

September 4, 2012

Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development
Center for Medicare Services
Room C4-26-05,
7500 Security Boulevard,
Baltimore, Maryland 21244-1850.

RE: Document Identifier CMS-10433, CMS-10438, CMS-10439 and CMS-10440

Dear Sir or Madam:

Consumers Union, the policy and advocacy division of Consumer Reports,¹ writes to comment on a number of discrete issues of concern to consumers in the draft application data elements. In general, we support a system that offers a consumer-centric application that is simple and easy to use; one that provides welcoming and reassuring messages, connects applicants to available assistance, collects data and tracks activities of assisters, allows consumers to submit partially completed applications, provides the option for applicants to start, stop, and return at any time, identifies the differences between required and optional data, recognizes and accommodates various modalities, and has been consumer tested before it is put into use.

In addition to these general principles, we offer comments on the following specific elements:

- *Collection of Optional Race and Ethnicity Data.* Comprehensive race and ethnicity data is essential to measure and address health care access gaps and disparities. Applicants should be informed, nonetheless, that providing race and ethnicity information is optional and how such information will be used. The application form should request race and ethnicity data from the household contact, using the standards put forth by the Institute of Medicine (IOM) in its 2009 report, *Race, Ethnicity, and Language Data: Standardization for Health Care Quality Improvement*.
- *Privacy Statement.* We support the inclusion of a privacy statement. However, it should come at the very beginning of the application before the consumer begins entering any personal information. Privacy is a distinct, overarching issue and applies regardless of whether the applicant is seeking financial assistance. Thus, it should be kept separate from the financial assistance question. The privacy statement should make it clear what

¹ Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications. Its advocacy division, Consumers Union, works for health reform, food and product safety, financial reform, and other consumer issues in Washington, D.C., the states, and in the marketplace.

information will be collected, how it will be used, who it will be shared with, how it will be stored and for how long. This information should be written in plain English. In addition to the general statement, when SSNs are requested (or other application questions that would warrant a privacy reminder), a specific statement should provide an assurance of privacy that information will not be used for immigration enforcement purposes. Consumer testing will be important to determine the best content and format for explanatory privacy text and the distinct points in the application where specific privacy statements may be warranted.

- *Discrepancies.* We support the idea of asking applicants for information on any discrepancies on the application that may arise when the information provided by the applicant is compared to data in the hub or other information on file. Inquiring about any changes in the last year, as well as any anticipated changes, will help to limit, or at least anticipate, these discrepancies. Regardless of the modality in which the application is submitted (paper, online, telephone, in-person), applicants should be asked whether there have been or will be any changes in their family structure, such as a marriage or the birth of a child, or income changes, such as a new job or a decrease or increase in hours. They should also be afforded the opportunity to provide explanations of why a discrepancy exists, with the health insurance affordability program informing the consumer about the data source and the timeframe the data represents.
- *Employer-based coverage.* While we recognize the challenges that HHS faces in implementing this provision given the lack of available, reliable data on access to employer-based coverage and the statutory language, we have significant concerns with a requirement to elicit many of the proposed data elements from the applicants themselves. We recommend that in an online environment, only certain applicants should be asked to provide these data points, specifically those claiming an exemption from taking up employer-based coverage because it is unaffordable and/or does not provide minimum value. Those applying for coverage on other grounds, should be asked only the basic questions pertaining to their employer and if they receive any offer of coverage. The more complex questions related to the availability of affordable, minimum value coverage should be asked post-eligibility and only if an individual is determined eligible for Advanced Premium Tax Credits (APTCs).
- *SSNs of tax filer(s) if not provided.* Regulations require the collection of the SSN for a non-applicant in the household only if the non-applicant has an SSN, is a tax filer, and has filed a tax return for the year for which tax data would be used by the exchange in making an eligibility determination. Otherwise, the exchange may not require individuals not seeking coverage for themselves to provide an SSN. Also, it should be made clear that this is required for determining eligibility for APTCs, to verify income through tax data and other available data sources.

- *Special enrollment period.* If an applicant is applying for APTCs during a non-open enrollment period, he/she should be given a list of qualifying events that would trigger eligibility for coverage. Applicants should also have the option of selecting “other” and providing an explanation as to why they are applying for coverage outside the typical enrollment season.
- *Application summary.* We strongly support providing families with the ability to review and make changes to their applications prior to submission. The design of any of the application modalities should provide consumers with final control over their application information, allowing them to investigate any other options and potential consequences before formally submitting their application. Applicants should also have the ability to print and save a copy of their application for reference. This protection should not be accessible solely online and through the paper application, but copies should be available to those who submit over the phone or through some sort of assistance mechanism.
- *Separate portal for assisters:* It is critically important to establish a separate web portal for navigators, other assisters, and family members authorized by the applicant that not only tracks their activity for audit and evaluation purposes, but also provides them with status and other information needed to assist the individual on an ongoing basis.
- *Determination and notice(s).* Families should receive a full and complete eligibility notice, regardless of whether or not the members are all eligible for the same program. The notice should clearly lay out in simple format what each family member is eligible for, as opposed to starting with what they are ineligible for, and should also provide the basis behind the determination. Additionally, if families are split between various programs, an explanation of each should be provided. The notice could begin with a summary page that provides an overview of the coverage determination (e.g., children Mary and Alice are eligible for CHIP; parents Bill and Jan are eligible for APTCs), followed by more detailed information about each applicant on subsequent pages.
- *Qualified Health Plan Enrollment.* Those found eligible for APTCs (or Exchange coverage without a subsidy) will also need to choose a qualified health plan in which to enroll. While this could be woven into an online or even telephone application process, it will need to be done post-eligibility for those using the paper application. In applying online or via telephone, individuals eligible to enroll in a QHP should be given the option to stop and return to the plan selection and enrollment process at a later date if so desired. Applicants should be made aware of what their premium contribution will be, as well as any cost-sharing subsidies that they will also be entitled to. It will also be important to explain that the only plans to enroll in and still be eligible for the cost-sharing subsidies will be the silver plans and the implications if an applicant chooses another tiered plan.

- *Plan selection and confirmation.* Applicants should be given enough information to make an informed choice of plans based on the qualifications that are most important to them. For example, if an applicant wants to continue seeing her current physician, she should be able to search plans based on this criteria. In addition, applicants should have the ability to pick multiple plans to secure the most appropriate coverage for their family.
- *Amount of APTC applied toward premiums.* Applicants will be able to determine how much of the APTC they wish to apply towards the premium. Consumers may wish to take less than the full APTC for which they are eligible if they anticipate a rise in income, for example, and want to avoid a repayment obligation. Clear information needs to be provided to applicants early in the application process regarding the potential for having to pay back a portion of the premium tax credit if income ends up being higher than projected and, conversely, the potential for a receiving refund should income end up being below what was projected. This part of the application should plainly describe the required reconciliation that will take place, and the implications of changes in income over the course of a year on the APTC. It will be important that this information is conveyed clearly, but also in a manner that does not discourage applicants from seeking assistance with paying for health insurance coverage that would likely otherwise be unaffordable.

On behalf of Consumers Union, we welcome the opportunity to comment on these important regulations and look forward to future NPRMs on quality measures and due process rights.

Sincerely,



Julie Silas
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Consumers Union