

*The Commonwealth of Massachusetts  
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Office of Medicaid  
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February 28, 2013

Office of Management and Budget  
Office of Information and Regulatory Affairs  
Attention: CMS Desk Officer  
Fax Number: (202) 395-6974  
Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov)

Re: CMS-10440, Agency Information Collection Activities: Submission for OMB Review,  
Comment Request

Dear CMS Desk Officer:

On behalf of the Office of Medicaid of the Executive Office of Health and Human Services (EOHHS), we appreciate the opportunity to respond to the request for comments on the Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies, published in the Federal Register on January 29, 2013.

More than six years ago, Massachusetts enacted landmark health reform legislation, Chapter 58 of the Acts of 2006, which has led to Massachusetts having the highest rate of insurance coverage in the nation. We were pleased that the major provisions of the Affordable Care Act (ACA), including the availability of subsidized health insurance to lower income individuals and the individual responsibility and employer responsibility requirements are based on our reforms. We are also pleased that the ACA offers states the opportunity to develop the computer systems and procedures necessary to support a seamless eligibility and enrollment system for all health coverage programs available to individuals seeking insurance.

The Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies is an important tool in such a seamless process and we offer the following comments on the draft applications as published:

**General Comments on both the paper and on-line applications**

**Privacy**

While the text of the privacy statement in the online application has not been provided, we are concerned about the following statement in Step 2 of the paper application, which provides: “Your information is private. We’ll use the information on this form only to see if you qualify for health insurance.” This statement could be interpreted in a way that is inconsistent with Medicaid regulations that permit Medicaid agencies to use and disclose applicant/member information not only for eligibility determinations but also for purposes directly connected to the administration of the plan. (See 42 CFR 431.301 and 302, 42 CFR 435.945(f), 42 CFR 435.907(e)) We recommend a correction of the paper application to read that applicable information will only be used or disclosed in accord with applicable laws, and a similar correction in the privacy statement for the online application, if it contains a similar statement that is inconsistent with Medicaid regulations.

**Application Unit and Household Composition**

We seek clarification that both the streamlined online and paper version of the application will be consistent with each other regarding which individuals residing in a home together may apply together.

For example, please clarify that both the online and paper application will allow the application filer, his/her partner and their shared and individual children to be included in the application unit.

In addition, the paper application allows the application filer to include his or her “children”. This could be interpreted to include only biological, adopted or step children. We seek clarification on the paper application that this could also encompass a minor for whom the applicant is taking responsibility within the meaning of 42 CFR 435.907 (i.e. the “child” of a “caretaker relative”).

In implementing the eligibility provisions of the Affordable Care Act, the Medicaid MAGI household composition poses the greatest challenge to system and process development. This is a significant change to how Medicaid is administered today and one of the more difficult things to communicate to families and households since MAGI households can differ greatly within a single family group or unit. Given that tax households are often trumped by living arrangements and relationships, such as married couples living together always being part of the same Medicaid MAGI household regardless of tax filing status, the Commonwealth suggests that CMS allow states to ignore tax households altogether and focus instead on relationships and living arrangements, as is done for non-tax filers.

The information necessary to be able to create household based relationship and living arrangements is being collected in the draft application and this is how Medicaid is administered today. Using tax filing status to determine a household adds unnecessary complexity and often tax information will not be useful to verify such households given that there are a number of exceptions for the creation of a Medicaid MAGI household. In addition, the draft application suggests that the overall IRS MAGI number cannot be used for a Medicaid/CHIP determination and can only be used for an APTC expedited determination. Therefore, in addition to tax information not being useful for household composition, it is also not useful for determining income. We respectfully request that states be given flexibility to focus only on relationships and living arrangements, and not on tax filing status, to determine a Medicaid household.

### **Social Security Numbers**

The applications do not address the exceptions for providing a Social Security Number. (See 42 CFR 435.910(h) for most such exceptions, including that Medicaid must be provided to individuals who have applied for, but not received a Social Security Number.) They also do not reflect the exception that certain non-citizens do need not provide a Social Security Number in order to receive emergency services. See 42 CFR 435.406(b) We recommend that these exceptions be reflected in the applications.

### **Immigration Status List**

The list of eligible immigration statuses on page 20 of the paper application and (we assume) linked from the online application does not include all of the immigration statuses listed as lawfully present in the 7/1/10 State Health Official (SHO) letter 10-006 and Section 431 of PRWORA as referenced in the SHO letter. To match the list in the federal guidance and regulations we recommend that the following statuses be added to the list:

- Native Americans born in Canada or U.S. territories
- Amerasians
- Iraqi and Afghan Special Immigrants
- Family Unity beneficiaries

### **Exemptions from the Five Year Bar**

The online application has a specific question regarding veteran status to determine whether an applicant is exempt from the five year bar. However, there are other statuses, such as being battered by a family member or a dependent of a battered individual, which a green card holder could have in addition to or prior to having a green card which would provide an exemption from the 5 year bar. We recommend that specific questions be added with regard to other statuses and conditions that allow exemption from the five year bar.

### **Medically Frail**

Individuals who are “medically frail” are exempt from mandatory enrollment in an Alternative Benefit Plan. 42 CFR 440.315(f) The draft applications include questions related to whether the

applicant has a disability or needs assistance with activities of daily living, but as proposed, the definition of medically frail appears to be broader than these two criteria. The draft applications currently do not include any questions specific to medical frailty. We recommend that CMS add a question to the applications in order to allow individuals to identify themselves for consideration as medically frail. Alternatively, we respectfully ask for clarification as to how and when CMS expects states to ascertain whether an individual is medically frail.

#### **Person 2 and on**

For purposes of the MAGI calculation, we suggest that the applications ask for relationship to not only the Head of Household, but also to other members of the household.

#### **Comments on the Online Application**

##### **Part IIIF Authorized Representative**

We assume that this section appoints an authorized representative other than the single filer under 435.907(a). The section only permits an applicant to designate an authorized representative and does not include documentation of other ways to become an authorized representative, such as a court ordered guardian. Further, the online application provides only a single signature line. As such, it appears to permit the single signer to designate an eligibility representative for other adults, again raising questions about the representative capacity of the single signer. In effect, it permits a person whose representative capacity is not clear at the outset to designate another individual to make eligibility decisions or access data of other adults who are applicants but not the single signer. Please clarify if CMS intends the single filer to complete this section or will require the actual applicant to do so. We also note that this section requires the e-signature of the single filer (or actual applicant, if that is what CMS intends). Such a requirement may trigger certain authentication requirements for e-signatures under state law to be repeated in the middle of the application, as opposed to the final signature line. We recommend clarification on each of these issues in both the online and paper application.

##### **Expedited Eligibility**

The online version of the application allows for an expedited path to APTC eligibility. Please clarify in the application under what circumstances this expedited path could apply to some but not all members of a Medicaid/APTC MAGI household. For example, could this pathway only apply to adults or parents but not children in such a household?

##### **Part I My Account**

Medicaid regulations require Medicaid agencies to accept applications signed by one individual falling into the categories set forth in 42 CFR435.907(a) but the representative authority of such a single signer to act on behalf of other adults is not clearly stated in the regulations. Will CMS and other federal agencies contributing data to the federal data services hub (DSH) recognize the single signer's representative capacity to perform a number of functions in connection with

eligibility on behalf of other adults in the household, based solely on a certification from the signer at the outset of the application that he or she has the permission of the other adults to perform such functions? Such functions include signing the consent to access IRS data on behalf of all individuals whose income must be verified (whether an applicant or not), viewing real time IRS and other federal agencies' verification data, and assuming other representative functions in connection with an application that could impact a non-signer's eligibility or privacy, such as application instructions about the duty to update circumstances, acknowledgement of statements about how data will be used (Part II and Part XX B 4 of application), selection of email notices (Part III E 3), designation of authorized representative (Part III F), claim of good cause to exempt cooperation on medical support orders (Part XX B 2), making tax filer statements (Part XX I) and receipt of access to other adults' eligibility or appeal notices.

### **Immigration Status**

The note in Part VII B Question 4 b that, if a person does not check that they have an eligible immigration status, *"encourage applicant to review list of eligible statuses available through help text and select option, if applicable"* seems to indicate the applicant would be asked to review the statuses and to choose one. It is not clear whether those that do check that they have an eligible status would also be asked to indicate their actual immigration status.

Part VII Questions 5 and 6 indicate that the applicant is asked to select an immigration document. The list of options, however, includes both documents and immigration statuses which could be confusing to the applicant. We recommend separating out the statuses and adding a Question "if you have one of the following statuses, please check the appropriate status".

We suggest adding the following to the list of possible documents that an applicant can select:

- I-918 Supplement A or B (U visa certification)
- I-914 Supplement A or B (T visa certification)
- Immigration Court Order
- Stamp in Unexpired Foreign Passport 30

### **Part XX B 4 Use of Income Data**

Medicaid regulations (See 42 CFR 435.945(f)) do not require state agencies to obtain consent to verify application information, rather, agencies must "inform" applicants that their application information will be used for verification purposes. Exchange regulations (See 455 CFR 155.335(k)) require consent to obtain tax return data for annual re-determination and also note that Exchanges must obtain such consent when performing renewal functions for Medicaid agencies. We request that CMS clarify in the application that the consent requirement applies with respect to eligibility for APTCs but not with respect to determining eligibility for Medicaid.

## **Part XX I Tax Filer Statement**

This section requires the tax filer's signature. Please clarify in the application whether the single filer, if not the tax filer, has the authority to do this, or whether the additional signature of the tax filer is required.

### **Comments on 508 CMS 10440 Appendix C FA Paper Application.pdf**

#### **Instruction Page**

We suggest adding "Please Print" so the written information will be as legible as possible.

We suggest changing the wording in the **What Happens Next** section to "If you don't have all of the *supporting* information we ask for, you should sign and submit your application anyway." We also suggest adding language here advising applicants that the agencies may request more information to make a determination. This will prepare applicants for possibly having to provide verifications.

#### **Page 1, Step 1, Tell us about yourself**

It is not clear whether the intent of this section is to gather information about an individual who can be considered the "head of household". The way it is currently presented is confusing as to who should be completing this section. The note that it should be an adult member of the family may lead someone to believe that they do not have to live with the individual. For example, a sister may be completing the application for a brother who lives elsewhere or a parent may be completing for an adult child who lives in the household but is going to have his own account separate from the parents.

Please add a way for the applicant to indicate the type of phone number being entered (Home, Work, Cell).

We suggest changing the wording of "Check here if you don't have a home address" to "Check here if you are homeless."

#### **Step 2, Tell us about your family**

In the paragraph starting "Anyone else who lives with you" we recommend separating the second sentence about not needing to file for taxes to apply because these items are completely unrelated and someone may not read the second sentence.

#### **Page 3, Step 2, Person 1**

We suggest that the introduction be changed to start with "Let's start with You. Step 2, Person 1 is about You. Please complete this section about yourself." We suggest then adding language about continuing to Step 2, Person 2 and so on if there are any other individuals in the household.

### **Page 3, Step 2, Citizenship and Immigration Questions**

We suggest changing the wording of the second line:

Go to page 20 for a list of eligible immigration statuses. ~~and~~ *If yes*, add the information *below gathered from your immigration documents/papers*.

We suggest adding a list of possible immigration documents in the Instructions for Immigration Status.

Please add to the paper application the additional immigration questions that are on the online application, including veteran status and whether the applicant has lived in the U.S. since 1996.

### **Page 3, Step 2, Caretaker Question**

We suggest making the sentence below bold so that it will stand out.

**Does PERSON 1 live with at least one child under the age of 19 and are they the main person taking care of this child?**

### **Page 3, Step 2, Absent Parent**

It is not clear whether the question “Does Person XX have a parent living outside the home?” is referencing Absent Parent information. If so, we would need information on the Absent Parent even if the custodial parent is claiming the children on income taxes (and we may need more information to inquire about health insurance provided by the absent parent). There is a mention of Absent Parent in the signature portion, but the section does not request information.

### **Page 4, Step 2, Wage Question**

We suggest adding a vertical line to the right of the Wage question to separate from the frequency question and to add the word “frequency?” before the frequency options.

### **Page 4, Step 2, Self-employed**

Should self-employed people answer the questions at the top of the page? If so, we suggest changing the wording for the self-employed section header to “If you are self-employed, please *also* answer the following questions.”

### **Page 4, Step 2, Other Income**

We suggest changing the wording of “Net Farming/Fishing” to “Farming/Fishing (Net Income)” and changing the wording of “Net Rental/Royalty” to “Rental/Royalty (Net Income).”

### **Page 4, Step 2, Deductions**

The online application appears to have more options and we suggest the additional options be added to the paper application for consistency.

#### **Page 4, Step 2, Yearly Income**

Please clarify in the questions whether the expected income is gross or net.

The questions need to be more specific for seasonal income as we need an average monthly income for current income.

The statement, “If you don’t expect changes to your monthly income, skip to Step 3”, could cause confusion if there are additional family members who have not been added. We suggest adding a statement, “If no other family members, skip to Step 3, or continue adding family members and then go to Step 3.”

#### **Page 4, Step 2, Income Questions**

We suggest separating out the question, “In the past 6 months, did person X..”, as it appears to be part of the second job section and could be missed by the applicant if s/he does not have a second job.

Is there any other information needed if they did answer check any response to a change in the past 6 months?

#### **Page 5, Step 2, Person 2**

We suggest linking to a list of possible other household member relationships (girlfriend’s child, etc.) to be sure all appropriate household members are included.

#### **Page 15, Insurance from Jobs**

We suggest moving the sentences “You can ask your employer for this information. See page 21” to the EIN section so it is clear what this is referring to.

#### **Page 16, Who does this job offer coverage to?**

We suggest adding “please list the individual if the employer only offers an individual policy, please list family members if the employer offers a family policy” after the question, “Who does this job offer coverage to?”

We suggest adding the suffix to the name column to be consistent with earlier questions.

We suggest changing the Name of Plan column heading to “Name of Insurance Company and/or Insurance Plan.”

#### **Page 17, American Indian/Alaska Native Questions**

We suggest adding the suffix to the name column to be consistent with earlier questions.

We suggest removing (First Name, Middle Name, Last Name) from the column on the right to prevent applicants from writing their names in that column, rather than in the response columns.



**Page 17, other sources question**

We suggest changing the wording to “Does the income reported in Step 3 include money from any of the following sources *in the left column below*?”

**Page 18, Step 5**

**Changes of Circumstances**

There is a note that the applicant must notify the Exchange of any changes but there is no indicated timeframe to submit changes. We suggest that the applications include the timeframe for submitting such changes.

**Renewal of Coverage**

We suggest separating the Renewal of Coverage section from the signature page because the applicant may not response to the questions. Additionally, if the applicant does not check anything off, does the renewal default to one year automatically? What are the repercussions if the applicant chooses the “Don’t renew my eligibility”? Are we supposed to automatically schedule a termination of benefits for this member/family at the end of a year?

**Page 18, signature**

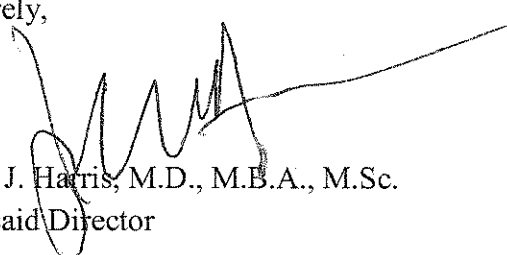
There are two blanks indicated for signature but no instructions on who must sign the application. The head of household only? All adults in the household?

Please clarify whether, if a person can only use a mark (“X”) for a signature, another person would be required to sign with them or whether can we accept their mark.

Please also see our questions above about the authority of the single signer.

We thank you for consideration of our comments and look forward to continuing to work with the federal government on successful implementation of the Affordable Care Act.

Sincerely,



Julian J. Harris, M.D., M.B.A., M.Sc.  
Medicaid Director