



**TO:** Board of Directors, Colorado Health Benefit Exchange

**FROM:** COHBE Staff

**DATE:** February 01, 2013

**RE:** **Comments on Medicaid, Children’s Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing**

The Colorado Health Benefit Exchange (COHBE) appreciates the Centers for Medicare & Medicaid Services (CMS) guidance on implementing key provisions of the Affordable Care Act (ACA) and the opportunity to comment. Below are our specific comments and recommendations on the proposed rule.

### **Eligibility Redeterminations During a Benefit Year**

The proposed rule’s amendment to paragraph (d)(1)(ii) of Section 155.330 states that Exchanges will conduct periodic examination of data sources to identify eligibility determinations for Medicare, Medicaid, and CHIP. It is our understanding that an applicant must be ineligible for the above mentioned programs before they can receive advance payments of the premium tax credit (APTC) or cost-sharing reductions (CSR). We believe that this proposed provision would decrease continuity of coverage for Exchange consumers and place an additional burden on Exchanges. We request that the final rule remove the requirement for Exchanges to run periodic examinations above and beyond the existing annual and life change requirements.

### **Eligibility Verifications**

#### *Catastrophic Health Plans*

The proposed rule adds additional verification requirements for Exchanges related to eligibility for enrollment in catastrophic plans. The preamble states that an applicant will not be determined eligible through the Exchange in a QHP that is a catastrophic plan until verification of necessary information can be completed. Verification includes validating an applicant’s age and/or exemption of the individual responsibility payment. We have concerns with this provision because it is not in line with other eligibility processes that allow individuals to be “conditionally eligible” for and enroll in a QHP while their application is being verified in accordance with §155.315(f)(4). The preamble mentions that CMS anticipates that verification of the exemption from the individual responsibility payment will be accomplished through the applicant sending the Exchange paper documentation. This process could take up to 90 days, and force the applicant to go without coverage during this time period. We request that the final rule allow Exchanges to provide conditional eligibility for individuals assessed eligible for enrollment in a catastrophic plan while their application for an individual responsibility payment is being verified.

#### *Employer Sponsored Coverage*

COHBE appreciates the flexibility to rely on the U.S. Department of Health and Human Services (HHS) to complete the verifications related to enrollment in an eligible employer sponsored plan and eligibility for qualifying coverage in an eligible employer sponsored plan, including sampling and inconsistency resolution. We support HHS’ approach of relying on the applicant when information is not reasonably

compatible. We also support the proposal that if after 90 days HHS is unable to verify information with the employer, the employee's attestation is considered sufficient. In addition, we support an approach for HHS to use information from data sources as a point of information for applicants and not as a point of comparison for the purposes of identifying inconsistencies (as part of the verification process) in order to allow the Exchange to continue the eligibility determination.

## **Notices**

### *Electronic Notice*

COHBE strongly supports the proposed provisions to provide notices either through standard mail, or if an individual or employer elects, electronically. We believe this allows the Exchange to leverage available technology to reduce administrative costs and provides ease of communication for our consumers. We also support the flexibility given to the SHOP to send all notices electronically and do not support the alternative approach suggested in the preamble to have the SHOP adopt the same standards as the Exchange's individual market under §155.230(d).

### *Notice to Employers and Employees Regarding APTC Eligibility*

It is proposed that if the Exchange receives any information from an employer relevant to the applicant's enrollment in an eligible employer-sponsored plan or eligibility for qualifying coverage in an eligible employer sponsored plan, the Exchange will only notify the applicant and his or her employers of any change in eligibility. COHBE supports the provision to limit notifications to employees about information obtained from employers to only instances where eligibility is affected. We believe this will reduce the burden on the Exchange and reduce confusion for applicants.

## **Appeals**

The proposed rule provides that individuals and employers may appeal a number of circumstances including:

1. Eligibility determinations for insurance affordability programs,
2. Eligibility for QHP enrollment periods,
3. Eligibility for enrollment in a catastrophic plan,
4. Eligible amount of APTC and level of CSR,
5. Eligibility for the individual responsibility exemption,
6. Employer's potential tax liability due to an employees eligibility for APTC or CSR, and
7. Employer and Employee eligibility in the SHOP.

We request clarification as to which appeals processes can be delegated to HHS and which must be handled by Exchanges. For example, when a state based exchange has deferred responsibilities to HHS such as eligibility determinations for the individual responsibility exemption and verification of employer sponsored coverage, state based exchanges should be given the flexibility to delegate the appeals processes for these determinations to HHS. COHBE envisions it will maintain appeals authority for items 1, 2, 4, and 7.

## **Effective Dates to Ensure Smooth Open Enrollment in 2013**

We appreciate the flexibility given to states to implement the appropriate effective dates for MAGI-based methodologies, application assisters, authorized representatives, the use of the single streamlined application, and coordination of eligibility notices. We believe this flexibility will ensure a smooth initial open enrollment in 2013 as well as minimize administrative and consumer burden.