

Submitter : Ms. Rhonda Seltz
Organization : FAMIS Outreach Project
Category : Other Health Care Professional
Issue Areas/Comments

Date: 07/27/2006

GENERAL

GENERAL

After successfully enrolling hundreds of children in Medicaid (FAMIS Plus) and FAMIS, Virginia's State Child Health Insurance Program over the last six years, our President, with a mere stroke of a pen, is jeopardizing the health and lives of thousands of Medicaid eligible children. As part of the federal deficit reduction act, beginning July 1, 2006, all Medicaid applicants both new and renewals, are required to present proof of citizenship.

I can only guess that the reasoning behind this is to make sure that illegal children are not using taxpayers money for their health care. First of all, it is extremely difficult to get non-citizens to come anywhere near a government program because of the mistrust and concerns about deportation. Even when the children are eligible after being born in the U.S. or having a permanent resident card for five years, these children are very difficult to enroll because of that fear. Actually these eligible children are probably easier to document because they have the required proof of legal status. It is the U.S. citizen children that will require a great deal of time, effort and resources to meet the new federal requirement.

It makes absolutely no fiscal sense to have to utilize so many resources to be able to weed out a handful, if that many, of non-eligible children. Quite the contrary; it is US citizen children who will be losing their health coverage when parents are unable or unwilling to go through the hassle of getting original birth certificates, taking time off from their jobs to hand deliver the original to the Eligibility Worker and then making arrangements to have photo IDs made for their children. After doing hundreds of Medicaid applications, I can honestly say that I have never had concerns about families faking citizenship to get Medicaid. Although the application process is simpler than in years past, income verification and other requirements allow Eligibility Workers the opportunity to spot red flags so that they can follow up to verify citizenship if needed.

Now, Eligibility Workers at our local Departments of Social Services (DSS) who are already overworked and underappreciated, have a heavier work load with added responsibilities with no extra resources for that additional time it will take them to assist families in meeting this federal mandate. Of course, families are going to be frustrated and angry and blame their local DSS worker who had nothing to do with the new rules. We are very fortunate to have many excellent eligibility workers in our region but due to their tremendous caseload it is unreasonable to place this added responsibility of verifying citizenship on them. It is unfortunate that families have to go through such a hassle to simply get health care for their children.

I do not want any of our community's children to lose their health coverage just because they cannot come up with proof of citizenship. Please reconsider this requirement and allow families to at least produce copies of birth certificates so they can be mailed in to the worker.

Submitter : Ms. Zelinda Hart

Organization : Ms. Zelinda Hart

Category : Individual

Date: 07/28/2006

Issue Areas/Comments

GENERAL

GENERAL

I think once documentation for citizenship is established, it should be recognized nationwide. The shuffle of paperwork is confusing, wasteful, and unnecessary. Utilize the electronic advantage and focus on the real issue at hand.

I am a foster parent on the end of providing for the child that has no control of his or her surroundings or legal situation.

I was angered at the recent law changes in the DCPS (Dept. of Child Protective Services) which also focused on more paperwork instead of real solutions to current problems.

I know the issues are complex, but where is the common sense? Who is advocating for the kids, the mentally ill, the elderly...who is watching to see how the laws will effect their already difficult lives.

Submitter :

Date: 07/28/2006

Organization :

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

I urge you to change the rules for citizenship documentation in order that Medicaid eligible persons not be denied access to essential health services.

Submitter : Ms. Lisa Specter-Dunaway
Organization : CHIP of Virginia
Category : Other Association

Date: 07/28/2006

Issue Areas/Comments

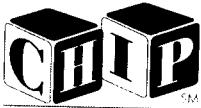
GENERAL

GENERAL

See attachment

CMS-2257-IFC-16-Attach-1.DOC

CMS-2257-IFC-16-Attach-2.DOC



CHIP of Virginia

701 E. Franklin St. Suite 502 • Richmond, VA 23219 • Phone: 804-783-2667 • Fax: 804-783-2723

July 28, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

RE: Medicaid Citizenship Documentation Interim
Final Rule, 71 Fed.Reg. 39214 (July 12, 2006)

CHIP of Virginia is a statewide network of 11 local programs offering health-focused home visiting for young children and their families. CHIP reaches out to families whose children face serious threats to a healthy future: poverty, chronic medical conditions, lack of insurance. The nurses and outreach workers who make up our home visiting teams offer families a wide range of assistance, including health screenings, help signing up for insurance, and referrals to medical and community services. CHIP teams work hand-in-hand with community-based programs such as health departments, early intervention and Head Start, as well as with local doctors who give CHIP children an all-important medical home. Last year we served more than 5000 children.

We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We are deeply concerned and disappointed that CMS has not acted to minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage.

Information collection requirements of the regulations:

As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies. The requirement for originals and certified copies also calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring that individuals obtain and submit originals and certified copies adds to the time compliance will take. In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state offices to submit them. State agencies will have to meet with individuals, make copies of their documents, and maintain records.

Deleted: TEMPLATE FOR COMMENTS ON CITIZENSHIP DOCUMENTATION REQUIREMENT

The attached letter provides sample comments on the interim final regulations to implement the requirement that U.S. citizens applying for and receiving Medicaid present "satisfactory documentary evidence" of their citizenship. The interim final regulations were published for comment on July 12, 2006. The regulations can be found at 71 Federal Register 39214. http://a257.g.akamaitech.net/7/257/2422/01jan20061800/cdoocket.access.gpo.gov/2006/pdf/06_6033.pdf

The comment period for these regulations ends on August 11, 2006. Comments can be submitted electronically. Go to www.cms.hhs.gov/eRulemaking. Click on the link "Submit electronic comments on CMS regulations with an open comment period and follow the instructions."

Comments can also be mailed to the address that is on the attached letter. You should include an original and two copies. Separate instructions for express or overnight mail and hand delivery are included in the preamble to the regulation at 71 Federal Register 39214.

The sample comments address the collection of information requirements of the new law in the section of the comments that addresses the requirement that only originals and certified copies can be considered as satisfactory documentary evidence of citizenship. If you include this section of the sample comments, you should also send a copy to: ... [1]

Deleted: ¶

Formatted: Indent: First line: 0", Line spacing: single

Deleted: [Description of organization submitting comments and its interest in the issue]

Deleted:

Deleted:

Deleted: Our comments below highlight [number] areas that CMS should modify in the final rule.

Deleted: [Include this paragraph only if you are commenting on the requirement for originals or certified copies: Our comments address the i

Formatted: Font: Bold

Formatted: Font: Bold

Deleted:

All told, this seems to directly contradict the purpose of the Deficit REDUCTION Act as additional federal and state funds will be required to administer the new requirements.

U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all eligibility requirements.

Under the DRA, the new citizenship documentation requirement applies to all individuals (other than Medicare beneficiaries and, in most states, SSI beneficiaries) who apply for Medicaid. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. The rule itself states that states "must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." 42 CFR 435.407(j).

Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted. There is nothing in the DRA that requires a delay in providing coverage. Yet CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates.

This year, about 10 million U.S. citizens are expected to apply for Medicaid who are subject to this requirement. Most of these citizens are children, pregnant women and parents who will be subject to the new citizenship documentation requirement. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children and other vulnerable Americans. This is likely to delay their medical care, worsen their health problems and further stress the existing network of safety net providers including Federally Qualified Community Health Centers, local health departments and free clinics.

While the statutory logic of this policy is elusive, the real-world consequence is crystal clear. U.S. citizens who have applied for Medicaid, who meet all of the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage. Some U.S. citizens who get discouraged or cannot get the documents they need within the time allowed by the state will never get coverage. Because there has been no outreach program to educate U.S. citizens about the new requirement, most applicants are likely to be unaware of it, and there are likely to be significant delays in assembling the necessary documents.

This has already required significant additional work on the part of the CHIP nurses and outreach workers. Time that they could be spending educating parents about child development, immunizations, asthma management and other topics that ultimately save Medicaid and the community funds is now being spent trying to chase down original records that could be accessed electronically. For some families, this will result in even more limited preventive care with more costly preterm births and trips to the emergency room.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation.

Deleted: |

Deleted:

Deleted:

Deleted:

Deleted: create financial losses for health care providers.¶

Deleted: *[Description of impact on organization -e.g. As providers of health care services to thousands of low-income children, we will not receive Medicaid payment for services rendered, until the documentation has been assembled and presented to the state Medicaid agency. In some cases we may never receive reimbursement. We are also concerned that families will forego preventive care and children will end up in our emergency room when a crisis arises.]*

Deleted: W

Deleted: ¶
Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement.¶

¶ The interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. Among the children subject to the documentation requirements are roughly one million children in foster care, including those receiving federal foster care assistance under Title IV-E. State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments. It is our understanding that the Administration for Children and Families (ACF) requires state child welfare agencies to follow the Department of Justice interim guidelines on verification of citizenship. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this effect in either the rule itself or the preamble.)¶

¶ *[Description of harm - e.g. When Medicaid eligibility for children in foster care is delayed, foster parents may end up using emergency care as they will not have a Medicaid card. The child may not be able to receive essential non-emergency care - such as prescription drugs, psychological [2]*

A state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital should be considered satisfactory documentary evidence of citizenship and identity.

Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. The rule provides that in such circumstances, extracts of a hospital record created near the time of birth could be used as proof of citizenship, 42 CFR 435.407(c)(1), and if this "third level" of evidence was not available, a medical (clinic, doctor, or hospital) record created near the time of birth could be used, but only in the "rarest of circumstances," 42 CFR 435.407(d)(4).

Under current law, infants born to U.S. citizens receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). The preamble to the interim final rule states that, in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This makes no sense, since the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen. In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant subject to the 5-year bar on Medicaid coverage or an undocumented immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, this makes no sense, since the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen.

| The risk to the health of newborns from delays in coverage and the potential for increased uncompensated care for providers are completely unnecessary. The state Medicaid agency has already made the determination, by paying for the birth, that the child was born in a U.S. hospital.

| We strongly urge that 42 CFR 435.407(a) be amended to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

CMS should adopt the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship.

| There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. Among these are victims of hurricanes and other natural disasters whose records have been destroyed, and homeless individuals whose records have been lost. The rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not address the situation in which a state is unable to locate the necessary documents for such an individual. Nor does the rule address the situation in which an individual does not have "incapacity of mind or body" but his or her documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is

Deleted: *[Description of harm, e.g. Because the rule would prevent states from granting coverage until documentation of citizenship is provided, hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement for the treatment of newborns who are low-birthweight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements.]*

Deleted:

Deleted:

likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are considered to be "proof" of citizenship and a "reliable means" of identification. We urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

Deleted: *Description of harm: e.g. While we will continue to provide care to these individuals, we will not be reimbursed for the services we provide to these applicants and beneficiaries who cannot document their citizenship increasing the amount of uncompensated care we already provide to people who are uninsured.*

Deleted:

The regulations for the SSI program allow people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have. (20 CFR 416.1610) The Secretary should adopt a similar approach. Specifically, 42 CFR 435.407 should be revised by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented. This approach would ensure that the **[patients we serve, families we work with, etc.]** who are U.S. citizens can continue to receive the health care services they need.

CMS should not require applicants and beneficiaries to submit originals or certified copies.

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Yet CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1). This requirement adds greatly to the information collection burden of the regulations and calls into question the estimate that it will only take applicants and beneficiaries ten minutes and state agencies five minutes to comply.

Requiring original or certified copies adds to the burden of the new requirement for applicants, beneficiaries, and states and makes it more likely that health care providers will experience delays in reimbursement and increased uncompensated care.

Applicants and beneficiaries will have to make unnecessary visits to state offices with original and certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards. As someone who is fortunate enough to not need Medicaid, I would never consider mailing an original document to ANYONE, especially a public agency.

Virginia and most other states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Eliminating the face-to-face interview requirement was one of a number of steps taken to simplify eligibility processes and make it easier

Deleted: *Examples of harm:*

Deleted: M

Formatted: Font: Not Bold, Not Italic

Deleted: states took

Deleted: their

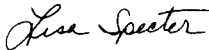
Formatted: Font: Not Bold, Not Italic

for eligible children and parents to enroll in Medicaid. Mail-in applications are also more efficient for state Medicaid agencies. Requiring originals and certified copies to document citizenship will make it harder for working families to enroll in Medicaid and increase the workload of Medicaid agencies. This unnecessary requirement that goes beyond the requirements Congress imposed in the DRA will also delay coverage while applicants wait for appointments at state Medicaid agencies. In some cases, having to visit a state office will discourage applicants from completing the application process. Children and families will go without coverage and remain uninsured and providers will not get reimbursed.

We urge CMS to revise the regulation by modifying the requirement at 42 CFR 435.407(h)(1) to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by the issuing state agency. States should be able to accept copies when the state has no reason to believe that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or beneficiary.

In summary, CMS has overstepped its boundaries the development of Medicaid Citizenship Documentation Interim Final Rule 71. The requirements are unnecessary, time-consuming, deny services to women and children who are citizens, and will ultimately cost everyone more money. Please do not require original or certified copies of official documents, allow people the ability to declare themselves citizens and let states implement the appropriate checks and balances, allow utilization of Medicaid's record of payment for the birth on an infant in a U.S. hospital suffice as evidence of citizenship and identity, and use the approaches adopted by the SSA for proof of citizenship.

Sincerely,



Lisa Specter-Dunaway
President/CFO

Deleted: |

Deleted: [Another example of harm - Requiring originals or certified copies adds to the burden of the new requirement for children in foster care. Child welfare agencies will likely have copies of birth certificates for many of these children that were obtained as part of the process for determining whether the children are eligible for federal foster care payments. It would be simple for the child welfare agencies to make copies available to the Medicaid agencies, but this is precluded by the requirement for originals or certified copies.]¶

Deleted: Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirement.¶

¶ While the interim final rule at 42 C.F.R. 437.407(c)(6) recognizes Native American tribal documents as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. (The regulations only allow identification cards issued by DHS to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship). We urge CMS to revise the regulation at 42 CFR 435.407(a) to specify that a tribal enrollment card issued by a federally recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity. ¶

¶ The federal government recognizes over 560 tribes in 34 states. These federally recognized tribes have been recognized by the federal government through treaty negotiations, federal statutes, or a federal administrative recognition process. Tribal constitutions establishing membership requirements are approved by the federal government. Each federally recognized tribe is responsible for issuing tribal enrollment cards to its members for purposes of receiving services from the federal government as well as tribal resources and voting in tribal matters. With very few exceptions, tribes issue enrollment cards only to individuals who are born in the U.S. (and have a U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens. Tribal genealogy charts date back to original and historic tribal membership rolls. In short, tribal enrollment cards are [3]

Deleted: Conclusion¶

Deleted: [Restate the interest of your group in the changes that need to be made to prevent harm

Deleted: |

**TEMPLATE FOR COMMENTS ON CITIZENSHIP DOCUMENTATION
REQUIREMENT**

The attached letter provides sample comments on the interim final regulations to implement the requirement that U.S. citizens applying for and receiving Medicaid present "satisfactory documentary evidence" of their citizenship. The interim final regulations were published for comment on July 12, 2006. The regulations can be found at 71 Federal Register 39214.

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-6033.pdf>

The comment period for these regulations ends on August 11, 2006. Comments can be submitted electronically. Go to www.cms.hhs.gov/eRulemaking. Click on the link "Submit electronic comments on CMS regulations with an open comment period and follow the instructions.

Comments can also be mailed to the address that is on the attached letter. You should include an original and two copies. Separate instructions for express or overnight mail and hand delivery are included in the preamble to the regulation at 71 Federal Register 39214.

The sample comments address the collection of information requirements of the new law in the section of the comments that addresses the requirement that only originals and certified copies can be considered as satisfactory documentary evidence of citizenship. **If you include this section of the sample comments, you should also send a copy to:**

Centers for Medicare and Medicaid Services
Office of Strategic Operations and Regulatory Affairs, Regulations Development Group
Attn: Melissa Musotto, CMS-2257-IFC, Room C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

AND Mail, Fax or e-mail a copy to:

Office of Information and Regulatory Affairs,
Office of Management and Budget, Room 10235, New Executive Office Building
Washington, DC
Attn: Katherine T. Astrich, CMS Desk Officer, CMS-2257-IFC
[Katherine T. astrich@omb.eop.gov](mailto:Katherine.T.astrich@omb.eop.gov)
Fax (202) 395-6974

Please adapt the comments in the attached letter and make them your own. We have tried to provide you with background on the core issues and the changes that have to be made as well as some ideas for personalizing the potential impact and harm for beneficiaries, health care providers and other groups.

There may be other issues that we have not included. If there are other issues you want to address and you need help with comments or if you have any questions, please let us know.

Date

Page 2: [2] Deleted

Judith Cash

7/28/2006 12:18:00 PM

Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement.

The interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. Among the children subject to the documentation requirements are roughly one million children in foster care, including those receiving federal foster care assistance under Title IV-E. State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments. It is our understanding that the Administration for Children and Families (ACF) requires state child welfare agencies to follow the Department of Justice interim guidelines on verification of citizenship. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid “must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration.” 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this effect in either the rule itself or the preamble.)

[Description of harm – e.g. When Medicaid eligibility for children in foster care is delayed, foster parents may end up using emergency care as they will not have a Medicaid card. The child may not be able to receive essential non-emergency care — such as prescription drugs, psychological care, dental care or the purchase of medical supplies for conditions such as asthma — until the child’s condition deteriorates to the point that it requires emergency care.]

The DRA does not compel this result, which requires unnecessary duplication of state agency efforts and puts these children at risk of delayed Medicaid coverage. To the contrary, the DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is precisely such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new documentation requirement, 71 Fed. Reg. at 39216.

We urge CMS to revise 42 CFR 435.1008 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

Page 5: [3] Deleted

Judith Cash

7/28/2006 12:23:00 PM

Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirement.

While the interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. (The regulations only allow identification cards issued by DHS to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship). We urge CMS to revise the regulation at 42 CFR 435.407(a) to specify that a tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity.

The federal government recognizes over 560 tribes in 34 states. These federally recognized tribes have been recognized by the federal government through treaty negotiations, federal statutes, or a federal administrative recognition process. Tribal constitutions establishing membership requirements are approved by the federal government. Each federally recognized tribe is responsible for issuing tribal enrollment cards to its members for purposes of receiving services from the federal government as well as tribal resources and voting in tribal matters. With very few exceptions, tribes issue enrollment cards only to individuals who are born in the U.S. (and have a U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens. Tribal genealogy charts date back to original and historic tribal membership rolls. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship. In the event a federally recognized tribe located in a state that borders Canada or Mexico issues tribal enrollment cards to non-U.S. citizens, the Secretary could require additional documentation of U.S. citizenship and tribal enrollment cards would qualify as evidence of identity but not citizenship.

[Examples of harm: If tribal enrollment cards are not recognized as proof of citizenship and identity, AI/AN Medicaid beneficiaries might not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many Traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as proof of citizenship and identity, CMS is creating a barrier to AI/AN's participation in the Medicaid program. Therefore, the federal regulation should be revised to specify that tribal enrollment cards issued by a federally-recognized tribe should be acceptable primary evidence of citizenship and identity. County, public and private providers serving these patients may be at risk for losing Medicaid reimbursements.]

Submitter : Ms. Julia Gatti
Organization : CHIP (Child Health Investment partnership)
Category : Health Care Provider/Association

Date: 07/28/2006

Issue Areas/Comments

GENERAL

GENERAL

As an Eligibility Outreach Worker employed by CHIP of Roanoke(Child Health Investment Partnership, it has been my passionate mission to assist many uninsured children in our area with enrollment into Medicaid and FAMIS in Virginia.

In May of 2004, I received an award for "Child Health Superhero" from Governor Warner. Since then, I have continued to work with school nurses within (5) localities in the Roanoke Valley to locate children who have no insurance. Over the past four years I have helped to enroll approximately 2000 children. This success is due to a strong referral network with local schools, churches, insurance agents such as Anthem, free clinics and much more.

Programs such as Medicaid have brought "peace of mind" to many parents, for children suffering from illness such as asthma, ADHD, depression, cerebral palsy and so much more. Often, a child who never gets sick, without insurance- could have an upcoming trip to the ER and leave an already struggling family financially devastated.

The requirements of the new law are taking steps backward in a state that has made great strides forward to provide health care access to children.

I feel certain with my past experience that many families that may lose Medicaid because of this new law, will only seek the ER for help. This will only add to the already numerous \$ being written off by local charity care.

How does an already impoverished family choose between food and documentation? Maybe you have been a transient family, who has been homeless and now you have another barrier to make your struggle even harder to survive. How many families of children or otherwise have a passport? I know I don't.

I close with one last statement, and that is a child has no choice of where he is born, what his environment is or how he cared for.
Why would we place another restriction on the "hope" of a child?
The children are the "hope" of the future, and there health depends on it.

Please as our agency and myself go forward to continue to provide medical support and health care coordination for children and pregnant mothers, we ask, please reconsider the restrictions and regulations within this new law. Children who have health have hope!

Sincerely,

Julia Gatti
CHIP of Roanoke

Submitter : Catherine Smith

Date: 07/28/2006

Organization : Catherine Smith

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Proof of citizenship should absolutely be a requirement.

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

Proof of citizenship should absolutely be required.

Submitter : Ms. Jenny S K Rockwell

Date: 07/28/2006

Organization : Ms. Jenny S K Rockwell

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Please change you rules so they are fair for EVERYONE!!!

Submitter : Ms. Mary McKay

Date: 07/29/2006

Organization : NA

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Being a US citizen and having seen too much abuse of Medicaid, I am all for the passage of the bill making it mandatory for ANY person seeking services to show proof of citizenship. I know of WORKING people who cannot get any type of health care at all, yet you want to give people who are not citizens or of questionable citizenship all the services that actual citizens cannot obtain? We need to take care of our own first. We already pay too much in taxes for illegals in this country in welfare, housing, foodstamp programs, crime and healthcare. If a person does not have proof of citizenship how can they get any services in the first place?

Providing proof should always be a requirement, no excuses. It is obvious that most people in this country are mentally ill in one form or another as evidenced by their actions and the refusal to take responsibility for these personal actions, which they blame of society as if someone held a gun to their head and made them do it. I have not seen any action taken here to stop our problem with mental illness yet. Too many real citizens are mentally ill in some form or another eg., raised by mentally ill parent(s), lazy, trying to beat the "system" or whatever resulting in the continued cycle of mental illness, neglect and abuse. It is PAST time to start solving the vast problem of mental illnesses in the US citizenship and PAST time to stop the results of these illnesses such as the PANDEMIC problem of OVER POPULATION, unwanted, abused, neglected children, rampant crime, the current general "state of the union". Let us fix our own problems first then we can be concerned about the rest of the world.

Submitter : Dr. Douglas Pierce Sr.

Date: 07/29/2006

Organization : Child Health Investment Partnership of Roanoke, VA

Category : Physician

Issue Areas/Comments

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

The new ruling that in order to receive Medicaid services, one must show proof that one is a US citizen by producing original documents, is a great barrier for poor people. Very few indigent people have original proff of their US citizenship and do not have the wherewithal to obtain such documents. We should be making it easier for the people who need Medicaid services to receive it, not making it more difficult.

Thank you for your consideration. Douglas E. Pierce, MD

Submitter : Ms. Maria Cristina Sanchez
Organization : Ms. Maria Cristina Sanchez
Category : Nurse

Date: 07/30/2006

Issue Areas/Comments

GENERAL

GENERAL

As a healthcare provider, I am concerned overall about the impact of the Citizenship Documentation Requirements on the general population of people already at risk because of generally severe health problems and decreased earning potential.

Working as a Neonatal Registered Nurse in a public facility, I am extremely concerned about the impact of the Citizenship Documentation Requirements on the access to healthcare for newborns and their mothers. As the nation touted as the leader of the industrialized world, the US ranks behind some developing countries in neonatal mortality and morbidity, mostly because of lack of adequate preventative programs for pregnant women, infants and children. Delaying access to routine healthcare would only crowd all Emergency Rooms beyond their already bordering-on-catastrophic current conditions as well as resulting in increased costs to the states.

Please see attachment for detailed comments.

CMS-2257-IFC-23-Attach-1.DOC

CMS-2257-IFC-23-Attach-2.DOC

July 30th, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

**Re: Medicaid Citizenship Documentation Interim Final Rule,
71 Fed. Reg. 29214 (July 12, 2006)**

The undersigned is pleased to submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirement.

At least 42 million individuals who are already on Medicaid will be affected by this new documentation requirement. I am deeply concerned that these individuals enrolled in Medicaid, as well as the thousands of people who apply each year, will find it difficult to prove their citizenship and/or identity, and thus keep or obtain coverage in Medicaid.

Positive Aspects of the Rule

I commend CMS for ameliorating the impact of the new documentation requirement by:

- 1) Recognizing the "scrivener's error" in the statute and exempting individuals on SSI or Medicare from the new rule.
- 2) Allowing the use of the SDX and state vital records databases to cross-match citizenship records, as well as allowing states to use state and federal databases to conduct identity cross-matches.
- 3) Clarifying that the new citizenship documentation requirement does not apply to "presumptive eligibility" for pregnant women and children in Medicaid, and that states may continue to use this effective and important strategy for enrollment.

These important steps will alleviate the burden of the documentation requirement for millions of vulnerable citizens.

However, many aspects of the rule remain problematic and overly burdensome for Medicaid recipients and applicants.

Concerns about the Rule

435.407(a) Medicaid payment records for births in U.S. hospitals should suffice as proof of citizenship and identity for newborns.

According to the preamble to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal (newborns are categorically-eligible for one year if their mothers were categorically-eligible at the child's birth and would have continued to be eligible if they were still pregnant during this time). 71 Fed. Reg. at 39216. The preamble also states that newborns born to

undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their birth before they can get any coverage at all. 71 Fed. Reg. at 39216. Yet, in both situations, there is no question that these children are American citizens by virtue of their birth in U.S. hospitals. Moreover, the states have first-hand knowledge of the citizenship of these children because Medicaid paid for their births.

This policy is problematic because it creates additional paperwork and potential delays or loss of coverage for infants, many of whom will have immediate health care needs, especially for those children who must, under the regulations, show proof of citizenship in order to get Medicaid coverage at birth. It is unlikely that these children can prove citizenship through state vital record matches, because time delays and processing lags do not allow for vital records to be created immediately at time of birth. Other third or fourth tier documents may be used, but are problematic as well. The third tier hospital record created at time of birth may be difficult to obtain in a prompt manner. A medical record created near the time of birth could be used, but it may be just as difficult to obtain, and as a fourth tier document, it can only be used "in the rarest of circumstances." 71 Fed. Reg. at 39224.

The easiest way to solve this problem is to allow states to use Medicaid billing records of births it has paid for as proof of U.S. citizenship and identity. Children born in the U.S., whose births were paid for by Medicaid, should be able to get and keep Medicaid if they are otherwise eligible without the need for their families to provide any additional proof that they are citizens.

I urge CMS to amend 42 CFR 435.407(a) to add that a state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is primary documentary evidence of both citizenship and identity.

435.407(a) Native American tribal enrollment cards should be included in the list of documents to prove citizenship

The new rule and their four tier hierarchy of documents do not allow for Native American tribal identification documents to be used to prove U.S. citizenship,¹ although they may be used for identity purposes. The National Association of State Medicaid Directors has stated that the tribal enrollment process does a "thorough job of assuring that an individual was born to a person who is a member of the tribe and as a member of the tribe, is a descendant of someone who was born in the United States, and is listed in a federal document that officially confers status to receive title to land, cash, etc."² I urge

¹ There are three instances where Native American-related documents may be used: individuals in the Kickapoo tribe may use their American Indian card designated with "KIC" as secondary evidence and Seneca Indian tribal census records and BIA tribal census records of Navajo Indians may be used as fourth-level evidence.

² June 21, 2006 letter from American Public Human Services Association/National Association of State Medicaid Directors to Dennis Smith, CMS.

CMS to allow the use of tribal identification cards as primary documentary evidence of an individual's U.S. citizenship and identity.

If tribal identification cards are not accepted as evidence of citizenship and identity, many Native American Medicaid recipients and applicants may not be able to provide other means of satisfactory citizenship documentation. Some Native Americans may not have been born in hospitals, therefore, there is no official record of their birth. Not recognizing tribal identification cards as proof of U.S. citizenship will cause great hardship for the Native American population and create a barrier to their enrollment and/or maintenance of Medicaid coverage.

I ask that all tribal enrollment cards are added to 42 CFR 435.407(a) as acceptable primary documentary evidence of an individual's U.S. citizenship and identity.

435.407 (c) and (d) The final rule should not further limit the types of evidence that may be used to document citizenship.

CMS has asked for comments regarding whether the documentation that can be used to prove citizenship should be limited to only Tier 1 and 2. 71 Fed. Reg. at 39219-39220. I strenuously urge CMS not to limit in any way the types of documents that can be used to document citizenship status. Most Medicaid applicants and recipients will not have passports, or the financial means to obtain one. Birth certificates may also be difficult for some to obtain, especially for individuals who may have been born at home and do not have access to a birth certificate or official record of their birth, or for individuals who lost documents in natural disasters, such as Hurricane Katrina. There are many people who will only be able to provide documents that are listed in the third and fourth tiers of the documentary hierarchy established at 435.407(a)-(d), and others who will have none of the documents that are listed in the hierarchy at all (see comments related to 435.407(k) below for more on this point).

435.407(h)(1) Copies of documents should be sufficient proof of citizenship.

The new rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. 71 Fed. Reg. at 39225. This provision of the rule poses a significant burden for both individuals and state agencies. Over the years many states have simplified and streamlined application procedures for Medicaid, including adopting a mail-in application process and eliminating face-to-face interviews. These processes reduce Medicaid administrative costs by eliminating the timely interview process and reducing staff time required for each application and renewal. They have been shown to make Medicaid more effective by increasing participation in Medicaid among people who are eligible for it. While CMS clarifies in the preamble of the rule that the documentation requirement does not prohibit utilization of mail-in application and renewal processes, the requirement that individuals submit original documents undermines those efforts. It is highly unlikely that individuals

will want to mail in their original documents and rely on the Medicaid agency to return them. Moreover, mailing original documents back to people would be quite costly for states. Furthermore, it is impractical for someone to mail in a driver's license to document their identity for Medicaid purposes because they may need to drive before they get it back. This provision of the rule will only delay coverage for new applicants forced to schedule appointments with the Medicaid agency to fulfill this requirement. Some applicants may even be discouraged from completing the application process.

The new rule also estimates that it will take recipients and applicants 10 minutes to collect and present evidence of citizenship and identity to the state, and take states 5 minutes to obtain this documentation from each individual, verify citizenship and maintain records. 71 Fed. Reg. at 39220. I believe these time estimates are extremely erroneous since the rule requires applicants and recipients to submit original documents to the state.

Nothing in the DRA itself requires Medicaid applicants or recipients to submit original or certified copies to the Medicaid agency in order to fulfill this new documentation requirement.

I urge CMS to reconsider and to eliminate the requirement in 42 CFR 435.407(h)(1) that original documents or certified copies be submitted.

435.407(j) Medicaid coverage should not be delayed because of lack of citizenship documentation.

While I commend CMS for requiring states to provide people applying for or renewing Medicaid coverage a "reasonable opportunity" to submit citizenship documentation, I am concerned that the rule is more stringent than required by Section 6036 of the DRA by not allowing people who are applying for and who are eligible for Medicaid to be enrolled until they have submitted satisfactory evidence of their citizenship status. This interpretation of the statute will cause significant delays in health care coverage and access to health care services for many very vulnerable people.

The new 42 CFR 435.407(j) requires states to give an applicant a "reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." Although no time period is directly specified, the rule states that the "reasonable opportunity" should be consistent with the timeframes allowed to submit documentation to establish other eligibility requirements for which documentation is needed. 71 Fed. Reg. at 39225. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216.

There is no statutory requirement to prohibit people who are otherwise eligible for Medicaid from enrolling in the program immediately. As written in Section 6036 of the DRA, the citizenship documentation requirement is a requirement for states to receive

federal matching funds, not an eligibility requirement for individuals. Once someone has declared under penalty of perjury that s/he is an American citizen and met all eligibility requirements for Medicaid, s/he should be enrolled in Medicaid pending submission of the appropriate documentation of citizenship. Without this change, coverage for working families, children, pregnant women, and parents will be delayed. And without this coverage, individuals with health care needs will delay seeking care and may ultimately require more expensive care if their condition worsens.

I urge CMS to revise 42 CFR 435.407(j) so that applicants who declare they are U.S. citizens and meet all the Medicaid eligibility criteria are enrolled in Medicaid, while they have a "reasonable opportunity period" to obtain the documentation necessary to prove their U.S. citizenship and identity.

435.407(k) The final rule should include a safety net for those who cannot prove citizenship.

Despite the various avenues for obtaining citizenship and identity documentation outlined in the rule, there will still be Medicaid applicants and recipients who are U.S. citizens but who are unable to come up with the kinds of documentation CMS has determined are appropriate. These individuals may be homeless, victims of natural disasters, such as hurricanes, or individuals who are incapacitated or have severe mental health issues. Although the rule commands states to assist "special populations," 71 Fed. Reg. at 39225, such as those listed above, with finding documentation of their citizenship, the rule appears to indicate that if none of the documents listed in the hierarchy are found, states may deny or terminate Medicaid, even if the individual is otherwise eligible. 71 Fed. Reg. at 39225. While some have suggested that the ability to use two written affidavits to document citizenship provides a "safety net" for those who do not have the other accepted documents, the rules for using the affidavits will make it unlikely that individuals who cannot provide any other documents to prove citizenship status will be able to offer two acceptable affidavits.

First, the preamble to the Interim Final Rule allows an individual to prove citizenship through the use of two written affidavits only "in rare circumstances." 71 Fed. Reg. at 39224. Second, the rules for using the affidavit exception are strict: individuals must obtain written affidavits by *two* individuals who have knowledge of that person's citizenship, and at least one of these individuals cannot be related to the applicant or enrollee. Additionally, the individuals making the affidavits must be able to provide proof of *their own* citizenship and identity, and the applicant or enrollee must also make an affidavit explaining why documentary evidence does not exist or cannot be obtained. 71 Fed. Reg. at 39224. An individual who cannot meet the documentation requirement will be unlikely to produce two individuals who have personal knowledge of the circumstances of their birth or naturalization, especially if one must not be a family member. Moreover, if the individual resides in a mixed status family, those family members who can offer an affidavit may not be citizens themselves. Undoubtedly, there will be individuals who cannot obtain documents from any of the tiers, not for lack of

trying, and cannot meet the affidavit requirements. As a result, U.S. citizens who are otherwise eligible for Medicaid will be denied or lose coverage.

As an alternative to the affidavit system described in the Interim Final Rule, CMS could look to the SSI program, which does have a true "safety net." If an SSI applicant who has declared U.S. citizenship cannot produce one of the required documents that indicate U.S. citizenship, they may explain why they cannot provide any of those documents, and instead, may provide any information they do have that might indicate they are a U.S. citizen. 20 CFR 416.1610. Adopting this procedure by adding a new provision to 42 CFR 435.407 would go a long way towards ensuring that citizens who cannot produce "acceptable" documentation under the new rule still be allowed to get or keep their Medicaid coverage.

I urge CMS to add a new provision at 42 CFR 435.407(k) which would adopt the SSI rules safety net.

435.1008 Foster children receiving Title IV-E assistance should be exempt from the documentation requirement.

The preamble to the Interim Final Rule states that "Title IV-E children receiving Medicaid...must have in their Medicaid file a declaration of citizenship...and documentary evidence of the citizenship..." 71 Fed. Reg. at 39216. CMS has exempted SSI and Medicare recipients from the new requirement since they already document their citizenship during the SSI and/or Medicare application processes. 71 Fed. Reg. at 39225. But Title IV-E children who receive Medicaid *do* have to document their citizenship to receive IV-E services (incorrectly stated in the preamble at 71 Fed. Reg. 29316). And as such, they should not have to document citizenship again in order to gain Medicaid coverage.

Foster children may have urgent medical and behavior health needs that necessitate a quick placement onto Medicaid. Documenting citizenship a second time for these children will lead to a delay in Medicaid coverage, which may result in a deterioration in their health or a need for more healthcare services later on.

Since foster children already must document citizenship to receive Title IV-E assistance, much like SSI or Medicare recipients document their citizenship in those programs, they should also be exempt from the Medicaid citizenship documentation requirement. I urge CMS to add an exemption at 42 CFR 435.1008 for foster children receiving Title IV-E assistance.

Conclusion

I thank CMS for making strides to ameliorate the harm of the new Medicaid citizenship documentation requirement, but I believe that unless the steps described above are not

taken, the citizenship documentation requirement will result in Medicaid recipients and new applicants losing or being denied coverage for critical health care benefits.

Thank you for your attention to these comments.

Maria Cristina Sanchez, RN
3910 NW 78th Lane
Hollywood, Fl, 33024

Submitter : Mr. Todd Wilder
Organization : Mr. Todd Wilder
Category : Individual

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

Please don't take Medicaid way from people who are elderly and are unable to find citizenship documents!!

Submitter : Mr. Chris Lee
Organization : Mr. Chris Lee
Category : Individual

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

It is well known in the medical community and in government that enrollment in Medicaid and the access to preventive care that enrollment grants, saves everyone; patient, government, and provider, money. It keeps patients out of emergency rooms, which is generally the most expensive way in which to provide care.

The federal government should not be acquiescing to political agendas in installing new requirements on persons who need medical care.

These new requirements will deny care to those most in need. Those who are eligible for Medicaid are most often those without copies of necessary documentation and would create a costly burden on those least able to afford it. It would also create additional hurdles for victims of disaster or those who lose their homes to fire. It would deny coverage for persons at the exact moment of their greatest need.

The government is in the best position to verify claims of eligibility and the onus should fall on the party in the best position to check claims and verify paperwork, not on those in need.

Please consider the impact on the poor, newborns requiring medical attention, increasing infant mortality, the increased burden on already over-taxed emergency rooms and the cost increase to a program that is supposed to save money.

The state Medicaid programs were not intended to be and should not function as an arm of the Border Patrol.

Maximizing access to Medicaid lowers the over all costs for medical care, increases the health and productivity of the labor pool and promotes positive health choices and preventive health maintenance.

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

I am writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

Submitter : Mrs. Joyce Pichette
Organization : Colville Tribal Behavioral Health
Category : Social Worker

Date: 07/31/2006

Issue Areas/Comments

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

Sounds like the Native Americans should come first for all health services since there was treaties, too much medicaid fraud going on anyway. Yes, illegal aliens should not be entitled to health care. This is an entitlement for U.S. Citizens. thank you

Submitter : Michael Leong
Organization : Michael Leong
Category : Attorney/Law Firm

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

Dear Sir or Madam:

The documentary requirements for original or certified copies of documents to prove eligibility for the Medicaid Program will create an unnecessary burden upon those who need care, resulting either in a complete barrier or in undue delays which would consequently result in exacerbated medical conditions and higher costs. Those particular affected would be children, seniors, low-income, migrant, limited-English-speaking, mentally ill, severely disabled and other vulnerable populations, who may not have ready access to such documents, either because the documents may not be readily found or because these individuals have limited abilities to obtain the documents. Also impacted would be victims of catastrophes, whether natural or terrorist. Likely misunderstanding on the part of the provider community of whether presented documents meet the documentary requirements will surely also result in individuals being turned away. Yet another undue burden upon these groups, who typically already must contend with access barriers, is an unnecessary hurdle for access to the Medicaid Program.

Thank you.

Michael

Submitter : Ms. Robin Haldiman
Organization : Child Health Investment Partnership of Roanoke Val
Category : Other Health Care Provider

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

Throughout our years of Medicaid enrollment experience, CHIP has never had an incident where the Eligibility Worker was concerned about a family faking citizenship to get Medicaid. In fact, children born in the U.S. to illegal parents are easier to document because they ARE born here and have the required proof of legal status. Among the children CHIP has assisted locally are babies waiting for coverage to obtain heart surgery, small children needing hearing aids, and a child waiting for the removal of a tumor. The real-world health and economic consequences of delaying Medicaid coverage is daunting. Parents will become too angry and frustrated to follow-through with the applications, which will in turn create the absence of preventive care including immunizations for children, as well as increased emergency room usage for chronic and acute conditions easily managed by a primary care provider. We will be adding hundreds of thousands of children to the increasing amounts of uncompensated care already provided to uninsured adults. Carilion Medical Center (which includes Roanoke Memorial and Community Hospitals in Roanoke Virginia) incurred \$44,153,000 in uncompensated charity care in 2005. Within Carilion Health System in the region, there was \$61,103,000 in uncompensated charity care in 2005. These numbers do not include bad debt write-offs, but reflect only charity care.

I urge CMS to revise the regulation by modifying the requirement listed in 42 CFR 435.407(h)(1) to make it clear that a state has the option of accepting copies of documents in lieu of original documents or copies certified by the issuing state agency. Most states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Mail-in applications are more efficient for both the family and the state Medicaid agency. This requirement goes beyond the requirements that Congress imposed in the DRA and will in most cases, discourage applicants from completing the application process. The result: Children and families will go without coverage, the numbers of uninsured will increase, and providers will not get reimbursed-which drives up the cost of health care for ALL Americans.

Regulatory Impact Statement

Regulatory Impact Statement

I am the Executive Director of Child Health Investment Partnership of Roanoke (CHIP of Roanoke Valley). Over the past four years, CHIP has helped to enroll almost 2,000 children in the Roanoke Valley in Medicaid. I am deeply concerned that the Medicaid Citizenship Documentation Interim Final Rule, 71 Fed. Reg. 39214, section 6036, could effectively eliminate coverage for up to 1.5 million children who are U.S. citizens. The requirement to prove citizenship and identity prohibits states from granting coverage to eligible citizens until they can obtain original documents such as birth certificates and photo IDs for their child. While negotiating with our local Department of Social Services about the best way to handle applications for CHIP enrolled clients, the eligibility worker just laughed and stated that the new requirements to submit AND view original documents are so overwhelming, that we have not been able to complete ANY applications because we are waiting for birth verifications. We are already so backed up, it s ridiculous. The resulting delays in obtaining Medicaid coverage for huge numbers of eligible children and low-income pregnant women will cost our health care system and economy far more than providing health care coverage once they simply declare they are citizens and meet all eligibility requirements.

Submitter : Ms. Debbie Daniel
Organization : Inter-Tribal Council of Nevada
Category : Health Care Professional or Association

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

The new federal regulations requiring all Medicaid recipients to have a birth certificate and identity documents or a passport to show citizenship is a concern for Native Americans in Nevada. This could cause many Native American Medicaid recipients to lose their coverage and many others to be denied. We realize that this is a federal regulation and the state of Nevada has little control over of this, but we hope the Welfare Office will work with Centers for Medicaid and Medicare to allow tribal enrollment cards and Certificates of Degree of Indian Blood (CDIB) issued by the BIA in lieu of a birth certificate or passport for Medicaid enrollment. A CDIB should be equivalent to a passport because it is issued by the Bureau of Indian Affairs (BIA), a government agency. A Tribal Enrollment card should also be equivalent to a U.S. Passport because it is issued by a tribal government. Tribal governments have a government to government relationship to the U.S. government, meaning that they stand on equal footing and their documents should carry the same amount of weight.

As you are probably aware, the Indian Health Service, which provides health care to American Indians and Alaska Natives, is funded at between 40-60% of the need. Therefore, tribal health clinics greatly rely on third party revenues from resources like Medicaid. The Indian Health Service is the payer of last resort, so the clinics require their patients to apply for alternative benefits first. Accepting CDIBs and tribal enrollment cards will greatly reduce the new barriers to enrollment for Native American applicants. As it is now, many Native Americans were born at home and do not have birth certificates. A passport costs close to \$100, a barrier for many low-income individuals, and most people do not own one unless they plan to travel outside of the United States. The tribal population generally travels domestically so they do not own passports.

One other issue that we have with the new verification rules is that the original documents must be shown in-person. Previously, tribal members and other Medicaid applicants were allowed to mail in their application with copies of the necessary documents. This worked quite well in the rural areas. Many tribal members live over 100 miles from the nearest Welfare Office, creating a large burden for these people to travel so far just to show their original documents. Many people are not comfortable asking a representative to bring in their documents, but not all tribal members have adequate transportation to travel the distance to their nearest Welfare Office. We would like to see the Welfare Office work with the Centers for Medicaid and Medicare to create an exemption to the rule of showing original documents so that tribal members can mail in copies of these documents to reduce the unnecessary burden of long distance travel.

Submitter : Ms. Jackie Doig
Organization : Center for Civil Justice
Category : Attorney/Law Firm

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-30-Attach-1.PDF

CENTER FOR CIVIL JUSTICE

320 South Washington, 2nd Floor

Saginaw, Michigan 48607

Voice: (989) 755-3120 Fax: (989) 755-3558

Fighting poverty through advocacy, education, and empowerment.

July 31, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

RE: Medicaid Citizenship Documentation Interim Final Rule,
71 Fed.Reg. 39214 (July 12, 2006)

The Center for Civil Justice (CCJ) is a non-profit law firm representing low income clients in a 14-county region of mid-Michigan and the Thumb, including the urban areas of Saginaw, Flint, and Bay City, as well as surrounding rural areas. Over 236,000 Medicaid recipients live in our service area.

In addition to our direct legal representation of low income individuals and families, CCJ meets regularly and works closely with private, non-profit human services providers throughout our service area, including faith-based organizations, non-profit health clinics, and the myriad of agencies that attempt to fill the gaps when low income individuals are uninsured or lack the health care coverage that they need to access necessary medical care. We also receive a grant from the Ruth Mott Foundation to provide intensive assistance and advocacy for low income clients seeking access to Medicaid and other governmental health coverage programs in Genesee County, Michigan.

We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

The interim final rules do not adequately protect U.S. citizens applying for or receiving Medicaid coverage from inappropriate delay, denial, or loss of Medicaid coverage and imposes burdens and requirements that are not required by the DRA. Our comments below highlight five areas that CMS should modify in the final rule.

1. U.S. citizens applying for benefits should receive Medicaid benefits once they declare they are citizens and meet all eligibility requirements.

Under the DRA, documentation of citizenship and identity is not required to establish an individual's Medicaid eligibility, although such documentation is required in order for the state to receive federal reimbursement for a portion of the Medicaid expenditures for the individual. 42 U.S.C. 1396b(x). Once an applicant for Medicaid declares that he or she is a citizen and meets all other eligibility criteria, Medicaid coverage for the individual should be granted. 42 U.S.C. 1320(d)(1)(A).

Although nothing in the DRA requires a delay in coverage, the preamble to the interim final rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. The rule itself states that states "must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." 42 CFR 435.407(j). In the final rule, CMS should make it clear that states may grant coverage to eligible citizens (*i.e.* individuals who have declared U.S. citizenship and who meet other eligibility criteria) while they are gathering documents such as birth certificates and photo identification cards.

This year, roughly 600,000 U.S. citizens are expected to apply for Medicaid in Michigan. Most of these citizens are children, pregnant women and parents whose Medicaid will be subject to the new documentation requirement. The net effect of the interim final rule's prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children and other vulnerable Americans. This is likely to delay their medical care, worsen their health problems and create financial losses for health care providers.

Under the interim final rule, U.S. citizens who have applied for Medicaid, who meet all of the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage. Some U.S. citizens who cannot obtain the documents they need within the time allowed by the state will never get coverage because they will become discouraged by the process. Because there has been no outreach program to educate U.S. citizens about the new requirement -- although section 6036(c) of the DRA specifically requires such a program -- most applicants are likely to be unaware of it, and there are likely to be significant delays in assembling the necessary documents. Many states take several months to provide copies of birth certificates and the increased volume of requests for such documents resulting from the DRA is likely to cause even greater delays.

"Safety net" medical providers in Michigan, such as free clinics, are stretched to their limits attempting to provide health care to individuals who do not meet the eligibility criteria for Medicaid (*e.g.* childless adults who do not meet the stringent disability criteria). They cannot

take on the burden of providing care to individuals who are eligible but not receiving Medicaid because they have requested but not yet received documentation of citizenship or identity. In many parts of the state – particularly in rural areas - there are no safety net providers. Medicaid-eligible individuals whose coverage is delayed because of documentation requirements will be forced to go without necessary treatment or to seek care in hospital emergency rooms – driving up the cost of care in the long run.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state’s Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a “reasonable opportunity” period to obtain the necessary documentation.

2. Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement.

The DRA allows CMS to exempt individuals from the DRA documentation requirements in situations where “satisfactory documentary evidence of citizenship or nationality ha[s] been previously presented.” 42 U.S.C. 1396b(x)(2)(C). However, the interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. The preamble to the interim final rule states that Title IV-E children receiving Medicaid “must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration.” 71 Fed. Reg. at 39216. This requirement places a wholly unnecessary burden on the state agency and on the foster or adoptive families seeking to provide for the children’s needs. State child welfare workers verify the citizenship of children who claim U.S. citizenship before they are approved for IV-E funding. Many of the IV-E children have special health care needs, in addition to being the survivors of abuse and neglect. Delays in treatment for these children will exacerbate their mental and physical health problems and may well result in increased development delays and an increased incidence of chronic health problems or permanent disability among this group of Medicaid recipients.

In Michigan, the documentation requirements under the interim final rule will apply to more than 35,000 children who receive Medicaid because they are in foster care or receiving an adoption subsidy, including more than 25,000 children who receive foster care or adoption assistance under Title IV-E of the Social Security Act. See 42 C.F.R. 435.115, .227, .403. The interim final rule requires unnecessary duplication of state agency efforts and puts these children at risk of delayed Medicaid coverage. Michigan’s Department of Human Services (DHS) verifies the citizenship status of these children in the process of determining their eligibility for Title IV-E payments, as required by federal authorities. See DHS Children’s Foster Care Manual, PR- Foster Care Payment Eligibility, available online at <http://www.mfia.state.mi.us/olmweb/ex/cff/902-2.pdf>. These IV-E children have not been

required to apply separately for Medicaid and DHS does not maintain a separate Medicaid eligibility file for them.

We urge CMS to use its authority under the DRA to revise 42 CFR 435.1008 to exempt from the documentation requirement those children who are eligible for Medicaid because they receive Title IV-E payments.

3. A state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital should be considered satisfactory documentary evidence of citizenship and identity.

Among the children subject to the documentation requirements under the interim final rules are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. The interim final rule provides that in such circumstances, extracts of a hospital record created near the time of birth could be used as proof of citizenship, 42 C.F.R. 435.407(c)(1), and if this "third level" of evidence was not available, a medical (clinic, doctor, or hospital) record created near the time of birth could be used, but only in the "rarest of circumstances," 42 CFR 435.407(d)(4).

As the preamble recognizes, infants born to U.S. citizens and qualified immigrants receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). 42 U.S.C. 1396a(e)(4). The preamble to the interim final rule states, however, that in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This creates an unreasonable and unnecessary burden on the state agency and the child's family, because the state Medicaid agency's payment for the child's birth in a U.S. hospital -- which makes the child, by definition, a U.S. citizen -- has been documented.

Labor and delivery are covered as emergency services for women whose Medicaid coverage is limited to emergency services only because of their immigration status. In the case of a child whose birth in a U.S. hospital is paid for by Medicaid, but whose mother is either a legal immigrant or an undocumented immigrant whose coverage is limited to emergency services, the preamble incorrectly states that in order for the newborn to be covered by Medicaid, the child must apply for Medicaid and provide citizenship documentation. 71 Fed. Reg. 39216. The interpretation of 42 U.S.C. 1396a(e)(4) contained in the preamble is internally inconsistent and is contrary to the language in the statute, which does not require a child to apply for Medicaid in these circumstances. The preamble correctly recognizes that the non-citizen mother is eligible for and receiving Medicaid on the date of the child's birth, but incorrectly asserts that the mother will not remain eligible following the birth. In fact, the mother's Medicaid eligibility will continue after the birth, subject to the same "emergency services only"

limitation on coverage. Therefore, the child is not required to apply for Medicaid. The automatic one-year Medicaid eligibility for children applies if the child is "born to a woman eligible for and receiving medical assistance ...so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance." 42 U.S.C. 1396e(4). The statute does not require that the child's mother be eligible for Medicaid with full coverage and does not exclude women whose coverage is for emergency services only.

When final rules are issued, CMS should acknowledge that children whose U.S. births are paid for by Medicaid are deemed to have applied for Medicaid and are eligible for one year, without regard to whether their mother's Medicaid coverage is limited to emergency services only.

The risk to the health of newborns from delays in coverage and the potential for increased uncompensated care for providers are completely unnecessary. Michigan has made significant progress in lowering its infant mortality rate, although the rate remains higher than the national average. Much of the progress in this area is due to policies that make it easier for low income women and newborns to access Medicaid coverage. Requiring additional documentation of citizenship when the state Medicaid agency has already made the determination, by paying for the birth, that the child was born in a U.S. hospital, will undermine efforts to improve maternal and child health.

We strongly urge that 42 CFR 435.407(a) be amended to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

4. CMS should use the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship and identity..

There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. Among these are victims of hurricanes and other natural disasters whose records have been destroyed, and homeless individuals whose records have been lost. The rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not address the situation in which a state is unable to locate the necessary documents for such an individual. Nor does the rule address the situation in which an individual does not have "incapacity of mind or body" but his or her documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in

Submitter : Ms. Lisa Fox
Organization : Ms. Lisa Fox
Category : Federal Government

Date: 08/01/2006

Issue Areas/Comments

GENERAL

GENERAL

Citizens need to prove their identify and citizenship to recieve Medicaid and other welfare benefits. The law abiding citizens whose tax payer dollars support these programs expect safeguards on our hard earned money.

Submitter : Mrs. Nanetta Phillips
Organization : Mrs. Nanetta Phillips
Category : Federal Government

Date: 08/01/2006

Issue Areas/Comments

GENERAL

GENERAL

Yes, Citizenship and ID and verification of income should be required!!!

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

Yes, any one should have to verify citizenship and ID. Welfare fraud is rampant. I am tired of paying for ineligible aliens just because they got pregnant. Easy ride here - come over and get your delivery paid for and then your child is a citizen, who we taxpayers continue to pay for.

Submitter : Mr. Gilbert Ramos
Organization : Self-employed
Category : Other Practitioner

Date: 08/01/2006

Issue Areas/Comments

GENERAL

GENERAL

This rule threatens to block or delay access to health care for many people in my state, Texas, including pregnant women and children in foster care.

The regulations do not exempt children in foster care, including those children who are receiving federal foster care payments under Title IV-E. This would require the Medicaid agency to DUPLICATE the work of the Texas child welfare agency, which already must verify the citizenship status of foster care kids in order to determine their eligibility for Title IV-E. This is totally absurd, unjust, and makes the burden of foster children in the state of Texas that much heavier.

This rule, if passed as it stands, will serve as testament to this administrations' waste of tax-payer money, disrespect for the foster care system, disrespect to unborn children, and disregard for the safety of the foster children under its care. Amazing ineptitude. If only unborn children whose parent(s) fall under the poverty line and foster kids could vote.

Shameful actions for the authors and supporters of this rule.

Also:

1) The regulations should be changed to permit states to accept 10 a record of Medicaid payment (or other insurance payment) for the birth of a child born in the US as proof of citizenship; and 2) a Medicaid record of birth in a US hospital or other setting. The rule as written would allow this for some children, but not for others, in effect discriminating against children whose mothers had private insurance as well as those who are immigrants (legal and undocumented alike).

2) The rule needs to allow states the flexibility to use alternative methods to verify citizenship or identity in 'special circumstances,' when the state finds that compliance with the regulations would be a hardship (and the state has reasonable grounds to conclude that the individual is a citizen).

3) Regarding Native Americans. A tribal enrollment card issued by a federally-recognized tribe should be treated like a passport as primary evidence of citizenship and identity. WHY THE EXTRA BURDEN????? Please explain...

4) The regulation should give states flexibility to accept copies of documents instead of original documents or copies certified by the issuing state agency. The cost of a state for receiving and safeguarding birth certificates and passports adds extra burden to the tax payer... Texas is planning to close 100 eligibility offices and convert to a largely paperless system that relies heavily on mail, FAX, and telephone, so this flexibility is critical.

PLEASE, PLEASE amend the regulations to allow for the above. Otherwise this rule will be the vehicle through which 1) millions of dollars will be misspent, 2) poverty will be fostered, 3) foster children and foster parents will be denied speedy access to services, 4) the unborn child and mother living in poverty will be denied speedy access to services, and 5) US citizens are discriminated against.

Respectfully,
Gilbert Ramos, LCSW

Submitter : Ms. nancy Poe

Date: 08/02/2006

Organization : Ms. nancy Poe

Category : Academic

Issue Areas/Comments

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

Imagine how difficult it is to get a sick child to the doctor-many do not have transportation, may not know how to access public transportation, may have other children to get ready and bring. Please do not put another obstacle-How many of you have easy access to your ORIGINAL birth certificate? And how many poor people do you know have passports for themselves much less for their children!!

Submitter : Mrs. Nidia Halstead
Organization : Florida Impact
Category : State Government

Date: 08/02/2006

Issue Areas/Comments

**Provisions of the Interim Final Rule
with Comment Period**

Provisions of the Interim Final Rule with Comment Period

Florida Impact fights hunger through outreach and advocacy for increased access to federal food and nutrition. As part of this effort, I am the Coordinator for Impact's statewide, bilingual Food Stamp Help-line. The Florida Department of Children and Families administers one on-line application for both food stamps and Medicaid.

I am writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. We are concerned about the rule's potential impact on access to health care for vulnerable Americans, including families that are food insecure. We offer our recommendations for revisions to the rule that we believe will better address these families' circumstances and not exacerbate their difficulties in meeting their health needs.

Our help-line was designed to prescreen clients for food stamps. The callers are given the food stamp guidelines and recent policy changes that may affect their eligibility. They are given directions on how to apply and other resources, such as food pantries, WIC, Medicaid, LIHEAP, Lifeline/Linkup, Legal Aide, Florida Kid Care, Child Support Enforcement, Etc&&&.

Some immigrant families are afraid to apply for benefits due to many reasons.

At times American born children go without food stamps, because of illegal parent being afraid of being turned in to INS. Some legal immigrants are afraid this will affect the process of applying for citizenship or getting their permanent residency.

This new rule will only hinder more families who are entitled to benefits.

In addition there are many different problems that clients face when applying for benefits. Whether being a single parent trying to make ends meet, being disabled or elderly and not able to leave the home, not able to comprehend beyond a certain level, homebound with no computer, not having the know how to use computer, pride.

Most callers complain about using the Access Florida Number and the EBT Help-line since it's automated because they find it confusing.

Once the clients get in touch with Florida Impact, we make the process a little easier and voice friendly to all clients that call.

Anything the clients need help with we try and find an answer or a way to help.