

October 28, 2011

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9989-P  
P.O. Box 8010  
Baltimore, MD 21244-8010

Dear Staff at the Department of Health and Human Services:

The Colorado Exchange Board (the Board) appreciates the opportunity to respond to the request for comments on the NPRM released August 17, 2011. As you know, Colorado has a long history of health coverage and access reforms and continues to be strongly committed to finding solutions to ensure sustainable financing of medical care for all families and businesses in Colorado.

Colorado was successful in enacting "Exchange" legislation this year, and doing so in a bi-partisan basis. The enabling legislation was co-sponsored by the Democratic Chair of the Senate Health and Human Services Committee and by the Republican Majority Leader in the House. As part of the state law, Colorado created a bi-partisan Legislative Implementation Review Committee. Members of the Board were appointed by both Republicans and Democrats, and represent consumer groups, small employers, physicians, health plans, and state government, all focused to establish an Exchange crafted to fit the specifics of Colorado consumers, businesses, and market dynamics.

In this light, the Board would like to comment on particular areas of the NPRM where Colorado's exchange could benefit from maximum flexibility to meet the unique needs of its state population and market conditions:

**Re: Response to request for comments on the Notice of Proposed Rule Making (NPRM): Patient Protection and Affordable Care Act: Health Insurance Premium Tax Credit; 26 CFR Part 1; REG-131491-10**

**Suggested Items for Comment**

**§5000A(f)(1)(A) Government sponsored coverage**

"In general, an individual is treated as eligible for a government-sponsored program (i.e. Medicaid) on the first day of the first full month in which the individual may receive benefits. Thus, taxpayers would not lose eligibility for the credit (*assuming they had come through the exchange*) for a month in which the taxpayer or a family member is technically eligible for a government program but cannot yet receive benefits due to, for example the need for administrative processing. An individual receiving advance credit payments may apply and be approved for government sponsored minimum essential coverage such as Medicaid that, after approval, is effective retroactively (overlapping some advance payment coverage months). The proposed regulations provide that an individual in this situation is treated as eligible for minimum essential coverage no sooner than the first day of the first calendar month after the approval." HHS seeks comment on whether rules should provide additional flexibility if operational challenges prevent timely transition from coverage under a QHP to coverage under a government-sponsored program.

We agree that states should have maximum flexibility to accommodate situations where operational challenges, delays in changes to IT systems or other unforeseen circumstances would delay a seamless transition from one subsidized program to another for the consumer. We believe that continuity of coverage and assurance that individuals get the benefits and services they need will be critical to improving health and health outcomes. States should have the flexibility to authorize additional transition time if a delay in the transition of coverage is beyond the control of the consumer.

**Summary of Notice of Proposed Rule Making (NPRM): Patient Protection and Affordable Care Act: Exchange Functions in the Individual market: Eligibility Determinations; Exchange Standards for Employers  
CMS-8874-P; 45 CFR Parts 155 and 157; Released August 17, 2011**

**Suggested Items for Comment**

**§155.305 (a)(1) Eligibility Standards**

HHS solicits comments regarding the language that an individual be “reasonably expected” for the entire period for which enrollment is sought, to be a citizen, national, or non-citizen lawfully present. This language comes directly from ACA. HHS is concerned that the period for which enrollment is sought does not have to be an entire benefit year. They seek comment on how this policy can be implemented in a way that is straightforward for individuals to understand and for the exchange to implement.

We are concerned about the expectations and ability for state exchanges to accurately and consistently determine immigration status, and in fact whether this is an appropriate role for states. An even greater concern is the expectation that a state would be able to acquire and maintain information to determine enrollment periods for individuals whose immigration status might change during the year. We think immigration status functionality for the purposes of determining eligibility for tax credits should be a federal responsibility.

**Preamble to 42 CFR 435.403 in the Medicaid Proposed Rule**

HHS intends to allow state Medicaid agencies to continue to have state-specific rules regarding residency for students. This is not consistent with proposed exchanged rules and HHS seeks comment on whether states should have the flexibility to have different residency rules than the exchange or whether a unified approach should be adopted.

We agree that states should continue to have the flexibility to have their own residency rules, and the flexibility to have different residency rules for Medicaid than the state exchange. We do not believe that a uniform federal standard is necessary and in fact could have unintended consequences that would not benefit the state or individuals.

**Use of Electronic Data**

HHS will approve the use of electronic data sources for verifications based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification. If no electronic data is authorized the exchange should accept the applicant’s attestation without further verification. What electronic data sources are available and should be authorized by HHS for exchange purposes? Should access to such data should be provided as a federally-managed service like citizenship and immigrant status information from SSA and DHS?

We believe states should have the option of using federally-managed services or state sources that are deemed sufficiently accurate. States should have the ability to make the decision regarding which data source to use based on the level of efficiency provided to the state and the cost to the state.

Thank you again for the opportunity to offer comments.

We look forward to working with you; if you have any questions or need addition information please contact:

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