

February 28, 2013

OMB, Office of Information and Regulatory Affairs:
CMS Desk Officer

Doc.: CMS-10440

By Email to: OIRA_submission@omb.eop.gov

Dear Friends,

These comments are submitted by the Massachusetts Law Reform Institute (MLRI), a state-wide nonprofit legal advocacy organization representing the interests of low income individuals and other vulnerable groups. Over many years MLRI has developed expertise in the operation of the Massachusetts Medicaid program as it affects applicants and beneficiaries and has been closely involved with the development and implementation of the 2006 Massachusetts health reform law that created a state-based marketplace, the Commonwealth Health Insurance Connector Authority.

We fully endorse the thoughtful and detailed comments of the National Health Law Program, the National Immigration Law Center, and the Georgetown Center for Children and Families on the paper and on-line applications and in addition make the following comments on the paper application for financial assistance.

Paper application for financial assistance, CMS-10440 Appendix C (1-16-13 draft)

Massachusetts has had the capacity for on-line applications through its Virtual Gateway system for many years, however paper applications still make up roughly 40% of applications received. Paper applications are likely to remain a significant source of overall applications in 2014. We are concerned that the paper application asks for too little information and will have to be supplemented with the back and forth of more requests for information which will make for a more burdensome process than supplying more detailed instructions and asking for more information initially.

Step1.

Add the option available in the online application to receive information by mail in addition to email or text.

Step 2 Tell us about your family

This section requires more information to explain who to include in the household. Such as:

- Your spouse, if you are married and living together
- Your children under age 19 [or other age as applicable] who live with you
- The parent of any child for whom you are applying who lives with you and the child.

- Anyone else you plan to claim as a tax dependant when you file your tax return in 2015 for calendar year 2014 including:
 - your spouse if you are living apart but planning to file a joint return,
 - your child age 19 or older, or under 19 but not living with you, who you plan to claim as a tax dependant.

Massachusetts recognizes same sex marriages not currently recognized under federal law. Further instruction will be needed for same sex married couples about how to complete the application.

Step 2:

For person 1, begin by saying to complete this section for yourself. Specify which **family members** who live with you to include if you don't file a tax return: e.g. but do not include family members other than your spouse, a child under 19, or the parent of a child under 19.

Clarify tax periods. Do you plan to file a tax return "in 2015 for calendar year 2014." In tax return section, consistently use future tenses e.g. will person claim any tax dependants?

Clarify tax dependants on "someone else's tax return. In the common situation where a parent or other head of household is both the contact person completing the application and the tax filer, "someone else" may be read as someone other than the parent/contact person/tax filer rather than someone other than the tax dependant. Restate as "Will Person 2 be claimed as a dependant on a tax return in 2015 for tax year 2014?"

If **disability** question is intended to screen for individuals who may be eligible for Medicaid on the basis of disability, more questions are required. Many individuals who do not need personal care assistance or live in a medical facility are disabled. See NHelp comments for suggestions. Similarly, if purpose of question is to identify individuals who are medically frail or have special needs who will be exempt from enrollment in an Alternative Benefit Plan, more information is needed.

Non US citizens. Pursuant to § 1137 of the Social Security Act, a Medicaid application must ask for a declaration of a satisfactory immigration status and both the Medicaid and Exchange regulations recognize that individuals who declare an eligible immigration status that cannot be verified immediately must be able to enroll during a 90-day period in which verification may be supplied. However, this section which refers applicants to page 20 for a description of an eligible immigration status appears to only ask individuals to identify themselves as lawfully present. If verification is not immediately available to determine if a lawfully present individual with income under 133% of poverty is also federally qualified and eligible, how will administrators know whether the applicant should be enrolled into Medicaid or into a QHP during the reasonable opportunity period? Further information would be required to determine if the individual is declaring a "qualified" status and whether the 5-year bar applies.

If a check box were to be added to the status list as a way of capturing a clearer declaration of eligible status, the list of statuses should contain a fuller description of certain eligibility categories which do not align with a single status. These eligibility categories include

Cuban/Haitian Entrants who may have been Paroled into the US, may be Applicants for Asylum, may be Lawful Permanent Residents who adjusted under special laws applicable to citizens of Cuba or Haiti or may have an Order of Supervision or otherwise be in non-final exclusion proceedings. Battered immigrants similarly may have a pending or approved petition of several different kinds including being an Applicant for Adjustment to LPR Status or an Applicant for Cancellation of Removal.

The list should also include members of federally recognized tribes who are not U.S. citizens. See our comments on Step 4.

It may also speed the determination process if applicants are advised of the option of submitting a copy of an immigration document. This may avoid the need for a further inquiry if the individual did not clearly identify the document or, for a document containing several different numbers, supply a number that is not used in the database instead of a number that is used. In the section asking for a document and document number, there should also be a reference to one or more locations of additional information such as a list of documents and a website showing examples of documents and the location of the most useful document number. We would also recommend listing at least green cards and work permits with the A# in addition to other documents and identifying numbers.

We don't understand the purpose of some questions such as whether a person under 26 lost insurance in the last 3 months.

Job and income information.

Add two times per month box with other payment options.

It's not clear how information that a person's circumstances changed in the past 6 months will be used. If the purpose is to identify that current income is likely not a good basis for determining annual income for the year, then add an instruction to the applicant to complete the yearly income section.

Other income: clarify the time period. Is this just asking about current income as in prior question or is it asking about income during the year as in following question?

Alimony. In the income section say Alimony Received, and in the Deductions section say Alimony Paid.

Other deductions –Add specific references to at least two additional common deductions: business losses and, unless already excluded in the income section, pre-tax withholding excluded from taxable wages such as certain cafeteria plans or flexible spending accounts.

Yearly income. It would be clearer to say "If the income you listed on this page does not reflect what you expect your income to be in 2014, please tell us what you expect your yearly income to be." A new job may provide a salary that is "steady from month to month" but the applicant may have been unemployed for the prior 6 months.

In the box for income, it should say "expected" income. It is not clear why there is a question about income [expected] in the following year. It would be more useful to ask if you expect any of the current income you identified to end during this calendar year, and if so when you expect it to end. This might eliminate an inconsistency between a wage match and expected annual income.

Step 3 Health Insurance.

We don't understand the purpose of asking the applicant's opinion of whether the offer is affordable.

Table on p. 16. Asking about changes you plan to make next year is confusing. Does it mean in the next 12 months? In the next calendar year? Or in the next insurance benefit year? Also it is not clear why information is not being asked instead about changes you plan to make this year; these are the changes that may affect eligibility.

Step 4. American Indian/Alaska Native.

Members of federally recognized tribes who are not U.S. citizens are considered qualified and lawfully present, but DHS will presumably not be able to verify tribal membership. This section should also inform the determination of noncitizen eligibility.

Step 5. Attestations regarding Medicaid.

Add that legal settlements "that pay medical expenses" will go to Medicaid...

Add regarding good cause not to cooperate that "If I think... I can will be informed how and when to tell Medicaid and I will not have to cooperate."

Last bullet "I know that I can be represented in the process..." These 3 sentences are repeated in the appeal section and do not appear to belong in Medicaid section.

Authorized Representatives. Will there be a place on the application to authorize the release of information to an individual who is assisting the applicant but who will not have the power to act for the applicant or sign an application for the applicant. This is the role of many legal advocates.

Thank you for the opportunity to make these comments.

Yours truly,

Vicky Pulos and Neil Cronin

vpulos@mlri.org

617-357-0700 Ext. 318