February 28, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services

RE: CMS–10440, CMS–10438, and CMS–10439

Dear Administrator Tavenner:

The Children's Defense Fund (CDF) appreciates the opportunity to comment on the model single, streamlined application for health insurance and the SHOP applications, released on January 29, 2013:

- Data collection and application for individuals for Medicaid, CHIP and Exchange (CMS-10440)
- Data collection and application for employees in the Small Business Health Option Program (CMS-10438)
- Data collection and application for employers in SHOP exchanges (CMS-10439)

CDF's Leave No Child Behind® mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for *all* the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor and minority children and those with disabilities. CDF educates the nation about the needs of children and encourages preventive investments before children get sick, drop out of school, get into trouble or suffer family breakdown.

We recognize that the single streamlined application for health coverage will be the primary vehicles through which individuals and small businesses will apply for health insurance through Medicaid, CHIP and the new health insurance marketplaces. Given it is of the utmost importance that families experience a simple and seamless application process, we have submitted extensive comments through a joint letter with others in the children's health community. However, we have additional recommendations to improve the application for the former foster youth who will become newly eligible for Medicaid until age 26.

Background:

We are pleased the proposed streamlined application includes a field that recognizes the ACA provision (Sec. 2004) to ensure Medicaid to age 26, beginning in January 2014, to young adults leaving foster care at age 18 or older and who were enrolled in Medicaid. This new mandate for Medicaid coverage for former foster care youth offers a promising opportunity to ensure that their health and mental health needs are better met in the future.

This provision of the ACA recognizes the challenges many young people who leave foster care without returning to their families, being adopted or placed permanently with relative guardians, face in obtaining health coverage. They often carry with them significant health and mental health challenges that persist into adulthood. They face enormous challenges in getting the health services they need. Between 35 to 60

percent of children and youth entering foster care have at least one chronic or acute physical health condition that needs treatment, and between one-half and three-fourths have behavioral or social problems that require mental health services.[1] Not surprisingly then, youth who age out of foster care are more likely than their peers generally to report having a health condition that limits their daily activities and to participate in psychological and substance abuse counseling.[2] In addition, these young adults are less likely to have health insurance. They can rarely afford private health insurance, infrequently have access to employment-based health care, and they lack birth parents through whom health benefits might be accessed.[3]

In our February 21st, 2013 comments to the Department of Health and Human Services on the Proposed Rule for the Patient Protection and Affordable Care Act: Medicaid, CHIP and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing [CMS-2334-P] (as published in the *Federal Register* on Tuesday, January 22, 2013, 42 CFR Parts, 430, 431, 433, 435, 440, 447, and 457 and 45 CFR Part 155), we offered comments that emphasized the importance of this ACA provision for former foster youth. We also made the recommendation that all eligible former foster care youth who were in care on their 18th birthday and enrolled in Medicaid be eligible for Medicaid under this ACA provision *regardless* of their state of residence. CDF strongly believes it should be a requirement that states provide Medicaid to age 26 for *all* eligible former foster care youth, without regard to the state in which they are living. Such a change would better address the needs of this particularly vulnerable and sometimes transient group of young people.

Recommendations:

The question about foster care status should be one of the final questions about personal identification information and come before any questions about income attestation. We propose this question be asked as: "Was [applicant name] in foster care at age 18 and enrolled in Medicaid?"

The question we have proposed, *"Was [applicant name] in foster care at age 18 and enrolled in Medicaid?"* must come very early on in the screening process – in both the online and paper application and should follow the question asking if the applicant is in foster care (to determine categorical eligibility). If the applicant answers affirmatively to having been in foster care at age 18 and enrolled in Medicaid, they are eligible for Medicaid under this provision of the ACA and thus, the vast majority of the remaining questions in the application become irrelevant. The proposed rule clarifies that these youth are eligible for Medicaid because of their status as former foster care youth and other eligibility rules that often apply for Medicaid, such as income or resource tests, and assessment of premiums and cost sharing, will not apply nor become barriers to their receipt of health coverage. (p. 4604) Thus, there is no need for the youth who qualify because of their status as former foster be required to complete any of those related

[1] CRS report – source cited: This is based on single state studies and data from a nationally representative survey. John Landover, Director, Child and Adolescent Services Research Center, Rudy Child's Hospital, San Diego, "Health Care for Children in Foster Care," written testimony submitted for Subcommittee on Income Security and Family Support, House Committee on Ways and Means hearing, July 19, 2007. CRS report: http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/R42378_gb.pdf

[2] Fred Wulczyn et al. (2005) Beyond Common Sense: Child Welfare, Child Well-being, and the Evidence for Policy Reform. New Brunswick: Aldine Transaction.

[3] Sonya Schwartz & Melanie Glascock (2008) Improving access to health coverage for transitional youth. National Academy of State Health Policy.

questions on the application. Not only do they make the application process more burdensome, but it could be challenging for such a vulnerable and transient population to even provide those kinds of required documents.

This question must also include *"age 18"* in the wording. The recently proposed rule made a number of important clarifications about eligibility for this population that we believe should be taken into consideration in the proposed application, and warrants moving this question to one of the first parts of the application. According to the proposed rule, any youth in foster care under the responsibility of the state or tribe who, on or after January 1, 2007, was in foster care at age 18 or older and enrolled in Medicaid, will be *eligible* for Medicaid to age 26, and may apply at any time before he or she reaches the age of 26. (p. 4604) As a result of this clarification, it is only relevant to know whether or not the youth was in foster care at age 18, for the proposed rule also clarifies that children who remain in care in states where foster care is offered to age 2l can also be eligible at a later age provided they were in care and receiving Medicaid at age 18 or when they aged out of care.

If the applicant does not qualify for Medicaid under this category, they can of course, continue to move through the screening process to determine if they are eligible otherwise.

In the screen for former foster youth, the application should allow for multiple states to be listed.

Currently, question 10 in section IX "Special Circumstances" of the proposed application asks: *In what state was [applicant name] in the foster care system?* We believe this question should immediately follow a positive response to the question proposed above and then read: *"Was [applicant name] in foster care at age 18 and enrolled in Medicaid?"* We then recommend that the final application allows for the applicant to list *multiple states* given many former foster youth have been in the foster care system in multiple venues and/or states. They may also have been placed in a state different from that which had the legal authority – a particularly confusing distinction for the former foster youth. The application should not be unnecessarily burdensome for these youth, and they should be able to provide any and all information that might be necessary and relevant with ease.

At this point, for these youth, the application should move forward asking any remaining necessary questions and certification of former foster care status should be certified efficiently and with the appropriate linkages of data systems.

As noted earlier and in our previous comments to HHS, we believe the intent of this provision is to ensure that any young person who had been in foster care on their 18th birthday and was enrolled in Medicaid, regardless of where he or she had been in foster care and was now living, is eligible. We hope the implementation of this provision and the proposed changes we have suggested will ensure the security of continuing Medicaid coverage without interruption, particularly for a population in which disabilities, chronic illnesses, and the receipt of specialized treatment for mental health or physical health problems, is common and extremely important.

Thank you for the opportunity to comment on the model single, streamlined application for health insurance and the SHOP applications. Ensuring comprehensive health and mental health coverage for all children that is easy to get and to keep is critical to their lives, health and future, and the prosperity of our nation. We look forward to working with you to ensure that all children realize the promise of the ACA. We appreciate your consideration of our comments and would be pleased to discuss them with you further.

Sincerely yours,

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