To: Connect for Health Colorado – Executive Committee Board Members

From: Patty Fontneau, CEO,

Subject: Establishment of a Separate Legal Structure

Date: April 7, 2014

Essential Question

Should Connect for Health Colorado establish a separate legal entity, as allowed under HB13-1245, to address the strategic direction of offering ancillary services and products on the Marketplace?

Background

Since late 2011 C4HCO and other State Based Marketplaces (SBMs) have been planning to offer Ancillary products & services to consumers via the Marketplace. The intentions behind the plan to offer services and products beyond the Qualified Health Plan provision are: 1.) To build customer loyalty and retention, 2.) To increase the value proposition of the Marketplace as it relates to fulfilling its' mission through focusing on products and services that drive costs down, increase accessibility and serve Coloradans through a choice of options that enhance their ability to maintain insurability, improve their health status and understand the financial investment they made in purchasing health insurance, 3.) Add to the Sustainability of Connect for Health Colorado through the meaningful realization of additional revenue not associated by QHP coverages.

On March 29, 2013 guidance was received from the Centers for Medicare and Medicaid Services (CMS) outlining "how" a State Based Marketplace (SBM) may offer non-QHP products and services. Per CMS, the State Based Marketplaces must:

- Establish a "separate legally and publicly distinct program" to offer non-QHP products and services.
- Not co-mingle non-Exchange related funds with Exchange related funds, though an allocation of time and, resources, physical space, materials is expected.
- Not utilize federal funds to support non-Exchange activities. Further, user fees and assessments may not be used to support non-Exchange activities.

On May 23, 2013, the Governor signed HB13-1245 in to law. This piece of legislation clarified several statues related to the Marketplace and provided the Board of

Directors the authority to establish a separate legal “program” to offer ancillary products and services.

As the Board is aware, Connect for Health Colorado had included the offering of stand- alone vision on its integrated platform during the development efforts. Once the CMS guidance was provided in March 2013, the Board supported the offering of Vision through a link option, until such time as an integrated offering could be vetted and a separate legal structure was approved.

At this time, the management team requests the Board approve the creation of a separate legal structure to allow for the consideration of several strategic opportunities. We anticipate requests to participate in shared services arrangements with the State, as well as, an impending higher level discussions regarding a product development strategy with the Board. These activities, while they should have a positive financial impact to operating costs and defray the need for higher assessment fees, transcend the Marketplace and its operations and will require a careful process of due diligence, opportunity selection and prioritization, return on investment, level of effort vs value, consumer impact, etc. The management team wishes to have the separate legal entity established proactively, to better enable the due diligence and business justification process to proceed when opportunities present themselves.

In addition, Connect for Health Colorado has applied for status as a 501c3 entity and the sale of non-QHP products and services is a commercial activity and likely not construed as “charitable, educational or scientific” for the purposes of tax exempt status.

The Board will recall that legal advice was obtained as to the recommended legal structure that a separate entity should have. The chart of options is below, however, the Public Benefit Corporation is the recommended structure, given its alignment with Connect for Health Colorado’s not for profit status and the mission we are dedicated to fulfilling. The anticipated costs associated with filing the application for this corporate status are approximately $8,500.

Options	Advantages:	Disadvantages:
C4HCO Division • Separate line of business • Different trade name • Not a separate legal entity	• Straightforward • Easy to maintain separation • Could be publicly distinct with different trade name • Consistent with C4HCO statute	• Not consistent with CMS guidance • Could jeopardize 501(c) status
Nonprofit Subsidiary • Conducted in a separate legal entity • C4HCO maintains control as sole member of the subsidiary	• Consistent with nonprofit mission and values • Separate entity & name that is publicly distinct (per CMS guidance) • No jeopardy to tax exempt status • No liability for business activities of subsidiary	• Not likely to be tax-exempt nonprofit • Not able to help offset ongoing costs • Some portion of allocated payments made to C4HCO will be reportable unrelated business income tax
For-Profit Subsidiary - LLC • Conducted in a separate legal entity • COHBE could maintain control as a sole member	• Separate entity & name that is publicly distinct (per CMS guidance) • Wholly-owned subsidiary	• LLC is a disregarded entity for tax purposes, which would likely be a risk to C4HCO's tax exempt status • LLC creditors can obtain a charging order against C4HCO assets for debts of LLC

Options	Advantages:	Disadvantages:
For-Profit Subsidiary – C Corporation • **Conducted in a separate legal entity** • **C4HCO could maintain control as a sole member**	• **Separate entity & name that is publicly distinct (per CMS guidance)** • **No jeopardy to C4HCO tax exempt status** • **Dividends can be distributed to C4HCO to offset ongoing costs** • **No unrelated shareholders to reap benefit of infrastructure** • **No liability for business activities of subsidiary**	• **Some portion of payments made to C4HCO for allocated rent, staffing, platform license fees will be reportable unrelated business income tax (UBI) to C4HCO**
Public Benefit Corporation • **Conducted in a separate legal entity** • **C4HCO could maintain control as a sole member** • **"Public benefit" means positive effects on individuals and communities other than shareholders**	• **Same as for-profit C-corporation** • **Must elect to be operated to produce a public benefit** • **Must operate in a responsible and sustainable manner** • **Consistent with the mission and values of C4HCO**	• **New concept – just became valid in Colorado** • **Same as for-profit subsidiary**