

## Certification of Exemption from the Individual Mandate

May 30, 2012

- 1. Should COHBE use the Federal service to certify exemptions from the individual mandate or develop its own process to determine and report exemptions from the individual mandate?**

### Goals/Objectives of COHBE:

- Ensure people are treated with fairness and are exempted from purchasing insurance when they meet the appropriate criteria
- Comply with applicable law
- Meet COHBE's implementation timeline

### Applicable law:

#### *Federal*

An Exchange must grant a certification (§1311(d)(4)(H)) attesting that an individual is exempt from the individual mandate or from the penalty because (1) there is no affordable qualified health plan available through the exchange or the individual's employer, or (2) the individual meets the requirements for any other such exemption from the mandate or penalty. The Exchange must provide the Secretary of the Treasury with the names and the taxpayer identification number of each of these individuals.

### Background:

The constitutionality of the individual mandate, requiring most Americans to purchase health insurance by 2014, is one of the issues being reviewed at this time by the US Supreme Court. This decision may be revised depending on the outcome from the court.

Under the ACA, some individuals can be exempt from the requirement to purchase health insurance. Exemptions include:

- Low income:
  - If the lowest cost plan option exceeds 8% of an individual's income<sup>i</sup>
  - Individuals (and their dependents) whose household income is less than the filing threshold for federal income taxes for the applicable tax year.<sup>ii</sup>
- Financial hardship<sup>iii</sup>
- Undocumented immigrants
- Incarcerated individuals (this does not include those who are pending the disposition of charges)
- Members of Indian tribes<sup>iv</sup>
- Religious objections<sup>v</sup>
- Those in a health care sharing ministry<sup>vi</sup>

- Qualifying individuals who would otherwise be subject to the mandate, but who are residing outside of the United States, as well as bona fide residents of any possession of the United States will be considered to have minimum essential coverage and therefore not be subject to the penalty.

The Exchange Blueprint released in May 2012 gives states the option to choose whether or not to use the federal service to certify exemptions from the individual mandate or develop their own determinations and report to the Federal government who is exempted from the individual mandate.

Considerations:

Advantages to using the federal service:

- Ensure compliance with federal law
- Reduce implementation workload and risk

Disadvantages to using the federal service:

- There will be a dependency risk
- Have less control of timing and integration with COHBE technology solution

Unknown:

- We do not know the fees that will be charged to use the federal service. There is not an anticipated timeframe for those fees to be released. Given the small number of individuals that will be impacted and the level of complexity of the various conditions, we anticipate it will be more cost effective to use the federal service in the initial years.

Recommendation:

COHBE staff recommends Colorado use the federal service as the default system for certifying exemptions from the individual mandate in its initial years of operation. As we become aware of volume, cost and complexity, we will revisit the decision with the Board.

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<sup>i</sup> The 8% applies after taking into account any employer contributions or tax credits. After 2014, the 8% will be adjusted to reflect the excess rate of premium growth above the rate of income growth for the period.

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<sup>ii</sup> In 2010 this would be an annual income of \$9,350 for an individual and \$18,700 for a family. For people above the threshold, there will be a tax penalty for those who fail to have coverage: \$95 in 2014, \$325 in 2015, \$695 in 2016, and up to 2% of income by 2016.

<sup>iii</sup> Any individual whom the Secretary of HHS determines to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.

<sup>iv</sup> The term “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

<sup>v</sup> In order to qualify for the religious exemption, an individual must be a member of a recognized religious sect or division (as described in 1402(g)(1) of the Internal Revenue Code of 1986) by reason of which he or she is conscientiously opposed to acceptance of the benefits of any private or public insurance that makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act, such as Social Security benefits and Medicare). Such sect or division must have been in existence at all times since December 31, 1950. There is no list of specific religious groups that qualify for the exemption. For more information, see CRS Report RL34708, *Religious Exemptions for Mandatory Health Care Programs: A Legal Analysis*, by Cynthia Brougher.

<sup>vi</sup> A health sharing ministry is defined as an organization described in Section 501(c) of the IRC (including corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, or testing for public safety) and is exempt from taxation under section 501(a). Members of the ministry share a common set of ethical or religious beliefs and share medical expenses, and retain membership even after they develop a medical condition. The health sharing ministry must have been in existence (and sharing medical expenses) at all time since December 31, 1999, and must conduct an annual audit by an independent certified public accountant, available to the public upon request.