

Kevin Counihan
Director and Marketplace Chief Executive Officer
Center for Consumer Information and Insurance Oversight (CCIIO)

Dear Mr. Counihan:

Connect for Health Colorado appreciates the opportunity to respond to the recommendations in the final report of the Office of Inspector General (OIG) titled *Colorado Did Not Correctly Expend Establishment Grant Funds for Establishing a Health Insurance Marketplace*. We take all audit recommendations seriously and use it as an opportunity to improve our processes. As a relatively new organization, we are continuously working on improving the efficiency and effectiveness of our operations and fulfilling our mission to provide access, affordability and choice to all Coloradans. The funds provided through the cooperative agreement have been essential for the establishment of the Marketplace and has set us up for long-term sustainability. We understand the importance of prudently using federal funds and the requirements of awardees. Connect for Health Colorado is confident it has spent all federal grant funds received through the cooperative agreements on allowable expenditures and has spent the funds in compliance with federal regulations. This statement is made in the context and with full agreement that some of the questioned costs identified in the OIG report were not allowable expenses. For those costs, Connect for Health Colorado appropriately removed the questioned expenditures from federal funding and reapplied those funds to allowable expenditures as noted in the more detailed discussion that follows.

The gravamen of OIG's report and the resulting recommendation to refund \$9,678,635, is stated on Page 7, "the Colorado marketplace had not developed, finalized, and implemented policies and procedures to ensure that it expended and accounted for establishment grant funds". This pronouncement has some merit given the time period audited. During this early stage of the organization, many of the policies and procedures were being implemented at the same time as the mandated accelerated implementation timeframe of the Marketplace. Through internal review and multiple State and independent audits that raised similar questions, the policies and procedures of the organization were continuously being improved. During this time, the results of these audits were reported to CCIIO along with the actions taken by Connect for Health Colorado to address audit findings.

To provide proper historical context, the primary activities undertaken during the period being audited was the building of the technology elements of the Marketplace and supporting the first two open enrollment periods. During this time, there was extensive interfacing with the program staff at CCIIO regarding the building of the infrastructure with transparency provided into the vendor contracting and costs.

While the evolution of the organization's policies and procedures during this time may have resulted in some initial inaccuracies in the appropriate accounting treatment of expenditures, we are confident through subsequent reviews and reconciliation of expenditures all costs recorded were entirely allowable under the program and that the funds were spent appropriately. There is an important and material difference between

a finding that activities were not adequately documented or accounting treatments were misapplied, as opposed to spending establishment funds for unallowable expenditures.

The following is our response to the individual monetary findings in the OIG report:

FINDING: THE COLORADO MARKETPLACE CHARGED UNALLOWABLE COSTS FOR SERVICES PROVIDED AFTER DECEMBER 31, 2014 TO THE ESTABLISHMENT GRANTS (\$4,504,799, Pages 10-11)

Connect for Health agrees these costs were unallowable; however, these costs ultimately were *not* funded with federal monies. The questioned costs related to prepaid hardware and software support and maintenance costs whose benefit occurred after December 31, 2014. Initially, these costs were charged to the grant based on the initial understanding of what constitutes establishment costs in addition to the expectation of obtaining a waiver to allow using Federal funds for these otherwise prudent expenses. Upon receiving additional guidance and direction from CMS (issued in June 2015) regarding the allowability of these expenses, Connect for Health Colorado removed these expenses from Federal funding in our accounting records as documented in the Fiscal Year 2015 independent auditors report. These "refunded" federal funds were reapplied to allowable establishment expenditures. The difference is ultimately one of an accounting process versus an imprudent or unreasonable use of funds.

FINDING: THE COLORADO MARKETPLACE DID NOT ADEQUATELY DOCUMENT SOME COSTS THAT IT CHARGED TO THE ESTABLISHMENT GRANTS (\$4,398,333, Pages 7-9)

The foundation of this finding is based primarily upon the Federal requirement that costs must "be necessary and reasonable for proper and efficient performance and administration of Federal awards" and must "be adequately documented" (2 CFR part 225, App. A, (C)(1)). What constitutes "adequate documentation" is not defined, nor subject to an objective evaluation.

Connect for Health Colorado is confident the documentation for the questioned expenditures was adequate to conclude they were necessary, reasonable, and ultimately allowable program expenses. We have provided in Appendix "A" a schedule of these questioned costs and our response to each cost. The schedule provides a reference to the supporting documents for each of the questioned costs which includes invoices, contracts and other relevant documentation. The supporting documents are incorporated by reference. To provide additional insight into these questioned costs, we would like to provide a narrative on three of the largest questioned costs (consisting of over 70% of the \$4,398,333). These expenditures all relate to our primary technology vendor's efforts in establishing and operating the Marketplace platform. These three expenditures were all supported by a detailed contract that resulted from a public RFP process. Extensive transparency was provided to CMS and our Board into the procurement and contracting for these services of which the questioned costs are a part. The questioned costs are for deliverables (including amounts) specifically identified in the contract and referenced in the invoices. The achievement of these deliverables is also documented along with appropriate approvals for these expenditures. These deliverables were also important milestones in the establishment of the Marketplace of which our CMS partners monitored closely. The documentation associated with these expenditures are representative of the type, breadth, and depth of documentation for the other questioned expenditures. Connect for Health Colorado maintained and

provided clear and reasonable documentation. A claw-back of these funds would fail to recognize the level of communication and transparency that existed at the time between Connect for Health Colorado and is neither mandated nor appropriate. In addition, since these questioned costs were essential to the establishment and early operation of the Marketplace, the potential refund contradicts the goal of the ACA that the organization become self-sustaining (ACA 1311(d)(5)(A)).

FINDING: THE COLORADO MARKETPLACE IMPROPERLY TRANSFERRED COSTS FROM ONE ESTABLISHMENT GRANT TO ANOTHER (\$312,449, Pages 11-12)

The transfers between the three grants that have been questioned were the result of correcting bookkeeping errors. The transfer between grant funds corrected the initial miscoding of the expenses source of funding in the general ledger. Because of the high volume of expense transactions during the period of these transfers and the overlapping grant periods, the initial general ledger recording of the funding source was based on an estimate. The estimated funding source recording was subsequently "trued up" through a periodic grant review and reconciliation process resulting in a journal entry reclassifying the source of the grant funds for those impacted expenses. During this time of high expense transaction volume, the initial recording of grant expenditures focused on the allowability of the expense for the overall program. Because all three grants were governed by the same cost principles and program expense requirements, less emphasis was initially given to the funding source at the time of expense incurrence. While the processes for initially recording the funding source in the general ledger and the timeliness of reconciling the funding source could have been improved upon during the early stages of the organization, the questioned transfers were necessary to correct the accounting records and accurately record grant expenditures to the proper grant. All transferred costs were allowable program costs. This type of assessment and correction is to be expected in the context of a never before conceived program established under time pressures, which unlike the vast majority of programs reviewed by OIG, did not benefit from mature processes and procedures.

FINDING: THE COLORADO MARKETPLACE DID NOT ALWAYS EFFICIENTLY AND EFFECTIVELY ADMINISTER ESTABLISHMENT GRANT FUNDS (\$463,054, Pages 12-15)

This finding is made up of a variety of expenditures that were questioned. In general, this finding was the result of the immaturity of the organization's policies and procedures in the very early stages of its existence. As previously discussed, these policies and procedures underwent continuous improvement over the initial years of the organization as the result of internal review and external audits. While the controls could have been improved upon (and later were), all the questioned costs, except where noted, were for allowable expenditures and necessary for the establishment and operation of the Marketplace during this formational period. The following is our response to the various questioned costs.

Establishment Grant Funds Improperly Used to Pay Subgrantees Amounts in Excess of Those Specified in the Subgrant Agreements (\$164,170)

The questioned grant funded expenditures were for three of the Assistance Network subgrantees. It is Connect for Health Colorado's position that federal funds were spent effectively and efficiently for the Assistance Network program and within the budgeted amount for the program. The Assistance Network program was funded by both federal grant and Connect for Health Colorado funds. A contract was executed for each of the Assistant Network partners that stipulated the maximum amount of total funding the

organization would receive from Connect for Health Colorado but did not stipulate the source of those funds. Connect for Health Colorado categorically **did not** make payments to the subgrantees that exceeded the maximum funding allowed in their respective contracts. Connect for Health Colorado's Board approved the subgrant award amounts and the overall allotment of federal funds for the program but did not specifically approve the source of funds for each subgrantee. For planning and internal budgeting purposes the organization did create a tracking sheet that showed planned use of federal funds for each of the sites which was the source document used by OIG for this finding. This tracking sheet was not part of the subgrant agreements. Overall, the total federal funds used for Assistance Network expenditures were below the total budgeted amount of federal funds approved by the Board and budgeted for the program. It is Connect for Health Colorado's opinion that these costs were allowable and do not necessitate refunding. OIG's use of the "tracking sheet" to the exclusion of other submitted documentation clearly demonstrates the subjective nature of the type of documentation determined as adequate. The conclusion that there was an overpayment is NOT supported by the totality of the available (but not considered) documentation.

Improperly Awarded Executive and Employee Bonuses (\$211,891)

This finding consisted primarily of 15 performance bonuses paid as part of the total compensation for services provided by staff. The payment of performance bonuses was not prohibited under the organization's policies and in the case of the executive bonuses, were publicly disclosed. The resulting total compensation for employees receiving bonuses was reasonable when compared to comparable compensation in the market for similar positions and services provided. While documentation of the performance reviews was lacking formality during this period, the public nature of the executive compensation provided transparency to the organization's Board for these questioned costs and their relationship to the executives' performance. This finding in the OIG report implied Connect for Health Colorado was a State agency/department and therefore subject to State regulations for incentive programs. This is clearly and demonstrably incorrect as set out in Colorado's enabling legislation. OIG chose to ignore clear statutory language. We do not agree with this "interpretation" of the organization's enabling legislation¹. Based on our review of these expenditures, they are allowable grant expenditures and do not necessitate refunding.

Other Establishment Grant Funds Not Efficiently and Effectively Administered (\$86,993)

The questioned other costs primarily consisted of expenditures on promotional giveaways that were used for outreach and marketing purposes (\$86,061). Connect for Health Colorado agrees with the finding that the use of Federal funds for these types of expenses is not allowed. These costs were previously recognized as unallowable under the grant and removed from Federal funds. The "refunding" of grant monies used for these expenditures were reapplied to allowable program expenditures.

As noted in our analysis of the findings that resulted in the recommendation by the OIG calling for refunding of \$9,678,635, Connect for Health Colorado agrees with the OIG's findings that \$4,590,860 of the total

¹ There is hereby created a **nonprofit unincorporated public entity** known as the health benefit exchange. The board of directors shall govern the operation of the exchange. The board shall determine and establish the development, governance, and operation of the exchange. **The exchange is an instrumentality of the state; except that the debts and liabilities of the exchange do not constitute the debts and liabilities of the state, and neither the exchange nor the board is an agency of the state.** The board does not have the authority to promulgate rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. The exchange shall not duplicate or replace the duties of the commissioner established in section 10-1-108, including rate approval, except as directed by the federal act. The exchange shall foster a competitive marketplace for insurance and shall not solicit bids or engage in the active purchasing of insurance. All carriers authorized to conduct business in this state may be eligible to participate in the exchange (emphasis supplied).

questioned expenditures are not allowable Federal expenditures under the program. These expenditures have been removed from Federal funds in the grant records and reapplied to allowable program expenditures. The organization, for the reasons noted in this analysis, does not believe the remaining amount of questioned costs totaling \$5,087,775 require refunding. These questioned costs were for legitimate and allowable program expenditures that were essential to the establishment and early operation of the Marketplace.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin N. Patterson", with a long horizontal stroke extending to the right.

Kevin N. Patterson, MURP, MPA
Chief Executive Officer
Connect for Health Colorado

Cc: Jennifer Stolbach, Acting Director, State Exchange Group, CCIIO
Jeff Wu, Acting Associate Deputy Director for Policy, CCIIO

