

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

RE: Comments by the New Mexico Center on Law and Poverty

**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**

Dear Sir/Madam:

The New Mexico Center on Law and Poverty (NMCLP) submits the below comments in response to the Proposed Rule above, issued January 22, 2012. NMCLP works to advance economic and social justice in New Mexico through education, advocacy and litigation. We improve living conditions, increase opportunity and protect the rights of people living in poverty. We greatly appreciate the efforts of the Centers for Medicare & Medicaid Services to develop a single, streamlined application to facilitate enrollment in Medicaid, CHIP, and the new health insurance Exchanges. We support many of the features of the paper and online applications, but there are also several areas of concern. We thank the Department of Health and Human Services for your consideration of these comments and recommendations.

**PAPER SINGLE STREAMLINED APPLICATION FOR INSURANCE AFFORDABILITY PROGRAMS**

It is critical that any widely used application is readable, understandable, and as simple as possible. The first page of the application provides the opening text that will familiarize applicants with the information needed, benefits provided, and what happens next in the application process. NMCLP commends HHS for including pertinent information but finds that there are many areas that can be streamlined, simplified, and improved.

**I. Page 1: Use this application to see what insurance choices you qualify for.**

This section provides applicants with their first explanation of what benefits they could qualify for under the ACA's healthcare expansion. The current subheading of "Use this application to see what insurance choices you qualify for," is problematic; the length and sentence structure is unnecessarily complicated. Simplified language is preferable wherever possible.

**Proposed:**

*Why Apply?*

*To determine if you are eligible for:*

- **Free or low-cost insurance** from Medicaid
- **Children's Health Insurance Program (CHIP)**
- A new **tax credit** to help pay your health insurance premiums
- **Private health insurance plans**

*Note: You may qualify for a free or low-cost program even if you earn as much as \$92,000 a year (for a family of 4).*

**II. Page 1: Who can use this application?**

We commend the fact that pertinent information is included in this section; however, we echo the concerns from the previous section regarding readability and simplicity. We suggest the rephrasing of this section to better indicate who can apply and for whom. Additionally, to maintain consistency, we suggest including the information as bulleted points.

**Proposed:**

*Who Can Fill Out the Application?*

- *You can use this application to apply for yourself or for anyone in your household*
- *You can apply if you have no health insurance or if you currently have health insurance*

*Note: You can apply even if you do not file a federal income tax return.*

**III. Page 1: What you may need to apply.**

It is very important that the application process is not intimidating for immigrant families. Given the significant barriers these families often face to enrolling in coverage, including fears that enrolling will expose household members to the risk of deportation, it is important to actively encourage participation by directly addressing barriers at the beginning of the application form. Including Social Security numbers (or document numbers for any legal immigrants who need insurance) as the first item is highly problematic. This inclusion and phrasing may lead many people in mixed-status homes to decide not to apply. This undermines the goal of increasing enrollment among those that are eligible – including citizen children in homes that include undocumented relatives or parents.

**Proposed:**

*What we ask you for:*

- *Birth dates*
- *Information about any job-related health insurance available to your family*
- *Employer & income information for everyone in your family (for example, from paystubs or Forms W-2, Wage and Tax Statements)*
- *Policy numbers for any current health insurance*
- *Social Security numbers (or document numbers for any legal immigrants who need insurance)*

*Note: The information provided will only be used to verify income and other information to necessary to determine eligibility for health insurance or health benefits.*

**IV. Page 1: Why do we ask for so much information?**

We appreciate the inclusion on page one of a privacy statement, as privacy of personal information is of paramount concern to all consumers today. Privacy protections are especially important to mixed-status families. Requesting this amount of information can cause apprehension for families concerned about immigration status or future consequences when they apply to adjust that status. The average person does not know what privacy the law requires, so there should be detail in the statement regarding what information will be requested and required, from which family members, and how information such as immigration status and Social Security Numbers will be used, including with whom it will be shared.

**Proposed:**

*What we do with the information you provide.*

***We ask about income and other information to make sure you and your family receive all the benefits for which you qualify. This information is obtained solely for the purpose of this determination and will only be shared with other agencies to verify information and eligibility related to the benefit. Any information provided regarding you and household members will only be used for these purposes and to compile demographic information. None of the information included in this form will be used for immigration enforcement.***

**V. Page 1: What happens next?**

NMCLP appreciates the inclusion of this section but would suggest including the actual address and also delineating the information with bullets.

**Proposed:**

*What happens next?*

- *Send your complete, signed application to:  
Health Insurance marketplace  
1005 XYZ Drive  
Washington, DC 20005*
- *Once we have received your completed, signed application, within 1-2 weeks we will notify you of what programs you might be eligible for.*

***Note: Even if you don't have all the information we ask for, you should sign and submit your application anyway.***

**VI. Page 1: Get help with this application.**

We appreciate that the application offers help in Spanish. Also, in small print at the bottom, it says in Spanish that the application has been translated and the Spanish language application can be used instead of the English language application. This is very important for encouraging participation of millions of potential applicants whose preferred language is Spanish. However, many immigrant and limited English proficient (LEP) families speak a non-English language other than Spanish. To comply with non-discrimination protections, HHS must provide meaningful access to ACA programs for all who are LEP and the application form is the gateway to program access. We also note that the Spanish version communicates that language assistance is available at no cost to the

LEP person, and we believe it is important to communicate this in the English version as well as in other languages. NMCLP recommends translating the paper application into at least 15 other languages and making them available for downloading and printing from the internet.

## **VII. Page 2: Step 1: Tell us about yourself.**

We commend HHS on allowing non-eligible persons to file on behalf of other eligible required family members, however, the phrase, “Tell us about yourself” is unduly vague. There is no accompanying information clarifying the role of the filer, nor any reassurance about confidentiality of the information. Clarifying language indicating that the application filer can complete the application without being an applicant himself/herself is needed. Additionally, clarification is needed regarding whether the role of “yourself”, i.e., that this person will be responsible for signing the application at the end under a listing of rights and responsibilities, is the filer.

### **Proposed:**

- Remove “yourself” and substitute with “filer.”

*Tell us about the filer.*

This section goes on to ask the filer for a Social Security Number. We commend HHS for identifying the Social Security Number as optional; however, more information is needed. We propose combining the two boxes related to Social Security Number information and having one box spelling out why, where and when the Social Security Number is needed.

We suggest the following modifications:

### **Proposed:**

*Social Security Number **OPTIONAL***

*Note: **This information is required only if filer is applying for insurance for themselves and has a Social Security Number.** A Social Security Number is optional for people not applying for insurance, but providing a Social Security Number can speed up the application process. We use Social Security Numbers to check income and other information relating to with insurance eligibility. If someone in your family doesn't have a Social Security Number and wishes to apply for one, call 1-800-XXX-XXXX or visit [www.placeholder.gov](http://www.placeholder.gov).*

Additional recommendations:

- Remove the “We will need to contact an adult member of the family” subtitle and add “If the filer is under the age of 18, check this box and provide name of an adult in the household.”
- Under the “I would like to get information about this application by:” section, we suggest the addition of:

*Select all that apply.*

*Note: HHS default correspondence provides for traditional paper notices. Selecting correspondence by email or text will mean faster access to information relating to your application.*

- In the list of eligible immigration statuses on page 8, define the acronym “EAD.”

- Provide a list of documents verifying eligible immigration status as a reference to help the applicant accurately name their immigration document in the blank provided on the form for this purpose.
- Lastly, we support phrasing the immigration status question by asking the applicant if they have an eligible immigration status, and providing a reference list of eligible statuses to aid in answering the question. We recommend the check box follow the instruction to refer to the reference list, rather than precede it.

### VIII. **Page 2: Step 2: Tell us about your family.**

The information included in this section is essential because it helps HHS determine what programs applicants qualify for. Because HHS' stated goal is to ensure that everyone gets the most coverage possible, it is important that applicants understand who to include and what to include. To help clarify which family members the applicant is to include, NMCLP suggests the following amendments.

#### **Proposed:**

#### ***People considered 'required family' for purposes of this application:***

- *Your spouse, if married*
- *Your children who live with you*
- *Your partner who lives with you (but only if you have children together who need health insurance)*
- *Anyone you include on your federal income tax return; or if you do not file a federal income tax return, include family members who live with you*

*Note: Anyone else who lives with you will need to file their own application if they want insurance.*

#### ***Complete one page (front and back) for each required family member. Start with yourself!***

- *If you have more than 6 required family members to include, you'll need to make a copy of the next 2 pages for each additional person.*

#### ***Your information is private.***

- *Your information will be kept private and will only be used for your health insurance determination.*

### IX. **Page 3: Step 2: Person 2.**

It is crucial to accurately describe the people these pages are soliciting information about and to specify that *only those applying should provide personal information*. Step 2 states that it must be filled out for your 'spouse/partner and children who live with you and/or anyone on your same federal income tax return if you file one,' however it does not sufficiently specify which required family members must submit what information.

Asking for Social Security numbers in this manner causes confusion and would serve as a barrier to accessing healthcare insurance. The request as presently worded could easily intimidate mixed-status families. Fear regarding the inability to provide Social Security Numbers for undocumented family members leads to many citizen children of undocumented not accessing the benefits for which they

are eligible. Including a number to call if someone does not have a Social Security Number does not sufficiently address this issue; language must be inserted to address and clarify this issue.

**Proposed:**

*Complete Step 2 for all required household members, beginning with yourself. Note: Social Security Numbers are only required for persons applying for health insurance who have Social Security Numbers.*

**Proposed:**

*If a family member does not have a Social Security Number, this information and any other information relating to immigration status will not be reported to the Department of Immigration or the Department of Homeland Security. This information is for the purpose of determining eligibility only.*

For readability and simplicity, we suggest amending “Social Security Number required if you have one and if not listed above,” to the following:

**Proposed:** *If you have a Social Security Number and have not listed it above, list it here.*

## **INDIVIDUAL ONLINE QUESTIONNAIRE**

### **CMS-10440, Appendix A**

The individual online application design, as published to date, features many thoughtful elements promoting as much ease as possible in working through the many eligibility questions that must be asked. These merits include screens prepopulated with information already provided by the application filer, thoughtful sequencing that minimizes unnecessary questions, some explanatory messaging that helps the filer to understand the process, some labeling that helps distinguish required from optional questions, and some offers of help in completing the application. The draft is unfortunately incomplete, making it impossible to fully evaluate whether the single streamlined application has successfully addressed some of the participation barriers.

There are two general suggestions that NMCLP would provide to HHS. The first is to provide for a pop-up screen after each section, congratulating the filer on the completion of another section, reviewing what section they have completed, indicating what percent of the total application they have completed, and describing what to expect and what is required in the next section. This will keep the filer engaged, informed, prepared, and committed to the process. Additionally, we suggest programming the application in a way that once the filer has indicated that they decline to enter a Social Security Number, a pop-up is produced to inform the filer of the consequences of not providing a Social Security Number (for example, that processing the application may take longer), have them select “I agree” and then not ask them for it again.

## **I. Privacy**

We support a strong privacy statement at the beginning of the application process. Here, the privacy statement is either not provided for review or, if it is, is not a privacy statement at all but

rather consent. Nothing shown here is adequate to overcome barriers to participation due to confidentiality concerns. Filers need to know how information will be used, and specifically that personally-identifiable information (PII) provided on the application will not be used for non-eligibility purposes. The consumer must agree to allow PII to be “used and retrieved from data sources.” This statement should be accompanied by information about the types of data that will be retrieved, such as income and employer, and a statement that the confidentiality of this data will be protected as is the rest of the information on the application.

**Recommendations:**

- Amend the privacy statement to clearly explain to consumers how information will be shared, what entities will have access to the information and for what purpose the information will be shared, and include reassuring language that information collected in this application will be used only for purposes of making health insurance coverage determinations.
- Amend the statement that information will be “used and retrieved from data sources,” to provide examples of the types information that will be obtained and to reassure that there will be no information obtained from immigration enforcement authorities.

## **II. My Account (I.)**

HHS’ proposed questionnaire has the individual filling out the application set up a “my account” as the first step in the application process. This account will allow for individuals to access or update their contact information, communication preferences, notices, coverage status, and other information in a secure environment. In order to ensure that the applicant is familiar with the tools and abilities of the site, it is especially helpful to communicate the following information:

**Proposed:**

- *The “my account” function has been created to help the consumer, and the person creating the account will control the information in the account.*
- *The application information may be saved at any point and returned to later, and information entered can be later deleted and/or replaced with different information.*
- *The government will not have access to the information until the consumer submits the application at the end.*
- *Throughout the application, information will be entered for the consumer that is gathered from various data sources, and these sources are protected by privacy laws and only the application filer will be able to see this information until the application is submitted at the end.*
- *After the application is submitted, privacy will continue to be protected and information provided will be used only for health coverage eligibility determinations.*

The filers are then asked for a Social Security Number. HHS states that the account creation allows for the “individual to establish their identity via an authentication process” and asks for a Social Security Number to set up the account. Even though the information is listed as “optional,” this request risks intimidating users and causing some qualified persons to delay or forgo their application, ultimately reducing qualified use of these services. Since the account creator/filer may not be filing on their own behalf, this information should not be requested until later in the application process.

**Proposed:**

*Delete n. Social Security number (SSN): \_\_\_\_\_ (optional)*

**III. Contact preferences - Preferred spoken language (III.E.)**

NMCLP commends HHS for providing an opportunity for applicants to indicate if English is not their preferred spoken or written language. NMCLP is concerned that information has not been provided as to *how* language services will be provided. Additionally, we are concerned that outside of reporting the demographic information, once an alternative language is selected, this information will not be capitalized on. It is important that once an applicant indicates a preferred language that the application will be provided in that language if the applicant requests it.

**Proposed:**

*E. Contact preferences*

- 1. Preferred spoken language: Drop-down menu with languages listed (in the language)*
  - 2. Preferred written language: Drop-down menu with languages listed (in the language)*
- Inclusion of "Other" – Where the filer can fill in the blank with an unlisted language.*

***Upon designation of non-English language, display preferred written language statement (in their preferred language) offering the option of having a paper application in their preferred language available in electronic form or mailed to their mailing address.***

**IV. Help paying for coverage (IV.)**

We commend HHS for clearly delineating the ways in which the applicant can designate who is applying for health benefits and health insurance. We are concerned however that an insufficient amount of information relating to the separate benefits has been included. NMCLP proposes the inclusion of a brief introduction to all types of healthcare assistance provided. Further, we suggest the inclusion of the information provided in Income Screener (IV.B.) at the onset of the "help paying for coverage" section. By providing more information about the level of financial assistance a family might receive, the application can encourage a higher rate of completion and submission.

**V. Personal Information (VII.)**

**a. Personal Information (VII.A.2.)**

The statement "This section is for additional household members" is not clear. In the collection of Social Security Numbers, we appreciate that there are different messages being provided depending on whether the person is an applicant or a non-applicant. With regard to the applicant message, the first sentence switches voice from third to second person, which could raise concerns in a non-applicant application filer that s/he is now being required to provide his/her Social Security Number. This can be clarified by using "the contact" or "the household contact" instead of the word "you", or it could be changed to ask for "[FNLNS]' Social Security Number," or "Social Security Number for [FNLNS]" instead of "a Social Security Number." A website is provided for the applicant, presumably for information on assistance in obtaining the Social Security Number though this is not specified, but some applicants will need to talk to someone on the phone rather than navigate over the computer, especially LEP applicants. Also, the purpose of collecting the



Social Security Number is “to check income and other information to see if [FNLNS] can get help paying for health insurance.” Given the concern many people have with providing their Social Security Number, it would be helpful to specify what “other information” will be verified using the Social Security Number. With regard to the non-applicant message about the use of the Social Security Number, it would be helpful to add “only” to the sentence, “We’ll use this Social Security Number only to check [Name]’s income.” It would also help clarify the use to state that “Social Security Number are not used for immigration enforcement.”

Questions 3 and 4 ask for clarification if there is a mismatch between the name being provided on the application and the name that appears on the Social Security card. If a household member has a Social Security card bearing a different name, for whatever reason, there may be reluctance to complete the application given that low-wage immigrant workers have been adversely affected by SSA “no-match” letters sent to employers. It is important to provide reassurance that there will be no immigration enforcement consequences for answering questions 3 and 4.

We support providing different messages about collection of Social Security Numbers depending on whether the person is an applicant or a non-applicant, to address different concerns and needs.

- At the beginning of the application message about collection of Social Security Numbers, delete the word “you” and/or add “for [FNLNS]” after “Social Security Number”.
- After “Visit [www.placeholder.gov](http://www.placeholder.gov)”, provide a toll-free phone number in addition, stating that help will be available in non-English languages.
- In the sentence, “We only use Social Security Numbers to check income and other information . . .” delete “and other information” and specify what other ways the Social Security Number will be used.
- In the non-applicant message, add the word “only” after “We’ll use this Social Security Number only to check [Name]’s income.”
- Add at the end of the message for a non-applicant: “*Social Security Numbers are not used for immigration enforcement.*”
- On questions #3 and #4, add an explanation for why the information is being sought and how it will be used, such as the following: *If you answer “no,” we will not share your answer with any employer or with immigration enforcement. We will ask you for the name that appears on the Social Security card, and we will use that name only to help check income to see if applicants in your household can get help paying for health insurance.*

#### **b. Citizenship/immigration status (VII.B.)**

Before beginning this section there should be a pop out that discusses what documents you may need, what the eligible immigration statuses are, document types, what this information is used for, who is going to need to provide this information, and what to do if you have any additional questions. There are many terms in this section that require specific definitions and need to be available to the filer at the time that they are inputting this information. That way, people can be prepared and any hesitancy they have will be alleviated.

#### **Proposed:**

- Provide a short definition of “U.S. national.”

- Provide a list of eligible statuses and documents to be used for verification.
- Define acronyms, particularly “EAD” and “SEVIS.”

## **ADDITIONAL CONCERNS**

### **I. Tell us about your household**

In this section there should be an inquiry for each person about their preferred language. It is not sufficient to collect preferred language information only about the household contact. Preferred language of every applicant and non-applicant will be needed at some point in the future, making it imperative to collect at the application stage. For applicants, the data will become a permanent part of the basic information that is provided to a QHP and for all family members the data can be provided to health care providers, to facilitate the provision of language services at every stage of the health care and coverage process. In addition, if the computer systems are not programmed to capture this information at the outset, it will be extremely expensive to add it later. The data is important for enforcing civil rights laws and promoting non-discrimination, under ACA §1552, and for crafting policies that address racial and ethnic disparities in health care.

Throughout the application, name and date of birth is requested of any family member or dependent who is “someone else not seeking health insurance.” We support the opportunity for non-applicants to be clearly identified so that they can be protected against requests for unnecessary and inappropriate information, which would discourage participation of any eligible members of the family. However, given that this is the first time the application asks for personal information about a non-applicant who may also be eligible for coverage, it is important to provide context for the application filer by communicating what additional information may later be asked about non-applicants once their identity has been revealed. If there will be no additional information asked later in the process, this should be explained.

#### **Proposed:**

- Collect preferred language of all family and household members, applicants and non-applicants.
- Before asking for non-applicant family members to be identified, inform the application filer what personal information will and will not be asked about non-applicants.

### **II. Ineligible household members**

Inclusion of comprehensive information on health care options for ineligible household members including enrollment information and offers of assistance, and a notice of eligibility at the end of the application process should be provided.

## **Conclusion**

In sum, we are certainly encouraged at the progress towards a single, streamlined application. We urge you to reject any provisions and language that could lead to intimidation or decreased enrollment. We hope that you will consider the improvements we have suggested. If you have any questions or need any further information, please contact Dorianne Mason at (505) 255-2840 or

[dorianne@nmpovertylaw.org](mailto:dorianne@nmpovertylaw.org).

Sincerely,

/s/

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