

June 23, 2016

BY ELECTRONIC DELIVERY

Centers for Medicare and Medicaid Services,  
Department of Health and Human Services  
Attention: CMS-9933-IFC  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Re: Patient Protection and Affordable Care Act: Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program**

Dear Acting Administrator Slavitt:

The staff of Connect for Health Colorado, the state-based health insurance marketplace for Colorado, greatly appreciates the opportunity provided by the Centers for Medicare and Medicaid Services (CMS) to comment on the proposed amendments to 45 CFR § 155.420, which are effective on July 11, 2016. 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. Special Enrollment Period under 45 CFR § 155.420(d)(7)**

*Connect for Health Colorado seeks guidance regarding the new requirements under § 155.420(d)(7)(i), which states that an individual must have had minimum essential coverage as described in 26 CFR 1.5000A-1(b) for one or more days during the 60 days preceding the date of a permanent move and asks for clarification as to how and when verification of an individual's previous coverage should be documented and collected by the exchange.*

The proposed amendment to § 155.420(d)(7) states that “[t]he qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move and either (i) had minimum essential coverage as described in 26 CFR 1.5000A-1(b) for one or more days during the 60 days preceding the date of the permanent move, or (ii) was living outside of the United States or in a United States territory at the time of the permanent move[.]”

Currently, some state-based Marketplaces (SBMs), including Connect for Health Colorado, do not require verification of an individual's prior coverage when they permanently move. Thus, many

existing procedures do not encompass collecting information from prospective enrollees regarding their medical coverage within the last 60 days.

Further guidance regarding the documentation that should be required to verify enrollment in minimum essential coverage (MEC) prior to a permanent move and also guidance as to a verification timeline would be helpful. For example, how long a period should an individual be provided in order to produce necessary documentation and verification of prior enrollment? And what specific documentation should be acceptable?

## **B. Special Enrollment Period under 45 CFR § 155.420(b)(2)(iv)**

*Connect for Health Colorado seeks clarity as to why § 155.420(b)(2)(iv) is being amended to carve-out a special effective date for those released from incarceration but not for others.*

The proposed amendment to § 155.420(b)(2)(iv) states that “[i]f a consumer ... becomes newly eligible for enrollment in a QHP through the Exchange in accordance with § 155.305(a)(2) as described in paragraph (d)(3) of this section, ... if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the date of the triggering event. If the plan selection is made after the date of the triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange.”

Connect for Health Colorado is asking why the individuals released from incarceration will be eligible for a special effective date under the new language but new citizens, lawfully present residents and others described in § 155.305(a)(1) would not be.<sup>1</sup>

Under § 155.420(d)(3), two groups of individuals are described. Those groups are 1) individuals who are citizens or nationals of the United States, are non-citizens who are lawfully present in the United States and are reasonably expected to become citizens, and non-citizens who are lawfully present during the entire period for which enrollment is sought; and 2) individuals being released from incarceration.

Under the proposed language in § 155.420(b)(2)(iv), the individuals in group 2) will be eligible for effective dates that are more generous than those available to group 1).

Connect for Health seeks to understand the policy justification behind providing these two groups two different sets of effective dates. Additionally, Connect for Health Colorado recommends that, absent compelling justification to the contrary, that both groups listed under § 155.420(d)(3) receive special effective dates.

## **C. Special Enrollment Period under 45 CFR § 155.420(d)(6)(iv)**

*Connect for Health Colorado seeks additional clarity within the proposed amended language of § 155.420(d)(6)(iv).*

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<sup>1</sup> Section 155.305(a)(1) states: “Citizenship, status as a national, or lawful presence. Is a citizen or national of the United States, or is a non-citizen who is lawfully present in the United States, and is reasonably expected to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought[.]”

The proposed amendment to § 155.420(d)(6)(iv) reads: “A qualified individual who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the FPL and who, during the same timeframe, was ineligible for Medicaid because he or she was living in a non-Medicaid expansion State, who either experiences a change in household income or moves to a different State resulting in the qualified individual becoming newly eligible for advance payments of the premium tax credit[.]”

Connect for Health Colorado seeks clarity and simplification of the definition of this population for the purpose of mitigating confusion.

**D. Special Enrollment Period under 45 CFR §§ 155.420(d)(7) and 155.420(d)(2)(ii)**

*Connect for Health Colorado supports deletion of an advance availability option under §§ 155.420(d)(7) and 155.420(d)(2)(ii).*

Connect for Health Colorado agrees with the amendment to § 155.420(d)(7) stating that it is “unnecessary and contrary to the public interest to require Exchanges to offer advance availability of the special enrollment period in § 155.420(d)(7) or to implement the new special enrollment period in paragraph (d)(2)(ii)” due to the possibility that it could introduce additional uncertainty to markets.

Deleting the option for advance availability under these sections will allow SBMs to continue operating more smoothly and soundly from a technological and administrative standpoint.

**E. Special Enrollment Period under 45 CFR § 155.420(d)(2)(ii)**

*Connect for Health Colorado would like to make CMS aware of technological challenges when implementing a change such as the one that was required and then amended to remove the requirement in § 155.420(d)(2)(ii).*

Many SBMs encounter challenges with technological developments which include lead times for those developments that can exceed six (6) to nine (9) months. Therefore, some SBMs may have already implemented the change that was required in § 155.420(d)(2)(ii). We would request that CMS be mindful of these technological challenges faced by SBMs going forward in its future amendments.

Thank you.

Sincerely,

Connect for Health Colorado Staff