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Centers for Medicare & Medicaid Services
Dep't of Health & Human Services
Attn: CMS-2334-P
P.O. Box 8016
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**RE: CMS-2334-P
Medicaid, Children's Health Insurance Programs, 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.**

To Whom It May Concern:

Upon review of the proposed rule, the New York City (NYC) Human Resources Administration (HRA) has concerns that program integrity must be considered and addressed with the introduction of brand new systems ranging from the Federal Services Data Hub to state based Exchanges.

The program risk from individuals obtaining coverage and benefits to which they are not entitled is real and substantial. For example, New York City has identified highly organized frauds connected with obtaining multiple cards by individuals seeking access to prescription controlled substances and/or expensive brand name prescription drugs for resale on the black market (or back to the same pharmacy from which they were purchased.). However, these frauds can be prevented through sophisticated investigations assisted by data analytics and search tools that address the risks of identity fraud and theft, and false statements about income, residency, and household composition. Listed below are suggestions that provide the necessary balance in ensuring that those in need receive essential services without substantial risk to program integrity.

Eliminating the Requirement for Original Documentation

Regulation §435.407(f) removes the requirement that individuals must provide an original copy of documents, but allows photocopies, facsimiles, scanned or other copies of documents. However, this proposed change does not account for prominent program integrity concerns. For instance, how can an agency determine whether the electronically submitted documents are what they are labeled? The proposed rule will allow for originals if “the agency otherwise has reason to question the validity of the information on the document.” We believe clarification is needed to clearly state that eligibility systems will have to have the capacity to determine that a copy of an original document is not a fabrication

This is similarly found in Regulation §435.952 in which “states may not require documentation from individuals for whom documentation does not exist or is not reasonably available at the time of application or renewal.” Although circumstances include such reasonable events as natural disasters, it does leave circumstances to be included open ended by stating that “circumstances include, but are not limited to.” Again it is completely reasonable that in certain, limited circumstances original or even copies of original documentation may not be immediately available; however, this proposed change does not account for the need of limitations in which those circumstances can be found acceptable.

Accuracy and Verification of Information

The final rule should provide parameters as to how new automated systems will address accuracy and verification of applicant information outside of states using the “Federal Data Services Hub.” Methods designed to increase data entry accuracy, such as dual data entry and instant alerts for certain obvious data entry problems should be incorporated. Additionally, the system should include methods for spotting duplicate applicants. In addition, an interactive identification quiz to authenticate an applicant’s identity should be considered. Other government programs are already employing such solutions, which work by generating questions from collateral databases (i.e. “Which of the following addresses have you lived at in the past five years?”).

The automated solution should also incorporate customized edits that catch “never events” (i.e. age changes), and flag applications for further review based on certain criteria. The solution should also include methods for spotting duplicate applicants.

Deterrence

Without built-in deterrents, changes to Medicaid will not eliminate the fundamental recipient-level integrity issue facing the Medicaid program— applicants who misrepresent or inaccurately report household composition or

income levels. This cuts across all demographics and states. Some examples that have been seen in New York City:

1. A family reports only one adult and multiple children—even though there are two parents who earn income.
2. A business-owner or landlord (receiving rental income) reports (s)he is an employee of his/her own business and makes only a small income. If it is a landlord, then (s)he will not report that income.
3. There is a large underground economy in New York City of people deriving income from off-the-books employment (i.e. they receive cash for work, such as limo and cab drivers, restaurant workers, construction workers, etc.).
4. A previously eligible recipient receives recertification forms, which (s)he fills out, but does not report actual changes in circumstances.

One solution would be to ensure there is False Claims Act liability and criminal prosecution language at the end of each application. The verification form would include a 28 U.S.C. 1746 notice for unsworn declarations under penalty of perjury. With online enrollment there should be an electronic signature attached to that application's submission. This is very common for many online documents, including tax forms and loan documents. This language will not deter the sincerely eligible, but it will deter those who know before they apply that they are ineligible. It will also help program integrity groups take civil and criminal action against egregious offenders.