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VIA ELECTRONIC SUBMISSION

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*National Advocates for
Asian American,
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Pacific Islander Health*

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

RE: Annual Eligibility Redeterminations for Exchange Participation and Insurance
Affordability Programs (CMS-9941-P)

Dear Sir/Madam:

Thank you for the opportunity to provide comments on this proposed rule, which attempts to improve and streamline the process for consumers to remain enrolled in coverage for plan year 2015. APIAHF is a national health justice organization that influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders (AAs and NHPs). For 27 years, APIAHF has dedicated itself to improving the health and well-being of Asian American, Native Hawaiian, and Pacific Islander communities living in the United States and its jurisdictions.

During the first enrollment period, APIAHF and three other national organizations came together to establish Action for Health Justice, a partnership of over 70 community-based organizations and Federally Qualified Health Centers in 22 states created to maximize enrollment for AAs and NHPs. We submit these comments based on the experiences and lessons learned from our partner organizations across the country, and to ensure that AAs and NHPs, many of whom are limited English proficient (LEP) consumers and immigrants, are not overlooked or “left out” in the redetermination, renewal, and re-enrollment processes.

Overall Comments

While the proposed rule attempts to provide efficient ways for consumers to obtain eligibility redeterminations and re-enrollment in qualified health plans (QHPs), we remain concerned that LEP consumers may not have meaningful access to the Marketplace. The Federally facilitated Exchanges (FFE) must comply with both Title VI of the Civil Rights Act and Section 1557 of the Patient Protection and Affordable Care Act (ACA). Section 1557 of the ACA prohibits discrimination, based on factors including national origin and language, in any health program and activity created under Title I of the ACA and applies to the state and federal health insurance marketplaces. To comply with these non-discrimination protections, HHS must provide meaningful access to ACA programs for all who are limited English proficient (LEP), which includes meaningful access in redetermining eligibility for QHPs.

Both FFE and health plan issuer notices must conform to Section 1557 and allow person with limited English proficiency to have the same information as other

consumers. FFEs and health plan issuers should include in-language taglines on all notices that language assistance is available at no cost or make translated notices available to consumers who have indicated a language preference in their application for coverage.

CMS should also require issuers to provide translated versions of all notices in any language that makes up 5% or 500 individuals of the issuers' enrolled population, whichever is less. We strongly recommend that the Department of Health and Human Services (HHS) adopt policy, through regulations and guidance, setting forth that the failure to translate documents when languages meet this percentage or numeric threshold is evidence of non-compliance with Title VI and Section 1557. This percentage and numeric threshold is already employed in other federal agency policy guidance, with some programs and agencies employing even lower thresholds. Utilizing a 5% or 500 person threshold will better ensure that the intent and statutory requirements to provide linguistically appropriate services will be met.

155.335(a)(2)(ii) – Annual eligibility redetermination

We commend HHS for providing additional procedures to conduct annual redeterminations. Additionally, we support the use of the three different proposed notices (Standard Notice, Income-Based Outreach Notice, and Special Notice) in the second alternative procedure, as described in the “Guidance on Annual Redeterminations for Covered for 2015”. Even though the Guidance states that all notices must conform to the standards in 45 CFR 155.205(c), which require that information is provide in manner that is accessible to individuals who are limited English proficient, our recent experience with inconsistency notices indicate that these regulations are not being followed.

Inconsistency Period Notices

After the enrollment period ended, APIAHF partners have reported many challenges with inconsistency notices to LEP consumers and eligible immigrants. As you are aware, the FFE has been sending notices to consumers with unresolved data-matching problems or inconsistencies. These written notices are provided only in English. Additionally, while notices related to immigration status included in-language taglines in multiple languages to contact the call center for additional information, notices related to income inconsistencies did not have these in-language taglines. As a result, LEP consumers were not able to understand the content of the notices. Many LEP consumers went back to the in-person assisters where they enrolled to ask about the meaning of these notices. Many consumers also received multiple notices requesting additional documentation, which created confusion as to what they were actually required to submit.

Recommendation: Ensure that all notices from health plan issuers and the FFE, regardless of which annual redetermination procedure is used, include appropriate in-language taglines. Additionally, if a consumer indicated a preferred language on their application, translated notices should be sent to those consumers in their preferred language.

Amend §155.335(c) by adding subsection (4) as follows:

(4) The Exchange shall ensure notices comply with §155.205(c) and with any applicable State laws and regulations regarding accessibility and readability

requirements of notices.

Because translation of complicated health insurance-related concepts into other languages is often difficult, we also recommend that CMS require exchanges and issuers to **conduct consumer testing** of all translated versions of the notices with the intended audience, in addition to consumer testing of the English notice.

§155.330(b)(4) – Eligibility redetermination during a benefit year

Removing the mail-in option for consumers to report changes may disproportionately affect LEP consumers and eligible immigrants. If the FFE will not accept changes by mail, we urge CMS to improve the language access features of the call center, so LEP individuals will not experience problems reporting changes via the phone. During the first open enrollment period, our partner organizations experienced many difficulties and challenges accessing language services through the Federal call center. We are concerned that these barriers will prevent LEP consumers from reporting necessary changes through the call center, which will be their primary mechanism for reporting any changes. Our experience from the first enrollment period indicates that many LEP consumers and eligible immigrants will not use the website to report changes, and will rely on making changes by connecting with an in-person assister, which will ultimately result in use of the call center.

Recommendation: Retain the requirement in current regulations that marketplaces allow consumers to use mail for applications, renewal or other marketplace business.

§156.1255 – Renewal and re-enrollment notices

We support the addition of information required to be included in notices from health insurance issuers in proposed §156.1255. We reiterate that all notices should include taglines for help in additional languages. As the notices may use language that is difficult for consumers to understand, particularly LEP consumers, language assistance and/or translated notices should be made available to consumers. For example, include in-language taglines that read as follows, “*To receive this information in X language, call #####*”, and provide the health plan issuer contact information for issuer notices or the Federal marketplace call center number for FFE notices.

Additionally, FFE and health plan issuer call center representatives should be trained and prepared to answer questions from consumers regarding the renewal process, requirements for reporting changes, and explanations for premium tax credit and cost sharing reduction calculations.

Recommendation:

Amend §156.1255 by adding subsection (e) as follows:

A health insurance issuer shall ensure notices issued under this section comply with §155.205(c) and with any applicable State laws and regulations regarding accessibility and readability requirements of health insurance issuer notices.

We thank HHS for the opportunity to comment on this important proposed rule.

Please direct any questions about our comments to Priscilla Huang, Policy Director,
at phuang@apiahf.org.

Sincerely

A handwritten signature in black ink, appearing to read "K. K. Chin". The signature is fluid and cursive, with the first two letters of each name being capitalized and prominent.

President/Chief Executive Officer