February 28, 2013,
Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: CMS Desk Officer
Washington, DC

Transmitted via E-Mail

To Whom It May Concern:

We appreciate this opportunity to provide comments on the proposed collection, "Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid, and Children's health Insurance Program." We believe that all patients should have access to affordable, adequate health care, regardless of their source of coverage. The enrollment and eligibility form for the Exchanges is the mechanism through which consumers will access affordable, adequate healthcare. Therefore, it is essential that this form collect accurate and thorough information to ensure that consumers receive all of the benefits to which they are entitled.

A health insurance surcharge for tobacco use and what is for many, a chronic disease of tobacco addiction, is likely to produce adverse consequences. There is little evidence that financial incentives or disincentives through insurance premiums change individual behavior. Tobacco rating is an unproven way to improve public health when we have several thoroughly tested, evidence-based interventions that are proven to reduce smoking consumption and prevalence, including higher tobacco taxes on all tobacco products, smoke-free laws and cessation and prevention programs. However, given that the tobacco rating is being implemented, we think it's important that there be clear, consistent and standardized ways of asking about tobacco use. Our recommendations reflect our concern about standardized identification of tobacco users and do not reflect an endorsement of the tobacco rating.

The final health insurance market rule states that regular use of any tobacco product will be grounds for insurers to impose the tobacco surcharge. We are concerned that will be considerable consumer confusion over the definition of a tobacco product and the definition of regular use. The following comments provide suggestions for how to operationalize these definitions on the streamlined Exchange enrollment forms.

Any definition of tobacco use must take into account the evidence that tobacco users may have different perceptions of their status than insurers or public health authorities. The questions regarding tobacco use must minimize the potential for a consumer to be exposed to accusations of fraud or false reporting. Studies show that some smokers do not report to be smokers, raising the risk of not understanding enrollment questions about tobacco use status (1,2). For example, in studies of college students, more than half of students who reported smoking a cigarette in the last 30 days responded "no" to a the question of whether they are a smoker (3, 4). Smoking trends are also pointing to fewer daily smokers, which may affect how smokers are identified or identify themselves (5). Even among "occasional" smokers, large differences exist in smoking history, smoking patterns and perceived addiction (6).

Users of newer or less common tobacco products may not even consider themselves tobacco users because they aren't using cigarettes or traditional smokeless tobacco. An occasional, or even regular, user of an e-cigarette, tobacco orbs or a flavored cigarillo does not necessarily identify as a smoker or tobacco user because they are not a smoking cigarettes and they do not consider themselves addicted to tobacco.

The final insurance market rule references the tobacco questions from the National Health Interview Survey (NHIS). The 2012 NHIS questionnaire uses a series of questions to identify whether and to what extent a respondent is a tobacco user. These questions are divided into three sections: cigarettes, other smoking products and smokeless tobacco products. Each section begins the question by first defining the products. For example, the smokeless question series begins by stating "Smokeless tobacco products are placed in the mouth or nose and can include chewing tobacco, snuff, dip, snus (snooze), or dissolvable tobacco." We recommend that the questions used to identify a tobacco user use a similar definition as employed by the NHIS in their tobacco questions. Further, we also suggest that the form use a series of questions about different types of tobacco products like those contained in the NHIS. Tobacco products are continually changing, new products are continually introduced and the marketing of the products is often purposely vague or deceptive, making clear understanding of what is a tobacco product a challenge for some consumers. These questions have been tested for use in the general population and are a sufficient placeholder until HHS can do further consumer testing of the tobacco questions.

The final insurance market rule defines tobacco use as follows: "use of tobacco on average four or more times per week within no longer than the past 6 months. This includes all tobacco products except that tobacco use does not include religious or ceremonial use of tobacco. Further, tobacco use must be defined in terms of when a tobacco product was last used." This definition is unclear as to whether someone who has used tobacco regularly for only a small point in time over the course of the past 6 months (but no longer uses tobacco) would be considered a tobacco user or whether someone would only qualify as a tobacco user if, over the full course of the past 6 months, they have used tobacco at least four times per week. We strongly recommend the adoption of the latter interpretation. If the intent of the definition is the former interpretation, we recommend that the definition set a minimum period of time through which an individual must have used tobacco regularly, in order to be considered a tobacco user. For example, the NHIS questions about frequency of use limit the time period to "now", rather than asking a respondent to quantify their behavior over many months.

Finally, because the tobacco surcharge could represent an increase of thousands of dollars in premiums, it is important that consumers understand the implications of their answers regarding tobacco use and cessation. We recommend that consumers be told clearly and directly in the application that indicating regular use of tobacco products will result in a higher premium. Further, for those consumers in the small group market who may avoid a tobacco surcharge through participation in a wellness program, we recommend that the form posts a clear disclaimer with the premium information, in consumer-friendly language, that failure to indicate intention to enroll in a cessation program will result in higher premiums.

Filling out the exchange enrollment and eligibility form is the first experience consumers will have with the ACA exchanges. As such, it is critical that consumers find this form easily comprehendible. We are concerned that if not clearly operationalized, consumers will face considerable confusion over the tobacco questions. Our comments suggest ways in which the tobacco questions can be designed to minimize consumer confusion.

Sincerely,

American Cancer Society Cancer Action Network

American Heart Association

American Lung Association

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5. Sacks, R et all. Exploring the Next Fronteir for tobacco control: Nondaily smoking among New York City Adults. Journal of Environmental Public Health 2012. Epub May 20, 2012.

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