March 7, 2017

BY ELECTRONIC DELIVERY

Secretary Thomas E. Price, M.D.
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-9929-P
Mail Stop C4-26-05,
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Patient Protection and Affordable Care Act; Market Stabilization

Dear Secretary Price:

The staff of Connect for Health Colorado, the state-based health insurance marketplace for Colorado, greatly appreciates the opportunity provided by the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) to comment on the proposed "Patient Protection and Affordable Care Act; Market Stabilization" rule. The proposed regulations that would have a particular impact on the Colorado Marketplace and the corresponding comments for each are listed below.

A. Part 147 – Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

a. Guaranteed availability of coverage (§ 147.104)

To address concerns regarding potential gaming, HHS is proposing to modify the interpretation of the guaranteed availability rules with respect to non-payment of premiums. Under the new proposal, an issuer would not be considered to violate the guaranteed availability requirements if the issuer attributes a premium payment for coverage under the same or a different product to the outstanding debt associated with non-payment of premiums for coverage from the same issuer enrolled in within the prior 12 months and refuses to effectuate new coverage for failure to pay premiums. This proposal defers to State laws that might otherwise prohibit the practice.

Connect for Health Colorado will defer to the Colorado Division of Insurance (DOI) to interpret Colorado law regarding this proposal. Dependent upon that interpretation and upon carriers' decisions to implement the change, Connect for Health Colorado will need to work with carriers to make necessary system updates and changes.

To minimize customer confusion, Connect for Health Colorado would require IT enhancements to process and store the industry standard code received from Colorado carriers that is sent when a customer does not pay their premium. This would allow our system and the customer's Connect for Health Colorado account to reflect the status of the customer's enrollment with the carrier who elected to use their premium payment to satisfy past due amounts.

Due to the new interface requirements that would need to be put in place if this proposal is finalized, Connect for Health Colorado considers the changes would be a relatively large project, and would consume a large amount of resources at considerable expense.

B. Part 155 – Exchange Establishment Standards and Other Related Standards under the Affordable Care Act

a. Initial and annual open enrollment periods (§ 155.410)

The Department of Health and Human Services (HHS) is proposing to shorten the Open Enrollment (OE) period from November 1, 2017 through January 31, 2018 (a three-month period) to November 1, 2017 through December 15, 2017 (a one-and-one-half-month period). HHS is seeking comment on: i) the capacity of State-based Exchanges to shift to the shorter open enrollment period for the 2018 plan year; ii) the effect of the shorter enrollment period on issuers' ability to enroll healthy consumers; and iii) any difficulties agents, brokers, navigators and assisters may have serving consumers seeking to enroll during this shorter time period.

i. Capacity of Connect for Health Colorado to shift to the shorter OE period for plan year 2018.

Connect for Health Colorado opposes shortening the annual Open Enrollment (OE) period for plan year 2018. This proposal would force both new and existing enrollees through Marketplace, carrier, broker, and assister channels in half the time originally allotted for this OE period. This will likely result in consumer confusion, inability of many consumers to timely enroll, and overwhelmed resources in all channels.

Connect for Health Colorado's initial cost estimate for implementing this proposal is $350,000.00 to $450,000.00 to complete necessary IT performance and system stabilization enhancements. With the additional load on our state's Shared Eligibility System, substantial operational costs will need to be directed toward manual processing of customer applications and verifications. It is expected that the shorter OE would cause a large increase in triggering of Reasonable Opportunity Periods (ROPs) due to Federal Data Services Hub (FDSH) time-outs that would occur with a large volume of use of FDSH services nation-wide. Additionally, there will be a reduction in the number of real-time eligibility determinations due to increased activity within a shorter OE period. A shorter OE period reduces the amount of time available to identify and fix system defects, including resolving customer accounts.

The Service Center will incur additional operational and facilities costs related to providing more staff for a shorter OE time frame.

Forcing such a large number of customers through systems that have not had the chance to prepare for this change would negatively affect the experiences of consumers, brokers, carriers and the Marketplace. The industry has extremely long lead times and changes for a shortened OE period are being worked on so that they may be feasibly implemented for the 2019 plan year, not the 2018 plan year. Planning for space use, staffing, and system capacity has not been performed and it is not reasonable to expect these items to be completed by November 1, 2017. Colorado will incur significant costs and expect negative customer impact if required to shift to the shorter open enrollment period for the 2018 plan year.

ii. Effect of shorter OE period on issuers' ability to enroll healthy consumers.

Assessment of Connect for Health Colorado data sources indicates that younger, possibly healthier consumers are more likely to wait until the final days and hours of OE to enroll in health insurance. In the first half of OE for the 2017 plan year, 51% of Connect for Health Colorado enrollees were under 44 years old. In the second half of OE for the 2017 plan year, which the proposal will eliminate for the 2018 plan year, 60% of enrollees were under age 44. Thus, based on this data, the second half of OE brings a 9 percentage point increase in younger, likely healthier, enrollees. Connect for Health Colorado is therefore concerned that cutting the OE period in half will decrease the number of younger, maybe healthier, enrollees and have a negative impact on the risk pool.

iii. Difficulties agents, brokers, navigators and assisters may have serving consumers during a shortened OE period.

All assistance personnel will have difficulty forcing the same or more enrollees through their systems during a shortened OE period. Many agents, brokers and other assisters already struggle to renew and to enroll the current volume of customers who come to them for help. Shortening the timeframe for the next OE would put additional pressure on them to accomplish this task in half of the time. This is unreasonable to ask beginning this year. Assisters of all types are likely already looking forward and attempting to plan for the OE period for plan year 2019 to be shortened. Decreasing the OE period beginning this year does not give anyone enough time to plan for and successfully execute a shortened OE period.

Agents and brokers will be additionally burdened by a shortened OE period this year because they will not only be working their book of business for the individual market, but they will have to work their Medicare book of business simultaneously. This adds burden to their time and resources and takes away valuable additional time needed to prepare for next year's shortened OE period. A shortened OE period for plan year 2018 will almost certainly result in reduced service to our customers and reduced income for the agents and brokers assisting them.

Navigators and assisters will also be burdened by large volumes of customers needing help with enrollment within a period of time that is too short and has not been planned for.

Connect for Health Colorado will have additional costs to provide more support to brokers, navigators, and assisters within a shorter OE period.

Connect for Health Colorado opposes the proposal to shorten the OE period for plan year 2018.

b. Special enrollment periods (§155.420)

This proposed rule would require the Federally Facilitated Exchange (FFE) State-based Exchanges using the Federal Platform (SBE-FPs) to conduct pre-enrollment verification for all categories of Special Enrollment Periods (SEPs) for all new consumers. As written, the customer can submit their application and select a plan. Before the Exchange releases enrollment information to the carrier, the enrollment will be "pended" for 30 days to complete verification of the SEP.

Connect for Health Colorado supports access to SEPs for all individuals who are legitimately eligible for those SEPs. Connect for Health Colorado also supports taking reasonable measures to reduce adverse selection.

Connect for Health Colorado is exploring the best way to implement the increased verification processes for SEPs, and believes that state flexibility is key. The concept of pending an enrollment before sending it to the carrier while verification is in process suggests a new system workflow, which would be a major change. Additional operational costs would result from the need to review verification documentation.

Due to these challenges, Connect for Health Colorado supports flexibility for State-based Marketplaces regarding this proposal.

i. Alternative to Pre-Enrollment SEP Verification for Existing Enrollees (§ 155.420(a)(4))

This proposed rule would provide an alternative to pre-enrollment verification for existing enrollees (as opposed to new applicants), which would limit the ability of existing Exchange enrollees to change plan metal levels during the coverage year.

Connect for Health Colorado believes that this proposal should be optional for State-based Marketplaces (SBMs). States should be allowed to innovate custom solutions to the issues presented by requiring verifications of SEP eligibility for existing enrollees (as opposed to new applicants). Making this alternative optional would allow States to evaluate costs associated with implementing changes that would correspond to this proposal and then make an appropriate decision based on organizational needs. States should also retain the ability to defer to State law.

Additionally, an initial estimate reflects an IT cost of approximately $85,000.00 to implement the changes as proposed in § 155.420(a)(4).

ii. Limiting Metal-level Changes for Certain SEPs (§ 155.420(a)(4)(iii))

This proposed rule states that for existing enrollees eligible for the certain SEPs (loss of MEC (d)(1); QHP violated a material provision of its contract (d)(5); permanent move (d)(7); and affected by material plan or benefit display error (d)(12)), the Exchange must only allow the enrollee and/or his/her dependents to make changes to their enrollment in the same QHP or to change to another QHP within the same metal level of coverage, if available. This includes enrollees who are on an application where a new applicant is enrolling in coverage who qualifies for an SEP.

Connect for Health Colorado supports availability of SEPs to individuals who are legitimately eligible. Connect for Health Colorado also supports reasonable measures which limit adverse selection. An initial estimate suggests an IT cost of approximately $85,000.00 to implement the proposed changes to § 155.420(a)(4)(iii).

iii. Changes to Marriage SEP (§ 155.420(d)(2)(i))

This proposed rule would impact only the individual Market and would require a new enrollee to demonstrate that, in the case of marriage, at least one spouse either had Minimum Essential Coverage (MEC) or lived outside of the U.S. for one or more days during the 60 days preceding the date of marriage.

Connect for Health Colorado seeks clarification as to whether this new requirement is related to a pre-eligibility determination, meaning that the customer must demonstrate prior MEC or an address outside of the U.S. before being determined eligible for a Qualified Life Change Event (QLCE), or if the requirement is only pre-enrollment, meaning we can find the applicant eligible for an SEP due to a QLCE, but the enrollment is then pended to allow the enrollee to demonstrate they had other MEC, or lived outside of the U.S. within the prior 60 days.

Depending on the specifics for how this requirement should be implemented, it could cost Connect for Health Colorado approximately $150,000 in IT enhancements.

iv. Significant Limitations on Exceptional Circumstances SEP (§ 155.420(d)(9))

The proposed rule will significantly limit the use of "exceptional circumstances" and require supporting documentation that a consumer was directly impacted by the circumstance.

Connect for Health Colorado opposes this proposal. Connect for Health Colorado supports availability of SEPs to individuals who are legitimately eligible. If circumstances occur which are out of a customer's control, Connect for Health Colorado supports facilitating the enrollment of such individuals. Connect for Health Colorado also supports taking reasonable measures which limit adverse selection.

Connect for Health Colorado would incur costs to make necessary changes to implement this proposal. The majority of costs associated with this change would be operational in nature.

C. Part 156 – Health Insurance Issuer Standards under the Affordable Care Act, Including Standards Related to Exchanges

1. Levels of coverage (actuarial value) (§ 156.140)

This proposed rule will amend the definition of de minimis to a variation of -4/+2 percentage points. For example, a silver level plan could have an Actuarial Value (AV) between 66 to 72 percent. This is applicable for each metal level.

This proposal would change the de minimis range for bronze plans to +5/-4 percentage points.

This proposed rule change will not impact §§156.400 or 156.420 – meaning that no modifications will be done with the de minimis range for silver level plan variations (the plans with an AV of 73, 87 and 94 percent, otherwise known as cost-share reduction (CSR) plans').

Connect for Health Colorado supports flexibility for carriers to design a range of plans that fit the unique needs of each carrier. However, decreasing AV ranges of Silver metal-level plans could lead to consumer confusion and less Advance Premium Tax Credit (APTC) availability for consumers because the APTC calculation is based on the Second Lowest Cost Silver Plan (SLCSP). Additionally, operational costs may be incurred if customers' plans are not renewable due to substantial plan changes by carriers.

D. Additional Concerns

Given that Connect for Health Colorado has limited access to funds and shares IT infrastructure with other state agencies (including state administrators of other health programs, as well as a wide range of public benefit programs), regulatory changes impacting the 2018 benefit year pose a considerable hardship. Cost estimates listed in this comment are subject to substantial increases based on pricing surges to expedite technological changes. Moreover, even if Connect for Health Colorado were able to absorb additional costs required for timely compliance, we also must contend with competing technological projects and improvements required by other state agencies in our shared technological system. As such, we request that the Secretary extend effective dates and compliance timelines wherever possible.

Sincerely,

Connect for Health Colorado Staff