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VIA ELECTRONIC SUBMISSION AT REGULATIONS.GOV

July 28, 2014

Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS-9941-P,
P.O. Box 8010,
Baltimore, MD 21244-8010

**Re: Notice of Proposed Rulemaking CMS-9941-P
Guidance on Annual Redeterminations for Coverage for 2015**

Dear Sir/Madam,

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, labor unions, 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 appreciates the opportunity to comment on the Marketplace Renewal Proposed Regulations, CMS-9941-P, (hereinafter referred to as the "NPRM" or "proposed rule") and *Guidance on Annual Redeterminations for Coverage for 2015* (hereinafter referred to as "2015 Guidance"). We appreciate the challenge CMS faces in preparing for the first marketplace coverage renewals while continuing to resolve inconsistencies from the first open enrollment period. We hope you find our comments and recommendations useful in finalizing regulations and a 2015 renewal process that ensure members of immigrant communities, and other consumers, are able to renew and retain affordable health coverage.

§155.330 - Eligibility redetermination during a benefit year.

Providing consumers with the ability to report changes, renew eligibility or take other actions required by the marketplace by mail is important for immigrant communities. Many immigrants lack ready access to the internet or the basic computer skills required to establish or update an online account, particularly on a system that does not support their primary language. During the first open enrollment

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period, many immigrants and others with limited credit history were unable to complete the remote identity proofing or immigration status verification processes without submitting identity documents. Issues with system functionality often made it difficult to upload documents, with the results that many applicants were required to mail documents to processing centers to complete their applications. This 'fall back' option may also prove to be necessary in the change reporting process.

Language access issues may also hinder immigrants' efforts to report changes through call centers - during the first open enrollment period we heard a number of accounts of long waits for interpreters and of applicants struggling to communicate their request for interpreters to English-speaking call center representatives. Such experiences are demoralizing, and discourage applicants from seeking or renewing coverage or reporting changes.

We understand that processing information received by mail can be more resource intensive than processing information received through other channels. Consumer's reliance on the mail can be reduced by ensuring ready access to multilingual call center operators, increasing the languages available on the exchange web sites and providing culturally appropriate consumer education.

Recommendation:

- All channels available for submitting an application, as set forth in §155.405(c)(2), should be available for change reporting and renewal.

§155.335 - Annual eligibility redetermination. The proposed rule modifies §155.335(a) to allow the marketplace to choose one of three methods for conducting annual redeterminations: 1. existing procedures described in §155.335(b) through (m), 2. alternative procedures specified by the Secretary of HHS that may be updated on an annual basis, as set forth in the 2015 Guidance, and 3. any alternative procedures approved by the Secretary of HHS that enable continued enrollment in coverage and meet other criteria.

We understand that technical limitations require some accommodation be made in the upcoming renewal process. However, the regulation should require that any alternative procedures developed by the Secretary be subject to a notice and comment process. Moreover, any alternative procedures approved for state-based exchanges should be required to meet all minimum federal standards.

Notices

Existing regulations and the procedures set forth in the 2015 Guidance call for a standard notice to be sent to consumers to advise them of the need to renew their coverage. The 2015 Guidance calls for two additional notices to be sent to

consumers in certain circumstances. We urge CMS to release the three notices for public comment and conduct consumer testing of the notices in time to incorporate feedback into the 2015 renewal process.

The content of the notices should make clear that they are not merely informational, and that consumers need to take action to update their information. The notices should describe the risk of losing premium tax credits (APTCs) and cost-sharing reductions (CSRs), or being required to make repayments if consumers fail to respond.

Given the notices' importance to consumers in retaining affordable coverage and receiving an appropriate amount of APTCs and CSRs, they should be considered vital documents, as defined in the CMS Language Access Plan, and translated into all frequently encountered and emerging languages.¹ Individuals who indicated a preference to receive information in a language other than English should receive translated notices in their preferred language, as well as in English. In addition, multilingual taglines should be included on all notices. The taglines should not simply direct individuals to call a phone number for free interpretation services, but should include an additional sentence indicating the urgency of the notice, and that the continuance of their premium tax credits and cost-sharing reductions may depend on whether they respond.

Many immigrants and other consumers will need to receive more 'touches' than a single notice before renewing their coverage, especially if the notice is not in their language. Before the renewal period, CMS should engage community partners to educate consumers about the upcoming renewal process, the opportunity to select a new plan, and the importance of keeping their information current.

Recommendations:

- Any alternative renewal procedures developed by the Secretary should be subject to a notice and comment process.
- Any alternative procedures approved for state-based exchanges should be required to meet all minimum federal standards.
- Notices should make clear that consumers need to take action, or face financial consequences.
- Notices should be translated into all frequently encountered and emerging languages.
- Multilingual taglines should be included in all notices, and should indicate the urgency of the notice and that a response is needed.

§155.335(j) - Re-enrollment. While we appreciate the importance of making it easy as possible for consumers to retain coverage, we oppose any re-enrollment

¹ CMS Strategic Language Access Plan (LAP) for Limited English Proficient Persons, (Feb. 28, 2014).

that would result in the loss of cost-sharing reductions or premium tax credits. Moreover, we do not agree with the hierarchy for automatic re-enrollment in a qualified health plan (QHP). There are substantial differences in plans, and their costs, at different metal levels and in different product lines. These differences are of fundamental importance to consumers. We believe it should be a marketplace, not an issuer, function to determine comparability of plans for auto-enrollment to ensure that such determinations are objective and in consumers' best interests. Moreover, CMS should define the criteria to be used in determining plan comparability, to include differences in plan benefits, benefit limitations and exclusions, provider networks, drug formularies, co-pays and other costs to consumers.

Recommendations:

- No individual or family who qualifies for cost-sharing reductions should be auto-reenrolled in any plan other than a silver plan.
- No individual or family who qualifies for premium tax credits should be enrolled in a QHP outside the marketplace.
- The marketplaces, not the issuers, should determine which plans are most comparable for consumer reenrollment.

If the hierarchy is retained, notices regarding auto-enrollment should be issued by the marketplace, not the issuers. Such notices should clearly articulate when the enrollee is at risk for losing cost-sharing reductions or premium tax credits and emphatically refer enrollees back to the marketplace to select a different plan. These notices should be translated into all frequently encountered and emerging languages, and include multilingual taglines with a call to action. Consumers who are eligible for APTCs or CSRs, and reenrolled into plans without them, should receive a special enrollment period to select a new plan.

Again, we thank you for the opportunity to comment. If we can provide any additional information, please contact me at (213) 674-2814 or lessard@nilc.org.

Respectfully,

Gabrielle Lessard
Health Policy Attorney