

July 31, 2014

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell:

As organizations that have worked hard to ensure the efforts of the Department of Health and Human Services (HHS) to fully implement the Affordable Care Act are successful, the undersigned organizations look forward to working with you to ensure all eligible immigrant families are able to successfully enroll in affordable health coverage. We commend the Department's efforts to promote enrollment and address the problems encountered by immigrant and mixed-immigration status families, and we are encouraged by your commitment to improving the application process.

However, we would like to bring to your attention serious barriers that continue to keep an untold number of eligible immigrant families from obtaining coverage. There is still time to resolve some serious problems lingering from the Federally-facilitated Marketplace's first open enrollment period, such as individuals stuck in the inconsistency process and incorrect eligibility determinations for immigrants under 100% FPL. We describe these problems and recommended solutions to them below. The remaining problems identified below—identity verification barriers, immigration status verification problems, and language access barriers—are also of great concern as the next open enrollment period is fast approaching. We hope you will act expeditiously to remove these barriers so eligible families may obtain coverage, as is required under the law.

Individuals Stuck in the Inconsistency or Data Matching Process

Currently, there are more than one million applications of immigrant families in the inconsistency process due to problems verifying citizenship or immigration status. HHS has begun sending notices to these individuals, in English only, warning that they have thirty days to submit documentation or they will no longer receive the subsidies that make their insurance affordable. Without these subsidies, it is highly unlikely that these individuals will be able to keep their coverage. Therefore, potentially more than a million eligible individuals in immigrant families may lose their subsidies, and as a result, lose their coverage, because they failed to respond to an additional request.

A significant percentage of families receiving these notices are limited English proficient and read, write and speak a language other than English or Spanish. We fear that these families have not received adequate notice in a language they can understand about the status of their application or the supporting documentation needed to resolve their inconsistency. Also, many of

these individuals have already mailed in or uploaded additional documents and are less likely to resubmit copies of their documents.

HHS should allow these individuals to keep their subsidies and their coverage until HHS has fully fixed the system errors in both the immigration status verification system; the programming of eligibility for subsidies for lawfully present individuals under 100% FPL; and is able to provide adequate, language appropriate notices about the additional information needed to process their application. It is unacceptable for individuals to lose their subsidies, and become unable to afford coverage because of mistakes, technical errors, and language access problems.

Incorrect Eligibility Determinations for Immigrants Under 100% Federal Poverty Level

Many lawfully present immigrants with income under 100 percent of the federal poverty level (FPL), who are ineligible for Medicaid based on their immigration status, have experienced additional barriers to marketplace coverage. These individuals are eligible for premium tax credits even though their income is below the poverty level. However, system errors continue to lead many of these individuals to receive inaccurate eligibility determinations. They are either denied the premium tax credits and cost-sharing reductions that make insurance affordable, or are referred to Medicaid, despite not meeting its immigrant eligibility requirements. This has affected lawful permanent residents subject to Medicaid's five-year bar as well as other lawfully present immigrants who are ineligible for Medicaid, such as applicants for asylum. While workarounds have recently been added to help trigger an accurate eligibility determination, such as adding a question to the application for individuals who received a Medicaid denial to indicate that the denial was due to immigration status, the workaround does not help all individuals in this situation and the fundamental glitch in the system remains. As a result, many eligible lawfully present immigrants with income under 100% FPL have been unable to enroll in health insurance because they cannot afford the cost of full-price coverage.

HHS should continue working to fix all of the system problems so that individuals may receive an accurate eligibility determination without needing to use a workaround. Until these problems are fully fixed, HHS should create another workaround for individuals who do not apply for Medicaid because they know they are ineligible, ensuring they receive an accurate eligibility determination for subsidies while their immigration status is verified. At the very least, HHS should notify individuals who may not have enrolled in a qualified health plan (QHP) because they were impacted by this problem, allow them to resubmit an application or submit additional documentation if necessary, and provide these individuals with a hardship exemption for the months they went without coverage due to this problem.

Identity Verification Barriers

HHS has imposed rigorous identity proofing requirements for persons submitting an application online. These requirements are delaying or deterring many low-income individuals, especially immigrants, from completing an application and enrolling in a QHP. In order to submit an application, the application filer's identity must first be verified using data maintained by the credit reporting company Experian. Many immigrants have limited, and in some cases

nonexistent, credit history, making this electronic verification process impossible. This requirement is particularly problematic for recent immigrants who have not been in the U.S. long enough to establish a credit history. It is also a problem for mixed-status families in which an undocumented parent is attempting to enroll eligible family members, often his or her U.S. citizen children. Making matters worse for many immigrant families, Experian does not provide adequate language access to individuals with limited-English proficiency (LEP) who speak languages other than Spanish; in fact, Experian offers no oral interpretation services in non-Spanish languages.

While we acknowledge that HHS has expanded the types of documents that individuals may use to prove their identity, such as a foreign passport or foreign identity card, HHS could make the identity proofing process more successful by including additional documents that low-income individuals are more likely to have, such as a lease or telephone bill. Moreover, unlike the verification processes for citizenship, immigration status, and income, which include due process protections through an “inconsistency” process that allows individuals to complete their applications while they provide additional proof of eligibility, individuals whose identity cannot be immediately verified are not allowed to proceed with the application process. Individuals whose identity cannot be immediately verified encounter a hard stop in the process and are not permitted to submit an application online and enroll in coverage pending verification of their identity. Countless individuals have experienced unnecessary barriers or have been unable to enroll in coverage for which they are eligible as a result of the identity verification process.

Over the long term, HHS should consult with other federal agencies, and technology experts that have experience serving individuals with low-incomes to identify a strategy to protect consumer privacy but that does not deter or delay eligible people from submitting applications (stakeholders representing consumer interests should also be consulted). This could include investigating other forms of identity proofing, and implementing an alternative application process that is not reliant on dynamic verification of eligibility data, making a rigorous identity verification process unnecessary.

In the short term, HHS could address the identity verification problems by implementing a number of fixes, including: requiring Experian to provide language assistance services in languages other than English and Spanish, tapping into other sources of data than just credit histories; further expanding the list of documents that individuals may use to prove identity; allowing enrollment assisters (including Navigators, In-Person Assisters and Certified Application Counselors) to act as intermediaries between Experian and the consumer and to review identity documents; and improving the paper application process, the alternative for people who have problems verifying their identity, so it allows for functions currently only available online or over the phone such as applying for Special Enrollment Periods and reporting changes.

Immigration Status Verification Problems

The Federally-facilitated Marketplace was designed to communicate in real time with U.S. Citizenship and Immigration Services (USCIS) to verify a lawfully present applicant’s

immigration status, as well as citizenship for individuals whose citizenship cannot be verified by the Social Security Administration (SSA). Unfortunately, the verification system has failed to accurately verify the immigration status of nearly 1.5 million eligible immigrants and naturalized U.S. citizens, in large part because of technological glitches. Although several workarounds were added in the last month of open enrollment, we remain concerned that the fundamental technological problems still are not fully fixed.

Additionally, we are concerned that consumers and assisters have not been adequately informed both of the workarounds that have been added, and the status of applications that have been pending since before the workarounds were implemented and for which the consumer uploaded or mailed in additional documents. We are especially concerned about non-Spanish LEP individuals who do not receive any notices in a language they can understand.

Prior to the next open enrollment period, HHS should identify and fully fix the remaining problems with the citizenship and immigration status verification process. Until then, HHS should disseminate information to assisters and consumers regarding temporary workarounds, including instructions for accessing these workarounds, as well as encourage individuals who encountered problems to try submitting their application anew. HHS should also establish methods for individuals to check the status of their document review and provide consumers with notices in their preferred language.

Language Access Barriers

For LEP consumers who speak a language other than Spanish, the options for enrollment are limited. Throughout the open enrollment period, only two out of the four avenues for enrollment—the call center and in-person assistance—were available to these consumers. Reports of poor quality interpreting services through the call center’s language line, weeks-long waiting lists for in-person assistance with bilingual assisters and interpreters, and the complete failure of Experian to provide interpreting services to non-English and non-Spanish speakers indicate a dearth of language assistance services. The Affordable Care Act expands the application of existing civil rights protections to prevent discrimination in health care, and HHS regulations impose affirmative obligations on marketplaces and Qualified Health Plans to provide “meaningful access” for LEP individuals. However, as we witnessed during the first year of enrollment, language access was insufficient, and HHS has yet to promulgate standards for ensuring meaningful access for LEP consumers. Additionally, HHS would be more effective in its outreach to consumers if it collected information on the preferred language of not just the household contact, but of each applicant as well.

Increasing health care coverage for all Americans, including immigrants, is integral to the success of the Affordable Care Act. As such, addressing as many of the barriers described above before the next open enrollment period should be a top priority for your Department. These improvements would also benefit immigrant families nationwide by providing leadership for those state-based marketplaces struggling with similar issues. We urge you to use the resources available to you to eliminate the barriers that immigrant families have faced while trying to access coverage and fully comply with the law.

Thank you for your time and consideration.

Sincerely,

National Organizations

AFL-CIO
Alliance for a Just Society
American Federation of State, County & Municipal Employees (AFSCME)
Asian & Pacific Islander American Health Forum
Asian American Legal Defense and Education Fund
Asian Americans Advancing Justice | AAJC
Association of Asian Pacific Community Health Organizations (AAPCHO)
Children's Defense Fund
Community Catalyst
Dignity Health
Empowering Pacific Islander Communities
Families USA
Farmworker Justice
First Focus
Georgetown University Center for Children and Families
Heartland Alliance for Human Needs & Human Rights
Hmong National Development
Ms. Foundation for Women
National Council of La Raza (NCLR)
National Health Law Program
National Immigration Law Center
The National Korean American Service & Education Consortium (NAKASEC)
National Latina Institute for Reproductive Health
National Tongan American Society
National Women's Law Center
Red Mexicana de Lideres y Organizaciones Migrantes
Samoan National Nurses Association
Sargent Shriver National Center on Poverty Law
Service Employees International Union (SEIU)
Southern Poverty Law Center
UNITED SIKHS
Young Invincibles

Alabama

Alabama Coalition for Immigrant Justice

Arizona

Asian Pacific Community in Action

California

Asian Americans Advancing Justice - Los Angeles
Asian Health Services
California Immigrant Policy Center
California Latinas for Reproductive Justice
California Pan-Ethnic Health Network
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
LIBRE
Operation Samahan, Inc.
The Children's Partnership
The Greenlining Institute

Connecticut

Connecticut Voices for Children

Florida

Farmworker Association of Florida
Florida Immigrant Coalition
Florida Legal Services
Latin American Coalition

Georgia

Center for Pan Asian Community Services
Medlink Georgia

Hawaii

Pacific American Foundation

Illinois

Access Living
AgeOptions
AIDS Foundation of Chicago
Alliance of Filipinos for Immigrant Rights and Empowerment (AFIRE)
Asian Health Coalition
Asian Human Services
Asian Human Services Family Health Center, Inc. (AHSFHC)
Cambodian Association of Illinois
Campaign for Better Health Care
Casa Michoacan Chicago
Centro de Informacion
Centro de Trabajadores Unidos
Chinese American Service League
Community Health Partnership of Illinois
DeKalb County Health Department
ECIRMAC

EverThrive Illinois
EZRA Multi-Service Center
Family Focus
Hanul Family Alliance
HIAS Chicago
Hispanic American Community Education and Services (HACES)
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
Indo-American Center
Instituto del Progreso Latino
Jewish Child & Family Services
Korean American Community Services
Mano a Mano Family Resource Center
Mujeres Latinas en Accion
Muslim Women Resource Center
Northwest Side Housing Center
P.A.S.O. - West Suburban Action Project
PODER
PrimeCare Community Health, Inc.
SEIU Healthcare Illinois Indiana
South Asian American Policy & Research Institute (SAAPRI)
South-East Asia Center
Uganda Community in Greater Chicago
United African Organization

Indiana

Immigrant Support And Assistance Center (ISAAC)

Kentucky

Covering Kentucky Kids and Families
Family & Children's Place
Family Health Centers, Inc.
Kentucky Equal Justice Center

Massachusetts

Health Care For All (Massachusetts)
Massachusetts Law Reform Institute
South Cove Community Health Center
UU Mass Action

Maryland

CASA de Maryland, CASA de Virginia

Maine

Consumers for Affordable Health Care
Maine Equal Justice Partners

Michigan

Accion Buenos Vecinos
EMU: Healthy Asian Americans Project
Michigan League for Public Policy
Michigan United

Minnesota

Children's Defense Fund - Minnesota
Hmong American Partnership
Immigrant Law Center of Minnesota
TakeAction Minnesota

Mississippi

Children's Defense Fund - Southern Regional Office
Steps Coalition

North Carolina

North Carolina Community Health Center Association
North Carolina Justice Center

New Jersey

Family Voices NJ
New Jersey Citizen Action
New Jersey Policy Perspective
PICO New Jersey
Statewide Parent Advocacy Network

New Mexico

La Clinica De Familia
New Mexico Asian Family Center
New Mexico Center on Law and Poverty

New York

Adhikaar
Coalition for Asian American Children & Families
Korean Community Services of Metropolitan New York, Inc.
New York Lawyers for the Public Interest
SEPA Mujer Inc
The New York Immigration Coalition

Ohio

Asian Services In Action

Oklahoma

Morton Comprehensive Health Services

Oregon

Asian Pacific American Network of Oregon

Pennsylvania

Health Federation of Philadelphia

Seamaac, Inc.

Rhode Island

Center for Southeast Asians

Texas

Children's Defense Fund - Texas

Insure Central Texas, a program of Foundation Communities

Utah

National Tongan American Society

Washington

Family Health Centers

Healthcare Committee, WA State Coalition for Language Access

Northwest Health Law Advocates

OneAmerica

Wisconsin

Wisconsin Council on Children and Families

CC:

Andrea Palm, Office of the Secretary (OS), HHS

Marilyn Tavenner, Centers for Medicare & Medicaid Services (CMS), HHS

Angela Botticella, OS, HHS

Jackie Garner, Center for Consumer Information and Insurance Oversight (CCIIO), CMS, HHS

Cindy Mann, Center for Medicaid and CHIP Services (CMCS), HHS

Andy Slavitt, CMS, HHS

Jocelyn Samuels, Office of Civil Rights (OCR), HHS

Lisa Wilson, CCIIO, CMS, HHS

Cecilia Muñoz, Domestic Policy Council (DPC), White House Office (WHO)

Felicia Escobar Carrillo, DPC, WHO

Julie Chavez Rodriguez, Office of Public Engagement (OPE), WHO