

To: Connect for Health Colorado Policy and Regulations Committee

From: Connect for Health Colorado Staff

Re: Update on the Large Employer Appeals Process

Date: August 24, 2015

I. Legal Overview

Under the Affordable Care Act and the resulting regulations, an exchange has the option to establish an appeals process for large employers who have employees receiving financial assistance. This process exists because an employee is not eligible for financial assistance if they are offered affordable minimum essential coverage by their employer.¹ Where an exchange chooses not to establish an appeals process, Health and Human Services will create a process that meets the regulatory requirements.² The federal appeals process is currently operated by the Office of Hearings and Inquiries within the Centers for Medicare and Medicaid Services (“CMS”).

Large employers are defined within the regulation as:

[...] an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define large employer by substituting “51 employees” for “101 employees. [...]”³

Colorado law does not define a large employer, however, it does define a small employer as:

[...] any person, firm, corporation, partnership, or association that:

(A) Is actively engaged in business;

(B) Employed an average of at least one but not more than fifty eligible employees on business days during the immediately preceding calendar year, except as provided in paragraph (e) of this subsection (61); and

(C) Was not formed primarily for the purpose of purchasing insurance.⁴

Although the intent of the regulation was to create a means by which an employer could contest an employee’s eligibility for a tax credit, and thereby reduce or eliminate the chance that the large employer would be subject to a fine for not providing minimum essential coverage, HHS has advised state based marketplaces to include the following caveat in notices to employers. The sentence will also be included on the Federal Marketplace notices when they are finally sent:

¹ 26 CFR §1.36B-2(c)

² 45 CFR §155.555(b)

³ 45 CFR §155.210

⁴ Colo. Rev. Stat. §10-16-102(61)(a)

This appeal will not determine whether your organization has to pay the Employer Shared Responsibility Payment to the Internal Revenue Service (IRS).

Thus, the result of a successful employer appeal would not in fact be the prevention of a penalty to the employer, but rather to discontinue an individual employee's financial assistance.

II. HHS Adjudication of Employer Appeals

In an effort to realize sustainability, effectively use Connect for Health Colorado ("Marketplace") appeals staff, and properly devote resources to the most pressing customers' needs, the Marketplace has decided to have HHS adjudicate large employer appeals. It is important to note, however, that HHS adjudication will only mitigate the Marketplace's employer appeal responsibilities. HHS has indicated the Marketplace will still send notices to employers where an employee has provided sufficient contact information. The Marketplace will also provide HHS with any other information necessary for HHS to hear the case.

After receiving an employer appeal request form and any requested information from the Marketplace, HHS will manage the appeal according to their internal procedures and will issue a ruling by which the Marketplace will abide. If an employee is found to have affordable minimum essential coverage by HHS, the employee's financial assistance will be terminated.

At present, the Marketplace is waiting for CMS to provide an amendment to the Information Exchange Agreement between the Marketplace and CMS. Once this amendment is received, edited (if needed), and approved, the Marketplace will be able to share relevant data through a secure file transfer protocol.