



**Report to the
Colorado General Assembly**

**Colorado Health
Insurance Exchange
Oversight Committee**

Prepared by

*The Colorado Legislative Council
Research Publication No. 660
December 2015*

Colorado Health Insurance Exchange Oversight Committee

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December 2015

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December 2015

To Members of the Seventieth General Assembly:

Submitted herewith is the final report of the Colorado Health Insurance Exchange Oversight Committee. This committee was created pursuant to Article 22 of Title 10, C.R.S. The purpose of this committee is to guide the implementation of the Colorado health benefit exchange.

At its meeting on November 10, 2015, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bill therein for consideration in the 2016 session was approved.

Sincerely,

/s/ Senator Bill Cadman
Chairman

Table of Contents

Committee Charge	1
Committee Activities	1
Financial and Operational Plans, Sustainability, Budget, and Fees	1
1332 State Innovation Waivers.....	2
Shared Eligibility System	3
Customer Service and Broker Interactions	3
Appointment of New Chief Executive Officer	4
Colorado HealthOP	4
Summary of Recommendations	5
Bill A — Exchange Use of Qualified Insurance Brokers.....	5
Text of Bill A	11
Committee Letter.....	5
Text of Committee Letter	15
Resource Materials	7

This report is also available on line at:

www.colorado.gov/pacific/cga-legislativecouncil/colorado-health-insurance-exchange-oversight-committee

Committee Charge

In March 2010, the federal Patient Protection and Affordable Care Act (PPACA), was adopted by the U.S. Congress and signed by the President. PPACA is intended to expand health care coverage by increasing access to private health insurance and public health programs through the use of the federal health insurance exchange and state-based health insurance exchanges. Health insurance exchanges are regulated marketplaces in which individuals and small businesses can shop for health insurance, or be referred to public health programs.

In 2011, Colorado passed Senate Bill 11-200 establishing the Colorado Health Benefit Exchange, which currently does business under the name Connect for Health Colorado (exchange), and its governance structure. The bill created the exchange as a nonprofit public entity with a board of directors responsible for its operation.

Senate Bill 11-200 also established the Legislative Health Benefit Exchange Implementation Review Committee. Senate Bill 15-256 changed the name of the committee to the Colorado Health Insurance Exchange Oversight Committee (committee). State law authorizes the committee to:

- meet at least two times a year; however, the committee can meet an unlimited number of times during the legislative session and up to seven times during the interim;
- approve the appointment of the executive director of the exchange by the Colorado Health Benefit Exchange board of directors (board);
- review and approve the board's initial financial and operational plans;
- review annual financial and operational plans of the exchange;
- review and approve any implementation grants for which the board wishes to apply; and
- recommend up to eight bills for consideration by the General Assembly each year.

Committee Activities

The Colorado Health Insurance Exchange Oversight Committee met nine times in 2015. The committee received briefings from the exchange board and staff at most of the meetings, and per its statutory charge, covered a range of topics pertaining to the operations and finances of the exchange. Additionally, the committee received briefings from the Colorado Association of Health Plans, Colorado Consumer Health Initiative, Colorado Health Institute, Colorado State Association of Health Underwriters, Department of Health Care Policy and Financing (HCPF), Division of Insurance in the Department of Regulatory Agencies, Independence Institute, National Conference of State Legislatures, Office of Legislative Legal Services, and Office of the State Auditor.

Financial and Operational Plans, Sustainability, Budget, and Fees

In accordance with Section 10-22-107, C.R.S., the committee is required to review the financial and operational plans of the exchange. At the June 5, 2015, meeting, Connect for Health Colorado staff presented the FY 2015-16 budget and information on the sustainability of the exchange to the committee for review and comment. Exchange staff explained that federal grant funding is no longer available and that the exchange is funded primarily by earned

revenue. Several sources of revenue for operational expenses were identified by exchange staff, including:

- the Marketplace Health Insurance Administrative Fee (MHIA);
- the Broad Market Assessment (BMA);
- carrier donations;
- grants;
- interest income;
- Small Business Health Options Program (SHOP); and
- potential Medicaid reimbursement.

The MHIA and the BMA will generate the bulk of revenue for the exchange. The MHIA is a carrier assessment based on the total premiums collected by a carrier from plans sold on the exchange. In 2015, the MHIA is set at 1.4 percent of premiums and will increase in 2016 to 3.5 percent of premiums. The BMA is a general monthly assessment on all health insurance plans sold in Colorado. This fee is set at \$1.25 per policy per month for 2015 and is set to increase to \$1.80 per policy per month in 2016. The BMA is a short-term funding mechanism that will expire at the end of 2016.

1332 State Innovation Waivers

Section 1332 of the PPACA allows a state to apply for a state innovation waiver to pursue innovative strategies for providing its residents with access to high-quality, affordable health insurance while still retaining certain elements of the PPACA. There is a specific application process, which includes adopting state legislation authorizing the state to implement the proposed waiver and receiving federal approval of the waiver. The 1332 state innovation waivers are approved for a five-year period, and can be renewed. Approved waivers may be implemented on or after January 1, 2017. There are federally required components of a 1332 state innovation waiver, elements of federal law that can be waived, and a monitoring and review process for an approved waiver.

At the July 15, 2015, committee meeting, the committee discussed 1332 state innovation waivers with representatives from Connect for Health Colorado, the Colorado Health Institute, and the National Conference of State Legislatures. Prior to that meeting, there was discussion of creating a subcommittee to explore the possibility of applying for a 1332 state innovation waiver, but it was decided that a subcommittee would not be convened for this purpose.

At the October 27, 2015, committee meeting, the committee considered two draft bills that would have required a waiver from certain provisions of the federal PPACA. The first draft bill considered, but not approved, required the Commissioner of Insurance to apply for a waiver to the federal PPACA to change the open enrollment period for consumers purchasing health coverage on the exchange to the birthday month of the primary policyholder. The second draft bill considered, but not approved, required the Commissioner of Insurance to apply for a waiver to the requirement of the federal PPACA that mandates that certain employers offer health insurance coverage to their employees. Both draft bills were withdrawn before the committee took action on them.

Shared Eligibility System

The committee discussed the Shared Eligibility System utilized by the exchange and HCPF at several meetings over the course of the year. Both staff of the exchange and HCPF discussed the challenges of the system and identified technology improvements that are being evaluated for implementation. Some areas of improvement brought to the attention of the committee were:

- creating a fast-track path for applicants that reduces the number of questions for those who do not qualify for Medicaid;
- creating a wrap-up summary screen that allows customers to edit their application;
- providing enhanced customer service by allowing exchange customer service center representatives to access customer information in the Colorado Benefits Management System;
- developing an educational avatar within the online system to assist customers in answering questions;
- modifying and clarifying Medicaid and Advance Premium Tax Credit (APTC) eligibility notices; and
- developing strategies to better identify exchange customers who move between financial eligibility categories.

At the October 27, 2015, committee meeting, the committee considered a draft bill that would have required HCPF to apply for all necessary waivers under federal law to align the methods used for assessing client income when determining eligibility for state medical assistance programs and the APTC. The draft bill was withdrawn before the committee took action on it. However, the committee approved sending a letter to Colorado's congressional delegation requesting support for Colorado's effort to receive retrospective and future federal reimbursement for Medicaid-related expenses incurred by the exchange and the alignment of federal rules governing income eligibility for Medicaid and for the APTC.

Customer Service and Broker Interactions

The committee had several discussions about the customer service provided by the exchange and the role of insurance brokers in relation to the exchange. At the April 15, 2015, committee meeting, the committee heard presentations from the Colorado State Association of Health Underwriters and the Colorado Consumer Health Initiative about the experience of insurance brokers and consumers with the exchange. Additionally, opportunities were provided at each committee meeting conducted during the interim for members of the public to provide testimony to the committee about their experience with the exchange or other topics. Finally, the committee created an online survey that allowed members of the public to submit feedback about their experience purchasing health insurance both through the exchange and with the assistance of insurance brokers. This feedback mechanism resulted in 72 completed surveys.

At the October 27, 2015, committee meeting, the committee approved a bill for introduction in the 2016 legislative session requiring Connect for Health Colorado to establish a system for referring consumers to qualified insurance brokers to enroll consumers in health plans. To participate in the system, a broker must be licensed by the Colorado Division of Insurance and certified by Connect for Health Colorado.

Appointment of New Chief Executive Officer

In 2014, Patty Fontneau resigned as the exchange's chief executive officer (CEO), and Gary Drews was appointed as the interim CEO. For several months, a search for a permanent CEO was conducted by the exchange's board of directors and in April 2015, the committee formed a subcommittee to discuss the CEO appointment with the board. A successful candidate was not identified during this initial search and the appointment of a permanent CEO was postponed. Kevin Patterson was named to replace Mr. Drews as interim CEO in June 2015. After several exchange board member appointments were made in July, the board resumed its search for a permanent CEO and named Mr. Patterson as the permanent CEO of the exchange. The committee approved Mr. Patterson's appointment at the October 27, 2015, meeting.

Colorado HealthOP

At the October 27, 2015, meeting, Marguerite Salazar, Commissioner of Insurance, dialogued with the committee about the decision to not allow Colorado HealthOP to offer insurance plans on the exchange for 2016 and the pending closure of the Colorado HealthOP. The Colorado HealthOP is a nonprofit health insurance cooperative initially funded by a start-up loan from the U.S. Department of Human Services (HHS). The decision to close the HealthOP was based on the HHS announcement that insurers across the county will be receiving only 12.6 percent of the expected reimbursement from the federal risk corridors program. The federal risk corridors program is designed to help ensure stable health insurance premiums by sharing risk on allowable costs between HHS and qualified health insurers. The decrease in funding means that Colorado HealthOP would not meet the state's minimum capital and surplus requirements established for insurance companies to do business in the state. Commissioner Salazar explained that Colorado HealthOP customers will continue to have coverage through December 2015. Connect for Health Colorado staff and board members discussed the steps the exchange has taken to address the departure of the Colorado HealthOP from Colorado's insurance market.

Summary of Recommendations

As a result of committee discussions and deliberation, the Colorado Health Insurance Exchange Oversight Committee recommended one bill for consideration in the 2016 legislative session. At its meeting on November 10, 2015, the Legislative Council approved the bill recommended by the committee for introduction. The committee also approved sending a letter to Colorado's congressional delegation. Three other draft bills were considered, but not recommended.

Bill A — Exchange Use of Qualified Insurance Brokers

Bill A requires the Colorado Health Benefit Exchange (Connect for Health Colorado) to establish a system for referring consumers to qualified insurance brokers to enroll consumers in health plans. To participate in the system, a broker must be licensed by the Colorado Division of Insurance and certified by Connect for Health Colorado.

Committee Letter

The committee approved sending a letter to Colorado's congressional delegation requesting support for Colorado's effort to receive retrospective and future federal reimbursement for Medicaid-related expenses incurred by the exchange and the alignment of federal rules governing income eligibility for Medicaid and for the APTC.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Colorado State Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on the Legislative Council website at:

www.colorado.gov/pacific/cga-legislativecouncil/year-round-committees

Meeting Date and Topics Discussed

March 18, 2015

- ◆ Historical overview of the legislative committee
- ◆ Introduction of Connect for Health Colorado board members and staff
- ◆ Presentation on Colorado Health Insurance Benefits Exchange Limited Performance Audit

April 1, 2015

- ◆ Continuation of the Presentation on Colorado Health Insurance Benefits Exchange Limited Performance Audit
- ◆ Discussion and vote on formation of executive director search subcommittee
- ◆ Presentation from Connect for Health Colorado on:
 - Executive director search
 - Response to audit findings
 - Financial and operational plans

April 15, 2015

- ◆ Presentation by Colorado Association of Health Plans
- ◆ Presentation by Colorado State Association of Health Underwriters
- ◆ Presentation by Colorado Consumer Health Initiative
- ◆ Update from subcommittee concerning the executive director appointment

April 29, 2015

- ◆ Update from subcommittee concerning the executive director appointment
- ◆ Presentation on health exchanges from the National Conference of State Legislatures

May 13, 2015

- ◆ Update on and discussion of the executive director search and possible board vacancies
- ◆ Discussion of the challenges of previous open enrollments and plans to improve the third open enrollment period
- ◆ Discussion of fiscal matters and sustainability plan, including the fee structure

June 5, 2015

- ◆ Presentation by Colorado Health Institute
- ◆ Presentation by the Independence Institute
- ◆ Discussion with Department of Health Care Policy and Financing
- ◆ Discussion with Division of Insurance in the Department of Regulatory Agencies
- ◆ Presentation on Connect for Health Colorado budget and operating plan

July 15, 2015

- ◆ Discussion with Colorado Health Institute about questions from June 5 meeting
- ◆ Presentation by Office of Legislative Legal Services on *King v. Burwell* decision
- ◆ Discussion of potential system changes using a Section 1332 State Innovation Waiver
- ◆ Discussion of health insurance marketplace for next open enrollment period
- ◆ Review of policies and procedures for board and staff at Connect for Health Colorado and discussion of fiduciary duties of the board
- ◆ Discussion with Division of Insurance in the Department of Regulatory Agencies about committee concerns raised during June 5 meeting
- ◆ Discussion with Department of Health Care Policy and Financing about committee concerns raised during June 5 meeting

September 11, 2015

- ◆ Update on Connect for Health Colorado executive director search and upcoming open enrollment period
- ◆ Connect for Health Colorado response to committee questions about audit follow-up, improvements to customer experience, and sustainability and budgeting
- ◆ Presentation on interim committee bill drafting process
- ◆ Committee discussion and vote on motions to request bill drafts

October 27, 2015

- ◆ Committee Discussion and voting on referring bill drafts to Legislative Council
- ◆ Approval of Connect for Health Colorado Chief Executive Officer
- ◆ Discussion with Commissioner of Insurance

Other Activities

- ◆ Subcommittee meetings were held on April 8, 2015, and April 17, 2015, to discuss the executive director search conducted by Connect for Health Colorado.

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL A

Temporary storage location: S:\LCS\Council\Legcouncil\LC2015\Nov 10 Interim Committee Meeting\Health Insurance Exchange Oversight Committee\Bill A.wpd

LLS NO. 16--0284.01 Kristen Forrestal x4217

SENATE BILL

SENATE SPONSORSHIP

Martinez Humenik, Lundberg, Roberts

HOUSE SPONSORSHIP

Sias, Landgraf, Tate

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF QUALIFIED INSURANCE BROKERS TO ENROLL**
102 **ELIGIBLE PARTICIPANTS IN HEALTH BENEFIT PLANS THROUGH**
103 **THE COLORADO HEALTH BENEFIT EXCHANGE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Health Insurance Exchange Oversight Committee.
The bill requires the Colorado health benefit exchange (exchange) to establish a system to refer consumers to qualified insurance brokers to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

enroll consumers in health benefit plans. To be qualified, an insurance broker must be licensed by the commissioner of insurance and be certified by the exchange.

The system must include the installation of a call center and the necessary software to make the referrals.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 10-22-112 as follows:

10-22-112. Health benefit exchange - referral to private

insurance brokers. (1) ON OR BEFORE NOVEMBER 1, 2016, THE EXCHANGE SHALL ESTABLISH A SYSTEM FOR QUALIFIED INSURANCE BROKERS, AS DETERMINED UNDER SUBSECTION (2) OF THIS SECTION TO ASSIST CONSUMERS IN ENROLLING IN HEALTH BENEFIT PLANS. A CUSTOMER SERVICE REPRESENTATIVE FROM THE EXCHANGE SHALL ASSIST CONSUMERS WITH THE ELIGIBILITY APPLICATION PROCESS. IF IT IS DETERMINED THAT A CONSUMER IS NOT ELIGIBLE FOR MEDICAID OR ANOTHER GOVERNMENTAL HEALTH BENEFIT PROGRAM, THE CUSTOMER SERVICE REPRESENTATIVE SHALL OFFER TO TRANSFER THE CONSUMER TO A QUALIFIED INSURANCE BROKER. UPON TRANSFER OF A CONSUMER FROM THE EXCHANGE, THE QUALIFIED INSURANCE BROKER SHALL ASSIST THE CONSUMER WITH THE HEALTH INSURANCE ENROLLMENT PROCESS.

(2) IN ORDER TO BE QUALIFIED TO RECEIVE A REFERRAL FROM THE EXCHANGE, AN INSURANCE BROKER MUST BE CERTIFIED BY THE EXCHANGE AND BE LICENSED PURSUANT TO ARTICLE 2 OF THIS TITLE.

(3) THE SYSTEM ESTABLISHED BY THE EXCHANGE SHALL:

(a) INCLUDE A CALL CENTER WHERE CONSUMERS CAN BE TRANSFERRED TO QUALIFIED INSURANCE BROKERS FOR IMMEDIATE ASSISTANCE;

1 (b) ALLOW BROKERS TO QUEUE INTO THE SYSTEM WHEN THEY ARE
2 AVAILABLE TO ASSIST CONSUMERS; AND

3 (c) MAKE THE NECESSARY SOFTWARE AVAILABLE TO QUALIFIED
4 INSURANCE BROKERS.

5 (4) AS USED IN THIS SECTION, "INSURANCE BROKER" MEANS AN
6 INSURANCE PRODUCER AS DEFINED IN SECTION 10-2-103.

7 **SECTION 2. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.

COLORADO GENERAL ASSEMBLY

Senate Members
Sen. Ellen Roberts, **Chairman**
Sen. Irene Aguilar
Sen. John Kefalas
Sen. Kevin Lundberg
Sen. Beth Martinez Humenik



House Members
Rep. Beth McCann, **Vice-Chair**
Rep. Lois Landgraf
Rep. Dianne Primavera
Rep. Su Ryden
Rep. Lang Sias

Colorado Health Insurance Exchange Oversight Committee

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October 27, 2015

The Honorable Michael Bennet
The Honorable Cory Gardner
The Honorable Diana DeGette
The Honorable Jared Polis
The Honorable Scott Tipton
The Honorable Ken Buck
The Honorable Doug Lamborn
The Honorable Mike Coffman
The Honorable Ed Perlmutter

Dear Members of Congress:

For the purposes of guiding the implementation of Colorado's health exchange, making recommendations to the General Assembly, and ensuring that the interests of Coloradans are protected, the Colorado General Assembly created the Colorado Health Insurance Exchange Oversight Committee. The following members of the Colorado Health Insurance Exchange Oversight Committee seek your support for Colorado's effort to receive retrospective and future federal reimbursement for Medicaid-related expenses incurred by Colorado's health exchange, Connect for Health Colorado (the exchange). We also request the alignment of federal rules governing income eligibility for Medicaid and for the Advance Premium Tax Credit (APTC).

Currently, staff from the Colorado Department of Health Care Policy and Financing and the exchange are working together to create a cost allocation methodology for use by the Centers for Medicare and Medicaid Services (CMS) to provide retrospective federal reimbursement for expenses incurred by the exchange in FY 2014-15 and FY 2015-16 that can be allocated to Medicaid. The methodology may also be used to establish an ongoing and prospective allocation methodology to offset future Medicaid-related expenses. Once the cost allocation methodology is approved by CMS, Colorado will be able to receive a federal draw down of funds that can be used to reimburse the exchange for services provided to customers related to Medicaid, such as the shared eligibility system, customer service and outreach, customer education, and staff training. We respectfully request that you urge CMS to approve Colorado's cost allocation methodology request as quickly as possible.

In addition to seeking approval for retrospective and future costs associated with Medicaid, we would like to address the difficulty some Medicaid clients and exchange customers have endured due to conflicting eligibility determinations as a result of the different criteria used for assessing income. Medicaid counts income on a current monthly basis and the exchange counts income for APTC purposes on a projected annual basis. This has resulted in gaps in health care coverage and unexpected costs for some clients. Our goal is to eliminate gaps in health care coverage and to simplify the process for exchange applicants. We request that you initiate discussion at the federal level to align the methods dictated by CMS rules and Internal Revenue Service rules for assessing income for purposes of determining eligibility for Medicaid and for the APTC.

Thank you for your consideration of our request, and we would appreciate a response from your office so that we can better coordinate state and federal efforts to expedite a resolution of these two issues.

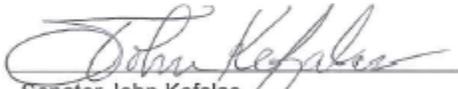
Sincerely,



Senator Ellen Roberts, Chair



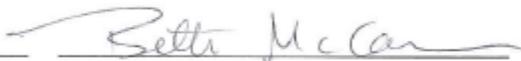
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