

**New York Health Benefit Exchange
Implementation Review
Section 3.0 Eligibility and Enrollment
August 13, 2013**

<u>Item Number</u>	<u>Topic</u>
3.11	Eligibility Appeals

Introduction and Organizational Structure

Since the submission of New York’s Blueprint document in October 2012, the development of the eligibility appeals process through the Marketplace has evolved. The introduction of proposed and final regulations and the systems development for the Marketplace has driven this evolution. The detail below represents how New York will implement the appeals process when the Marketplace opens. As the system builds continue and the federal government releases final rules, we anticipate we will make additional changes and modifications.

The New York Marketplace’s Appeals Unit will hear all eligibility appeals for the Marketplace. This includes coordinated eligibility appeals across all Insurance Affordability Programs and for enrollment in qualified health plans in the Individual and Small Business Marketplaces. The unit will be placed within the Office of the Exchange Counsel, within the New York State Department of Health, Division of Legal Affairs. The unit Director and one Supervising Hearing Officer have been hired and are presently working with counsel and staff to the Marketplace on development. When the Marketplace opens in October, the unit will consist of the Director, two Supervising Hearing Officers and six Hearing Officers. As the Marketplace enrollment increases and current Medicaid and Child Health Plus enrollees are transitioned into the Marketplace, the unit anticipates hiring nine additional Hearing Officers and eleven support staff.

When the Marketplace begins assessing eligibility for and enrolling applicants in health insurance coverage, the Appeals Unit will have the ability to hear SHOP, individual, and large employer appeals. For each of these types of appeals, the unit has coordinated development with technical support from Manatt Health Solutions, through the Robert Wood Johnson State Health Reform Assistance Network, Exchange Counsel, eligibility and enrollment subject matter experts, IT staff, and other partners. Together they have defined the appealable issues, designed notices, and created a process to resolve disputes when they arise.

Shop Appeals

The Appeals Unit will hear appeals for employers and employees seeking eligibility determinations through the SHOP Marketplace. Employers and employees can also request an appeal based on the Marketplace’s failure to provide a timely eligibility determination. Additionally, employers can appeal

their eligibility to purchase coverage for qualified employees through the SHOP. These determinations include:

- The business is not a small employer;
- The employer does not have a business address or worksite in the Marketplace service area; or
- The business has not elected to offer insurance coverage to all its full-time employees.

Employees may also appeal their eligibility to enroll in coverage through the SHOP Marketplace. The basis for these appeals is a determination that the enrollee is not a qualified employee. The SHOP Marketplace will consider an employee a qualified employee if the employer makes an offer of coverage.

The Appeals Unit, SHOP staff, and Exchange Counsel, with technical support from Manatt, developed notices and an appeal process flow to comply with proposed federal regulations and resolve SHOP Marketplace disputes when they arise. Although the notices and process are distinct, the unit based them on those created for Individual Marketplace appeals. We discuss appeals notices and that process in the next section.

Given the limited scope of appealable issues in the SHOP Marketplace, the Appeals Unit does not anticipate a large number of SHOP appeals. For those employers or employees who do appeal, the Marketplace intends to use the informal dispute resolution process envisioned for applicants seeking appeals through the HHS appeals process.¹

For those appeals that advance to hearing, the Appeals Unit anticipates that it will decide the majority of them by desk review. The unit will decide desk review cases entirely on paper instead of by telephone hearing as described below. Under the desk review process, an impartial hearing officer will review relevant information in applicants' or enrollees' accounts and any additional relevant information they submit. Based solely on the application and other submitted evidence, if any, the hearing officer will render a written decision. If the appellant requests no adjournments, the unit will render its decision within 90 days of a valid appeal request.

Although the unit believes that most small employers and their employees will prefer desk review, for efficiency and as a less burdensome process, it will also offer telephone hearings for those who want to present their cases orally. These hearings will mirror the process used for telephone hearings described below for the Individual Marketplace. SHOP appeals notices templates and a process flow for SHOP appeals are attached.

Individual and Large Employer Appeals

Individual Appeals

¹ As discussed below, the New York Marketplace is also implementing an informal dispute resolution process for applicants and enrollees in the individual marketplace.

The New York Marketplace has developed a fully integrated, consumer-centered, and highly efficient customer assistance and appeals process for individual applicants. As in the SHOP, applicants can appeal the timeliness of their eligibility determinations. In addition, they can ask the Appeals Unit to review eligibility determinations for MAGI-based Medicaid, CHIP, and special enrollment periods. The unit will also review determinations regarding the amount advance premium tax credits, level of cost-sharing reductions, and whether an applicant is a qualified individual to enroll in a QHP in the Marketplace.

If applicants disagree with a Marketplace eligibility determination, they have 60 days to request an appeal.² Whether they request online, over the phone, via mail, or any by any other approved method, at the time of request, applicants may:

- Assign an authorized representative for appeals (designation form attached)
- Indicate a preference for when the hearing officer will hold the hearing; and
- Request any accommodation they might need for a hearing impairment or other disability or translation if English is not their preferred language.

Once the Marketplace receives the request, it automatically generates an acknowledgement notice. This either prompts appellants to log on to their online account to view it or the system to print a paper notice, depending on how consumers opted to receive notices. If the Appeals Unit finds that the applicant made an invalid request, the unit sends a notice explaining the defect. The notice also gives appellants an opportunity to amend their request.

If the applicant makes a valid request, the Marketplace begins the scheduling process. Before the unit sends the scheduling notice, however, the Marketplace's call center contacts the appellant and tries to resolve the dispute informally. This informal resolution process complies with and complements the HHS process and regulations.

If customer service and the appellant resolve the dispute, the Marketplace works with the consumer to withdraw the appeal request or the unit sends a Notice of Disposition.³ If they do not resolve the dispute, the appeal moves to hearing. The unit starts this process by sending a Notice of Hearing at least fifteen days before the telephone hearing.⁴ The unit also sends this notice if the appellant or the Marketplace representative requests an adjournment.

To allow for the release of federal tax information and certain personally identifiable information to appellants so that they can prepare for their appeal, Exchange Counsel has developed a release form in

² New York is using 60 days because of a conflict between state and federal regulations. Under the proposed federal regulations, a favorable eligibility determination for any other IAP is a MAGI-based Medicaid denial. Currently in New York, Medicaid applicants must request a hearing within 60 days of their eligibility determination. 18 NYCRR § 358-3.5(b)(1) (2013). Since there is no similar conflict for SHOP applicants and enrollees, they will have 90 days to request an appeal.

³ The Notice of Disposition works functions as a decision but the unit issues it without holding a formal hearing.

⁴ The SHOP Marketplace only sends a scheduling notice if appellants opted for a telephone hearing, since there is nothing to schedule for the default desk review process.

coordination with the IRS. Signing the form authorizes the disclosure of such information in the appellant's evidence packet. To ensure that this information is easily accessible to appellants the Marketplace will issue this authorization form with all appeals acknowledgment notices. The Marketplace's release is attached.

Assuming no adjournments, an impartial hearing officer calls the appellant, conducts the hearing, and renders a written decision within 90 days of the appeal request. Along with the written decision, the unit will issue a Notice of Decision explaining the appellant's right, in an appeal involving advance premium tax credits, to HHS review. The Notice of Decision will also explain in all cases the appellant's right to state court review.

Under some circumstances, such as invalid requests or withdrawals, an appeal never advances to hearing. In these instances, the unit sends the appellant a Notice of Dismissal. This notice explains the reason for the dismissal and the process appellants can use to vacate it. The Appeals Unit will also send this notice if appellants fail to attend their telephone hearings.⁵ A notices template and process flow for Individual appeals is attached.

The description above represents how the appeals process will work for most individuals whom the Marketplace issues eligibility determinations. As detailed below, for those consumers who work for large employers, the process may differ slightly.

Large Employer Appeals

The Appeals Unit designed large employer appeals in tandem with the individual process since a determination that an individual employed by a large employer is eligible for financial assistance triggers a notice and appeal rights. Prior to the delay of the large employer shared responsibility mandate by the IRS, the New York Marketplace had developed notices and the appeal process for large employers. However due to systems constraints, large employer appeals will not be offered on Day 1 of Marketplace operations. We plan to offer them by mid-2014 so that there is seamless coordination between individual and large employer appeals when the mandate goes into effect in 2015. Below is a description of how this process will work when it is operational.

The New York Marketplace will assess whether individuals seeking coverage through the marketplace are eligible for Medicaid, Child Health Plus or financial assistance in the form of advance premium tax credits and cost-sharing reductions. As part of this process, applicants must disclose whether they have access to minimum essential coverage (MEC). To determine whether they have employer-based MEC, applicants must state whether they have access to coverage through a job. If they answer yes, then the Marketplace requests employer information. The application describes what constitutes MEC and asks the applicant whether the coverage is MEC. It also asks how much that coverage would cost the applicant. If the Marketplace determines the applicant eligible for financial assistance, the Marketplace system will flag the applicant's account and send a notice to the employer.

⁵ The unit will also send the notice if it discovers the appellant dies before the hearing.

The notice informs the employer that the New York Marketplace found one of its employees eligible for advance premium tax credits or cost-sharing reductions. It also lists the employee's name. Because large employers will not have accounts with the New York Marketplace or access to the web portal, the Appeals Unit needed a mechanism to link the employer to the eligible employee. To connect the employer to the employee the notice will also include a form for a company representative to complete. The form asks the employer to provide the employee's name, social security number, and date of birth. We choose these data elements because all employers should have them for each employee and our system is able to identify accounts based on this information. The form also provides the employer the opportunity to state the basis for their appeal. A draft large employer appeal notice and a draft version of the return form are attached.

Like SHOP appeals, the Appeals Unit will conduct large employer appeals by desk review. However, the unit hopes that most large employers will not appeal these types of determinations in 2014 since none must pay a penalty until 2015. Thus, both the notices and the Marketplace's website will link large employers to IRS information about the mandate and its delayed implementation.

Post Appeal Compliance

Hearing decisions will have three possible outcomes. The Appeals Unit could (1) uphold or (2) overturn the Marketplace determination. It could also (3) remand the case back to the Marketplace for a new determination based on additional evidence presented during the appeals process. If the hearing officer issues a decision overturning or remanding the case, the decision will provide appellants with contact information for compliance staff. If an appellant later makes a complaint, that staff will ensure that the appropriate agency follows the decision and will monitor the timeliness of implementing those decisions.