



VIA ELECTRONIC SUBMISSION

February 28, 2013

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

RE: CMS – 10440: Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children’s Health Insurance Program Agencies. 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

To Whom It May Concern:

Farmworker Justice (FJ) submits these comments in response to CMS’ proposed streamlined application for the Affordable Insurance Exchanges, Medicaid and the Children’s Health Insurance Program. We provide comments on the online questionnaire (Appendix A) and the financial assistance (FA) paper application (Appendix C), since most farmworkers who apply for health insurance will apply for financial assistance. Many of the recommendations for the FA Paper Application can also be made for the Non-FA Paper Application (Appendix D).

Farmworker Justice is a national advocacy organization representing migrant and seasonal farmworkers in the United States. Farmworker Justice works with migrant and community health centers, farmworker community-based organizations and farmworker health advocates to improve farmworkers’ health and safety and to ensure greater access to healthcare.

All eligible applicants should be able to easily apply for affordable health insurance. Farmworkers face numerous barriers to healthcare, including cost. In 2009, the median income for a family of farmworkers was between \$20,000 and \$22,499.¹ At migrant health centers, 82.3% of patients are at or below 100% of the federal poverty level.² Also, 71% of farmworkers are foreign born and an estimated 48% are undocumented, further complicating access to

¹ National Agricultural Workers Survey 2009, Department of Labor, Employment and Training Administration, <http://www.doleta.gov/agworker/naws.cfm>.

² 2011 HRSA UDS Data

healthcare.³ Considering the unique circumstances of farmworkers and their families, we submit the following comments and recommendations to facilitate their enrollment in Medicaid, CHIP and the Affordable Insurance Exchanges.

CMS-10440, APPENDIX A – LIST OF QUESTIONS IN THE ONLINE APPLICATION

The individual online application design, as published to date, features many thoughtful elements to help applicants navigate the lengthy process to assess eligibility. However, there remain elements which may be confusing to immigrants and their families and may complicate the eligibility process. The application also does not go far enough to adequately address the concerns of immigrant and farmworker families, many of whom may be applying for health insurance for the first time. Our comments and recommendations regarding the online application are below. Unfortunately, the lack of opportunity to review help messages and explanations that will appear in the application does not allow us a complete picture of the application process. We urge CMS to provide an opportunity to stakeholders to review the accompanying help messages and explanations before the single streamlined application becomes operational.

RECOMMENDATIONS:

- **Include an “Important Information for Immigrants” section in the homepage**

According to the National Agricultural Workers Survey, approximately 71% of farmworkers are foreign born.⁴ Many farmworker families are mixed-status households, whose members may include U.S. citizens, lawful permanent residents (LPRs), and undocumented individuals. Most children of undocumented immigrants (73% according to 2008 data) are U.S. citizens by birth.⁵ Many farmworkers may not be aware that they or their family members are eligible to apply for coverage or for financial assistance to pay for insurance. The online application should convey the following information on the home page to dispel any misconceptions and to encourage all potentially eligible individuals and their family members to apply for coverage:

Confidentiality of personal information – Before the applicant fills out his/her personal information, it is important to provide specific information about the confidentiality of that information. The applicant needs to know what data is collected, how it will be used, and what data sources will be used. For mixed-status families, who may have a non-eligible family member applying on behalf of an eligible child, it is especially important that the application provide assurances that non-applicants will not be asked information regarding their own immigration status nor will they be required to provide an SSN for

³ NAWS 2009, see Carroll, D *National Agricultural Workers Survey: An Update for the National Advisory Council on Migrant Health*, Presentation to the National Advisory Council on Migrant Health, Arlington, VA, February 7, 2012.

⁴ NAWS 2009.

⁵ Passel J and Cohn D (2009), *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center. <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>

themselves or any other non-applicants in the family. **The application should also make it explicitly clear from the outset that the information provided will not be used for immigration enforcement purposes.**

Non-eligible applicants may apply on behalf of eligible family members – The front of the application should encourage non-eligible adults to file applications on behalf of eligible family members. Language should be included that applications will ask for information about both eligible and non-eligible family members. It should also state that an SSN is not required for those family members not seeking coverage, and that health coverage will not be delayed or denied because there are family members who are not seeking coverage.

Social Security numbers – The application should make it explicitly clear that SSNs for non-applicants are optional and will not impact the rest of the application for eligible family members.

No impact on public charge determinations – Eligible immigrants may be concerned that an application for financial assistance for healthcare may hurt a future application for permanent residency or U.S. citizenship because they may be deemed as a “public charge.” **Language must be included that explicitly states that applying for health insurance or financial assistance for health insurance costs will not make someone a “public charge” and will not affect his/her immigration status or chances of becoming a Lawful Permanent Resident.**

Language assistance –An estimated 23% of Exchange applicants will speak a language other than English at home.⁶ 71% of farmworkers speak Spanish as their dominant language.⁷ The application should include an offer to provide language assistance to individuals who are limited English proficient (LEP) through the use of an interpreter by phone. It should be clear that this language assistance is offered at no cost to the applicant.

- **Collect language data on all household members instead of just the household contact**

We support the collection of preferred language in the online application. However, language data is only requested for the household contact rather than the entire household. By only collecting data from the household contact, it is likely that the needs of LEP individuals will be undercounted. Given the well-documented barriers LEP individuals face in accessing healthcare, it is likely that if a household has an English-speaking member, that individual will be the household contact.

In the supporting statement released with the draft paper application and list of questions in the online application, CMS stated that it plans to collect data elements pursuant to §4302 of the Affordable Care Act. As §4302 states:

⁶ The Henry J. Kaiser Family Foundation. *A Profile of Health Insurance Exchange Enrollees*, March 2011. <http://www.kff.org/healthreform/upload/8147.pdf>

⁷ NAWS 2009

The Secretary shall ensure that, by no later than 2 years after the date of enactment of this title, any federally conducted or supported health care or public health program, activity or survey...collects and reports, to the extent practicable – (A) data on...primary language...**for applicants, recipients or participants.**⁸ (*emphasis added*)

Comprehensive language data is essential to ensuring non-discrimination and compliance with Title VI of the Civil Rights Act and §1557 of the Affordable Care Act. Administrators of the Affordable Insurance Exchanges need to know what language an applicant speaks so they can ensure the provision of appropriate language services, oral and written, in their offices and call centers.

We also recommend that the preferred language question be accompanied with information about non-English language services available at no cost to the applicants, including a phone number to speak to an interpreter.

- **Delete the request for a Social Security number to create an online application account**

As explained above, in farmworker and other immigrant communities, non-eligible family members may apply on behalf of eligible family members. Requesting the SSN in order to create an account may deter a non-eligible family member from beginning the application process for other eligible family members. The regulations strictly prohibit collecting SSNs of non-applicants. Although the request says that the SSN is “optional,” it needs to be made abundantly clear that one can proceed with the application without providing an SSN. In order to prevent confusion, we recommend deleting this request and instead ask for an SSN in the “personal information” section.

- **Include information about other healthcare services available to non-eligible immigrants**

Under the Citizenship/Immigration Status section, an applicant who does not have eligible immigration status for health insurance will be shown a message, “explaining that this person might be eligible for services if he/she has an emergency or is pregnant.” (Appendix A, p. 18). Information should also be provided about Federally Qualified Health Centers (FQHCs) and other available healthcare services. Only about 20% of farmworkers and their families went to an FQHC in 2011.⁹ For those applicants who find that they are not eligible for health insurance, it is important that they are aware of other options for primary and preventative care outside of Emergency Medicaid.

Information about FQHCs, public hospitals and other healthcare services available regardless of immigration status should also be included in the Eligibility Results section.

⁸ §4302 (a)(1)(A)

⁹ HRSA UDS Data, 2011

- **Delete seasonal work from the Discrepancies section and add seasonal work to types of income in the Current/Monthly Income section (question 2a)**

Currently, the only question relating to seasonal work can be found in the Discrepancies section. Only if an applicant meets narrow circumstances – “if applicant has attested to an annual income that is in the Medicaid/CHIP range and monthly income is not in the Medicaid/CHIP range, and the state has taken the option to consider reasonably predictable increases in income” (Appendix A, p. 33) – will the applicant be asked about seasonal work. For farmworkers, many of whom are seasonal workers, the income types listed in the Current/Monthly Income section are insufficient. They do not reflect agricultural work, such as harvesting crops, or pruning trees. The general category “job” is too broad and the dropdown menu for wage (hourly, daily, weekly, every 2 weeks, twice a month, monthly) may be difficult for a farmworker to calculate if he or she is paid by a piece-rate. The piece rate, which varies by crop, may or may not be equivalent to hourly or daily wages. Additionally, the category “farming or fishing” income, though not explained in this draft application, seems to refer to farm owners rather than farmworkers.

To accurately reflect the income of farmworkers and other seasonal workers, “seasonal work” should be added to the list of income types under question 2a in the Current/Monthly Income section. Follow-up questions can include:

- Do you work in agriculture? (Y/N)
- What kind of seasonal work? (If answered no to agriculture)
- How many months did you work last year?
- How many months do you expect to work this year?

- **Include help text to give examples of the different income types at question 2a in the Current/Monthly Income section**

It is unclear what jobs are categorized under each income type listed in question 2a of the Current/Monthly Income section. A farmworker may see farming/fishing income and select it because it best describes their work. However, once selected, the applicant is asked about net income and frequency of income. Although not explained, the question seems to be aimed at farm owners. The farmworker would have to spend extra time going back to the original page, which may discourage him/her from completing the application. To make the application as efficient and simple as possible, the applicant should have all the information in front of him before proceeding to the next question. A help text at question 2a will ensure that the applicant chooses the income type that best reflects his work.

- **Ensure that applicants who need to mail in required documents are able to complete the application and have their application processed without delay while documents are being mailed**

Farmworkers, especially migrant farmworkers, may find it difficult to compile the required documents for their health insurance application. The necessary documents may be in another

state, for example, if open enrollment takes place during a harvest season that takes them to another area of the country. These eligible applicants should be able to proceed with their application while they compile and mail any required documents to the Health Insurance Marketplace. We also recommend that only photocopies of documents be required.

CMS-10440, APPENDIX C – FINANCIAL ASSISTANCE PAPER APPLICATION

We appreciate HHS creating a paper application that is simple and easy to fill out. We strongly support the inclusion of a toll-free number for application assistance in Spanish and English at the bottom of every page. We provide the following recommendations with the goal of encouraging eligible farmworkers and their families to apply for health insurance.

RECOMMENDATIONS:

- **Include an “Important Information for Immigrants” section on the Things to Know page**

As we recommended earlier for the online application, language needs to be included in the Things to Know section that encourages eligible immigrants to apply for health insurance coverage. The front page of the application needs to include reassurances to immigrant families regarding confidentiality and required information. The “Important Information for Immigrants” section should convey the following:

- Confidentiality of personal information – The application should make it explicitly clear from the beginning of the application process that the information provided will not be used for immigration enforcement purposes.
 - Non-eligible applicants may apply on behalf of eligible family members – The front of the application should encourage non-eligible adults to file applications on behalf of eligible family members.
 - Social Security number – State explicitly that an SSN is not required for those family members who are not seeking coverage. Coverage will not be delayed or denied because there are family members who are not eligible or who are not seeking coverage.
 - No impact on public charge determinations – Include language that makes it clear that applications for financial assistance will not deem the applicant to be a public charge for immigration purposes.
- **Offer toll-free interpretation and language assistance in at least 15 non-English languages, including Haitian Creole**

While the majority of farmworkers are Spanish speakers, there are a number of farmworkers from Haiti and other countries. Language assistance is essential to help these individuals complete the application for health insurance. Similar to the Spanish tagline, it should be clear that this language assistance is available at no cost to the applicant.

- **Amend sentence about SSNs on Step 2 of application to include reassurances that information is not used for immigration enforcement purposes.**

We appreciate that the word “optional” is in bold face caps next to the space for the SSN. However, in the help box about SSN just below, it is important to reiterate that the SSN will not be used for immigration enforcement purposes. Immigrant families should be reassured that their information is private and will not be shared with immigration enforcement officials.

- **Clarify sentence about assistance to obtain an SSN**

The sentence offering help to obtain an SSN is unclear. The sentence states, “If someone doesn’t have an SSN, call 1-800-XXX-XXXX or visit www.placeholder.gov.” A farmworker without an SSN may think that he needs to call to obtain an SSN, regardless if he wants one or not. A sentence should be added that explains the purpose of directing the applicant to the 800-number or web site, emphasizing that this is optional if the person submitting the application is not applying for himself.

- **Provide a list of documents that can be used to verify immigration status**

Along with a list of eligible immigration statuses for health insurance coverage, we recommend a list of documents that can be used to verify immigration status. The online application provides a list of documents. A list of documents will help the applicant accurately name their immigration document in the application, preventing errors and delays after submission.

- **Collect language data on all household members instead of just the application filer**

It is important to collect language information on all household members, not just the application filer. Along with race and ethnicity, which is asked of all household members, preferred language ensures nondiscrimination and compliance with Title VI of the Civil Rights Act and §1557 of the ACA. Comprehensive data is critical to address health disparities, a primary goal of the Affordable Care Act. Collecting the language information of only the application filer will significantly undercount the needs of LEP individuals.

- **Include an option of “other” with an explanation for wages in the Current Job and Income Information section**

Migrant and seasonal farmworkers do not have a steady source of income. They often work on a piece-rate, getting paid by the amount of fruits or vegetables they harvest. This piece rate varies by crop and location. Their wages depend on numerous factors including but not limited to the abundance of the harvest, the weather, the speed at which they are able to harvest, and the

number of hours they harvest. Their income may not be equivalent to hourly or daily wages, especially since it varies day-to-day. Seasonal work should be reflected in the Current Job and Income Information section of the application since it is likely that farmworkers (along with other seasonal workers) will qualify for some form of financial assistance. Understanding the limitations of a paper application, we recommend that there is an additional category in the wages/tips question labeled “other,” followed by a space for more information. This additional space would allow farmworkers and other seasonal workers to provide more accurate information about their income.

- **Provide an alternative to Yearly Income in the Current Job and Income Information section**

As discussed above, due to the nature of agricultural work, migrant and seasonal farmworkers do not necessarily have a steady source of income. At the bottom of the Current Job and Income Information, the application states, “If the income you listed on this page is not steady from month to month, please tell us what you expect the yearly income to be.” (Appendix C, Step 2). A farmworker, who likely will not have steady income from month to month, may not be able to provide their anticipated income for next year. There are too many factors that are out of the control of the farmworker to accurately predict next year’s income. Given that their income will help determine their eligibility for financial assistance, we recommend that the application provide an alternative to Yearly Income that reflects the reality of seasonal work. Some suggestions include:

- Are you employed in seasonal work? (Y/N)
- How many months did you work last year?
- How many months do you expect to work this year?

We appreciate the opportunity to comment on the single streamlined application. We hope we have an opportunity to also provide comments on the help text that will accompany the applications to ensure that it meets the needs of farmworkers and their families. Thank you for your attention.

Sincerely,



Virginia Ruiz
Director of Occupational and Environmental Health