



March 30, 2016

Andy Slavitt
Acting Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

Submitted via email: SEP@cms.hhs.gov

Dear Mr. Slavitt:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists nationally. We appreciate the opportunity to comment on the CMS plan to expand the eligibility verification process for people who are enrolling in individual market coverage via the federally facilitated marketplace (FFM) during the annual special enrollment period (SEP).

The members of NAHU work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage. Over the past few months, many NAHU members have helped millions of their clients purchase marketplace-based coverage, and plan to continue to help their clients with eligibility for enrollment during the SEP period with their individual coverage needs. NAHU members directly encounter individuals who are seeking coverage year-round and have a wealth of experience with regard to qualifying-event verification, given that they have been assisting with similar processes in the private marketplace for decades. Health insurance agents and brokers also have a unique understanding of how health coverage risk pools work, and the impact an appropriate balance of risk has on health coverage pricing and insurance market stability. For all of these reasons, NAHU members have a profound interest in the CMS proposal to expand the SEP eligibility verification process. We have convened a group of members who work directly with individual market and exchange consumers nationally to provide you with detailed comments broken down by topic about the development of your proposal, so please note that they reflect the direct thoughts of experts in the field.

Overall Market Stability

NAHU believes that your goal of requiring greater verification of SEP eligibility for the most common enrollment situations is a sound policy and we commend CMS for expanding the eligibility verification process for the federally facilitated marketplace. The individual health insurance market is naturally more prone to adverse selection than perhaps any other insurance market because individuals typically bear the price of coverage themselves and because people have unique knowledge of their health status and can seek coverage only when they feel they truly need to use medical care services. However, for this market to function properly and maintain both price and risk stability, as many participants as possible need to enter the market simply because they want the financial protection health insurance coverage provides, not because they are in ill health. Furthermore, to provide both national health security and market stability, as many people as possible need to maintain their coverage year-round and from year to year. Given that the Patient Protection and Affordable Care Act mandates an open-enrollment period/special enrollment period for the entire individual insurance marketplace, it is critical that individuals who are seeking coverage outside of the annual open-enrollment period have a legitimate reason for doing so.

The new verification process proposed by CMS, which focuses on the most common SEP eligibility scenarios, is a sound start to preventing abuse and ensuring greater individual market stability. However, NAHU would like to stress that unless the verification process is clear, fair and comprehensive both from the perspective of the consumer and the issuers in the marketplace, it will be



insufficient to prevent fraud and preserve the “health” of the overall individual market. To that end, NAHU would like to see CMS move to enhance its eligibility processes for other qualifying events beyond the most common scenarios. Furthermore, to promote compliance, fairness and risk pool stability in the entire individual marketplace, NAHU believes the documents required for verification of SEP eligibility, as well as the eligibility timeline and other general processes, should be the same regardless of the point of purchase. While the current guidance is merely for the FFM, NAHU feels that CMS should work to ensure that consistent standards are being applied in the state-based exchanges and the off-exchange individual market. We encourage the development of more formal regulatory guidance to ensure consistent standards are being used and enforced nationwide.

Timing

The prospect of the development of enhanced SEP eligibility verification procedures by the FFM raises a number of questions and concerns relative to timing. First of all, in the blog post announcing CMS’s plans and other related documents, your agency indicates that some parts of this effort, such as modifications to Healthcare.gov notifying consumers in the application process that additional documentation could be required, will take effect immediately. Other components, such as additional communication materials to consumers and the actual verification process, will be ramped up over time. NAHU appreciates CMS’s efforts to begin at least some implementation as soon as possible. However, we believe that consumers and professionals involved in the FFM coverage process would benefit from the public announcement of a concrete timeframe. We would all be better off knowing which verification components will be added to the current SEP and approximately when, as well as which components, if any, will not be finalized until the 2017 SEP.

Once it is fully established when the FFM’s enhanced SEP verification process will begin, the next question that arises is how long consumers will have to provide documentation of their eligibility status to the FFM and how implementation of the new verification process will impact an individual’s enrollment status. Based on their experience verifying qualifying event eligibility for both employer group and individual market coverage in the private market, NAHU members believe that consumers should have 90 days from their initial point of enrollment with the FFM to provide all needed coverage-verification documents. This should give the FFM a sufficient amount of time to communicate with consumers and give consumers enough time to procure documents that may not be immediately available, such as divorce-related paperwork or a birth certificate.

An even more important timing decision that needs to be made and communicated immediately to consumers and benefit professionals is when the coverage will be effectuated if additional verification documents are required. NAHU members feel very strongly that the best practice for both the health of the market and the consumer is to allow consumers to enroll in coverage immediately and begin paying premiums, even if they do not have all required documents to submit at the time of initial enrollment. However, if all documents are not immediately available for verification, we would suggest that the consumer be placed in a “pending” status by the FFM and the health plan, similar to the status of current FFM consumers with health premium tax credit eligibility who are in their 31-90 days of their payment grace period. Once documentation is received and verified by the FFM, then the pending status should be lifted and claims incurred be paid retroactively to the date of enrollment. Consumers, their certified agent/broker or other assister and the involved issuer would then be notified immediately about the individual’s change of status and the consumer and the certified broker or assister could also be advised about how to address any previously unpaid claims if any issue occurred. NAHU members believe that the use of this process will protect both the issuers and the consumers far better than retroactive terminations, and we believe issuers would be able to easily implement it.

Finally, as CMS moves forward with this process, we believe that there is an area of SEP eligibility timing that should be reviewed and addressed. Generally, an individual’s SEP eligibility lasts for 60 days following a qualifying event. However, for SEP eligibility for involuntary loss of minimum essential coverage (MEC), we suggest that the 60-day window beginning with the later of the qualifying date or the notice the individual receives of the qualifying event. Sometimes, particularly in tricky family situations or in the loss of



CHIP coverage, brokers report that individuals may not realize their loss of coverage until they are eventually notified, which might be quite a while after the coverage was actually lost.

Verification Process

Health insurance agents and brokers have a wealth of experience with regard to qualifying event verification, given that they have been assisting with similar processes in the private marketplace for decades. NAHU members believe there are many lessons that can be learned from insurer, employer and agent and broker experiences in verifying eligibility for COBRA, state continuation, HIPAA conversion policies, high-risk pools, employer coverage and current SEP verification practices being conducted in the off-exchange marketplace. NAHU encourages CMS to keep the dialogue open with individuals who have experience in these areas and would be happy to provide you with more detailed feedback about our experiences with eligibility verification upon request.

Generally, NAHU members note that when establishing effective eligibility verification processes, it is essential that consumers be required to provide official documents that indicate their status. Eligibility verification that relies on personal attestations or affidavits (such as the attestation of a birth by a doctor or midwife rather than a birth certificate) should be the exception, not the rule, as these items lend themselves most easily to fraud. Furthermore, the list of items that can be used to verify eligibility should be both clear and limited. Individuals who are truly eligible will be motivated and able to obtain official documentation of their situation. An overly broad list of allowable documentation encourages inconsistency in implementation and will be more difficult for all assisters (agents and brokers, call center operators, navigators, etc.) to monitor.

NAHU members recognize that there will always be extraordinary cases where individuals cannot obtain official documents or cannot meet allowable timeframes due to circumstances beyond their control. The FFM has a robust appeals process already in place. NAHU suggests that all special circumstances be routed through the appeals process, including individuals who cannot obtain official documentation and individuals whose ability to obtain the documents eclipsed the 90 days.

Specifically, NAHU members in the field have developed the following recommendations about the type of documents needed and the processes that should be used for each type of SEP qualifying event for which additional verification will be required:

Involuntary Loss of Eligibility for Minimum Essential Coverage

An individual's eligibility for an SEP related to the loss of MEC eligibility can be both tricky for a consumer to understand and also tricky to document. Therefore, NAHU believes that it is crucial that the required coverage documentation accurately reflect the individual's status. Qualification for this SEP is very specifically predicated upon **involuntary loss of eligibility for MEC**. Qualification is not necessarily related to if the person had and lost prior coverage; rather, it is the loss of eligibility that is important. For example, if an individual consumer had prior individual coverage and dropped it voluntarily, he or she would not be truly eligible for an SEP even though proof would be available that indicated a coverage loss. However, an individual who previously had access to group coverage through an employer but chose not to enroll, and then lost such eligibility mid-year due to a discontinuation of the employer group plan, would have SEP rights even though there was no actual coverage loss to document.

Given that qualification for an SEP based on this situation is both complicated and ACA-specific, NAHU believes that the best means of documenting eligibility would be through the completion of a CMS-developed document. Rather than a consumer being required to procure documents that may or may not truly indicate their eligibility, for consistency purposes, NAHU members suggest that CMS develop an official template letter/form that individuals could provide to their former source of MEC eligibility to certify their current SEP eligibility status. This form could have several variations to accommodate the various different potential sources of MEC, such as employer-based coverage, a school plan, Medicaid/CHIP, etc. It would need to include eligibility loss dates and sections to be completed and signed by both the consumer and the appropriate MEC plan administrator. Furthermore, NAHU would suggest that



such a form include clear notification of the consequences of a false certification and that CMS reserves the right to contact the source of prior MEC eligibility to verify that eligibility has been involuntarily lost.

While the onus for obtaining the form and ensuring its completion and return to the FFM would always be on the consumer seeking to enroll in FFM-based coverage during an SEP, NAHU believes that if CMS made this form readily and publicly available, specific group plans and particularly government sources of coverage may automatically begin to adopt its use when an individual loses eligibility.

Permanent Move to a Different Coverage Service Area

NAHU members strongly believe that for proof of a move, multiple forms of documentation should be required. An individual could easily acquire a rental property or temporarily move residences and acquire a single piece of proof that indicates a move, but that doesn't mean a true residence shift has occurred. In addition, NAHU members note that some consumers might be disinclined to report a move if they felt that their current coverage was preferable to the coverage that would be available in a new service area. Schools, state agencies providing official identification and other government offices routinely require multiple sources of address verification, and NAHU believes that CMS should too.

Move documentation should also include both the new and old addresses. This may require up to four pieces of verification documentation being submitted to CMS, but NAHU believes that to truly prevent fraud, it is essential that multiple sources of move and new address documentation be provided.

Acceptable means of verifying a move/qualifying change of permanent address should include:

- Lease or rental agreement
- Insurance documents, such as homeowner's, renter's or life insurance policy or statement
- Mortgage deed if it states that the owner uses property as the primary residence
- Mortgage or rental payment receipt
- Mail from the Department of Motor Vehicles, such as a driver's license, vehicle registration or change of address card
- State ID
- Official school documents, including school enrollment, report cards or housing documentation
- Utility, Internet or cable bill
- Mail from a government agency to your address, such as a notice from TANF or SNAP agency
- Mail from a financial institution, such as a bank statement
- U.S. Postal Service change of address confirmation letter
- Pay stub showing address
- Voter registration card showing your name and address

Alternative documentation should only be permissible if other more official sources of documentation are truly unavailable. If an individual is in the situation where he or she truly cannot document a qualifying change of permanent residence through formal means, then he or she should be required to access the coverage-appeals process.

Birth, Adoption, Divorce, Marriage or Court-Ordered SEPs

With regard to these changes in life circumstances, NAHU believes that official government documents should be provided to verify SEP eligibility whenever possible. If an individual is in the situation where he or she cannot document a life event change through



formal means, then he or she should be required to access the coverage-appeals process. NAHU members recognize that the process to obtain documents like birth certificates and divorce decrees can take time and sometimes are completely outside of the control of the consumer. If individuals are truly in this situation where documents cannot be obtained in the allowable timeframe, then the coverage appeals process should be an allowable avenue for them to pursue. Acceptable means of documenting qualifying life events should include:

- Birth certificate for the newborn
- Application for a Social Security Number for the newborn
- A foreign birth record showing date of birth
- Military record showing date and place of birth of the newborn
- Religious record showing the date birth for the newborn
- Social Security card for the newborn
- Legal record showing date of adoption
- Legal document showing the date that the child was placed in the home
- Letter that shows the date legal guardianship was established
- Court order showing the effective date of the order
- U.S. Department of Homeland Security immigration document for foreign adoptions
- Medical support order
- Foster care papers
- Marriage certificate showing the date of the marriage
- An official public record of the marriage, including a foreign record of marriage that has been translated and notarized

A marriage license should not be an acceptable documentation means, as a license may be obtained but the marriage not executed.

SEP Communications with Consumers

NAHU members believe that for the FFM to effectively implement a new SEP verification process, consumer communications will be key. First of all, Healthcare.gov's online interface should be updated to provide consumers with clear information about the new program. NAHU supports the efforts that have already been made to enhance enrollment prompts to indicate the new need for documentation for each circumstance and to improve the online enrollment instructions to more clearly indicate the circumstances that trigger eligibility. However, we believe that the "Get Answers" section of healthcare.gov needs to be updated as soon as possible to include a section specific to providing more information about SEP qualification. This section should outline the enrollment rules, the new SEP verification process including all relevant deadlines and acceptable verification documents by category, means of documentation submission, the appropriate channels for an appeal, and the details of how coverage will be effectuated when additional verification is required.

Additionally, CMS will need to develop clear and readable written communications to consumers who apply for coverage during the SEP explaining the eligibility-verification requirements, acceptable documentation and its submission process, the means for appeals and all relevant timelines and deadlines. This communication should be provided to consumers through multiple channels, including email and U.S. mail, so that consumers can be assured of receipt. Notification via healthcare.gov or via automatic telephone or "robocall" technology is both insufficient and unreliable means of consumer communication. NAHU supports the use of telephoning consumers as a follow-up to official written communications, but note that such calls should be placed and executed by live and trained customer support personnel.



NAHU also strongly urges that all written communications to consumers should include copies to any certified agent or broker listed on the individual's application or any certified navigator or assister. This will ensure that consumers have an additional source of enrollment support and assistance through the SEP-verification process. Furthermore, at the stage it is appropriate and determined, the relevant health insurance issuer should be notified, and all entities should be capable of communicating with each other and sharing information obtained during the SEP enrollment and verification process to ensure that the consumer is effectively served in these situations.

SEP Training for Brokers and Other Assisters

CMS has indicated that it plans to provide additional training support to health insurance agents and brokers, as well as navigators and other assisters related to the FFM's new SEP-verification program. NAHU appreciates CMS's recognition that brokers play a key role in the SEP and need to have accurate information to effectively assist consumers. However, we do not believe that CMS needs to devote extensive resources on broker-specific training relative to the SEP-verification process. Instead, as soon as CMS has the list of required verification documents and the submission process, appeals information and coverage effective dates finalized, this information needs to be provide to agents and brokers as soon as possible. Posting the eligibility-verification process rules and requirements online as soon as practicable will also be key for compliance. NAHU suggests that SEP eligibility and verification information should be incorporated into the existing broker certification programs, and we suggest that the training for other assisters be modified as well.

Perhaps the most important thing CMS could do to help both consumers and the certified professionals that may help people enroll in and utilize their FFM-based individual coverage is to ensure that CMS's own customer support professionals are well-trained in the SEP eligibility requirements and the mechanics of the verification processes. NAHU suggests that CMS train a subset of call-center operators specifically on the SEP rules and changes and develop an internal process so that calls with SEP questions can quickly be routed to an individual with advanced training. In addition, these individuals should be given the internal authority to escalate SEP cases if a problem or unique situation occurs.

NAHU sincerely appreciates the opportunity to provide comments on CMS's proposed new verification process for the special enrollment period and we look forward to working with you and providing more feedback as it is fully implemented in the year ahead. If you have any questions or need additional information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink that reads "Janet Trautwein". The signature is fluid and cursive, with a large loop at the end.

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters