



Date: March 22, 2016

From: Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services

Subject: Marketplace Eligibility Appeals – Options for Paper-based Processes

Section 1411(f) of the Affordable Care Act requires the Secretary to establish a federal process for hearing and making decisions with respect to appeals of determinations made under section 1411(e) of the Affordable Care Act related to eligibility for enrollment in a qualified health plan (QHP) through the Marketplace, advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs), and exemptions from the individual responsibility requirement. Section 1411(f) also requires the Secretary to establish a separate appeals process for employers that are notified that they may be liable for the employer shared responsibility payment. The Centers for Medicare & Medicaid Services (CMS) published final regulations on eligibility appeals on August 30, 2013. In these regulations, CMS established standards for:

- A process by which federal officers hear and make decisions with respect to appeals of Marketplace eligibility determinations, including eligibility for enrollment in a QHP through the Marketplace, APTC/CSRs, exemptions from the individual responsibility requirement, and, for states that delegate these appeals to the Marketplace or to the Marketplace Appeals Entity, Medicaid and the Children's Health Insurance Program (CHIP);
- A separate appeals process for employers that are sent a notice that they may face tax liability because an employee has been determined eligible for APTC/CSRs on the basis that the employer does not provide minimum essential coverage through an employer-sponsored plan or that the employer does provide such coverage but it is not affordable with respect to the employee; and
- An eligibility appeals process for both employer and employee applicants to the SHOP Marketplace.

The regulations also provide the flexibility for State-based Marketplaces (SBMs) to implement their own appeals processes in accordance with federal requirements. In addition, the preamble to the final rule provided flexibility for appeals entities to conduct eligibility appeals via a paper-based process for the first year of operation, through December 31, 2014, and on October 23,

2014, CMS issued guidance to allow for the extension of this flexibility to conduct eligibility appeals via a paper-based process until December 31, 2015.¹

CMS has determined that the flexibility to use a paper-based process to conduct eligibility appeals should be extended an additional year, through December 31, 2016. We understand that in their third year of operation, appeals entities are compliant with a number but not all of the requirements in the regulations governing the acceptance of Internet-based appeal requests, the provision of appeals notices electronically, and the secure electronic transfer of eligibility and appeal records between appeals entities and Marketplaces or Medicaid or CHIP agencies. CMS has determined that it is reasonable to extend the flexibility to conduct a paper-based appeals process to allow appeals entities additional time to come into full compliance with regulatory requirements, since the paper-based process adequately protects the due process rights of appellants while providing additional time for appeals entities to complete the systems development work necessary to implement the electronic requirements of the process. We believe this approach strikes a balance between safeguarding appellant's rights and the demands on appeals entities.

We note that the flexibility extended today applies to individual market eligibility appeals (45 CFR 155.500-550), employer appeals (§155.555), and SHOP employer and employee appeals (§155.740). Further, the flexibility extends to all the electronic requirements included within these sections of the regulations, including standards for appeal requests, transfers of appeal records between appeals entities and Medicaid or CHIP agencies, and notice requirements. SBM appeals entities are encouraged to notify CMS through their CCIIO State Officers whether they will be using this flexibility for the third year of operation. Within CMS, the Marketplace Appeals Group, the HHS appeals entity handling appeals for the Federally-facilitated Marketplaces and appeals elevated from SBMs, will exercise this flexibility for the 2016 benefit year.

CMS will continue to work with all Marketplace eligibility appeals entities to support their implementation efforts and ensure successful coordination where appropriate. CMS is available to provide further technical assistance to Marketplaces, Marketplace appeals entities, and state Medicaid and CHIP agencies regarding permissible paper-based processes for eligibility appeals.

¹ 178 FR 54070; 54088-89, 54097-98, 54114, 54116, 54118 (Aug. 30, 2013), and Sub-Regulatory Guidance Memorandum (10/23/2014), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Paper-based-Appeals-Process-Guidance.pdf>.