# COLORADO CENTER
## on LAW & POLICY

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Justice and Economic Security for all Coloradans

February 28, 2013

**VIA ELECTRONIC SUBMISSION**
OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer
OIRA_submission@omb.eop.gov

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

**Attention:    CMS-10440**
**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/Madam:

Thank you for the opportunity to comment on the model application materials released in
January of 2013. The Colorado Center on Law and Policy (CCLP) is Colorado's unrestricted
legal services program and has a particular interest in the enrollment of individuals in
Medicaid/SCHIP and the Colorado Health Benefit Exchange (COHBE). We have worked
closely with advocates, community based organizations and the Colorado Department of
Health Care Policy and Financing during several iterations of Medicaid application redesign
over the past fifteen years focusing particularly on issues such as the overall accessibility of
the materials, disability and LEP access, rights and responsibilities and user friendliness.

CCLP shares the goal of maximizing opportunities for enrollment under the Affordable Care
Act and appreciates all of the work that has gone in to creating these draft materials. We
submit the majority of our comments by joining in comments submitted by the Center for
Children & Families of the Georgetown University Health Policy Institute. We emphasize
below those issues with which we have particular experience in Colorado.

We begin by saying that we recognize that it is extraordinarily difficult to turn the complex
eligibility and enrollment rules behind Medicaid, CHIP and the new Advance Premium Tax
Credits (APTC) and Cost-Sharing Reduction (CSR) into a single, unified application. The
draft materials include numerous positive elements and features that we hope will be
retained or strengthened in the next version, such as:

- A strong, person-center orientation to the applications and related materials;
- In the paper application, good, basic upfront information about the application and eligibility determination process;
- In the online environment, use of a "preliminary assessment" and a dynamic flow that helps to minimize unnecessary questions.
- Tools to connect people with assistance, such as a help line phone number.

We also want to commend you for consumer testing and soliciting public input on these draft materials.

To our comments:

1. **Tests must be conducted in a live environment not only by clients, but by eligibility workers and others who will be assisting applicants through the process.**

   People who are familiar with application processing bring unique expertise to the testing environment. As an example, county eligibility workers who we consulted in Colorado regarding the draft paper application told us that it is impossible for them to work with an application that includes key information in orange text or that is grey scaled. It does not show up in their computers. They recommend that any and all information that is required for purposes of completing the application be in black and white to ensure that it can be scanned and read electronically.

   This is an excellent example of why it is critical that people who are familiar with application processing be included in testing. In addition, it is critical that testing be done with live cases, rather than canned scenarios. Colorado went live with the Colorado Benefits Management System (CBMS) in 2004. One, among many, of the core failures leading up to the launch of that flawed system was the use of canned scenarios. Caseworkers did not have the opportunity to test and comment on the functionality, design or user friendliness of the system. CCLP is very familiar with this particular circumstance having initiated litigation against the state shortly after CBMS went live.

2. **We hope the review process will continue and there will be an iterative improvement process in place even after the application is in use.** While we very much appreciate the opportunity to comment on the draft application materials released in January of 2013, it is impossible to fully evaluate them in their current form. We are still missing the "help text" that will accompany the on-line application and can only see selected screen shots of the on-line system. We recognize that the help text and on-line system are still under development, but, until they are in place, we cannot fully assess where improvements may be needed. Unfortunately, these are not minor gaps. As a result, we strongly urge HHS to provide consumer groups, eligibility workers, community based organizations and

others an opportunity to provide feedback on the help text when it becomes available, as well as to test and offer input on the online application once it is operational. We also hope that you will collect and analyze data about where people pause or abandon the online application process, so that you can assess whether there are key points in the process that might warrant review.

We also encourage you to build into the online application various strategies for gathering feedback on how it is working, for example through focus groups and structured interviews with consumers and assisters as well as an optional online survey that consumers can complete about their application experience.

We recognize that there may not be enough time to take all of these steps in the next few months, especially because the on-line system appears still to be very much under development. For this and other reasons, we recommend that HHS consider acknowledging and planning now for the need to update and refine the application materials throughout the fall of 2013 and into 2014. Such a strategy would allow for appropriate consumer and assister testing and public input on the complete application experience. It also would allow HHS to gather and analyze data from the initial open enrollment period to refine the application material. By acknowledging and planning for such a need, HHS could allow states and IT vendors to better prepare for future, anticipated changes.

3. **We recommend additions to the application to help identify people with disabilities and chronic health conditions.** We are concerned that neither the paper, nor the online application does enough to help applicants who may qualify for Medicaid on the basis of disability or consistent/high medical bills. There is an enormous difference in the affordability of the coverage provided via the new Marketplaces versus Medicaid, making it a high stakes issue as to whether people get into the right program. CCLP recommends the following changes to the application material:

**Accessibility of the application**
- Include information about disability access on the front page, and in the "need help with your application tagline" at the bottom of each page of the paper application as well as in help pop ups in the online environment. For example, there should be a TTY and video phone access number for people who are deaf or hard of hearing.
- Provide information about how to obtain an application in braille.
- We hope that people will be able to request a large type application.
- Include instructions about how to request a reasonable modification of policies, practice or procedure so that people can access effective formats for application submission.

- We assume that the help website will be compliant with Section 508 of the Americans with Disabilities Act regarding access to electronic and information technology.

**Disability Screening Questions**

The screening questions on the application include: "Have a disability" and "Needs help with activities of daily living......" In our experience, people have very different understandings of disability and may not appropriately identify qualifying conditions without a more thorough explanation. In addition, many people are unlikely to understand the phrase "activities of daily living". CCLP recommends that HHS include a section that asks questions related to identification of a disability. Such questions might include but are not limited to:

- "Are you or anyone applying for insurance on SSI or receive any payment related to disability (examples might include SSDI, workman's compensation, VA benefits)?" Y/N
- "Do you or anyone applying for insurance have a physical, mental or behavioral health condition that affects their ability to work, go to school or take care of yourself?" Y/N
- Do you or anyone applying for insurance need help getting in and out of bed, bathing dressing, eating, or taking medications? Y/N
- Do you or anyone applying for coverage need life-sustaining medications, oxygen or medical equipment? Y/N

**These questions could be asked through a work sheet or pop up questions in the online version, and an optional boxed section in the paper application.**

**Explanation of purpose:**

We would also recommend adding a pop up explanation in the online version and a pull out in the paper application explaining why these questions are important. Some people may hesitate to disclose or not understand the importance of answering these questions. We believe providing information that an applicant or family member with a disability may be eligible for additional services under Medicaid would alleviate some of these concerns.

4. **Provide more reassurance, explanation and tools to consumers.** We see a number of places throughout the application where it would be helpful to provide additional context, information, explanation and reassurance.

- **Front page of paper application.** We recommend the following changes to the front page:
  - In "Who can use this application," make it clear immigrants are welcome to apply for eligible family members;
  - Modify the privacy language to specifically say that personal information will only be used to check if you are eligible for health insurance;

- o Reassure people that they likely will not have to complete all questions and provide information on how long it might take them (e.g., most people only take X minutes to complete this application and/or only need to complete Y questions)
- o To make space for such changes, we believe that you could drop the full section given to "apply faster online" and, instead, make this point along the bottom of the page; eliminate the discussion of "what happens next" since it is addressed at the end of the application; and scale back/rewrite the discussion of "what you may need to apply" (for the reasons discussed in more detail above).
- o Add the hours during which the call center will be open.
- o Add a clear explanation of where this application works (or information on how to determine where it works). We are concerned that people will find it on the web or otherwise get a copy of it and not realize that they can't use it to apply in their particular state.
- o Add accessibility information as discussed in Section 3 above.
- o Add a "babel" sheet to the paper application that includes a line in the top 15 languages spoken in the U.S. explaining in that language where people can get assistance with filling out an application. Provide language access information in the online version up front. Currently the language access question comes after "Create an Account" and after a request for preliminary information about the person filling out the form. Language access and disability access information should be easily identifiable on the page or screen and among the first things that a user sees.

**In online environment, create additional helps texts/videos with reassurance and explanation.** We recommend using help text and/or videos that explain the value and importance of health insurance; offer additional explanation and, as appropriate, reassurance about filing an application; and provide information on how to handle changes in circumstances. Without such information, we are concerned that many people will throw their hands up when they see the application or get stuck as they move through the on-line version. To emphasize the importance of explaining the value of health insurance: CCLP partnered with two other Colorado non-profits in 2012 to develop recommendations to the Colorado Health Benefit Exchange about consumer and potential assister needs related to applications for health insurance through the Exchange. Potential navigators/assisters surveyed said that among their top concerns was that people would need help "understanding about private insurance, the role of the Exchange, health policies and procedures and, more fundamentally … why insurance is needed in the first place…". (For more information see: http://www.cclponline.org/health_care/page/aca-implementation-fund-project).

- • Some areas that require special attention include:
  - o **What to do if you don't know answers.** People should be reassured that they can't get into trouble if they fill out the application to the best of their abilities. There should be clear explanations of what to do if you don't know the answers or need help completing questions.

- o **Immigration concerns.** CCLP recommends special reassurances for immigrants that they need not fear public charge problems or deportation when eligible family members enroll in coverage. We recommend including these messages in help text, as well as producing a video that is specifically for immigrant family. (Note that we don't see help text and a reassuring video as substituting for better upfront messaging, but as supplementing it).
- o **APTC repayment obligation.** One particularly tricky issue is how to address the potential repayment obligation for APTCs. We do not want to scare people away from using them, but also consider this topic too important to leave to follow up notices alone. We recommend noting in help text/via pop up alerts that repayment obligations are a possibility, but are avoidable if you follow key safeguards, such as reporting changes in your circumstances as they occur.
- o **Changes in circumstances for Medicaid/CHIP.** We are concerned that it isn't clear where people should report changes in their circumstances if they are enrolled in Medicaid or CHIP. In FFE states, many are likely to expect they should report such changes to the FFE. While notices could inform them of where to report changes, we also recommend that the final results page in the on-line application advise people on where they should report changes in circumstances.
- o **Explanation of why questions are being asked.** The online application helpfully notes in a number of instances why a question is being asked, and we recommend that you expand the use of this practice. Our experience is that people are more likely to answer questions and answer them correctly if they understand why they are being asked. For example, the questionnaire includes significant numbers of questions about tax filing status, tax dependents, etc., and it would be useful to explain to people that they are included because assistance may be delivered to individuals via a tax credit. We also recommend that you add some text boxes in the paper application with similar information.

5. **Immigrant families.** Immigrant families, and particularly mixed status families should be encouraged to apply. We ask in particular that you minimize the requests for Social Security numbers on the application to only those places where the number is absolutely necessary, and make it clear that only those applying for coverage must produce their Social Security or other identifying information (for applicant immigrants). There have been substantial problems in some locales in Colorado where non-citizen parents applying for their children have been asked to produce social security numbers for themselves and other non-applicant household members and/or threatened with being reported to ICE.

To promote enrollment of all eligible persons, compliance with civil rights and privacy laws and reduction of administrative errors and costs, the applications at minimum need to avoid creating obstacles to participation, and strive to create a

gateway to health care that is welcoming, informative, credible, and secure. Our specific recommendations for reaching this goal include:

- **Provide strong, clear messages that offer reassurance to immigrant families seeking coverage for eligible members.** These reassurances are important for applicants, as well as those helping them to apply, who may not fully understand that certain information is not required of non-applicants. The application materials should clearly convey information such as the following:

  - Only citizen and lawfully present members of immigrant families are eligible for services, but ineligible adults are encouraged to file applications on behalf of eligible family members.
  - Ineligible, non-applicant family members will never be required to provide their citizenship or immigration status in order to apply for others in their family.
  - Non-applicants are not required to provide Social Security numbers (SSNs) nor are applicants who do not have SSNs.
  - Information regarding immigration status and SSNs will be used solely to administer the health care program and not for immigration enforcement purposes.
  - Free language services will be provided to assist persons with limited-English proficiency (LEP).

- **Include key reassuring messages on the home page or cover sheet.** Many immigrant families won't even start the application process if immigration-related concerns aren't addressed upfront. As noted above, we recommend that the home page or cover sheet include some key messages aimed at immigrant families that are welcoming and reassuring. Specifically, we recommend that it address:
  - Families that include immigrants are welcome to apply. You do not have to provide immigration status or a Social Security number (SSN) for those in your family who are not seeking health insurance.
  - For family members who do not apply, we can give you information about other ways to get health care.
  - We will keep all the information you provide private and secure as required by law. We will use personal information only to check if you are eligible for health insurance.

- **Address issues created for immigrant families by the on-line account.** It is particularly problematic that the on-line application immediately begins by asking the application filer to create an account. As part of this process, a filer for an immigrant family is asked to begin by revealing personally-identifiable information (PII) without yet receiving any assurances about how PII that is collected will be used and what data sources will be tapped for information. This design fails to address immigrant concerns about questions of non-applicants regarding immigration status or SSNs.

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- **Provide explicit reassurance on implications for green card applications.** The proposed materials provide no information about the effect of applying for health insurance on an individual's chances of having a Lawful Permanent Resident (green card) application approved by DHS. Many immigrants are concerned that applying for help paying for coverage may result in DHS deeming them inadmissible as a "public charge." CCLP routinely sees a great deal of confusion about the public charge issue in Colorado.

- **Explain options available to ineligible family members for health care.** The draft application materials provide no information or enrollment assistance for family members who are ineligible for coverage under the ACA except for a few passing references to emergency Medicaid in the on-line form. The application should provide family members who qualify for emergency Medicaid with a notice of their eligibility, as well as any available information on federal/state/local options for addressing their other health care needs. For example, through help text and pop up windows/maps, the on-line application could identify community health centers serve individuals regardless of their immigration status. Colorado, for instance, anticipates that fully half of today's uninsured, more than 400,000 people, will remain uninsured even after full ACA implementation.

- **Retain and strengthen the collection of demographic data.** We strongly support collection of data on race and ethnicity, and also support collection of data on primary language. This data should be asked of all family and household members, not just the household contact. Collection of this data is critical for enforcing nondiscrimination laws, as well as for assisting insurers, navigators and healthcare providers, and establishing national standards for sound policymaking. We suggest that the request for data include an explanation of the reason, to increase the likelihood of a response to these voluntary questions, such as the following:

  > *"We ask for your race, ethnicity and language so that we can review application information to make sure that everyone gets the same access to health care. This information is confidential and it will not be used to decide what health program you are eligible for. You do not have to provide your race and ethnicity to complete the application."*

6. **Offer assistance to LEP filers.** We believe it is imperative that limited-English proficient filers (LEPs) be offered free language assistance. This should include providing a phone number for interpretation in many languages where assistance completing the form is available and in English with taglines. As noted above, we also strongly encourage that the homepage or cover sheet include taglines in multiple languages or a language portal that directs those with limited English proficiency to translated versions of the application and how to access assistance completing the application (e.g. call center phone number or local assisters, navigators, or certified application counselors who can provide in-language assistance). Specifically, we recommend that you include on the homepage or cover

sheet either the following statement in at least 15 languages or a language portal that directs LEP individuals to a webpage for information on how to obtain further assistance.

> *"If you do not speak English, we will get an interpreter to help you for no cost to you. Please call (XXX) XXX-XXXX."*

It is also important for HHS to translate the application into multiple languages. This will assist applicants as well as applicant filers, navigators, and others who will provide application assistance to all LEP individuals.

7. **Provide consumers with better options for reporting their income data.**

We are concerned that the income questions may prove impossible for many people to answer unless HHS offers additional tools and explanation. Moreover, some of the proposed questions do not appear to be consistent with federal rules. This is an area where it is very easy for applicants to become confused and frustrated about the questions asked.

- **Collect current monthly income prior to projected annual income.** We strongly recommend that the application first screen for Medicaid and then for premium tax credits. We believe that more individuals will understand how to answer questions about their current monthly income as opposed to projecting their annual income. Also, people who are eligible for Medicaid or CHIP are not eligible for APTC, so a thorough screen should be completed for Medicaid and CHIP prior to APTC. For these reasons we recommend switching the sequencing of these income questions to screen for Medicaid and CHIP before APTC.
- **Create a pop up worksheet for income.** We recommend that HHS harness the potential power of the online environment and offer consumers a pop up worksheet that allows them to estimate their modified adjusted gross income (MAGI). Such a worksheet could, for example, make it far easier to help consumers determine how they are supposed to handle pre-tax deductions, address week-to-week changes in their earnings, calculate self-employment, and convert hourly wages into current monthly and projected annual income. The worksheet should auto-fill the appropriate data elements of the on-line application after it is completed.
- **Address individual contributions to pre-tax benefits.** Right now, neither the online, nor paper explicitly addresses the issue of individual contributions to pre-tax benefits that would not count towards MAGI and will result in a number of individuals and families not being accurately assessed or determined eligible for Medicaid or not being offered the full APTC available to them. We believe that both applications need to be very clear on how people should treat their pre-tax deductions; this could be easily done in an income worksheet.
- **Ensure questions are consistent with federal policy.** The questions on "yearly income" on the paper application do not appear to match what is needed

to make an eligibility determination. Instead of asking about income that is not "steady from month to month," the form should ask more generally whether someone expects their income or family size to change. And, it should gather the information that is needed to determine projected annual income for APTC purposes or, if relevant to a state, someone's projected income for the remainder of the calendar year.

- **Refer to "business expenses" rather than expenses.** Based on the experience in Massachusetts, self-employed people may report their income net of all expenses, not just business expenses, unless they are asked about "profit once *business* expenses are paid".

8. **Simplify the questions on access to employer-based coverage.** While we recognize that these questions are to some extent required by the ACA, we remain deeply concerned that they will make little sense to most people and could cause significant numbers to abandon their applications or to submit incomplete forms. The reality is that they are based on complex terms and concepts created only recently by Congress, such as the notion of employer-based insurance that meets "minimum value" that will be meaningless for many. Moreover, they require people to approach their employers for information even though their employers may have fiscal incentives for them not to enroll an APTC. Some of these issues may ease over time, but they could prove daunting in the early months and years of ACA implementation. To mitigate the disruptive impact, we recommend that you pursue the following strategies:

   - **Minimize who must answer the employer-based coverage questions.** The employer-based coverage questions are a major reason why we believe that the "pre-assessment" model being used by HHS in the online environment is critical and needs to be retained. It is harder to ensure that these questions are not asked of Medicaid-eligible individuals submitting a paper application, but our recommendations above for creating a simplified, one-page form (a la the 1040EZ) for select individuals who are clearly eligible for Medicaid would help to mitigate this problem.
   - **Provide clear instructions on what people should do if they can't answer the questions.** On the paper form, HHS should give people the option to say "don't know," as well as provide them with specific instructions on what to do if they can't answer these questions. We recommend that the materials encourage people to contact their HR Department to gather this information (not just their "employer") and remind them of who to contact if they can't figure out the answers on their own.
   - **Eliminate the question on whether someone "thinks" coverage is affordable.** The personal opinion of applicants as to the affordability of employer-based coverage has no bearing on their APTC eligibility. We recommend deleting this question as unnecessary and confusing.
   - **Clarify that people are expected to answer only if they are "eligible" for coverage.** In many instances, firms "offer" insurance, but it isn't available to

everyone. Only those who have worked there for a specified period of time or who work a certain number of hours a week are eligible for the coverage. We think asking about coverage for which someone is "eligible" will produce more accurate, relevant results.

9. **Increase usability by providing more white space in the paper application and by defining key terms, using them consistently and improving readability.** We remain concerned that many people will find the language used in the application materials difficult to understand. To address, we recommend the following:
    - **Define key terms.** In help text and for key terms in the paper application, we recommend that you define key terms. In many instances, a hover button may be more appropriate than help text to provide definitions.
    - **Use language consistently.** We found a number of instances in which some terms were used inconsistently (e.g., the application materials switched from "household" to "family").
    - **Use shorter sentences.** We found a number of instances, particularly in the detailed on-line application questions about income, in which sentences were quite long and dense. We encourage particular scrutiny of these questions from a readability perspective.
    - **Create more white space on the paper application, particularly the individual person pages.** White space is a key design mechanism that helps people who have difficulty with forms be better able to get through them.


**Additional issues:**

**Step 6. Reassurances around "Mail Completed Application" on paper application**
It would be helpful to reassure people once again that they should submit their application even if they have not been able to fully complete, so long as they have included basic information and signed the application. In addition we recommend enlarging the "Need Help" information on this page. We are worried that people might get to this section and abandon the application because it says "Mail completed application".

**Incarcerated family member**
**Please don't wait until the end of the application to inform people that an incarcerated family member is not eligible for coverage.** The affirmation that: "I can confirm that no one applying for health insurance on this application is incarcerated (detained or living in a medical facility)" is on the last page of the paper application. We are concerned that if an applicant's child is temporarily detained or someone is incarcerated the applicant will not know what to do at this point. The online application asks who in the family is incarcerated and whether they are pending disposition. The paper and online applications ought to be consistent and provide sufficient information so that the applicant knows what to do with the application if one of their family members is incarcerated.

Thank you again for the opportunity to submit comments on the application. Please do not hesitate to contact us if we can be helpful in any way.


Sincerely,

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