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January 7, 2011

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attn: CMS-2346-P
P.O. Box 8016
Baltimore, MD 21244-8016

**Re: Comments on Federal Funding for Medicaid Eligibility
Determination and Enrollment Activities
File Code: CMS-2346-P**

To Whom It May Concern:

The National Immigration Law Center (NILC) specializes in the intersection of health care and immigration laws and policies, offering technical assistance, training, and publications to government agencies, non-profit organizations and health care providers across the country. For over 30 years, NILC has worked to promote and ensure access to health services for low-income immigrants and their family members.

NILC is submitting the following comments on Proposed Rule for Federal Funding for Medicaid Eligibility Determination and Enrollment Activities, published at 75 Fed. Reg. 68583-95 (November 8, 2010).

We support the enhanced federal funding to states to improve their electronic Medicaid eligibility determination and enrollment activities, to ensure compliance with the Affordable Care Act's requirements. We specifically support the changes in the proposed rule that will ensure that improvements to the states' Medicaid eligibility determination systems will be included in the enhanced federal funding, as those systems will be critical for connecting low-income populations to Medicaid or other affordable health coverage.

While we support the enhanced federal funding to states for these critical technology improvements, we recommend additional conditions and standards that states must satisfy in order to receive the enhanced match. These conditions would be intended to ensure that the electronic systems meet their purpose and that millions of Americans are able to easily apply and receive the appropriate, most affordable health coverage for which they are eligible. The requirements could also provide incentives to states to maintain a focus on beneficiaries in designing any technology improvements.

In the past decade, low-income immigrants and their family members consistently have faced application and redetermination problems due to Medicaid eligibility and enrollment systems and inadequate training of eligibility workers. This has resulted in lower rates of participation in the Medicaid and CHIP programs, across all states, of eligible children in immigrant and limited English proficient (LEP) families.¹

Some of the most common application and enrollment problems experienced by immigrant and LEP families applying for Medicaid include:

- not allowing family members to indicate whether they are applicants or non-applicants prior to the final eligibility determination;
- determining citizen children ineligible for Medicaid due to a non-applicant family member's immigration status or lack of a Social Security Number;
- not providing alternative methods for workers in the informal economy to provide proof of family income;
- requiring applicants and beneficiaries repeatedly to submit information they have already provided;
- not providing clear notice and an explanation in plain language of the reason for denial or termination;
- not providing written or on-line applications, or subsequent requests for additional information, or notices of eligibility determination in the applicant's or beneficiary's primary language;
- sending multiple notices on eligibility determinations with conflicting information (e.g., notice 1 may indicate that an applicant is eligible and the next day, applicant receives 2nd notice that he/she is not eligible);
- erroneous assumptions about a household's eligibility based on one family member's status, resulting in the denial of the opportunity to apply, and;
- document restrictions built into the electronic systems that deny any opportunity for an individual to prove eligible income, identity, citizenship or immigration status.

Although no eligibility and enrollment system could be designed to eliminate these problems completely, the enhanced federal funding should be provided only to states that demonstrate a recognition of these common application and enrollment problems and are attempting to correct or resolve these problems as part of their system improvements, or at a minimum, do not purposely erect these barriers in their system design.

NILC recommends that CMS add the following to its conditions and standards for the enhanced federal funding to ensure that states design and implement systems that will minimize application and enrollment barriers faced by low-income immigrants:

¹ *Who And Where Are The Children Yet To Enroll In Medicaid And The Children's Health Insurance Program?*, Genevieve M. Kenney, Victoria Lynch, Allison Cook, and Samantha Phong, Health Affairs, October 2010, available at: http://images.gmimage3.com/members/18967/ftp/Newsletter/Kenney_final.pdf

- 1) We recommend that states be required to demonstrate how their electronic enrollment and eligibility determination system enhancements will comply with Sections 1411(e) and 1411(g) of the ACA.

Section 1411(g) of the ACA prohibits unnecessary questions during the application process and limits the use of information provided to the Exchange. Section 1411(e) provides that certain procedures governing verification of eligibility in the Medicaid program, including its due process protections, shall apply to the Exchange. We recommend that CMS require as a condition of the enhanced federal match a demonstration that a state's Medicaid system enhancements ensure that applicants and non-applicants are requested to provide only information that is strictly necessary for determining eligibility. In addition, system enhancements should ensure that applicants are properly notified that their information will be shared with other agencies only for the purpose of eligibility determinations.

- 2) We recommend that states be required to demonstrate how their electronic enrollment and eligibility determination system enhancements will comply with Section 1557 of the ACA and the U.S. Department of Health and Human Services' Office for Civil Rights ("Tri-Agency Guidance").²

Section 1557 prohibits discrimination based on race, color, national origin, gender and disability for any health care activity or program where any part is receiving federal financial assistance, credits, subsidies or contract of insurance. The Tri-Agency Guidance provides guidance to states on how to ensure that enrollment forms and other eligibility processes do not ask unnecessary questions that have a disparate impact on families of specific national origins seeking to enroll eligible members.

We recommend that CMS require as a condition of the enhanced federal match a demonstration that a state's Medicaid system enhancements for online Medicaid and CHIP applications, portals, and procedures comply with the Tri-Agency Guidance and the ACA's non-discrimination requirements. Specifically,

- On-line application and enrollment procedures should ensure that individuals can seek all of the benefits for which they or their family members may be eligible without providing unnecessary information.
- On-line and system generated notices, instructions, and the applications should inform non-applicant parents, guardians, and caretaker relatives in plain language that they can apply on behalf of other individuals without submitting unnecessary information about themselves.

² *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, available at: <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/origin/policyguidanceregardinginquiriesintocitizenshipimmigrationstatus.html>

- On-line instructions should clarify in plain language when inquiries regarding citizenship, immigration status, and SSNs are required and when they are not required, and if required, how any such information may be used.
- On-line application forms should begin with a notice of privacy rights and the right to an interpreter and, at minimum, translated taglines directing limited English proficient (LEP) individuals to translated privacy notices, instructions for gaining access to interpreter resources.

States should be encouraged to share and adopt best practices in enrollment system designs and protocols that comply with the Tri-Agency Guidance and Section 1557 of the ACA.

- 3) We recommend as a condition of receiving enhanced federal funding that states demonstrate that their systems of verifying the citizenship and immigration status of applicants comply with federal requirements established by HHS to ensure consistency and non-discrimination.
- 4) For verification of citizenship or immigration status, income or other eligibility criteria, we recommend that states develop plans to ensure that non-electronic alternatives are available to verify eligibility of individuals whose information may not be easily verified electronically.

Specifically, states should be required to demonstrate that their system enhancements will provide alternative methods for applicants to document their income - beyond paycheck stubs, tax returns, and/or a Social Security Number. Systems should be designed to accept proof of income based on documents such as letters from employers or self-attestation – as part of the initial eligibility determination, not only in cases where there are inconsistencies in the electronic verification. As many low-income individuals are non-traditional workers (e.g., seasonal, contract, part-time workers), states must ensure that the systems designed provide these individuals equal opportunities to comply with the initial eligibility requirements. Without ensuring that these alternatives are incorporated into the initial eligibility determination process, many individuals will not be able to enroll in Medicaid from the outset and will remain uninsured.

- 5) We recommend that CMS require states to demonstrate as a condition of the enhanced match how their eligibility and enrollment systems will properly determine eligibility for low-income, lawfully present immigrants who are income eligible for Medicaid but whose immigration status makes them ineligible for federal Medicaid. Under existing federal Medicaid eligibility rules, many low-income lawfully present non-pregnant adults are not eligible for Medicaid for five years or longer. Unfortunately, the Affordable Care Act did not change eligibility restrictions for this group.

Thus, a lawfully present applicant with an income below 133% FPL may not be eligible for federal Medicaid and will need to be referred to the Exchange for affordable health coverage. States should demonstrate how their system enhancements will account for these

low-income immigrants in determining eligibility, how their Medicaid applications will be promptly delivered to the Exchange without requiring a new application be submitted, while also providing the applicant clear notice of the status of their application and eligibility.

Thank you for your consideration of these comments. If you have any questions, please contact Sonal Ambegaokar, NILC Health Policy Attorney at (213) 639-3900 ext. 114 or ambegaokar@nilc.org.

Sincerely,

/s/

Sonal Ambegaokar

National Immigration Law Center