**Submitter :** Ms. Rachelle Wenger **Date:** 08/09/2006

**Organization :** Catholic Healthcare West

**Category :** Hospital

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-138-Attach-1.DOC

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August 9, 2006

**SUBMITTED ELECTRONICALLY**

Mark McClellan, Ph.D.
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

**RE: Medicaid Program; Citizenship Documentation Requirements (CMS-2257-IFC)**

Dear Dr. McClellan:

Catholic Healthcare West (CHW), on behalf of our 42 hospitals in Arizona, California and Nevada, is pleased to submit the following comments to the Centers for Medicare and Medicaid Services (CMS) on the interim final rule implementing Section 6036 of the Deficit Reduction Act of 2005 (DRA, P.L. 109-171) regarding new citizenship verification requirements.

These requirements will have a significant impact on both the ability of Medicaid-eligible individuals to qualify for the program and of states to enroll them in the program. CHW appreciates the improved flexibility this guidance gives to states, but we are still concerned that these new requirements could deny eligible United States citizens and nationals Medicaid coverage. Due to the burdensome and, in some instances impossible, requirements imposed on states, Medi-Cal beneficiaries and their providers, CHW seeks CMS' leadership to partner with affected states and their stakeholders to work aggressively to minimize the impact of this provision.

Catholic Healthcare West respectfully provides comments and recommendations on the following issues:

1. Vulnerable Populations Currently Not Exempted from Documentation Requirements
2. Federal Financial Participation (FFP) for Administrative Expenditures
3. Restrictive Provisions of the Interim Rule

## VULNERABLE POPULATIONS

We are pleased that the interim rule expands the list of vulnerable populations that are exempt from the new documentation requirements, particularly Medicare beneficiaries, people with disabilities who receive supplemental security income (SSI), and pregnant women and children, who are presumptively eligible for Medicaid.

**We encourage CMS to consider further expanding the exemptions** to include, but not limited to:

- Non-elderly people with severe physical and mental disabilities but do not receive SSI
- Children receiving foster care benefits under Title IV-E of the Social Security Act
- Citizen infants born to non-eligible immigrant mothers
- Those individuals receiving Medicaid for five or more years
- The homeless

As a mission-driven, values-based organization, CHW is particularly focused on the needs of the poor, vulnerable and disenfranchised. We daily face the challenges that the communities we serve endure. We welcome CMS partnering with us to lessen the burden of patients and to foster in our nation shared values that ensure provision of health care for all those in need.

## FFP FOR ADMINISTRATIVE EXPENDITURES

The rule indicates that CMS will increase auditing and agency monitoring of states, and that non-compliance with citizenship verification requirements will result in withholding of Federal Financial Participation (FFP). CMS, in particular will monitor the extent to which states use documentation from the primary evidence category to establish citizenship. CHW, along with the hospital community nationwide, are concerned that, as a result, states will be overly cautious in interpreting the guidance and err on the side of not enrolling eligible individuals.

**We request CMS to make every effort to clarify that agency oversight is not intended to prevent entitled citizens from receiving Medicaid benefits.**

Moreover, CHW is concerned that CMS opines that it will ordinarily take applicants and beneficiaries ten minutes and state agencies five minutes "to obtain acceptable documentation, verify citizenship and maintain records." It would be reasonable to hold the view that satisfying citizen requirements would translate into significant amount of time (above and beyond five minutes) that would be required to comply with the rule.

CHW is concerned that CMS does not fully comprehend that citizenship requirements would equate with increased cost borne by the state, providers, and beneficiaries. With respect to services furnished to otherwise eligible beneficiaries, hospitals may in many instances have to forgo compensation until and unless the documentation requirements are satisfied. The new requirements will likely result in a potential increase in uncompensated care, thus ultimately having the added effect of compromising the health status of a significant number of individuals.

**We request that CMS reconsiders the time estimates stated in the rule to appropriately reflect responsible, accurate estimates, that truly recognize the complexities and burdens associated in meeting the documentation requirements.**

**RESTRICTIVE PROVISIONS OF THE INTERIM RULE**

However, CHW is concerned that applicants and individuals subject to redeterminations do not have sufficient time to produce the necessary documentation and that the use of certain documents listed is too restrictive. Specifically,

- Both applicants and current recipients should be provided that same "reasonable opportunity period" to produce the necessary documentation.
- Medicaid applicants or beneficiaries born outside the United States who are naturalized citizens should not be restricted to three forms of documents – a U.S. passport, certificate of naturalization, or certificate of citizenship. They should be permitted to use the same forms of documentation as citizens born in the U.S.
- While states are prohibited from accepting many documents unless they were created more than five years before an individual applies for Medicaid, CMS does not provide for a sufficient explanation as to why documents created at any time are more or less valid than ones created five years prior to explanation. Such restrictions should be eliminated.
- The rule states that original documents must be presented to satisfy the requirements, but the statute (DRA) makes no such stipulation. This requirement only serves to add to the information collection burden of the regulations and make more likely the delay in provider reimbursements as well as increase in uncompensated care. States should be allowed to accept and use copies of the required documents.

CHW is pleased that the rule allows states to use electronic data matches, such as those made through the Vital Statistics Records, as acceptable documentation. We urge CMS to encourage states to do so.

**We strongly urge that CMS adopt these above recommendations to protect the integrity of the Medicaid program and equally so, the preservation of the Medicaid safety net for America's population most in need.**

We look forward to working with you to elevate common ground and to achieve both purposes. Should you have any questions, please contact me at 626/744-2209 or **rwenger@chw.edu** or Shelly Schlenker, Vice President, Public Policy & Advocacy at 916/851-2006 or **sschlenker@chw.edu**.

Sincerely,

Rachelle R. Wenger
Manager, Public Policy & Advocacy

**Submitter :** Ms. Susan Zimmerman **Date:** 08/09/2006

**Organization :** FAVOR, Inc.

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-139-Attach-1.PDF

August 4, 2006

Michael O. Leavitt
Secretary, United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

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

Dear Secretary Leavitt:

FAVOR, Inc., a family advocacy organization for children's mental health, is sending you our comments 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 have also submitted our comments to CMS through the CMS website).

We submit these comments because of our serious concerns about CMS's interpretation of the law and its likely detrimental impact on vulnerable children. We anticipate delays in critical health care coverage to new applicants and the potential loss or denial of Medicaid coverage for those who, despite best efforts, are unable to document their citizenship. The Connecticut Department of Social Services (DSS), without new or additional resources, is making every effort to comply with the law and to minimize the harm to applicants and enrollees. To do this, however, DSS has had to divert scarce resources from other efforts to assure health care access and services for our state's vulnerable populations.

We applaud the Secretary's decision to ease implementation of the Medicaid documentation requirement for some citizens by exempting Medicare and SSI beneficiaries from the requirement, and by allowing the state Medicaid agency to access vital records to document the birth of US citizens born in our state without waiting for individuals to show they have unsuccessfully attempted to obtain paper records. We remain concerned, however, that the interim final rule goes beyond what Congress intended and will deny or delay access to health care for many United States citizens, including children, especially children in state foster care programs.

We urge CMS to make the following revisions to ensure that children and their parents receive Medicaid benefits without experiencing delays, disruptions or denials of coverage. We believe these revisions are particularly appropriate because the new law does not address any documented problem of non-United States citizens fraudulently receiving Medicaid coverage. You are no doubt aware of the finding by

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HHS's Office of Inspector General in its report "*Self-Declaration of US Citizenship for Medicaid*" that there was no substantial evidence that non-citizens are obtaining Medicaid by falsely claiming citizenship. And here in Connecticut an audit by our Department of Social Services over a four-year period did not uncover a single case of an applicant falsely declaring citizenship.

**Applicants and enrollees should not be required to submit originals or certified copies of documents.**

The DRA does not require applicants and enrollees to submit original or certified copies to meet the new citizenship documentation requirement. CMS has added this provision in the interim final regulation at 42 CFR 435.407(h)(1). We are convinced that CMS's estimate that it will take applicants and enrollees "ten minutes" and state agencies "five minutes" to comply with the requirement that individuals provide original or certified copies to the Medicaid agency is unrealistic.

In Connecticut, we have worked hard to simplify the eligibility process. We no longer require pregnant women and families to undergo a face-to-face interview to apply for or renew Medicaid coverage. In addition, after experiencing a steep decline in family enrollment after the repeal of self-declaration of income procedures in June 2005, the legislature and Governor agreed to reinstate self-declaration last month (July 2006). We fear that the increased efficiency to be gained by the reinstatement of self-declaration will now be lost due to this new citizenship documentation burden. Moreover, the Department of Social Services has seen a dramatic decrease in its staffing over the last several years, as well as a reduction in the number of its offices. As a result, it is a hardship for some people to travel increased distances to reach a regional DSS office, particularly in a state without a mass transit system. Even if people manage to get to a DSS office, the state agency is not currently equipped to deal with a dramatic increase in foot traffic at its local offices.

While the regulations allow for documents to be mailed, it is unlikely that individuals will send original documents, such as passports, birth certificates, and driver's licenses through the mail, risking the misplacement or loss of these important personal papers. Moreover, people are not permitted to drive without their licenses so it is implausible that anyone would mail his or her driver's license to DSS. Low-income working families on Medicaid can ill afford to take time off from work to bring such documents to DSS offices. Based on past experience, we fear that these families will forego health care coverage rather than risk loss of pay or jobs in order to make the required trips to state offices. We have seen in Connecticut that any additional paperwork, however seemingly benign in intent, acts as a barrier to enrollment. As mentioned above that is why state lawmakers wisely restored self-declaration of income procedures this summer

We, therefore, urge CMS to eliminate this requirement and allow copies


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of documents to be submitted by applicants and enrollees. Under current law, state Medicaid agencies have always had the authority to require additional proof of citizenship where the person's declared statement is questionable. This is unchanged by the DRA and the interim final regulations.

**U.S. children and parents applying for benefits should be able to receive benefits while they obtain the documents they need.**

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. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid coverage for large numbers of eligible, low-income children and parents. These delays in coverage are of special concern for children with mental health needs because they could hinder their ability to get timely intervention.

We note the rule will delay coverage for other vulnerable groups, such as persons with disabilities who are not on SSI, but receive Social Security Disability Insurance (SSDI), and are awaiting Medicare coverage. (As you know, the waiting period for Medicare coverage is 24 months from the date of the disability determination for SSDI). These people are not exempt from the citizenship and identity documentation requirements under the DRA and the interim final regulations. We are aware of a very recent case in point where an individual was diagnosed with a terminal illness. He has just applied for both Social Security Disability Insurance and Medicaid. He should not have to experience delays in receiving Medicaid coverage and the critically needed care that will ease his final days.

Although DSS has every intention of accessing Connecticut vital records in order to document the birth of US citizens born in this state as appropriate, the system is not yet in place, will likely experience glitches as all systems do, and will not address the need for documentation from US citizens born in other states.

Congress did not make documentation of citizenship a condition of receiving Medicaid benefits, and in fact instructed CMS through another provision of the Medicaid Act to not approve state Medicaid plans that impose "any citizenship requirement which excludes any citizen of the United States" as a condition of eligibility for the program. See 42. U.S.C. 1396a(b)(3). Therefore, when applicants show that they meet all eligibility criteria and make a sworn declaration of citizenship, they should receive benefits while they get the documents they need. This is the rule for legal non-citizens whose legal status makes them eligible for Medicaid, and the same rule should be applied to citizens.

We urge you to revise 42 CFR 435.407(j) to allow applicants who declare they are U.S. citizens or nationals and who have shown that they

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meet the state's Medicaid eligibility criteria to receive Medicaid coverage while they obtain the documents they need to meet the new requirement.

**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. There are about 7,000 children in Connecticut's foster care programs, including approximately 3,000 children receiving federal foster care assistance under Title IV-E, who are subject to the citizenship documentation requirement.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. 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.)

In the DRA, Congress allowed CMS to exempt individuals who are eligible for other programs that require documentation of citizenship. The IV-E program is precisely such a program. Foster children in the care of the state need immediate access to medical coverage. There is no reason to delay their Medicaid coverage when child welfare agencies have already verified that they are citizens or to add unnecessary and duplicative burdens to state agencies.

We urge you to revise 42 CFR 435.1005 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.

Thank you for the opportunity to submit these comments. Please contact Susan Zimmerman, Policy Analyst, FAVOR, at (860) 563-3232 ext. 104, szimmerman@favor-ct.org with any questions you may have about the information contained in this letter.

Sincerely,

***/s/ Susan P. Zimmerman***

Susan P. Zimmerman
Policy Analyst, FAVOR


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**Submitter :** **Date: 08/09/2006**

**Organization :** **Action for Children North Carolina**

**Category :** **Other**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-140-Attach-1.PDF


August 9, 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)

Action for Children North Carolina is a statewide non-profit dedicated to making North Carolina the best place to be and raise a child. Access to health care, especially preventative care, is essential for children to grow up healthy, enter school ready to learn, and adulthood ready to succeed. In North Carolina, 675,000 children rely on Medicaid for health insurance. Medicaid in North Carolina is effective for children, with 70% receiving preventive services.

Given this concern, 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 North Carolina children applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage to get the health care they need to be healthy

Our comments address the 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.

**1) 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.

The net effect of the prohibition on granting individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income children and pregnant women. 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.

Such provisions are particularly troubling for North Carolina children. North Carolina has had the second greatest decline in employer-provided health insurance in the nation, a trend that has tremendous impacts for children of working parents. Manufacturing jobs are being lost and replaced by jobs that are frequently lower-paying and without benefits. Children in these families still need health insurance. At the same time, our state has become home for many Katrina evacuees, not to mention the many coastal North Carolina children who themselves have come through hurricanes with little more than the clothes on their backs. Families who experience such trauma should not be should not face the additional difficulty of going without health insurance because they cannot immediately produce an original birth certificate.

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 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 the roughly 10,000 North Carolina children in foster care, including those receiving federal foster care assistance under Title IV-E. 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.)

Children who may have been beaten, abused, sexually assaulted or starved will not have access to Medicaid to cover psychological care, prescription drugs, or other needed services that require emergency room services. Foster children are incredibly vulnerable and need additional supports – not the denial of medical treatment and prevention services. Caseworkers in North Carolina deal with an average of 82 investigations and 23 on-going cases each. Requiring more time for paperwork will not improve – and may jeopardize -- child welfare outcomes.

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 and should be exempt 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.

**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 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.

This rule would prevent states from granting coverage until documentation of citizenship is provided. That means that reimbursements to hospitals and physicians treating fragile newborns may be denied or delayed. This could waylay needed treatment for post-partum complications or well-baby care. North Carolina already has the 40th worst infant mortality rate in the nation and this provision could make it even more difficult for babies to get the health services they need in a timely fashion.

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.

**4) 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. As mentioned previously, North Carolina has been hard hit by hurricanes in the past and will likely face such severe weather again.

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 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.

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.

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 North Carolina children and their parents who are U.S. citizens can continue to receive the health care services they need.

**5) 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. Assuming it takes ten additional minutes of staff time to process the application of 675,000 North Carolina children, an additional 112,000 hours (the equivalent of 54 full time positions) of staff time will be devoted to such activity.

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.

This provision will be particularly burdensome when it comes to foster children. Each county welfare agency will have to obtain an original or certified birth certificate even though it likely has a copy from determining IV-E eligibility. The costs of obtaining almost 10,000 certified copies of birth certificates could put a further strain on child welfare budget and already overworked Child Protective Services staff.

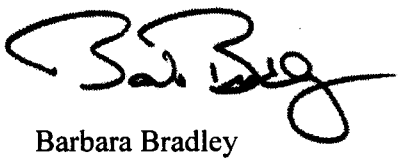
We urge CMS to revise the regulation by modifying the requirement at 42 CFR 435.407(h)(1) to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by the issuing state agency. States should be able to accept copies 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.

**Conclusion**

The documentation requirements of the DRA potentially threaten the Medicaid coverage of 675,000 North Carolina children, including almost 10,000 foster children. By making changes, CMS could minimize, rather than exacerbate, these problems. In particular, there should be no delays for children to receive Medicaid while waiting for documentation once eligibility has been established and citizenship declared; foster children should be exempt; proof of Medicaid covered birth should cover newborns to receive health services; CMS should adopt the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship; and CMS should not require applicants and beneficiaries to submit originals or certified copies.

The impact of these decisions is not trivial. They will determine whether or not North Carolina children have access to basic preventative health services. They will determine if abused and neglected children can receive the counseling, medications, and other medical services they need. They will determine if huge backlogs occur from the time delay of Medicaid staff checking original documents. They will determine if Child Protective Service staff can spend time helping abused and neglected children or chasing down paperwork. We urge you to adopt regulations that promote the health of children. Thank you.

Sincerely,



Barbara Bradley
Executive Director

**Submitter :** **Date: 08/09/2006**

**Organization :** **Institute for Reproductive Health Access**

**Category :** **Other**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

CMS-2257-IFC-141-Attach-1.DOC

August 11, 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 Institute for Reproductive Health Access works to expand reproductive rights for all women regardless of age, race or income. For years, we have worked to ensure that low-income women have adequate health coverage and are able to access a full range of health services. Medicaid is the leading source of health coverage for low-income women in the US. Medicaid provides critical services, including routine check-ups, preventive screenings, and reproductive health care, to 19 million low-income women. As women comprise 71% of the adult beneficiary population, they are disproportionately affected by barriers to obtaining and renewing Medicaid coverage.

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 section of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid provide documentation of their citizenship and identity. We are deeply concerned 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. Our comments below highlight four critical areas that CMS should modify in the final rule.

**Family planning waiver programs should be exempted from the citizenship and identity documentation requirements.**
Sections 435.406 and 436.406 of the interim final rule require individuals receiving benefits under section 1115 family planning demonstrations to provide documentation of citizenship. If implemented, this rule would impede access to critical, time-sensitive and cost-effective family-planning care and would leave many low-income women without the means to avoid unintended pregnancy.

Over the past decade, 24 states have obtained federal approval under section 1115 to expand Medicaid eligibility for family planning services and supplies to individuals who otherwise would not be covered. These programs have improved access to family planning services and have consequently reduced the number of unintended pregnancies among the covered population. The demonstrations have resulted in significant cost-savings since family planning reduces the need for more costly services associated with pregnancy and postpartum care.

The interim final rule places a significant barrier to care for individuals seeking to enroll in these programs. The problem posed by the documentation requirements is particularly serious when it comes to accessing such a time-sensitive service as family planning. Any delay in receiving services could result in an unintended pregnancy which leads to higher medical costs. We urge CMS to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute.

**A record of payment for the birth of an infant in a U.S. hospital should be considered satisfactory documentary evidence of citizenship and identity.**
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. However, by paying for the birth, the state Medicaid agency has already made the determination that the child was born in a U.S. hospital and is therefore 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, by paying for the birth, the state Medicaid agency has already made the determination that the child was born in a U.S. hospital and is therefore a citizen.

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 or physician record created near the time of birth could be used, but only in the "rarest of circumstances," 42 CFR 435.407(d)(4).

Since 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 onerous documentation requirements. Hospitals and physicians, who cannot turn away patients, will suffer financially.

The risk to the health of newborns from delays in coverage and the potential for increased uncompensated care for providers are completely unnecessary. By paying for the birth, the state Medicaid agency has already made the determination that the child was born in a U.S. hospital. We strongly urge that CMS amend 42 CFR 435.407(a) 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 not require applicants and beneficiaries to submit original documents or certified copies.**

We are concerned that the requirement that only original documents or certified copies be accepted as satisfactory evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies. The DRA does not require that applicants and beneficiaries submit original documents or certified copies to satisfy the new citizenship documentation requirement. Yet CMS has added this requirement to the interim final regulations at 42 CFR 435.407(h)(1). CMS also estimates that it will only take applicants and beneficiaries ten minutes and state agencies five minutes to comply with the requirement. This requirement adds to the information collection burden of the regulations and compliance will take considerably longer than CMS's estimation.

Applicants and beneficiaries will have to make unnecessary visits to state offices with original documents or certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is unlikely that applicants and beneficiaries will be willing to mail in original birth certificates or certified copies. Moreover, they may be unwilling or unable to mail in proof of identity such as driver's licenses or school identification cards.

Most states, including New York, do not require face-to-face interviews 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 that states took to simplify their eligibility processes. Mail-in applications are also more efficient for state Medicaid agencies. Requiring original documents and certified copies to prove citizenship will make it harder for working families to enroll in Medicaid and will increase the workload of Medicaid agencies. Many applicants may not be able to pay for certified copies of documents that they have lost or misplaced. Compliance with this requirement may be especially difficult for victims of natural disasters or homeless individuals who simply do not have these documents. Agencies will face additional costs if they must mail the copies or original documents back to applicants and beneficiaries.

This unnecessary requirement goes beyond the requirements that Congress imposed in the DRA. This requirement will 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. A visit may be particularly burdensome, if not infeasible, for women who have the additional responsibility of securing childcare and transportation.

We urge CMS to revise the requirement at 42 CFR 435.407(h)(1) so that states have 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 there is no reason to suspect that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or beneficiary.

**U.S. citizens applying for benefits should start receiving benefits once they declare that 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. Under the new requirement, large numbers of eligible, low-income Americans will be denied Medicaid coverage during the application process. Some U.S. citizens who become discouraged or cannot obtain the documents they need within the time allowed by the state will never receive coverage. Furthermore, most applicants will be unaware of the new requirement since CMS has not established a specific outreach program to educate U.S. citizens. Thus, the new requirement could result in significant delays for applicants and beneficiaries who are not prepared to provide documentation and must scramble to assemble the necessary documents.

We are particularly concerned that delays in Medicaid coverage will have significant effects on the receipt of timely care and will worsen health problems for millions of low-income women. These delays could lead women to forego essential preventive services, including cervical and breast-cancer screenings. In addition, delays for pregnant women may deter early entry into prenatal care, which will put both the mother and her child at risk for complications. Women who are currently enrolled in Medicaid may experience disruptions in their care when they have to renew their coverage. Low-income, eligible women must have immediate and continuous access to Medicaid so they can obtain the care that they need.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and 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.

**Conclusion**
We strongly urge CMS to consider the ramifications of the interim final rule on the health of low-income women and their children. The requirements specified in this document will present substantial obstacles for low-income women who seek to enroll or renew

their enrollment in Medicaid. The documentation requirements will equally impact the children of low-income women. If the documentation requirements are not amended, low-income women and children may be denied or may loss coverage for crucial health services. Thank you for your attention to our comments.

Sincerely,

Robert Jaffe
Executive Vice-President

**Submitter :** Ms. Pamela Sutherland **Date:** 08/09/2006

**Organization :** Illinois Planned Parenthood Council

**Category :** Health Care Provider/Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attached revised document of our comments

CMS-2257-IFC-142-Attach-1.DOC

August 11, 2006

Administrator Mark B. McClellan, M.D., Ph.D
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Re: 42 CFR Parts 435, 436, 440, 441, 457, and 483
Medicaid Program; Citizenship Documentation Requirements

Dear Administrator McClellan:

We are writing to comment on the interim final rule, published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). Section 6036 requires that all U.S. citizens applying for or receiving Medicaid benefits produce documentation proving citizenship. We are deeply concerned about the impact this provision will have on millions of Medicaid eligible citizens.

The Illinois Planned Parenthood Council represents seven Planned Parenthood Affiliates that have 23 family planning health centers serving Illinois residents. The percentage of our clients who are on Medicaid ranges from 20% to 40%. These clients receive a wide range of family planning services including contraceptive care, annual gynecological exams, breast and cervical cancer screenings, treatment for sexually transmitted infections, and education on preventing unintended pregnancy. These services are essential to helping these women not only lead healthy lives, but also plan their families so that they can achieve self-sufficiency and independence.

We are disappointed that the Centers for Medicare and Medicaid Services (CMS) did not capitalize on the opportunity to lessen the negative impact of section 6036. Actually, in several instances, the interim final rule sets forth requirements that are more burdensome than what the statute calls for. Below, we highlight areas where CMS should modify the interim final rule to more effectively ensure that patients have timely access to the health care services they are eligible for and need.

We are especially concerned about the impact the interim final rule will have on individuals seeking family planning services. Nationwide, Medicaid is a significant source of funding for family planning and other preventive health care services we provide to our patients. This critical program is the largest source of public funding for family planning services, accounting for more than 60% of all publicly-funded care.

In Illinois 24% of all clients (35,603 individuals) seen by agencies in the Illinois Family Planning Program were on Medicaid. Thus, Medicaid is an important part of the program statewide, not just at Planned Parenthood agencies.

In addition, we have the Illinois Healthy Women Program which provides family planning health care services/birth control to women who have recently lost regular Medicaid medical benefits. Family planning health care pays for birth control, physical exams and lab tests women need to plan their pregnancies. This program which was implemented through a section 1115 family planning waiver, has been very important in helping women transition from public assistance to self-sufficiency. The program is expected to not only benefit its clients, but also save the State of Illinois in potential costs related to unintended pregnancies among this population.

**Individuals receiving benefits under section 1115 family planning demonstration programs should be exempt from the citizenship documentation requirements.**

Since 1993, twenty-four states have expanded access to family planning services through 1115 family planning demonstration programs. Under these programs, states have received CMS approval to extend Medicaid-covered family planning services to individuals who do not meet the requirements for standard Medicaid enrollment in order to prevent unintended pregnancies. Streamlining enrollment and extending coverage are fundamental to the success of these programs, which have assisted millions of low-income people who would otherwise have no source for family planning services. For Illinois, family planning demonstration programs are at the cornerstone of improvements in quality of health care. Unfortunately, the citizenship documentation requirements strike at the core of how family planning demonstration programs are designed and could ultimately render them meaningless.

The interim final rule completely threatens the viability and impact of these programs by requiring individuals who receive these services to produce citizenship documentation. The preamble of the interim final rule states that "individuals who are receiving benefits under a section 1115 demonstration project approved under title XI authority are also subject to the provision" (71 Fed. Reg. 39216 and 42 CFR 435.406(a)(1)(iii)).

This inclusion of family planning demonstration programs is entirely counterproductive. The point of these programs is to expand coverage and streamline access to critical services by waiving certain federal requirements under the Medicaid program. Services provided under the family planning demonstration programs are limited in scope, but their impact is tremendous. Each year, millions of women rely on these programs to prevent unintended pregnancies and to access other crucial health care services.

In addition to expanding access to such vital health care services, family planning demonstration programs save money. A 2003 study commissioned by CMS showed that in each of the states studied, the program actually saved money by averting unintended pregnancies. For instance, South Carolina realized a savings of $56 million over a three-year period while Oregon's program saved almost $20 million in a single year.

Requiring family planning demonstration program patients (who otherwise would not qualify for Medicaid coverage) to comply with a requirement for the broader Medicaid population completely undermines the programs by erecting unnecessary enrollment barriers. Furthermore, the citizenship documentation requirements would ultimately create a larger financial burden for the federal and state governments.

We strongly urge CMS to exempt this population from the documentation requirements in the final rule. Doing so will ensure that family planning waiver demonstration programs will continue to make important strides in enhancing access to time-sensitive services and reducing the rate of unintended pregnancies. Without such an exemption, states will be faced with the very real possibility that costs associated with requiring citizenship documentation will outweigh the savings the programs currently produce.

**Individuals applying for Medicaid should receive benefits once they declare citizenship.**

Section 6036 of the DRA applies to all individuals (with the exception of Medicare beneficiaries and most SSI beneficiaries) who apply for Medicaid. For those individuals who are already receiving Medicaid benefits, the interim final rule stipulates that they will continue to be eligible for services while they are in the process of producing the required documentation during a "reasonable opportunity" period allotted to them. However, for those individuals who are newly applying to the program, the interim final rule firmly establishes that they will not be eligible for services until citizenship is proven (see 71 Fed. Reg. at 39216 and 42 CFR 435.407(j)). As a result, U.S. citizens applying for Medicaid who have met all eligibility criteria and are in the process of producing the documentation will experience significant delays in Medicaid coverage. This will have a substantial impact on individuals in need of time-sensitive reproductive health care services.

As a result, in this year alone, approximately 10 million U.S. citizens applying for Medicaid will face the possibility of a gap in coverage while they are in the process of producing the required documentation. It should not be lost that the majority of these citizens will be low-income pregnant women, children, and other vulnerable Americans. Undoubtedly, this will result in delays in care, worsening health care problems and eventually placing a heavier burden on the health care system. This will have an especially negative impact on individuals in need of family planning services, cervical and breast cancer screening, and STI testing services. Some U.S. citizens who may get discouraged or are unable to produce the documents within the time allowed by the state will be denied coverage. Furthermore, because an active outreach program has not been implemented, many citizens are likely unaware of the documentation requirements and are not prepared to comply.

Surprisingly, this requirement was not required by the DRA statute. There is nothing in the DRA that requires any delay in providing coverage for health care services. Unfortunately, CMS freely incorporated this debilitating provision into the interim final rule.

Even still, delaying eligibility does not correspond with the statute. Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Instead, it is a criterion for states to receive federal financial participation (FFP). Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, he or she should be able to access Medicaid-covered services while attempting to produce the required documentation during the "reasonable opportunity" period.

We therefore urge CMS to revise the interim final rule at 42 CFR 435.407(j) to state that new Medicaid applicants who declare they are U.S. citizens or nationals and who meet the state's eligibility criteria must receive Medicaid-covered services while they are obtaining the necessary documentation during the "reasonable opportunity" period.

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

The interim final rule requires that individuals submit original or certified copies of documentation (see 42 CFR 435.407(h)(1)). This requirement creates an even larger burden for beneficiaries who will be faced with either the additional cost of purchasing a certified copy, making a face-to-face visit with state offices, or with entrusting important documentation, such as an original birth certificate or passport, to the postal system and state Medicaid agencies.

Attaining the required documents presents its own challenges. The cost of a certified copy of an Illinois birth certificate is $15. Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220). Of course, delays in care will occur as a result of the document acquisition process —an especially harmful issue for those who will have to forgo reproductive health care services while they are attempting to attain the required documentation.

While the regulations state that individuals can submit documents by mail, it is unlikely that many will be comfortable mailing in originals or certified copies of birth certificates, final adoption decrees, or medical/life insurance records. Moreover, it would be completely impractical to mail in proof of identity, such as a driver's license or school identification card.

The requirement for the submission of original or certified copies also stands to curtail efforts our state has made to streamline the Medicaid enrollment process. The requirement that only original and certified documents can be accepted is unreasonable and will undermine efforts to streamline and optimize enrollment of eligible individuals into the Medicaid program.

Not only is the requirement onerous, it is also unnecessary. The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Furthermore, in addition to the obstacle this creates for patients, this requirement makes it more likely that health care providers will experience delays in reimbursement as well as uncompensated care.

We strongly urge CMS to eliminate the requirement at 42 CFR 435.407(h)(1) that only originals or copies certified by the issuing agency can be accepted.

**The final rule should allow states more flexibility to effectively implement the documentation requirements**.

Illinois should not be forced to implement a citizenship documentation process that is both burdensome and counterproductive. We recognize that the regulations are a significant improvement over the June 9th CMS guidance in that they explicitly allow states to use vital

health databases to document citizenship and other state and federal databases to document identity (see 71 Fed. Reg. 39216 and 42 CFR 435.407(e)(10).

At the same time, however, Illinois is still bound by a proscriptive process that does not adequately allow it to respond to the unique needs of their population. In general, the hierarchy of document reliability that CMS chose creates a much larger burden than is necessary to implement section 6036. Specifically, there are several areas where CMS should amend the interim final rule.

While requiring states to help "special populations" in securing citizenship documentation is an important safeguard, it is unclear if this provision covers all individuals who may be in need of state assistance (see 42 CFR 435.407(g)). The provision applies to those who cannot acquire the documents because of "incapacity of mind or body." Conceivably, there are many groups of people who may be lost in this provision, such as victims of natural disasters and certain homeless individuals. CMS should erect a clear safety net for these populations as well. Furthermore, CMS should ensure that for these populations, eligibility for services cannot be denied as a result of a state's incapacity to locate the documentation.

In the interim final rule, CMS solicits comments on whether individuals would have difficulty proving citizenship and identity if only primary or secondary level documents were permitted (see 71 Fed. Reg. 39220). Given that many beneficiaries and applicants will face significant hurdles in documenting citizenship according to the provisions of the interim final rule, it would be enormously detrimental if the regulations were limited so severely in the final rule. Instead, CMS should approach the final rule in terms of broadening the scope of acceptable documentation. For instance, section 435.407(a) should be amended to allow Native American tribal identification documents to be used to prove both citizenship and identity.

We strongly urge CMS not to limit the accepted documentation to the primary and secondary level of documents. If the true goal of the provision is simply to require the proof of citizenship and identity of Medicaid-eligible U.S. citizens, then it is only natural that CMS would accept a variety of documents to reflect the varied circumstances of Medicaid-eligible citizens' lives.

**Conclusion**

The citizenship documentation requirements set forth by the Deficit Reduction Act will have a profound impact on the way the Illinois Medicaid program operates. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

Thank you for your attention to these comments.

Sincerely,

Pamela A. Sutherland
President & CEO

Illinois Planned Parenthood Council
107 West Cook Street, Suite F
Springfield, Illinois 62704

**Submitter :** **Ms. Jill June** **Date: 08/09/2006**

**Organization :** **Planned Parenthood of Greater Iowa**

**Category :** **Health Care Professional or Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

"See Attachment"

CMS-2257-IFC-143-Attach-1.DOC

August 11, 2006

Administrator Mark B. McClellan, M.D., Ph.D
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Re: 42 CFR Parts 435, 436, 440, 441, 457, and 483
Medicaid Program; Citizenship Documentation Requirements

Dear Administrator McClellan:

We are writing to comment on the interim final rule, published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). Section 6036 requires that all U.S. citizens applying for or receiving Medicaid benefits produce documentation proving citizenship. We are deeply concerned about the impact this provision will have on millions of Medicaid eligible citizens.

In the past year, Planned Parenthood of Greater Iowa (PPGI) has delivered health care to over 12,000 Medicaid recipients. For many of these Iowans, PPGI is their primary health care provider, offering annual exams, birth control supplies and counseling, pregnancy tests and treatment for sexually transmitted infections and preventive health care. Without the professional care PPGI provides, many of these women and families would simply go without the health care they need.

We are disappointed that the Centers for Medicare and Medicaid Services (CMS) did not capitalize on the opportunity to lessen the negative impact of section 6036. Actually, in several instances, the interim final rule sets forth requirements that are more burdensome than what the statute calls for. Below, we highlight areas where CMS should modify the interim final rule to more effectively ensure that patients have timely access to the health care services they are eligible for and need.

We are especially concerned about the impact the interim final rule will have on individuals seeking family planning services. Nationwide, Medicaid is a significant source of funding for family planning and other preventive health care services we provide to our patients. This critical program is the largest source of public funding for family planning services, accounting for more than 60% of all publicly-funded care.

Medicaid is crucial to public health and family planning and preventive health care efforts in Iowa, supporting 34.7% of the entire state's family planning services. Access to comprehensive family planning programs helps low income women avoid unplanned pregnancy and ensures their furture health.

**Individuals receiving benefits under section 1115 family planning demonstration programs should be exempt from the citizenship documentation requirements.**

A recently implemented family planning demonstration waiver has given low income Iowa women the opportunity to receive the same access to quality reproductive health care as their more fortunate, privately insured counterparts. This waiver has opened the door for Iowa women seeking birth control and preventive health care. Since February of 2006, nearly 9,000 Iowa women have come to Planned Parenthood of Greater Iowa for services as covered under the family planning demonstration waiver. Nearly 17,000 women statewide have benefited from the increased access provided by the waiver.

Since 1993, twenty-four states have expanded access to family planning services through 1115 family planning demonstration programs. Under these programs, states have received CMS approval to extend Medicaid-covered family planning services to individuals who do not meet the requirements for standard Medicaid enrollment in order to prevent unintended pregnancies. Streamlining enrollment and extending coverage are fundamental to the success of these programs, which have assisted millions of low-income people who would otherwise have no source for family planning services. In Iowa, family planning demonstration programs are at the cornerstone of improvements in quality of health care. Unfortunately, the citizenship documentation requirements strike at the core of how family planning demonstration programs are designed and could ultimately render them meaningless.

The interim final rule completely threatens the viability and impact of these programs by requiring individuals who receive these services to produce citizenship documentation. The preamble of the interim final rule states that "individuals who are receiving benefits under a section 1115 demonstration project approved under title XI authority are also subject to the provision" (71 Fed. Reg. 39216 and 42 CFR 435.406(a)(1)(iii)).

This inclusion of family planning demonstration programs is entirely counterproductive. The point of these programs is to expand coverage and streamline access to critical services by waiving certain federal requirements under the Medicaid program. Services provided under the family planning demonstration programs are limited in scope, but their impact is tremendous. Each year, millions of women rely on these programs to prevent unintended pregnancies and to access other crucial health care services.

In addition to expanding access to such vital health care services, family planning demonstration programs save money. A 2003 study commissioned by CMS showed that in each of the states studied, the program actually saved money by averting unintended pregnancies. For instance, South Carolina realized a savings of $56 million over a three-year period while Oregon's program saved almost $20 million in a single year.

Requiring family planning demonstration program patients (who otherwise would not qualify for Medicaid coverage) to comply with a requirement for the broader Medicaid population completely undermines the programs by erecting unnecessary enrollment barriers. Furthermore, the citizenship documentation requirements would ultimately create a larger financial burden for the federal and state governments.

We strongly urge CMS to exempt this population from the documentation requirements in the final rule. Doing so will ensure that family planning waiver demonstration programs will continue to make important strides in enhancing access to time-sensitive services and reducing the rate of unintended

pregnancies. Without such an exemption, states will be faced with the very real possibility that costs associated with requiring citizenship documentation will outweigh the savings the programs currently produce.

**Individuals applying for Medicaid should receive benefits once they declare citizenship.**

Section 6036 of the DRA applies to all individuals (with the exception of Medicare beneficiaries and most SSI beneficiaries) who apply for Medicaid. For those individuals who are already receiving Medicaid benefits, the interim final rule stipulates that they will continue to be eligible for services while they are in the process of producing the required documentation during a "reasonable opportunity" period allotted to them. However, for those individuals who are newly applying to the program, the interim final rule firmly establishes that they will not be eligible for services until citizenship is proven (see 71 Fed. Reg. at 39216 and 42 CFR 435.407(j)). As a result, U.S. citizens applying for Medicaid who have met all eligibility criteria and are in the process of producing the documentation will experience significant delays in Medicaid coverage. This will have a substantial impact on individuals in need of time-sensitive reproductive health care services.

As a result, in this year alone, more than one in ten Iowans who will apply for Medicaid will face the possibility of a gap in coverage while they are in the process of producing the required documentation. It should not be lost that the majority of these citizens will be low-income pregnant women, children, and other vulnerable Americans. Undoubtedly, this will result in delays in care, worsening health care problems and eventually placing a heavier burden on the health care system. This will have an especially negative impact on individuals in need of family planning services, cervical and breast cancer screening, and STI testing services. Some U.S. citizens who may get discouraged or are unable to produce the documents within the time allowed by the state will be denied coverage. Furthermore, because an active outreach program has not been implemented, many citizens are likely unaware of the documentation requirements and are not prepared to comply.

Surprisingly, this requirement was not required by the DRA statute. There is nothing in the DRA that requires any delay in providing coverage for health care services. Unfortunately, CMS freely incorporated this debilitating provision into the interim final rule.

Even still, delaying eligibility does not correspond with the statute. Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Instead, it is a criterion for states to receive federal financial participation (FFP). Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, he or she should be able to access Medicaid-covered services while attempting to produce the required documentation during the "reasonable opportunity" period.

We therefore urge CMS to revise the interim final rule at 42 CFR 435.407(j) to state that new Medicaid applicants who declare they are U.S. citizens or nationals and who meet the state's eligibility criteria must receive Medicaid-covered services while they are obtaining the necessary documentation during the "reasonable opportunity" period.

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

The interim final rule requires that individuals submit original or certified copies of documentation (see 42 CFR 435.407(h)(1)). This requirement creates an even larger burden for beneficiaries who will be

faced with either the additional cost of purchasing a certified copy, making a face-to-face visit with state offices, or with entrusting important documentation, such as an original birth certificate or passport, to the postal system and state Medicaid agencies.

Attaining the required documents presents its own challenges. Low income Iowa women have to pay $15 for a copy of an Iowa birth certificate. The patient may present an application in person to the State Vital Statistics office in Des Moines, which imposes a considerable travel burden to many rural Iowans. If travel is not feasible or possible, the patient must send an application bearing her notarized signature (at an additional cost) to the county of birth to apply for a copy of an Iowa birth certificate. The certificate should be received in 30 -35 days. To obtain by phone the applicant must pay a $5.50 fee in addition to the basic $15 fee and must pay by credit card. There is a minimum of a two week wait.

Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220). Of course, delays in care will occur as a result of the document acquisition process — an especially harmful issue for those who will have to forgo reproductive health care services while they are attempting to attain the required documentation.

While the regulations state that individuals can submit documents by mail, it is unlikely that many will be comfortable mailing in originals or certified copies of birth certificates, final adoption decrees, or medical/life insurance records. Moreover, it would be completely impractical to mail in proof of identity, such as a driver's license or school identification card.

The requirement for the submission of original or certified copies also stands to curtail efforts our state has made to streamline the Medicaid enrollment process. The requirement that only original and certified documents can be accepted is unreasonable and will undermine efforts to streamline and optimize enrollment of eligible individuals into the Medicaid program.

Not only is the requirement onerous, it is also unnecessary. The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Furthermore, in addition to the obstacle this creates for patients, this requirement makes it more likely that health care providers will experience delays in reimbursement as well as uncompensated care.

We strongly urge CMS to eliminate the requirement at 42 CFR 435.407(h)(1) that only originals or copies certified by the issuing agency can be accepted.

**The final rule should allow states more flexibility to effectively implement the documentation requirements.**

Iowa should not be forced to implement a citizenship documentation process that is both burdensome and counterproductive. We recognize that the regulations are a significant improvement over the June 9th CMS guidance in that they explicitly allow states to use vital health databases to document citizenship and other state and federal databases to document identity (see 71 Fed. Reg. 39216 and 42 CFR 435.407(e)(10)). Iowa's plan to use vital health databases to check for birth certificates is a major improvement as some citizens will not be required to track down certain documentation because of this change.

At the same time, however, Iowa is still bound by a proscriptive process that does not adequately allow it to respond to the unique needs of their population. In general, the hierarchy of document reliability that CMS chose creates a much larger burden than is necessary to implement section 6036. Specifically, there are several areas where CMS should amend the interim final rule.

While requiring states to help "special populations" in securing citizenship documentation is an important safeguard, it is unclear if this provision covers all individuals who may be in need of state assistance (see 42 CFR 435.407(g)). The provision applies to those who cannot acquire the documents because of "incapacity of mind or body." Conceivably, there are many groups of people who may be lost in this provision, such as victims of natural disasters and certain homeless individuals. CMS should erect a clear safety net for these populations as well. Furthermore, CMS should ensure that for these populations, eligibility for services cannot be denied as a result of a state's incapacity to locate the documentation.

In the interim final rule, CMS solicits comments on whether individuals would have difficulty proving citizenship and identity if only primary or secondary level documents were permitted (see 71 Fed. Reg. 39220). Given that many beneficiaries and applicants will face significant hurdles in documenting citizenship according to the provisions of the interim final rule, it would be enormously detrimental if the regulations were limited so severely in the final rule. Instead, CMS should approach the final rule in terms of broadening the scope of acceptable documentation. For instance, section 435.407(a) should be amended to allow Native American tribal identification documents to be used to prove both citizenship and identity.

We strongly urge CMS not to limit the accepted documentation to the primary and secondary level of documents. If the true goal of the provision is simply to require the proof of citizenship and identity of Medicaid-eligible U.S. citizens, then it is only natural that CMS would accept a variety of documents to reflect the varied circumstances of Medicaid-eligible citizens' lives.

**Conclusion**

The citizenship documentation requirements set forth by the Deficit Reduction Act will have a profound impact on the way Iowa's Medicaid program operates. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

Thank you for your attention to these comments.

Jill June
President and CEO
Planned Parenthood of Greater Iowa

**Submitter :** Mark Kunkel **Date:** 08/09/2006

**Organization :** Mark Kunkel

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

Exempt Foster and Adoptive Children from New Citizenship Requirements
for Medicaid! New requirements obligating patients on Medicaid to prove their identity and citizenship are being put in place by the federal Center for Medicare and Medicaid Services (CMS) at the Department of Health and Human Services. These requirements will apply to children in foster care and special needs adoptive children. If a child doesn't have a passport, then the child must prove their citizenship in addition to also proving their identity. Failure to prove citizenship and identity could result in a loss of coverage. Please exempt
foster and adoptive children from these new requirements. It is highly unlikely that a child in foster care will have a passport, so other documentation will be required to first prove that child's citizenship and then to prove their identity. These new requirements to prove U.S. citizenship or nationality and identity will create a tremendous burden on foster children, foster
families, and an already overburdened child welfare system.
Furthermore, the new requirements are duplicative in the case of foster children, as according to federal law, foster children already must have documented citizenship to receive Title IV-E assistance.

**Submitter :** **Jean Ross** **Date: 08/09/2006**

**Organization :** **California Budget Project**

**Category :** **Other**

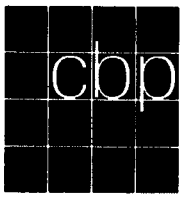
**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-145-Attach-1.PDF



CALIFORNIA BUDGET PROJECT

August 10, 2006

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

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

To Whom It May Concern:

I am writing to comment on the interim final rule to implement Section 6036 of the Deficit Reduction Act of 2005 (DRA). Section 6036 requires Medicaid applicants and beneficiaries who are citizens to provide documentation of their citizenship and identity.

The California Budget Project (CBP) – a nonprofit organization that engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians – is concerned that the interim final rule will unnecessarily result in the delay, denial, or loss of needed health services for low-income Californians. This letter identifies five areas that the Centers for Medicare & Medicaid Services (CMS) should modify in the final rule to lessen the burden on low-income Californians.

This letter includes comments on the information collection requirements of the regulations. The interim final rule includes an unnecessary provision that requires Medicaid applicants and beneficiaries to submit original or certified copies of documents in order to demonstrate citizenship and identity. Many, if not most, applicants and beneficiaries will need considerably longer than the estimated 10 minutes to comply with this requirement. First, individuals who do not have the documents on hand will have to locate or apply for them, which will often take considerably longer than 10 minutes. In addition, it is likely that few individuals will choose to mail important citizenship and identity documents to county social services offices, thus requiring personal visits to these offices to present the documents – an additional time-consuming step.

**1. Interim Rule Unnecessarily Delays Coverage for US Citizens.**

The interim final rule takes the unnecessary step of requiring US citizens who apply for health coverage to meet the new citizenship documentation requirement *before* the state can enroll them in Medicaid. The DRA does not require that states delay coverage to otherwise eligible persons who are in the process of locating or obtaining the necessary documents. Congress drafted the documentation

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requirement as a *condition for states to receive federal matching funds and not as a condition of Medicaid eligibility.* States should be allowed to enroll individuals who meet other eligibility requirements during the reasonable opportunity period while they locate or obtain the required documents.

Prohibiting states from granting Medicaid coverage to persons who are locating the necessary documents will unnecessarily delay health coverage and, for some individuals, delay the use of needed medical care services. As a result, individuals could forego preventive care or critically needed medical services, which could lead to worsened health outcomes that require more costly care. To the extent that individuals delay care while they seek the necessary documents, Medicaid costs could increase.

***The CBP requests that CMS revise 42 CFR 435.407(j) to require that states provide Medicaid coverage to otherwise eligible applicants who declare to be US citizens while they locate or obtain the required documents during the reasonable opportunity period.***

**2. Foster Care Children Should Be Exempt from the Citizenship Documentation Requirement.**

The interim final rule exempts individuals who are eligible for or enrolled in Medicare or who receive Supplemental Security Income (SSI), but the rule does not exempt foster care children. Approximately 75,000 children are in foster care in California, many of whom are supported by federal Title IV-E funds. Children who receive federal foster care assistance are automatically enrolled in Medicaid without submitting an application. Since these children do not apply for Medicaid and thus do not declare to be citizens for purposes of Medicaid eligibility, they should not be subject to the citizenship documentation requirement. Moreover, child welfare agencies verify the citizenship status of foster care children when determining if they are eligible for Title IV-E payments.

Foster care children are among the most vulnerable in our society. A report by the Government Accountability Office found that foster care children "are sicker than homeless children and children living in the poorest sections of inner cities."[1] However, the likely result of applying the documentation requirement to them will be delays in needed preventive care and increases in emergency care that will increase costs to the state and health care providers.

***The CBP requests that CMS revise 42 CFR 435.1008 to exempt children eligible for Medicaid on the basis of receiving federal foster care payments from the documentation requirement.***

**3. Medicaid Payment for Births Should Be Considered Documentation of Citizenship and Identity.**

Children whose births are paid by Medicaid are, by definition, citizens and should not need to provide further documentation of their citizenship. However, the preamble to the final interim rule states that infants whose births are paid by Medicaid must comply with the citizenship documentation requirement. The preamble indicates that these infants must meet the documentation requirement when renewing their coverage or, in the case of infants born to immigrant mothers who are eligible only for emergency coverage, when applying for Medicaid coverage following their birth.

Since children born in the US are clearly citizens, there is no rationale for requiring that they document their citizenship status. Applying the requirement to children whose births are paid by Medicaid will create unnecessary burdens for families and states, and will potentially delay medical care for newborns with special medical needs. Newborns do not yet have birth records on file with the state's vital statistics agency and will have to rely on

documents, such as extracts of hospital records, which the interim final rule classifies as less reliable than birth certificates.

***The CBP requests that CMS revise 42 CFR 435.407(a) to specify that a state Medicaid agency's record of payment for a birth in a US hospital is sufficient evidence of citizenship and identity.***

**4. Applicants and Beneficiaries Should Be Allowed to Use Copies of Citizenship Documents.**

The interim final rule calls for applicants and beneficiaries to submit original or certified copies to meet the new documentation requirement, a step not required by the DRA. Obtaining original documents or copies certified by the issuing agencies will greatly increase the amount of time and effort needed for applicants and beneficiaries to meet the documentation requirement. Many applicants and beneficiaries will need to spend more time to obtain the necessary documents, as well as additional time to visit social services offices in person instead of mailing in copies.

Requiring original or certified copies to document citizenship will also discourage children and parents from applying for or renewing their coverage because it will lead to unnecessary visits to county social services offices. California, like many other states, has eliminated face-to-face interviews for children and parents in order to make it easier to enroll in and retain Medicaid coverage. Eliminating face-to-face interviews has also simplified the program and reduced costs for the state and counties. However, the interim final rule essentially requires face-to-face interviews for those applicants and beneficiaries who do not wish to risk mailing original copies of important documents, such as birth certificates and driver's licenses.

***The CBP requests that CMS revise 42CFR 435.407(h)(1) to allow states to accept copies or notarized copies of documents.***

**5. Final Rule Should Address Individuals Who Lack Necessary Documents.**

Some individuals will not be able to provide the required documentation through no fault of their own. The interim final rule takes a step in the right direction by exempting Medicare beneficiaries and SSI recipients, many of whom may lack the required documents. However, other vulnerable individuals, including persons displaced by natural disasters, may not have or be able to obtain the required documents. For example, an individual uprooted from Hurricane Katrina living in California may have lost his or her documents and may be unable to obtain a certified copy.

The interim final rule requires states to help certain individuals obtain the required documents, but the rule does not address the situation in which the necessary documents either do not exist or cannot be found. The use of affidavits may help some of these individuals meet the documentation requirement. However, the restrictions on affidavits are rigorous, and affidavits will not likely be feasible for all individuals who lack the necessary documents. For example, only persons familiar with the circumstances leading to an applicant or beneficiary's citizenship can submit affidavits. However, for some individuals, persons with such knowledge may not exist, may be unavailable, or may have passed away.

The DRA gives the Secretary of the Department of Health and Human Services the authority to recognize other documents as proof of citizenship. The Secretary should consider the approach used by the SSI program to recognize additional means of documenting citizenship. The SSI regulations permit individuals who cannot present any of the

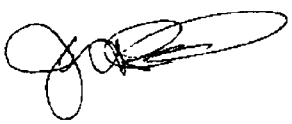
documents allowed under the SSI program to explain why the documents are unavailable and to provide any information they do have.

***The CBP requests that CMS add a new subsection (k) to 42 CFR 435.407 to allow state Medicaid agencies to certify that it has obtained satisfactory documentation of citizenship if none of the listed documents are available and it is reasonable to conclude that the individual is in fact a citizen.***

The interim final rule adds unnecessary requirements that are not included in the DRA and misses opportunities to make the requirement less burdensome to applicants and beneficiaries. Changes in the five areas outlined in this letter can substantially reduce the burden and loss of health coverage to low-income Californians.

Thank you for your consideration. If you have any questions, please contact David Carroll at (916) 444-0500.

Sincerely,



Jean Ross
Executive Director

JR:dc

[1] US General Accounting Office, *Foster Care: Health Need of Many Young Children Are Unknown and Unmet* (May 1995).

**Submitter :** Mr. James Kuyper **Date:** 08/09/2006

**Organization :** CASA of Ventura County

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

Subject: Documentation of Citizenship and Legal Status for Children in Foster Care

As a Court Appointed Special Advocate (CASA) working in Ventura County, California with Foster Children for the past 7 years, I am greatly concerned about the new guidance by the Administration in response to the 2006 Deficit Reduction Act (PL 109-362)and its potential negative impact on children in Foster Care.

PLEASE EXEMPT FOSTER AND ADOPTIVE CHILDREN FROM THE NEW CITIZENSHIP REQUIREMENTS FOR MEDICAID ELIGIBILITY!

These new requirements to prove U.S. citizenship or nationality and identity will create a tremendous burden on foster children, foster families and an already overburdened chld welfare system. Furthermore, the new requirements are duplicative in the case of foster children, as according to federal law, foster chldren already must have documented citizenship to receive Title IV-E assisteance.

Again, please to not add another burden for foster children and foster families to obtain the support they most justly need and deserve! THESE KIDS NEED OUR HELP!

**Submitter :** **Ms. Kathleen Sellick** **Date: 08/09/2006**

**Organization :** **Rady Children's Hospital San Diego**

**Category :** **Hospital**

**Issue Areas/Comments**

**GENERAL**

GENERAL

Please see the attached letter from the California Children's Hospital Association. Rady Children's Hospital San Diego has the same concerns as expressed in that letter. Thank you for your consideration of the issues for children's hospitals in regard to Medicaid citizenship documentation.

CMS-2257-IFC-147-Attach-1.PDF

CALIFORNIA

children's

HOSPITAL

ASSOCIATION

August 4, 2006

3914 MURPHY CANYON ROAD
SUITE 125
SAN DIEGO, CA 92123

858.974.1644
FAX: 858.974.1629

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)

Dear Sir/Madam:

I am writing on behalf of the Board of Directors of the California Children's Hospital Association to express concern about 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 policies set forth in the regulation could have a very significant impact on the patients served by children's hospitals in California. Medicaid provides a vital safety net that allows children to access essential medical services. For the eight private, non-profit children's hospitals in California, Medicaid is the primary payer of services comprising on average 50 percent of the caseload. Three of the hospitals have caseloads well over 60 percent.

While we appreciate the fact that CMS has included some provisions in the interim final rule that address the unique circumstances of children under the age of 16, we are still very concerned that without modifications there is a strong likelihood that access to Medicaid coverage will be delayed and/or denied for children who are U.S. citizens. The regulations will also impose an undue financial burden on children's hospitals, as we will not be compensated for care provided to children otherwise eligible for Medicaid until and unless the documentation requirements are satisfied.

Below are the comments of California's children's hospitals, which highlight a number of areas that we believe CMS should modify in the final rule.

Exemption for Children

We recommend that CMS exempt children who are eligible for federal foster care payments from the new documentation requirements. These children already provide documentation to prove citizenship through the foster care eligibility process. Requiring this group of children to present documentation a second time is burdensome and unnecessary. When Medicaid eligibility for children in foster care is delayed, foster parents will not be able to receive essential non-emergency care until

the child's condition deteriorates to the point that it requires emergency care in the already over-burdened hospital emergency departments at a cost much higher than routine care. A highly-likely side effect of diminished access to health care for these already vulnerable children will be the withdrawal of foster parents from the program.

We also ask that CMS add all children to the list of vulnerable groups that states must assist in accessing the documents necessary to demonstrate citizenship in part because children must rely on others -- their parents or guardians -- to collect this information.

Nationwide, children represent more than half of all Medicaid recipients. These same children face the greatest risk of inappropriate denial of necessary health care should they not be exempted from the documentation requirements. Children's hospitals believe that the requirements put forth in this regulation add barriers to accessing health care that will likely add to the six million children who are eligible for Medicaid but not enrolled. While we recognize that CMS does not have the authority to exempt children from this new requirement, we urge you to work with Congress to accomplish this policy.

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

We urge CMS to revise the regulation to state that children 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 new documentation. There is nothing in the DRA that would prohibit CMS from implementing such a policy.

As an alternative, for children who are otherwise eligible for the Medicaid program, CMS could allow a parent or guardian to use an affidavit as evidence of both identity and citizenship during the "reasonable opportunity" period while they are locating other documentation. This would allow a child who is a U.S. citizen to receive Medicaid benefits immediately.

The prohibition on granting children Medicaid coverage until they provide documentation of their citizenship will delay access to care, which will likely worsen health problems. As providers of health care services to low-income children, children's hospitals will not receive Medicaid payment for services rendered until and unless the documentation has been assembled and presented to the state Medicaid agency.

In addition, we urge CMS to clarify that existing retroactive eligibility is not impacted by the new regulations. Retroactive eligibility allows Medicaid applicants to get coverage retroactive to three months prior to application. Maintaining retroactive eligibility will ensure that children receive needed services. Furthermore, it will ensure that children's hospitals are reimbursed for services they provide to citizen children who have applied for Medicaid and been determined eligible, but who are waiting for birth records or identity documentation.

Application to Newborns

The preamble to the regulation states that newborns whose mothers are categorically eligible for Medicaid are deemed eligible and remain eligible for one year as long as the mother remains eligible. Despite this categorical eligibility at birth, these infants will be required to produce citizenship documentation for "re-determination" at their first birthday. 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 continue to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply immediately.

We recommend that CMS amend its list of acceptable documents to prove citizenship and identity to include a state Medicaid agency's record of payment for these children. When Medicaid has paid for the birth of a child in a U.S. hospital, the child is by definition a U.S. citizen.

Requiring Medicaid agencies to obtain additional documentation is unnecessary and redundant. Additionally, mandating that these parents obtain this new documentation could interrupt care. Since birth certificates can take months to obtain, children's hospitals are at high risk for delayed or denied payments for often-expensive treatment of low birth weight babies and those with post-partum complications.

Requirement of Originals and Certified Copies

We recommend that CMS allow states to accept copies or notarized copies of required documentation. The requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship will add to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies. CMS proposes in the interim final rule that it 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 will add to the time compliance will take. In addition to locating or obtaining their documents, applicants and beneficiaries will also have to visit state offices to submit them, as it is unlikely that individuals will choose to submit such important documents by mail. State agencies, in turn, will have to meet with individuals, make copies of their documents, and maintain record. In the case of a child, he or she will have to rely upon a parent or guardian to take the necessary steps to obtain original or certified copies of the accepted documents.

We would also recommend that CMS work with states to implement electronic systems to establish citizenship. Programs that can identify Medicaid records nationwide, enrollment in other local, state, and federal programs that require proof of citizenship, and birth record matching should be developed and encouraged to ease the burden on Medicaid applicants, beneficiaries, states, and providers.

Conclusion

Representing more than half of all Medicaid recipients, and dependent upon adults to act for them, children are an especially vulnerable population that will be adversely impacted by these new documentation requirements. The delay in eligibility determination for children who apply for Medicaid will also impact payments to providers, such as children's hospitals, which jeopardizes the financial stability of the entire health care system.

We appreciate the opportunity to present comments on the interim final rule to implement section 6036 of the DRA. Thank you for your consideration.

Sincerely,

Diana S. Dooley

Diana S. Dooley
President & CEO
California Children's Hospital Association

**Submitter :** **Dr. Elena Rios** **Date: 08/09/2006**

**Organization :** **National Hispanic Medical Association**

**Category :** **Health Care Professional or Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

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

Provisions of the Interim Final Rule with Comment Period

August 9, 20006

Mark McClellan, MD, MBA
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

Dear Dr. McClellan:

This is to respond to the CMS Regulation for Proof of Citizenship for Medicaid Eligibility. On behalf of the National Hispanic Medical Association, we strongly feel that this regulation will serve to deter millions of Hispanics and other Americans from enrolling in Medicaid, and, thus, this regulation will increase the U.S. uninsured rate.

This year the Department of Health and Human Services has recognized in the National Disparities Report that Hispanics have a terrible record in use of health services and consequently, poor health status. It seems ironic that CMS would put forth a regulation that will worsen the situation, not only for Hispanics, but for many citizens who will not be able to afford to apply for expensive documentation or who may not have original documentation, due to being born at home and not in a hospital.

We urge you to reconsider this regulation and focus on the outreach and education needed to increase enrollment for those eligible for Medicaid. We stand ready to assist you in this effort.

Sincerely,

Elena Rios, MD, MSPH
President & CEO, NHMA

**Submitter :** Kevin Kawamoto **Date:** 08/09/2006

**Organization :** Kevin Kawamoto

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment.

CMS-2257-IFC-149-Attach-1.DOC

August 8, 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)**

I am a recent graduate (master's degree in social work) and part-time instructor at the University of Washington School of Social Work. Our school partners with over 500 community agencies providing services to some of our community's most vulnerable individuals. These community partners offer everything from maternity support, child welfare services, services to individuals with a broad array of disabilities, hospital social work, school social work, oncology social work, social services to current and returning veterans, through services to people in their final years in nursing homes, group homes, and hospice centers.

Through our current and former graduates we serve low-income people across the state, and many of them are Medicaid enrollees. As a result, we are vitally concerned with the new CMS rules requiring citizenship documentation; our faculty, students, and community partners have direct knowledge of the role Medicaid plays in low-income lives, and can anticipate some of the impact the new regulations will have. As written, we believe they will cause delays, denials, extreme hardship, and even loss of Medicaid coverage to many eligible people.

That is not acceptable, and my reason for offering these comments on the interim final rule 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 but I believe that can be accomplished in better ways.

The following are key areas that should be modified in the Final Rule.

**Information collection requirements should be eased.**
The requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds unnecessarily to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies.

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Nonetheless, CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1).

Insisting on originals and certified copies adds greatly to the information collection burden of the regulations. It 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. In addition to locating or obtaining their documents, applicants and beneficiaries will

likely have to visit state offices to submit them because even though the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants or beneficiaries will be willing to mail in originals or certified copies of their birth certificates, or proof of identity such as driver's licenses or school identification cards.

In addition, state agencies will have to meet with individuals, make copies of their documents, and maintain records. This approach means scarce resources will be spent on bureaucratic processes rather than on needed health care services.

Therefore I urge CMS to 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.

**U.S. citizens applying for benefits should not face delays once they declare they are citizens and meet all other 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).

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, and yet the CMS Rules would prohibit states from granting coverage to eligible citizens until they can obtain documents such as birth certificates.

The net effect of denying coverage to applicants while they are attempting to retrieve documentation will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, and other vulnerable Americans. This will delay needed medical care, worsen individuals' health problems, and create financial losses for health care providers.

Some individuals 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. Still other U.S. citizens will get discouraged or be unable to get the documents they need within the time allowed: they will never get coverage. The lack of any outreach program to educate U.S. citizens about the new requirement, virtually assures that many applicants will experience significant delays in providing the necessary documents.

Therefore I urge CMS to revise 42 CFR 435.407(j) to state that applicants declaring they are U.S. citizens or nationals and meeting the state's Medicaid eligibility criteria are eligible for Medicaid. Furthermore, we urge CMS to require states to provide

applicants with Medicaid coverage during a "reasonable opportunity" period for obtaining the necessary documentation.

**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. The Administration for Children and Families (ACF) already 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.)

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.

Therefore I 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.

**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.**
Infants born in US hospitals will be subject to the documentation requirements under these rules. The rule provides that 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 is unreasonable and irrational: the fact that a state Medicaid agency paid for the child's birth in a U.S. hospital means that the child is by definition a citizen.

Delaying care while further documentation is sought will put any infant with health complications at grave risk. Hospitals and health care providers will also face risk of malpractice and the costs of uncompensated care. Both are unnecessary: by paying for the birth, a state Medicaid agency has determined that the child is a US citizen, born in a U.S. hospital.

Therefore I 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.**

Some U.S. citizens who will not be able to provide any of the documents listed in the interim final rule because they are victims of 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, or despite a sound mind, an individual's documents have been lost or destroyed. Some low-income citizens (e.g., Native Americans, African Americans) never had birth certificates or other forms of documentation. Under the rule as written, if such individuals apply for Medicaid they can never qualify; if such individuals are already beneficiaries, they will 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 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. This rule fails to recognize that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship.

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. The Secretary should 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.

Current 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)

Therefore I urge the Secretary to adopt a similar approach. 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 who are U.S. citizens can continue to receive the health care services they need.

**Those receiving Medicaid through family planning waivers should be exempt.**

Those who receive Medicaid through family planning waivers will experience unnecessary, inordinate delays in service provision if they are required to wait to receive services until the proper documentation can be obtained. Services delays to this population would have negative consequences.

Therefore I urge that the rules be modified to exempt this group from the requirement. Washington State's family planning program has proven effective in limiting unwanted pregnancies; without changes, these rules will erase the progress made over many years.

**American Indians 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 American Indian tribal documents as proof of identity, the regulations do 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.

By not recognizing tribal enrollment cards as proof of citizenship and identity, CMS will create a new barrier to American Indian participation in the Medicaid program. This will also lead to an increase in uninsured American Indians, further straining

community health centers, Indian health clinics, and other public providers that are a key part of Washington's health care system.

Therefore I urge revision of the federal regulation to specify that tribal enrollment cards issued by a federally-recognized tribe should be acceptable primary evidence of citizenship and identity.

In conclusion, I believe that as written, the Interim Final Rules for the citizenship verification provision in the DRA create unnecessary bureaucratic obstacles to Medicaid applicants and beneficiaries, and are likely to cause serious harm to both low-income people and an already overburdened health care system.

I therefore urge you to modify the interim final regulation to ensure that eligible citizens continue to have access to Medicaid coverage, as intended by the U.S. Congress and the DRA.

Sincerely,

Kevin Kawamoto, M.S.W.
Seattle, WA

**Submitter :** **Mr. Gerald Danforth** **Date: 08/09/2006**

**Organization :** **Oneida Tribe of Indians of Wisconsin**

**Category :** **Government**

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

See attachment

CMS-2257-IFC-150-Attach-1.PDF

AWHONN
Association of Women's Health, Obstetric and Neonatal Nurses

*Promoting the health of women and newborns.*

August 8, 2006

Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

**RE: Medicaid Program; Citizenship Documentation Requirements Interim Final Rule (File Code CMS 2257-IFC)**

Dear Centers for Medicare and Medicaid Services:

The Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) appreciates the opportunity to provide comment on the Centers for Medicare and Medicaid Services (CMS) interim final rule (IFR) that provides state Medicaid programs with guidance policy on accepted documentary evidence that may be used to confirm an applicant's declaration of citizenship in order to be eligible to receive Medicaid benefits. Implementing Section 6036 of the Deficit Reduction Act (DRA) of 2005, this IFR was published in the Federal Register on July 12, 2006: Volume 71, No. 133, Pages 39214-39229.

AWHONN is a national membership organization of 22,000 nurses, and it is our mission to promote the health and well-being of women and newborns. AWHONN members are staff nurses, nurse practitioners, certified nurse-midwives, and clinical nurse specialists who work in hospitals, physicians' offices, universities, and community clinics throughout the United States. Our members care for newborns each and everyday. We are concerned that provisions in the IFR may harm newborns by creating difficulty in access to and a potential delay in necessary health care.

## I. Background: Implementation Conditions/Considerations

Under Medicaid law, infants born to mothers, who are U.S. citizens and receiving Medicaid at the time of birth, are also eligible for Medicaid benefits for one year, as long as they remain a member of the mother's household and the mother remains eligible for Medicaid. Under such circumstances, citizenship and identity documentation for the child must be obtained at the next re-determination - one year after birth. Thus, under this circumstance a newborn and infant will continue receiving Medicaid benefits for one year, at which point documentation evidence will be needed to prove citizenship and identity.

While this portion of Medicaid law seems reasonable, AWHONN is concerned with access to care for citizen children and newborns, who are born to non-qualified aliens, or those babies born to illegal aliens. According to the IFR, these mothers are either receiving or eligible to receive Medicaid at the time of birth, but do not continue to qualify for Medicaid immediately following the birth resulting in non-eligibility for these newborns. The rule continues on to state that "the[se] child[ren], however, could be eligible as a poverty level child or

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1931 child. In these cases an application must be filed for the child and the requirements of this regulation would apply at the time of application."[1] **AWHONN recommends CMS expand Medicaid coverage to these children/newborns to include coverage from the time of their birth until the application as a poverty child or 1931 child is filed and through determination.** Expanding coverage to include this time period will result in little to no lapse of medical coverage, which is imperative as this point of a baby's life.

**II. Provisions of the Interim Final Rule with Comment Period: Section 42 CFR 435.407(a)**

Babies born in U.S. hospitals are among those who must present proof of citizenship to receive Medicaid benefits under Section 6036 of the DRA. CMS outlines a complicated tiered system of evidence for proof of citizenship and identify. These tiers require Medicaid to seek documentary evidence first from the primary level, and if documentation is not available at this level, then it may be sought from the secondary level, tertiary level and so forth.

CMS guidance under DRA states:

> Acceptable third level documentation to verify proof of citizenship are: 1) extract of U.S. hospital record of birth established at the time of the person's birth and was created at least 5 years before the initial application date and indicates a U.S. place of birth; and, 2) Life or health or other insurance record showing a U.S. place of birth and was created at least 5 years before the initial application date.[2]

Newborns, as expected, will not have a U.S. passport, a birth certificate on file with a state's Vital Statistics Agency or any form of an identification card at the time or shortly after the time of birth. However, a hospital record of birth and a record of insurance payment, in this case Medicaid payment, are readily available documentary evidence for a newborn that imply citizenry.

**AWHONN recommends that CMS consider allowing documents that currently identify at the tertiary level (a U.S. hospital record and insurance record) as primary evidence of citizenship and identity for these newborns.** AWHONN also recommends removing the established five year timeframe for hospital records and insurance payments as this timeframe cannot be met by this population. CMS should establish a more realistic timeframe in which they allow hospital records and insurance (Medicaid) records of payment as primary evidence until a birth certificate or other such records can be made available for proof of citizenship. Once these records are made available, then current established documentation guidance should apply.

Thank you for the opportunity to comment on this interim final rule. If you have any questions, please do not hesitate to contact Ann Walker-Jenkins at 202-261-2402.

Sincerely,

Karen S Thomas

Karen Tucker Thomas, CAE
Executive Director

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[1] Medicaid Program; Citizenship Documentation Requirements, 71 Fed. Reg. 39214 (July 12, 2006) (to be codified at 42 CRF Parts 435, 436, 440, 441, 457 and 483).

[2] Medicaid Fact Sheet: HHS Issues Citizenship Guidelines for Medicaid Eligibility; Center for Medicare and Medicaid Services, June 9, 2006.

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**Submitter :** Mrs. Kimberly Cantor **Date:** 08/10/2006

**Organization :** Association of Women's Health, Obstertic and Neona

**Category :** Health Care Professional or Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

"See Attachment"

CMS-2257-IFC-151-Attach-1.DOC

AWHONN
Association of Women's Health, Obstetric and Neonatal Nurses

*Promoting the health of women and newborns.*

August 8, 2006

Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

**RE: Medicaid Program; Citizenship Documentation Requirements Interim Final Rule (File Code CMS 2257-IFC)**

Dear Centers for Medicare and Medicaid Services:

The Association of Women's Health, Obstetric and Neonatal Nurses (AWHONN) appreciates the opportunity to provide comment on the Centers for Medicare and Medicaid Services (CMS) interim final rule (IFR) that provides state Medicaid programs with guidance policy on accepted documentary evidence that may be used to confirm an applicant's declaration of citizenship in order to be eligible to receive Medicaid benefits. Implementing Section 6036 of the Deficit Reduction Act (DRA) of 2005, this IFR was published in the Federal Register on July 12, 2006: Volume 71, No. 133, Pages 39214-39229.

AWHONN is a national membership organization of 22,000 nurses, and it is our mission to promote the health and well-being of women and newborns. AWHONN members are staff nurses, nurse practitioners, certified nurse-midwives, and clinical nurse specialists who work in hospitals, physicians' offices, universities, and community clinics throughout the United States. Our members care for newborns each and everyday. We are concerned that provisions in the IFR may harm newborns by creating difficulty in access to and a potential delay in necessary health care.

## I. Background: Implementation Conditions/Considerations

Under Medicaid law, infants born to mothers, who are U.S. citizens and receiving Medicaid at the time of birth, are also eligible for Medicaid benefits for one year, as long as they remain a member of the mother's household and the mother remains eligible for Medicaid. Under such circumstances, citizenship and identity documentation for the child must be obtained at the next re-determination - one year after birth. Thus, under this circumstance a newborn and infant will continue receiving Medicaid benefits for one year, at which point documentation evidence will be needed to prove citizenship and identity.

While this portion of Medicaid law seems reasonable, AWHONN is concerned with access to care for citizen children and newborns, who are born to non-qualified aliens, or those babies born to illegal aliens. According to the IFR, these mothers are either receiving or eligible to receive Medicaid at the time of birth, but do not continue to qualify for Medicaid immediately following the birth resulting in non-eligibility for these newborns. The rule continues on to state that "the[se] child[ren], however, could be eligible as a poverty level child or

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1931 child. In these cases an application must be filed for the child and the requirements of this regulation would apply at the time of application."[1] **AWHONN recommends CMS expand Medicaid coverage to these children/newborns to include coverage from the time of their birth until the application as a poverty child or 1931 child is filed and through determination.** Expanding coverage to include this time period will result in little to no lapse of medical coverage, which is imperative as this point of a baby's life.

**II. Provisions of the Interim Final Rule with Comment Period: Section 42 CFR 435.407(a)**

Babies born in U.S. hospitals are among those who must present proof of citizenship to receive Medicaid benefits under Section 6036 of the DRA. CMS outlines a complicated tiered system of evidence for proof of citizenship and identify. These tiers require Medicaid to seek documentary evidence first from the primary level, and if documentation is not available at this level, then it may be sought from the secondary level, tertiary level and so forth.

CMS guidance under DRA states:

> Acceptable third level documentation to verify proof of citizenship are: 1) extract of U.S. hospital record of birth established at the time of the person's birth and was created at least 5 years before the initial application date and indicates a U.S. place of birth; and, 2) Life or health or other insurance record showing a U.S. place of birth and was created at least 5 years before the initial application date.[2]

Newborns, as expected, will not have a U.S. passport, a birth certificate on file with a state's Vital Statistics Agency or any form of an identification card at the time or shortly after the time of birth. However, a hospital record of birth and a record of insurance payment, in this case Medicaid payment, are readily available documentary evidence for a newborn that imply citizenry.

**AWHONN recommends that CMS consider allowing documents that currently identify at the tertiary level (a U.S. hospital record and insurance record) as primary evidence of citizenship and identity for these newborns.** AWHONN also recommends removing the established five year timeframe for hospital records and insurance payments as this timeframe cannot be met by this population. CMS should establish a more realistic timeframe in which they allow hospital records and insurance (Medicaid) records of payment as primary evidence until a birth certificate or other such records can be made available for proof of citizenship. Once these records are made available, then current established documentation guidance should apply.

Thank you for the opportunity to comment on this interim final rule. If you have any questions, please do not hesitate to contact Ann Walker-Jenkins at 202-261-2402.

Sincerely,

Karen S. Thomas

Karen Tucker Thomas, CAE
Executive Director

[1] Medicaid Program; Citizenship Documentation Requirements, 71 Fed. Reg. 39214 (July 12, 2006) (to be codified at 42 CRF Parts 435, 436, 440, 441, 457 and 483).
[2] Medicaid Fact Sheet: HHS Issues Citizenship Guidelines for Medicaid Eligibility; Center for Medicare and Medicaid Services, June 9, 2006.

**Submitter :** Ms. Margaret Murray **Date:** 08/10/2006

**Organization :** Association for Community Affiliated Plans

**Category :** Health Care Professional or Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

CMS-2257-IFC-152-Attach-1.DOC

# ACAP

*Association for Community Affiliated Plans*

1400 Eye Street, NW ◊ Suite 300 ◊ Washington, DC 20005
Phone: 202.331.4600 ◊ Fax: 202.296.3526 ◊ www.communityplans.net
Darnell Dent, Chairman ◊ Margaret A. Murray, Executive Director


August 11, 2006

Department of Health and Human Services
Att: CMS-2257-IFC
Room 445-G
Hubert. Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

*Re: CMS-2257-IFC -- Interim Final Rule on Medicaid Program; Citizenship Documentation Requirements (RIN 0938-A051)*

On behalf of the members of the Association for Community Affiliated Plans (ACAP), I am submitting the following comments on the interim final rule to implement section 6036 of the Deficit Reduction Act of 2005 ("DRA").

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## I. CMS should exempt children eligible for federal foster care payments 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.

*Because the DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship, ACAP urges 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.*

---

ACAP

Association for Community Affiliated Plans

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Darnell Dent, Chairman ◊ Margaret A. Murray, Executive Director

**II. CMS should allow a state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital as 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 is unnecessary in these cases since the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen. We are concerned about the risk to the health of newborns from delays in coverage.

*Therefore ACAP strongly urges CMS to amend 42 CFR 435.407(a) 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.*

---

**III. CMS should adopt the Social Security Administration's approach for U.S. citizens who lack documentation of their citizenship.**

Due to a myriad of unfortunate experiences, many U.S. citizens are unable to provide documents for proof of citizenship identified in the interim final rule. Among these are victims of natural disasters whose records have been destroyed, people whose personal affects were lost in a house fire, and homeless individuals whose records have been lost. The rule directs does not address the situation in which a state is unable to locate the necessary documents, or when an individual's documents were lost or destroyed and could not be found.

The interim final rule does allow the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "only ... in rare

# ACAP

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circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is 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 seem to acknowledge that many U.S. citizens are without documents proving citizenship and without any idea that they will need such documents.

*ACAP urges the Secretary to use his discretion to give state Medicaid agencies the capacity to recognize when an individual is in fact a U.S. citizen for purposes of Medicaid eligibility. 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.*

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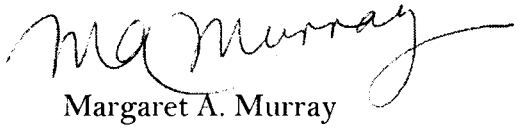
Thank you for your consideration of these comments.

Respectfully submitted,



Margaret A. Murray
Executive Director

**Submitter :** Ms. Linda Rosenberg **Date:** 08/10/2006

**Organization :** National Council for Cmty Behavioral Healthcare

**Category :** Health Care Provider/Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-153-Attach-1.PDF

NATIONAL COUNCIL FOR COMMUNITY BEHAVIORAL HEALTHCARE

LINDA ROSENBERG, MSW, LCSW — ELIZABETH TOSI, MBA

August 9, 2006

Mark B. McClellan
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IRC
PO Box 8017
Baltimore, MD 21244-8017

Dear Mr. McClellan:

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of the National Council for Community Behavioral Healthcare. The National Council is a not-for-profit association of 1,300 behavioral healthcare organizations that provide treatment and rehabilitation for mental illnesses and addictions disorders to nearly six million adults, children and families in communities across the country. Medicaid is a critically important resource for the children, youth and adults our members treat, and we urge you to clarify a number of issues in the Interim Final Rule to ensure that individuals with disabilities retain access to essential Medicaid-funded mental health services and supports.

1. Eliminate delays in establishing eligibility for Medicaid (§436.1004)

The rule rightly permits those already on the Medicaid rolls to remain eligible while documentation is gathered, yet there is no comparable provision for new applicants. There is no good reason for this distinction, as those who are already on the program have not previously been required to submit documentation of citizenship. The Deficit Reduction Act did not require states to deny eligibility until applicants have produced the necessary documents, and the regulations should not impose such a requirement.

Individuals who apply for Medicaid and have met all of the other eligibility requirements and are cooperating and diligently working to prove their citizenship should be covered under the program. Given that obtaining the required documents may take considerable time for some people, and given that the vast majority of applicants will be citizens or lawful immigrants in desperate need of medical and mental health services, delaying their coverage for this paperwork is inappropriate. We urge that all applicants who meet other requirements be covered, and that those with disabilities be given at least 90 days in which to complete the

citizenship requirements, with an opportunity for the deadline to be extended if the applicant is making a good faith attempt to obtain the necessary documentation.

2. Remove barriers to access for children in foster care (§435.1008)

We strongly oppose the provisions in the final rule that would apply the citizenship rule to children entering foster care. According to the Child Welfare League of America, more than 80% of children in foster care have developmental, emotional, or behavioral problems.[i] It is unconscionable to delay access to care for these children, whose needs are significant and immediate. Few will be found not to be either citizens or legal immigrants, but for some potentially lengthy period of time they will have no Medicaid coverage under this rule. Such a barrier will also discourage people from becoming foster parents, especially for children who have known emotional and behavioral problems, at a time when foster parents are in great demand.

It will not be easy for states to find the necessary documentation to make these children eligible, given that their birth families may not cooperate. Moreover, states already verify citizenship of about half of the children in foster care when they determine them eligible for federal foster care payments under Title IV-E. Yet the regulations require citizenship to be proven again. We strongly urge you to remove this unnecessary and counter-productive barrier to care for children and youth in foster care.

3. Close gaps in the exemptions (§435.1008)

We applaud CMS for issuing the rule that individuals on SSI or Medicare will not be subjected to these documentation requirements. All of the children and adults on a federal program where citizenship has already been determined should be exempted from these requirements.

However, there are gaps in the exemptions. In particular, individuals on Social Security Disability Insurance (SSDI) who are in the waiting period for Medicare or disability payments should also be included within the exempt group. In addition, other individuals have also already proved their citizenship, including TANF families and children and S-CHIP applicants and recipients who get Old Age Survivor and Disability Income (OASDI) survivor, retirement and disability auxiliary benefits from the Social Security Administration (SSA), and those whose citizenship has been verified by SSA for early age 62 retirement, age 60 widows or widower OASDI beneficiaries.

Requiring documentation from those Medicaid applicants or beneficiaries who have already provided it other federal programs is redundant, unnecessary and costly to all levels of government, providers and recipients.

4. Institute fair documentation dates (§435.407(c)& (d) and §436.407(c) and (d)–third and fourth level evidence)

There is no rationale for a requirement that certain documents are only considered valid if issued at least five years before the application for Medicaid. This is an entirely arbitrary date that may

cause significant hardship, particularly if the individual is unable to secure such old records. Low-income individuals tend to move frequently and may be unable to locate paperwork from five years ago. Given the recent release and short time frame for the implementation of these new rules, it is highly unlikely that a person considering fraudulent behavior would have known to produce such specific documents.

For those now on the program and new applicants within the next two years, it should be sufficient that such documents existed at the time of the DRA enactment. In the future, a more reasonable time frame should apply, such as two years.

5. Include mental health authority in cross-match for evidence of identity (§435.407(e) and §436.407(e))

CMS should cite the state mental health authority among the state agencies' data systems with which a cross-match may be made. Individuals with serious mental illness are likely to be among those who have great difficulty obtaining the necessary documents due to functional issues, and, in addition, the stress of this process could trigger relapse. Therefore, every effort should be made for making this process as easy as possible for such individuals. State mental health agencies and the community providers who serve this population will have medical records and other databases that enable confirmation of identity, and there is no reason to exclude them from the cross-match process.

6. Clearly define populations needing special assistance (§435.407(g) and §436.407(g))

The language describing persons who need special assistance is not clearly written. In place of the vague and undefined phrase "incapacity of mind" to describe the people who must be assisted, it would be more appropriate to require that states must assist individuals who, "due to a physical or mental condition" are unable to comply or would have great difficulty complying with the requirement to present satisfactory documentary evidence.

States should also be required, in the regulation, to assist all homeless persons with securing the necessary documents. Currently, the Preamble suggests that this is mandated, but the regulation itself makes no mention of homeless people. It will be extremely hard for someone with no fixed address, little or no income and who faces daily challenges in terms of all aspects of their lives to write off for new copies of their birth certificates. Furthermore, it is highly unlikely that these individuals will have passports.

Further requirements should also be made that states assist people who have been displaced by a natural or man-made disaster or who, because of such disasters, have lost their documentation.

In all cases where the state is assisting such individuals to obtain the documents, Medicaid coverage should be provided so that medical care can be furnished in the meantime.

7. Time frame for collecting documents (§435.407(j) and §346.407(j))

States should be given broad flexibility to allow individuals the time necessary to collect their proof of status. Unlike other information required on the Medicaid application (or for recertification), it may take some individuals considerable time to collect these documents. If the individual is working to provide the documents, this should be sufficient.

8. Improve outreach effort

CMS as well as the states should be conducting considerable outreach on this provision. At this time, we are continually learning that not only do individuals on Medicaid have no idea they must collect such documents, but nor do many front line staff of mental health agencies. People have a right to know that this onerous requirement is now in place.

9. Emphasize presumptive eligibility regardless of citizenship documentation

The proposed rule does not specifically make it clear that those who meet presumptive eligibility standards are still presumptively eligible, regardless of the status of their proof of citizenship. This should be rectified, or the presumptive eligibility categories will have little meaning.

10. Enable rules to apply across states (§435.407(h) and §436.407(h))

We applaud CMS for clarifying that this process need only be gone through once. However, it is also not completely clear that once these documents have been procured and citizenship status has been proved that this is sufficient not only for future eligibility determinations in that state, but across all states. The regulations should specify that any state that has determined evidence of citizenship and identity, the requirement is deemed met in all states where the individual later resides. Unlike other records, states should be required to maintain indefinitely records documenting citizenship and identity.

Finally, we also applaud CMS for clarifying that individuals need not come in person to prove their citizenship. Many states no longer require an in-person application, and requiring the individual to come in to deal with the citizenship issue would be a significant burden.

Thank you for this opportunity to comment on the proposed rule.

Sincerely,

Linda Rosenberg

Linda Rosenberg, MSW, CSW
President and CEO

---

[i] http://www.cwla.org/programs/bhd/mhdefault.htm.

**Submitter :** Leslie Gabel-Brett **Date:** 08/10/2006

**Organization :** CT Permanent Commission on the Status of Women

**Category :** State Government

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachement

CMS-2257-IFC-154-Attach-1.PDF

# State of Connecticut

GENERAL ASSEMBLY

PERMANENT COMMISSION ON
THE STATUS OF WOMEN

18-20 TRINITY STREET
HARTFORD, CT 06106-1628
(860) 240-8300
FAX: (860) 240-8314
Email: pcsw@cga.ct.gov
www.cga.ct.gov/PCSW



August 10, 2006
Michael O. Leavitt
Secretary, United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

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

Dear Secretary Leavitt:

The Connecticut Permanent Commission on the Status of Women is committed to supporting legislative policies that positively affect the health and well being of low income women and families. Therefore, we have concerns about section 6036 of the Deficient Reduction Act of 2005 (DRA). As you know, this provision, which went into effect on July 1, requires U.S citizens and nationals applying for or receiving Medicaid to provide documentation of their citizenship.

We have serious concerns with this new law because it will be detrimental to parents, pregnant women and children. Requiring such documentation is likely to cause delays in critical health care coverage or worse, some may be denied access to health care altogether.

In the best interest of women and families, we believe that it is crucial to allow such persons to continue to receive medical benefits while they obtain the documentation necessary. Without such an exception, a large number of low-income pregnant women,

children and parents will experience delays in Medicaid coverage. These delays are especially harmful to pregnant women because a delay in coverage will hinder timely prenatal care.

Thank you for the opportunity to submit these comments. We believe there are necessary revisions to this new law in order to ensure that low-income women and families receive appropriate and timely medical services.

Sincerely,

Leslie Gabel-Brett
Executive Director
Connecticut Permanent Commission on the Status of Women

**Submitter :** Ms. Kirsten Sloan **Date:** 08/10/2006

**Organization :** AARP

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-155-Attach-1.TXT

August 10, 2006 Department of Health & Human Services
Attention: CMS-2257-IFC HYPERLINK

"http://www.cms.hjhs.gov/eRulemaking" http://www.cms.hhs.gov/eRulemaking RE:Medicaid Program; Citizenship Documentation

Requirements 71 Federal Register 39214, July 12, 2006 To Whom It May Concern: Thank you for the opportunity to comment

on the proposed rule implementing the Deficit Reduction Act (DRA) requirement for Medicaid beneficiaries to document their

citizenship. AARP is concerned that this new requirement could be a barrier for millions of eligible American citizens who do not

have such documentation. For example: older African Americans were born in the days of segregation when their mothers were

often barred from giving birth in hospitals and so they were never issued birth certificates Hurricane Katrina evacuees and other

disaster victims may have lost their personal papers; and beneficiaries who have Alzheimer's, mental illness, or other cognitive

disabilities, or who are in nursing homes or are homeless and unable to locate required documents The new requirement also

places a significant burden on state Medicaid agencies and could divert resources from outreach and other important beneficiary

services. We are pleased that the proposed rule allows proof of enrollment in Medicare or the Supplemental Security Income

program, along with many other types of documents, to serve as proof of citizenship. It also allows for affidavits from people

knowledgeable about an individual's birth in cases where documentation cannot be obtained. And it encourages states to conduct

data matching with other government programs that may already have proof of citizenship on record. These provisions help to

minimize the burden on beneficiaries and protect needed coverage for millions who otherwise would be at riskWe are concerned,

however, that some eligible citizens remain at serious risk of falling between the cracks for two reasons the proposed rule lacks an

expansive presumptive eligibility provision; and the proposed rule lacks a hardship exception. Page 2 Temporary Coverage: The

proposed rule does not allow potentially eligible applicants to receive temporary coverage while waiting for documents to prove

citizenship, except in cases where presumptive eligibility is already allowed under current law. This oversight could lead to serious,

preventable problems. It can take weeks to obtain original copies of birth certificates, and people often do not apply for Medicaid

until they are in a health crisis that requires immediate medical attention. Denying access to time-limited coverage until

documentation is obtained could result in postponement of medically necessary care and lead to far more serious health problems

and higher program spending. For example, while hospitals are generally required to provide uncompensated emergency care, many

medical providers will not provide care in the absence of a payment source, e.g. pharmacies, dentists, chemotherapy and dialysis.

CMS and the HHS Inspector General agreed in a July 2005 report that there is "little evidence that many non-eligible non-citizens are

receiving Medicaid." Therefore, not expanding the scope of presumptive eligibility seems far more likely to cause preventable harm to

eligible citizens than to prevent illegal immigrants from obtaining coverage. Hardship exemption: The proposed rule does not allow

hardship exemptions in cases where, despite the best efforts of eligibility workers, documentation simply cannot be obtained. While

these will most likely be rare occurrences, there will be situations in which this option will be needed. For example, a homeless

person with severe dementia and no identification may be unable to provide sufficient information to track down necessary

documentation. The affidavit option, which requires two affidavits from individuals with personal knowledge of events establishing

citizenship, probably will not help in such situations.

Regulations for the Supplemental Security Income program, at 20 CFR

416.1610, allow eligibility workers to rely on other types of information when applicants cannot provide the listed documents. SSI

enrollment constitutes proof of citizenship under the proposed rule; the same criteria established by SSI should apply for Medicaid,

as well. We therefore urge you to let eligibility workers attest that all reasonable efforts have been made and failed but that there is

no reason to believe someone is not a citizen.Page 3

Thank you for considering our comments. If you have questions please

contact Paul Cotton on our Federal Affairs staff at (202) 434-3770.Sincerely, David Certner
Legislative Counsel and Legislative

Policy Director Government Relations and Advocacy Self-Declaration of U.S. Citizenship for Medicaid, Department of Health &

Human Services Office of Inspector General, July 2005, OEI-02-03-00190.

**Submitter :** Ms. Jamila Taylor **Date:** 08/10/2006

**Organization :** The AIDS Institute

**Category :** Other

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

see attachment...

CMS-2257-IFC-156-Attach-1.TXT

ugust 7, 2006 Centers for Medicare and Medicaid Services
Department of Health and Human ServicesAttention: CMS-2257-IFC

P.O. Box 8017 Baltimore, MD 21244-8017 RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Federal Register 39214

AIDS Institute, a national agency that promotes action for social change through public policy research, advocacy, and education, is

pleased to offer comments on the interim final rule, which was published in the Federal Register on July 12. The final rule

implements 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. Any of these instances would be extremely harmful on Medicaid

beneficiaries living with HIV/AIDS. As you know, Medicaid is the nation's major public health program for low-income Americans,

financing health and long-term care services for more than 52 million people. Further, Medicaid is a critical source of coverage for

many low-income people with HIV/AIDS. Despite improvements in treatment, HIV disease is often a disabling condition that forces

individuals to leave the workforce (or be unable to enter into it), thereby loosing income and access to employer-sponsored health

insurance. These conditions qualify them for Medicaid. Additionally, an increasing proportion of the newly infected are low-income

and more likely to be Medicaid eligible. Currently over half (55%) of those living with AIDS are served by Medicaid, as are up to 90%

of children living with AIDS. Medicaid's role for individuals living with HIV/AIDS will surely grow, due to the following factors: more

people are living with HIV/AIDS than ever before; those who are newly infected are increasingly likely to be low-income; and

prescription drugs, a critical component of HIV care and treatment, are offered by all state Medicaid programs. The AIDS Institute is

concerned that due to various provisions of the Deficit Reduction Act regarding the necessity of documentation to prove citizenship,

the large number of Medicaid beneficiaries living with HIV/AIDS could suffer tremendous harm. This potential harm may not only be

in the form of unfavorable health outcomes, but also social and economic misfortune. Our comments below highlight the possible

sources in delay of care and treatment for AIDS patients. We are concerned that the requirement for only originals and certified

copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants

and beneficiaries living with HIV/AIDS. 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 a small amount of time to satisfy the requirement of the

regulations. Requiring that all individuals obtain and submit originals and certified copies adds to the time of compliance. In addition

to locating and obtaining their documents, applicants and beneficiaries will more than likely have to visit state offices to submit them.

State agencies will in turn have to meet with these individuals, make copies of their documents, and maintain records. In most

instances, this will require a number of visits to state agencies. U.S. citizens applying for benefits should be granted benefits

immediately after declaring citizenship and meeting all eligibility requirements. Under the DRA, the new citizenship documentation

requirement applies to all individuals 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 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. The net effect of the

prohibition on granting

coverage to those living with HIV/AIDS could end in deadly results. This delay in Medicaid coverage is sure to hit a large number of

eligible, low-income, vulnerable Americans—as aforementioned, many of whom have HIV/AIDS. A delay in Medicaid coverage is

synonymous with a delay in medical care, creation of financial losses, and worsened health problems.

In conclusion, The AIDS

Institute affirms that although the statutory logic of this policy is elusive, the real-world consequence is clear. U.S. citizens who have

applied for Medicaid, who meet the state's eligibility criteria, and who are trying to obtain the necessary documentation, will

experience delays in Medicaid coverage. Some U.S. citizens will even be discouraged by the inability to locate the documents they

need in order to receive benefits, and result in those individuals forgoing coverage completely. This will be heart-wrenching for those

with HIV/AIDS. Any interruption of care and treatment for these individuals has the potential to have harmful effects not only on the

individuals themselves, but also on the community at large. Individuals not in treatment for HIV/AIDS are more likely to transmit the

virus to others due to high viral loads, they are more likely to become homeless as a result of there illness, and they are more likely

to become impoverished due to lack of favorable health—precluding an inability to work for sustainable income. Finally, because no

outreach program has been put in place to educate U.S. citizens about the new citizenship requirement, most applicants are likely

to be unaware of it, which will also add to significant delays in assembling the necessary documents. The AIDS Institute appreciates

the opportunity to submit these comments and hopes that you will consider them as you finalize the implementation of this provision

of the Deficit Reduction Act. It is important to note that although the DRA aims to address the "over-spending" of many

much-needed entitlement programs in the United States, it is important to ensure that the most vulnerable populations in this country

do not suffer harmful outcomes at this expense. Accommodations should be made to at least educate these populations on the new

citizenship requirements, and also minimize any delay in treatment and care for those suffering from illnesses like HIV/AIDS.

Should you have any questions or comments, feel free to contact me or Jamila Taylor, Global Policy Coordinator for The AIDS

Institute at (202) 835-8373 or HYPERLINK "mailto:jtaylor@theaidsinstitute.org" jtaylor@theaidsinstitute.org .Sincerely, Dr. A. Gene

Copello Executive Director The AIDS Institute 1705 DeSales Street, NW, Suite 700
Washington, DC 20036
(202) 835-8373

PAGE □1

**Submitter :** Ms. Jamila Taylor **Date:** 08/10/2006

**Organization :** The AIDS Institute

**Category :** Other

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

see attachment...

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

**Submitter :** **Ms. Jamila Taylor** **Date: 08/10/2006**

**Organization :** **The AIDS Institute**

**Category :** **Other**

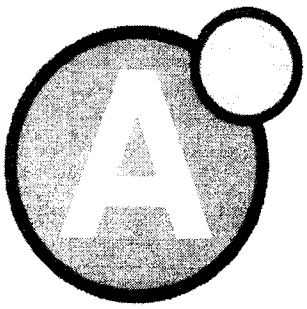
**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

see attachment...

CMS-2257-IFC-158-Attach-1.DOC



THE **AIDS** INSTITUTE
August 7, 2006

Centers for Medicare and 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 Federal Register 39214**

The AIDS Institute, a national agency that promotes action for social change through public policy research, advocacy, and education, is pleased to offer comments on the interim final rule, which was published in the Federal Register on July 12. The final rule implements 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. Any of these instances would be extremely harmful on Medicaid beneficiaries living with HIV/AIDS. As you know, Medicaid is the nation's major public health program for low-income Americans, financing health and long-term care services for more than 52 million people. Further, Medicaid is a critical source of coverage for many low-income people with HIV/AIDS. Despite improvements in treatment, HIV disease is often a disabling condition that forces individuals to leave the workforce (or be unable to enter into it), thereby loosing income and access to employer-sponsored health insurance. These conditions qualify them for Medicaid. Additionally, an increasing proportion of the newly infected are low-income and more likely to be Medicaid eligible. Currently over half (55%) of those living with AIDS are served by Medicaid, as are up to 90% of children living with AIDS.

Medicaid's role for individuals living with HIV/AIDS will surely grow, due to the following factors: more people are living with HIV/AIDS than ever before; those who are newly infected are increasingly likely to be low-income; and prescription drugs, a critical component of HIV care and treatment, are offered by all state Medicaid programs. The AIDS Institute is concerned that due to various provisions of the Deficit Reduction Act regarding the necessity of documentation to prove citizenship, the large number of Medicaid beneficiaries living with HIV/AIDS could suffer tremendous harm. This potential harm may not only be in the form of unfavorable health outcomes, but also social and economic misfortune. Our comments below highlight the possible sources in delay of care and treatment for AIDS patients.

**We are concerned that the requirement for only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants and beneficiaries living with HIV/AIDS.** 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 a small amount of time to satisfy the requirement of the regulations. Requiring that all individuals obtain and submit originals and certified copies adds to the time of compliance. In addition to locating and obtaining their documents, applicants and beneficiaries will more than likely have to visit state offices to submit them. State agencies will in turn have to meet with these individuals, make copies of their documents, and maintain records. In most instances, this will require a number of visits to state agencies.

**U.S. citizens applying for benefits should be granted benefits immediately after declaring citizenship and meeting all eligibility requirements.** Under the DRA, the new citizenship documentation requirement applies to all individuals 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 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. The net effect of the prohibition on granting coverage to those living with HIV/AIDS could end in deadly results. This delay in Medicaid coverage is sure to hit a large number of eligible, low-income, vulnerable Americans—as aforementioned, many of whom have HIV/AIDS. A delay in Medicaid coverage is synonymous with a delay in medical care, creation of financial losses, and worsened health problems.

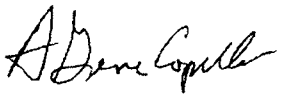
In conclusion, The AIDS Institute affirms that although the statutory logic of this policy is elusive, the real-world consequence is clear. U.S. citizens who have applied for Medicaid, who meet the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience delays in Medicaid coverage. Some U.S. citizens will even be discouraged by the inability to locate the documents they need in order to receive benefits, and result in those individuals forgoing coverage completely. This will be heart-wrenching for those with HIV/AIDS. Any interruption of care and treatment for these individuals has the potential to have harmful effects not only on the individuals themselves, but also on the community at large. Individuals not in treatment for HIV/AIDS are more likely to transmit the virus to others due to high viral loads, they are more likely to become homeless as a result of there illness, and they are more likely to become impoverished due to lack of favorable health—precluding an inability to work for sustainable income. Finally, because no outreach program has been put in place to educate U.S. citizens about the new citizenship requirement, most applicants are likely to be unaware of it, which will also add to significant delays in assembling the necessary documents.

The AIDS Institute appreciates the opportunity to submit these comments and hopes that you will consider them as you finalize the implementation of this provision of the Deficit Reduction Act.

It is important to note that although the DRA aims to address the "over-spending" of many much-needed entitlement programs in the United States, it is important to ensure that the most vulnerable populations in this country do not suffer harmful outcomes at this expense. Accommodations should be made to at least educate these populations on the new citizenship requirements, and also minimize any delay in treatment and care for those suffering from illnesses like HIV/AIDS.

Should you have any questions or comments, feel free to contact me or Jamila Taylor, Global Policy Coordinator for The AIDS Institute at (202) 835-8373 or jtaylor@theaidsinstitute.org.

Sincerely,



Dr. A. Gene Copello
Executive Director
The AIDS Institute
1705 DeSales Street, NW, Suite 700
Washington, DC 20036
(202) 835-8373

**Submitter :** **Ms. Lauren Bholai-Pareti** **Date: 08/10/2006**

**Organization :** **Council on Homeless Policies and Services**

**Category :** **Other Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-159-Attach-1.DOC

# Council on Homeless Policies and Services

**70 West 36th Street, Suite 1404**
**New York, New York 10018**
**Ph: (646) 827-2271**
**Fax: (646) 536-8185**


August 10, 2006

Mark B. McClellan
Administrator
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)

Dear Mr. McClellen:

I am writing on behalf of the Council on Homeless Policies and Services (The Council), with comments on the Interim Final Rule, which was published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). The Council on Homeless Policies and Services is a coalition of sixty non-profit agencies serving homeless and at-risk children and adults in New York City. The Council provides advocacy, information and training to member agencies to strengthen their capacity to deliver high quality services.

We are deeply concerned about the impact that the Interim Final Rule will have on eligible homeless citizens. We urge CMS to modify the final rule to minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage, including those who are homeless, will face delay, denial, or loss of Medicaid coverage. Our comments below highlight eight specific areas in which we urge CMS to modify the final rule.

**1. 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 12 million U.S. citizens are expected to apply for Medicaid. 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, including homeless, Americans. This is likely to delay their medical care, worsen their health problems and create financial losses for health care providers.

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 are unable to navigate the processes 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.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare that 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. Moreover, states should be given broad flexibility in allowing individuals the time necessary to collect their proof of status.

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 435.1005 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

**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. In instances when the state Medicaid agency paid for the child's birth in a U.S. hospital, 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, since the state Medicaid agency paid for the child's birth in a U.S. hospital the child is by definition a citizen and applying the citizenship documentation requirements is unnecessary and inefficient.

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. Some families may be unable to get care for their newborn children, care that is essential to their children's health and development.

The risk to the health of newborns from delays in coverage and the potential for increased uncompensated care for providers are 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.

**3. 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 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 knowledge that they need documents proving citizenship.

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.

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 help to ensure that the homeless clients with whom our members work and who are U.S. citizens can continue to receive the health care services they need.

**4. 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 take applicants and beneficiaries only 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.

Most 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 states took to simplify their eligibility processes and make it easier 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 people 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 adults 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.

**5. All of the children and adults on a federal program, where citizenship has already been determined, should be exempted from these requirements.**

We applaud CMS for issuing the rule that individuals on SSI or Medicare will not be subjected to these requirements. However, individuals on Social Security Disability Insurance who are in the waiting period for Medicare or disability payments should also be included within the exempt group.

In addition, other individuals have already proved their citizenship, including TANF families and children and recipients who get survivor, retirement and disability auxiliary benefits from SSA, and those whose citizenship has been verified by SSA for early retirement, age 60 widows or widower OASDI beneficiaries.

**6. Evidence of identity should be cross matched with the state's mental health authority.**

CMS should cite the state mental health authority among the state agencies' data systems with which a cross match may be made. Individuals with serious mental illness are likely to be among those who have great difficulty obtaining the necessary documents due to functional issues, and, in addition, the stress of this process could trigger relapse. Therefore every effort should be made for making this process as easy as possible for such individuals. State mental health agencies and the community providers who serve this population will have medical records and other data bases that enable confirmation of identity.

**7. Those groups who were presumed eligible should retain that status in a clarified DRA rule.**

The proposed rule does not make specifically make it clear that those who meet presumptive eligibility standards are still presumptively eligible, regardless of the status of their proof of citizenship. This should be rectified, or the presumptive eligibility categories will have little meaning.

**8. There should be outreach services instituted to provide awareness of the application requirements.**

CMS, as well as the states, should be conducting considerable outreach on this provision. At this time, we are continually learning that not only do individuals on Medicaid have no knowledge that they must collect such documents, but many front line staff at our member agencies lack this information.

**We are deeply concerned that, if the above changes are not made to the DRA requirements, homeless people will suffer greatly and unnecessarily.**

Thank you for this opportunity to comment on the proposed rule. We hope you will make adequate adjustments to assure that Medicaid is accessible to all US citizens.

Sincerely,

Lauren Bholai-Pareti
Executive Director

**Submitter :** Mrs. Iara Woody **Date:** 08/10/2006

**Organization :** American Assoc of Homes & Services for teh Aging

**Category :** Health Care Provider/Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-160-Attach-1.DOC

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August 11, 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: CMS-2257-IFC: Medicaid Program; Citizenship Documentation Requirements**, Fed. Reg. 39214 (July 12, 2006)

Dear Dr. McClellan:

The American Association of Homes and Services for the Aging (AAHSA) appreciates the opportunity to submit comments on the Centers for Medicare and Medicaid (CMS) Proposed Rule: Medicaid Program; Citizenship Documentation Requirements, published in the Federal Register on July 12, 2006.

The members of AAHSA (www.aahsa.org) serve two million people every day through mission-driven, not-for-profit organizations dedicated to providing the services people need, when they need them, in the place they call home. Our members offer the continuum of aging services: assisted living residences, continuing care retirement communities, nursing homes, outreach programs, and senior housing. AAHSA's commitment is to create the future of aging services through quality the public can trust.

We are writing to comment on the interim final rule that became effective on July 1, 2006, and requires that U.S. citizens and nationals applying for or receiving Medicaid provide proof of U.S. citizenship. The new provision under of the Deficit Reduction Act of 2005 effectively requires that the States must obtain evidence of citizenship at the time of application or at the time of first re-determination occurring on or after July 1, 2006. Self-attestation of citizenship and identity is no longer an acceptable practice. The Interim Final Rule, issued by CMS on July 12, amends significant changes in the new documentation requirement for proof of citizenship (see below).

AAHSA is pleased that CMS included an exempt provision for the elderly and disabled citizens who are enrolled in both Medicaid and Medicare (also known as Dual Eligibles) or are enrolled in Medicaid because they receive Supplemental Security Income (SSI) benefits; however, we are still concerned over certain remaining issues that may cause interruption, d enial, o r l oss o f M edicaid c overage f or c urrent b eneficiaries a nd new applicants. Our comments below highlight areas where we recommend changes.

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## COMMENTS

1. ***"Reasonable Opportunity" for New Applicants:*** As stated in the Interim Final Rule, the State must give a Medicaid recipient, who has signed a declaration of citizenship or nationality, a "reasonable opportunity" to establish citizenship. These individuals will remain eligible until the State has determined that the individual has not made a good faith effort to present satisfactory documentation. By contrast, applicants for Medicaid (not currently receiving Medicaid or SSI), are *not* eligible until they have presented all required documentation to establish citizenship or the State Medicaid agency is able to match their identity records through cross-matching databases.

   The ramification of this provision can be devastating to the frail and elderly population in our nursing homes who heavily depend on Medicaid coverage for health care services. Some residents may be applying for Medicare and Medicaid simultaneously or may be disabled and not yet eligible for Medicare or a recipient of SSI. Since these individuals would not be automatically exempt from the citizenship proof requirement and would not be in the State's electronic database for identification purposes, they would need the same "reasonable opportunity" time that current beneficiaries have been granted to locate their documentation.

   Without a grace period (or "reasonable opportunity") to allow these individuals to gather the information they need, delays and potential denials may increase the number of uninsured elderly and disabled population who depend on nursing home services. This restriction may also increase the amount of uncompensated care provided by the nursing homes, which will put nursing homes at risk of not receiving reimbursement for applicants who encounter delays or cannot get the required documentation for Medicaid eligibility.

***AAHSA recommends that CMS revise the "reasonable opportunity" provision to include applicants and allow for immediate coverage based on their sworn declaration of citizenship while they gather the documentation needed to prove citizenship. Consistent with the "reasonable opportunity" provision for current Medicaid beneficiaries, the State would provide applicants with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation. This will ensure that all nursing home residents who are U.S. citizens continue to receive the health care services they need.***

2. ***Victims of Natural Disasters***: The interim final regulation does not protect victims of natural disasters whose documents have been lost or destroyed. This population needs as much assistance as possible in acquiring the required

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documentation; otherwise, some beneficiaries and applicants may lose coverage all together.

AAHSA recommends that CMS require the States to assist this population in reacquiring the necessary documentation to prove their citizenship. In cases where documents seem to be unattainable, we ask that CMS allow for State Medicaid agencies to have discretion in recognizing and accepting U.S. citizenship without documents for purposes of Medicaid eligibility. This approach is similar to the SSI program, which allows people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and recognize and certify, in good faith, that they are US citizens.

3. ***Rare Cases***: US citizens who are not able to provide any documentation to establish citizenship can submit two affidavits, one of which must be from a person not related to the applicant or beneficiary. Persons making the affidavits must be able to prove their own citizenship and identity and must have personal knowledge of the applicant or beneficiary's birth.

   AAHSA is pleased that CMS is accepting affidavits as a means to establish citizenship when all else fails. In some cases, however, individuals do not have ready access to two people who have personal knowledge of their birth. Affidavits may also not be readily available for disabled and/or cognitive-impaired persons in nursing homes who are not yet eligible for Medicare or SSI but need to apply for Medicaid. Some may not even have family to submit an affidavit for them.

AAHSA recommends that in these rare instances where acceptable affidavits cannot be provided, applicants be awarded the same accommodation / privilege that AAHSA recommends for victims of natural disaster (#2 above).

AAHSA appreciates the opportunity to submit our views on this issue and the time and consideration you devote to the comment process. Please feel free to contact me at (202) 508-9429 or Iwoody@aahsa.org.

Sincerely
Iara Woody

American Association of Homes and Services for the Aging
2519 Connecticut Avenue, NW Washington, DC 20008-1520 | aahsa.org | 202.783.2242

**Submitter :** Mr. Philippe Largent **Date:** 08/10/2006

**Organization :** Illinois Primary Health Care Association

**Category :** Health Care Provider/Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-161-Attach-1.PDF

**IPHCA** ILLINOIS PRIMARY HEALTH CARE ASSOCIATION



August 9, 2006

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Att: CMS-2257-IFC
Room 445-G
Hubert Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

**Re: CMS-2257-IFC**
**Interim Final Rule on Medicaid Program; Citizenship Documentation Requirements (RIN 0938-A051)**

The Illinois Primary Health Care Association (IPHCA) is please to offer it's comments on the interim final rule to implement section 6036 of the Deficit Reduction Act of 2005 ("DRA"). IPHCA is Illinois sole trade association representing Community/Migrant Health Centers (C/MHC) and Federally Qualified Health Centers (FQHC) operating inside our state.

**1. The Medicaid citizenship and identification documentation requirements affect the ability of health centers to meet their statutory responsibility to provide health care to anyone regardless of their ability to pay.**

The loss of Medicaid benefits for individuals who are otherwise eligible will have a negative impact on health centers which, due both to their mission and to the requirements of their federal Public Health Service, Section 330 grant, must serve anyone regardless of their ability to pay. The result for health centers is that a potentially large portion of their "insured" patients, Medicaid beneficiaries, may become uninsured as a result of failing to prove citizenship and/or identity. Adding to the already large and growing uninsured population with persons who are actually eligible for Medicaid places enormous pressure on the federal grant awarded to centers to serve the uninsured. The grant already does not meet the need in our communities and this provision only exacerbates this problem.

**2. IPHCA is pleased that the Centers for Medicare and Medicaid Services has exempted recipients of Medicare and Supplemental Security Income (SSI) from the citizenship documentation requirements.**

The interim final rule seems to have accepts recommendation from other interested organizations that documentation of citizenship for programs administered by the Social Security Administration be acceptable for proof of citizenship under Medicaid. The preamble to the interim final rule and new 42 CFR 435.1008 provide that recipients of either Medicare or Supplemental Security Income ("SSI") need not provide additional citizenship documentation.

The new 42 CFR 435.407(e) provides that identity can be established by various documents, including a school identification card with a photograph, a U.S. military card or draft record, a military dependent's identification card, or a Native American Tribal document (the new 42 CFR 407(e)(6) should be amended in the final rule to clarify that this includes tribal enrollment cards). IPHCA joins other organizations in calling for the final rule to allow other documents – such as a voter registration card, school records or report card, or a clinic doctor or hospital record – be sufficient to establish identity.

**3. Submission of Original or Certified Documents**

While the interim final rule encourages states to use existing state and federal data bases, we regret

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CHICAGO LOCATION
*542 South Dearborn Street, Suite 900 • Chicago, IL 60605 • (312) 692-3000 • (312) 692-3001 fax*
*www.IPHCA.org*

that the new 42 CFR 435.407(h)(1) requires applicants to submit original or certified documents rather than copies or notarized copies. **The DRA does not require the rejection of copies, and so the final rule should not contain this burdensome requirement**.

**4. Reasonable Opportunity to Provide Necessary Documents**

IPHCA is pleased that the final interim rule gives current Medicaid beneficiaries a reasonable opportunity to provide the necessary documents when they renew their Medicaid status and provides for continued Medicaid coverage while the beneficiary appeals an adverse eligibility decision. However, we urge that the final rule require states to enroll new applicants in Medicaid while they are given a reasonable opportunity to document their self-attestation that they are citizens. In the preamble to the interim final rule the Centers for Medicare and Medicaid ("CMS") estimated that the old self-attestation system for citizens led to less than $120 million a year in Medicaid fraud (less than $70 million to the federal government and less than $50 million to the states). Thus, the new documentation system, even if it works perfectly in preventing Medicaid fraud by beneficiaries, will save less than $120 million annually. **Rather than deny citizens the benefits to which they are entitled, CMS should amend new 42 CFR 435.407(j) to permit new applicants to enroll in Medicaid while they also are given a reasonable opportunity to provide the necessary documentation in support of their self-attestation.** This is especially true of vulnerable populations such as the homeless and children.

**5. The final rule should require a state to accept the determination by another state that a Medicaid beneficiary is a citizen.**

New section 435.407(h)(5) says "Presentation of documentary evidence of citizenship is a one time activity." However, the interim final regulation (and its preamble) fails to acknowledge that Medicaid beneficiaries, like other citizens, move among states. A person who has provided adequate citizenship and identify documentation to state A should not be required to provide similar documentation to state B. Thus, new section 435.407(h)(5) should be amended to provide that state B should be required to accept the determination by state A (unless state B can show that there was fraud in state A).

**6. Medical Records of Birth**

Under current law, children born in the United States are U. S. citizens, including those born to undocumented pregnant women (for whom Medicaid is available only for coverage of the labor and delivery of the child.). CMS' interim regulations do not permit a State to consider a record of Medicaid or other insurance payment for the birth of the child in a U.S. hospital as acceptable documentation of the child's citizenship. We believe such an approach is totally illogical. If Medicaid has covered a child's birth in a hospital in the United States, the records of such payment serve as clear and incontrovertible evidence that the child is a U. S. citizen. We urge CMS to permit such records of payment by Medicaid (or any other insurance payment for birth in a U.S. hospital) as sufficient proof of U.S. citizenship.

**7. Documentation Dates**

In several parts of its rule – specifically 42 CFR 435.407 (c) and (d) and 436.407 (c) and (d) – CMS requires that, in order for certain documents to qualify as evidence of citizenship, they must have been created at least five years before the initial Medicaid application date. **Notably, clinic records are listed as one of those documents that must meet the five year rule.** We believe that this five year requirement undercuts the effectiveness of such a rule and will limit the ability of CHCs and other healthcare providers to assist their patients in documenting their citizenship through such medical records. Such a five year requirement is not provided for in the statute and appears to be arbitrary. The requirement will establish an unnecessary obstacle for health center patients and other individuals to surmount in order to qualify for Medicaid services.

**8. The final rule should amend the interim final rule to make it consistent with the important policies articulated in the preamble to the interim final rule.**

The preamble to the interim final rule provides (at 13) that "Individuals who receive Medicaid because of a determination by a qualified provider, or entity, under sections 1920 [pregnant women], 1920A [children], or 1920B [certain breast cancer or cervical cancer patients] of the [Social Security] Act are not subject to the documentation requirements until they file an application [for Medicaid] and declare on the application that they are citizens or nationals. These individuals receive Medicaid during the 'presumptive' period notwithstanding any other provision of title XIX [of the Social Security Act]..." This very important policy on presumptive Medicaid eligibility for these three groups is not set forth in the actual interim final regulations, and the final

regulations should correct this important oversight.

**9. Populations Requiring Special Assistance**

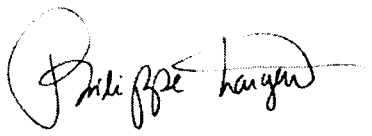
IPHCA believes the final rule contains more detail as to the populations that will require special assistance and the minimal steps the states must take to assist them. For example, while the preamble to the rule indicates that assistance in securing necessary documents should be provided to homeless persons, the rule itself – at 42 CFR 435.407(g) and 436.407(g) – does not mention the homeless. **Illinois health centers serve nearly 20,000 homeless people,** and can attest to the fact that it will be very difficult for these individuals, with no fixed address, little or no income, and often in very poor health, to secure necessary documentation of citizenship.

**10. Foster Children Should be Exempted Under Final Rule**

The interim rule does not exempt children in foster care from the citizenship documentation requirements, including those who receive federal foster care payments under Title IV-E. However, state child welfare agencies must verify the citizenship of foster care children when determining their eligibility and those found eligible for that program are automatically eligible for Medicaid. Other children may be found eligible for Medicaid through other coverage categories. Nonetheless, the preamble to the rule states that these children must have a declaration of citizenship in their Medicaid file as well as documentary evidence of such citizenship 71 Fed. Reg. at 39216. The policy contradicts the decision exempting Medicare and SSI beneficiaries from these rules and would require unnecessary duplication efforts by agencies of state governments and put children at risk of delayed, or even denied, Medicaid coverage. Finally, it is our understanding that CMS staff has indicated that Title-IV foster care children **will be** treated as Medicaid recipients for purposes of the citizenship requirements. The finalized version of the rule, therefore, should clearly exempt foster care children from the documentation requirement

Thank you for the opportunity to provide comment on the interim final rule.

Respectfully submitted,



Philippe J. Largent
Vice President for Government Affairs
Illinois Primary Health Care Association

**Submitter :** Mr. Thomas Johnson **Date:** 08/10/2006

**Organization :** Medicaid Health Plans of America

**Category :** Health Care Professional or Association

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

See Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

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Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Ms. Nan Feyler **Date:** 08/10/2006

**Organization :** Nationalities Service Center

**Category :** Attorney/Law Firm

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

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

Provisions of the Interim Final Rule with Comment Period

CMS-2257-IFC

**Submitter :** **Date: 08/10/2006**

**Organization :** **American Academy of Physician Assistants**

**Category :** **Physician Assistant**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

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

Provisions of the Interim Final Rule with Comment Period

See attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

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Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Ms. Sharon Langer **Date:** 08/10/2006

**Organization :** Connecticut Voices for Children

**Category :** Other Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

"See Attachment"

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

Provisions of the Interim Final Rule with Comment Period

CMS-2257-IFR

CMS-2257-IFC-165-Attach-1.DOC

CONNECTICUT VOICES FOR CHILDREN

33 Whitney Avenue
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www.ctkidslink.org

August 12, 2006

Administrator Mark B. McClellan, M.D., Ph.D.
Centers for Medicare & Medicaid Services
U.S. 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, CMS-2257-IFR**

Dear Administrator McClellan:

**The 18 undersigned organizations from the State of Connecticut join Connecticut Voices for Children in submitting these comments 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 submit these comments because of our serious concerns about CMS's interpretation of the law and its likely detrimental impact on vulnerable children, parents, pregnant women and persons with disabilities. We anticipate delays in critical health care coverage to new applicants and the potential loss or denial of Medicaid coverage for those who, despite best efforts, are unable to document their citizenship. The Connecticut Department of Social Services (DSS), without new or additional resources, is making every effort to comply with the law and to minimize the harm to applicants and enrollees. To do this, however, DSS has had to divert scarce resources from other efforts to assure health care access and services for our state's vulnerable populations.

We applaud the Secretary's decision to ease implementation of the Medicaid documentation requirement for some citizens by exempting Medicare and SSI beneficiaries from the requirement, and by allowing the state Medicaid agency to access vital records to document the birth of US citizens born in our state without waiting for individuals to show they have unsuccessfully attempted to obtain paper records. We remain concerned, however, that the interim final rule goes beyond what Congress intended and will deny or delay access to health care for many United States citizens, including pregnant women and children, especially children in state foster care programs.

We urge CMS to make the following revisions to ensure that eligible pregnant women, parents, children and persons with disabilities receive Medicaid benefits without experiencing delays, disruptions or denials of coverage. We believe these revisions are particularly appropriate because the new law does not address any documented problem of non-United States citizens fraudulently receiving Medicaid coverage. You are no doubt aware of the finding by HHS's Office of Inspector General in its report "*Self-Declaration of US Citizenship for Medicaid*" that there was no substantial evidence that non-citizens are obtaining Medicaid by falsely claiming citizenship. And here in Connecticut an audit by our Department of Social Services over a four-year period did not uncover a single case of an applicant falsely declaring citizenship.

**Applicants and enrollees should not be required to submit originals or certified copies of documents.**

The DRA does not require applicants and enrollees to submit original or certified copies to meet the new citizenship documentation requirement. CMS has added this provision in the interim final regulation at 42 CFR 435.407(h)(1). We are convinced that CMS's estimate that it will take applicants and enrollees "ten minutes" and state agencies "five minutes" to comply with the requirement that individuals provide original or certified copies to the Medicaid agency is unrealistic.

In Connecticut, we have worked hard to simplify the eligibility process. We no longer require pregnant women and families to undergo a face-to-face interview to apply for or renew Medicaid coverage. In addition, after experiencing a steep decline in family enrollment after the repeal of self-declaration of income procedures in June 2005, the legislature and Governor agreed to reinstate self-declaration last month (July 2006). We fear that the increased efficiency to be gained by the reinstatement of self-declaration will now be lost due to this new citizenship documentation burden. Moreover, the Department of Social Services has seen a dramatic decrease in its staffing over the last several years, as well as a reduction in the number of its offices. As a result, it is a hardship for some people to travel increased distances to reach a regional DSS office, particularly in a state without a mass transit system. Even if people manage to get to a DSS office, the state agency is not currently equipped to deal with a dramatic increase in foot traffic at its local offices.

While the regulations allow for documents to be mailed, it is unlikely that individuals will send original documents, such as passports, birth certificates, and driver's licenses through the mail, risking the misplacement or loss of these important personal papers. Moreover, people are not permitted to drive without their licenses so it is implausible that anyone would mail his or her driver's license to DSS. Low-income working families on Medicaid can ill afford to take time off from work to bring such documents to DSS offices. Based on past experience, we fear that these families will forego health care coverage rather than risk loss of pay or jobs in order to make the required trips to state offices. We have seen in Connecticut that any additional paperwork, however seemingly benign in intent, acts as a barrier to enrollment. As mentioned above that is why state lawmakers wisely restored self-declaration of income procedures this summer

We, therefore, urge CMS to eliminate this requirement and allow copies of documents to be submitted by applicants and enrollees. Under current law, state Medicaid agencies have always

had the authority to require additional proof of citizenship where the person's declared statement is questionable. This is unchanged by the DRA and the interim final regulations.

**U.S. Citizen pregnant women, children, parents, and persons with disabilities applying for benefits should be able to receive benefits while they obtain the documents they need.**

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. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, parents, and persons with disabilities. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

In Connecticut, DSS officials and others are working together to develop an expedited family planning waiver program that would permit a simplified enrollment process for patients seeking family planning services at family planning clinics. Connecticut is thoughtfully building on successful models in other states, but it will now be difficult to implement such a program in light of the application of the citizenship documentation rule to this population of mostly young and vulnerable women. These young women are unlikely to carry with them their citizenship papers, and will be reluctant to make multiple trips to the clinics in order to obtain family planning services.

The rule will delay coverage for other vulnerable groups, such as persons with disabilities who are not on SSI, but receive Social Security Disability Insurance (SSDI), and are awaiting Medicare coverage. (As you know, the waiting period for Medicare coverage is 24 months from the date of the disability determination for SSDI). These people are not exempt from the citizenship and identity documentation requirements under the DRA and the interim final regulations. We are aware of a very recent case in point where an individual was diagnosed with a terminal illness. He has just applied for both Social Security Disability Insurance and Medicaid. He should not have to experience delays in receiving Medicaid coverage and the critically needed care that will ease his final days.

Although DSS has every intention of accessing Connecticut vital records in order to document the birth of US citizens born in this state as appropriate, the system is not yet in place, will likely experience glitches as all systems do, and will not address the need for documentation from US citizens born in other states.

Congress did not make documentation of citizenship a condition of receiving Medicaid benefits, and in fact instructed CMS through another provision of the Medicaid Act to not approve state Medicaid plans that impose "any citizenship requirement which excludes any citizen of the United States" as a condition of eligibility for the program. See 42. U.S.C. 1396a(b)(3). Therefore, when applicants show that they meet all eligibility criteria and make a sworn declaration of citizenship, they should receive benefits while they get the documents they need.

This is the rule for legal non-citizens whose legal status makes them eligible for Medicaid, and the same rule should be applied to citizens.

- We urge you to revise 42 CFR 435.407(j) to allow applicants who declare they are U.S. citizens or nationals and who have shown that they meet the state's Medicaid eligibility criteria to receive Medicaid coverage while they obtain the documents they need to meet the new requirement.

**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. There are about 7,000 children in Connecticut's foster care programs, including approximately 3,000 children receiving federal foster care assistance under Title IV-E, who are subject to the citizenship documentation requirement.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. 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.)

In the DRA, Congress allowed CMS to exempt individuals who are eligible for other programs that require documentation of citizenship. The IV-E program is precisely such a program. Foster children in the care of the state need immediate access to medical coverage. There is no reason to delay their Medicaid coverage when child welfare agencies have already verified that they are citizens or to add unnecessary and duplicative burdens to state agencies.

We urge you to revise 42 CFR 435.1005 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.

**Newborns**

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. While the rule allows extracts of a hospital record created near the time of birth to be used as proof of citizenship, 42 CFR 435.407(c)(1), and a medical (clinic, doctor, or hospital) record created near the time of birth to be used in the "rarest of circumstances," 42 CFR 435.407(d)(4), there is no reason that states should have to obtain this information. There is also no reason that newborns should experience delays in receiving Medicaid coverage while these documents are obtained. When a state Medicaid agency pays for a child's birth in a U.S. hospital, the child is by definition a citizen. Further proof should not be required for newborns whose birth is paid for by

a state's Medicaid program. Risking the health of newborns and increasing the potential for uncompensated care is unnecessary in this situation.

We urge you to amend 42 CFR 435.407(a) 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.

**Homeless individuals, victims of natural disasters and others whose records have been destroyed or can't be found should be permitted alternative methods for proving citizenship.**

The regulations make no provision for situations in which individuals' documents have been destroyed or lost, or an illness, such as dementia, prevents a person from obtaining the documentation, even with the help of the state. Connecticut and other states should be given the discretion to use alternative means to verify citizenship and identity. A state Medicaid agency should also be allowed to waive the requirement when compliance would cause hardship to the individual, and its staff has reason to conclude that the person is a US citizen or national.

Thank you for the opportunity to submit these comments. Please contact Sharon D. Langer, Senior Policy Fellow, Connecticut Voices for Children, at (860) 548-1661, slanger@ctkidslink.org with any questions you may have about the information contained in this letter.

Sincerely,

All Our Kin, Inc.
Bridgeport Child Advocacy Coalition
Child Guidance Center of Mid-Fairfield County
Collaborative Center for Justice
Community Health Center, Inc.
Connecticut Association of Human Services
Connecticut Chapter of the American Academy of Pediatrics
Connecticut Council of Child and Adolescent Psychiatry
Connecticut Education Association
Connecticut Immigrant and Refugee Coalition
Connecticut Legal Rights Project
Family Services Working
Hill Health Corporation
National Council of Jewish Women, Connecticut
Norwalk Community Health Center
Norwalk Healthy Families Collaborative
Parent Child Resource Center
United Church of Christ

**Submitter :** Mr. David Blatt **Date:** 08/10/2006

**Organization :** Community Action Project of Tulsa Co.

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

CMS-2257-IFC-166-Attach-1.PDF

CMS-2257-IFC-166-Attach-2.PDF

Community Action Project
4606 S. Garnett, Suite 100
Tulsa, OK 74146

August 10, 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)

We are a non-profit organization that provides comprehensive anti-poverty services in Tulsa County and conducts advocacy and education on state policy issues affecting low-income Oklahomans.

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 requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

Through both our direct service and advocacy work on behalf of low-income families, we are strongly aware of the vital rule that the Medicaid program plays in ensuring access to health care for the most economically and physically vulnerable Oklahomans. Our state Medicaid program has taken important steps in simplifying the Medicaid application and enrollment process to remove barriers and improve access to the program for those who qualify. We are concerned that the proposed rules will amount to a large step backwards away from the goal of facilitating access to health care by imposing cumbersome new requirements that will place undue burdens on both individual recipients and on our state agencies.

Our specific suggestions for revisions to the rule are as follows:

**The regulations should better accommodate people for whom documents are not available or do not exist.** U.S. citizens who may lack the documents listed in the interim final rule include, among others, victims of hurricanes and other natural disasters, homeless individuals. The Secretary should use his discretion under the DRA to expand on the list of acceptable documents. Specifically, we urge the Secretary to borrow a

practice from the Supplemental Security Income (SSI) Program, by which state Medicaid agencies can recognize when a person without documents is in fact a U.S. citizen.

**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. Revising the final rule to allow a broader range of options, that include, but are not limited to, original or certified copies would make it more likely that clients could easily comport with the new law and would streamline states' application processes significantly. This change would likely result in the need for fewer office visits for beneficiaries, require less staff time to meet these additional demands, and will likely lead to savings in both human productivity and actual administrative costs.

**Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, Medicaid eligibility should be granted.** Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Yet the proposed rule would prohibit states from granting coverage to eligible citizens until they can get certain documents that prove their citizenship and identity. We urge the final rule be modified to require states to provide coverage upon the submittal of an otherwise complete application and allow applicants, beneficiaries and the states to make good faith efforts to acquire the new documents required under the DRA.

**Children in foster care should not have to verify citizenship again.** State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E foster care payments. Those outside of the IV-E program are already under the care of the state. Requiring foster children to document citizenship again constitutes an unnecessary duplication of state agency efforts and puts these children at risk of delayed Medicaid coverage. The DRA does not compel this result.

**Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirement.** Many Native Americans were not born in a hospital and have no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as proof of citizenship and identity, the regulations create a barrier to participation in the Medicaid program. We urge that the revised rule recognize tribal enrollment cards as satisfying the documentation requirement.

**In addition to revising the rule, we urge CMS to undertake public education to ensure that state agencies, eligibility workers, and clients understand that the new requirements affect only Medicaid, not the Food Stamp Program.** Medicaid traditionally operates in conjunction with food stamps and other benefits programs, and the programs are frequently administered by the same workers. It is vital that CMS work with states and USDA to educate caseworkers and the public about what the rule requires regarding the Medicaid program and makes clear that the provision does not affect food stamp requirements. Given the scope of hunger and food insecurity in our nation, we

can ill afford any spillover effects of the Medicaid rule onto the Food Stamp Program. We must guard against intensifying problems that vulnerable families face in accessing resources to put food on the table.

Thank you for considering our concerns about the interim final regulations. We hope you will take into account how revising the rule would implement the DRA without undermining crucial benefits for vulnerable people.

Sincerely,

David Blatt
Director of Public Policy
Community Action Project of Tulsa County
(918) 382-3228
dblatt@captc.org

**Submitter :** **Ms. Phyllis Snyder** **Date: 08/10/2006**

**Organization :** **National Council of Jewish Women**

**Category :** **Consumer Group**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Ms. Nan Feyler **Date:** 08/10/2006

**Organization :** Nationalities Service Center

**Category :** Attorney/Law Firm

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

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

Provisions of the Interim Final Rule with Comment Period

CMS-2257-IFC

CMS-2257-IFC-168-Attach-1.DOC

# Nationalities Service Center

1300 Spruce Street, Philadelphia, PA. 19107-5812
Phone: 215-893-8400, Fax: 215-735-9718
Web site: http://www.nationalitiesservice.org

August 9, 2006

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

**RE: CMS-2257-IFC, Citizenship Documentation Requirements for Medicaid Program**

To Whom It May Concern:

Nationalities Service Center (NSC)is a non-profit organization in Philadelphia, Pennsylvania that provides a range of services to immigrants and refugees from throughout Southeast Pennsylvania. Our services include English language classes, legal services, senior services and refugee resettlement services. The majority of our clients are low income.

In addition, as a public interest attorney I have many years of experience in the Philadelphia Pennsylvania are representing low income individuals seeking Medical Assistance and I will include comments based on this experience as well as our experience helping immigrants.

We appreciate the opportunity to comment on CMS-2257-IFC ("Interim Final Rule") to comment on the citizenship documentation requirements for Medicaid benefits effective July 1, 2006.

**I. Positive Aspects of the Rule:**

We commend CMS for ameliorating the impact of the new documentation requirement by exempting individuals on SSI or Medicare from the new rule. CMS should extend these rationales to *all* applicants who have already proven their citizenship, such as foster children and Native Americans, and to other populations that would have particular difficulty meeting the new requirements.

We also commend CMS for 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. . However, this option will primarily help individuals who are applying for or receiving Medicaid in the state where they were born. It is unlikely it will help

many people born in other states. Moreover, all applicants or recipients will still have to fulfill the Interim Final Rule's identity requirements, regardless of where they were born.

We also commend CMS for 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.

We also commend CMS's decision to give states the option of conducting upfront data matches with state vital records to obtain birth certificates. This will prevent low-income individuals from having to go through the unwieldy and costly process of obtaining and submitting their certificates Electronic data matching is particularly important given the difficulty individuals are likely to experience when requesting documents such as birth certificates, and the resulting delay in obtaining Medicaid benefits. CMS should take the lead in developing a system that would allow states to verify US birth by computer. A national approach is needed if states are to participate in a system that allowed for computer verification of birth in the US. Consideration must also be given to the fact that states do not now have the infrastructure to do cross-matching with other states, which could lead to a disruption of Medicaid benefits despite the fact the person has been found eligible for Medicaid in one state and subsequently moved to another state. Certainly the determination of the first state should be adequate proof for any new state to which the person relocates.

## II. Overall Concerns about the Rule:

While CMS has taken some good first steps towards ensuring that the Interim Final Rule will not deny eligible U.S. citizens from receiving much-needed medical coverage, there are still significant barriers that need to be remedied in order to reach this goal.

### A. The Interim Final Rule, while not directly impacting eligible immigrants, will cause confusion and deter appropriate applications

While the rule does not apply to eligible immigrants who are already required to provide documentation of their legal status, the regulations should clarify this fact. The regs should clearly state that these do not apply to immigrants whether applying for regular or emergency Medicaid and that the documentation requirements for these populations are not changed.

In addition the regs should clearly require states to create safeguards to ensure that Medicaid applicants and recipients who are NOT claiming U.S. citizenship are not denied or delayed enrollment due to U.S Citizenship verification and CMS should advice states not to ask for documents from their former country, allow immigrants to sign affidavits of citizenship for family members who were born in the US.

**B. Denying Medicaid for Applicants Waiting for Documentation or Who are Unable to Get Documentation Will Prevent Eligible Citizens from Receiving Medicaid Benefits**

(i) **New applicants should be immediately enrolled in Medicaid, provided that they are otherwise eligible, while being given a "reasonable opportunity" to present the required documentation.** Applicants who are making a good faith effort to secure documentation and cooperate with their local welfare office should be given the Medicaid benefits for which they are eligible.

(ii) **Securing the required documentation can be a lengthy and expensive process.** Few low-income Americans have passports, and many do not have copies of their birth certificates. Under the Interim Final Rule these Medicaid applicants would be denied medical coverage as they search for documentation that may not even exist.

The Interim Final Rule states that this policy is "no different than current policy regarding information which an initial applicant must submit in order for the State to make an eligibility determination." 71 Fed. Reg. at 39216. This simply is not true. The stringent citizenship documentation requirements are drastically different from the other information an applicant must provide when applying for Medicaid. Personal information such as income, family situation, and employment status are all within an applicant's control to provide, and this information is relatively easy to acquire. Conversely, an applicant must wait perhaps months to receive government documentation of citizenship, even if this applicant promptly applies for the proof upon seeking Medicaid. Therefore, requiring proof of citizenship before allowing applicants to receive Medicaid is a dramatic change in policy which is not mandated by statute. Many states allow applicants to verify eligibility with whatever is readily available and accept reasonable statements in the absence of documentary proof.

(iii) **To delay eligible applicants Medicaid and access to health care is detrimental to both the health of individuals and the community.**

Uninsured families are less likely to use any medical services than are insured families and those who do, use fewer services on average. When uninsured families are affected by illness or injury, they are also more likely to have high health expenses relative to income. Delayed or lack of insurance has a well documented impact on the health outcomes of individuals as well as risks the larger public health by leaving contagious diseases untreated and increasing the costs of hospital emergency care treatment

## C: The Interim Final Rule is a Significant Departure from Both the Statute and the Express Legislative Intent

The rigid nature of the Interim Final Rule goes far beyond the DRA's statutory requirements and its drafters' legislative intent. For example, the DRA does not require a hierarchy of acceptable documentation or that applicants be denied Medicaid coverage pending citizenship verification. Both the language in Sec. 6036 and public statements made by the bill's sponsors, as well as the Presidential Signing Statement, indicate that the legislature and the executive did not intend for these requirements to be interpreted so strictly that eligible citizens would be denied their Medicaid benefits. Yet, in effect, this is exactly what the Interim Final Rule does.

(i) **This policy directly violates two important government goals: making sure that those eligible receive vital medical coverage and reducing bureaucratic paperwork.** Both the statute and legislative statements stress that flexibility should be emphasized. As it is currently written, the Interim Final Rule is rigid, inefficient and heavily burdensome on bureaucratic agencies.

Representative Charlie Norwood, one of Sec. 6036's sponsors, has issued public statements that Sec. 6036 necessarily provided "wiggle-room" for CMS to be more flexible with documentation requirements.[1] Representative Norwood has also emphasized the need for flexibility to prevent particularly vulnerable populations from being "kicked off Medicaid."[2] Indeed, Sec. 6036(a)(2)(C) gives CMS the authority to exempt those "under which satisfactory documentary evidence of citizenship or nationality had been previously presented." Nonetheless, CMS has chosen not to exercise this authority and instead will require some populations that have already verified their citizenship, such as foster children receiving federal assistance or children whose birth was covered by Medicaid, to do so again.

The President's public comments regarding the DRA also indicate that CMS should use its authority to streamline the Medicaid eligibility process. The President declared that "Medicaid will always provide help for those in need, but [will] never tolerate waste, fraud or abuse."[3] If the primary concern is eliminating fraud, then there is no benefit in requiring those whose citizenship has already been verified by a different state or federal agency to be re-verified. It only serves to increase the burden on the eligibility process. The same applies for applicants whose citizenship is not in doubt but who are simply waiting for receipt of a birth certificate. As the Inspector General for HHS found in its study last year, there has been no significant fraud involving illegal aliens improperly

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[1] Eunice Moscoso, "Bill Adds Citizen ID Test for Medicaid," Cox News Service, January 19, 2006.
[2] Robert Pear, "Medicaid Rules Toughened on Proof of Citizenship," *The New York Times*, June 5, 2006.
[3] George W. Bush, *Statement on Signing the Deficit Reduction Act*, 42 Wkly. Comp. Pres. Docs. 213 (Feb. 8, 2006).

receiving Medicaid.[4] By providing coverage for an interim period for people who meet all eligibility criteria but whose citizenship verification is pending, there is little risk of fraud or abuse, and Medicaid can achieve its mission of providing help for those in need. In keeping with the legislative intent behind the DRA, the Final Rule should enroll Medicaid applicants while citizenship verification is pending.

(ii) **CMS has also not fully exercised the authority granted by the DRA (§6036(x)(3)(C)(v)) to specify additional documents which prove citizenship and identity**. The Department of Justice has suggested additional documents as reliable proof of citizenship, including religious records recorded within three months of birth, early school records showing a U.S. place of birth, statements from U.S. consular officials, and any other documents that indicate U.S. citizenship.[5] In accordance with the statutory directive to establish additional documents as reliable proof of citizenship, CMS should expand the list of acceptable documentation.

## D. Foster Children Should Not be Required to Provide Citizenship Documentation Because They Are Exempt From the Statute

The Interim Final Rule requires that low-income children in foster care under Title IV-E who are receiving Medicaid must have documentary evidence of citizenship. 71 Fed. Reg. at 39216. This is a severe departure from statutory guidelines articulated in the DRA and threatens the health of foster children, who have a heightened need for medical care.

**(i) First, the statutory authority for the Interim Final Rule, Section 6036 of the DRA, provides an exception for children who receive assistance under Title IV-E. Section 6036 places documentation requirements on those who declare "under Section 1137(d)(1)(A) [of the Social Security Act] to be a citizen or national of the United States...." §6036(a)(22).** Section 1137(d)(1)(A) requires citizenship verification only for benefit programs listed in subsection (b). While Section 1137(b)(2) identifies Medicaid as such a program, significantly, subsection (b) does *not* mention Title IV-E as an impacted program. Therefore, Title IV-E is not identified as a program that is subject to the verification requirements. Once children receive assistance under Title IV-E, they automatically receive Medicaid without further application procedures. The Interim Final Rule ignores this statutory exemption and instead requires a redundant and damaging citizenship documentation requirement for foster children. CMS should revise the Interim Final Rule to recognize the express statutory exemption of Title IV-E foster children from the citizenship documentation requirements.

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[4] HHS Office of the Inspector General, "Self-Declaration of U.S. Citizenship Requirements for Medicaid," July 2005. *Also found at* http://oig.hhs.gov/oei/reports/oei-02-03-00190.pdf.
[5] 63 Fed. Reg. 41681 (Aug. 4, 1998).

**(ii) Second, it has been well documented that children living in foster care experience a very high rate of chronic physical, mental, developmental and behavioral conditions that impair functioning and fundamentally threaten proper growth and development.**[6] These children are among the most vulnerable members of our society, and many of them have already been victims of abuse or neglect. States verify the citizenship of many children in foster care when they determine eligibility for federal foster care payments. Yet the Interim Final Rule requires a foster child's citizenship to be proven again, and denies Medicaid coverage until the documentation requirement is met.

**(iii) Obtaining a birth certificate for foster care children can be especially difficult. Many of these children have scattered and chaotic family backgrounds.** Furthermore, foster care children may live in a state other than the state in which they were born and foster parents of such children may not know where to apply to get their child's birth certificate. Even after foster parents do apply for the certificate, they must wait for extended periods of time until the government agency is able to provide a certified copy. In sum, many foster care children will be forced to go without health care, even though they are fully eligible for Medicaid.

## E. Medicaid Records of Birth Should Suffice as Proof of Citizenship and Identity for Newborns

**(i) Both the statute and legislative statements stress that flexibility should be emphasized. As it is currently written, the Interim Final Rule is rigid, inefficient and heavily burdensome on bureaucratic agencies.**

This policy is extremely problematic because it creates additional paperwork and potential delays or loss of coverage for infants, many of whom will have immediate health care needs. The Interim Final Rule prohibits the use of Medicaid records of birth as adequate documentation, even though the state Medicaid agency has paid for the birth in a U.S. hospital. 71 Fed. Reg. at 39216.

## F. The Final Rule Should Include a Hardship Provision to Account for Personal and Natural Disasters

**(i) The Final Rule should contain a hardship exception for individuals who have experienced natural disasters such as hurricanes, flooding, and house fires, and also personal disasters such as domestic violence victims who have fled their home and possessions.** The hardship exception should also extend to individuals who are homeless,

[6] Mathematica Policy Research, Inc., *Children in Foster Care: Challenges in Meeting Their Health Care Needs Through Medicaid*, March 2001.

incapacitated, or who have several mental illness. Otherwise, these individuals will be deprived of critical medical care because they are unable to supply documentation. While 42 C.F.R. §§ 435.407(g) and 436.407(g) properly require states to assist populations with "incapacity of mind or body," many individuals require more than state assistance. Instead, the Final Rule should include a hardship exception to protect these individuals and ensure that they receive the medical care they need. This is particularly true if applicants are not afforded a reasonable opportunity period during which time they receive Medicaid. There needs to be a hardship provision in the Interim Final Rule to deal with natural disasters that, as we now know from Hurricane Katrina, can leave individuals without basic necessities, let alone a paper trail to qualify for life-sustaining services like Medicaid.

## II. Provisions of the Interim Final Rule with Comment Period

### A. The Hierarchy of Acceptable Documentation Promotes an Inefficient and Overly Restrictive Eligibility Process

**(i) The Interim Final Rule's hierarchical list of acceptable citizenship documentation means that eligible citizens will be denied Medicaid benefits, even if they do have some proof of U.S. citizenship.** CMS should eliminate the hierarchical list of acceptable citizenship documentation and instead allow States to accept any of the listed documents as proof of citizenship.

Section 6036 gives CMS the authority and flexibility to implement its directives without violating the Medicaid Act, allowing CMS to construct a system under which no citizen would be barred from the program due to inability to produce a specific document. CMS should use this authority and allow Medicaid applicants to produce any and all corroborating documents that support their declaration of citizenship, and, as a last resort, rely on an uncontradicted self-declaration to show citizenship. This would comply with the congressional intent that there be a heightened focus on citizenship verification, while also fulfilling the express statutory directive not to deny benefits to citizens. Nothing in Sec. 6036 requires the current hierarchical approach that requires individuals to demonstrate that they do not have documents in one level before using documents in another. The statutory language gives the Secretary of HHS broad latitude to specify a variety of documents which prove citizenship, and the legislative history clearly indicates that Congress did not intend for the requirements to be implemented rigidly. The Final Rule should dispense with the hierarchy and allow Medicaid applicants and recipients to produce *any* documentary evidence of citizenship.

As the Interim Final Rule currently stands, third level evidence can only be used if primary or secondary evidence "cannot be obtained." 71 Fed. Reg. at 39218-19. The

most logical interpretation of this statement is that even if an applicant has *several* pieces of third or fourth level evidence of citizenship, a caseworker would be forced to make the applicant apply for a birth certificate, and delay eligibility while that request is being processed. In this scenario, where there may be several hospital or public records documenting the applicant's birth, there is no doubt as to the applicant's citizenship. States, which after all have a financial stake in accurate determination of eligibility, should be given the authority to make a reasonable judgment regarding acceptable documentation, rather than imposing on them a rigid, hierarchal process.

## B. Requiring Only Original or Certified Copies Unwisely Encourages Applicants and Recipients to Turn Over Documents That Are Best Left in Their Own Possession

**(i) The Interim Final Rule currently requires states to accept only originals or certified copies of documentary evidence. 71 Fed. Reg. at 39219. This is an overly burdensome requirement that has little impact on the reliability of a document.**

Importantly, Sec. 6036 does not require that documentation be an original or certified copy. Instead, CMS should allow applicants and recipients to submit copies of these documents. No other means of documentation requires originals. The Interim Final Rule itself states that the eligibility and redetermination process is "ordinarily conducted by skilled interviewers who are trained and skilled in the review of documents...." These skilled caseworkers surely have the ability to identify questionable copies of documents.

While there is no in-person requirement to apply for Medicaid (71 Fed. Reg. at 39216), the Interim Final Rule is essentially forcing applicants and recipients to either make an in-person appearance or *mail in original or certified copies of documents*. The hierarchical structure of acceptable documents requires many applicants and recipients to obtain a passport or birth certificate, both of which are costly and time-intensive to obtain. These citizenship documents, as well as identity documents such and driver's licenses and photo id cards, are exactly the types of documents CMS should encourage applicants and recipients to keep in their personal possession, rather than send through the postal system. It is likely that most applicants and recipients will be reluctant to mail in expensive documents for which they have been waiting weeks, or which they need on a daily basis. Additionally, if such documents are lost in the mail, the applicant must re-apply for them, increasing the time eligible applicants must wait to receive Medicaid.

This provision 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. Such arrangements also allow for better

program access for working people. These effective efforts would be seriously undermined by requiring original documents to prove citizenship. As original documents are not required by Sec. 6036, states should be permitted to accept copies of documents to satisfy the documentation requirement

## C. Special Identification Requirements for Children Should Apply to All Children Under Age 18 and Disabled Individuals (§§ 435.407(f) & 436.407(f))

### (i) Special Identification Requirements for Children Should Apply to All Children Under Age 18 Because Many 16 and 17 Year Olds Also Lack ID

CMS should expand special identification rules for children under the age of 16 to include all children under the age of 18. Though some children over 16 may have photo identifications from their high schools, this is not the case for many children. Children who are home schooled or sick and unable to regularly attend school will certainly not receive photo identification. Special educational, religious, rural or other small schools may also not provide photo identification. The Interim Final Rule allows children under 16 to obtain coverage without photo id, but denies this flexibility to older children without a sound reason. All children under 18 may have trouble producing photo identification if their school does not provide these IDs and the Final Rule should reflect this fact by allowing alternative means of verifying identity.

If a child's school does not provide ID cards and the child is 16 and over, she may be unable to provide proof of identity for Medicaid under the current Rule. Many states do not permit teenagers to drive until they are at least 16 and a half, and still other states require drivers to be at least 17. Thus driver's licenses are not a readily available form of identification. Moreover, many teenagers, especially those from low-income families, do not have the opportunity to learn how to drive and receive a driver's license. For these older children with no school ID and no driver's license, there is no readily available form of photo identification and yet they are not covered by the special identification requirements for children in the Interim Final Rule.

Therefore, CMS should extend the special identification rules for children to include 16 and 17 year olds, and allow school records and affidavits to suffice as proof of identification for all children under 18. This exception would be in accord with the statutory language of the DRA as well. The DRA specifically references the Immigration and Nationality Act in §6036(x)(2)D)(i).[7] The INA, in turn, is implemented by 8 C.F.R. §274a.2(b)(1)(v)(B)(3), which allows minors *under 18* to have a parent or guardian fill out a section on the Form I-9 if the minor does not have any of the required identity documents for employment. Therefore, recognizing that many children under 18 do not have any form of photo identification, the special identification rules for children should extend to all those under 18.

[7] 8 U.S.C.A. § 1324a(b)(1)(D).

**(ii) Identification Affidavits Should Be Accepted for Minors under the Age of 18 Even if a Citizenship Affidavit was Submitted, Because Many Minors Lack Both Citizenship and Identification Documentation**

Identification affidavits for children should be accepted even if a citizenship affidavit was provided. Many children lack both citizenship and identification documents. This is especially true for families who are homeless or have been victims of natural disasters or domestic violence. CMS has acknowledged that many children do not have photo identification and therefore established special identification verification rules. 71 Fed. Reg. at 39219. Furthermore, between 1.4 and 2.9 million children do not have a birth certificate or passport readily available.[8] Of these children, many will have difficulty obtaining a birth certificate or other documentary evidence of citizenship. Therefore, in those circumstances where a child has neither proof of citizenship nor of identity, the child's parent or guardian should be permitted to submit affidavits attesting to both citizenship and identity, so that all children eligible for Medicaid can receive the medical attention they need.

**(iii) The Identification Requirement Exception Should Also Apply to Disabled Individuals, Who May Also Have Increased Trouble Providing Proof of Identity**

The special identification requirements outlined in the Interim Final Rule should also apply to disabled individuals as per 8 C.F.R. §274a.2(b)(1)(v)(B)(4), recognizing that disabled individuals may have difficulty proving identity. It is particularly important that disabled individuals receive the medical care they require without encountering unnecessary delays in the Medicaid application or recertification process. The DRA specifically references section 274A(b)(1)(D) of the Immigration and Nationality Act[9] to provide acceptable identity documentation. The regulations which implement this provision recognize that individuals with disabilities often have difficulty presenting proof of identification, 8 C.F.R. §274a.2(b)(1)(v)(B)(4), and provides that individuals with handicaps[10] who are unable to provide specified identity documents may designate this difficulty on the Form I-9 and simply have their employer sign another section on the same form. The Final Rule should adopt this approach and recognize the difficulty the identification requirements present for disabled individuals and therefore permit third parties to submit identity affidavits on the disabled applicant/recipient's behalf.

**D. CMS Should Include Additional Documents as Evidence of Citizenship and Identity In Order to Allow U.S. Citizens a Full Opportunity to Prove Their Citizenship**

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[8] Center on Budget and Policy Priorities, *supra* n. 1, at 1.

[9] 8 U.S.C.A. § 1324a(b)(1)(D).

[10] 8 C.F.R. § 274a.2(b)(1)(v)(B)(4)(i)-(iii) defines a handicapped person as one who "has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such impairment."

**(i) It is critically important to maintain flexible documentation standards so that eligible Americans can receive Medicaid.** Many applicants or recipients may not have birth certificates but may be able to provide proof of citizenship through other documents, such as a religious document. When there is no doubt as to a person's citizenship, it is in keeping with the intention of the DRA to enroll this individual on Medicaid.

CMS has solicited comments and suggestions for additional documentation that may be accepted for proof of citizenship and identity. 71 Fed. Reg. at 39219. The DRA encourages the Secretary of Health and Human Services to specify other reliable documents that prove citizenship or nationality. §6036(x)(3)(B)(v).

**(ii) In order to have a more flexible and efficient verification process, the following documents should be included in the Final Rule:**

- Baptismal record
- Family Bible record
- Certificate of circumcision
- Other religious documents indicating place of birth
- Court records of parentage, child custody, juvenile proceedings, or child support
- Early school records indicating place of birth
- Voting records
- Billing, rent, or mortgage records
- Wills and probate records

**(iii) New York has required proof of citizenship for Medicaid applicants for years, and CMS should draw on its significant implementation experience.** Among New York's most commonly accepted form of documentation is a baptismal record recorded within three months of birth.[11] However, the Interim Final Rule does not permit the acceptance of religious documents, such as a baptismal record or Family Bible record, though many families may be able to produce this documentation in the absence of a birth certificate or other proof of citizenship.

The interim guidance from CMS to State Medicaid Directors on June 9, 2006, indicated that CMS's list of acceptable documentation "generally mirrors" New York's practice. However, these key omissions mark a clear difference between what New York has been accepting and what CMS has designated as acceptable proof of citizenship. This is particularly so with the acceptance of religious records, which is among the most common proof of citizenship accepted for Medicaid in New York. This glaring omission should be resolved so that U.S. citizens have

[11] Kaiser Commission , *supra* n. 2, at 11.

the best possible opportunity to prove their citizenship in order to receive the Medicaid coverage for which they are eligible.

Churches and other religious organizations may be able to produce proof of citizenship more quickly than a state agency overburdened with birth certificate requests. Therefore, accepting these records as proof of citizenship is an efficient and accurate way to enroll applicants into Medicaid without creating a bureaucratic breakdown. Allowing religious records indicating place of birth to suffice for proof of citizenship may help resolve the difficulty created for the many Americans, often born in rural or formerly segregated areas, for whom a birth certificate was never created.[12] Religious records are, by their very nature, reliable especially when they were created at or near the time of birth, before any applicants knew of any future changes to Medicaid citizenship documentation requirements.[13]

Other documentation should be included as acceptable proof of citizenship, including court records of parentage, juvenile proceedings, or child support. New York also currently accepts these court documents to suffice for proof of citizenship. There is no reason to believe that court documents, produced under scrutiny and under oath, would provide inaccurate citizenship information.

**E. CMS Should Not Limit Acceptance of Citizenship Proof to Primary and Secondary Evidence, or U.S. Citizens Eligible for Medicaid will be Improperly Denied Coverage**

**(i) CMS should work towards *expanding* the types of citizenship documentation accepted, rather than *limiting* the ways in which eligible U.S. citizens can prove their citizenship in order to receive Medicaid.** The Interim Final Rule suggests that the exception provided for SSI and Medicare recipients sufficiently protects those who may have trouble proving their citizenship for Medicaid purposes. 71 Fed. Reg. at 39220. Although this is an important exception, many other individuals who are otherwise eligible for Medicaid will have difficulty proving their citizenship, even if all four tiers of documentation are accepted.

**(ii) Millions of Americans do not have a U.S. passport or birth certificate in their possession.**[14] Though some of these individuals may be able to successfully request a birth certificate from the state agency, those without knowledge of their date or place of birth would

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[12] A recent study by the Center for Budget and Policy Priorities found that 8.1% of U.S.-born adults with income less than $25,000/year do not have a birth certificate or passport available at home. This figure is even higher among African-Americans (8.9%), Americans in rural areas (9.1%), and those without a high school diploma (9.2%). Center on Budget and Policy Priorities, *supra* n. 1, at 1.

[13] New York currently requires that Family Bible records show the date and place of birth, be created within the first five years of the applicant's life, and be submitted along with a Letter of No Record if there is no available birth certificate.

[14] *Of Medicaid recipients alone*, approximately 1.7 million U.S.-born adults and between 1.4 and 2.9 million U.S.-born children do not have a U.S. passport or birth certificate in their possession. Center on Budget and Policy Priorities, *supra* n. 1, at 7.

be unable to obtain their birth certificate. Older African-Americans, many of whom were born in segregated states, were not permitted to use white-only hospitals and thus often do not have a record of their birth on file. One study estimated that 20% of African-Americans born in 1939 and 1940 lack birth certificates.[15] Other people may simply not know exactly where they were born. The elderly and incapacitated are particularly unlikely to be able to provide sufficient information about their birth.

If an applicant is unable to obtain his or her birth certificate to use as secondary evidence of citizenship, the applicant will also be unable to apply for a passport to use as primary evidence because passport applications require the presentation of a birth certificate.[16] Though other documentation in addition to birth certificates is listed as secondary evidence, these documents are rare and do not apply to most Americans, especially those in low-income families.

If CMS were to reduce the acceptable citizenship documentation to only primary and secondary evidence, it would leave many Medicaid applicants with no other option than presenting a birth certificate. For the millions of Americans who do not have birth certificates or are unable to obtain them, being permitted to present the third and fourth level documents as proof of citizenship is the only way they will be able to receive the medical care for which they are eligible.

**F. <u>The Process to Submit an Affidavit Proving Citizenship is Overly Burdensome (§§435.407(d)(5) and 436.407(d)(5))</u>**

**(i) Under the Interim Final Rule, the affidavit policy is overly burdensome, and could be administered in such a way as to violate the Medicaid Act.** Allowing written affidavits to suffice for proof of citizenship is key to ensuring that eligible citizens without documentary proof of citizenship can enroll in Medicaid.

**(ii) Affidavits should not be permitted only in "rare" circumstances, but instead whenever appropriate.** That is, when an individual cannot produce documentary evidence within a "reasonable opportunity" period and has cooperated with the local welfare office, she should be permitted to submit affidavits from others attesting to her citizenship. The Final Rule should reflect the reality that many Americans will be unable to produce documentary evidence of citizenship, and permit affidavits whenever appropriate.

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[15] S. Shapiro, *Development of Birth Registration and Birth Certificates in the United States*, Population Studies, 4: 86-111, 1950.

[16] Passports also cost up to $157, which is prohibitively expensive for most Medicaid applicants or recipients. Kaiser Commission *supra* n. 2, at 14.

**(ii) Requiring two affidavits from individuals possessing personal knowledge of the applicant/recipient's birth is overly burdensome, particularly for the elderly who may not have peers or elders to attest to their birth.** Therefore, if an applicant/recipient does not possess and cannot obtain other documentary evidence of citizenship, the applicant/recipient should be allowed to present only one affidavit, either by a third party or by the applicant/recipient. Also, requiring that the affiant prove his or her U.S. citizenship in order to present an affidavit presents serious difficulties for those who do not have proof but are entirely capable of attesting to the applicant/recipient's citizenship.

**(iii) The requirement that only one of the two affiants be related to the applicant/recipient is unrealistic, as most people acquainted with the details of one's birth are indeed relatives.** The goal is to reliably establish citizenship, and if two relatives are able to swear under penalty of perjury that the applicant/recipient is a citizen, then this goal is met. CMS has offered no reason why only one affiant may be a relative, and this policy is not required by statute, nor by any other agency that verifies citizenship. If the Interim Final Rule's policy of requiring two affidavits is maintained, there should be no restrictions on who could submit them.

**(iv) Requiring a third affidavit from the applicant/recipient or a third party attesting to the reason for the unavailability of documentary evidence is unnecessarily duplicative if the other affidavits explain the lack of documentary evidence.** Requiring multiple affidavits that all serve the same purpose generates bureaucratic waste and is at odds with the Paperwork Reduction Act.[17]

**(v) More importantly, requiring unnecessary affidavits presents additional burdens and obstacles for those applying for or receiving Medicaid.** Therefore, affidavits should be accepted as proof of citizenship whenever the applicant/recipient is unable to secure other documentary evidence of citizenship. Only in this way can CMS ensure that every eligible U.S. citizen is afforded Medicaid in compliance with the Medicaid Act.

## G. CMS Should Implement Flexible Guidelines Regarding Acceptable Types of Documentary Evidence of Citizenship (§§435.07 and 436.407)

Sections 435.407(b)(7) and 436.407(b)(7) currently allow only American Indian Cards of the Texas Band of Kickapoos to be used as proof of citizenship. All American Indian Cards should be sufficient proof, particularly because these cards themselves indicate that they are proof of citizenship. American Indian Cards are issued by the Department of Homeland Security and there is no reason to doubt their accuracy. If tribal identification cards are not accepted as evidence of citizenship and identity, many Native Americans may not be able to provide other

[17] The purpose of the Paperwork Reduction Act is to "minimize the paperwork burden for individuals [and] . . . state . . . governments . . . resulting from the collection of information for the federal government." 44 U.S.C.A. § 3501(a). The elaborate affidavit requirement is directly contrary to this stated purpose.

means of satisfactory citizenship documentation. Some Native Americans may not have been born in hospitals and there is therefore no official record of their birth. The National Association of State Medicaid Directors has stated that American Indian identification cards are reliable proof of citizenship.[18] Therefore, CMS should accept tribal identification cards as primary documentary evidence of citizenship and identity.

Sections 435.407(c)(1), 436.407(c)(1), 435.407(c)(2), 436.407(c)(2), 435.407(d)(4), and 436.407(d)(4) lists records from hospitals, medical providers, and insurance companies, as acceptable proof of citizenship. Yet the Interim Final Rule requires that these documents be created at least five years before the *initial* application date. This requirement is arbitrary and overly burdensome because the initial application date may have been decades ago, thus depriving chronically poor recipients of the opportunity to use these documents to prove their citizenship. CMS should allow applicants and recipients to use contemporaneous documents to prove their citizenship. As noted earlier, caseworkers are skilled at document review and will be able to detect any fraudulent documentation.

In the alternative, CMS could also allow records that were created five years before the most recent, post DRA application date. This way, an individual who has been receiving Medicaid for decades but has proof of citizenship pre-dating a Medicaid redetermination date would be permitted to use these documents to prove citizenship and maintain Medicaid coverage. Under this approach, hospitals, medical providers, and insurance companies would not have to attempt to hunt down records that have likely been lost or destroyed. Since the record would have been created at least five years before the Medicaid citizenship verification changes, there would be little risk of applicants fraudulently creating documents to satisfy the new requirements.

## III. Collection of Information Requirements

**(i) In light of the aforementioned difficulty with obtaining the required citizenship documentation, the Interim Final Rule's estimated time needed to acquire these documents is wholly inaccurate.** The Interim Final Rule estimates that it would take an individual ten minutes to acquire and provide the acceptable documentary evidence, and it would take states five minutes to obtain the documents, verify citizenship and maintain current records on each individual.

If an individual had the necessary information to obtain a birth certificate, he or she would first have to find the correct form with which to make the request, complete the form, purchase a money order, send it, wait for the state agency to process his request, and then, since he will likely be hesitant to mail in the certificate, make an appointment with his caseworker to bring in

[18] Ltr. from Jerry W. Friedman, Pres., American Public Human Services Association and Nancy V. Atkins, Chair, National Association of State Medicaid Directors, to Dennis Smith, Director, CMS (June 21, 2006).

the documents. This entire process will take significantly longer than ten minutes. Even discounting the waiting time for the documents, this process will likely take many hours. Similarly, it will take state workers significantly longer than five minutes to assist individuals in requesting documentation (especially when the individual was born out of state or does not recall her place of birth) and verifying this documentation once it arrives. CMS should include a more realistic estimate of the time required of individuals and states to comply with these new requirements.

## IV. Conclusion

The goal of the DRA and the Medicaid Act is to preserve the Medicaid program's integrity while ensuring that no eligible citizen be denied Medicaid benefits. The current Interim Final Rule fails to meet this goal with its rigid structure, inexplicable document requirements and significant departure from legislative intent. Only by making the above recommended changes can CMS ensure that all eligible citizens receive the medical coverage they desperately need.

Thank you for the opportunity to comment on the Interim Final Rule. We look forward to your response.

Very truly yours,

Nan Feyler, J.D., M.P.H.
Executive Director

**Submitter :** Mrs. Jill Hanken **Date:** 08/10/2006

**Organization :** Virginia Poverty Law Center

**Category :** Attorney/Law Firm

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Ms. Phyllis Snyder **Date:** 08/10/2006

**Organization :** National Council of Jewish Women

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment.

CMS-2257-IFC-170-Attach-1.DOC

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August 10, 2006

Mark B. McClellan
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
PO Box 8017
Baltimore, MD 21244-8017

Re: CMS-2257-IFC

Dear Dr. McClellan:

I am writing on behalf of the National Council of Jewish Women (NCJW) to submit comments on the Interim Final Rule regarding Citizenship Documentation Requirements issued pursuant to section 6036 of the Deficit Reduction Act of 2005 (DRA), which requires that states obtain satisfactory documentation of citizenship from applicants in place of the self-attestation of citizenship and identity which previously applied.

Since its inception in 1893, NCJW has been concerned with the welfare of women, children, and immigrants. In our most recent organizational resolutions, we pledged to work for "quality, comprehensive, nondiscriminatory health care coverage and services, including mental health, that are affordable and accessible for all." While aspects of the interim final rule are indeed helpful, we are particularly concerned that others could prove unnecessarily burdensome for those most in need of government assistance in obtaining essential medical care.

First, a child whose birth in a US hospital was paid for by Medicaid need not be subject to standard documentation requirements. In these cases, the state government would have already confirmed citizenship in order to pay the original hospital bill. As such, no additional proof of citizenship should be necessary. Requiring additional documentation places a newborn at an unnecessary risk for a delay in coverage. The state Medicaid agency's record of payment for the birth of an individual in a US hospital should be adequate evidence of both citizenship and identity. (See 435.407(a).)

Second, that new applicants cannot receive benefits until their citizenship is documented—while those individuals who already receive Medicaid benefits may continue to do so while their citizenship is established—is both arbitrary and unfair. Health care is not something that can be provided retroactively like back wages; rather

it is needed in a timely fashion. Furthermore, delaying coverage for these individuals will reduce the likelihood that individuals and families will seek preventive care, a fact that could strain the system when preventable conditions become emergencies that must be treated. New applicants and existing recipients should both receive services while documentation is pending. (See 435.407(j).)

Third, the identification requirements should provide a true safety net for those who cannot provide the documentation required. Victims of a natural disaster, homeless individuals, mentally ill Americans, and others with legitimate problems producing documentation should not fall through the cracks. Rather, such persons should be able to provide whatever proof they can of their citizenship and explain why the required documentation is unavailable to them. States should be able to accept such reasonable proof as is already permitted in the SSI program. (See 435.407(k).)

Fourth, the documentation requirements should be realistic and only as onerous as is necessary. Because many Medicaid-eligible citizens do not have passports (which now cost $97 to obtain for adults and $82 for those under 16), most applicants will rely on second and third tier documents as defined by the proposed rule. Copies of these documents should suffice; otherwise, applicants and beneficiaries will have to make unnecessary visits to state offices with original or certified documents, further delaying the collection of benefits. Though the regulations state that applicants need not appear in person, many individuals will not mail in an original birth certificate or other original document and rely on the Medicaid agency to return them. See 435.407(h)(1).)

Medicaid recipients are among the most vulnerable in our society. They include children, the homeless, the elderly, mental health patients, and many, many other Americans who lack the resources to pay for their own care. While some are lucky enough to have an active advocate on their behalf, volunteer or otherwise, many are adrift—alone and isolated. The requirements for documenting citizenship should be reasonable and realistic given these circumstances. We urge the Department of Health and Human Services to revisit the issues we raise above and make the changes necessary to craft guidance that is workable for both recipients and state agencies alike.

Sincerely,

Phyllis Snyder

Phyllis Snyder
NCJW President

**Submitter :** Mr. Richard Weishaupt **Date:** 08/10/2006

**Organization :** Community Legal Services, Inc.

**Category :** Attorney/Law Firm

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment.

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

Provisions of the Interim Final Rule with Comment Period

See attachment.

**Regulatory Impact Statement**

Regulatory Impact Statement

See attachment.

CMS-2257-IFC-171-Attach-1.DOC

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August 10, 2006

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

**RE: CMS-2257-IFC, Citizenship Documentation Requirements for Medicaid Program**

To Whom It May Concern:

Community Legal Services ("CLS") is a non-profit organization that provides free legal services to low-income individuals in the Philadelphia area. Every year we represent hundreds of individuals who are having difficulty accessing the Medicaid program and assist many individuals who have lost their proof of identity and other crucial papers as a result of theft, homelessness, natural and personal disasters and domestic violence. Virtually all of our clients, who are all low income people, depend on the Medicaid program for their health insurance.

We also write on behalf of many organizations who share our concerns regarding the Interim Final Rule, including Nationalities Service Center, Project H.O.M.E., Philadelphia Citizens for Children and Youth, Pennsylvania Catholic Health Association, Pennsylvania Catholic Conference, Pennsylvania Partnerships for Children, Homeless Advocacy Project, Greater Philadelphia Coalition Against Hunger, Congreso de Latinos Unidos, and Maternity Care Coalition.

Nationalities Service Center works with immigrants and refugees, protecting their legal rights and helping them to participate fully in American society. Project H.O.M.E. provides a full range of services for chronically homeless people, including health care, education, and employment. Philadelphia Citizens for Children and Youth (PCCY) advocates on behalf of Philadelphia's children on issues including medical care, housing, child care, and financial support. The Pennsylvania Catholic Health Association is a statewide organization whose membership comprises Catholic hospitals, nursing long-term care facilities, numerous multi-facility health systems, sponsoring religious congregations, and dioceses. Pennsylvania Catholic

Conference is the public affairs arm of Pennsylvania's Catholic bishops and dioceses, and works to ensure access to health care. Pennsylvania Partnerships for Children conducts research and mobilization efforts to improve the health care, education, and well-being of children in Pennsylvania. The Homeless Advocacy Project (HAP) provides free legal services to homeless individuals in Philadelphia, many of whom lack photo identification and suffer from mental health problems which preclude them from remembering details of their birth. The Greater Philadelphia Coalition Against Hunger fights hunger in Southeastern Pennsylvania through education, advocacy, and outreach, including improving access to the Food Stamp Program. Congreso de Latinos Unidos is a community based organization serving Philadelphia's Latino community by improving access to health care, combating poverty, and strengthening education. Maternity Care Coalition works with high-risk families to improve maternal and child health and advocates for increased services on behalf of mothers and their children.

These organizations have extensive experience working with the individuals whom the new documentation requirements will affect the most. We appreciate the opportunity to comment on CMS-2257-IFC ("Interim Final Rule") on behalf of thousands of clients regarding citizenship documentation requirements for Medicaid benefits effective July 1, 2006.

## I. General Comments

There are currently 1.8 million recipients of Medicaid in Pennsylvania. The new requirements proposed in the Interim Final Rule have the potential to force a significant number of these recipients, who are U.S. citizens and fully eligible for Medicaid, to go without health care, either because they are waiting for paperwork from an overwhelmed agency or are unable to get the paperwork.

CLS commends CMS's decision to exempt low-income elderly people and individuals with disabilities who are eligible for both Medicare and Medicaid or are receiving Supplemental Security Income (SSI) benefits from the documentation requirements. As these individuals have already been subject to documentation requirements, it is only logical that they not be forced to do so again. Additionally, the preamble to the Interim Final Rule correctly states that recipients of Medicare and SSI, by virtue of being either aged, blind or disabled, would have a particularly difficult time obtaining the necessary documentation. 71 Fed. Reg. 39214, 39216 (July 12, 2006). In doing so, CMS recognizes burdens that the new rules impose not just on these groups but on the entire population. CMS should extend these rationales to *all* applicants who have already proven their citizenship, such as foster children and Native Americans, and to other populations that would have particular difficulty meeting the new requirements.

We also commend CMS's decision to give states the option of conducting upfront data matches with state vital records to obtain birth certificates. This will prevent low-income individuals from having to go through the unwieldy and costly process of obtaining and submitting their certificates. However, this option will primarily help individuals who are applying for or receiving Medicaid in the state where they were born. It is unlikely it will help many people born in other states. Moreover, all applicants or recipients will still have to fulfill the Interim Final Rule's identity requirements, regardless of where they were born.

Electronic data matching is particularly important given the difficulty individuals are likely to experience when requesting documents such as birth certificates, and the resulting delay in obtaining Medicaid benefits. CMS should take the lead in developing a system that would allow states to verify US birth by computer. A national approach is needed if states are to participate in a system that allowed for computer verification of birth in the US. Consideration must also be given to the fact that states do not now have the infrastructure to do cross-matching with other states, which could lead to a disruption of Medicaid benefits despite the fact the person has been found eligible for Medicaid in one state and subsequently moved to another state. Certainly the determination of the first state should be adequate proof for any new state to which the person relocates.

While CMS has taken some good first steps towards ensuring that the Interim Final Rule will not deny eligible U.S. citizens from receiving much-needed medical coverage, there are still significant barriers that need to be remedied in order to reach this goal.

A. Denying Medicaid for Applicants Waiting for Documentation or Who are Unable to Get Documentation Will Prevent Eligible Citizens from Receiving Medicaid Benefits

The Medicaid Act clearly requires that the Medicaid program not be administered in a way that denies benefits to any citizen. 42 U.S.C. §1396a(b)(3). New applicants should be immediately enrolled in Medicaid, provided that they are otherwise eligible, while being given a "reasonable opportunity" to present the required documentation. Applicants who are making a good faith effort to secure documentation and cooperate with their local welfare office should be given the Medicaid benefits for which they are eligible.

Securing the required documentation can be a lengthy and expensive process. Few low-income Americans have passports, and many do not have copies of their birth certificates. Assuming that an applicant knows the date and location of her birth, obtaining her birth certificate may take over a month and cost up to $70.[1] The process of obtaining a birth certificate can also be a lengthy one. Furthermore, the National Association for Public Health Statistics and Information Systems estimates that the new Medicaid citizenship verification requirements may increase the number of birth certificate requests by up to 50%, overwhelming state vital records offices and causing "significant delays in processing birth certificate applications."[2] For applicants who do not know the date and/or location of their births, obtaining their birth certificate is even more difficult, and it may take months or even years to secure alternate documentation of their citizenship. Under the Interim Final Rule these Medicaid applicants would be denied medical coverage as they search for documentation that may not even exist.

Under the Interim Final Rule, even if an applicant has expeditiously requested a birth certificate in an effort to comply with the new requirements, she may not receive Medicaid for an extended period of time due to the inevitable backlog of birth certificate applications, and the resulting delay in processing an applicant's request for a birth certificate. The result of the Interim Final

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[1] Kaiser Commission on Medicaid and the Uninsured, *Citizenship Documentation Requirements in the Deficit Reduction Act of 2005: Lessons from New York* at 14, June 2006 [hereinafter Kaiser Commission].

[2] Center on Budget and Policy Priorities, *Survey Indicates Deficit Reduction Act Jeopardizes Medicaid Coverage for 3 to 5 Million U.S. Citizens* at 7, Feb. 17, 2006 [hereinafter Center on Budget and Policy Priorities].

Rule is to keep citizens from receiving Medicaid even though they may have done everything possible to produce the necessary documentation.

The Interim Final Rule states that this policy is "no different than current policy regarding information which an initial applicant must submit in order for the State to make an eligibility determination." 71 Fed. Reg. at 39216. This simply is not true. The stringent citizenship documentation requirements are drastically different from the other information an applicant must provide when applying for Medicaid. Personal information such as income, family situation, and employment status are all within an applicant's control to provide, and this information is relatively easy to acquire. Conversely, an applicant must wait perhaps months to receive government documentation of citizenship, even if this applicant promptly applies for the proof upon seeking Medicaid. Therefore, requiring proof of citizenship before allowing applicants to receive Medicaid is a dramatic change in policy which is not mandated by statute. Many states allow applicants to verify eligibility with whatever is readily available and accept reasonable statements in the absence of documentary proof.

This change in policy is also unnecessary to ensure the integrity of the Medicaid program. An investigation by the Department of Health and Human Services' Office of Inspector General conducted last year found no significant fraud involving illegal aliens improperly receiving Medicaid.[3] Thus, placing applicants on Medicaid pending arrival of their requested citizenship documentation does not expose the Medicaid system to financial risk. The alternative is prohibiting otherwise eligible citizens from receiving Medicaid while they attempt to secure the necessary documents, at a time when they may need medical coverage the most.

New applicants otherwise eligible for Medicaid should not be denied coverage pending verification and instead should be enrolled in Medicaid and given a reasonable opportunity to present documents proving citizenship and identity. In fact, this was the approach followed in early drafts of the State Medicaid Directors Letter, where applicants were permitted a "reasonable opportunity" to present proof of citizenship, during which time FFP was available. This policy is more properly in line with the both the statutory language and the expressed legislative intent behind Section 6036 of the Deficit Reduction Act (DRA) and should be reflected in the Final Rule.

B. The Interim Final Rule is a Significant Departure from Both the Statute and the Express Legislative Intent

The rigid nature of the Interim Final Rule goes far beyond the DRA's statutory requirements and its drafters' legislative intent. For example, the DRA does not require a hierarchy of acceptable documentation or that applicants be denied Medicaid coverage pending citizenship verification. Both the language in Sec. 6036 and public statements made by the bill's sponsors, as well as the Presidential Signing Statement, indicate that the legislature and the executive did not intend for these requirements to be interpreted so strictly that eligible citizens would be denied their Medicaid benefits. Yet, in effect, this is exactly what the Interim Final Rule does.

[3] HHS Office of the Inspector General, "Self-Declaration of U.S. Citizenship Requirements for Medicaid," July 2005. *Also found at* http://oig.hhs.gov/oei/reports/oei-02-03-00190.pdf.

Representative Charlie Norwood, one of Sec. 6036's sponsors, has issued public statements that Sec. 6036 necessarily provided "wiggle-room" for CMS to be more flexible with documentation requirements.[4] Representative Norwood has also emphasized the need for flexibility to prevent particularly vulnerable populations from being "kicked off Medicaid."[5] Indeed, Sec. 6036(a)(2)(C) gives CMS the authority to exempt those "under which satisfactory documentary evidence of citizenship or nationality had been previously presented." Nonetheless, CMS has chosen not to exercise this authority and instead will require some populations that have already verified their citizenship, such as foster children receiving federal assistance or children whose birth was covered by Medicaid, to do so again. This policy directly violates two important government goals: making sure that those eligible receive vital medical coverage and reducing bureaucratic paperwork.

The President's public comments regarding the DRA also indicate that CMS should use its authority to streamline the Medicaid eligibility process. The President declared that "Medicaid will always provide help for those in need, but [will] never tolerate waste, fraud or abuse."[6] If the primary concern is eliminating fraud, then there is no benefit in requiring those whose citizenship has already been verified by a different state or federal agency to be re-verified. It only serves to increase the burden on the eligibility process. The same applies for applicants whose citizenship is not in doubt but who are simply waiting for receipt of a birth certificate. As the Inspector General for HHS found in its study last year, there has been no significant fraud involving illegal aliens improperly receiving Medicaid.[7] By providing coverage for an interim period for people who meet all eligibility criteria but whose citizenship verification is pending, there is little risk of fraud or abuse, and Medicaid can achieve its mission of providing help for those in need. In keeping with the legislative intent behind the DRA, the Final Rule should enroll Medicaid applicants while citizenship verification is pending.

CMS has also not fully exercised the authority granted by the DRA (§6036(x)(3)(C)(v)) to specify additional documents which prove citizenship and identity. The Department of Justice has suggested additional documents as reliable proof of citizenship, including religious records recorded within three months of birth, early school records showing a U.S. place of birth, statements from U.S. consular officials, and any other documents that indicate U.S. citizenship.[8] In accordance with the statutory directive to establish additional documents as reliable proof of citizenship, CMS should expand the list of acceptable documentation.

Both the statute and legislative statements stress that flexibility should be emphasized. As it is currently written, the Interim Final Rule is rigid, inefficient and heavily burdensome on bureaucratic agencies.

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[4] Eunice Moscoso, "Bill Adds Citizen ID Test for Medicaid," Cox News Service, January 19, 2006.
[5] Robert Pear, "Medicaid Rules Toughened on Proof of Citizenship," *The New York Times*, June 5, 2006.
[6] George W. Bush, *Statement on Signing the Deficit Reduction Act*, 42 Wkly. Comp. Pres. Docs. 213 (Feb. 8, 2006).
[7] HHS Office of the Inspector General, "Self-Declaration of U.S. Citizenship Requirements for Medicaid," July 2005. *Also found at* http://oig.hhs.gov/oei/reports/oei-02-03-00190.pdf.
[8] 63 Fed. Reg. 41681 (Aug. 4, 1998).

C. Foster Children Should Not be Required to Provide Citizenship Documentation Because They Are Exempt From the Statute

The Interim Final Rule requires that low-income children in foster care under Title IV-E who are receiving Medicaid must have documentary evidence of citizenship. 71 Fed. Reg. at 39216. This is a severe departure from statutory guidelines articulated in the DRA and threatens the health of foster children, who have a heightened need for medical care.

First, the statutory authority for the Interim Final Rule, Section 6036 of the DRA, provides an exception for children who receive assistance under Title IV-E. Section 6036 places documentation requirements on those who declare "under Section 1137(d)(1)(A) [of the Social Security Act] to be a citizen or national of the United States...." §6036(a)(22). Section 1137(d)(1)(A) requires citizenship verification only for benefit programs listed in subsection (b). While Section 1137(b)(2) identifies Medicaid as such a program, significantly, subsection (b) does *not* mention Title IV-E as an impacted program. Therefore, Title IV-E is not identified as a program that is subject to the verification requirements. Once children receive assistance under Title IV-E, they automatically receive Medicaid without further application procedures. The Interim Final Rule ignores this statutory exemption and instead requires a redundant and damaging citizenship documentation requirement for foster children. CMS should revise the Interim Final Rule to recognize the express statutory exemption of Title IV-E foster children from the citizenship documentation requirements.

Second, it has been well documented that children living in foster care experience a very high rate of chronic physical, mental, developmental and behavioral conditions that impair functioning and fundamentally threaten proper growth and development.[9] These children are among the most vulnerable members of our society, and many of them have already been victims of abuse or neglect. States verify the citizenship of many children in foster care when they determine eligibility for federal foster care payments. Yet the Interim Final Rule requires a foster child's citizenship to be proven again, and denies Medicaid coverage until the documentation requirement is met.

Obtaining a birth certificate for foster care children can be especially difficult. Many of these children have scattered and chaotic family backgrounds. Furthermore, foster care children may live in a state other than the state in which they were born and foster parents of such children may not know where to apply to get their child's birth certificate. Even after foster parents do apply for the certificate, they must wait for extended periods of time until the government agency is able to provide a certified copy. In sum, many foster care children will be forced to go without health care, even though they are fully eligible for Medicaid.

D. Medicaid Records of Birth Should Suffice as Proof of Citizenship and Identity for Newborns

The Interim Final Rule prohibits the use of Medicaid records of birth as adequate documentation, even though the state Medicaid agency has paid for the birth in a U.S. hospital. 71 Fed. Reg. at

[9] Mathematica Policy Research, Inc., *Children in Foster Care: Challenges in Meeting Their Health Care Needs Through Medicaid*, March 2001.

39216. This policy is extremely problematic because it creates additional paperwork and potential delays or loss of coverage for infants, many of whom will have immediate health care needs. Because the state Medicaid agency paid for the child's birth in a U.S. hospital, and the child is by definition a U.S. citizen, a Medicaid record of birth should be accepted as primary evidence of citizenship and identity.

E. The Final Rule Should Include a Hardship Provision to Account for Personal and Natural Disasters

The Interim Final Rule does not have a hardship provision to deal with natural disasters that, as we now know from Hurricane Katrina, can leave individuals without basic necessities, let alone a paper trail to qualify for life-sustaining services like Medicaid. The Final Rule should contain a hardship exception for individuals who have experienced natural disasters such as hurricanes, flooding, and house fires, and also personal disasters such as domestic violence victims who have fled their home and possessions. The hardship exception should also extend to individuals who are homeless, incapacitated, or who have several mental illness. Otherwise, these individuals will be deprived of critical medical care because they are unable to supply documentation. While 42 C.F.R. §§ 435.407(g) and 436.407(g) properly require states to assist populations with "incapacity of mind or body," many individuals require more than state assistance. Instead, the Final Rule should include a hardship exception to protect these individuals and ensure that they receive the medical care they need. This is particularly true if applicants are not afforded a reasonable opportunity period during which time they receive Medicaid.

## II. Provisions of the Interim Final Rule with Comment Period

A. The Hierarchy of Acceptable Documentation Promotes an Inefficient and Overly Restrictive Eligibility Process

The Interim Final Rule's hierarchical list of acceptable citizenship documentation means that eligible citizens will be denied Medicaid benefits, even if they do have some proof of U.S. citizenship. Section 6036 gives CMS the authority and flexibility to implement its directives without violating the Medicaid Act, allowing CMS to construct a system under which no citizen would be barred from the program due to inability to produce a specific document. CMS should use this authority and allow Medicaid applicants to produce any and all corroborating documents that support their declaration of citizenship, and, as a last resort, rely on an uncontradicted self-declaration to show citizenship. This would comply with the congressional intent that there be a heightened focus on citizenship verification, while also fulfilling the express statutory directive not to deny benefits to citizens. Nothing in Sec. 6036 requires the current hierarchical approach that requires individuals to demonstrate that they do not have documents in one level before using documents in another. The statutory language gives the Secretary of HHS broad latitude to specify a variety of documents which prove citizenship, and the legislative history clearly indicates that Congress did not intend for the requirements to be implemented rigidly. The Final Rule should dispense with the hierarchy and allow Medicaid applicants and recipients to produce *any* documentary evidence of citizenship.

As the Interim Final Rule currently stands, third level evidence can only be used if primary or secondary evidence "cannot be obtained." 71 Fed. Reg. at 39218-19. The most logical interpretation of this statement is that even if an applicant has *several* pieces of third or fourth level evidence of citizenship, a caseworker would be forced to make the applicant apply for a birth certificate, and delay eligibility while that request is being processed. In this scenario, where there may be several hospital or public records documenting the applicant's birth, there is no doubt as to the applicant's citizenship. States, which after all have a financial stake in accurate determination of eligibility, should be given the authority to make a reasonable judgment regarding acceptable documentation, rather than imposing on them a rigid, hierarchal process.

CMS should eliminate the hierarchical list of acceptable citizenship documentation and instead allow States to accept any of the listed documents as proof of citizenship.

B. Requiring Only Original or Certified Copies Unwisely Encourages Applicants and Recipients to Turn Over Documents That Are Best Left in Their Own Possession

The Interim Final Rule currently requires states to accept only originals or certified copies of documentary evidence. 71 Fed. Reg. at 39219. This is an overly burdensome requirement that has little impact on the reliability of a document. Importantly, Sec. 6036 does not require that documentation be an original or certified copy. Instead, CMS should allow applicants and recipients to submit copies of these documents. No other means of documentation requires originals. The Interim Final Rule itself states that the eligibility and redetermination process is "ordinarily conducted by skilled interviewers who are trained and skilled in the review of documents...." These skilled caseworkers surely have the ability to identify questionable copies of documents.

While there is no in-person requirement to apply for Medicaid (71 Fed. Reg. at 39216), the Interim Final Rule is essentially forcing applicants and recipients to either make an in-person appearance or *mail in original or certified copies of documents*. The hierarchical structure of acceptable documents requires many applicants and recipients to obtain a passport or birth certificate, both of which are costly and time-intensive to obtain. These citizenship documents, as well as identity documents such and driver's licenses and photo identification cards, are exactly the types of documents CMS should encourage applicants and recipients to keep in their personal possession, rather than send through the postal system. It is likely that most applicants and recipients will be reluctant to mail in expensive documents for which they have been waiting weeks, or which they need on a daily basis. Additionally, if such documents are lost in the mail, the applicant must re-apply for them, increasing the time eligible applicants must wait to receive Medicaid.

This provision 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. Such arrangements also allow for better program access for working people. These effective efforts would be seriously undermined by

requiring original documents to prove citizenship. As original documents are not required by Sec. 6036, states should be permitted to accept copies of documents to satisfy the documentation requirement.

C. Special Identification Requirements for Children Should Apply to All Children Under Age 18 and Disabled Individuals (§§ 435.407(f) & 436.407(f))

*1. Special Identification Requirements for Children Should Apply to All Children Under Age 18 Because Many 16 and 17 Year Olds Also Lack ID*

CMS should expand special identification rules for children under the age of 16 to include all children under the age of 18. Though some children over 16 may have photo identifications from their high schools, this is not the case for many children. Children who are home schooled or sick and unable to regularly attend school will certainly not receive photo identification. Special educational, religious, rural or other small schools may also not provide photo identification. The Interim Final Rule allows children under 16 to obtain coverage without photo id, but denies this flexibility to older children without a sound reason. All children under 18 may have trouble producing photo identification if their school does not provide these IDs and the Final Rule should reflect this fact by allowing alternative means of verifying identity.

If a child's school does not provide ID cards and the child is 16 and over, she may be unable to provide proof of identity for Medicaid under the current Rule. Many states do not permit teenagers to drive until they are at least 16 and a half, and still other states require drivers to be at least 17. Thus driver's licenses are not a readily available form of identification. Moreover, many teenagers, especially those from low-income families, do not have the opportunity to learn how to drive and receive a driver's license. For these older children with no school ID and no driver's license, there is no readily available form of photo identification and yet they are not covered by the special identification requirements for children in the Interim Final Rule.

Therefore, CMS should extend the special identification rules for children to include 16 and 17 year olds, and allow school records and affidavits to suffice as proof of identification for all children under 18. This exception would be in accord with the statutory language of the DRA as well. The DRA specifically references the Immigration and Nationality Act in §6036(x)(2)D)(i).[10] The INA, in turn, is implemented by 8 C.F.R. §274a.2(b)(1)(v)(B)(3), which allows minors *under 18* to have a parent or guardian fill out a section on the Form I-9 if the minor does not have any of the required identity documents for employment. Therefore, recognizing that many children under 18 do not have any form of photo identification, the special identification rules for children should extend to all those under 18.

[10] 8 U.S.C.A. § 1324a(b)(1)(D).

2. *Identification Affidavits Should Be Accepted for Minors under the Age of 18 Even if a Citizenship Affidavit was Submitted, Because Many Minors Lack Both Citizenship and Identification Documentation*

Identification affidavits for children should be accepted even if a citizenship affidavit was provided. Many children lack both citizenship and identification documents. This is especially true for families who are homeless or have been victims of natural disasters or domestic violence. CMS has acknowledged that many children do not have photo identification and therefore established special identification verification rules. 71 Fed. Reg. at 39219. Furthermore, between 1.4 and 2.9 million children do not have a birth certificate or passport readily available.[11] Of these children, many will have difficulty obtaining a birth certificate or other documentary evidence of citizenship. Therefore, in those circumstances where a child has neither proof of citizenship nor of identity, the child's parent or guardian should be permitted to submit affidavits attesting to both citizenship and identity, so that all children eligible for Medicaid can receive the medical attention they need.

3. *The Identification Requirement Exception Should Also Apply to Disabled Individuals, Who May Also Have Increased Trouble Providing Proof of Identity*

The special identification requirements outlined in the Interim Final Rule should also apply to disabled individuals as per 8 C.F.R. §274a.2(b)(1)(v)(B)(4), recognizing that disabled individuals may have difficulty proving identity. It is particularly important that disabled individuals receive the medical care they require without encountering unnecessary delays in the Medicaid application or recertification process. The DRA specifically references section 274A(b)(1)(D) of the Immigration and Nationality Act[12] to provide acceptable identity documentation. The regulations which implement this provision recognize that individuals with disabilities often have difficulty presenting proof of identification, 8 C.F.R. §274a.2(b)(1)(v)(B)(4), and provides that individuals with handicaps[13] who are unable to provide specified identity documents may designate this difficulty on the Form I-9 and simply have their employer sign another section on the same form. The Final Rule should adopt this approach and recognize the difficulty the identification requirements present for disabled individuals and therefore permit third parties to submit identity affidavits on the disabled applicant/recipient's behalf.

D. CMS Should Include Additional Documents as Evidence of Citizenship and Identity In Order to Allow U.S. Citizens a Full Opportunity to Prove Their Citizenship

CMS has solicited comments and suggestions for additional documentation that may be accepted for proof of citizenship and identity. 71 Fed. Reg. at 39219. The DRA encourages the Secretary

[11] Center on Budget and Policy Priorities, *supra* n. 1, at 1.

[12] 8 U.S.C.A. § 1324a(b)(1)(D).

[13] 8 C.F.R. § 274a.2(b)(1)(v)(B)(4)(i)-(iii) defines a handicapped person as one who "has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such impairment."

of Health and Human Services to specify other reliable documents that prove citizenship or nationality. §6036(x)(3)(B)(v).

In order to have a more flexible and efficient verification process, the following documents should be included in the Final Rule:

- Baptismal record
- Family Bible record
- Certificate of circumcision
- Other religious documents indicating place of birth
- Court records of parentage, child custody, juvenile proceedings, or child support
- Early school records indicating place of birth
- Voting records
- Billing, rent, or mortgage records
- Wills and probate records

It is critically important to maintain flexible documentation standards so that eligible Americans can receive Medicaid. Many applicants or recipients may not have birth certificates but may be able to provide proof of citizenship through other documents, such as a religious document. When there is no doubt as to a person's citizenship, it is in keeping with the intention of the DRA to enroll this individual on Medicaid.

New York has required proof of citizenship for Medicaid applicants for years, and CMS should draw on its significant implementation experience. Among New York's most commonly accepted form of documentation is a baptismal record recorded within three months of birth.[14] However, the Interim Final Rule does not permit the acceptance of religious documents, such as a baptismal record or Family Bible record, though many families may be able to produce this documentation in the absence of a birth certificate or other proof of citizenship.

Churches and other religious organizations may be able to produce proof of citizenship more quickly than a state agency overburdened with birth certificate requests. Therefore, accepting these records as proof of citizenship is an efficient and accurate way to enroll applicants into Medicaid without creating a bureaucratic breakdown. Allowing religious records indicating place of birth to suffice for proof of citizenship may help resolve the difficulty created for the many Americans, often born in rural or formerly segregated areas, for whom a birth certificate was never created.[15] Religious records are, by their very nature, reliable especially when they were created at or near the time of birth, before any applicants knew of any future changes to Medicaid citizenship documentation requirements.[16]

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[14] Kaiser Commission , *supra* n. 2, at 11.

[15] A recent study by the Center for Budget and Policy Priorities found that 8.1% of U.S.-born adults with income less than $25,000/year do not have a birth certificate or passport available at home. This figure is even higher among African-Americans (8.9%), Americans in rural areas (9.1%), and those without a high school diploma (9.2%). Center on Budget and Policy Priorities, *supra* n. 1, at 1.

[16] New York currently requires that Family Bible records show the date and place of birth, be created within the first five years of the applicant's life, and be submitted along with a Letter of No Record if there is no available birth certificate.

Other documentation should be included as acceptable proof of citizenship, including court records of parentage, juvenile proceedings, or child support. New York also currently accepts these court documents to suffice for proof of citizenship. There is no reason to believe that court documents, produced under scrutiny and under oath, would provide inaccurate citizenship information.

The interim guidance from CMS to State Medicaid Directors on June 9, 2006, indicated that CMS's list of acceptable documentation "generally mirrors" New York's practice. However, these key omissions mark a clear difference between what New York has been accepting and what CMS has designated as acceptable proof of citizenship. This is particularly so with the acceptance of religious records, which is among the most common proof of citizenship accepted for Medicaid in New York. This glaring omission should be resolved so that U.S. citizens have the best possible opportunity to prove their citizenship in order to receive the Medicaid coverage for which they are eligible.

### E. CMS Should Not Limit Acceptance of Citizenship Proof to Primary and Secondary Evidence, or U.S. Citizens Eligible for Medicaid will be Improperly Denied Coverage

CMS should work towards *expanding* the types of citizenship documentation accepted, rather than *limiting* the ways in which eligible U.S. citizens can prove their citizenship in order to receive Medicaid. The Interim Final Rule suggests that the exception provided for SSI and Medicare recipients sufficiently protects those who may have trouble proving their citizenship for Medicaid purposes. 71 Fed. Reg. at 39220. Although this is an important exception, many other individuals who are otherwise eligible for Medicaid will have difficulty proving their citizenship, even if all four tiers of documentation are accepted.

Millions of Americans do not have a U.S. passport or birth certificate in their possession.[17] Though some of these individuals may be able to successfully request a birth certificate from the state agency, those without knowledge of their date or place of birth would be unable to obtain their birth certificate. Older African-Americans, many of whom were born in segregated states, were not permitted to use white-only hospitals and thus often do not have a record of their birth on file. One study estimated that 20% of African-Americans born in 1939 and 1940 lack birth certificates.[18] Other people may simply not know exactly where they were born. The elderly and incapacitated are particularly unlikely to be able to provide sufficient information about their birth.

If an applicant is unable to obtain his or her birth certificate to use as secondary evidence of citizenship, the applicant will also be unable to apply for a passport to use as primary evidence because passport applications require the presentation of a birth certificate.[19] Though other

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[17] *Of Medicaid recipients alone*, approximately 1.7 million U.S.-born adults and between 1.4 and 2.9 million U.S.-born children do not have a U.S. passport or birth certificate in their possession. Center on Budget and Policy Priorities, *supra* n. 1, at 7.

[18] S. Shapiro, *Development of Birth Registration and Birth Certificates in the United States*, Population Studies, 4: 86-111, 1950.

[19] Passports also cost up to $157, which is prohibitively expensive for most Medicaid applicants or recipients. Kaiser Commission *supra* n. 2, at 14.

documentation in addition to birth certificates is listed as secondary evidence, these documents are rare and do not apply to most Americans, especially those in low-income families.

If CMS were to reduce the acceptable citizenship documentation to only primary and secondary evidence, it would leave many Medicaid applicants with no other option than presenting a birth certificate. For the millions of Americans who do not have birth certificates or are unable to obtain them, being permitted to present the third and fourth level documents as proof of citizenship is the only way they will be able to receive the medical care for which they are eligible.

F. The Process to Submit an Affidavit Proving Citizenship is Overly Burdensome (§§435.407(d)(5) and 436.407(d)(5))

Allowing written affidavits to suffice for proof of citizenship is key to ensuring that eligible citizens without documentary proof of citizenship can enroll in Medicaid. However, under the Interim Final Rule, the affidavit policy is overly burdensome, and could be administered in such a way as to violate the Medicaid Act.

First, affidavits should not be permitted only in "rare" circumstances, but instead whenever appropriate. That is, when an individual cannot produce documentary evidence within a "reasonable opportunity" period and has cooperated with the local welfare office, she should be permitted to submit affidavits from others attesting to her citizenship. The Final Rule should reflect the reality that many Americans will be unable to produce documentary evidence of citizenship, and permit affidavits whenever appropriate.

Second, requiring two affidavits from individuals possessing personal knowledge of the applicant/recipient's birth is overly burdensome, particularly for the elderly who may not have peers or elders to attest to their birth. Therefore, if an applicant/recipient does not possess and cannot obtain other documentary evidence of citizenship, the applicant/recipient should be allowed to present only one affidavit, either by a third party or by the applicant/recipient. Also, requiring that the affiant prove his or her U.S. citizenship in order to present an affidavit presents serious difficulties for those who do not have proof but are entirely capable of attesting to the applicant/recipient's citizenship.

Third, the requirement that only one of the two affiants be related to the applicant/recipient is unrealistic, as most people acquainted with the details of one's birth are indeed relatives. The goal is to reliably establish citizenship, and if two relatives are able to swear under penalty of perjury that the applicant/recipient is a citizen, then this goal is met. CMS has offered no reason why only one affiant may be a relative, and this policy is not required by statute, nor by any other agency that verifies citizenship. If the Interim Final Rule's policy of requiring two affidavits is maintained, there should be no restrictions on who could submit them.

Finally, requiring a third affidavit from the applicant/recipient or a third party attesting to the reason for the unavailability of documentary evidence is unnecessarily duplicative if the other affidavits explain the lack of documentary evidence. Requiring multiple affidavits that all serve

the same purpose generates bureaucratic waste and is at odds with the Paperwork Reduction Act.[20]

More importantly, requiring unnecessary affidavits presents additional burdens and obstacles for those applying for or receiving Medicaid. Therefore, affidavits should be accepted as proof of citizenship whenever the applicant/recipient is unable to secure other documentary evidence of citizenship. Only in this way can CMS ensure that every eligible U.S. citizen is afforded Medicaid in compliance with the Medicaid Act.

### G. CMS Should Implement Flexible Guidelines Regarding Acceptable Types of Documentary Evidence of Citizenship (§§435.07 and 436.407)

Sections 435.407(b)(7) and 436.407(b)(7) currently allow only American Indian Cards of the Texas Band of Kickapoos to be used as proof of citizenship. All American Indian Cards should be sufficient proof, particularly because these cards themselves indicate that they are proof of citizenship. American Indian Cards are issued by the Department of Homeland Security and there is no reason to doubt their accuracy. If tribal identification cards are not accepted as evidence of citizenship and identity, many Native Americans may not be able to provide other means of satisfactory citizenship documentation. Some Native Americans may not have been born in hospitals and there is therefore no official record of their birth. The National Association of State Medicaid Directors has stated that American Indian identification cards are reliable proof of citizenship.[21] Therefore, CMS should accept tribal identification cards as primary documentary evidence of citizenship and identity.

Sections 435.407(c)(1), 436.407(c)(1), 435.407(c)(2), 436.407(c)(2), 435.407(d)(4), and 436.407(d)(4) lists records from hospitals, medical providers, and insurance companies, as acceptable proof of citizenship. Yet the Interim Final Rule requires that these documents be created at least five years before the *initial* application date. This requirement is arbitrary and overly burdensome because the initial application date may have been decades ago, thus depriving chronically poor recipients of the opportunity to use these documents to prove their citizenship. CMS should allow applicants and recipients to use contemporaneous documents to prove their citizenship. As noted earlier, caseworkers are skilled at document review and will be able to detect any fraudulent documentation.

In the alternative, CMS could also allow records that were created five years before the most recent, post DRA application date. This way, an individual who has been receiving Medicaid for decades but has proof of citizenship pre-dating a Medicaid redetermination date would be permitted to use these documents to prove citizenship and maintain Medicaid coverage. Under this approach, hospitals, medical providers, and insurance companies would not have to attempt to hunt down records that have likely been lost or destroyed. Since the record would have been

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[20] The purpose of the Paperwork Reduction Act is to "minimize the paperwork burden for individuals [and] . . . state . . . governments . . . resulting from the collection of information for the federal government." 44 U.S.C.A. § 3501(a). The elaborate affidavit requirement is directly contrary to this stated purpose.

[21] Ltr. from Jerry W. Friedman, Pres., American Public Human Services Association and Nancy V. Atkins, Chair, National Association of State Medicaid Directors, to Dennis Smith, Director, CMS (June 21, 2006).

created at least five years before the Medicaid citizenship verification changes, there would be little risk of applicants fraudulently creating documents to satisfy the new requirements.

## III. Collection of Information Requirements

In light of the aforementioned difficulty with obtaining the required citizenship documentation, the Interim Final Rule's estimated time needed to acquire these documents is wholly inaccurate. The Interim Final Rule estimates that it would take an individual ten minutes to acquire and provide the acceptable documentary evidence, and it would take states five minutes to obtain the documents, verify citizenship and maintain current records on each individual.

If an individual had the necessary information to obtain a birth certificate, he or she would first have to find the correct form with which to make the request, complete the form, purchase a money order, send it, wait for the state agency to process his request, and then, since he will likely be hesitant to mail in the certificate, make an appointment with his caseworker to bring in the documents. This entire process will take significantly longer than ten minutes. Even discounting the waiting time for the documents, this process will likely take many hours. Similarly, it will take state workers significantly longer than five minutes to assist individuals in requesting documentation (especially when the individual was born out of state or does not recall her place of birth) and verifying this documentation once it arrives. CMS should include a more realistic estimate of the time required of individuals and states to comply with these new requirements.

## IV. Conclusion

The goal of the DRA and the Medicaid Act is to preserve the Medicaid program's integrity while ensuring that no eligible citizen be denied Medicaid benefits. The current Interim Final Rule fails to meet this goal with its rigid structure, inexplicable document requirements and significant departure from legislative intent. Only by making the above recommended changes can CMS ensure that all eligible citizens receive the medical coverage they desperately need.

Thank you for the opportunity to comment on the Interim Final Rule. We look forward to your response.

Very truly yours,

Richard P. Weishaupt
Senior Attorney

Felicia Lin
Katrin Rowan
Legal Interns

**Submitter :** Ms. Vicky Pulos **Date:** 08/10/2006

**Organization :** Massachusetts Law Reform Institute

**Category :** Attorney/Law Firm

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Mr. James Barry Adams **Date:** 08/10/2006

**Organization :** NAMI Linn County

**Category :** Social Worker

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

As rigorous enforcement of "I 9" procedures by Goodwill have done nothing to keep 10 to 20 million illegals from being employed by those disrespecting our immigrations laws, over co nvoluting documentation requirements for homeless or other American's with disabilities will do little to fight fraud. Homeless individuals with mental illness should be allowed access to services while their providers obtain documentation. Copies of documentation from hospitals, mental health centers or other sources shoul be as good as the original.

**Submitter :** Victoria Pulos **Date:** 08/10/2006

**Organization :** Massachusetts Law Reform Institute

**Category :** Attorney/Law Firm

**Issue Areas/Comments**

**GENERAL**

GENERAL

My earlier submission did not contain the attachment. I'm trying again, see attachment.

CMS-2257-IFC-174-Attach-1.DOC

August 10, 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 sixteen undersigned organizations representing a broad range of Medicaid provider and consumer advocacy organizations in Massachusetts submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirements. Our comments also address the information collection requirements of the regulations.

There are over one million individuals enrolled in the Massachusetts Medicaid program (MassHealth) and thousands more who apply for MassHealth each year. The vast majority of these residents are U.S. citizens who will be affected by this rule, and who, like most Medicaid applicants and recipients are low income families with children, people with disabilities or elderly. We are deeply concerned that the interim final rules have made it unreasonably difficult for many of these vulnerable U.S. citizens to obtain the medical assistance for which they are eligible. Their health and the public health will suffer as a result.

Congress specifically authorized CMS to use its regulatory authority to identify individuals who have already established their U.S. citizenship and should not have to do so again, as well as to identify more acceptable documents than the short list enumerated in the legislation. We commend CMS for exempting individuals on SSI or Medicare from the new rule as Congress plainly intended, clarifying the continued application of Presumptive Eligibility options for pregnant women and children, and authorizing the use of SDX and vital records databases. However, other aspects of the rule create unreasonable barriers not required by the legislation and fail to exercise the full regulatory authority conferred on CMS by the statute and necessary to make this new requirement workable.

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

We strongly disagree with the provision in the interim final rules precluding states from providing medical benefits during the "reasonable opportunity period." 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." 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.

Denying benefits during the reasonable opportunity period is not required by § 6036 of the DRA and is not consistent with other provisions of federal law applicable to Medicaid such as §1137(d)(4) of the Social Security Act. If an individual declares citizenship and is otherwise eligible, the state should not delay, deny, reduce or terminate an individual's eligibility for benefits based on documentation of citizenship until a reasonable opportunity period has been provided to submit documents.

As discussed below, the Massachusetts §1115 demonstration relies heavily on hospitals and health centers to assist uninsured patients to apply for MassHealth. Under the new on-line application system, access to our state's uncompensated care pool is now through the same application process as MassHealth. Almost all of these applications occur when an uninsured individual is seeking care for an immediate medical need. Delaying benefits until citizenship is verified will either result in financial hardship for our safety net providers who will provide care without a guarantee of payment or prevent beneficiaries from obtaining timely care.

We 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(h)(1) Copies of documents should be sufficient proof of citizenship and identity.**

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 is probably the single most unworkable requirement in the interim rules.

Well over 10 years ago Massachusetts revamped its Medicaid program through a comprehensive 1115 demonstration waiver affecting almost the entire population of recipients under age 65. A hallmark of health reform was the simplification and streamlining of the application process. MassHealth was early in eliminating the face to face interview at application or renewal. For many years, the vast majority of applications and renewals have been conducted entirely by mail. In 2004, Massachusetts launched an innovative tool to enable hospitals, health centers and trained community organization to submit applications on line through a system called the "Virtual Gateway." These reforms have been highly successful in enabling eligible residents to obtain Medicaid and reducing the number of the uninsured, and remain a lynchpin of the state's ambitious 2006 health reform plan.

The Massachusetts Medicaid agency has only four regional offices statewide to handle the currently low demand for face to face applications. It has no local offices. There is no regional office in Boston. The Springfield regional office covers a service area encompassing all of central and western Massachusetts.

While the preamble claims that states may continue to dispense with face to face applications, the requirement that citizenship and identity documents be originals or copies certified by the issuing agency effectively requires a face to face interview. For many of the most common documents that will be used to prove citizenship and identity the issuing agency does not certify

copies. Neither passports nor driver's licenses allow for a certified copy from the issuing agency. No sensible person would mail an original of a passport, or a driver's license, school ID or other forms of identification needed on a daily basis to a distant government office.

The interim rule 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. These times represent a gross underestimate. The Massachusetts state vital statistics office has only paper files for residents born prior to 1988, and with an estimated 3-fold increase in requests for birth certificates and no increase in staff, the process of obtaining a birth certificate is likely to involve lengthy waits. Once low income residents have obtained their documents, applicants and renewing recipients will face long drives or even more time-consuming trips by public transportation to bring original documents to one of only four offices in the state. With the current staffing of regional offices which is based on an almost entirely mail-in and on-line system, citizens will then face a long wait to see a worker. The end result: a photocopy placed in a file.

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

**435.405(g) Assistance to special populations should include the costs of obtaining required verification**

We commend CMS for making explicit in the regulations the state's obligation to assist people whose disabilities who are unable to obtain documentation. CMS should also make clear that if a fee must be paid to obtain documentation, the state's assistance should extend to paying the fee and that any such payment will be entitled to federal financial participation. Many of the documents required by this rule can only be obtained on payment of a fee.

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

Pursuant to §1902(e)(4) an infant born to a mother receiving Medicaid is automatically eligible for Medicaid for up to one year so long as the mother "remains (or would remain if pregnant)" eligible for such assistance. In order to comply with this requirement, Massachusetts and presumably all other states, have established procedures to obtain notification of birth from hospitals in addition to the procedures for payment of claims. If an infant is born in a U.S. hospital and the state Medicaid agency pays for the birth, the payment records along with the notification of birth record constitute highly reliable evidence of both U.S. citizenship and identity and should be recognized as such by CMS in its rule.

Infants should not have to re-verify citizenship and identity when the state already has such verification in its possession from the time of the child's birth in a U.S. hospital. This is true regardless of whether the birth is paid for and the mother eligible for full-scope Medicaid or

emergency Medicaid. The child in either case is a U.S. citizen and the state in either case has highly reliable documentation of citizenship and identity already in its possession.

We 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)(5) An SDX match should be primary evidence for former as well as current SSI recipients.**

CMS gives States which do not automatically provide Medicaid to SSI recipients the option to use the State Data Exchange (SDX) to verify citizenship and identity for SSI recipients. This option should also be available to States which do automatically provide Medicaid to SSI recipients in order to enable them to verify citizenship and identity for former SSI recipients. Younger people with disabilities who receive only insurance-based Social Security disability benefits are generally not entitled to Medicare for 24 months, but many will have received SSI during the 5-month waiting period before their SSDI began. Similarly, many children with disabilities may lose SSI when their family income goes up but will remain financially eligible for Medicaid. These disabled former SSI recipients face all the same difficulties supplying documentation as current SSI and Medicare recipients, and all States should be able to use the SDX for primary verification.

**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. We strenuously urge CMS not to limit in any way the types of documents that can be used to document citizenship status. On the contrary, we urge CMS to recognize more ways of verifying citizenship and identity.

**435.407(k) The final rule should include a safety net for those who do not have one of the specified documents.**

No U.S. citizen should be denied Medicaid because of an inability to produce a particular document. Yet 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.

CMS has recognized SSI records as containing reliable records of citizenship and identity. It should also follow the method used in SSI to verify citizenship and identity when preferred documents are not available. 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. CMS should adopt a similar provision to 42 CFR 435.407 ensuring that citizens who cannot produce "acceptable" documentation under the new rule will not lose access to Medicaid.

We 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 and other individuals who are eligible for Medicaid based on eligibility for cash assistance should be exempt from the documentation requirement.**

The interim final rule applies the DRA citizenship documentation requirements to children in foster care and children with special needs receiving adoption assistance under Title IV-E. These children are automatically eligible for Medicaid as recipients of Title IV-E assistance. 42 U.S.C. § 673(b). Thus, they do not make a declaration of citizenship for the purposes of obtaining Medicaid under §1137(d) and §6036 of the DRA should not apply to them at all. Similarly, recipients of TANF cash assistance in Massachusetts and most other states are automatically eligible for Medicaid and when they make the required declaration of citizenship it is for purposes of IVA not Title XIX, thus TANF recipients too should be exempt from § 6036 documentation requirements.

The DRA allows the Secretary to exempt individuals who are eligible for other programs that require documentation of citizenship. Both Title IV-E and Title IV-A are precisely such programs. We urge CMS to revise 42 CFR 435.1008 to add children eligible for Medicaid on the basis of receiving Title IV-E payments along with families receiving TANF assistance to the list of groups exempted from the documentation requirement.

**Conclusion**

Thank you for the opportunity to make these comments. We hope you will adopt the changes recommended above in order to ensure that no eligible US citizens lose access to medical benefits for which they are eligible. If you have any questions concerning these comments please contact Vicky Pulos, Massachusetts Law Reform Institute, 617-357-0700 Ext. 318, vpulos@mlri.org.

Yours truly,

Massachusetts Law Reform Institute
99 Chauncy Street
Boston, MA 02111

Health Care For All
30 Winter Street
Boston MA 02118

Neighbor to Neighbor Massachusetts
8 Beacon Street
Boston, MA 02108

The Boston Public Health Commission
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Boston, MA 02118

Rosie's Place
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Greater Boston Legal Services
(on behalf of individual clients)
197 Friend Street
Boston, MA 02114

Neighborhood Legal Services, Inc.
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Mental Health and Substance Abuse
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251 West Central Street
Natick, MA 01760

Community Partners, Inc.
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Independent Living Center
of the North Shore and Cape Ann, Inc.
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Boston AIDS Consortium
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Disability Policy Consortium, Inc.
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Public Policy Institute
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Boston, MA 02108

Massachusetts Immigrant and
Refugee Advocacy Coalition
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Boston, MA 02111

Legal Assistance Corporation
of Central Massachusetts
405 Main Street
Worcester, MA 01608

C: 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

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
By Fax (202) 395-6974

**Submitter :** **Mr. Orvin Hanson** **Date: 08/10/2006**

**Organization :** **Indian Health Council**

**Category :** **Health Care Provider/Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

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Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Dr. Jeanette Mann **Date:** 08/10/2006

**Organization :** All Saints Church Foster Care Project

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

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

Provisions of the Interim Final Rule with Comment Period

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-1FC
P. O. Box 8017
Baltimore, MD 21224-8017

Medicaid Program:L Citizen Documentaiton Requirements
Interim Final Rule

**Regulatory Impact Statement**

Regulatory Impact Statement

All Saints Church Foster Care Project is pleased to submit comments on the interim rule to implement section 6026 of the Deficit Reduction Act of 2005 (DRA) which was published in the Federal Register on July 12. Section 6036 governs the citizenship documentation required for children in foster care. We are very concerned about the application of this rule and request that CMS add an exemption at 42 CFR 435.1008 for foster children.

Of the 22,000 children in Los Angeles County 15% percent are under the age of three years; 24% are under the age of six. It is unrealistic to expect these children to have passports. It is also unrealistic to expect abusive parents who have had their children removed from their custody to be co-operative in providing other forms of documentation. Thus, these new requirements will create a critical burden on foster children, foster families and already over burdened social workers.

These new citizenship requirements are particularly onerous and duplicative for foster children because, according to federal law, foster children already must have documented citizenship to receive Title IV-E assistance. In California Title IV-E funds constitutes 71% of the total federal child welfare spending.

The burden of duplicating proof of citizenship according to the new stringent requirements could result in the delay or denial of heath care to children in foster care. Many of these children enter state custody with serious health problems. According to the American Academy of Pediatrics, compared with children from the same socioeconomic background, they [children in foster care] have much higher rates of serious emotional and behavioral problems, chronic physical disabilities, birth defects, developmental delay and poor school achievement. (1) Other research indicates that children in foster care have 8-11 times the levels of services use of other Medicaid-enrolled children. (2)On the other hand, if Medicaid funds are lost for these children, then the state will be forced to cover the cost of their health care. This would result in a shift of resources away from one part of the child welfare system to another with the potential of denying resources for prevention intervention a support services in other parts of the system.

We urge you to address this situation by recommending that foster and adoptive children be exempt from this requirement. Or if CMS fail to make this exemption, we urge the Center to state in written guidance that children entering the foster care system be considered as current recipients so they can receive immediate Medicaid services while foster parents and social workers attempt to obtain the necessary documentation within a reasonable period of time.

Sincerely,

Jeanette Mann, Chair
All Saints Church Foster Care Project

Cc: The Honorable Adam B. Schiff, Member of Congress

Notes:

1, Health Care of Young Children in Foster Care American Academy of Pediatrics Committee on Early Childhood, Adoption and Dependent Care, Pediatrics Vol. 109, No. 3 March 2002.

2) Harman, et al. Archives of Ped Adol Medicine, 154 (11): 2000: Halfon, et al. Pediatrics, 89 (6): 1992.

**Submitter :**

**Date: 08/10/2006**

**Organization :**

**Category : Health Care Provider/Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-177-Attach-1.DOC

**Indian Health Council, Inc.**
**50100 Golsh Road, Valley Center, Ca 92082**
**760-749-1410**
**www.indianhealth.com**

To whom it may concern:

Subject: Comments to Interim Final Rule: Medicaid Program: Citizenship Documentation Requirements, 71 Federal Register 39214 (July 12, 2006); File Code: CMS-2257-IFC

Thank you for the opportunity to provide comments to the interim final rule, published in the Federal Register on July 12, 2006, at Vol. 71, No. 133, amending Medicaid regulations to implement the new documentation requirements of the Deficit Reduction Act (DRA) requiring persons currently eligible for or applying for Medicaid to provide proof of U.S. citizenship and identity.

As a Tribal Consortium (Consisting of 9 federally recognized tribes) that serves the healthcare needs of Native Americans in North San Diego County, CA, I am disappointed that the interim regulations do not recognize a Tribal enrollment card or Certificate of Degree of Indian Blood (CDIB) as legitimate documents of proof of U.S. citizenship. The June 9, 2006 State Medicaid Directors (SMD) guidance indicates that the Centers for Medicare and Medicaid Services (CMS) consulted with the CMS Tribal Technical Advisory Group (CMS TTAG) in the development of this guidance. While Native American tribal documents and CDIBs are recognized as legitimate documents for identification purposes, the CMS SMD guidance did not include Tribal enrollment cards or CDIBs as legitimate documents of proof of citizenship. Prior to the publication of the interim regulations, the National Indian Health Board (NIHB), the CMS TTAG, and the National Congress of American Indians (NCAI) requested the Secretary of the Department of Health and Human Services to exercise his discretion under the DRA to recognize Tribal enrollment cards or CDIBs as legitimate documents of proof of citizenship in issuing the regulations. However, tribal concerns expressed by the national Indian organizations and the CMS TTAG were not incorporated into the interim regulations.

As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, Tribal governments find it "rather ironic that Native Americans, in the true sense of the word, must prove their U.S. citizenship through documentation other than through their Tribal documentation. This same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution."

There are 563 Federally-recognized Tribes in the U.S. whose Tribal constitutions include provisions establishing membership in the Tribe. The Tribal constitutions, including membership provisions, are approved by the Department of Interior. Documentation of eligibility for membership is often obtained through birth certificates but also through genealogy charts dating back to original Tribal membership rolls, established by Treaty or pursuant to Federal statutes. The Tribal membership rolls officially confer unique Tribal status to receive land held in trust by the Federal government, land settlements, and other benefits from the Federal government. Based on heroic efforts of Indians serving in the military during World War I, the Congress in 1924 granted U.S. citizenship to members of Federally Recognized Tribes. To this day, Tribal genealogy charts establish direct descendency from these Tribal members. With very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards or CDIBs to members and descendants of Federally Recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, Tribal enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

In developing the interim regulations, the CMS might have been concerned that some Tribes issue enrollment cards to non-citizens and determined that Tribal enrollment cards or CDIBs are not reliable documentation of U.S. citizenship for Medicaid eligibility purposes under the DRA. However, members of Indian Tribes, regardless of citizenship status, are already eligible for Federal public benefits, including Medicaid, under exceptions to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Title IV of the PRWORA provides that with certain exceptions only United States citizens, United States non-citizen nationals, and "qualified aliens" are eligible for federal, state, and local public benefits. Pursuant to Federal regulations at 62 Federal Register 61344 (November 17, 1997) non-citizen Native Americans born outside of the United States who either (1) were born in Canada and are at least 50% American Indian blood, or (2) who are members of a Federally recognized tribe are eligible for Medicaid and other Federal public benefits, *regardless of their immigration status.* The documentation required for purposes of the PRWORA is a membership card or other tribal document demonstrating membership in a federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. Thus, tribal membership cards issued to members of Federally-recognized tribes, including non-U.S. citizen tribal members, are satisfactory proof of documentation for Medicaid eligibility purposes under the PRWORA. The documentation requirements under the DRA should be the same.

The interim regulations, at 42 C.F.R. 437.407(e)(6) and (e)(8)(vi), recognize Native American tribal documents as proof of identity. Section 437.407(e)(9) recognizes CDIBs as evidence of identity because they include identifying information such as the person's name, tribal affiliation, and blood quantum. Since the CMS already recognizes Native American tribal documents or CDIBs as satisfactory documentation of identity, there is sufficient basis for CMS to recognize Tribal enrollment cards or CDIBs as satisfactory documentation of primary evidence of both U.S. citizenship AND identity. The term Native American tribal document is found in the Department of Homeland Security,

Form I-9, where Native American tribal documents suffice for identity and employment eligibility purposes. The interim regulations do not define the term 'Native American tribal document" but certainly, Tribal enrollment cards or CDIBs fall within the scope of a "Native American tribal document." Thus, I recommend that section 435.407 (a) of the regulations be amended to include Tribal enrollment cards or CDIBs as Tier 1 documents.

In the alternative, if CMS will not amend the regulations at 435.407(a) to include Tribal enrollment cards or CDIBs as primary evidence of citizenship and identity, I recommend that the CMS recognize Tribal enrollment cards or CDIBs as legitimate documents of citizenship as a Tier 2 document, secondary evidence of citizenship. The regulations only allow identification cards issued by the Department of Homeland Security 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. However, in light of the exception found in the PRWORA, the regulations at 435.407(b) should be amended to include Tribal enrollment cards for all 563 Federally-recognized Tribes as secondary evidence of U.S. citizenship.

The Senate Finance Committee in unanimously reporting out S. 3524 included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a "document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe" to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that " [w}ith respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection." S. 3524 also provides for a transition period that " until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

I would urge CMS to amend the interim regulations to address tribal concerns by recognizing Tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2 documents. As explained above, with very few exceptions, Tribes issue enrollment cards or CDIBs to their members after a thorough documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent, the Secretary has concerns that some Tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, 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 satisfactory documentation of U.S. citizenship, the CMS is creating a barrier to AI/ANs access to Medicaid benefits. As you know, the Indian health care programs, operated by the IHS, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals, that provide services to AI/ANs are dependent on Medicaid reimbursements to address extreme health care disparities of the AI/AN population compared to the U.S. population. Recognizing Tribal enrollment cards or CDIBs as sufficient documentation of U.S. citizenship will benefit not only Indian health care programs but all of the health care providers located near Indian country that provide services to AI/AN Medicaid beneficiaries.

Thank you for your thoughtful consideration of my comments.

Sincerely,

Deven Parlikar
Executive Director, Indian Health Council

Enclosure

Cc: Senator
Senator
Representative
NIHB

**Submitter :** Mrs. Monica Rei **Date:** 08/10/2006

**Organization :** St. Joseph Mercy, Oakland

**Category :** Hospital

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

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Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Mrs. Meredith Dodson **Date:** 08/10/2006

**Organization :** RESULTS

**Category :** Other

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment (August 10, 2006)

CMS-2257-IFC-179-Attach-1.TXT

August 10, 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) RESULTS is a citizen's grassroots lobby committed to ending hunger and abject poverty. We have

volunteer groups in 100 communities across the United States. On behalf of or network of activists across the country we submit the

following comments to you RESULTS is 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. RESULTS is

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. The comments below highlight areas that CMS should

modify in the final rule RESULTS wishes to address the information collection requirements of the regulations. As explained below,

RESULTS is 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. Traveling to state offices is often

an ordeal for the poor, especially those who lack the extra funds and time for transportation. In addition, many impoverished families

will be unable to pay for the childcare that will be needed during a visit like this. 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 create financial

losses for health care providers. This is likely to delay their medical care, worsen their health problems and create financial losses for

health care providers. Families will forego preventive care. When children become sick, they will be taken to an already overcrowded

emergency room rather than to a family doctor. In addition, the toll placed on society overall is often grave. Children who receive

delayed medical care are also at-risk developmentally. Developmental delays impact educational progress and often require special

education services (which are costly to schools.) 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. 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. 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.) 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. 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.

RESULTS finds this regulatory lapse ethically unconscionable. 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 DRAallows 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. RESULTS urges 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. 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.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. There is already a reluctance by health care

professionals to treat Medicaid recipients. The increased potential of a delayed payment will only widen the health gap between

those with private health coverage and Medicaid recipients. 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. In addition, 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 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. 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 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  Most 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 states took to simplify their

eligibility processes and make it easier 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.

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. 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. 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. 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 Mediciad

reimbursements. RESULTS believes that Medicaid's purpose is to make sure the most vulnerable members of our society have

access to medical care. As such, it must not be undermined by unnecessary regulatory burdens. CMS's strengthening of the

regulations on top of the Deficit Reduction Act's requirements unfairly leaves those who often need the most medical care (foster

children, victims of natural disasters etc.) without it. RESULTS lobbies Congress and the president routinely on issues such as

these. Rarely do we take a stance on regulatory matters. However, due to the severity of these rules, RESULTS is asking CMS to

take the comments above into consideration so that this situation can be rectified immediately. Sincerely, Meredith Dodson,

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**Submitter :** LeeAnn Hall **Date:** 08/10/2006

**Organization :** NWFCO

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-2257-IFC-180-Attach-1.DOC

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August 11, 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 Northwest Federation of Community Organizations is pleased to submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirement of the Deficit Reduction Act of 2005 (DRA). The Northwest Federation of Community Organizations (NWFCO) is a regional network of four grassroots organizations. NWFCO's mission is to achieve systemic change by building strong state affiliate organizations and by executing national and regional campaigns that advance economic, racial, and social justice.

At least 42 million individuals who are already on Medicaid will be affected by this new documentation requirement. We are 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*

We 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.

We 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)-(d) The document hierarchy established in the rule goes beyond the statutory requirements of the DRA.**

The Interim Final Rule and June 9, 2006 State Medicaid Director letter establish a hierarchical structure for documents that individuals can use to prove citizenship. The documents are tiered according to their "reliability." 71 Fed. Reg. at 39218. Documents such as a U.S. passport or Certificate of Naturalization are in the first tier and thus deemed more "reliable" than documents in Tiers 2, 3 and 4. The rule also requires states to obtain higher-level documentation where it is available, before moving on to documentation from a lower tier. 71 Fed. Reg. at 39222-39224.

While we are pleased that CMS has used the authority granted in the DRA expanded the list of documents that can be used to prove citizenship beyond those included in the statute, we are concerned that the hierarchy employed in the Interim Final Rule goes beyond the statutory requirements of Section 6036 of the DRA. The hierarchy will cause significant time delays for applicants and headaches for agency staff and beneficiaries and applicants as individuals attempt to demonstrate that they cannot get a higher tier document before moving to the subsequent tier. The hierarchy also makes little sense: If a fourth tier document eventually becomes sufficient proof for an individual, then why cannot it be sufficient documentation at the outset?

We urge CMS to amend 42 CFR 435.407(a)-(d) and eliminate the document hierarchy.

**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] We urge 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

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[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.

Native American population and create a barrier to their enrollment and/or maintenance of Medicaid coverage.

We 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 requirement that third and fourth level evidence must be issued at least 5 years before an individual's application for Medicaid is arbitrary and overly burdensome.**

Most of the third and fourth level evidentiary documents listed in the Interim Final Rule are acceptable documentation only if they are dated at least five year's prior to the applicant's or recipient's original application for Medicaid. 71 Fed. Reg. at 39223-39224. This requirement will undoubtedly result in hardship for many individuals, especially those who are applying for, or are long time recipients of, nursing home care and may not possess documents that meet this time restriction. Furthermore, there is no apparent explanation in the Interim Final Rule for this stringent requirement.

We urge CMS to amend 42 CFR 435.407(c) and (d) by removing the requirement that third and fourth level documentary evidence must have been created five years prior to the individual's application for Medicaid.

**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. We 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. We 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.

We 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(h)(5) Meeting the citizenship documentation requirement in one state should suffice for any other state.**

The Interim Final Rule states that documentation of citizenship and identity should be a one-time event. 71 Fed. Reg. at 39225. The Rule includes no provision for ensuring that individuals who meet the documentation requirement in one state and get onto Medicaid, then move to a different state can enroll Medicaid in their new state without providing documentation a second time. The Interim Final Rule should be clarified and amended at 42 CFR 435.407(h)(5) so that individuals truly only have to provide documentary evidence of citizenship once as the regulations intend.

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

While we commend CMS for requiring states to provide people applying for or renewing Medicaid coverage a "reasonable opportunity" to submit citizenship documentation, we are 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.
We 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.

We 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. We urge CMS to add an exemption at 42 CFR 435.1008 for foster children receiving Title IV-E assistance.

**435.1008 CMS should use its authority to exempt additional groups of people from the citizenship documentation requirement.**

The Interim Final Rule exempts Medicare and SSI recipients from the documentation requirement. 71 Fed. Reg. at 39225. Section 6036 of the DRA authorizes the Secretary of HHS to exempt other groups who have submitted proof of U.S. citizenship or nationality from the requirement.There are a number of other categories of Medicaid applicants and recipients who should be exempt from the documentation requirement because they already establish proof of their U.S. citizenship through the application process for other government benefit programs. These groups include:

- SSDI recipients in the two year waiting period for Medicare, who have met all the eligibility criteria for Medicare—including providing proof of citizenship—and are just waiting to fulfill the two year time period.
- Former SSI and Medicare beneficiaries, who for whatever reason are no longer eligible for those programs, but have established proof of citizenship in the past, and are now eligible for Medicaid.
- Former and current TANF recipients who receive Medicaid on the basis of receipt of TANF. These individuals have proven their citizenship through the TANF program.

We urge CMS to amend 42 CFR 435.1008 and exempt the categories of individuals mentioned above.

**Conclusion**

We thank CMS for making strides to ameliorate the harm of the new Medicaid citizenship documentation requirement, but we 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. If you have any questions, please contact Carrie Tracy at Northwest Federation of Community Organizations at (206) 568-5400.

Respectfully submitted,

LeeAnn Hall
Executive Director

**Submitter :**

**Date: 08/10/2006**

**Organization :** **Voices for Illinois Children**

**Category :** **Other**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-181-Attach-1.PDF


Voices for Illinois Children champions the full development of every child in Illinois by working with families, communities and policymakers to ensure that all children grow up healthy, nurtured, safe and well-educated. Our commitment to the health and well-being of children compels us to comment on the interim final rule for the Medicaid citizenship documentation requirements outlined in the *Federal Register* (Vol. 71, No. 133, July 12, 2006, pages 39214-39215).

Earlier this year, Congress passed the Deficit Reduction Act of 2005 (DRA) [P.L. 109-362], which includes a provision in section 6036 requiring that all U.S. citizens applying for or receiving Medicaid document their citizenship and identity. We applaud CMS for revising earlier regulations released on June 9 to exempt individuals receiving Supplementary Security Income (SSI) or Medicare benefits from these requirements. This exemption is critical to maintaining insurance coverage for many children with complex health care needs. The continuation of benefits for individuals with presumptive eligibility status is also vital for maintaining coverage for vulnerable and at-risk populations. We also commend CMS for permitting states to use data matches with vital records in order to verify the citizenship and identity of Medicaid beneficiaries and new applicants. This provision will prevent many of the more than 1.1 million children receiving Medicaid services in Illinois from losing their access to health care due to an inability to secure paper copies of their citizenship documentation.

**Voices for Illinois Children's Concerns Regarding the Interim Final Rule**
Although the interim final rule protects Medicaid coverage for a large number of low-income children, we have concerns about how the citizenship documentation requirements will impact certain children applying for or renewing Medicaid coverage. These concerns and recommendations are outlined below:

**435.407 (j)**
**New applicants should have a reasonable opportunity to obtain citizenship documentation**
We have concerns about the lack of benefits available for children who are new Medicaid applicants and do not have citizenship documentation available at the time of their application. The interim final rule provides current beneficiaries renewing their Medicaid coverage a reasonable opportunity to obtain citizenship documentation while still receiving benefits. New applicants with the same income and categorical eligibility status as current beneficiaries do not receive the same opportunity to gather the required documentation while still receiving Medicaid services. Without a reasonable opportunity to obtain their documents, many low-income children will not be able to access Medicaid services while they wait to receive documentation from government agencies. *We urge CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation.*

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**435. 1008**

**All children in foster care should be exempt from documentation requirements**

The interim final rule mandates that children in foster care comply with the Medicaid citizenship documentation requirements. The children who receive federal foster care and adoption assistance (Title IV-E) in Illinois automatically qualify for Medicaid, and their citizenship is already verified as part of their eligibility review for Title IV-E. Therefore, verifying their citizenship in order to confirm their Medicaid eligibility is a duplicative effort.

Requiring children in foster care to document their citizenship will create new barriers to their access to the health and mental health services they need. By law, states must provide medical care for children in foster care. Therefore, if states are unable to access Medicaid funding for children in foster care, they must finance the necessary health care services with state funds. When state resources are scarce, such an arrangement will likely delay preventive health care for children in foster care and make early intervention for their health and mental health needs impossible. Prolonging access to necessary services for children in foster care will ultimately result in the need for complex and expensive emergency care. *Voices for Illinois Children strongly urges CMS to exempt all children in foster care from Medicaid citizenship documentation requirements in order to appropriately meet their health and mental health needs.*

**435.407 (h)(1)**

**Qualifying documents should not be limited to original or certified copies**

The provision requiring that citizenship documents be original or certified copies exceeds the requirements of the DRA, placing an additional burden on applicants and beneficiaries. This requirement leaves children who would normally receive Medicaid services without any form of health insurance while they wait to obtain these specific documents.

The mandate will have an especially detrimental effect on children and families faced with homelessness such as those displaced by Hurricane Katrina. As a result of the disaster, many families lost all of their existing records. Requiring these families to provide original or certified documents before they can receive Medicaid services greatly threatens the ability of affected children to access necessary health and mental health services. Obtaining a birth certificate will also be extremely difficult for populations with disparate access to hospitals such as those living in very rural areas, African Americans and Native Americans, who are more likely than others to be born at home and therefore never receive a birth certificate. In addition, the cost of obtaining a birth certificate will contribute to the difficulty individuals receiving or applying for Medicaid coverage will experience when attempting to prove their citizenship.

Requiring that all citizenship documentation be original or certified copies will likely hinder the expansion of Medicaid coverage to the millions of children who are eligible but not enrolled in the program. Simple enrollment procedures are vital for expanding Medicaid coverage to eligible children in order to decrease the number of children who are uninsured. Illinois, like

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many other states, has developed simplified and streamlined application processes that ease the enrollment procedure for children. These processes eliminate the need to apply for Medicaid in-person. Providing original or certified documents will require applicants to apply for Medicaid in-person, or to send the only copies of their most important personal documents through the mail. This requirement reverses the progress Illinois and other states states have made in adopting more efficient enrollment procedures that have the potential to decrease the number of eligible children who do not receive Medicaid coverage. *Voices for Illinois Children urges CMS to eliminate the requirement that Medicaid beneficiaries and applicants provide original or certified documents so that states can continue to more effectively enroll eligible children.*

**435.407 (a)**
**Medicaid payment records for birth should qualify as proof of infant citizenship**
Voices for Illinois Children also has concerns about requiring citizenship documentation for infants whose mothers are Medicaid beneficiaries at the time of their births. Such application of the new requirements unnecessarily endangers newborns who require immediate well-baby or critical care. Medicaid pays for the births of more than 70,000 infants born in Illinois hospitals each year. These newborns are automatically United States citizens by law. However, the interim final rule does not permit the use of Medicaid records indicating payment for childbirth as proof of a newborn's citizenship status. Failure to accept these records results in a duplication of efforts that seriously threatens the ability of low-income newborns to receive necessary health care services. *Voices for Illinois Children urges CMS to exempt infants born to mothers with Medicaid coverage from the requirements to provide proof of citizenship as directed in the interim final rule. We ask that evidence of Medicaid payment for birth serve as proof of citizenship for newborns.*

**435.407 (a)**
**Native American tribal enrollment cards should qualify as proof of citizenship**
The interim final rule does not allow states to accept Native American tribal enrollment cards as proof of citizenship. Such cards are the only proof of citizenship that many Native Americans have in their possession. Native Americans are disproportionately more likely to be born at home, and therefore less likely than other populations to have official birth certificates. Failure to accept tribal enrollment cards will greatly impede the ability of many Native American children to access the health care services they need. *Voices for Illinois Children urges CMS to accept Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants.*

Voices for Illinois Children greatly appreciates this opportunity to share our comments on the interim final rule of the Medicaid citizenship documentation requirements. If you have any questions, please contact Jerome Stermer, President, at 312-516-5550.

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**Submitter :** LeeAnn Hall **Date:** 08/10/2006

**Organization :** Idaho Community Action Network

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERIVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Mr. Robert Reske **Date:** 08/10/2006

**Organization :** University of Michigan Health System

**Category :** Hospital

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-183-Attach-1.WPD

University of Michigan
Hospitals and
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Accounting and Reimbursement Services
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Ann Arbor, Michigan 48105-1500
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August 10, 2006

Mark Mc Clellan, M.D. Ph.D, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS – 2257 – ICF
P. O. Box 8017
Baltimore, MD. 21244-8017

RE: Medicaid Program; Citizen Documentation Requirements

Dear Dr. McClellan:

The University of Michigan Health System (UMHS) welcomes the opportunity to comment to the Center for Medicare & Medicaid Services (CMS) regarding the Medicaid citizenship documentation requirements contained in the interim final rule published in the July12, 2006 Federal Register (Vol. 71, No 133 Pages 39214 – 39229). The final rule with comment period implements section 6036 of the Deficit Reduction Act of 2005 (DRA).

The policies set forth in the regulation could have a significant impact on UMHS and the patients we serve. The Medicaid program provides an important safety net that allows children to access critical medical services. Without modifications, these regulations impose barriers to children in the state of Michigan that will prevent them from obtaining Medicaid coverage. Those barriers could prevent or result in the delay of children receiving necessary care. The regulations may also impose an undue financial burden on UMHS, which will not be compensated for the care provided to patients otherwise eligible for Medicaid, until the documentation requirements are satisfied.

The University of Michigan Hospitals and Health Centers (UMHHC an operating unit of UMHS) serves as the principal teaching facility for the University of Michigan Medical School, and the majority of physician services to UMHS patients are provided by faculty of the Medical School. During the year ended June 30, 2006 UMHHC provided over 250,000 days of care of which more than 12 % had Medicaid coverage. The UMHS C.S. Mott Children's Hospital is the state's key referral center for children's healthcare needs. UMHS C.S. Mott Children's Hospital receives referrals from virtually all of Michigan's 81 counties.

The proposed regulations and the underlying law require a delicate balancing act. On the one hand, the regulations and the DRA seek to ensure that individuals without legal eligibility do not receive services for which they are not entitled. On the other hand, if not implemented prudently, the policy and underlying rules will create a barrier to the ability of children to receive timely care, and place them at increased risk of serious health problems. If not implemented prudently children's hospitals, which are disproportionately devoted to children eligible for Medicaid benefits, will be placed at serious financial risk as a result of not being reimbursed by the Medicaid program for the care provided.

UMHS commends CMS for the changes that were made in the interim final rule. The changes that will benefit the Medicaid population's ability to access and retain services as well as lessen the impact of the documentation requirements on children include:

- The exemption of SSI children,
- Clarification that presumptive eligibility is still intact for children,
- Explanation that states are allowed to do data matches with vital statistics to access birth records.

Each revision will assist children in need to receive Medicaid coverage on a timely basis, without undermining the purpose of the citizenship documentation requirements.

In addition, UMHS' concern about the regulations and the potential impact on the children we serve include:

**Exemption for Children**

The law's enactment does not consider that children represent more than half of all Medicaid recipients and that children face the greatest risk of inappropriate denial of needed health care if the law becomes a barrier to timely enrollment. UMHS recommends children (age 18 and under) be exempted from the documentation requirements. Studies have shown that when states change eligibility requirements for children, enrollment drastically decreases. The documentation requirements contained in these regulations represent barriers that are likely to add to the number of children who are eligible for Medicaid but not enrolled. UMHS recognizes that CMS does not have statutory authority to exempt children; however, we encourage CMS to work with Congress to accomplish this policy change.

Until Congress is persuaded to amend the federal statute to exempt children from the DRA's documentation requirements, UMHS recommends that as an interim step, CMS exempt children who are eligible for federal foster care payments from the documentation requirements. It is UMHS' understanding that through the foster care eligibility process, these children already provided documentation to prove citizenship. Duplication of the documentation process is unnecessary and should be avoided. In addition, UMHS recommends that CMS add children to the list of vulnerable groups that states must assist in accessing necessary documents.

**Document Requirements**

UMHS recommends that CMS allow states to accept copies or notarized copies of required documentation. The requirement that documents be originals or a certified copy from the issuing agency institutes an unnecessary barrier for children and families applying for Medicaid. Over

time states have streamlined their application processes to increase the number of eligible children enrolled in Medicaid, including eliminating requirements for face-to-face interviews. Although states are authorized by the rule to accept original documents by mail, it is unlikely that families will choose to submit such important documents by mail. This process is unnecessarily burdensome when compared to the benefits derived and will result in an increase in face-to-face interviews at state Medicaid agencies. UMHS believes the policy will result in a significant decline in Medicaid enrollment among eligible children.

**Provision of Benefits to Medicaid Applicants**
UMHS recommends that CMS treat children applying for Medicaid who meet other eligibility criteria as Medicaid recipients. This revision would allow children applying for Medicaid to receive needed medical benefits while the family produces the appropriate documentation and ensure that pediatric providers would be reimbursed for these services on a timely basis.

**Application to Newborns**
The preamble to these regulations states that newborns whose mothers are categorically eligible for Medicaid are deemed eligible and do not need to have citizenship documented until their first redetermination period. Although UMHS support this clarification, CMS should amend its list of acceptable documents to include a state Medicaid agency's record of payment for health care services for these children. After Medicaid has paid for the birth of a child in a U.S. hospital, the child is by definition a U.S. citizen. Requiring Medicaid agencies to obtain additional documentation is therefore redundant. Since birth certificates can take months to obtain, children's hospitals are at risk for delayed or denied payments for often-expensive treatment of low-birth weight babies and those with post-partum complications.

**Conclusion**
Children represent a significant portion of all Medicaid recipients and depend upon adults to act for them. Documentation requirements impose barriers to Medicaid coverage of children, a group that are an especially vulnerable population. UMHS recommends that unnecessary or duplicate documentation requirements contained in these regulations be eliminated. The delay in eligibility determination for children who apply for Medicaid will also result in delayed or denied payments for UMHS.

Again, UMHS appreciates the opportunity to provide input on these policy matters. If there are any questions on these comments or if you wish to discuss them, please contact me at 734-647 - 2579. Thank you for your consideration.

Sincerely,

Robert Reske
Hospital Financial Services
University of Michigan Hospitals and Health Centers