



May 5, 2024

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Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard,
Baltimore, MD 21244

Re: OMB Control Number 0938-1191, CMS-10440 Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Benefits Exchanges, Medicaid and CHIP Agencies

Dear Centers for Medicare & Medicaid Services,

Dēmos, the American Civil Liberties Union (ACLU), and the League of Women Voters hereby submit these comments in response to the Comment Request by the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), regarding the proposed Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Benefits Exchanges, Medicaid and CHIP Agencies (CMS-10440), published at 89 Fed. Reg. 16,580 (March 7, 2024).

I. Interest of Commenters

Dēmos is a think tank that powers the movement for a just, inclusive, multiracial democracy. Since 2000, Dēmos has worked through a unique combination of research, advocacy, multi-platform communications, legal expertise, and deep partnerships with grassroots organizations from across the country. Dēmos, which means “the people,” is the root word of democracy. The name is a reminder that America’s power is derived from the diversity of its people. Dēmos has an almost two-decade-long history of working to implement the government agency registration sections of the National Voter Registration Act (NVRA), 52 U.S.C. §§ 20504, 20506—including submission of comments about the NVRA and HealthCare.gov in response to the Comment Request by CMS regarding Agency Information Collection Activities: Submission for OMB Review, published at 78 Fed. Reg. 6109, 6110 (Jan. 29, 2013) (commenting on proposed information collection 3, entitled, “Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment Through Affordable Insurance Exchanges, Medicaid, and Children’s Health Insurance Program Agencies”)—and therefore has specific expertise and knowledge related to the integration of voter registration opportunities within agency benefits applications. Indeed, Dēmos’ work, along with partners, has resulted in the facilitation of voter registration applications by at least 3 million new, primarily low-income voters.

The ACLU is a nationwide, nonprofit, nonpartisan organization with millions of members and supporters across the country. Since its founding in 1920, the ACLU has been dedicated to the principles of liberty and equality embodied in the U.S. and state Constitutions and our nation’s civil rights laws, including the rights to free speech, expression, association, and the right to cast a meaningful vote. In 1965, the ACLU established its Voting Right Project, which has aggressively and successfully challenged efforts to suppress voting or to dilute minority voting strength through litigation, advocacy, and public education. ACLU voting rights staff have been fighting to achieve compliance with Section 7 of the NVRA for over 12 years. This includes significant work with more than a dozen states’ Medicaid agencies and, since 2013, state-operated health insurance exchanges. Accordingly, the ACLU has substantial expertise pertaining to effectively integrating voter registration opportunities into applications for public assistance and health insurance benefits.

The League of Women Voters (the “League”) is a nonpartisan, nonprofit, community-based membership organization that promotes political responsibility by encouraging Americans to participate in the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 500,000 members and supporters and is organized in more than 750 communities and in every state. The League founded the Motor Voter Coalition in the 1980s and 1990s and served as national co-chair of the campaign to pass and implement the NVRA. The League has been one of the foremost active defenders of the NVRA by, *inter alia*, notifying, working with, and/or filing enforcement lawsuits against Secretaries of State to correct NVRA violations in Alabama, Arizona, Florida, Georgia, Louisiana, Montana, Ohio, Pennsylvania, Tennessee, and Texas. The League also has filed litigation to protect the spirit and text of the NVRA, including, for example, *League of Women Voters v. Newby*, 238 F. Supp. 3d 6 (D.D.C. 2017) (ruling that the Election Assistance Commission did not have the authority to allow three states to require citizenship documentation on federal voter registration forms) and *League of Women Voters of Indiana, Inc. v. Sullivan*, 5 F.4th 714 (7th Cir. 2021) (affirming district court injunction of Indiana’s list maintenance law that violated NVRA). Notably, in early 2013, the League provided comments to CMS regarding its information collection entitled, “Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment Through Affordable Insurance Exchanges, Medicaid, and Children’s Health Insurance Program Agencies.” Through advocacy, litigation, and grassroots efforts, the League holds a record of registering thousands of voters every election cycle, and is instrumental in ensuring access to voter registration for all eligible voters.

The content of the following comments draws heavily from these organizations’ long experience with public agency voter registration.

II. Background

An affirmative federal effort to ensure every eligible American is registered to vote is a proven and much-needed means of strengthening our democracy. According to the Census Bureau, during the 2022 election, nearly a third of eligible Americans—over 72 million people—

were not registered to vote.¹ As states across the country passed laws imposing barriers to voting that disproportionately burden people of color, voters with disabilities, individuals with lower incomes, and other historically disenfranchised groups, in 2021—on the 56th anniversary of Selma’s Bloody Sunday—President Biden issued Executive Order 14019 on “Promoting Access to Voting,” which acknowledged the responsibility of the federal government to expand access to and education about voter registration to help ensure all Americans can participate in our democracy.² The Executive Order adopted a bold, whole-of-government approach to integrating voter registration opportunities through federal agency programs, including those administered by HHS. It directed federal agencies to “consider ways to expand citizens’ opportunities to register to vote and to obtain information about, and participate in, the electoral process.”³

After President Biden issued the Executive Order, the White House released a statement on the Biden Administration’s actions “to restore and strengthen American democracy.”⁴ The statement identified CMS’s commitment to “mak[ing] it easier for consumers using HealthCare.gov to connect to voter registration services and receive assistance” as a signature priority, listing it as the first among several actions aimed toward “making it easier for Americans to register to vote.”⁵ On March 7, 2024, CMS published the instant notice inviting comments from interested persons regarding its proposed actions, including those aimed at “provid[ing] consumers interested in voting resources.”⁶

III. Policy Considerations Supporting this Action

We applaud HHS and CMS for issuing this notice addressing the inclusion of a voter registration question within the federal applications for health coverage and for recognizing that doing so “further[s] the goals of Executive Order 14019 to expand access to, and education about, voter registration and election information to enable all eligible Americans to participate in the democratic process.”⁷ HHS, and CMS in particular, is uniquely situated to have a strong

¹ *Voting and Registration in the Election of November 2022*, tbl.4a, U.S. Census Bureau (May 2, 2023), <https://census.gov/data/tables/time-series/demo/voting-and-registration/p20-586.html>.

² Exec. Order No. 14019, 86 Fed. Reg. 13,623 (Mar. 7, 2021); *see also* Liz Avore, *The Markup: Weekly Election Legislation Update for Monday, July 12*, Voting Rights Lab (July 12, 2021), <https://votingrightslab.org/2021/07/12/the-markup-weekly-election-legislation-update-for-monday-july-12/> (indicating that 443 new anti-voter bills had been introduced in state legislatures by mid-July 2021).

³ Exec. Order No. 14019, § 3.

⁴ *Fact Sheet: The Biden-Harris Administration is Taking Action to Restore and Strengthen American Democracy*, The White House (Dec. 8, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-the-biden-harris-administration-is-taking-action-to-restore-and-strengthen-american-democracy/>.

⁵ *Id.*

⁶ *Agency Information Collection Activities: Proposed Collection; Comment Request*, 89 Fed. Reg. 16,580, 16,581 (Mar. 7, 2024).

⁷ *Supporting Statement for Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and*

impact through its implementation of the Executive Order. In fact, effective implementation of the voter registration question by CMS is one of the most significant things *any* federal agency can do to promote access to voting. Analysis conducted by Dēmos found that if CMS were to effectively integrate an offer of voter registration into the process flow of the HealthCare.gov application, it could yield as many as 1 million new and updated voter registration applications each year.⁸

We know from the incredible success of the National Voter Registration Act (NVRA), which celebrated its 30th anniversary last year, that including a voter registration question within the process flow of an application for benefits (as this notice proposes to do by moving the voter registration question as shown in Exhibits A through D) is highly impactful and maximizes the likelihood that applicants will see and take advantage of an offer of voter registration.⁹ This is significant for both health and voting policy reasons.

There is a strong relationship between civic participation and improved health and well-being. Research has shown that states and countries with greater accessible voting and higher civic participation practices perform better across several public health measures than those with fewer such practices.¹⁰ As HHS itself has recognized, voting is one of the social determinants of health.¹¹ Indeed, the research referenced above was cited by three former CMS administrators who advocated for a “frictionless opportunity for voter registration when [Americans] submit an

Children’s Health Insurance Program Agencies, CMS (Mar. 7, 2024), <https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995pra-listing/cms-10440> (footnote omitted).

⁸ See *Federal Agency Voter Registration Estimates of Annual Impact* at 1, 3, Dēmos (Apr. 2024), <https://www.demos.org/sites/default/files/2024-04/Voting%20Access%20EO%20Impact%20Estimates-April%202024.pdf>.

⁹ See Exs. A-D, *Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children’s Health Insurance Program Agencies*, CMS (Mar. 7, 2024), <https://www.cms.gov/regulations-and-guidance/legislation/paperworkreductionactof1995pra-listing/cms-10440>; see also Laura Williamson, Pamela Cataldo & Brenda Wright, *Toward a More Representative Electorate: The Progress and Potential of Voter Registration Through Public Assistance Agencies*, Demos (Dec. 2018), <https://www.demos.org/research/toward-more-representative-electorate> (detailing the NVRA’s success in expanding access to the ballot and making it easier for millions of Americans to register to vote by providing voter registration opportunities during the application process for government benefits).

¹⁰ See Christopher Nelson, Jennifer Sloan & Anita Chandra, *Examining Civic Engagement Links to Health: Findings from the Literature and Implications for a Culture of Health*, RAND Corp. (2019), https://www.rand.org/pubs/research_reports/RR3163.html; see also *Health and Democracy Index*, Healthy Democracy Healthy People (2021), <https://democracyindex.hdhp.us/>.

¹¹ See *Healthy People 2030: Increase the Proportion of the Voting-Age Citizens Who Vote*, U.S. Dept. of Health & Human Servs., <https://health.gov/healthypeople/objectives-and-data/browse-objectives/social-and-community-context/increase-proportion-voting-age-citizens-who-vote-sdoh-07>.

application for health insurance on HealthCare.gov.”¹² Thus, the inclusion of this opportunity to register to vote within the health coverage application process, and the concomitant increase in the people who register to vote, can only help improve health outcomes.

Moreover, integrating voter registration into the HealthCare.gov application flow would ensure that the many millions of users of the federal exchange would gain access to participation in our democracy and acknowledge that their voices are essential.¹³ Over two-thirds of the users of the federal exchange have lower incomes and live in states with more restrictive voting laws.¹⁴ Lower-income people are registered to vote at rates well below those who are more affluent, and there is significant overlap between states with more restrictive voting laws and states that use HealthCare.gov and the federal exchange.¹⁵ Therefore, health insurance accessed through HealthCare.gov—including both Medicaid and private insurance—reaches precisely those citizens who have more limited access to voter registration and participation.

Finally, the inclusion of this question will better ensure that those applicants who apply for benefits through HealthCare.gov and are determined to be eligible for Medicaid are provided access to voter registration services, regardless of whether their state delegates the authority to make final Medicaid eligibility determinations to the federal marketplace or requires CMS to

¹² Andy Slavitt, Don Berwick & Cindy Mann, *Americans Should Be Able to Register to Vote When They Apply for Health Insurance on HealthCare.gov*, StatNews (Mar. 21, 2023), <https://www.statnews.com/2023/03/21/healthcare-gov-voter-registration/>.

¹³ In the most recent open enrollment period, 16 million people used HealthCare.gov. *See Historic 21.3 Million People Choose ACA Marketplace Coverage*, U.S. Dept. of Health & Human Servs. (Jan. 24, 2024), <https://www.hhs.gov/about/news/2024/01/24/historic-21-million-people-choose-aca-marketplace-coverage.html>; *see also* CMS 2024 Marketplace Open Enrollment Period State-Level Public Use File, <https://www.cms.gov/data-research/statistics-trends-reports/marketplace-products/2024-marketplace-open-enrollment-period-public-use-files>.

¹⁴ *See 2024 Marketplace Open Enrollment Period Public Use Files*, CMS (Mar. 22, 2024), <https://www.cms.gov/data-research/statistics-trends-reports/marketplace-products/2024-marketplace-open-enrollment-period-public-use-files> (indicating in the “2024 OEP State-Level Public Use File” that over 11.3 million of the nearly 16.4 million consumers who enrolled in coverage during the 2024 Open Enrollment period have incomes between 100% and 200% of the federal poverty line); *Democracy Map*, Movement Advancement Project, https://www.mapresearch.org/democracy-maps/ratings_by_state (Apr. 22, 2024) (tracking state election laws, policy and data to evaluate how states optimize civic engagement, including tracking a number of factors to evaluate if states unduly restrict access to registration).

¹⁵ *See, e.g., New Census Data Reveal Voter Turnout Disparities in 2022 Midterm Elections*, Nat’l Low Income Hous. Coal., <https://nlihc.org/resource/new-census-data-reveal-voter-turnout-disparities-2022-midterm-elections> (“While 73% of eligible homeowners were registered to vote in November 2022, only 58% of eligible renters were registered. Eighty-two percent of eligible voters with household incomes above \$100,000 were registered, compared to just 57% of eligible voters with household incomes below \$20,000.”). *Compare Democracy Map*, Movement Advancement Project, *supra* note 14, with *State Health Insurance Marketplace Types, 2024*, KFF, <https://www.kff.org/affordable-care-act/state-indicator/state-health-insurance-marketplace-types/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

transfer the account to the state’s Medicaid agency for a final determination.¹⁶ Medicaid is one of the public assistance programs for which states are required to provide voter registration services under the NVRA.¹⁷ Adding this voter registration opportunity to HealthCare.gov will help to ensure that Medicaid clients are receiving an offer to apply for voter registration.

IV. Recommendations for Modifications of Proposal in Notice

While the proposed placement of a voter registration question within the process flow of the health coverage application’s determination of eligibility for benefits provides a higher likelihood that applicants see and avail themselves of the opportunity to register to vote than did its former location, we still recommend some modifications to the language and placement. Most state-operated health insurance exchanges have implemented NVRA-compliant voter registration services, and the recommendations below rely upon effective state practices as a model.

(1) We recommend modifying the language of the voter registration question, in both the HealthCare.gov online application (Attachment A) and the paper applications (Attachments B, C, and D).

CMS proposes asking applicants, “Would you like information on registering to vote?” The proposed language does not alert applicants to the available opportunity to *register* to vote but, rather, suggests that a “yes” response will result in a deluge of information about the process of voter registration. Instead, the language of the voter registration question should make clear that people can have the opportunity to apply to register to vote, not just to obtain voter registration information. To accomplish this end, we recommend asking:

“If you are not registered to vote where you currently live, would you like to apply to register to vote?”

This alternative phrasing of the question is closely modeled on, but slightly modified from, the language of the NVRA.¹⁸ Using this language conveys to the applicant an ability to take action to get registered rather than just passively receive information.

(2) We recommend that the voter registration question in the HealthCare.gov online application be programmed as a “hard stop,” i.e. that the applicant must select an answer from one of the radio buttons.

¹⁶ See, e.g., *Medicaid and CHIP Marketplace Interactions*, Medicaid.gov (Nov. 1, 2015), <https://www.medicaid.gov/medicaid/national-medicaid-chip-program-information/medicaid-chip-enrollment-data/medicaid-chip-marketplace-interactions/index.html>; *Technical Resource Guide – Overview: State Medicaid/CHIP Agencies Accepting Federally-Facilitated Marketplace Eligibility Decisions*, CMS (Oct. 1, 2022), <https://www.medicaid.gov/federal-policy-guidance/downloads/ffm-d-trg-overview.pdf>.

¹⁷ See *The National Voter Registration Act of 1993 (NVRA)* at Question 13, U.S. Dept. of Justice (July 20, 2022), <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.

¹⁸ See 52 U.S.C. § 20506(a)(6)(B)(i) (“If you are not registered to vote where you live now, would you like to apply to register to vote here today?”).

Making a question a hard stop, which requires the applicant to choose one of the multiple answers provided, ensures that applicants and assisters engage with, rather than skip over, the question at issue. As currently proposed for the HealthCare.gov online application, an individual can simply skip the voter registration question. Years of NVRA enforcement and implementation experience show that many users do not see or engage with a question that they are not required to complete. Adding a hard stop so that applicants have to think about their answer to the voter registration question guarantees that people do not fail to see it.

That said, by offering “*prefer not to answer*” as an available response to the question, HHS is ensuring that applicants who do not wish to answer the question with a “yes” or “no” are not required to do so and may opt out of answering whether or not they wish to apply to register to vote.

In sum, to ensure that applicants see and do not unintentionally skip over the offer of voter registration information, CMS should program the question as a “hard stop.”

(3) For the HealthCare.gov online application, we recommend tracking the responses to the voter registration question.

Tracking responses to the voter registration question is key to ensuring its successful implementation. Under the NVRA, states are required to track extensive data about voter registration applications and responses and provide a biennial report to the U.S. Election Assistance Commission (EAC).¹⁹ Data compiled by states as required by the NVRA has proven invaluable not only in ensuring their compliance with federal law, but also in developing best practices and identifying more effective ways for states to administer voter registration generally and at public assistance agencies, specifically.

Tracking responses to the voter registration question on HealthCare.gov will prove similarly valuable. For one, it will provide a helpful metric for understanding the impact of adding the voter registration question. It will also allow for assessment of whether there is a need for further improvements or modifications in the future.

(4) We recommend modifying the informational language that follows the voter registration question seen by those who respond “yes” using the HealthCare.gov online application and by all applicants who apply using paper applications.

As with the proposed voter registration question, the follow-up language to the question (which appears for those who respond “yes” through the HealthCare.gov application in Attachment A and for all applicants who use the paper applications in Attachments B, C, and D) should be modified to more specifically describe the available access to voter registration

¹⁹ See 11 C.F.R. § 9428.7 (describing required content of reports); see also 52 U.S.C. § 20508(a)(1).

opportunities at Vote.gov rather than suggest that the site contains only information. As a baseline, we recommend the following alternative language for the HealthCare.gov application:

“You answered that you would like to register to vote. You can access a voter registration application, voter registration information including deadlines, and other voting resources at Vote.gov.”

We also recommend the following alternative language for paper applications:

“If you would like to register to vote, you can access a voter registration application, voter registration information including deadlines, and other voting resources at Vote.gov.”

These sentences should replace CMS’s proposed language, which reads, “You can get information, registration deadlines, and find resources for your state at Vote.gov.” With these changes, applicants are more likely to understand that a voter registration opportunity is available and to avail themselves of that opportunity to register to vote.

(5) For the HealthCare.gov online application, we recommend modifying how the information about Vote.gov, which follows the voter registration question, is presented.

In determining how and where to present the language directing applicants who respond “yes” to the voter registration question to Vote.gov, two considerations are paramount: (1) the language should be presented in such a way as to minimize the possibility that the applicant fails to finish their health coverage application; and (2) the language should be presented in such a way as to maximize the possibility that an interested applicant will take advantage of the voter registration opportunity offered through Vote.gov. We recommend one of two alternatives to accomplish these objectives.

Option 1

For the first option, HealthCare.gov could be designed such that, when an applicant responds “yes” to the voter registration question, that applicant is presented with follow-up information directly in the application’s process flow *and* Vote.gov automatically opens in a separate tab or window. This would give applicants easy access to Vote.gov without impeding progress through the health coverage application process. Applicants could then easily avail themselves of the opportunity to register to vote after finishing their health care applications and enrollment process.

Of course, many if not most browsers are set up with pop-up blockers, and, if not coded properly and according to accessibility guidelines, pop-up screens may be difficult for

individuals who rely on screen readers.²⁰ To ensure that applicants who wish to register can easily access Vote.gov, the information presented after the voter registration question should include the following language:

“Vote.gov will open in a separate tab or window. If you have a pop-up blocker, you may need to enable pop-ups from this website. Alternatively, you can visit Vote.gov to access a voter registration application at any time.”

Option 2

For the second option, CMS could display the language directing applicants who respond “yes” to the voter registration question to Vote.gov after the determination of eligibility for benefits. With this option, the specific placement would be based on whether the applicant is determined to be (potentially) eligible for Medicaid or will proceed to enroll through the Marketplace.

When an applicant is determined (potentially) eligible for Medicaid and is informed as such on the confirmation page that an applicant sees after submitting information for a determination of eligibility for benefits, we recommend that, after a specified brief period of time (perhaps 30 seconds to a minute), the applicant should be automatically redirected to Vote.gov. In addition to this automatic redirect, the applicant should also be given the option to circumvent the redirection. Specifically, the applicant should see the following language at the very top of the confirmation page:

“You answered that you would like to register to vote. In a moment, you will be redirected to Vote.gov where you can access a voter registration application, voter registration information including deadlines, and other voting resources. If you wish to opt out of this redirection, click [here](#).”

For an applicant who will enroll in health coverage through the Marketplace, immediate redirection from the confirmation page could potentially hinder the applicant’s continuation to enrollment. Instead of the process recommended for Medicaid, we propose that these applicants should see language as part of the confirmation page that states:

“You answered that you would like to register to vote. After you complete your enrollment, you will be redirected to Vote.gov where you can access a voter registration application, voter registration information including deadlines, and other voting resources.”

The applicant should then be redirected to Vote.gov upon completion of plan selection in the Marketplace.

(6) We recommend correction and modification of language that appears only in the paper Application for Health Coverage in Attachment D.

²⁰ Michael Taylor, *Pop-Up Accessibility and How to Make Pop-Ups More Accessible*, UsableNet (Sept. 13, 2023), <https://blog.usablenet.com/pop-up-accessibility-and-how-to-make-pop-ups-more-accessible>.

On page 4 of the Application for Health Coverage, as shown in Attachment D, there is language that does not appear in the other paper applications and that should be modified. In particular, Step 3 explicitly directs some applicants to skip over the voter registration question. Step 3 asks applicants, “Are you or is anyone in your household American Indian or Alaska Native?” One of the two responses is, “NO. If no, skip to Step 4.” Following that direction, most applicants would skip over the voter information question that appears at the end of Step 3 and proceed directly to Step 4 (“Your agreement & signature.”).

We recommend that the following alternative language be used for the negative response to Question 1 under Step 3:

“NO. If no, review the voter registration question below and then proceed to Step 4.”

V. Conclusion

We appreciate the opportunity to provide these comments regarding CMS’s proposed data collection to support eligibility determinations for insurance affordability programs and enrollment through health benefits exchanges, Medicaid, and CHIP Agencies. We urge CMS and HHS to implement these recommended changes to ensure effective implementation of the voter registration question and a smooth, successful process for applicants for health benefits on the federal marketplace who wish to register to vote.

Sincerely,

Dēmos
American Civil Liberties Union
League of Women Voters