



American Cancer Society & Children's Defense Fund/New York & Community Service Society of New York &  
Make The Road New York & Metro New York Health Care for All Campaign  
New Yorkers for Accessible Health Coverage & New York Immigration Coalition  
Public Policy and Education Fund of New York/Citizen Action of New York & Raising Women's Voices &  
Schuyler Center for Analysis and Advocacy

February 28, 2013

## **VIA ELECTRONIC SUBMISSION**

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8016  
Baltimore, MD 21244-8016

Attention: CMS-10440

RE: Appendix A: List of Questions in the Online Application to Support  
Eligibility Determinations for Enrollment through the Health Insurance  
Marketplace and for Medicaid and the Children's Health Insurance Program

Appendix C: FA Paper Application

Appendix D: Non-FA Paper Application

Dear Sir or Madam:

Health Care For All New York (HCFANY) is a statewide coalition of over 130 organizations which seek to achieve affordable, quality health care for all New Yorkers. We thank you for the opportunity to comment on the new single, streamlined application for health insurance in preparation for the launch of a new Health Insurance Marketplace next fall. In 2014, this application will serve as the pathway to all health insurance affordability programs. It will be vital to ensure the application is designed so that eligible individuals are enrolled in the correct program without the burden and potential confusion of multiple forms and duplicative processes.

New York has elected to set up a state-based Health Benefit Exchange. However, we realize states like New York are working closely with the federal government to build Exchange

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systems that work for their constituents. Furthermore, HCFANY is actively engaged in the establishment of the New York Exchange, and the recommendations we have made to the State on the development of their application are considerations we believe should be made for the federally created Health Insurance Marketplace.

### **Recommendations on Specific Questions**

The questions asked of each individual on the application include sensitive information that may deter individuals from completing an application. Therefore, we recommend the application include text that explains why specific questions are asked. The explanation of “Why do we ask for so much information?” in the Things to Know section does not fully explain why certain information is being asked.

#### *Phone numbers*

It should be clear that providing a phone number is optional. Consumers are not required to have a phone number to be eligible for coverage.

#### *Preferred Language*

We strongly recommend that CMS collect language data of all applicants, not merely of the household contact. Comprehensive language data is essential to ensuring nondiscrimination and compliance with Title VI of the Civil Rights Act and § 1557 of the Affordable Care Act. Having comprehensive language data is also critical to address health disparities and service planning. Exchanges need to know the languages of applicants so they can ensure provision of appropriate language services – both oral and written – in their offices, call centers, and by subcontractors. Collecting this data once on the application will save time and money since the Exchange can share this data with health plans, providers, navigators, assisters, certified application counselors, brokers and others who will be assisting limited English proficient individuals.

Furthermore, only collecting this data from the household contact will likely misrepresent and significantly undercount the needs of LEP individuals. Given the well-documented barriers LEP individuals face in accessing services and healthcare,<sup>1</sup> it is likely that if a household has an English-speaking member, that individual will be the household contact. Yet an estimated 23 percent of Exchange applicants will speak a language other than English at home, demonstrating the significant need to identify language needs so that appropriate assistance can be provided for *all* applicants.

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<sup>1</sup> See, e.g., Institute of Medicine, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Healthcare* (2002), at <http://www.iom.edu/Reports/2002/Unequal-Treatment-Confronting-Racial-and-Ethnic-Disparities-in-Health-Care.aspx>, and Race, Ethnicity and Language Data: *Standardization for Health Care Quality Improvement* (2009), at <http://www.ahrq.gov/research/iomracereport/>.



### *Social Security Number*

We recommend that the application include clear help text addressing the collection of Social Security numbers (SSN). For many mixed status families, there is a fear that applying for coverage for children may negatively affect other undocumented family members. Help text should make clear that parents can apply for children, even if parents themselves are not eligible. This help text should be reiterated each place a SSN is requested in the application.

### *Sex*

We recommend that applications ask about an enrollee's *legal* sex and include help text as to the definition of legal sex and why it is being collected. Many transgender individuals encounter difficulty changing the sex designation on various forms of identification such as driver's licenses, passports, birth certificates, and Social Security cards, and thus may find this question unclear. We recognize that for enrollment and eligibility purposes, applicants may need to report their sex according to what is listed on relevant government records. However, when questions about individuals' sex are asked for the purpose of health outcome data collection, they should be allowed to report their preferred sex, on an optional and confidential basis.

We recommend the question reads as follows on all applications:

*What is your legal sex?*

*Female*

*Male*

We recommend the following help text be included as well:

“This question asks for your legal sex, which in this context means the sex on your Social Security record. We need this information to check whether you are eligible for Medicaid in your state or for subsidies to help you purchase coverage through the Health Insurance Marketplace.

Your answer to this question will not affect the benefits you receive through Medicaid or any Marketplace plan that you purchase.”

### *Pregnant?*

We also suggest that introductory text and/or help text that explain that pregnant woman may be eligible for more affordable insurance options, like Medicaid. Medicaid coverage, when she otherwise would not be eligible, prior the question, “Pregnant?” Women have historically been discriminated against for being pregnant and unless the rationale for asking this question is explained, some women may find it surprising and intrusive and decide not to continue the enrollment process.



Special attention should also be made to keep pregnancy status private. Some women may not intend to continue their pregnancies or may not wish to share this information with other members of their household through the application process. This is especially true for women in abusive relationships since domestic violence has been shown to increase during pregnancy. (See our further comments below in our section on privacy issues concerning the potential for separate application log-ins for different members of a household.)

### *Race*

To aid in protecting civil rights, we support asking for the race and ethnicity of applicants, as well as non-applicants, as long as the answer to the question remains optional. Applicants should be informed that race and ethnicity information is optional and how such information will be used. Applicants should be made aware that the data are being collected to ensure that everyone gets the same access to health insurance and that the information is confidential and will not be used to decide which program they are eligible for.

### *Expansion of nondiscrimination statements*

We recommend that the nondiscrimination statements included at the end of each application be expanded to encompass all protected categories. We applaud the inclusion of non-discrimination statements as they are an integral part of ensuring that all individuals are informed of their rights and are aware of their options to appeal in the event they experience discrimination. We recommend the statement include *all* protected categories - specifically, the full list of categories under 45 CFR 155.120, which includes age, sexual orientation, and gender identity in addition to race, color, national origin, sex and disability.

## **Privacy Issues**

### *Unique Log-Ins*

While one household contact and accountholder is mandatory, we recommend allowing functionality for multiple users in each household to create unique log-ins to enter their private information at the consumer's option (i.e. not required for each household member). We are concerned for privacy within households applying for coverage. For example, women in abusive relationships may not want to inform violent husbands about pregnancy, use of birth control, or other health issues. Young women and LGBT people (including young adults up to age 26 living away from home) may not be confiding in their parents about their health issues and needs, such as use of birth control, need for HIV testing or desire to use an LGBT-friendly health care provider. Each person in the household old enough to create a unique log-in connected to the family's application should be able to do so.

### *Separate Applications*



Young adults and separated spouses should have the ability to apply for insurance separate from their “tax-filing family.” This option can be especially important for young adults who need reproductive health coverage or have been shunned from their families due to their LGBT status, and for women who no longer live or communicate with an abusive spouse.

## **Issues of Language and Culture**

### *Language Access*

We recommend that both paper and online applications be translated into the most commonly used languages in the United States. To comply with nondiscrimination requirements in the ACA, CMS must ensure that all limited English proficient individuals can have meaningful access to the application process and receive needed in-language assistance. We recommend that CMS include text in multiple languages on the English-language version of the paper and on-line applications that informs LEP individuals how to obtain assistance through the call center and receive translated applications. The application should also provide information on access for people with disabilities, including TTY helplines and Braille versions.

### *Culturally representative*

We recommend the online application include examples of applicants who are representative of a culturally diverse population. Photographs should showcase diverse racial and ethnic backgrounds and family structures, such as LGBT families, single-parent households, and households where children are being raised by grandparents. This representation would allow more diverse populations to connect with the application and believe that the Marketplace is designed for people like them too.

## **Data Collection**

### *Sexual Orientation and Gender Identity*

We recommend that in addition to the optional reporting of race and ethnicity, the application include optional reporting of sexual orientation and gender identity. Comprehensive demographic data collection will help Marketplaces with activities such as outreach planning, compliance with nondiscrimination requirements and customer satisfaction evaluations. They will also help Marketplaces understand and address health disparities related to personal identity factors that affect health status, access to health care and insurance, and health care outcomes. As such, we recommend the demographic data collection sections collect a full range of demographic data, including sexual orientation and gender identity.

We join the Center for American Progress in specifically recommending the addition of the following **optional** questions. The first question was developed by the National Center for



Health Statistics, and a version of it is now on the National Health Interview Survey. The second question has been used on state Behavioral Risk Factor Surveillance System surveys for several years.

*Do you consider yourself to be:*

- *Straight or heterosexual*
- *Gay or lesbian*
- *Bisexual*
- *Something else (write in)\_\_\_\_\_*

*Some people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman. Do you consider yourself to be transgender?*

- *Yes, transgender, male to female*
- *Yes, transgender, female to male*
- *Yes, transgender, gender-nonconforming*
- *No*

We also strongly echo the comments submitted by NHeLP, and recommend that CMS collect language data about all applicants, not merely from the household contact.

## **Ease of Use**

### *Consumer Assistance Program and Call Center Promotion*

We recommend the call center phone number and local consumer assistance program (CAP) phone number (if different) should be clearly posted on every page of the online application. Applicants may find themselves half way through the application before needing assistance, and they should not have to scroll to the beginning of the website in order to find the call center number. Additionally, we recommend that the online application automatically prompt the user with the call center phone number if the application remains idle. The Community Service Society of New York runs New York's CAP, Community Health Advocates ([www.communityhealthadvocates.org](http://www.communityhealthadvocates.org)), which currently serves over 65,000 New Yorkers each year.

### *Remote Connections for CAP Call Centers*

We recommend the Marketplace consider allowing CAP and call center staff the ability to remotely connect to an applicant's desktop should she/he need more intensive assistance with the application. This technique has been successful in IT management and support, and would allow call center staff to address problems unique to an individual enrollee.



### *Tip Sheets*

We recommend the Marketplace provide tip sheets that potential applicants can review prior to starting an application. These tip sheets should address what documents an applicant should collect prior to applying. The tip sheets should also provide targeted information for specific populations, such as: LGBT individuals/families, mixed status families, young adults/college students, families with members who have recently been incarcerated, families with heads of household who are divorced/separated, and individuals/families with disabilities.

### *Promotion of Insurance Affordability Programs*

We recommend that CMS more clearly delineate the differences between the Financial Assistance (FA) and non-FA paper applications on the front page of the application, and provide further information to help individuals determine which application they should begin. We appreciate the question structure in the online application that encourages applicants to determine their eligibility for tax credits and cost-sharing affordability programs. The additional questions included in the application, which demonstrate scaled eligibility for those with higher incomes, will encourage applicants who may not believe they're eligible for tax credits to in fact apply.

We believe further measures can be taken on the non-FA application to provide similar encouragement. We recommend CMS include the following line at the top of the application:

If you need help with paying for health insurance, please do not use this application. Get a different application by calling 1-800-XXX-XXXX or at [www.placeholder.gov](http://www.placeholder.gov).

### *Cross-agency Awareness of the Marketplace*

We recommend that CMS promote cross-agency awareness of the Marketplace and its rules. As individuals change their personal information with other agencies, those agencies should prompt the individual to change their personal information with the Marketplace too. This will help facilitate continuous and appropriate insurance coverage.

### *Inclusion of a Calculator Tool*

We recommend the online application include a pop-up calculator. This would allow applicants to track income and hours worked, while completing the application.

## **General Process**

### *Engagement of Stakeholders*

We applaud CMS' efforts to date to stakeholders and seek our comments on these draft applications. As more information and prototypes become available, we look forward to





continuing to provide input and feedback. Particularly for states whose residents will actually be using these applications, it is important that CMS work with consumer-focused stakeholders, and not merely rely on state officials to facilitate feedback.

### *Consumer Testing*

The consumer testing done thus far is evident in the quality of the draft products. We encourage consumer testing for clarity and ease of use, both by applicants and by potential navigators

### *Ensure Quality Assistance*

We encourage quality to be measured for all assistors, and adequate referral and appeals mechanisms for individuals experiencing difficulty obtaining coverage. As we know that this will be the first time many enrollees will be purchasing private insurance, or that those applying through the Exchanges may have had poor past interactions with public and private insurance, the ability for seamless transition to in-person and phone quality assistance will be critical to the success of enrollment in health insurance.

## **Recommendations to Build in State Flexibility**

### *Inclusion of State-Specific Language*

We appreciate that the application leaves space to refer to Medicaid/CHIP with the state-specific program name. It is important that whenever possible, the applications tailor assistance and questions to specific state programs. This will avoid confusion from those who may not realize that a state program with which they are familiar *actually is* their state's Medicaid program.

### *Equal Opportunity for LGBT Families*

We recommend that the Marketplace applications be structured to recognize same-sex partners and spouses and enable them to apply for family coverage. We specifically recommend that same-sex partners and spouses be able to combine individual subsidies for which they are eligible towards the cost of family coverage. States that are developing state-based Exchanges, like New York State, are working to ensure that Exchange applications and plan enrollment are nondiscriminatory on this matter.

To ensure that individuals who have a same-sex spouse or partner receive the assistance they need to correctly calculate their subsidies, guidance for Navigators and Marketplace staff should note that numerous states extend relationship recognition to same-sex partners and/or spouses, even though federal law does not currently recognize these couples for federal tax purposes. Navigators and Marketplace staff should thus be prepared to competently and





respectfully assist individuals with same-sex spouses or partners in filing the appropriate paperwork to apply for subsidies. This guidance should also note that federal regulations released in February 2013 do not preclude same-sex spouses or partners from using their subsidy dollars to purchase family plans.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at [ebenjamin@cssny.org](mailto:ebenjamin@cssny.org) or at (212) 614-5461 or Carrie Tracy at [ctracy@cssny.org](mailto:ctracy@cssny.org) or at (212) 614-5401.

Sincerely,

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