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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/Madam:

Raising Women's Voices ("RWV") is a national initiative working to ensure that the health care needs of women and our families are addressed as the Affordable Care Act is implemented. Founded by the Black Women's Health Imperative, the National Women's Health Network and the MergerWatch Project of Community Catalyst, RWV has a special mission of engaging women who are not often invited into health policy discussions: women of color, low-income women, immigrant women, young women, women with disabilities and members of the lesbian, gay, bisexual and transgender (LGBT) community. We place a priority on inviting women to share their experiences navigating the health care system. We believe women are grassroots experts in what is wrong with the current health system and what it takes to fix it. Women's roles as arrangers of health care for our families give us a unique perspective essential to the national discussion on health care reform.

Raising Women's Voices has 25 regional coordinators in 22 states and DC (see the list included below), who engage women in local and statewide discussions about health care reform. Many of our coordinators live in states that have elected to have a state-federal partnership or federally-facilitated exchange.

We are submitting these comments in response to the Department of Health and Human Services' CMS 10440, 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 and paper applications.

We value the tremendous work the Department has done to ensure that the paper and online applications are comprehensive, yet manageable for health care consumers. These draft products are evidence of the great consumer testing you have done thus far, and we are confident that they will only improve after this round of public comments.

We particularly look forward to the further details that will be provided to enrollees through help language, pop ups, and links to explanations. Many of our comments will likely be addressed through these mechanisms. We appreciate you considering our comments as you continue to finalize those elements of the online and paper applications.

Issues with Specific Application Questions

Question about pregnancy: We recommend that applications include clear help text as to why an enrollee's pregnancy status is being collected, to avoid having women react negatively to what might seem like an intrusive question. Women have historically been discriminated against for being pregnant and should be informed that their pregnancy status will only be used to determine if more affordable insurance options (like Medicaid) are available.

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.)

Question about incarceration: We recommend that clear help text be provided regarding the question about incarceration. This question may prompt applicants to become hesitant to disclose information for fear of discrimination. The application should include an explanation on why the incarceration status of household members is relevant, and the application question should not include household members whose age would deem them ineligible for incarceration.

Additional Explanations: We recommend that help text be included for questions that are not obvious in their relevance to obtaining coverage. In particular, we note that help text should be included for questions relating to date of marriage and whether the enrollee lost insurance due to untimely payment of premiums.

Question about 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 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.”

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.

Contact Information: We recommend the applications not require the applicant to provide two phone numbers. While we understand the importance of multiple forms of contact, several potential enrollees will not have the means to maintain two phone numbers. Reporting of a second phone number should be optional.

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. 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.

Non-Traditional Families

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 and apply them 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.

Mixed status families: 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.

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*

Data Collection from all members of applicant's household: We support collecting race and ethnicity demographic data of all applicants. By explaining why the application is collecting this information, individuals may be more likely to provide it. We agree with NHeLP that the explanation language should emphasize confidentiality and that providing race and ethnicity reporting helps ensure that everyone has equal access to health care. 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.

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. We greatly appreciate the recognition of the need to collect comprehensive demographic data. As § 4302 states:

The Secretary shall ensure that, by not 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.

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.

Further, collecting these data *only* 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, it is likely that if a household has an English-speaking member, that individual will be the household contact. Yet an estimated 23% 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.

Ensure data collection on accountability measures: In order for the applications to work as smoothly as possible for enrollees, the systems should be tracked to assess quality and accountability metrics, such as length of time to complete application, call-center and navigator contacts, and the seamless transfer of data to state Medicaid agency for eligibility certification.

Ease of Use

Call Center Promotion: We recommend the call center phone number 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 application 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.

Remote Connections for Call Centers: We recommend the Marketplace consider allowing 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.

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 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.

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 engage 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.

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

Ensure quality measures 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.

Thank you again for all your work on the Affordable Care Act, and ensuring that implementation goes as smoothly as possible. Please do not hesitate to contact Maryanne Tomazic at 212-870-2010 with any follow-up questions for the Raising Women's Voices Network.

Sincerely,

Raising Women's Voices for the Health Care We Need

Raising Women's Voices is a collaborative initiative between three organizations:

Black Women's Health Imperative
National Women's Health Network
MergerWatch Project of Community Catalyst

Raising Women's Voices has 25 regional coordinators in 22 states and the District of Columbia. They are listed below.

ARKANSAS
PLANNED PARENTHOOD OF THE HEARTLAND

CALIFORNIA
ACCESS: WOMEN'S HEALTH JUSTICE, OAKLAND CALIFORNIA LATINAS FOR
REPRODUCTIVE JUSTICE, LOS ANGELES

COLORADO
COLORADO LATINAS ORGANIZING FOR OPPORTUNITY AND REPRODUCTIVE
RIGHTS (COLOR)

CONNECTICUT
PLANNED PARENTHOOD OF SOUTHERN NEW ENGLAND, NEW HAVEN

FLORIDA
MIAMI INTERNATIONAL LATINAS ORGANIZING FOR LEADERSHIP AND
ADVOCACY

ILLINOIS

ILLINOIS MATERNAL AND CHILD HEALTH COALITION, CHICAGO

IOWA
PLANNED PARENTHOOD OF THE HEARTLAND

MARYLAND
MARYLAND WOMEN'S COALITION FOR HEALTH CARE REFORM, POTOMAC

MASSACHUSETTS
NARAL PRO-CHOICE MA, BOSTON

MINNESOTA
NARAL PRO-CHOICE MN, ST. PAUL

MONTANA
MONTANA WOMEN VOTE, MISSOULA

NEW JERSEY
NEW JERSEY CITIZEN ACTION / PLANNED PARENTHOOD OF NJ

NEW MEXICO
NEW MEXICO RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE,
ALBUQUERQUE

NEW YORK
RAISING WOMENS VOICES – NEW YORK

OHIO
OHIO RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE, COLUMBUS

OREGON
NARAL PRO-CHOICE OREGON, PORTLAND

PENNSYLVANIA
NEW VOICES, PITTSBURGH
WOMEN'S WAY, PHILADELPHIA

RHODE ISLAND
PLANNED PARENTHOOD OF SOUTHERN NEW ENGLAND, PROVIDENCE

TEXAS
LESBIAN HEALTH INITIATIVE OF HOUSTON, INC

WASHINGTON
NORTHWEST HEALTH LAW ADVOCATES, SEATTLE

WASHINGTON, DC
BLACK WOMEN'S HEALTH IMPERATIVE

WEST VIRGINIA
WEST VIRGINIA FREE, CHARLESTON

WISCONSIN
WISCONSIN ALLIANCE FOR WOMEN'S HEALTH, MADISON