

To: The Board of Directors, Connect for Health Colorado

From: Connect for Health Colorado Staff

Date: April 17, 2014

Re: Comment on Patient Protection and Affordable Care Act; Exchange and Insurance Market Standards for 2015 and Beyond

Connect for Health Colorado, the state-based health insurance marketplace for Colorado, greatly appreciates the opportunity provided by the Centers for Medicaid and Medicare Services (CMS) to comment on the proposed “Exchange and Insurance Market Standards for 2015 and Beyond.” 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. Navigator Program Standards

Connect for Health Colorado urges flexibility under §§155.210(e)(6), 155.215(g) and 155.225(f) to provide and retain customer authorizations electronically and asks for clarification as to whether §155.210(d)(8) would prohibit Navigators from participating in outbound communications.

Currently, Connect for Health Colorado uses paper customer authorization forms with its Navigator and non-Navigator assistors, and want to clarify that there is flexibility to retain documents electronically and to move to electronic authorizations as technology developments allow.

Connect for Health Colorado also seeks clarification on §155.210(d)(8) and the prohibition on calling consumers to provide application and enrollment assistance without the consumer initiating contract. As a current enrollment strategy, Connect for Health Colorado reaches out via mail notices and phone calls to individuals with Medicaid denials and would like the flexibility to use Navigator personnel in this outbound strategy.

B. Employer Sponsored Coverage Verification

Connect for Health Colorado opposes the deletion of §155.320(d)(4), without revision to related language and provisions within the section. Furthermore, the regulation should allow for a continuance of self-attestation as the sole acceptable verification procedure while an alternative procedure is being considered.

Connect for Health Colorado is concerned about the ambiguity that results from deleting §155.320(d)(4) without revision to any other language within §155.320(d). The proposed revision is

reasonably interpreted to suggest that state-based marketplaces (SBMs) must still gather and transmit data from approved data sources. However, this would have to be done without a data source made available by the Department of Health and Human Services (HHS).

SBMs commonly verify other forms of personal information through HHS services. However, if no data source will be provided by HHS for verification related to enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan, SBMs would have to employ and administer an alternative data source. Connect for Health Colorado believes this will be very difficult to achieve without an option from HHS, because of the lack of uniform documentation to verify this issue. Consequently, the objective to mitigate the administrative burden for SBMs to verify this information would be compromised.

In light of the administrative and technological burden caused by this proposal's effects, Connect for Health Colorado requests clarity and revision to the whole of §155.320(d). 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.

C. Initial and Annual Open Enrollment Periods

Connect for Health Colorado opposes both proposals for noticing of annual open enrollment and annual redetermination, under §155.410(d). SBMs should have the flexibility to begin this noticing no earlier than August 1.

Connect for Health Colorado is opposed to postponing noticing of annual open enrollment and annual redetermination until no earlier than October 1. By delaying the window of opportunity in which SBMs may produce and distribute these notices, SBMs will be forced to accommodate heavy volumes in their customer service centers. Such heavy volume breeds administrative burden, higher costs, and customer frustration.

There are numerous benefits created by allowing SBMs to produce and distribute these notices months prior to open enrollment. Primarily, there is no risk of adverse selection to the industry as a whole, as these renewals would only concern the subsequent coverage year. Also, the population of customers who are renewing for the subsequent coverage year can be attended to earlier. This will balance out the volume and burden on SBM customer service centers, make the enrollment process more efficient, and make the customer experience more positive. Early distribution of notices will allow SBMs to facilitate new enrollments and resolve other customer service issues much quicker during open enrollment periods, resulting in more covered lives.

The proposed revision would limit the timeframe in which these beneficial activities could be done. If SBMs were allowed an earlier start date to commence these activities, it would have more time to enroll more individuals. Again, this could be done without a negative effect to the insurance industry.

In light of the many benefits associated with moving noticing annual open enrollment and annual redetermination to an earlier date, Connect for Health Colorado opposes both proposals which limit SBMs to noticing no earlier than October 1. Connect for Health Colorado requests flexibility for SBMs to be able to start noticing no earlier than August 1.

D. Proposed Rule to Allow for the Telephonic Withdrawal of Appeal Requests

Connect for Health Colorado supports the proposal to amend §155.530 to allow for the withdrawal of appeal requests in writing or by telephone.

As was stated in the preamble to the proposed rules, this amendment would expedite the conclusion of the appeals process while leaving the decision to withdraw solely with the appellant. During the majority of informal resolutions conducted by Connect for Health Colorado, appellants express a verbal acceptance of the resolution reached, a willingness to receive a written withdrawal letter, and to sign and return it. However, this verbal agreement often does not result in a written withdrawal. By allowing for telephonic withdrawal and signature, CMS would ease the process on the appellant and help both the appellant and appellee to speedily reach a mutually agreed upon resolution of the appeal.

E. Options for Conducting Eligibility Determinations for Exemptions

Connect for Health Colorado opposes the elimination of the option for SBMs to use HHS for exemption eligibility determinations, under §155.625.

Connect for Health Colorado is concerned about the revision of §155.625. The proposed revision would eliminate the option for SBMs to use HHS's eligibility determinations for exemptions. Rather, SBMs would have the option of determining eligibility for exemptions either directly or through contracting.

Connect for Health Colorado opposes this revision because the alternative options would create significant administrative, financial, and technological burdens. If the SBMs were required to facilitate this eligibility process directly, they would have to develop extensive procedures to process this determination in a limited amount of time, when unprepared and not budgeted to do so. Implementing these procedures in a limited time would cause administrative and financial burdens, which would be otherwise avoidable. Also, SBMs would have to design and develop technological infrastructure in a limited amount of time, when unprepared and not budgeted to do so. Furthermore, the alternative option to contract this service out would cause an unnecessary financial burden for SBMs, which are unprepared and not budgeted to contract this service.

In light of the administrative, financial, and technological burdens caused by this proposal's effects, Connect for Health Colorado requests that §155.625 remain unchanged. Specifically, it requests that SBMs be allowed to use HHS until CMS and SBMs are able to identify and agree to a more efficient solution.

F. Enrollment Periods under SHOP

Connect for Health Colorado opposes the proposal to amend the SHOP regulations in §155.725(c) to prohibit a qualified employer's annual election period from beginning prior to November 15, 2014.

In regards to this amendment, we also urge consideration of two issues related to the proposed amendments in §155.725(c) and (e). First, that the proposed amendment should neither conflict with nor supersede the current rule that a “SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year.¹” Second, that the rule accounts for states with laws allowing for the 2015 open enrollment period for individual and SHOP to begin prior to November 15, 2014.

We believe that requiring state-based SHOPS to align with the individual open enrollment period start date of November 15, would place state-based SHOPS at an unnecessary disadvantage relative to the non-marketplace options available to small businesses. Should the proposed amendments to §155.725(c) and (e) be finalized and have some effect on rolling enrollment as required in §155.725(b), it could put the sustainability of state-based SHOPS in jeopardy.

Additionally, the proposed rule would substantially shorten the time available to small businesses wishing to join a state-based SHOP for a January 1 effective date. The proposed change would require both that all the employers in a SHOP complete their annual election period and that employees subsequently select plans within the approximate six week window before January 1. Such a window does not apply to businesses purchasing insurance outside SHOP.

For both the SHOP and individual markets, we seek a rule to ensure state flexibility in cases where state legislation proscribes an earlier open enrollment period.² There is no risk of adverse selection to the industry as a whole, as this earlier date would only concern the subsequent coverage year. Also, the population of customers who are renewing for the subsequent coverage year can be attended to earlier. This will balance out the volume and burden on SBM customer service centers, make the enrollment process more efficient, and make the customer experience more positive. Providing for state flexibility within the rule will allow SBMs to facilitate new enrollments and resolve other customer service issues much quicker during open enrollment periods, resulting in more covered lives.

Furthermore, many states have legislative calendars that will not allow for the introduction of legislation during the remainder of the 2014 legislative session. Without an exception for states that encoded the prior open enrollment rules, a number of SBMs will be forced to choose between complying with state law or federal regulations.

In order to meet the needs of small businesses, Connect for Health Colorado opposes any change that would further limit when Coloradans may obtain coverage or which would impede meeting employer requirements.

¹ 45 CFR §155.725(b)

² Specifically, Colo. Rev. Stat. 10-14-15.7(2013) requires an open enrollment start date of October 15 for 2015 and subsequent benefit years.