



BEFORE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Comments of Project Vote on Proposed Health Insurance Applications for Eligibility Determinations Under the Affordable Care Act

I. INTRODUCTION:

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are able to participate fully in American civic life by registering and voting. In pursuit of this goal, Project Vote has also been a national leader in increasing implementation and enforcement of Section 7 of the National Voter Registration Act (NVRA), 42 USC §1973gg-5, which requires that certain offices providing public assistance also offer voter registration services. Along with the Lawyers' Committee for Civil Rights Under Law and Demos, Project Vote has improved Section 7 compliance in 18 states through investigation, cooperative efforts, and litigation.

Project Vote submits the following comments addressing the Agency Information Collection Activities, submitted to OMB for review by the Centers for Medicare & Medicaid Services ("CMS") and published at 78 FR 6109, 6110. CMS has requested comments on the summary of proposed agency information collection activities addressed by this Federal Register Notice. This proposal by CMS includes a number of appendices that provide lists of questions for various applications that have been proposed for use to determine eligibility for health insurance enrollment through the Health Insurance Marketplace, Medicaid, and the Children's Health Insurance Program ("CHIP"). Included are:

- 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, referred to also as the Single Streamlined Application for the Health Insurance Marketplace, (hereinafter the "online application" or "Appendix A");
- Appendix C: FA Paper Application, which is a proposal for a paper application for health insurance that states it will allow an applicant "to find out if [they] can get help with costs", (herein after the "paper application" or "Appendix C");
- Appendix D: Non-FA Paper Application, which appears to be a second proposed paper application for health insurance without any reference to the potential for help with costs, (hereinafter "Appendix D").

The following comments primarily address how the proposed online application (Appendix A) and the proposed paper application (Appendix C) comply with Section 7 of the NVRA.

The Exchange and Insurance Affordability Programs authorized by the Affordable Care Act are unquestionably “offices...that provide public assistance.” As such, Section 7 of the NVRA applies to the content of the applications proposed as part of this Notice. The United States Department of Health & Human Services and CMS therefore included voter registration in the prior Federal Register Notice published by CMS at 77 FR 40061 (July 6, 2012), relating to required data elements for application forms to determine eligibility for enrollment under the Affordable Care Act. Appendix A to that earlier notice specifically referenced the need for inclusion of voter registration in these applications, citing Section 7 of the NVRA.

Commendably, the proposed online application that is a part of this CMS Notice specifically addresses voter registration. However, further steps must be implemented to ensure full and meaningful compliance with Section 7.

II. SECTION 7 BACKGROUND:

The NVRA was enacted in 1993 with the express purpose of expanding voter registration by making it both simpler to apply and more accessible to demographic groups previously under-represented in the electorate. Section 7 of the NVRA sets forth specific requirements about how voter registration services shall be offered by public assistance offices. Under Section 7, public assistance offices shall: (i) distribute a voter registration application form with each application for public assistance and with each recertification, renewal, or application for a change of address (collectively, “covered transactions”), unless the individual applicant or client affirmatively opts out of voter registration by declining in writing to register to vote; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address (“voter preference form”); and (iii) provide assistance in completing the voter registration forms to the same degree the office provides assistance in completing its own benefits applications (“equal assistance”) *See* 42 U.S.C. § 1973gg-5(a)(6). Recent court decisions, as well as official guidance provided by the United States Department of Justice, make it clear that covered transactions occurring “remotely,” such as online or through the mail, are also subject to the requirements of Section 7. *See Ferrand v. Schedler*, 2012 WL 1570094 (E.D. LA, May 3, 2012); *Ga. State Conf. of NAACP v. Kemp*, 11-cv-01849-CAP (N.D. Ga. Jan. 30, 2012), Dkt. No. 44; *see also* U.S. Department of Justice, *The National Voter Registration Act of 1993: Questions and Answers*, available at

http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

Section 7 also requires that the voter preference form utilize specific language and set forth certain required disclosures. First, the voter preference form must ask an applicant for public assistance the following question: “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” *See* 42 U.S.C. § 1973gg-5(a)(6)(B)(i). Second, the voter preference form must include the following disclosures:

- “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.” *See* 42 U.S.C. § 1973gg-5(a)(6)(B)(ii).

- “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.” *See* 42 U.S.C. § 1973gg-5(a)(6)(B)(iv).
- “If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with [the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed].” *See* 42 U.S.C. § 1973gg-5(a)(6)(B)(v).

III. PROPOSED APPLICATIONS:

A. Paper Applications

As an initial matter, there is no mention of voter registration whatsoever in either of the proposed paper applications for health insurance (Appendix C and Appendix D). Clearly, Appendix C is an application for public assistance because it allows individuals to apply for Medicaid, the Children’s Health Insurance Program (CHIP), and other assistance. Under Section 7, voter registration must be included in this application. Project Vote urges that, at a minimum, voter registration be incorporated into this paper application when it is finalized and that the other guarantees of Section 7 (as discussed below) are afforded to those who apply for services using this paper application.

B. Online Application

It appears that an offer of voter registration is included in the online application (Appendix A). There is a question about voter registration within the application in at least two places, suggesting that voter registration is offered during at least some of the possible application pathways. Project Vote applauds the effort to make voter registration available in this application and is very supportive of the idea that voter registration is offered to all individuals using the online application. We are concerned, however, that voter registration may not be offered properly to every person who is potentially applying for public assistance using this online application, as required by Section 7 of the NVRA. Project Vote urges CMS to make sure that the pathways within the application are configured so as to ensure that every person using the online application who is potentially applying for public assistance is offered voter registration.

Project Vote recommends additional steps be undertaken by CMS to ensure full and meaningful compliance with Section 7. The specific provisions of Section 7 that require certain disclosures and the actual distribution of the voter registration forms (unless an individual declines in writing) are designed to ensure that individuals applying for public assistance are fully informed about their right to register to vote, including making it clear that help in completing the voter registration form is available, and to ensure that they actually receive a voter registration form if they want it.

It is clear from the Appendices that assistance in completing the health insurance applications will be provided. The proposed online application, Appendix A, has a mechanism on top of each screen whereby an applicant can choose to “get help” by clicking on a symbol on the application.¹ It is also Project Vote’s understanding that a new job description of “navigators” is being created for the purpose, among others, of providing assistance to individuals in completing the health insurance applications. Section 7 requires that the same level of assistance that is offered in completing the health insurance application be offered in completing voter registration forms. *See* 42 U.S.C. § 1973gg-5(a)(6)(C). Project Vote suggests, as a starting point, that for an individual using the online application, equal assistance should include a statement making it clear that help with voter registration is available and providing a link to the informational website of the chief election officer in the state where the individual lives. In fact, the Election Assistance Commission already maintains a webpage with an interactive map that provides this contact information for each state in the country; see http://www.eac.gov/voter_resources/contact_your_state.aspx.

In addition, Project Vote suggests that all individuals providing assistance to health insurance applicants, such as navigators and staff at the planned call centers, be given some training regarding voter registration. This training could simply involve informing these individuals that voter registration is part of the health insurance application process and providing basic information about voter registration, such as where the voter registration forms should be sent when completed and the importance of completely filling out the voter registration form and signing it.

Project Vote is also concerned about the proposed format of the voter registration question found in the online application. We urge CMS to modify the language of the voter registration question so that it conforms with the requirements of Section 7 outlined above.

The online application, Appendix A, indicates if a person says “yes” they would like to register to vote, they are directed to a blank voter registration form. Appendix A, however, does not provide any information about the proposed format of the blank voter registration form utilized at that point. We assume that a link to a downloadable version of the National Voter Registration Form is intended. If so, Project Vote urges CMS to thoroughly evaluate what format of the National Voter Registration Form is used. The format currently found on the Election Assistance Commission website is a .pdf of the entire form, including a complete set of the state-specific instructions, and provides no online means to fill in any of the information required by the form. That form is almost 30 pages in length and can be overwhelming for the average user.

As evidenced by the work of a number of nonpartisan voter registration organizations, it is possible to create a modified portal using the National Voter Registration Form that provides only the state instructions for the relevant state and allows an individual to fill in

¹ The proposed paper applications, Appendices C and D, also include an offer of assistance. The following language is found at the bottom of the each page of the paper applications: “NEED HELP WITH YOUR APPLICATION? Call us at 1-800-XXX-XXXX, or visit us at www.placeholder.gov.”

the relevant information online as part of the portal interface. While the voter registration form must be still be printed out and then mailed when using these portals, there remains a considerable advantage because the forms is already pre-populated with all the required information except the signature. Project Vote urges CMS to consider the format of the National Voter Registration Form offered and to take steps to ensure that this form is as user-friendly as possible. The individuals using the online application will have already provided their address and citizenship information, so it is possible to modify the voter registration form presented to include just the relevant information for the applicant's home state. Furthermore, it appears that many portions of the online application will pre-populate with information already provided by the applicant as he or she moves through the process. It should, then, also be possible to pre-populate certain fields of the National Voter Registration Form with information already provided by the applicant.

In addition to our concerns about the format of the voter registration form that will be offered, Project Vote is also concerned that the lack of actual distribution of these forms, in particular, will make the offer of voter registration much less effective. The purpose of Section 7 is to provide an opportunity to register to vote to a population that often has very limited means and consequently may not have access to printers. As discussed, we believe the current proposal involves only a link to the National Voter Registration Form. At present, this form cannot be completed and submitted online. So while an individual will be able to complete and submit his or her health insurance application online without needing a printer, he or she must print and mail the voter registration form. Often, a person of severely limited means without access to a printer may not be able to take advantage of this opportunity. Project Vote urges that CMS adopt a mechanism for distributing voter registration forms to individuals who do not have access to a printer.²

From our experience helping states to better incorporate voter registration into their online benefits applications, we have found that it is most effective to offer several options regarding the distribution of voter registration forms. For example, in Colorado there are several means by which clients applying for public assistance obtain voter registration forms. The Colorado Department of Human Services automatically includes voter declination and voter registration forms when it mails benefits applications to clients. See http://www.sos.state.co.us/pubs/elections/NVRA/files/colorado_agency_nvra_manual.pdf. In addition, Colorado has adopted online voter registration, and a link to the online voter registration option is available within the online benefits application, PEAK. See <https://peak.state.co.us/selfservice/>. It can be effective to have a choice regarding the distribution of voter registration forms, even in states where online voter registration is not available. In Georgia, for example, if an applicant indicates that he or she would like to register to vote in the online benefits application maintained by the Georgia Department of Human Services, COMPASS, see <https://compass.ga.gov/selfservice/>, he or she is offered the option of filling in the voter registration form online and then downloading and

² Moreover, simply providing a link to the National Voter Registration Form is not feasible when an individual is using a paper application, such as Appendix C. In such situations, Project Vote recommends that a voter registration form be included with each blank paper application.

printing it, or the option of checking a box requesting that a voter registration form be mailed to his or her current address.

Project Vote suggests that CMS modify the current proposed online health insurance application so that individuals using the online application are given a choice. If an applicant indicates within the online application that he or she would like to register to vote, he or she should be offered the option of using the home state's online voter registration form when it is available.³ Additionally, the online health insurance application should provide applicants with an opportunity to indicate that they would like a voter registration form mailed to their current address, particularly if they do not have access to a printer. It is Project Vote's understanding that other notices will be mailed to applicants as part of the health insurance eligibility determination process. (The paper application, Appendix C, indicates that applicants will be notified about the programs for which they qualify within a matter of weeks.) We recommend that voter registration forms be mailed to United States citizens who request them when other notices, such as determination notices, are being sent.

IV. CONCLUSION

Project Vote commends CMS for the overall thoroughness of the proposed applications. These applications are likely to be used as models by states creating their own health insurance applications to make eligibility determinations for enrollment through the Health Insurance Marketplace and for Medicaid and CHIP. Indeed, they are invited to do so by the CMS Notice. This underscores the necessity for CMS to create a model in which the proposed health insurance applications are in full compliance with the NVRA. Project Vote remains available to offer any additional assistance.

³ As part of being directed to this option, there must be an effective prompt that explains that even though the applicant's state has online voter registration, it may not be available for all individuals and, therefore, other options to obtain a voter registration forms will be presented. This is important because at this point in time, generally online voter registration systems maintained by the states require that an individual have a signature in a state driver's license or state ID database. Just as many potential applicants may not have access to a printer, they also may not have the required signature on file.