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November 15, 2013

Office of Management and Budget
Office of Information and Regulatory Affairs

RE: **Form Number: CMS-10466 (OCN: 0938-NEW)**

Dear Sir/Madam:

The National Health Law Program (NHeLP) is a public interest law firm working to advance access to quality health care and protect the legal rights of low-income and underserved people. NHeLP provides technical support to direct legal services programs, community-based organizations, the private bar, providers and individuals who work to preserve a health care safety net for the millions of uninsured or underinsured low-income people. We are pleased to submit the following comments in response to the October 16, 2013 request for comments regarding Centers for Medicare and Medicaid Services' application forms for exemption requests for from the Affordable Care Act's (ACA) shared responsibility requirement.

Comments on Supporting Statement

A. Clear explanation on consumer education and application forms is required for exemptions that are available via HHS or only via IRS

Because there are certain exemptions to the shared responsibility requirement that can be obtained exclusively from IRS and not the marketplaces, we recommend that HHS make this clear to consumers on all exemption applications, FAQ's related to the exemption applications, and where information about the shared responsibility payment is available on healthcare.gov or state based exchanges' web portals. We also recommend that call center staff, navigators and assistors be specifically trained by HHS on which exemptions must be applied for via HHS and which ones are limited to the IRS. We recommend that any information about exemptions be explicit about the individuals who are "automatically" exempt – those whose incomes are below the filing thresholds – so that this is a threshold answer for consumers seeking to apply for an exemption before they start the application process. We also recommend that marketplace call center staff be able to refer consumers who are eligible for the IRS specific

exemptions directly to call center staff at the IRS for assistance, or that call the marketplace call center staff be trained so that they can equally explain the IRS specific exemptions, as well as those available through the marketplace, to the consumer. HHS should ensure that state based exchanges - including those who opt to use HHS' "federal managed services"- create materials (including on the website) and train call center staff regarding the eligibility and appeals process for all exemptions as is required under 45 CFR §155.625(b)(1)(iii).

B. Use of SSN and citizenship and immigration information

Per 45 CFR § 155.610(e), an applicant for an exemption who has a SSN must provide his her SSN. But this requirement is not made very clear on the current draft application forms. In addition, the application forms also do not make it clear that an SSN is not required for an application filer who is not seeking an exemption for himself or herself (45 CFR §155.610(e)(1)). If an application filer's SSN is needed to verify income per 45 CFR §155.610(e)(2), the application form should explain this to the application filer where the SSN is requested on the application, which the forms currently do not.

The supporting statement indicates an SSN "will be collected for purposes of verifying incarceration status, citizenship, and household income and family size... as well as for purposes of tax administration." None of these reasons are clearly explained on any of the application forms and should be since consumers may believe their SSN is being used only to verify their income.

It is also unclear why citizenship status must be verified (via an SSN) in order to obtain an exemption. We object to the request for SSN for this purpose as well as the request for immigration status and documents on several of the exemption forms. Immigration status is relevant for only one exemption category – for tax filers who are not lawfully present and excluded from the individual mandate. Only the IRS will be administering this particular exemption so there is no need for HHS to request any information about citizenship or immigration status for any of the other exemptions. Moreover, due to the IRS' strict confidentiality rules under Section 6103 of the Internal Revenue Code, the IRS does not collect immigration or citizenship status of tax filers because it is contrary to the IRS' goal of ensuring everyone is paying their regardless of their immigration status. As a result, it is unclear why citizenship or immigration status is needed to implement the shared responsibility requirement or exemption process.

C. Verification & Confidentiality

Many of the details regarding how and when HHS (or the state exchanges) will verify certain information and when consumers will be asked for (or allowed to) provide documentation of required information is unclear based on the information available on the application forms. The application forms should make clear that the information provided on the application will be electronically verified and for what purpose. The application should also explain to the consumer the process if his/her information cannot be verified electronically and how he/she can provide additional documentation under the inconsistency process (45 CFR § 155.615(g)). We recommend that the inconsistency process (in 45 CFR 155.615(g)) and related forms and instructions, especially in order to substantiate hardship, not impose undue burdens or barriers for a consumer to obtain an exemption.

The application should also provide clear notice that the applicant's information (and not the application filer's) will be shared with federal agencies to verify his/her information. This is important because

many of the exemption requests relates to very personal information about income, who is in the household, religious affiliations or whether one is incarcerated or not. It is critical that consumers be assured that their information is protected and will not be shared unless absolutely necessary. HHS' exemption forms should also be evaluated as to their compliance with 45 CFR § 155.610(a) and Section 1411(g) of the ACA to ensure application questions are "strictly necessary" to determine eligibility for the exemption are asked on the application. HHS' exemption forms may also need to comply with the IRS' confidentiality protections, especially if information is shared between the IRS and HHS and if certain exemptions can be approved by either HHS or the IRS.

Furthermore, the application should notify consumers that their information may be periodically verified per 45 CFR § 155.620. Yet is unclear from the regulation and the supporting statement what HHS and the IRS would consider the optimum frequency of verification. Consumers should know how often their information may be periodically be verified and should provide consent on the application.

Finally, better explanations are needed on the application and in FAQs regarding what information consumers will need to provide to be eligible for each type of exemption.

D. Consumer accessibility and readability

Our overarching concerns regarding all the current exemption forms are that they are not consumer friendly or easy to understand or to complete, are overly complicated and often ask unnecessary questions, and are not written in plain English at a lower literacy level, as is required. In the current format, the forms would also be very difficult to translate for limited English proficient (LEP) consumers as is required by 45 CFR § 155.600(d).

The supporting statement indicates that exemption application forms may be electronic or paper applications. We strongly recommend that both formats of the application be consumer tested more than once before the forms are finalized. We support the plan to have the on-line exemption application questions be dynamic, asking only those questions that are relevant. However, much more work needs to be done on the paper application to ensure the same goal. We also recommend that consumer testing on the exemption applications be done in non-English languages and include more than Spanish prior to official publication. Section 1557 of the ACA prohibits discrimination based on national origin; the lack of translated materials and forms, whether in paper or on-line formats, for exemption requests will violate this requirement. We applaud HHS's plan to conduct consumer testing on exemption eligibility notices that are issued but also recommend consumer testing be done on these exemption application forms and that the testing be done in Spanish and other non-English languages to ensure compliance with language access requirements.

E. State acceptance of exemption applications

For the 18 states that will be utilizing HHS' "federally-managed service" to process exemption requests, the supporting statement indicates that the states will still be required to accept the exemption applications. We recommend that HHS provide states certain minimum standards as to how applications for exemptions can be accepted from consumers and efficiently transmitted to HHS for evaluation. As mentioned earlier, HHS should require state-based marketplace staff be properly educated and trained on the eligibility rules for each exemption and where to apply for each exemption. It is most likely that state based exchange staff will be the first ones consumers ask about the

exemption process and how to avoid the tax penalty, and thus should be well trained and supported to provide consumers accurate information.

Below are general and specific recommendations and comments regarding the application forms for some of the key exemptions that we reviewed from the perspective of low-income and other vulnerable consumers who will likely be seeking an exemption from the shared responsibility requirement.

General Recommendations for all application forms

- Simplify each application and limit the number of pages. All forms are currently too long, have unnecessary and repetitious information included but often do not provide clear instructions on how to use the form, why certain questions are asked, and what happens after the application is submitted.
- We have concerns about the readability and literacy level of all the forms and whether they comply with the accessibility requirements under 45 C.F.R § 155.600(d). For example, there is not enough white space on each page and the first page is crammed with too much information that is not necessary to have on the first page. The forms should also be translated in multiple languages for LEP consumers.
- The title of each form should be simplified to just name the type of exemption.
- Do not use the term “shared responsibility payment.” Recommend being clearer and using exemption from the “tax penalty.” Recommend consumer testing other synonyms.
- It is unclear why there would be different exemption forms for federally-facilitated marketplaces vs. state-based marketplaces. This is especially true if 18 states with state-based marketplaces, such as California, are using the “federal managed service” for determining exemptions (according to the supporting statement).
- Consider using the same application for certain exemptions – such as hardship and affordability - as most consumers may not easily make a distinction. Add some initial questions at the top of the application so that they (or HHS) can assess which exemption they fall under and don’t unnecessarily fill out the wrong application form.
- Create a separate exemption request form if an affordability exemption is needed specifically because the offered employer coverage was “unaffordable.” This is a separate test and requires additional information from the employer that is not required for those who do not have access to employer coverage and are only claiming the marketplace plans are unaffordable to them based on income alone.
- Add page numbers at the bottom of the form or make the font at the top larger and easier to see.
- Delete the “initial here” section that’s on every page of the application. Most consumers will likely miss this so. Why is this necessary? If a consumer fails to initial every page, will it be considered an incomplete application?
- Make it clear on page 1-2 of every type of exemption application that an individual may be eligible for an exemption even if he/she does not have an SSN. (Mentioned on the hardship application form, page 2).
- Revise the request for Social Security Number to “Tax Identification Number” which is inclusive and consistent with federal law.

- The request for SSN or TIN should be marked as optional for application filers and there should be a clear explanation of how a consumer's SSN will be used for this form next to the request for SSN per federal regulations as well as the Privacy Act of 1974 requirements.
 - Language currently used on the various applications explaining the request for SSN is inconsistent.
 - The affordability application forms state that SSNs can be helpful “even if you don't want an exemption” which is confusing and not relevant to someone completing the application, who most likely wants an exemption.
 - Use the language in the hardship application form as the starting point for revising all other applications. *“Providing your SSN can be helpful since it can speed up the application process, but you're not required to have an SSN to get an exemption.”*
 - There was also conflicting information in the various forms as to whether an SSN was absolutely necessary to request an exemption. Is it required to verify someone's income? If so, what happens if the consumer earns income that cannot be electronically verified?
- There should be no request for citizenship or immigration status on any of the HHS exemption forms. There is only one statutory exemption related to immigration status that someone can only apply for via the IRS, and the IRS will likely not ask for citizenship or immigration status to process that exemption request. Please remove all references in the instruction pages or within the application asking for consumers' immigration or citizenship status or immigration document number. This violates 45 CFR §156.610(a) and Section 1411(g) of the ACA by asking for information that is not strictly necessary to determining eligibility for an exemption.
- Make it clear as part of the cover page that this form is to be used to get a certificate of exemption so that they will not face a tax penalty. The information about catastrophic coverage is secondary and should be provided on the notice that their exemption has been approved and where they can go to apply for this coverage. This information can also be added to an FAQ that's separate from the application form itself, rather than on the cover page.
- To comply with 45 CFR §§ 155.610(i) and 155.610(j), add this explanation on the first page (from page 2 of the religious sect exemption application) to the application form for every exemption.
 - “If you get this exemption, we'll give you an Exemption Certificate Number that you'll put on your federal income tax return.”
 - **Suggest replacing that sentence with this revised language: “If your request for an exemption is approved, you will get an “Exemption Certificate Number” with your approval letter. Keep this for your records. You will need to write that number on your federal income tax return at the time you file taxes.”**
 - This was the only application form where this was explained and would be a very useful and helpful piece of information as to why the need to complete this form.
- The right to appeal a decision about the consumer's request for an exemption should be on the first page and clearly stated. On every application form, the right to appeal is not provided until the signature block. This information should be included on the first page.
- Add an explicit explanation on the first page as to who should and should not use the particular application as it not at all clear except for the heading.

- Make clear in every exemption application that those whose incomes fall below tax filing thresholds are already exempt and do not need to complete an application. Provide a list of the filing thresholds for that year, especially on the affordability exemption application. It is likely low-income individuals who don't file taxes will be confused and may believe they must request an exemption or face a tax penalty. Best to be explicit from the start and avoid confusion.
- Use this bullet (from the hardship application) on all applications on the first page because it is not clear otherwise:
 - ***“You may use one application to request an exemption for all members of your tax household.”***
- In the section “Why do we ask for this information?” on the first page of each application, retain the existing language about keeping information private and secure. Add which agencies the information will be shared with and that it will be used only to determine eligibility.
- Ask the RACE question (#8) BEFORE the Hispanic/Latino question (#9) so that the order is reversed. The current order could be interpreted incorrectly to mean that HHS is most concerned with the Hispanic/Latino community over other races or lead to fear as to why that may be.
- For question #7, if an individual is from South or Central America, what box should he/she mark? Suggest adding 2 additional boxes – South America and Central America - under Hispanic/Latino rather than assuming they will indicate “other.”
- Add separate boxes for “South Asian” and “Southeast Asian” and remove “Asian Indian” and “Other Asian” under the Race question. Since other API populations are being specifically named, better to be more inclusive with specific categories. Also, “Asian Indian” is not a commonly used term and is not inclusive of those from Pakistan, Sri Lanka, Tibet or other countries near India. It also adds confusion since “Asian Indian” is placed under “American Indian or Native” and these two “Indian” categories are not comparable or close in relationship in anyway. Recommend simply revising “Asian Indian” to “South Asian.”
- On the signature page of every application, revise the phrase *“If you don't agree with what you qualify for”* to ***“If you don't agree with the decision,”*** “Qualifying for an exemption” is not plain English.
- Why is the page where Authorized Representatives and navigators can sign in each exemption application titled “Appendix C”? Where is Appendix A and B and if those 2 appendixes are not relevant for certain applications, it is confusing to have this page marked Appendix C because consumers may think those pages are missing and still need to be completed. Why is the page not just another page of the application rather than an appendix page?

Comments and suggestions on specific exemption application forms

A) Application for Exemption from the Shared Responsibility Payment for individuals Who are Unable to Afford Coverage and Are in Certain States with a State Based Marketplace

- Suggest revising title of this form to “Affordability Exemption Request Form”
- On front page of application:
 - Explain in first paragraph how “unaffordable” or “affordability” is defined using plain English (not referring to actuarial value which most consumers do not understand).

- Eliminate and revise the first two bullets and the section heading “use this application...” Clearly state that this application form should be used to request a certificate of exemption for those in the tax household who did not or do not have minimum essential coverage for the past tax year. The current language on the forms are vague, confusing and do not help explain why the consumer would need to use this form.
- Refer individuals to use the hardship form if there are special circumstances that make insurance unaffordable or make it more clear for consumers which form they should use.
- Remove request to the consumer for information about the premium cost of the bronze plan. This information should come directly from the relevant exchanges, not the consumer. If the consumer does not have coverage and is asking for an exemption, it is likely he/she is not familiar with the marketplace, what plans are available, or hasn’t been on the web portal since the beginning of the year. This request will likely confuse consumers and provides an undue burden on them to seek this information when there are better and more accurate sources of this information than the consumer.
- Revise the term “exemption process” under “What happens next?” This is vague and unclear.
- Explain clearly under “What happens next?” that this request for an exemption will be evaluated and a decision will be provided in 1-2 weeks, which they can immediately appeal if they disagree with.
- The request for income information for everyone in the family is not explained since there is no definition of affordability or how it relates to the family’s income. Also, this information should not be requested from the consumer unless their household income cannot be electronically verified or they indicate that on the application.
- Why are the policy numbers of job-related health insurance required of consumers? If they are not enrolled in the employer coverage that is offered, asking them to obtain the policy number from the employer is an unnecessary burden.
- A request for an exemption based on the consumer’s claim that coverage offered by the employer is not affordable to them (based on the 8% rule) should be a separate exemption form from those who do not have access to employer coverage and are primarily claiming that the marketplace plans are unaffordable to them.
- On page 2, under Step 2 “Tell about your family.”
 - This section does not make it clear why other family members’ information is being requested. How do they know if certain people in their family need an exemption or not? If the tax filer is completing this form, he or she would assume they are requesting an exemption for everyone in their tax household who doesn’t have minimum essential coverage. A tax filer is likely to assume those in the household who are insured do not have to be included on this application form for an exemption since they have coverage.
 - The language in this entire section is not clear, adds further confusion (even to an educated consumer) and it is unclear how it helps the family be determined eligible or not for this exemption.

- This sentence should be stricken: “You don’t need to provide immigration status or SSN for family members who don’t need an exemption.” First, no one should be asked for their immigration status. Second, double negatives in any sentence should not be allowed. Finally, how does a consumer know who needs an exemption in the family and who doesn’t? Nowhere on this particular application form does it clearly explain that the tax filer can apply for an exemption for him/herself and must also request an exemption for dependents in the tax household. This should be explained on the first page as the first bullet. It would be clearer to state that information about those in the household who may have coverage is not needed because they do not need an exemption. But currently this sentence does not communicate anything helpful. Best to delete and instead inform the application filer that only information about members of their tax household who are uninsured will be needed and that this exemption request applies to all those in the tax household who need an exemption.
- On page 3, “Step 2: Person 1”
 - Revise request for SSN to TIN.
 - Reformat question 6 as these questions are not laid out and asked in the most efficient manner.
 - Eliminate question 7. If a consumer is filling out this form, he or she is likely applying for an exemption for him/herself and other uninsured family member. Ask one question on the application that would most easily allow the application filer to indicate which members in the household need a certificate of exemption issued, including himself or herself.
 - Recommend adding a separate worksheet to help consumers calculate their yearly income for question #10. Most individuals may not find calculating their total yearly income is easy, especially if they receive their income information as a monthly amount. Also, certain income does not need to be counted which should be made clearer than it currently is. Best to provide a worksheet to walk them through the calculations to avoid confusion and error.
 - Why is yearly income of each person needed separately? Isn’t the affordability exemption based on total household income in comparison to a benchmark and should not be different for each person in the household? Even the employer coverage affordability test, while applied to each member separately, uses the total household income for each scenario.
- On page 4, “Step 2: Person 2”
 - Revise request for SSN to TIN
 - Eliminate question 7
 - Request question #10 on yearly income be completed for person 2 “only if different from the previous page.”
- On page 5, “Step 3”
 - This entire section needs to be eliminated and revised. The explanation and current formatting is not easy to understand, not clear, and will only lead to questions and confusion.

- The information about the average premium of a bronze plan among the consumer's plan options is better obtained directly from the relevant exchange rather than the consumer as discussed earlier.
- This comparison of the cost of the bronze plan premiums to their household income should be explained to the consumer clearly and concisely so they understand that this is how affordability is being measured.
- Suggest adding an example with different premium costs in comparison to different yearly incomes and whether the percentage would be sufficient to meet the affordability test or not and whether they would then get an exemption or not.
- On page 5, "Step 4"
 - Be explicit and add the 30 day deadline by when consumers must report any changes.
 - Why does the consumers' information need to be shared with the consumer reporting agency? Object to this data sharing. If necessary, explicit consent by the consumer should be requested and given and explanation of what if anything will happen without this consent.
 - All the appeal information here should be explained in an FAQ as well.
- On page 6, "Appendix A: Exemptions"
 - The request for an affordability exemption related to offered employer coverage should be a separate affordability exemption request form.
 - Request for information about employer coverage will not be relevant to everyone seeking an affordability exemption and it should be made clear that these questions should only be completed if you were offered employer coverage at your job but it was unaffordable to you.
 - Delete request for Employer Identification Number (EIN). How would an employee be expected to know or obtain that information?
 - Questions 14 – 15b need to be significantly revised. None of the current language is in plain English, nor does it help the consumer understand what "minimum essential value" is and why it is relevant for this exemption request.
 - Revise Question 16 as follows:
 - If known, will you be offered health insurance coverage by your employer next year? No Yes if no, go to next page.
- On page 7, "Employer Coverage Tool: Exemptions"
 - Revise "Tool" to "Worksheet" or something other than "tool"
 - This page should be removed from the general affordability exemption request form and only be included with a separate exemption form based on affordability for employer coverage.
 - Delete request for EIN in question #4
 - Revise Question 16 as follows:
 - If known, will you be offered health insurance coverage by your employer next year? No Yes if no, go to next page.
- On page 8, "Appendix C"
 - Change title of this page to something other than "Appendix C." It should not be considered an appendix and there is not Appendix A or B beforehand in this particular application form.

- Can an employer be an Authorized Representative for an exemption form request? If not, that should be clearly stated in the section/instructions for Authorized Representative.

B) *Application for Exemption from the Shared Responsibility Payment for individuals Who are Unable to Afford Coverage and Are in a State with a Federally Facilitated Marketplace*

- It is unclear why the affordability exemption forms would need to be different for state based vs. federally facilitated marketplaces. Have only one form for exemption request for affordability, regardless of state based or federally facilitated marketplace, to simplify and avoid duplication, inconsistency, and confusion for consumers.
- On first page:
 - Eliminate request for document numbers for immigrants which is not required by law.
 - Explain what affordable means under the law.
- In general, similar comments and recommendations as above since the two affordability applications are basically the same although different language is used throughout the applications. See comments below for sections/language that is only in this application.
- On page 2, “Step 2 Tell us about your family”
 - The language in this section is not included in the state-based exchange affordability application form and it is unclear why.
 - This language is a slightly better explanation (than in the state based exchange application) of why other family members’ information may be needed, but does not explain who needs an exemption or not. This language should be the starting point for revisions to Step 2 in this application and the state-based exchange applications but more clarity should be provided regarding who needs to have an exemption and who doesn’t because he/she has minimum essential coverage.
 - This section fortunately does help make clear who in your household you do not have to provide information on even if they live in the household.
 - Please explain why family members who do NOT need an exemption should be listed on this application. If household size is needed in general, ask that question instead.
 - Delete the sentence “You don’t need to provide immigration status or a SSN for family members who don’t need an exemption.” It is confusing and incorrectly and unnecessarily raises the issue of immigration status – which is not needed even for those who do need an exemption.
 - If reassuring language regarding immigration status is needed on the application, recommend adding one bullet on the first page simply stating, “You do not need to provide citizenship or immigration status for yourself or anyone in your family to complete this form.”
- Page 3, “Step 2: Person 1”
 - Unclear why there is no yearly income section on the bottom of this page like in the state-based marketplace affordability application. It appears the yearly income question on this application is only 2 questions at the bottom of page 4 and the request and wording differs from the state-based marketplace application. Please

- revise to make the yearly income section consistent between the state-based and federally facilitated marketplace applications.
- Revise SSN request to TIN
 - See above comments regarding rest of this section.
 - On page 5, “Step 2: Person 1”
 - Delete question #30 and #31. Information about immigration or citizenship status is not required in order to obtain an exemption, especially one based on affordability.
 - Eliminate question #29 “Were you in foster care at age 18 or older?” It is unclear from the application or the July 1, 2013 final rule how this question would affect one’s eligibility for an exemption based on affordability. Furthermore, this question was not asked on the application form for the state based marketplace affordability exemption form or other exemption forms. If former foster care youth are exempt from the shared responsibility requirement that information should be made clearer on the application as part of an explanation in the application form next to any question regarding one’s former foster care eligibility.
 - Use question #25 as a starting example of how to explain and help consumers indicate who in their family needs an exemption or not.
 - On page 8, “Step 2: Person 2”
 - Delete question #30 and #31. Information about immigration or citizenship status is not required in order to obtain an exemption, especially one based on affordability.
 - Eliminate question #29 “Were you in foster care at age 18 or older?” As discussed above, it is unclear from the application or the final rule how this question would affect one’s eligibility for an exemption based on affordability. If the answer to this question does not affect eligibility for an exemption, delete because it is an unnecessary question on the application. If relevant, an explanation is needed so an applicant understands why he/she is being asked this question.
 - On page 9, “Step 3”
 - Delete the 3rd bullet about incarcerated family members. Consumers should not have to attest separately to the fact no family members are incarcerated in order to request an affordability exemption. This specific bullet is not in the state-based marketplace application and should be eliminated in this application.
 - The explanation that information will be shared with Department of Homeland Security is not necessary because immigration/citizenship status should not be asked for nor verified via DHS. Delete reference to DHS.
 - If reference to DHS is not removed, recommend adding an explicit explanation that information will be shared only to determine eligibility for an exemption and shall not be used for immigration enforcement purposes. Best to delete all reference to DHS.

C) **Application for Exemption from the Shared Responsibility Payment for Individuals Who Experience Hardships**

- Make it clear at the top of the application form whether the consumer should use the hardship exemption form vs. the affordability exemption form. Suggest giving examples of hardship scenarios on page 1 of this application in addition to Table A.
- Add somewhere on this application that an individual has up to 3 years to request an exemption based on hardship per 45 CFR§ 155.610(h)(2).
- On page 1:
 - Revise the bullets under “Use this application to apply...” because as currently written the statements are unhelpful and unclear.
 - Revise bullet 3 under “Who can use this application” as follows: **“Use this application if you or any other household member needs an exemption because you have experienced a hardship this tax year that affected your ability to get health care coverage.”**
 - Eliminate reference to getting catastrophic coverage if you get an exemption. See comments above. Also, do not use the term “catastrophic coverage” because it is not commonly understood. It may also not be sensitive to those completing this application who may have experienced an actual catastrophe.
 - Add a bullet to explain who should not use this application and give examples (including those with incomes below the tax filing thresholds and individuals who are not lawfully present).
 - Revise reference to SSN to Tax Identification Number (TIN). Good to have qualifier “if you have them” but better to indicate optional.
 - Revise the bullet “Information about people in your tax household” to be more specific as it’s vague and broad. What kind of information?
 - Under the “What happens next?” section on page, revise the sentence “You’ll get instructions on the next steps to complete the exemption process.” This doesn’t help explain anything and it indicates to the consumer that this application form is only the first form they may have to complete when in fact it may be the only form they need to complete. Suggested revision:

“We will let you know that we have received your request form and within 1-2 weeks afterwards, you should know if your request for an exemption was approved or not. If we need additional information to evaluate your application, we will notify you.”

- On page 2, “Step 2”
 - Revise section under “Step 2” as discussed earlier to make clearer whose information is needed on the application and why.
- On page 3, “Step 2”
 - Add reminder at the top of the page/section that if they are not required to file taxes, they don’t need to complete this request because they are already exempt.
 - Revise SSN to TIN

- Keep the language *“Providing your SSN can be helpful since it can speed up the application process, but you’re not required to have an SSN to get an exemption.” Use this language in other application forms.*
- Delete question #7 – why is this needed? Can HHS grant a hardship exemption prospectively?
- Delete the sentence after question #11 asking if they are “still experiencing this hardship” and the request for documentation. Why is this relevant? None of the categories of hardship in Table A refer to a requirement that the hardship is ongoing so why is it asked? Plus the request for documentation is non-sensical because what kind of documentation could a consumer submit to prove he/she is still experiencing hardship. If an individual is currently experiencing a hardship, it’s more likely he or she will not have appropriate documentation to begin with.
- On page 5, “Table A”
 - Reduce column width of 1st column
 - Recommend moving this list of hardship categories to after the first page so consumers can determine if they fall within one of these categories or should use a different application.
 - Add #13 for “Other” for other hardships that do not clearly fall within the described 12 and may not be easy to anticipate right now.
 - Make sure to create as well as explain what the procedure is for those who do not have a copy of the required documentation. Lack of specific documentation of a hardship should not prevent someone from getting an exemption that’s based on hardship.
 - For category 6, recommend adding copies of news reports for possible documentation.
 - For category 10, recommend developing an electronic method of obtaining proof of Medicaid/CHIP denials directly from the state agency. If a consumer has been denied eligibility, it’s unlikely he/she would have kept a copy of a denial, especially if the notice was received months before.
 - For category 12, delete request for documentation. The consumer’s address alone should flag for HHS if he/she is in a state that did not expand Medicaid. The consumer should not be required to “prove” his/her state didn’t expand Medicaid. In addition, it’s unlikely in a non-expansion state that a consumer would actually apply for Medicaid and get a denial notice.

D) *Application for Exemption from the Shared Responsibility Payment for Members of Recognized Religious Sects or Divisions*

- See above recommendations for readability, clarity, and simplifying the first page and other sections of the application that are similar in all applications.
- The name of this exemption should be clearer and consistent; the application form only indicates members of recognized religious sects but 45 CFR §155.605(c) refers to this exemption as “Religious Conscience.”
- The eligibility for this exemption on the application form does not include the language in the final rule (45 CFR 155.605(c)) that requires membership in a recognized religious sect or

division “and an adherent of establish teachings of such sect or division.” Eligibility language on the application form for any exemption should be consistent with the regulatory language that pertains to that exemption.

- Where in federal law or guidance did the language on this exemption form “opposed to acceptance of the benefits of any private or public insurance, including Medicare and Social Security” become the eligibility criteria for this exemption?
- Criteria to qualify for this exemption should be made clear, be based on some type of objective evidence, and be related to the original purpose of this exemption.
- Add examples or a link to a list of “approved” religious sects or divisions so consumers know whether they can use this application.
- Unclear why a consumer must indicate when they became a member of their sect or when they ended their membership. The relevant question is during the benefit year, were they a member of their sect or did they have any gaps in membership.
- There is no explanation on the application that, per 45 CFR 155.615(b) as well as the preamble in the final rule (78 Fed. Reg. 39494, 39508 (July 1, 2013)), the marketplace will verify with Social Security Administration (SSA) whether SSA recognizes the religious sect declared on the application and what the process is if not recognized by SSA. The application form or instructions should make this clear to the applicant.
- Explain what the “IRS Form 4029” is and it’s more commonly known name.

Thank you for your attention to our comments. If you have any questions or need any further information, please contact Sonal Ambegaokar (ambegaokar@healthlaw.org; 310-736-1646), Senior Attorney, at the National Health Law Program.

Sincerely,



Emily Spitzer
Executive Director