange to obtain updated tax return information. Connect for Health Colorado currently utilizes the maximum of 5 years for accessing tax return information, but also requires more frequent attestations of information prior to re-enrollment for consumers seeking financial assistance. Decreasing the number of years for which an individual can authorize the use of their data would require costly changes to existing technology, with no distinguishable benefit to consumers.

Additionally, Exchanges already use periodic data matches which may reduce the frequency of inaccurate information being used for financially assisted consumers.

**G. Material Plan or Benefit Display Errors (45 CFR § 155.420(d)(12))**

*Connect for Health Colorado supports excluding § 155.420(d)(12), the Special Enrollment Period available for material plan or benefit display errors, from paragraph (a)(4)(iii) to allow for the enrollee who experiences a material display error to switch to a different qualified health plan (QHP) at any metal level.*

Connect for Health Colorado supports increased consumer choice. In this scenario, a consumer, through no fault of their own, may have been unable to appropriately select a plan as a result of display errors. Given that these consumers were prevented from making fully informed purchase decisions, it is appropriate for them to access a full range of plan selections.

**H. Prior Coverage Requirements (45 CFR § 155.420(a)(5))**

*Connect for Health Colorado supports this proposed rule change, which would exempt qualified individuals from the prior coverage requirement if, for at least 1 of the last 60 days, they lived in a service area where no QHPs were offered.*

Connect for Health Colorado supports flexibility on conditions for coverage, especially where there are no QHPs offered for sale, or in other circumstances that are outside of consumer control. Given that these consumers did not have prior access to QHPs, Connect for Health Colorado supports allowing this population access to Special Enrollment Periods without the prior coverage requirement.

**I. Aligning Coverage Effective Dates (45 CFR § 155.420(b)(2))**

*Connect for Health Colorado supports this proposed rule change, which would align the coverage effective dates for all Special Enrollment Periods (SEPs) based on gaining or becoming a dependent, other than through marriage. This proposal would also allow individuals who qualify for an SEP due to the gain of/becoming a dependent through birth adoption, placement for adoption, placement in foster care or through a child support or other court order to choose from certain effective dates.*

Connect for Health Colorado supports consumer choice. This proposal would provide consumers with more choices as to their effective dates for certain SEPs.

**J. Aligning Termination Dates (45 CFR § 155.430(d)(2))**

*1) Connect for Health Colorado opposes this proposed rule change, which will align the effective dates for all enrollee-initiated terminations on the date on which the termination is requested by the enrollee or on another prospective date selected by the enrollee.*

Connect for Health Colorado respectfully requests that HHS provide flexibility for individual states to assess the termination dates that best meet the needs of consumers and carriers in each state. In Colorado, retroactive termination dates have been very difficult to process in both Exchange and carrier technology platforms, and result in confusion and conflict on premiums and claims that may have already been paid. Often, these cases result in increased manual work by Exchange and carrier

teams, confusion, and increased financial liability for the most vulnerable consumers, and limited access to care as a result.

*2) Connect for Health Colorado also opposes the portion of this proposal that would change the effective termination date of a QHP for an individual who gains Medicaid or CHP+ to be effective on the date requested by the enrollee, or on a future date of their choosing.*

Effective dates for terminations for enrollees who transition between eligibility for Advance Premium Tax Credits and Medicaid programs are carefully managed in Colorado to avoid gaps in coverage and protect consumers from unanticipated, uncovered claims. This balance in the Colorado market has been deliberately addressed, and is structured into existing technology systems that impact Insurance Carrier systems, Colorado's Medicaid administering entity (the Colorado Department of Health Care Policy and Financing), and Exchange infrastructure. Changes to this architecture are especially burdensome and costly for all involved parties.

Sincerely,

Connect for Health Colorado Staff