American Cancer Society ☙ Children's Defense Fund/New York ☙ Community Service Society of New York ☙
Make The Road New York ☙Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☙ New York Immigration Coalition
Public Policy and Education Fund of New York/Citizen Action of New York ☙ Raising Women's Voices ☙
Schuyler Center for Analysis and Advocacy

October 31, 2011

Secretary Kathleen Sebelius
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2349-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Comments on proposed rule on Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010 – File Code CMS-2349-P

Dear Secretary Sebelius:

Health Care for All New York (HCFANY) submits these comments on the Notice of Proposed Rulemaking (NPRM) on the Medicaid Program eligibility changes under the Affordable Care Act (ACA). HCFANY is a statewide coalition of 120 organizations which seek to achieve affordable, quality health care for all New Yorkers. We thank you for the opportunity to provide our comments on this fundamental provision of the ACA. Our comments are presented in the order the relevant provision appears in the NPRM.

Health Care For All New York
c/o Elisabeth Ryden Benjamin, Community Service Society of New York
105 E. 22nd Street, New York, New York 10010
(212) 614-5461

Part 433: State Fiscal Administration

Subpart E—Methodologies for Determining Federal Share of Medicaid Expenditures for Mandatory Group

§433.204 Definitions

This section of the NPRM defines "newly eligible individuals," those who would not have been eligible for Medicaid in their state as of December 1, 2009.

HCFANY Comment: The "newly-eligible" definition included in this section of the proposed regulations is different than the statutory definition used to determine eligibility under the Medicaid expansion. HCFANY recommends that the definition of "newly-eligible" in this section for determining federal Medicaid matching payments conform to the statutory definition at 1905(y)(2)(A) of the Affordable Care Act. Namely, the definitions should take into account adult status (age over 18), should require the benefit package of an existing expansion program to meet the benchmark benefit standard, and should require that applicants are not excluded from coverage due to capped or limited enrollment.

§433.206 Choice of Methodology

This section of the NPRM describes the multiple, federally-approved methods for determining what proportion of their Medicaid expenditures is for "newly-eligibles" that would be matched to receive an enhanced FMAP.

HCFANY Comment: HCFANY stresses that applicants should not be burdened by the responsibility to supply additional information for the purpose of the matching rate determination, regardless of which method a state uses. HCFANY recommends that this language be strengthened to ensure that applicants are not unduly burdened, cross-referencing the standards of a streamlined application at §435.907(c). Prior to requesting any documentation, electronic data matching should be used to the fullest extent possible in acquiring necessary information, as required under §435.949. In addition, CMS should establish standards for any additional application questions states will implement for the purpose of the matching rate determination and applicants should be informed that failing to answer these questions will not impact Medicaid eligibility.

Part 435: Eligibility in the States, District of Columbia, the Northern Mariana Islands, and American Samoa

Subpart A – General Provisions and Definitions

§435.4 Definitions and Use of Terms

This section of the NPRM defines and describes the use of several terms, including types of eligibility groups.

HCFANY Comment: HCFANY supports the codification of the definition of a caretaker relative. The specification that a relative does not have to claim a child as a tax dependent to be considered a caretaker relative is an important addition because it reflects the reality for many families. HCFANY supports the codification of the definition of a dependent child. HCFANY also supports the explicit inclusion of the "post-partum" period in the definition of pregnant woman.

Subpart B – Mandatory Coverage

§§435.110, 435.116, 453.118, 435.119 Consolidation of Eligibility Groups

These sections of the NPRM describe mandatory coverage that state agencies must provide to different eligibility groups.

HCFANY Comment: HCFANY supports the consolidation of existing mandatory and optional eligibility groups into three categories starting in 2014: parents and other caretaker relatives (§435.110), pregnant women (§435.116), and infants and children under age 19 (§435.118). We understand that these categories will complement the new adult group (§435.119).

§435.110 Parents and Other Caretaker Relatives

This section of the NPRM describes how eligibility for Medicaid will be determined for the category of parents and other caretaker relatives.

HCFANY Comment: For parents and other caretaker relatives, HHS says if individuals in this category lose eligibility under section 1931 (if a state reduces coverage to the minimum permitted under the statute), these individuals will still retain eligibility under the new adult group. Yet we do not know what scope of benefits individuals in the new adult group will receive, making it difficult to assess the impact of this change. Important benefits may be lost for these individuals in states that choose to provide more restrictive benchmark plans to the new adult group.

§435.116 Pregnant Women

This section of the NPRM describes how eligibility for Medicaid will be determined for the category of pregnant women.

HCFANY Comment: HCFANY recommends that the NPRM eliminate the state option in §435.116(d)(1) to provide limited benefits to pregnant women. However, the option to provide enhanced pregnancy-related services as set in §440.250(p) should remain. Pregnancy-related services should be broadly defined since almost any medical condition can impact or complicate a pregnancy. Most states have recognized that all health services provided to pregnant women are pregnancy-related. Therefore HHS should accept the policy of most states as its own. Ultimately, HHS must align coverage for pregnant women with the coverage provided to all other adults.

§435.118 Infants and children under age 19

This section of the NPRM describes how eligibility for Medicaid will be determined for the category of infants and children under the age of 19.

HCFANY Comment: HCFANY supports this proposal. In New York, this proposal will expand Medicaid coverage to children between the ages of 6 and 18, who are currently only eligible for Medicaid up to 100 percent FPL.

§ 435.119 Coverage for individuals age 19 or older and under age 65 at or below 133 percent FPL

This section of the NPRM describes a mandatory category of coverage, the new adult group. The preamble to the proposed regulations states at 51151 that it will also include individuals currently eligible under an optional coverage (e.g., for individuals with disabilities) who have household income, based on the new MAGI methods, at or below 133 percent of the FPL.

HCFANY Comment: As mentioned above, we do not know what scope of benefits individuals in the new adult group will receive. Important benefits may be lost in states that choose to provide more restrictive benchmark plans, so it is vitally important that all people with disabilities and/or in need of long term care services and supports not fall into this group. The final regulations must make it clear that populations that are described at § 435.603 (i), for which modified MAGI-based methods do not apply, shall not be put into the new adult group when it will result in underinsurance. Please see our comments on Subpart G for further concerns we have about these exemptions from MAGI-based methodology not reaching all populations that we believe were intended by Congress.

Subpart C—Options for Coverage

§435.218 Coverage for Individuals Above 133% FPL

This section of the NPRM describes the option for states to expand Medicaid coverage to individuals above 133 percent FPL.

HCFANY Comment: HCFANY supports the creation of this new eligibility group which provides a mechanism for states to cover individuals whose income exceeds the state's income standard for mandatory coverage.

HCFANY support the inclusion of children, if they are not already eligible for Medicaid, in this new optional group. HHS mentions that if a state currently covers children with incomes above 133% FPL in a separate CHIP program, but adopts coverage under this group, the state will shift the children from CHIP to Medicaid. States will still be able to claim enhanced FMAP under title XXI for such children. This is a positive result because it will enable children to receive full Medicaid coverage, including Early Periodic Screening, Diagnosis, and Treatment (EPSDT) benefits, enhanced appeal rights and potentially a better benefit package.

Subpart E – General Eligibility Requirements

§435.403 State Residence

This section of the NPRM describes what determines an individual's residency to become eligible for Medicaid.

HCFANY Comment: HCFANY generally supports HHS' definitions of residency. However, we believe that it is problematic that state Medicaid agencies will continue to have flexibility to establish state-specific rules governing residency for students. 76 Fed. Reg. at 51160. This is particularly true because, as HHS acknowledges, the Exchange residence definition allows the parent to choose a child's residence. 76 Fed. Reg. 51202, 51229 (to be codified at 45 C.F.R. § 155.305(a)(3)(iv)). HHS has requested input as to whether a uniform residence standard should be applied. 76 Fed. Reg. at 51207. We believe it is desirable to have one federal definition of state residence for students and that it be the state chosen by the parent. A consistent definition will ensure that there are not conflicting rules in different states. Otherwise, there is a risk that an out-of-state student could be left with no state of residence. Moreover, a uniform rule will help generally promote establishment of the coordinated eligibility and enrollment system established under ACA §§ 1413 and 2201.

Subpart G—General Financial Eligibility Requirements and Operations

§ 435.603 Application of Modified Adjusted Gross Income (MAGI)

§ 435.603(a) Basis, Scope, and Implementation

This section of the NPRM describes how modified adjusted gross income (MAGI) will be applied to determine if individuals are eligible for Medicaid.

HCFANY Comment: HCFANY supports the grace period described in §435.603(a)(3) for applying the MAGI methodology. This grace period will ensure that individuals maintain their coverage during the initial transition to the MAGI methodology. However, the grace period in §435.603(a)(3) is not carried over to children in the Children's Health Insurance Program (CHIP). In order to consistently apply the new MAGI-based income levels across programs, as well as to ensure that children in CHIP are afforded the same protections as those in Medicaid, §457.315 should also incorporate §435.603(a)(3).

While the methodology and process for doing the MAGI conversion is not laid out in this proposed regulation, HCFANY strongly recommends that the approach taken to develop such methods and standards be a public and transparent one, both at the national and the state level, as the stakes are incredibly high for current and future Medicaid beneficiaries.

The preamble also discusses allowing states to convert to MAGI prior to 2014 using a section 1115 waiver. As with the conversion process itself, the application and approval process for such waivers should be a public one. While the proposed regulations outlining the transparency requirements for section 1115 waivers have not been finalized, the public notice and comment requirements in those proposed regulations were strong and should, at a minimum, be followed in such cases where a state is seeking a waiver to implement the MAGI conversion prior to 2014. Given that maintenance of eligibility requirements will remain in place for adults until 2014 and children until 2019, it is especially important that states converting to MAGI in advance of 2014 use a methodology that does not result in the loss of eligibility for current beneficiaries.

§ 435.603(b) Definitions

This section of the NPRM defines *code* (the Internal Revenue Code of 1986), *family size* (the number of persons counted as members of an individual's household), and *tax dependent* (as defined in §435.4) for the purposes of §435.603.

HCFANY Comment: HCFANY supports the proposed rule requiring states to count a pregnant woman as two persons in determining her household size. We agree that this method of counting pregnant women, which anticipates the change in household size that will occur after the birth, would promote continuity of coverage for the pregnant woman. However, we recommend that states be required to always count pregnant women as two persons, whether in determining their own eligibility or in determining the eligibility of their family members. We see significant problems in the proposed rule which makes it a state option to count the pregnant woman as one or two persons when determining the household size of other family members. In such cases, if a state counts pregnant women as only one person, members of the same household could end up in different coverage programs.

§ 435.603(f) Household

This section of the NPRM describes household composition for the purpose of determining eligibility for Medicaid.

HCFANY Comment: HCFANY believes the proposed rule has become too complex. It may be difficult for families to understand the proposed household rules and in some instances the rules would split a family up, with different members of the family receiving coverage from different sources. The proposed rules would apply a different method for determining the household of an individual based whether the individual is: (1) a taxpayer; (2) a taxpayer's dependent; or (3) a non-filer or someone who is not claimed as a tax dependent. And in some cases the same family will be treated differently depending on how they file their taxes. We recommend the creation of a "safe harbor" for individuals who may fall in the coverage gap, which would make them eligible for Medicaid when application of the rules yields a decision of ineligibility for both Medicaid and premium credits.

HCFANY supports retaining current Medicaid rules that limit the inclusion of spouses in each other's household to those who are living together. We also support HHS's decision not to adopt the rule applied to eligibility for premium credits and require married couples to file a joint return in order to be eligible for Medicaid. Under the proposed methodology, each spouse is included in the household of the other spouse despite their filing status. However, the spouse filing a separate return and not claiming the child does not get included in the household of the child.

In the case of married couples who live together, we recommend always treating them as filing jointly — and using the rules that apply to married couples filing jointly — regardless of how they file. This approach would attribute the same income and household size to the different members of the family, ensuring that they are able to get coverage together as a family.

HCFANY recommends that Medicaid follow the same rule as for premium credits for unmarried parents who have a child in common and who live together but cannot file a joint return. Because the income of both parents is counted in determining eligibility of the child, but each parent's income is considered independently when determining their eligibility, application of the proposed rules would split the child's coverage from the parents' coverage, despite the fact that they live together and have the same income available to them.

Alternatively, if Medicaid follows premium credit rules for determining the household in this situation, only the income of the parent claiming the child would be considered and the child would generally get coverage with that parent. While we understand the proposed rule is based on current Medicaid practice, the availability of premium credits and the use of a tax-based approach require a change in current rules to avoid the potential that children receive less comprehensive coverage than their parents. We recommend that CMS follow the premium credit rules for determining the household for unmarried parents living together.

§ 435.603(h) Budget Period

This section of the NPRM describes what time period will be assessed to determine individuals' financial eligibility for Medicaid. Financial eligibility for applicants and new enrollees is based on current, monthly income. For individuals already enrolled, states may base financial eligibility either on current monthly income or project annual income. In addition, the agency may predict future income, including by self-attestation.

HCFANY Comment: HCFANY strongly supports using projected annual income and taking predictable changes in income into account, but believe this should be a requirement for both new applicants and current enrollees.

§ 435.603 (i) Eligibility Groups for which modified MAGI-based methods do not apply

This section of the NPRM is intended to describe the populations that shall not be subjected to the MAGI calculations and thus be placed in the new adult group. The regulations do exclude from the MAGI calculation people receiving SSI and deemed to be receiving SSI. MAGI calculations also do not apply to individuals whose eligibility is being determined on the basis of *being* blind or disabled or *being treated as* blind or disabled. (Emphasis added). The proposed rule also exempts individuals whose eligibility is being determined on the basis of need for long term care services, but it is unclear if individuals who are applying for long term care or waiver services will be excepted.

HCFANY Comment: We do not know what scope of benefits individuals in the new adult group will receive. Important benefits may be lost in states that choose to provide more restrictive benchmark plans, so it is vitally important that all people with disabilities and/or in need of long term care services and supports not fall in to this group. There is some concern in the disability community that the language being used in the regulation may not reach people in the 24-month waiting period for Medicare or people eligible for the Medicaid Buy-in program. HCFANY stresses that it is must be made absolutely clear that individuals found eligible for the new mandatory adult group not be prohibited from participating in optional groups like the Medicaid Buy-in. HCFANY recommends that individuals be asked to identify a potential disability at the point of application and annually and that individuals be advised of how to trigger an assessment for disability status and why it might be important.

Subpart J—Eligibility in the States and District of Columbia Applications

§435.905 Availability of Program Information

This section of the NPRM describes what information the state agency should make available (eligibility requirements, Medicaid services available, and the rights and responsibilities of applicants and beneficiaries) and formats the information should be made available (electronic and paper, and orally as appropriate).

HCFANY Comment: In 2014 the need for information about Medicaid and other health coverage programs will be even greater than it is now due to the requirement that all individuals obtain coverage. HCFANY supports many aspects of the proposed rule on availability of program information and offers recommendations to make it stronger.

The final rule should require that agencies make the following program information available to consumers: eligibility requirements; application and renewal processes and related assistance available; benefits and services provided; responsibilities of applicants, beneficiaries and agencies; and rights of applicants and beneficiaries. Moreover, Medicaid agencies should provide information about all insurance affordability programs rather than just limiting information to Medicaid.

As proposed, the rule requires states to make program information available to "…all applicants and other individuals who request it." The final rule should retain this agency responsibility but should go further and require that program information be made publicly available so that consumers will be able to learn about the program *without having to formally request information from the agency.*

§ 435.907: Application

This section of the NPRM describes the single, streamlined application which must be used to apply for all insurance affordability programs.

HCFANY Comment: HCFANY strongly supports the efforts in the NPRM to establish a single streamlined application for eligibility for Medicaid, CHIP, Basic Health (if applicable), premium credits, and cost-sharing reductions. We also encourage HHS to add a specific requirement in the finalized regulation that states that applicants may not be required to answer questions that are not pertinent to the eligibility and enrollment process. This is especially true because even in well-intentioned states such as New York, additional relatively irrelevant questions (e.g. veteran's status, information about water bills) abound. HCFANY supports HHS' rule that the agency may not require a non-applicant who is applying on behalf of an applicant to provide an SSN or information regarding a non-applicant's citizenship, nationality, or immigration status.

The final rule should directly address that the express lane option is still allowable.[1] Additionally, authorized representatives and persons acting responsibly for the applicant should be clearly defined and consumers should be informed of this and be allowed to terminate the authority of these individuals at any time.

§435.907(b)

This section of the NPRM describes the single, streamlined application for all insurance affordability programs either developed by the Secretary or developed by the State and approved by the Secretary.

HCFANY Comment: While HCFANY strongly supports the single, streamlined application envisioned in the proposed rule, we are concerned that some states may misunderstand the rule to mean that multi-benefit applications are no longer allowed. If states stop using multi-benefit applications, consumers who wish to apply for multiple assistance programs will have to complete separate applications that require many of the same data elements, to obtain health coverage, Supplement Nutrition Assistance Program or Child Care Subsidies, and/or other benefits and make the process too burdensome.

It should be clarified that nothing in the rule should be interpreted to prevent states from having multi-benefit applications in addition to their single, streamlined application for insurance

[1] While express lane eligibility is scheduled to sunset prior to the start of the required ACA Medicaid expansion, we are presuming that it will be reauthorized.

affordability programs. States should also be able to create alternative applications that allow consumers to choose to apply for other health coverage programs.

§435.907(c)

This section of the NPRM describes the supplemental forms to the application described in §435.907(b)(1) or an alternative application form that may be used for individuals applying whose eligibility may be determined on a basis other than MAGI.

HCFANY Comment: HCFANY supports the provision allowing states to elect whether to use the single, streamlined application with supplemental forms or an alternative application to collect information needed for those eligible for coverage that does not use MAGI. Although the regulation requires the alternative application form to be approved by the Secretary, it is unclear if the Secretary must also approve the supplemental forms. The final rule should require that the supplemental forms and alterative applications be approved by the Secretary when first developed and when substantive changes are made. The rule should also require that these forms only require minimum additional information necessary to determine eligibility and be structured to maximize applicants' ability to complete the forms as required by section 1413 (b)(1)(A). The final rule should also ensure that when supplemental forms are used, they should be provided with the initial application.

§435.907(d)

This section of the NPRM describes the methods of submission of the application described in §435.907(c)(1).

HCFANY Comment: HCFANY supports the requirement that Medicaid agencies establish procedures to allow consumers to submit applications via the internet, telephone, mail, in person and fax.

§ 435.908: Assistance with application and redetermination

This section of the NPRM would require states to allow individual(s) of the applicant or beneficiary's choosing to assist with the application process and to provide assistance to individuals seeking assistance.

HCFANY Comment: HCFANY supports the continued requirement that Medicaid agencies allow applicants and beneficiaries to obtain assistance from their choice of individuals through the application and redetermination process.

HCFANY commends HHS for including an explicit requirement that Medicaid agencies provide assistance to individuals seeking help with the application or redetermination process. In 2014, many individuals and families will need assistance to understand the coverage available to them and how to access and maintain the coverage. Ensuring that Medicaid agencies provide assistance to individuals will be critical to the effort to maintain high coverage levels envisioned in the ACA. We strongly support the provision of the rule requiring agencies to ensure that assistance is accessible for people with disabilities and people with limited English proficiency.

The final rule should clarify state obligations to provide equal access and should ensure that assistance in all forms (i.e. in person, online, and telephone) meet the meaningful access standards for persons with limited English proficiency and should conform to rules ensuring equal access to persons with disabilities. We recommend that HHS add standards that will ensure adequate access to assistance by measuring agency performance looking at: call abandonment, call wait times, number of days to wait for an in-person assistance appointment, waiting time for online assistance, and other measures should be measured to examine agency performance on assistance.

§ 435.916: Periodic redeterminations of Medicaid eligibility

This section of the NPRM describes redetermination (renewal) of Medicaid eligibility.

HCFANY Comment: HCFANY strongly supports the overall approach of this section. We believe these rules will reduce administrative burden on states and improve retention among eligible beneficiaries. The proposed changes build on state practices that have had documented success in reducing staff time, decreasing churn and improving program integrity. These rules additionally come close to aligning Medicaid rules with those proposed for the premium tax credit.

§435.916(a)(1)

This section of the NPRM proposes 12 month redeterminations for Medicaid beneficiaries whose eligibility is based on MAGI.

HCFANY Comment: HCFANY commends HHS for requiring that redetermination be completed once every 12 months unless the state has information about changes in circumstances. New York currently performs redeterminations every 12 months. This regulation only applies to beneficiaries found eligible for Medicaid based on MAGI; the final rule should retain this requirement and it should be extended to apply to Medicaid beneficiaries that are found eligible for Medicaid on a non-MAGI basis.

§435.916(a)(2)

This section of the NPRM describes how a state Medicaid agency must make a redetermination without requiring information from the individual if the agency has or can obtain the information from any database.

HCFANY Comment: Consistent with section 1413(c)(3) of the ACA, this regulation requires states to rely on data available from other programs to the maximum extent possible for completing redeterminations of eligibility. Requiring agencies to first evaluate information available to it will reduce administrative burdens and costs for agencies, be far less burdensome for applicants and beneficiaries, and will significantly increase the number of eligible individuals who retain coverage.

We also support the process in the proposed rule. Under this process, when states find beneficiaries are still eligible based on available information, beneficiaries are notified that they remain eligible, and they are not required to sign and return the notice. Beneficiaries only have to respond if any information on the notification is not accurate. This too will significantly increase the number of eligible individuals who remain eligible.

§435.916(a)(3)

This section of the NPRM requires agencies to provide consumers with forms that the agency pre-populates with available information it has and provides 30 days to respond and provide further information if necessary.

HCFANY Comment: HCFANY recommends that the final regulation should require that beneficiaries be able to provide reasonable alternative documentation to verify their statements and when such documentation is not available or readily accessible, allow for self attestation.

We support allowing beneficiaries to complete the renewal processes via the Internet, telephone, mail, in-person and fax. This will give consumers the choice of renewing coverage in the manner that best meets their needs and that is most accessible to them.

We strongly support that if coverage for a beneficiary is terminated because they fail to complete the renewal processes within 30 days, there is an opportunity to be reconsidered without the need to file a new application if the individual responds to the agency within a reasonable period. The final regulation should retain this rule and set a standard of 90 days, as suggested in the preamble for what is considered to be "timely."

§435.916(a)(4)

This section of the NPRM requires the Medicaid agency assess eligibility for other insurance affordability programs when an individual is determined to be no longer eligible for Medicaid, and to send the pertinent data to the appropriate program for a determination of eligibility.

HCFANY Comment: HCFANY strongly supports this provision. This rule will help promote continuous coverage and should be retained in the final rule.

§435.916(c) and (d)

This section of the NPRM requires agencies to ensure that beneficiaries make timely and accurate reports of any changes in circumstances that may affect their eligibility and to review eligibility in response.

HCFANY Comment: While HCFANY believes the final rule should require beneficiaries to report changes such as loss or gain of household members, loss or gain of employment or change in state residency, we do not believe that the final rule should require beneficiaries to report income fluctuations throughout the 12-month eligibility period. Nor do we believe that the final rule should require agencies to act on fluctuations in income during 12-month eligibility periods. The variability of income is high among low-income families and individuals and we believe that it will be administratively burdensome and costly to require agencies to act on fluctuations that may temporarily change eligibility. Additionally, such an approach is consistent with the budget periods proposed under § 435.603(h).

§435.945 General Requirements

§435.945(a) Program Integrity

This section of the NPRM indicates that nothing in the subpart (which includes §435.948, §435.949 or §435.956) should be considered to limit state program integrity efforts.

HCFANY Comment: Restating the objective of program integrity in such broad terms serves little practical purpose in the regulation, and instead weakens the regulation by allowing a broad vague exception to all provisions of the regulation if any program integrity interest can be identified. HCFANY is concerned that if states wish to continue relying on processes that heavily depend on the collection of paper documentation, they can do so under the banner of program integrity. The net effect could be simply to make it difficult for all eligible children and families to enroll.

Program integrity is clearly dealt with under part 455 and is best addressed through those specific regulations, thus the removal of subpart (a) is recommended. Or, instead of removing subpart (a), the final rule in should require that if states choose to not implement provisions in this subpart in order to maintain program integrity, they should be required to document how the alternative process will improve program integrity and get approval from the Secretary.

§ 435.945(d)

This section of the NPRM requires that states must share information income and eligibility information needed for verifying eligibility in a timely manner.

HCFANY Comment: HCFANY supports this provision.

§ 435.945(e)

This section of the NPRM requires under subpart that states provide other agencies with reimbursement for furnishing relevant information.

HCFANY Comment: HCFANY supports this provision.

§ 435.945(f)

This section of the NPRM requires the agency to inform individuals that requests will be made to obtain information from other agencies or programs.

HCFANY Comment: HCFANY supports this provision.

§ 435.945(g)

This section of the NPRM requires that the agency report information about compliance with verification requirements.

HCFANY Comment: The regulation should require that these data be reported publicly and that the Secretary assess compliance and issue a report of findings. HCFANY also recommends that the report include a consumer and consumer advocate survey component as to the effectiveness of the verification process.

§ 435.945(h)

This section of the NPRM requires that information be exchanged securely and confidentially.

HCFANY Comment: HCFANY supports this provision. HCFANY recommends that the regulation specify that information can only be requested, shared or used for purposes strictly relevant to eligibility verifications.

§ 435.945(i)

This section of the NPRM requires that states establish formal agreements to protect information.

HCFANY Comment: HCFANY supports this provision but recommends that these formal agreements require that information can only be used for narrow and relevant verification purposes.

§435.948 Verifying Financial Information

This section of the NPRM describes how state Medicaid agencies will verify financial eligibility.

HCFANY Comment: CMS staff has described a definition of "reasonable compatibility" standard to exist when an individual's attestation and the available electronic data are relatively consistent and do not vary in a way that is meaningful for eligibility. In other words, the two sources of data need not match one another if both lead to the same eligibility determination. However, this crucial definition is absent from the regulations. CMS should define reasonable compatibility as information that is relatively consistent and does not vary in a way that is meaningful for Medicaid or CHIP eligibility.

§435.948(d) Flexibility in Information Collection and Verification.

This section of the NPRM describes how agencies may use alternative data sources, as long as such alternatives are approved by the Secretary and reduce administrative costs and burdens on individuals and states.

HCFANY Comment: It is unclear whether agencies would be approved to use such alternatives on a blanket basis (for all applicants at any point in the application process), only when other data sources required by paragraph (a) do not yield useable results, or on an individual basis.

The regulation should provide more detail as to how alternative sources would be used. HCFANY recommends that this paragraph could explicitly allow the agency to contact the individual's employer to obtain financial information when such information is not available through the federal data hub or through the sources mentioned in paragraph (a).

§ 435.949 Verification of Information through an Electronic Service

§435.949(a)

This section of the NPRM describes how information may be verified through an electronic service.

HCFANY Comment: HCFANY commends the creation of the federal electronic service (hub) that States must use to verify eligibility-related information available. We recommend that HHS consider expanding the scope of information provided by establishing linkages to state or other databases that contain reliable, relevant eligibility data. In particular, it is a priority for HHS to develop an electronic source that will assist states in determining whether an individual has access to minimum essential coverage.

HHS should seek to provide as robust a data service hub as possible and to continually improve and expand the sources of information available through it to aid states in verifying eligibility electronically, in real-time.

§435.952 Use of Information and Requests of Additional Information from Individuals

§435.952 (a)

This section of the NPRM requires the agency to promptly evaluate information it receives to determine whether the information affects an individual's eligibility.

HCFANY Comment: HCFANY recommends that the final rule should specify timeliness standards for Medicaid agencies to act on information during the initial application and beneficiary redetermination, which will occur once every 12 months. We propose that Medicaid agencies be required to complete such determinations as quickly as possible but under no circumstances should it take more than 30 days.

The variability of income is high among persons with low income and it is unreasonable to expect states to continuously act on fluctuations throughout the 12-month eligibility period. If states are required to do so, many individuals will likely move back and forth between Medicaid and

coverage through the Exchange with premium tax credits throughout the year. This movement between programs would be burdensome to consumers and costly to Medicaid agencies, Exchanges, health plans and medical providers. The final rule should only require Medicaid agencies to act on changes in household size, state residency and loss or gain of employment and should only permit Medicaid agencies to act on fluctuations in income during the initial application and redetermination that occurs once every 12 months.

§435.952(b) Continuing Assessment of Eligibility through Data Matching

This section of the NPRM requires the agency to determine or redetermine an individual's eligibility if information provided is reasonably compatible with information obtained by the agency.

HCFANY Comment: The ability of states to verify eligibility by accessing relevant data electronically will revolutionize the application process for children and families. It will ease administration for states and simplify enrollment for consumers. Data matching for verification should occur upon application, redetermination, and at other appropriate eligibility review junctures, but it should not be an affirmative on-going and real time responsibility for states with regard to Medicaid. If states are required to conduct behind-the-scenes verification on a continual basis, many individuals will likely move back and forth between Medicaid and coverage through the Exchange with premium tax credits throughout the year. This movement between programs would be burdensome to consumers, disrupt continuity of care and be costly to Medicaid agencies, Exchanges, health plans and medical providers. The final rule should only require Medicaid agencies to act on changes in household size, state residency and loss or gain of employment that impact eligibility.

HCFANY recommends that the regulation should be clear in requiring the use of data sharing for the purposes of appropriate verifications at application and redetermination, and as individuals report changes, but not as an on-going real time Medicaid responsibility.

§435.952(d)

This section of the NPRM prohibits the agency from terminating or reducing benefits based on information received through data matching unless the agency has sought additional information from the individual.

HCFANY Comment: HCFANY strongly supports this provision.

§435.956 Verification of Other Non-Financial Information

This section of the NPRM describes verification of other non-financial information, including social security numbers, pregnancy and household size, and age and date of birth.

HCFANY Comment: HCFANY strongly supports the requirement that the agency must accept attestation of pregnancy and household members. We support that states may accept an applicant's attestation of residency to determine eligibility unless the state has information that is not reasonably compatible.

To support consistency among all insurance affordability programs, states should be required to accept self-attestation of residency, age and date of birth.

Subpart M – Coordination of Eligibility and Enrollment Between Medicaid, CHIP, Exchanges and Other Insurance Affordability Programs

§435.1200 Medicaid Agency Responsibilities

This section of the NPRM describes the coordination of eligibility and enrollment between Medicaid, CHIP, Exchanges and other programs.

HCFANY Comment: HCFANY supports the overall approach of this section. However, we believe there is a need for more specific standards regarding the timeliness of applications, how consumers will be informed and notified, and how issues that will arise between the various coverage programs will be resolved.

§435.1200(c) General Requirements

This section of the NPRM requires the Medicaid agency to enter into agreements with the Exchange and other agencies administering insurance affordability programs to ensure coordination.

HCFANY Comment: HCFANY supports this provision. This should be retained in the final rule, and we suggest that HHS provide model agreements for this purpose.

§435.1200(d)—Internet Website

This section of the NPRM requires the agency to maintain a Web site that provides information on the various insurance affordability programs, as well as a mechanism through which people can apply for and renew coverage. The website must be accessible to people with disabilities and people with limited English proficiency

HCFANY Comment: HCFANY supports this rule. While we understand that the agency's intention is to address accessibility in other regulations, we wish to emphasize the importance of making translated materials available on state websites so that limited English proficient individuals can fully participate in these programs and the requirements of Title VI of the Civil Rights Act can be met. Similarly, access for persons with disabilities is critical. We urge HHS to develop specific and thorough regulations governing accessibility. We also recommend that HHS work with states to develop model forms, uniform vocabulary and other materials so that states can avoid expensive duplicative efforts.

HCFANY encourages any State Medicaid website to include information about all coverage and services. However, we ask that the regulations do not permit States to create sites that are merely health care information clearinghouse portals. Instead applicants should be able to fill out and submit applications for all insurance affordability programs from a single site. A webpage that does not allow for online application submission should not satisfy the text of the regulation.

§435.1200(e) Provision of Medicaid for Individuals Found Eligible for Medicaid by the Exchange

This section of the NPRM requires that the Medicaid agency furnish Medicaid "promptly and without undue delay" to applicants found eligible by the Exchange to the same extent as if they were found eligible by the Medicaid agency.

HCFANY Comment: HCFANY supports this provision.

§435.1200(f) Transfer of Applications from Other Insurance Affordability Programs to the State Medicaid Agency

This section of the NPRM requires agencies to ensure that it determines eligibility promptly.

HCFANY Comment: HCFANY is pleased that the proposed regulations prohibit the State Medicaid agency to request information or documentation from the applicant that is already contained in the transferred application. Similarly, and echoing our comments regarding §435.911(c)2, we ask that State Medicaid agencies consider verifying information already known to other State entities or utilizing data sharing technologies such as asset verification systems before requesting additional information from the applicant.

We also support the requirement that the Medicaid agency electronically transfer applications of individuals determined not eligible for Medicaid to other insurance affordability programs.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at ebenjamin@cssny.org or at (212)614-5461 or Abigail Claflin at aclaflin@cssny.org or (212) 614-5346.

Sincerely,

Elisabeth Benjamin, MSPH, JD
Vice President of Health Initiatives
Community Service Society of New York