CMS-2257-IFC-184

Submitter : Ms. Karla Peterson **Date:** 08/10/2006

Organization : Planned Parenthood of East Central Illinois

Category : Other Health Care Provider

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-184-Attach-1.DOC

August 10, 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.

Planned Parenthood of East Central Illinois has seven health centers serving over 15,000 East Central Illinois residents. Twenty-two percent of our clients are on Medicaid . 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. We also provide prenatal care for the first 36 weeks that has a Medicaid population of 95%. This high- risk group of women depend on Medicaid and Planned Parenthood for prenatal care since neither local medical group will accept new Medicaid clients for care. These services are essential to helping 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 and prenatal services. Nationwide, Medicaid is a significant source of funding for family planning and other preventive health care services that 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, 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. For prenatal coverage, this is especially onerous since early care is critical in assuring a healthy baby.

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. Very few people live in the same county in which they were born which will mean mailing a request or traveling to another location. 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 or prenatal 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,

Karla Peterson, CEO
Planned Parenthood of East Central Illinois
302 East Stoughton St
Champaign IL 61820

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

Organization : Office of Kentucky Legal Services Programs

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment.

CMS-2257-IFC-185-Attach-1.PDF

OFFICE OF KENTUCKY LEGAL SERVICES PROGRAMS
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August 10, 2006

Submitted via email

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

Re: Medicaid Citizenship Documentation Interim Final Rule, 71 FR 39214 (7/12/06)

Dear Secretary Leavitt,

Kentucky implemented the new citizenship documentation requirement for Medicaid on July 1. Our state's ability to do so was greatly aided by provisions of the Interim Final rule that exempted Medicare and SSI recipients.

It was also helped by the fact that the Interim Final Rule allowed — and our state agency had the ability to conduct — online verification of in-state birth at our local offices that handle Medicaid application and recertification.

Our office coordinates task forces and monitors developments in poverty law for civil legal services programs in Kentucky. While we are pleased with the steps taken at the federal and state level to make the citizenship documentation process manageable for agency workers and recipients, we believe several aspects of the Interim Final Rule unnecessarily hamper our agency.

They also burden our citizens. Kentucky is a poor and largely rural state. Many Kentuckians struggle with poverty, disability and limited literacy. Some were born outside hospitals. At stake in the documentation requirement is both care for them — sometimes urgently needed care — and payment for their health care providers.

Our purpose in what follows is to highlight rules and practices allowable under the DRA that would make a difference in the burden on our state agency and on individual Kentuckians.

We comment and make suggestions both on the populations affected and the documentation requirements. We offer short rationales, knowing that you will likely hear from many other commenters.

1. Further limit the populations required to provide new documentation

The Secretary has noted a "scrivener's error" in the DRA and has exercised the authority provided to exempt *individuals* receiving Medicare and SSI. As noted above, the exemption for Medicare and SSI recipients has made the new documentation requirement much more manageable for Kentucky.

The same section also allows the Secretary to exempt individuals "for whom satisfactory documentation of citizenship or nationality already has been provided." 42 U.S.C. 1396(b)(x)(2)(c).

We urge the Secretary to reduce further the burden on states and individuals by using this authority to exempt additional populations. State agency officials here have told us, for example, that the SDX system provides information on SSI applicants who proved citizenship or nationality but were denied SSI for other reasons.

A number of Kentuckians have disabling conditions that may have caused them to apply for SSI. Even if they did not meet the strict standard of permanent and total disability, their conditions may make it difficult to comply with the new requirement, or may require the state agency to help. These burdens can be avoided by allowing the state to use SDX data on denied SSI cases.

In fact, there are several populations for whom satisfactory documentation already has been provided. For each of the following, we ask that the final rule allow exemption from the new documentation requirement:

> **SSI applicants denied for other reasons:** As noted above, information on citizenship status is available to states through SDX. There is no reason it should not be used.
>
> **Former SSI and Medicare recipients:** These individuals have met the same documentation requirements as current recipients. The prior information should be considered sufficient.
>
> **Persons found eligible for SSDI who are in the 24-month waiting period for Medicare:** These persons, too, have met the same requirements as Medicare recipients.
>
> **Title IV-E foster children:** Foster care children do not declare citizenship for the purpose of receiving Medicaid. They do, however, demonstrate citizenship or nationality for purposes of receiving Title IV-E benefits.
>
> **People who have received Medicaid in another state:** The rule at 42 CFR 435.407(h)(5) states that documentation should be a one time event. It should make clear that documentation in one state suffices for later eligibility in another.

Members of each of the above groups have demonstrated citizenship or nationality already. There is no reason to treat them differently from the SSI and Medicare recipients that the Secretary already has exempted from the new documentation requirement.

2. Allow Medicaid records of payment for birth to serve as proof of citizenship

States have first hand knowledge of the citizenship of children born in hospitals when their Medicaid program paid for the birth. Because citizenship is established by birth in the U.S., there is no reason to distinguish, as the current rule does, in the length of initial eligibility allowed children born to citizen parents, legal immigrants within the 5-year bar or undocumented parents receiving emergency Medicaid.

Moreover, the rule presents practical problems. Vital records of birth may not be recorded quickly enough to be accessed online for newborns. Parents and state workers may have to turn to "lower tier" documents, with attendant burdens for hospitals and doctors to produce records. None of this work is necessary and, for infants with immediate care needs, the delay it causes can be costly to health — or to providers.

We urge CMS to allow Medicaid records of birth in the U.S. to serve as primary proof of citizenship and identity of children under 42 C.F.R. 435.407(a).

3. Do not require original or certified copies

For many individuals, mail-in verification at application or upon recertification is a convenient, preferred or necessary way to document particulars of eligibility. Under the new rules, provision of a birth certificate for citizenship and a driver's license for identity often will be the simplest way to meet the new requirement.

For obvious reasons, people may judge it unwise to part with these vital documents even for a short period, making in person appointments necessary again. Where documents are mailed, the state agency will have the burden and cost of returning them. It is our understanding that nothing in the DRA itself requires use of original or certified copies.

CMS should eliminate the requirement in 42 C.F.R. 435.407(h)(1) that original documents or certified copies be submitted.

4. Allow a "safety net" for individuals who cannot find proof among the tiers

For all the detail provided by the four "tiers" in the regulation, the fact remains that some individuals may not be able to provide the proof listed. This may include people with physical or mental incapacity and limited family or social networks to help them. It may also include people separated from their records by homelessness or disaster.

While the affidavit option would appear to serve as a last resort, it is certainly not a simple one. It requires three affidavits, including a statement by the applicant or recipient as to why other documentation is not available.

We were pleased to learn recently that the SSI program provides an alternative "safety net" provision. SSI applicants who cannot obtain a listed document may explain why and may provide any information they do have that might establish that they are citizens. 20 CFR 416.1610.

CMS should add a new provision to adopt the SSI rule as a "safety net."

This concern is closely related to CMS' invitation in the preamble to comment upon whether documents below Tiers 1 and 2 should suffice to prove citizenship, or whether proof of citizenship should be further restricted. We believe limitations on documentation will mean simply this: that some U.S. citizens will be denied benefits.

We also believe our state has the ability to review and make a determination about the credibility of documentation.

5. Do not deny applicants in the reasonable opportunity period

State agency staff recently told us that about 20,000 Kentuckians apply for Medicaid each month. The vast majority will be citizens rather than qualified immigrants, and of these, the greatest number of applicants will be children and their caretakers.

According to the state's KyHealth Choices proposal, Kentucky Medicaid covers pregnant women in 1 out of every 2.5 births (44%) and provides health coverage to 1 of every 3 children and 1 of every 7 seniors in the state. Each of these populations has critical health care needs.

While the Interim Final Rule allows citizen applicants "reasonable opportunity" to meet the new documentation requirement, we believe it erroneously delays a determination on eligibility until the new requirement is met. (Section 6036 of the DRA did not create a new eligibility requirement. Instead, it created a new requirement for state receipt of federal matching funds.)

We therefore share the concern that the Interim Final Rule deprives citizens of equal protection under the law. It creates a result that we doubt was intended by Congress, that citizens be denied eligibility during the reasonable opportunity period while qualified aliens are approved.

We urge you to revise 42 CFR 435.407(j) so that applicants who declare they are U.S. citizens and otherwise are eligible may receive Medicaid benefits during the reasonable opportunity period.

6. Clarifying the help functions for people with disabilities

Our state agency has included in its policy manual for workers a broad exhortation to "be especially mindful of potential challenges facing the elderly, the disabled, the blind and those coping with other types of limitations."

While we welcome this as a management message, we are also concerned that it leaves many questions unanswered, including whether workers should help only after a good faith effort has been made and when they should allow extensions of the reasonable opportunity period.

CMS should expand the list of reasons why a person may require assistance at the outset, making specific reference to both the ADA and Section 504 of the Rehabilitation Act and including people who are limited English proficient (LEP), homeless or displaced by a natural disaster.

CMS also should clarify that states can extend the reasonable opportunity period.

Closing

As we noted at the outset, Kentucky has made a vigorous effort to meet the new requirement timely and without undue burden.

Each recommendation we have made above is permissible under the DRA. Each will further reduce the burden of the new documentation requirement on our state agency, Medicaid recipients and the providers of their care. Taken as a whole, the recommendations seek to insure that no citizen goes without Medicaid simply because listed documentation cannot be found in time.

Thank you for your consideration of our comments.

Sincerely,

Richard J. Seckel
Director

Submitter : Mr. Dee Wilson **Date:** 08/10/2006

Organization : Northwest Institute for Children and Families

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-186-Attach-1.DOC

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)

In my role as Director of the Northwest Institute for Children and Families (NICF), I do training on various child welfare subjects for public child welfare staff and for community professionals and guardian ad litems around the state. In addition, I oversee the Child Welfare Training and Advancement Program (CWTAP) which educates approximately 130-140 graduate students per year in social work. NICF also works closely with private child welfare agencies throughout the state, offering evaluation of promising programs and consultation regarding program development.

My experience working in and with the public child welfare system leads me to be concerned with the new CMS rules requiring citizenship documentation for children in the foster care system, an already overburdened and under funded system in which delays in providing timely services can have a devastating impact on children's lives.

In addition, after 28 years of professional work in the state's child welfare system – including 7 years as a regional director in western Washington – I have direct knowledge of the role Medicaid plays in low-income children's lives, and understand the impact the new regulations could have. As written, I believe these regulations will cause needless delays, duplication of paperwork, and in some cases, possibly loss of critically needed Medicaid coverage.

My comments focus on that section of the interim final rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA) that affects child welfare.

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 520,000 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.

It should also be kept in mind that if foster children are not exempted, states will find it difficult to obtain the necessary documents for eligibility. Birth families often refuse to cooperate with public child welfare agencies. Requiring these children - who may have already been the victims of child maltreatment - to wait for medical care while additional documentation is obtained is unacceptable.

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. This provision will affect children coming into foster care at birth.

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 mother's household and the mother 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 re-determination."
71 Fed. Reg. 39216.

This is 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.

I ask 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.

As written, the Interim Final Rules for the citizenship verification provision in the DRA create unnecessary bureaucratic obstacles to Medicaid applicants and beneficiaries in the child welfare system, with predictable harm to both the children and the system.

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

Sincerely,

Dee Wilson, Director
The Northwest Institute for Children & Families

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

Organization : **American Academy of Physician Assistants**

Category : **Health Care Professional or Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-187-Attach-1.DOC

American Academy of Physician Assistants
950 North Washington Street ■ Alexandria, VA 22314-1552 ■ 703/836-2272 Fax 703/684-1924

August 11, 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 Fed. Reg. 39214

On behalf of the nearly 60,000 physician assistants (PAs) who are represented by the American Academy of Physician Assistants (AAPA), we appreciate this opportunity to comment on the interim final rule published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA), which requires that U.S. citizens and nationals applying for or receiving Medicaid document both their citizenship and their identity.

AAPA is the only national professional organization representing PAs in all medical and surgical specialties. Across the country, physician assistants can be found practicing in urban, rural and underserved communities, delivering needed health care services in rural health clinics, community health centers, private practices, and public hospitals. A relatively high proportion of PAs practice in areas with large Medicaid populations, where they have been credited with improving access to quality, cost-effective health care for vulnerable Medicaid patients.

The AAPA has serious concerns that the documentation requirements laid out in the interim regulations are onerous for many of our country's most vulnerable populations, and will lead to delays in or denial of care for enrollees, as well as delay in or denial of reimbursement to practices where PAs provide care to Medicaid beneficiaries.

First and foremost, we are concerned that the interim final regulations do not protect groups, including foster children, Native Americans, victims of natural disasters, and the severely disabled, who may have considerable difficulty meeting the new documentation requirements. Nor do the regulations give the same latitude to U.S. citizens as is afforded to legal immigrants who apply for Medicaid – who are permitted to receive benefits during the time they are obtaining necessary documents. For many individuals, despite their best efforts – or the efforts of a representative or the state on the individual's behalf – identifying documents have been lost, destroyed, or otherwise cannot be obtained. For others, such as foster children, copies of required documents may be all that is available, especially in times of crises.

Furthermore, while many PAs will continue to provide care to these individuals, they may find themselves in the position of not receiving reimbursement for the services provided, increasing the amount of uncompensated care PAs and their practices provide to the uninsured.

We are gravely concerned that the most vulnerable of U.S. citizens will be forced to delay or go without preventive and critical care health care services unless their PA or other provider is willing to provide it free of charge, or unless they seek care in costly and overburdened emergency departments.

As a profession with a strong involvement in and commitment to underserved populations, the AAPA strongly urges CMS to revise the interim final rules to ensure that America's most vulnerable citizens are afforded the ability to seek health care without delay or denial. To ensure this, CMS should allow states to provide applicants with Medicaid coverage while they attempt to obtain documents, and to employ common-sense verification of citizenship – including permitting state agencies to certify citizenship in certain circumstances of an individual without documents and to accept copies rather than original documents, and allowing Native Americans to use federally-recognized tribal membership cards as proof of citizenship.

We believe that these steps will ensure timely delivery of health care to individuals who need it the most, and will reduce the burden on PAs who may choose to provide uncompensated care to their Medicaid-seeking patients.

We appreciate the opportunity to share our views on this important issue. If we can be helpful in supplying additional information or details on this matter, please don't hesitate to contact Kristin Butterfield, AAPA Assistant Director of Federal Affairs, at 703/836-2272, ext. 3223, or *kbutterfield@aapa.org*.

Sincerely,

Stephen C. Crane, PhD, MPH
Executive Vice President and Chief Executive Officer

SCC:kb

Submitter : **Mrs. Darrah Johnson** **Date: 08/10/2006**

Organization : **Planned Parenthood of San Diego & Riverside Counti**

Category : **Health Care Provider/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

"See Attachment"

Regulatory Impact Statement

Regulatory Impact Statement

"See Attachment"

CMS-2257-IFC-188-Attach-1.DOC

Planned Parenthood®
of San Diego & Riverside Counties

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.

Planned Parenthood of San Diego & Riverside Counties provides over 230,000 patient visits for family planning services to Medicaid patients and patients enrolled in the 1115 family planning demonstration progam (FamilyPact Program). 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 2001, 80.9% of all public family planning expenditures in California were attributable to Medicaid

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 California, family planning demonstration programs are at the cornerstone of improvements in quality of health care. In 2001, 1.7 million people were served in the 13 states that had waiver programs – 1.3 million of those were in California. 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. Researchers from the University of California, San Francisco found that in its first year of operation, FamilyPACT prevented 108,000 unintended pregnancies, 24,000 of which would have been to teens. This, in turn, helped California avoid 41,000 abortions (9,000 of which would have been to teens). In that year, FamilyPACT spent $114.4 million on services. Those services saved $511.8 in future medical, social services, and educational costs. Every dollar spent on FamilyPACT, saves $4.48 in future costs.

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. In California, a copy of a birth certificate costs $14 dollars and takes a minimum of 4 weeks for delivery. Applications for birth certificates through the mail require an application to be notarized before being sent. They are more expensive if an applicant applies in person at a county office. 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. California has a mail-in application that allows copies of all relevant documentation to be sent in. 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.

California 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, California 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.

The citizenship documentation requirements set forth by the Deficit Reduction Act will have a profound impact on the way MediCal 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.

Darrah D. Johnson
President & CEO
Planned Parenthood of San Diego & Riverside Counties

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

Organization : The Hospital & Healthsystem Assoc of Pennsylvania

Category : Hospital

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-189-Attach-1.DOC

THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

August 10, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC, Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

File code: CMS-2257-IFC. Medicaid Program; Citizenship Documentation Requirements (71 Federal Register 39214), July 12, 2006

Dear Sir/Madame:

On behalf of the more than 225 hospitals and health systems in Pennsylvania, I would like to thank you for the opportunity to comment on the Centers for Medicare & Medicaid Services (CMS) interim final rule regarding citizenship documentation requirements under the Medicaid program.

The Hospital & Healthsystem Association of Pennsylvania (HAP) is a statewide membership services organization that advocates for the more than 225 acute and specialty care hospitals and health systems which provide primary care, sub-acute, long-term care, home health, and hospice services to the citizens of this commonwealth.

The recently enacted Deficit Reduction Act (DRA) mandates documentation of both citizenship and identity for all Medicaid applicants and recipients claiming U.S. citizenship. The citizenship and identity documentation requirements of the DRA, as interpreted by CMS, have the potential for serious consequences, including denied access to care, for many of Pennsylvania's most vulnerable citizens. While HAP fully supports the adoption of a standardized documentation process, we are concerned that implementing these regulations will create enrollment barriers for low-income citizens who otherwise meet all of the Medicaid eligibility requirements. It is important that CMS adopt a policy that maximizes the flexibility afforded under the statute for states and health care providers to enroll patients in the Medicaid program.

We commend CMS for including exemptions for certain categories of Medicaid applicants, such as citizens and nationals receiving Supplemental Security Income (SSI), or for individuals entitled to, or enrolled in, Medicare, as well as not mandating verification requirements to apply to pregnant women and children, who are presumptively eligible for Medicaid. However, CMS is encouraged to provide additional flexibility in the application of the documentation requirements and exemptions for other populations as outlined in this letter.

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Expand Categories of Exemptions

We concur completely with the list of vulnerable populations that are exempt from the new documentation policies, but encourage CMS to consider expanding the exemptions. In particular, **we ask CMS to expand the exemptions to include the non-elderly disabled who have severe physical, cognitive, and mental disabilities but do not receive SSI.**

In addition, CMS should allow **an exemption for Title IV-E children in foster care** whose families already are trying to manage a disruptive living situation. These children should not be at risk of losing their Medicaid coverage, which would increase the financial burden for foster families. Because there is already an exception for presumptively eligible pregnant women and children, we ask CMS to give consideration to **making an exemption for citizen children born to non-eligible immigrant mothers.** We feel strongly that these children need to have the benefit of being eligible for Medicaid coverage and not have unnecessary barriers to enrollment.

Increase Flexibility with Accepted Documents and Process

The Pennsylvania Department of Public Welfare (DPW) is implementing a streamlined approach with regard to the process of obtaining the necessary citizenship and identity documents for Medicaid applicants. It is imperative for CMS to create more flexibility in its regulation, so Pennsylvania and other states can continue to provide the Medicaid safety net for its neediest citizens. For instance, we recommend the elimination of the restriction that requires applicants to present all of the required documentary evidence for citizenship and identity prior to being made eligible for Medicaid. This is an unnecessary barrier to eligibility and would negatively impact individuals who present to hospitals on an emergency basis from having Medicaid coverage for medical services rendered. Ultimately, this would also have a negative financial impact on hospitals that are required to treat all patients who present for emergency services. Pennsylvania's policy is that "if all other conditions of eligibility for Medicaid are met except documentation of citizenship and/or identity, and the individual is cooperating with the County Assistance Office (CAO) staff in obtaining this documentation, eligibility for Medicaid will not be denied or terminated while documentation issues are being researched and resolved." **CMS should provide flexibility in the final regulations to grant Medicaid eligibility to those applicants who are cooperating with the state-established processes to obtain required documentation.**

HAP also recommends that CMS reconsider the requirement that original documents must be presented to satisfy eligibility. There is no such stipulation in the original statute and we believe that **states should be allowed to use copies of documents to satisfy eligibility requirements.** In Pennsylvania, the Medicaid application process is primarily electronically. If individuals have to provide original documents proving citizenship and

identity to the County Assistance Offices, the application process will be prolonged, and it will be an unnecessary administrative burden for consumers, as well as additional expense for the commonwealth..

We encourage CMS to increase the flexibility regarding the types of documents that are acceptable. According to the CMS rule, states are prohibited from accepting many documents unless they were created more than five years before an individual applied for Medicaid. However, CMS does not provide any justification for this time restriction. **We recommend that CMS eliminate the restriction that documents need to have been created more than five years before an individual applies for Medicaid in order to be accepted.**

In addition, **hospital records of Medicaid births should be allowed as adequate documentation of citizenship for children.** As currently proposed, these records of the births would not be allowed to document citizenship even though they serve as the documentation to generate payments for those births from the Medicaid program.

Finally, **CMS should consider establishing uniform guidelines to facilitate the access to or transmission of records, such as birth certificates or drivers licenses, between states for individuals who have relocated from the state where the documents exist.** An example would be a CMS led effort to create a national system that would allow states to verify U.S. births by computer.

As proposed, this regulation alters the balance between maintaining program integrity while continuing to ensure necessary coverage for eligible citizens. Therefore, HAP encourages CMS to reconsider the impact this regulation could have to enrolling, and subsequently assuring access to care, to the most vulnerable populations.

HAP appreciates the opportunity to comment on this interim final rule. If you have any questions or would like to discuss these recommendations in more detail, feel free to contact Robert Greenwood, HAP's vice president, health care finance and insurance, at (717) 561-5358 or bgreenwood@haponline.org; or Melissa Speck, HAP's director, policy development, at (717) 561-5356 or mspeck@haponline.org.

Sincerely,

Paula A. Bussard

PAULA A. BUSSARD
Senior Vice President, Policy & Regulatory Services

Submitter : **Ms. Deborah Outlaw** **Date: 08/10/2006**

Organization : **Pediatrix Medical Group**

Category : **Physician**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

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

RE: Medicaid Citizenship Documentation Interim Final Rule, CMS-2257-IFC

On behalf of Pediatrix Medical Group, Inc we appreciate the opportunity to comment on the interim final rule (Rule) to implement section 6036 of the Deficit Reduction Act (DRA). This section requires a state to obtain documentation of a declaration of citizenship for purposes of Medicaid eligibility. While we recognize the legitimate policy goal of ensuring the integrity of Medicaid program expenditures for individuals who are eligible for such services, we are concerned over the Rule s impact on access to care for newborns.

Pediatrix is a large physician group of neonatologists and pediatric cardiologists, as well as maternal fetal medicine specialists, pediatric intensivists, advanced nurse practitioners and other medical specialties. Most of our physicians are hospital based, providing care for premature and critically ill newborns, sick and injured children and women with high-risk pregnancies. Over 50% of our patients are Medicaid recipients.

We are pleased that the Rule clarifies that presumptive eligibility determinations will continue to apply for pregnant women until such time as they file an application for Medicaid. As providers of care, it is vital that women have access to prenatal care to ensure their own health and minimize potential pregnancy complications. We are concerned, however, over the potential impact this Rule could have on infants born in U.S. hospitals.

For example, newborns who are born in U.S. hospitals may have to provide citizenship documentation in order to be eligible for Medicaid. The preamble to the rule states that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must provide citizenship documentation following their birth. While the mother may not be eligible for Medicaid after giving birth, there is no question that these children are American citizens by virtue of their birth in U.S. hospitals and eligible for Medicaid. 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 infants born premature or with other medical complications that require care in a hospital s neonatal unit. 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 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 can only be used in rare circumstances.

The risk to the health of newborns and the potential for delays or denials in reimbursement for physicians providing medical care are of concern. The easiest solution is to allow states to use Medicaid billing records of births for which it has paid, 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 Medicaid services if they are otherwise eligible without the need for any additional proof that they are citizens.

We urge CMS to amend the Rule to state that a 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.

Thank you for the opportunity to comment. For additional information, please contact Deborah Outlaw at 703/819-7783.

Pediatrix Medical Group
1301 Concord Terrace
Sunrise, FL

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

Organization : Center on Budget and Policy Priorities

Category : Other

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-191-Attach-1.DOC

CMS-2257-IFC-191-Attach-2.PDF

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

ATTN: CMS-2257-IFC

RE: Comments on Medicaid Citizenship Documentation Interim Final Rule, 71 *Federal Register.* 39214 (July 12, 2006) and Collection of Information Requirements

The Center on Budget and Policy Priorities is a nonpartisan research and policy organization based in Washington, DC. Founded twenty-five years ago, the Center conducts research and analysis to inform public debates and policymakers about a range of budget, tax and programmatic issues affecting low- and moderate-income families and individuals. We appreciate the opportunity 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).

We were pleased to see that the Secretary recognized the "scrivener's error" made by Congress in drafting section 1903(x)(2), as added by the DRA, and has clarified in the interim final regulations that Medicare beneficiaries and, in most states, Supplemental Security Income (SSI) recipients are exempt from the citizenship documentation requirements. However, we are deeply concerned and disappointed that the Secretary has not exercised the discretion afforded to him under the statute to minimize the likelihood that numerous other U.S. citizens applying for or receiving Medicaid coverage – primarily low-income children, pregnant women and parents – will face delay, denial, or loss of Medicaid coverage. We are particularly troubled that the Secretary did not ease the burden of the new rules to the extent possible on new applicants; foster care children receiving title IV-E benefits; Social Security Disability Insurance recipients; and individuals who, despite making a good faith effort to comply with the documentation requirements, simply cannot produce any of the specific documents identified in the interim regulation. We estimate that roughly 38 million current recipients remain subject to the citizenship documentation requirements, and that approximately 10 million citizen applicants who meet all Medicaid eligibility requirements will be subject to the requirements in the next year. [1]

[1] This estimate, based on analyses of Medicaid administrative data as well as analyses of the Agency for Healthcare Research and Quality's 2003 Medical Expenditure Panel Survey, will be presented in "Documenting Citizenship and Identity Using Data Matches," by Leighton Ku, Donna Cohen Ross and Matt Broaddus, Center on Budget and Policy Priorities, forthcoming. We adjusted these estimates to exclude counts for Medicare and SSI beneficiaries.

In the following comments we (1) suggest ways that the Secretary can alleviate the unnecessary burden that the current rule imposes on these populations and (2) respond to the Secretary's solicitation for comments and suggestions on the use of other electronic data matches and other documents that could reliably establish citizenship. We also comment on the impact that requiring submission of original or certified copies of the requisite documents will have on the collection of information requirements, and have sent a copy of our comments to the appropriate Offices at the Centers for Medicare and Medicaid Services and the Office of Management and Budget.

Finally, while we agree that changes to immigrant eligibility for Medicaid made by the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) make it appropriate for the Secretary to remove the regulations at 42 CFR 435.408 and modify the regulations at 42 CFR 435.406, we are concerned that the Secretary has (1) inadvertently omitted some groups of legal immigrants who are eligible for Medicaid and (2) inappropriately required states to verify the immigration status of others with the Department of Homeland Security.[2]

COMMENTS ON PROVISIONS OF INTERIM FINAL RULE AND PREAMBLE IMPLEMENTING SECTION 6036 OF THE DRA

Section I. Background, *Implementation Conditions/ Considerations* (42 CFR 435.407 and 435.1008)

1. *U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all eligibility requirements (435.407(j)).*

   Under the DRA, the new citizenship documentation requirement applies to all individuals who apply for Medicaid, unless otherwise exempt from the requirement under the regulation. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 *Federal Register* at 39216. The interim rule itself provides 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).

   As noted, the new documentation requirement has the potential to delay or deny Medicaid coverage for up to 10 million U.S. citizens who will apply for Medicaid this year, most of whom will be children, pregnant women and parents. To not permit enrollment until all documents are produced could delay, or result in a denial of access to, medical care, including prenatal and early childhood services, impair health and jeopardize the financial status of health care providers who may otherwise be forced to serve these women and children on a charity basis.

   While an individual must be a citizen or qualified alien to receive full Medicaid benefits, *documentation* of citizenship is not itself a criterion of Medicaid eligibility. We note that, under section 1137(d) of the Social Security Act ("Act"), Congress did expressly make an

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[2] Please note that, where we have made specific suggestions in ways in which the regulations should be modified, we have identified only the pertinent section in Part 435 of the interim final regulations. In each instance, we would urge the Secretary also to make conforming changes to the corresponding section of Part 436 of the interim final regulations.

individual's *declaration* of citizenship or qualified alien status a condition of eligibility.[3] In adding subsection 1903(x) to the Social Security Act, Congress has required states to document citizenship as a condition of receiving Federal financial participation (FFP). Congress did not, however, make documentation of citizenship a criterion of eligibility *per se*. Therefore, once an applicant for Medicaid declares that he or she is a citizen, and the State determines that the individual meets all other eligibility requirements, medical assistance should be made available, and the individual should be afforded the same reasonable opportunity as beneficiaries to provide the requisite documentation of citizenship.

Since the enactment of the Immigration Reform and Control Act of 1986, states have had to apply similar documentation requirements under §1137(d) of the Act to immigrants, as those now applied to citizens under the DRA. Sections 1137(d)(2) and 1137(d)(3) require states to obtain documentation of immigration status from immigrant applicants and to verify such status with the United States Citizenship and Immigration Services (USCIS). Under §1137(d)(4), states are required to give immigrant applicants a reasonable opportunity to submit the necessary documentation and, during such period, to provide medical assistance to otherwise-eligible immigrants. Although not expressly required under the DRA, there is nothing in the DRA that prevents the Secretary from affording citizen applicants the same treatment. Yet, the Secretary has declined to do so, requiring instead an unnecessary delay in coverage for citizens who cannot readily produce the required documentation.

The policy articulated in the preamble to the interim final regulations, while not statutorily compelled, has serious implications – implications which are both foreseeable and avoidable – for the vulnerable citizen populations who need medical assistance and for the providers who serve them. U.S. citizens who (1) have applied for Medicaid and (2) meet all of the state's eligibility criteria, but (3) are trying to obtain the necessary documentation, may experience significant delays in coverage. Some, who become discouraged or simply are unable to obtain the necessary documents within the time period provided by the state, will never get coverage. Providers will have to turn vulnerable patients away, or run the risk of not being compensated for critical services, and the health of these individuals may suffer. The use of emergency rooms to obtain services and the burden of uncompensated care will increase. The lack of an effective outreach program to educate U.S. citizens about the new requirement will further exacerbate these consequences, as most applicants are likely to be unaware of the new rules, and there are likely to be significant delays in assembling the necessary documents.

Therefore, we urge the Secretary to revise 42 CFR 435.407(j) as follows:

(1) If an individual declaring to be a citizen of national of the United States does not present satisfactory documentary evidence of citizenship at the time of application—
  (A) The State—
    (i) Shall provide the individual with a reasonable opportunity to submit such evidence to the State; and

[3] Section 1137(d)(1)(A) states, in pertinent part: "The State shall require, *as a condition of an individual's eligibility* for benefits under a program listed in subsection (b) [including Medicaid], a declaration in writing, under penalty of perjury ...stating whether the individual is a citizen or national of the United States..." (emphasis supplied)

(ii) May not delay, deny, reduce or terminate the individual's eligibility for benefits until such a reasonable opportunity has been provided.

(B) If, after a reasonable opportunity is provided to such individual, satisfactory documentary evidence of citizenship or nationality is not provided, the State shall—

(i) Deny or terminate the individual's eligibility for benefits under the program; and

(ii) Provide the individual with notice and opportunity for a fair hearing, in accordance with Part 431, Subpart E.

(2) Federal financial participation shall be provided in expenditures for medical assistance to such individuals whom the State Medicaid agency determines meet the State's Medicaid eligibility criteria during the reasonable opportunity period described in subparagraph (1).

2. *Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement (42 CFR 435.1008)*

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 or Medicare. Among the children subject to the documentation requirements under the interim final regulations are roughly one million children in foster care, including those receiving federal foster care assistance under title IV-E – a population of extremely vulnerable children, often in need of immediate mental and physical health interventions, that will be unlikely to have access to the necessary documentation.

The DRA does not compel this result. Indeed, under the literal terms of the changes to the Act made by §6036 of the DRA, states should not be required to document the citizenship of children eligible for Medicaid by virtue of their title IV-E status. Section 1903(x) of the Act, as added by the DRA, requires states to verify the citizenship of individuals who have declared their citizenship as part of the Medicaid application process. Because Medicaid eligibility is automatically conferred upon title IV-E recipients, no such declaration of citizenship by, or on behalf of, these children is required. Thus, they need not, and should not, be subject to the new documentation requirements.

Even if the Secretary erroneously concludes that the terms of the DRA do apply to children receiving assistance under title IV-E, the Department of Health and Human Services' Agency for Children and Families (ACF) issued a Policy Interpretation Question (ACYF-CB-PIQ-99-01) which already requires state child welfare agencies to verify the citizenship of citizen children receiving title IV-E benefits. The ACF policy further requires that the agencies do so in accordance with the verification procedures set forth in the "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of PRWORA," published in the *Federal Register*, Vol. 62, No. 221, on November 17, 1997. Nonetheless, the preamble to the interim final rule states that, in order to receive Medicaid, citizen children receiving title IV-E benefits "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 *Federal Register* at 39216.

The DRA does not compel the unnecessary duplication of state agency efforts, which puts these particularly vulnerable children at risk of delayed medical care. To the contrary, the DRA allows the Secretary to exempt individuals who are eligible for other programs that require documentation of citizenship. Title IV-E is precisely such a program. Therefore, we urge the Secretary to revise the second sentence of 42 CFR 435.1008 as follows:

> This requirement does not apply with respect to individuals declaring themselves to be citizens or nationals who are eligible for medical assistance
> (i) on the basis of receiving supplemental security income benefits under title XVI of the Social Security Act or federal foster care payments under title IV-E of the Act; or
> (ii) who are entitled to benefits or enrolled in any parts of the Medicare program under title XVIII of the Social Security Act.[4]

3. *Individuals eligible for Social Security Disability Insurance should be exempt from the citizenship documentation requirement (42 CFR 435.1008)*

The interim final regulation exempts Medicare beneficiaries who are applying for or receiving Medicaid from the citizenship documentation requirements. However, disabled individuals who are eligible for Social Security Disability Insurance (SSDI) benefits, but not yet entitled to Medicare, are not afforded comparable treatment – even though they automatically become entitled to Medicare Part A after receiving SSDI for 25 months.[5]

For purposes of the citizenship documentation requirements, there is no meaningful distinction between Medicare beneficiaries and SSDI recipients. Medicare entitlement is automatically conferred by receipt of either Social Security Old-Age Insurance or SSDI benefits under title II of the Social Security Act. Eligibility for both Social Security and SSDI, in turn, requires that the recipient be either a U.S. citizen, national or lawfully-present alien – a status which the Social Security Administration is required to verify. That SSA verifies the citizenship or immigration status of Medicare beneficiaries provides the rationale behind their exemption from the new citizenship documentation requirement under Medicaid. This same logic clearly supports the exemption of SSDI recipients from the Medicaid documentation requirements as well.

Moreover, SSDI recipients are automatically entitled to Medicare after a two-year waiting period. At that point, they will be exempt from the Medicaid citizenship documentation requirements. There simply is no rational reason to question their citizenship during the first two years of SSDI eligibility, any more than after they become eligible for Medicare. Accordingly, we urge CMS to revise the second sentence of 42 CFR 435.1008 as follows:

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[4] Note that we have an additional suggested revision to section 435.1008, discussed in the next section of our comments, below.

[5] Many SSDI recipients are eligible for Medicaid. A 2003 Commonwealth Fund report estimated that approximately 40% of SSDI recipients in the two-year waiting period for Medicare entitlement, or 500,000 SSDI recipients, were enrolled in Medicaid. (See "Elimination of Medicare's Waiting Period for Seriously Disabled Adults: Impact on Coverage and Costs," The Commonwealth Fund, July 2003). Moreover, states are required, as part of the Income and Eligibility Verification System (IEVS), to verify SSDI benefits, which they can do through the Social Security Administration's State Data Exchange (SDX).

This requirement does not apply with respect to individuals declaring themselves to be citizens or nationals who are eligible for medical assistance —

(i) on the basis of receiving supplemental security income benefits under title XVI of the Social Security Act, federal foster care payments under title IV-E of the Act, or Social Security Disability Insurance under title II of the Act; or

(ii) who are entitled to benefits or enrolled in any parts of the Medicare program under title XVIII of the Social Security Act;

4. *Additional electronic data matches which states should be permitted to rely upon in verifying citizenship (42 CFR 435.407(b))*

In the preamble, the Secretary solicited "comments and suggestions for the use of other electronic data matches with other governmental systems of records" (71 *Federal Register* 39216) that states can rely upon to verify citizenship and/or identity. We urge the Secretary to give states the option to use alternative types of cross matches with federal, state or private data sources to document citizenship, provided that the state describes such data or cross match in an amendment to its state plan. As with all state plan amendments, CMS would have the opportunity to review and approve or deny the proposed data match.

The interim final regulation permits electronic cross matches to document citizenship under very narrow circumstances: matches with state vital records or State Data Exchange (SDX) files for Supplemental Security Income beneficiaries. Other types of public or private data, however, may just as effectively document citizenship. It is shortsighted to foreclose the ability of states to use other electronic data matching opportunities that may be more effective or efficient in meeting the purposes of the law. For example:

- The Social Security Administration's NUMIDENT data base has data on the place of birth for virtually all people with Social Security numbers and data on citizenship for those who entered the system since 1972. SSA currently does not provide access to these data to CMS or states, but the interim final regulations would prohibit their use even if SSA were to grant access.

- States have found that the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) system can be used to document whether a person is a naturalized citizen, but the regulations do not permit the use of SAVE data. DHS staff confirmed that SAVE has these data. This would be extremely useful, particularly in circumstances in which a naturalized citizen cannot find an original Certificate of Naturalization, which is the only document permitted under the interim rules. To get a replacement certificate requires payment of a prohibitive $220 fee and can take up to a year to obtain. States already participate in SAVE and can use it to get information about naturalized citizens more rapidly and less expensively.

Finally, it is quite likely that other federal, state or private data sources will be identified or developed in the near future that can meet these needs effectively. Information technology evolves rapidly and CMS should leave room for development of new and better approaches.

Therefore, we recommend that the Secretary add a new subparagraph (11) to 42 CFR 435.407(b) of the interim regulation to read:

> (11) *Other electronic verification of citizenship.* At State option and subject to approval by the Secretary, a State may use a cross match with a Federal, State or local governmental agency or private data system not specifically provided for in this section. The State must describe such cross match and data system in an amendment to its state plan.

Section II. Provisions of Interim Final Rule with Comment Period, (42 CFR 435.407)

The Secretary also solicited "comments and suggestions for additional documents that are a reliable form of evidence of citizenship...or identity" as well as "comments as to whether the number of documents accepted for proof of citizenship and identity should be limited" to first and secondary level documents "in light of the exception provided for citizens and nationals receiving SSI [in 1634 states] and for individuals entitled to or enrolled in Medicare." 71 *Federal Register* at 39219-20.[6]

We strongly urge the Secretary to use his authority to authorize a broader set of documents that can be used to establish citizenship and/or identity and to give more flexibility to states. As discussed elsewhere in our comments, there are many individuals, other than SSI recipients and Medicare beneficiaries, for whom the new documentation requirements pose a significant, if not insurmountable, burden in obtaining or retaining Medicaid benefits. To further constrain these individuals' ability to meet already stringent documentation requirements is neither necessary nor justified under the statute. On the contrary, the Secretary would be well-advised to expand the list of documents that may be used to satisfy the documentation requirements.

There are two specific types of documents that we urge the Secretary to add to the regulations as satisfactory evidence of both citizenship and identity: (1) Records of payment by Medicaid or the State Children's Health Insurance Program (SCHIP) for the birth of a Medicaid applicant or beneficiary in the United States; (2) tribal enrollment cards issued by a federally-recognized tribe. In addition, we strongly urge the Secretary to follow the approach taken by the Social Security Administration in verifying the citizenship of applicants for SSI, by granting states the ability to rely on other evidence of citizenship where an individual is unable to produce any of the documents identified in the regulations and the state finds it reasonable to conclude that the individual is a citizen for purposes of Medicaid eligibility.

1. *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 (Primary Evidence of Citizenship, 42 CFR 435.407(a))*

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[6] Preliminarily, we would like to note our support of the 42 CFR 435.407(d)(3) of the interim final regulation, which permits the use of institutional admission papers from a nursing facility or similar institution and does not limit reliance on such documents to those created at least five years before the initial application, as the guidance in the June 9, 2006 letter to State Medicaid Directors from Dennis Smith (SMDL 06-012) would have done. Only a small proportion of individuals remain institutionalized for more than five years. Thus, adding a five-year waiting period effectively would have precluded the use of such evidence for most institutionalized individuals.

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, and it may take several months or more for such agencies to even have a birth certificate on file. The interim 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 is 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).

Children born in the United States are, by definition, citizens.[7] If a state Medicaid or SCHIP agency or managed care organization (MCO) paid for the child's birth in a U.S. hospital, the state knows that the child was born in the U.S. and therefore knows that the child is a U.S. citizen. This is true, regardless of whether the child's mother is a citizen or qualified alien eligible for full Medicaid benefits, or an undocumented alien or legal immigrant subject to the five year bar and therefore eligible only for coverage of labor and delivery of the child. It also is true regardless of whether or not the child is entitled to deemed newborn eligibility under section 1902(e)(4) of the Act.[8]

Thus, a record of payment for a child's birth by the state Medicaid agency, the SCHIP agency or a Medicaid or SCHIP MCO reliably and conclusively establishes citizenship and should be acceptable evidence of such. Inasmuch as Medicaid alone pays for the delivery of more than 40 percent of all U.S. births, recognizing that a Medicaid or SCHIP record of payment for the birth establishes citizenship would significantly ease the burden created by the new requirements for states, providers and families.

All newborns, regardless of the immigration status of their mothers, need well-baby care. Those born prematurely or at a low birth weight, or who otherwise have post-partum

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[7] While virtually every child born in the United States is a U.S. citizen, there is, of course, an exception: Children born to foreign diplomats temporarily residing in the United States are not granted U.S. citizenship. We submit, however, that the number of foreign diplomats (or their wives) who give birth in the United States and whose labor and delivery is covered by Medicaid is negligible – probably non-existent.

[8] We note, however, that the policy regarding deemed newborn eligibility described in the preamble is incorrect, as it purports to limit the continued deemed newborn eligibility status to infants born to women who, not only were eligible for and receiving medical assistance at the time of the child's birth, but also who remain eligible for Medicaid during the child's first year of life. It appears that, in making this statement, the Secretary was relying on regulations at 42 CFR 435.117. These regulations, however, were superseded by a subsequent change to section 1902(e)(4) of the Social Security Act. Previously, the statute did require that, to retain the deemed eligible status for the full year, the infant's mother had to remain actually eligible for Medicaid. Section 1902(e)(4) of the Act now requires only that the mother was eligible for and received Medicaid at the time of birth, that the child remain a part of her household, and that the mother either remain eligible for Medicaid or that she would remain eligible if still pregnant.

The preamble correctly states that pregnant women who are undocumented aliens or subject to the five-year bar are eligible for Medicaid at the time of the child's birth, but incorrectly concludes that infants born to such women are not eligible for deemed newborn eligibility because the mother does not remain eligible for Medicaid after the child's birth. However, an undocumented or five-year bar woman mother, if still pregnant, would remain eligible for Medicaid, albeit only for emergency services, including for labor and delivery. As noted, the statute now provides that coverage of the infant should continue so long as the mother would, if pregnant, remain eligible for Medicaid. Accordingly, children born to undocumented mothers or mothers subject to the five-year bar are entitled to a full year of deemed newborn eligibility to the same extent as children born to citizen or qualified alien mothers not subject to the five year bar. We urge the Secretary to correct this misstatement of federal law in the preamble.

complications, require critical, more costly interventions. Prohibiting states from granting coverage until documentation of citizenship is provided places hospitals and physicians treating newborns at risk for a delay in, or denial of, reimbursement and needlessly jeopardizes the health of these babies.

We strongly urge that the Secretary amend 42 CFR 435.407(a) by adding a new subparagraph (6) to state:

> (6) A record of payment for the birth of the individual, including electronic claims records, by any of the following entities: the State Medicaid agency; the agency which administers a separate child health program under Subchapter D, Part 457 of this title; or a managed care organization which administers the benefits covered under the State's Medicaid and/or separate child health program.

2. *Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirements (Primary Evidence of Citizenship, 42 CFR 435.407(a))*

While the interim regulations, at 42 C.F.R. 437.407(e)(6), recognize Native American 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 to serve as secondary evidence of citizenship and census records for the Seneca and Navajo Nations as fourth-level evidence of citizenship).

Over 560 tribes in 34 states 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. Tribal genealogy charts date back to original and historic tribal membership rolls, and each Federally-recognized tribe is responsible for issuing tribal enrollment cards to its members. These cards are used in establishing eligibility for Federal benefits as well as tribal resources and voting in tribal matters. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship.

Further, 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. The exception would be a Federally-recognized tribe located in a state that borders Canada or Mexico and which issues tribal enrollment cards to non-U.S. citizens. In such cases, 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, American Indians and Alaskan Natives (AI/AN) might not be able to produce a birth certificate or other satisfactory proof of citizenship. Many traditional AI/ANs were not born in a hospital and there is no record of their birth, except through tribal genealogy records. Thus, failure to recognize tribal enrollment cards as proof of citizenship creates an unnecessary barrier to AI/AN participation in the Medicaid program. Accordingly, we strongly urge the Secretary to revise the regulation by adding a new paragraph (7) at 42 CFR 435.407(a) to read:

(7) A Tribal enrollment card, issued by a Federally-recognized tribe, unless the tribe is located in a state that borders Canada or Mexico and issues tribal enrollment cards to non-U.S. citizens.

3. *Proof of naturalized citizenship for parent should be accepted as primary evidence of citizenship for foreign-born children (Secondary Evidence of Citizenship, 42 CFR 435.407(b))*

Foreign-born children gain "derivative" U.S. citizenship when one of their parents becomes a naturalized citizen. However, such children do not routinely receive a Certificate of Naturalization or other document proving their citizenship. Getting the proper paperwok (e.g., a passport or Certificate of Citizenship) can be a time-consuming and expensive process, which, at a minimum, will delay receipt of Medicaid for some eligible children and, at worst, may result in others never getting coverage. This result is unnecessary, since proof of the parent's naturalized status conclusively establishes the child's citizenship. Therefore, we urge the Secretary to add a paragraph (12) to section 435.407(b) to read:

(11) *Certificate of Naturalization (DHS Forms N-550 or N-570).* The Department of Homeland Security issues these forms. While a certificate of naturalization serves as primary evidence of citizenship for the individual to whom the certificate is issued, such certificate also provides secondary evidence of citizenship for the foreign-born children (including adopted children) of the parent to whom such certificate is issued.

4. *The Secretary should adopt the approach taken by the Supplemental Security Income program for U.S. citizens who otherwise lack documentation of their citizenship (Fourth Level of Evidence of Citizenship, 42 CFR 435.407(d))*

There inevitably are and will continue to be 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 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 interim rule, such individuals, if they apply for Medicaid, can never qualify. Those who are currently receiving Medicaid will eventually lose their coverage, even though they are U.S. citizens and otherwise eligible for Medicaid.

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.

The reality is that there are significant numbers of U.S. citizens who simply will not be able to provide documentary evidence of citizenship at any level provided for in the interim final rule. Unable to do so, these individuals will be denied (or, if currently receiving Medicaid, ultimately will lose) coverage and access to critical services. Their health may suffer, and the burden on hospital emergency rooms and other providers of uncompensated care will grow.

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 are capable of reliably determining 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 generally accepted 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 State Department also provides more flexible options to document citizenship in issuing U.S. passports.) The Secretary should adopt a similar approach. Specifically, 42 CFR 435.407 should be revised by adding a new subparagraph (6) to subsection 435.407(d) to provide:

> (6) In the case of an individual who is unable to produce any of the documentary evidence described in subsections (a) through (d), the state Medicaid agency, at its option, may determine that the individual is a U.S. citizen for purposes of receiving Federal financial participation under section 435.1008 if the individual or his or her guardian or other authorized representative—
>
> (i) Explains why none of the documentary evidence described in subsections (a) through (d) is available; and
>
> (ii) Provides any information he or she does have which shows that the individual was born in the United States or that the individual has voted in the United States (in an election requiring U.S. citizenship) or that otherwise indicates U.S. citizenship; and
>
> The agency finds that 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.

Insofar as the regulations permit evidence of citizenship approved by SSI to count as proof of citizenship in Medicaid, we do not see why a similar, more flexible documentation approach cannot be permitted for Medicaid applicants and beneficiaries who are not also receiving SSI.

5. *The Secretary should expand the permissible use of affidavits to establish identity (42 CFR 435.407(f) and 435.407(g))*

The DRA provides that identity can be established by "[a]ny identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act." Under 42 CFR 435.407(f) of the interim final regulations, children under the age of 16 can establish identity through a sworn affidavit signed by the child's parent or guardian. Consistent with 8 CFR 274a.2(b)(1)(v)(B)(3) and (4), which implement §274A(b)(1)(D) of the Immigration and

Nationality Act, the Secretary should extend the permissible use of affidavits to children under age 18 and disabled individuals. Specifically, we recommend that section 435.407(f) be amended as follows:

- Insert "and disabled individuals" after "Special identify rules for children" in the heading;
- Replace "children under 16" with "children under 18"; and
- Strike "If" in the second sentence and replace with "For children under 18 and disabled individuals, if".

Section I. Background, *Implementation Conditions/ Considerations* and Section III. Collection of Information Requirements (42 CFR 435.407(h))

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

First, requiring that individuals obtain and submit originals or certified copies will exacerbate the information-collection burden imposed by the regulations on applicants, beneficiaries and state Medicaid agencies, and calls into question the estimate that it will take applicants and beneficiaries only ten minutes and state agencies five minutes to comply. In addition to the time spent in locating and/or obtaining original or certified copies of documents, applicants and beneficiaries likely will have to visit state offices to submit them, as they often undoubtedly will be reluctant to mail an original. As noted above, there are approximately 38 million current beneficiaries who may be affected by the interim rule and an estimated 10 million new citizen applicants who will be required to prove their citizenship over the course of the next year. For each, the state Medicaid agency will have to meet with the individual or his/her representative, make a copy of the pertinent documents, maintain the records and, in some instances, provide assistance in obtaining an original or certified copy.

Second, requiring original or certified copies also will undermine the effort many states have made to simplify the application process – simplifications which have increased the accessibility of Medicaid for many eligible low-income families and children and other individuals. To the extent possible, for example, many states routinely obtain verification of various eligibility requirements from other state or federal agencies; indeed, as part of the eligibility redetermination process, states are required to do so. Child welfare agencies, for example, likely will have a copy of a foster child's birth certificate or other documentation of citizenship, obtained in verifying eligibility for foster care benefits. Yet, section 435.407(h)(1) of the interim final regulation precludes states from obtaining a copy of probative documentation from another agency, even if that agency itself had received an original or certified copy.

Moreover, many applicants and beneficiaries will find obtaining an original or certified copy difficult, if not prohibitive. And many more will be understandably reluctant to mail original birth certificates, passports or other such documents, or their only certified copy. They certainly will not be able or willing to mail in proof of identity, such as a driver's license or school identification card. The result will be that applicants and beneficiaries will have to make

otherwise unnecessary visits to state or county Medicaid offices. Those who cannot afford to miss work, lack transportation, are not mobile or otherwise are unable to travel to the Medicaid office during business hours will forego the application process altogether, thereby never receiving the coverage they and their families need. The inevitable result will be that eligibility determinations will be delayed and/or ultimately denied, and that health care providers will experience delays in reimbursement and increased uncompensated care.

We are not aware of any reliable research that demonstrates that undocumented immigrants are obtaining non-emergency Medicaid services by falsely claiming citizenship.[9] Nonetheless, in order to alleviate any concern that accepting copies of documents could result in undocumented immigrants becoming eligible for full Medicaid benefits, the Secretary should require that states opting to accept copies of documents must implement effective, fair and non-discriminatory procedures to ensure the integrity of the application process. For example, a state could institute a system to randomly check the original or certified documents of some applicants and beneficiaries. The State would need to terminate the eligibility of anyone found to have submitted fraudulent copies and, if the percentage of fraudulent copies was found to be unacceptable, the Secretary could require the State to take appropriate remedial measures – including, if necessary, requiring original or certified copies from all applicants and beneficiaries.

Accordingly, we urge the Secretary to revise the regulation by modifying subparagraph (1) of 42 CFR 435.407(h) as follows:

> (1) All documents must be either originals or copies certified by the issuing agency or entity, except that, at their option, States may accept copies of documents provided that the State —
>
> (i) Requires submission of an original document if the State has a reasonable suspicion that the copy is counterfeit, has been altered, or is inconsistent with information previously supplied by the applicant or beneficiary; and
>
> (ii) Has implemented effective, fair and non-discriminatory procedures for ensuring the integrity of the application process.

COMMENTS ON CHANGES MADE TO REGULATIONS GOVERNING IMMIGRANT ELIGIBILITY

With the passage of PRWORA, Congress changed the rules for Medicaid eligibility of immigrants residing in the United States. For the most part, to be eligible for full Medicaid benefits, an immigrant must fall into the definition of a "qualified alien" set forth in section 431 of PRWORA, as amended, 42 USC 1641. However, several groups of legal immigrants who are eligible for full Medicaid benefits are not included in the definition of "qualified alien."[10] In limiting eligibility of

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[9] Similarly, in CMS' response to the Office of Inspector General (IOG) Draft Report: "Self-Declaration of U.S. Citizenship for Medicaid" (OEI-02-03-00190), the CMS Administrator noted: "The [OIG] review found that, while there are vulnerabilities in states' accepting self-declaration of citizenship, states have little evidence that many non-eligible, non-citizens are receiving Medicaid as a result." See memo dated April 8, 2005 from Mark B. McClellan to Daniel R. Levinson, attached at Appendix D to the final OIG report.

[10] The following immigrants are not included in the definition of "qualified alien" in section 431 of PRWORA, but are eligible for Medicaid:

legal immigrants for Medicaid to those who fall into the definition of "qualified alien" under section 431 of PRWORA, the interim final regulation at 42 CFR 435.406(a)(2) fails to recognize the eligibility of these other groups of legal immigrants.[11]

In addition, 42 CFR 435.406(a)(2) of the interim final regulation would limit Medicaid benefits to legal immigrants whose immigration status has been verified with the Department of Homeland Security. We have two comments on this aspect of the regulation. First, as is the case with verification of U.S. citizenship, verification of immigration status is not a criterion of Medicaid eligibility. Indeed, section 1137(d)(4)(A) of the Act expressly requires states to provide benefits to otherwise eligible individuals who have declared to be in a satisfactory immigration status, pending verification of such status. Therefore, we recommend that the regulatory provisions governing eligibility based on citizenship and immigration status be separated from those governing verification.

Second, the interim final regulation would require the immigration status of all legal immigrants to be verified with DHS. However, the status of some immigrants eligible for Medicaid cannot be verified with DHS. Such immigrants include, for example, victims of a severe form of trafficking, whose status must be confirmed with the Office of Refugee Resettlement, and certain American Indians, the status of some of whom must be confirmed through tribal documents.

Accordingly, we recommend that the Secretary modify the regulations at 42 CFR 435.406 as follows:

1. Delete subparagraphs (ii) and (iv) of 42 CFR 435.406(a)(1).
2. Revise 42 CFR 435.406(a)(2) to read:

§435.406(a) * * *

(2) Individuals who declare, under section 1137(d) of the Act, to be
(i) A qualified alien as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, 8 U.S.C. 1641;

- Victims of a severe form of trafficking and certain of their family members – In accordance with section 107(b)(1)(A) of the Trafficking Victims Protection Act, 22 USC 7105(b)(1)(A), trafficking victims are eligible for means-tested benefits, including Medicaid, to the same extent as refugees (who are included in the definition of "qualified alien"); subsequent legislation also extended eligibility for such benefits to family members of trafficking victims who hold a so-called "Derivative T Visa." See 22 USC 7105(b)(1).
- Certain American Indians born outside of the United States – Under section 402(b)(2)(E) of PRWORA, as amended, there are two groups of American Indians who, although not U.S. citizens and not included in the definition of "qualified alien," are eligible for full Medicaid benefits: (1) American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply and (2) members of a Federally-recognized tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 USC 450b(e).
- Non-qualified aliens receiving SSI – Section 402(b)(2)(F) of PRWORA, as amended, grandfathered the Medicaid eligibility of non-qualified aliens receiving SSI as of the date PRWORA was enacted (August 22, 1996)

[11] The definition of "qualified alien" also was amended by legislation enacted after PRWORA. We also recommend that this be acknowledged in the text of the regulation.

(ii) A victim of a severe form of trafficking, or a family member of such a victim who holds a Derivative T Visa, as provided under 22 USC 7105(b)(1);
(iii) An American Indian described in §402(a)(2)(G) of PRWORA, as amended, 8 USC 1612(a)(2)(G); or
(iv) Receiving Supplementary Security Income Program benefits, as provided in §402(b)(2)(F) of PRWORA, as amended, 8 USC 1612(b)(2)(F).

3. Add a new paragraph (b) to 42 CFR 435.406 to read:

(b) The State Medicaid agency must —
(i) Effective July 1, 2006, for individuals declaring citizenship or national status, verify such status at initial application or redetermination, in accordance with the procedures set forth in §435.407;
(ii) For individuals declaring to be in satisfactory immigration status, the State Medicaid agency shall –
(I) Verify such status with the Department of Homeland Security (DHS), in accordance with the procedures set forth in section 1137(d)(4) of the Act, or through other such means where appropriate.
(ii) Pending completion of such verification procedures, not delay, deny, reduce, or terminate the individual's eligibility for benefits.

Again, thank you for the opportunity to comment on this interim regulation. If you have any questions, please do not hesitate to contact Sarah deLone at 202-408-1080.

Sincerely,

Robert Greenstein
Executive Director

Sarah deLone
Senior Policy Analyst

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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

ATTN: CMS-2257-IFC

RE: Comments on Medicaid Citizenship Documentation Interim Final Rule, 71 *Federal Register*. 39214 (July 12, 2006) and Collection of Information Requirements

The Center on Budget and Policy Priorities is a nonpartisan research and policy organization based in Washington, DC. Founded twenty-five years ago, the Center conducts research and analysis to inform public debates and policymakers about a range of budget, tax and programmatic issues affecting low- and moderate-income families and individuals. We appreciate the opportunity 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).

We were pleased to see that the Secretary recognized the "scrivener's error" made by Congress in drafting section 1903(x)(2), as added by the DRA, and has clarified in the interim final regulations that Medicare beneficiaries and, in most states, Supplemental Security Income (SSI) recipients are exempt from the citizenship documentation requirements. However, we are deeply concerned and disappointed that the Secretary has not exercised the discretion afforded to him under the statute to minimize the likelihood that numerous other U.S. citizens applying for or receiving Medicaid coverage – primarily low-income children, pregnant women and parents – will face delay, denial, or loss of Medicaid coverage. We are particularly troubled that the Secretary did not ease the burden of the new rules to the extent possible on new applicants; foster care children receiving title IV-E benefits; Social Security Disability Insurance recipients; and individuals who, despite making a good faith effort to comply with the documentation requirements, simply cannot produce any of the specific documents identified in the interim regulation. We estimate that roughly 38 million current recipients remain subject to the citizenship documentation requirements, and that approximately 10 million citizen applicants who meet all Medicaid eligibility requirements will be subject to the requirements in the next year.[1]

[1] This estimate, based on analyses of Medicaid administrative data as well as analyses of the Agency for Healthcare Research and Quality's 2003 Medical Expenditure Panel Survey, will be presented in "Documenting Citizenship and Identity Using Data Matches," by Leighton Ku, Donna Cohen Ross and Matt Broaddus, Center on Budget and Policy Priorities, forthcoming. We adjusted these estimates to exclude counts for Medicare and SSI beneficiaries.

In the following comments we (1) suggest ways that the Secretary can alleviate the unnecessary burden that the current rule imposes on these populations and (2) respond to the Secretary's solicitation for comments and suggestions on the use of other electronic data matches and other documents that could reliably establish citizenship. We also comment on the impact that requiring submission of original or certified copies of the requisite documents will have on the collection of information requirements, and have sent a copy of our comments to the appropriate Offices at the Centers for Medicare and Medicaid Services and the Office of Management and Budget.

Finally, while we agree that changes to immigrant eligibility for Medicaid made by the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) make it appropriate for the Secretary to remove the regulations at 42 CFR 435.408 and modify the regulations at 42 CFR 435.406, we are concerned that the Secretary has (1) inadvertently omitted some groups of legal immigrants who are eligible for Medicaid and (2) inappropriately required states to verify the immigration status of others with the Department of Homeland Security.[2]

COMMENTS ON PROVISIONS OF INTERIM FINAL RULE AND PREAMBLE IMPLEMENTING SECTION 6036 OF THE DRA

Section I. Background, *Implementation Conditions/ Considerations* (42 CFR 435.407 and 435.1008)

1. *U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all eligibility requirements (435.407(j)).*

   Under the DRA, the new citizenship documentation requirement applies to all individuals who apply for Medicaid, unless otherwise exempt from the requirement under the regulation. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 *Federal Register* at 39216. The interim rule itself provides 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).

   As noted, the new documentation requirement has the potential to delay or deny Medicaid coverage for up to 10 million U.S. citizens who will apply for Medicaid this year, most of whom will be children, pregnant women and parents. To not permit enrollment until all documents are produced could delay, or result in a denial of access to, medical care, including prenatal and early childhood services, impair health and jeopardize the financial status of health care providers who may otherwise be forced to serve these women and children on a charity basis.

   While an individual must be a citizen or qualified alien to receive full Medicaid benefits, *documentation* of citizenship is not itself a criterion of Medicaid eligibility. We note that, under section 1137(d) of the Social Security Act ("Act"), Congress did expressly make an

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[2] Please note that, where we have made specific suggestions in ways in which the regulations should be modified, we have identified only the pertinent section in Part 435 of the interim final regulations. In each instance, we would urge the Secretary also to make conforming changes to the corresponding section of Part 436 of the interim final regulations.

individual's *declaration* of citizenship or qualified alien status a condition of eligibility.[3] In adding subsection 1903(x) to the Social Security Act, Congress has required states to document citizenship as a condition of receiving Federal financial participation (FFP). Congress did not, however, make documentation of citizenship a criterion of eligibility *per se*. Therefore, once an applicant for Medicaid declares that he or she is a citizen, and the State determines that the individual meets all other eligibility requirements, medical assistance should be made available, and the individual should be afforded the same reasonable opportunity as beneficiaries to provide the requisite documentation of citizenship.

Since the enactment of the Immigration Reform and Control Act of 1986, states have had to apply similar documentation requirements under §1137(d) of the Act to immigrants, as those now applied to citizens under the DRA. Sections 1137(d)(2) and 1137(d)(3) require states to obtain documentation of immigration status from immigrant applicants and to verify such status with the United States Citizenship and Immigration Services (USCIS). Under §1137(d)(4), states are required to give immigrant applicants a reasonable opportunity to submit the necessary documentation and, during such period, to provide medical assistance to otherwise-eligible immigrants. Although not expressly required under the DRA, there is nothing in the DRA that prevents the Secretary from affording citizen applicants the same treatment. Yet, the Secretary has declined to do so, requiring instead an unnecessary delay in coverage for citizens who cannot readily produce the required documentation.

The policy articulated in the preamble to the interim final regulations, while not statutorily compelled, has serious implications – implications which are both foreseeable and avoidable – for the vulnerable citizen populations who need medical assistance and for the providers who serve them. U.S. citizens who (1) have applied for Medicaid and (2) meet all of the state's eligibility criteria, but (3) are trying to obtain the necessary documentation, may experience significant delays in coverage. Some, who become discouraged or simply are unable to obtain the necessary documents within the time period provided by the state, will never get coverage. Providers will have to turn vulnerable patients away, or run the risk of not being compensated for critical services, and the health of these individuals may suffer. The use of emergency rooms to obtain services and the burden of uncompensated care will increase. The lack of an effective outreach program to educate U.S. citizens about the new requirement will further exacerbate these consequences, as most applicants are likely to be unaware of the new rules, and there are likely to be significant delays in assembling the necessary documents.

Therefore, we urge the Secretary to revise 42 CFR 435.407(j) as follows:

(1) If an individual declaring to be a citizen of national of the United States does not present satisfactory documentary evidence of citizenship at the time of application—
  (A) The State—
    (i) Shall provide the individual with a reasonable opportunity to submit such evidence to the State; and

[3] Section 1137(d)(1)(A) states, in pertinent part: "The State shall require, *as a condition of an individual's eligibility* for benefits under a program listed in subsection (b) [including Medicaid], a declaration in writing, under penalty of perjury ...stating whether the individual is a citizen or national of the United States..." (emphasis supplied)

(ii) May not delay, deny, reduce or terminate the individual's eligibility for benefits until such a reasonable opportunity has been provided.

(B) If, after a reasonable opportunity is provided to such individual, satisfactory documentary evidence of citizenship or nationality is not provided, the State shall—

(i) Deny or terminate the individual's eligibility for benefits under the program; and

(ii) Provide the individual with notice and opportunity for a fair hearing, in accordance with Part 431, Subpart E.

(2) Federal financial participation shall be provided in expenditures for medical assistance to such individuals whom the State Medicaid agency determines meet the State's Medicaid eligibility criteria during the reasonable opportunity period described in subparagraph (1).

2. *Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement (42 CFR 435.1008)*

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 or Medicare. Among the children subject to the documentation requirements under the interim final regulations are roughly one million children in foster care, including those receiving federal foster care assistance under title IV-E – a population of extremely vulnerable children, often in need of immediate mental and physical health interventions, that will be unlikely to have access to the necessary documentation.

The DRA does not compel this result. Indeed, under the literal terms of the changes to the Act made by §6036 of the DRA, states should not be required to document the citizenship of children eligible for Medicaid by virtue of their title IV-E status. Section 1903(x) of the Act, as added by the DRA, requires states to verify the citizenship of individuals who have declared their citizenship as part of the Medicaid application process. Because Medicaid eligibility is automatically conferred upon title IV-E recipients, no such declaration of citizenship by, or on behalf of, these children is required. Thus, they need not, and should not, be subject to the new documentation requirements.

Even if the Secretary erroneously concludes that the terms of the DRA do apply to children receiving assistance under title IV-E, the Department of Health and Human Services' Agency for Children and Families (ACF) issued a Policy Interpretation Question (ACYF-CB-PIQ-99-01) which already requires state child welfare agencies to verify the citizenship of citizen children receiving title IV-E benefits. The ACF policy further requires that the agencies do so in accordance with the verification procedures set forth in the "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of PRWORA," published in the *Federal Register*, Vol. 62, No. 221, on November 17, 1997. Nonetheless, the preamble to the interim final rule states that, in order to receive Medicaid, citizen children receiving title IV-E benefits "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 *Federal Register* at 39216.

The DRA does not compel the unnecessary duplication of state agency efforts, which puts these particularly vulnerable children at risk of delayed medical care. To the contrary, the DRA allows the Secretary to exempt individuals who are eligible for other programs that require documentation of citizenship. Title IV-E is precisely such a program. Therefore, we urge the Secretary to revise the second sentence of 42 CFR 435.1008 as follows:

> This requirement does not apply with respect to individuals declaring themselves to be citizens or nationals who are eligible for medical assistance
> (i) on the basis of receiving supplemental security income benefits under title XVI of the Social Security Act or federal foster care payments under title IV-E of the Act; or
> (ii) who are entitled to benefits or enrolled in any parts of the Medicare program under title XVIII of the Social Security Act.[4]

3. *Individuals eligible for Social Security Disability Insurance should be exempt from the citizenship documentation requirement (42 CFR 435.1008)*

The interim final regulation exempts Medicare beneficiaries who are applying for or receiving Medicaid from the citizenship documentation requirements. However, disabled individuals who are eligible for Social Security Disability Insurance (SSDI) benefits, but not yet entitled to Medicare, are not afforded comparable treatment – even though they automatically become entitled to Medicare Part A after receiving SSDI for 25 months.[5]

For purposes of the citizenship documentation requirements, there is no meaningful distinction between Medicare beneficiaries and SSDI recipients. Medicare entitlement is automatically conferred by receipt of either Social Security Old-Age Insurance or SSDI benefits under title II of the Social Security Act. Eligibility for both Social Security and SSDI, in turn, requires that the recipient be either a U.S. citizen, national or lawfully-present alien – a status which the Social Security Administration is required to verify. That SSA verifies the citizenship or immigration status of Medicare beneficiaries provides the rationale behind their exemption from the new citizenship documentation requirement under Medicaid. This same logic clearly supports the exemption of SSDI recipients from the Medicaid documentation requirements as well.

Moreover, SSDI recipients are automatically entitled to Medicare after a two-year waiting period. At that point, they will be exempt from the Medicaid citizenship documentation requirements. There simply is no rational reason to question their citizenship during the first two years of SSDI eligibility, any more than after they become eligible for Medicare. Accordingly, we urge CMS to revise the second sentence of 42 CFR 435.1008 as follows:

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[4] Note that we have an additional suggested revision to section 435.1008, discussed in the next section of our comments, below.

[5] Many SSDI recipients are eligible for Medicaid. A 2003 Commonwealth Fund report estimated that approximately 40% of SSDI recipients in the two-year waiting period for Medicare entitlement, or 500,000 SSDI recipients, were enrolled in Medicaid. (See "Elimination of Medicare's Waiting Period for Seriously Disabled Adults: Impact on Coverage and Costs," The Commonwealth Fund, July 2003). Moreover, states are required, as part of the Income and Eligibility Verification System (IEVS), to verify SSDI benefits, which they can do through the Social Security Administration's State Data Exchange (SDX).

This requirement does not apply with respect to individuals declaring themselves to be citizens or nationals who are eligible for medical assistance —

(i) on the basis of receiving supplemental security income benefits under title XVI of the Social Security Act, federal foster care payments under title IV-E of the Act, or Social Security Disability Insurance under title II of the Act; or

(ii) who are entitled to benefits or enrolled in any parts of the Medicare program under title XVIII of the Social Security Act;

4. *Additional electronic data matches which states should be permitted to rely upon in verifying citizenship (42 CFR 435.407(b))*

In the preamble, the Secretary solicited "comments and suggestions for the use of other electronic data matches with other governmental systems of records" (71 *Federal Register* 39216) that states can rely upon to verify citizenship and/or identity. We urge the Secretary to give states the option to use alternative types of cross matches with federal, state or private data sources to document citizenship, provided that the state describes such data or cross match in an amendment to its state plan. As with all state plan amendments, CMS would have the opportunity to review and approve or deny the proposed data match.

The interim final regulation permits electronic cross matches to document citizenship under very narrow circumstances: matches with state vital records or State Data Exchange (SDX) files for Supplemental Security Income beneficiaries. Other types of public or private data, however, may just as effectively document citizenship. It is shortsighted to foreclose the ability of states to use other electronic data matching opportunities that may be more effective or efficient in meeting the purposes of the law. For example:

- The Social Security Administration's NUMIDENT data base has data on the place of birth for virtually all people with Social Security numbers and data on citizenship for those who entered the system since 1972. SSA currently does not provide access to these data to CMS or states, but the interim final regulations would prohibit their use even if SSA were to grant access.

- States have found that the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) system can be used to document whether a person is a naturalized citizen, but the regulations do not permit the use of SAVE data. DHS staff confirmed that SAVE has these data. This would be extremely useful, particularly in circumstances in which a naturalized citizen cannot find an original Certificate of Naturalization, which is the only document permitted under the interim rules. To get a replacement certificate requires payment of a prohibitive $220 fee and can take up to a year to obtain. States already participate in SAVE and can use it to get information about naturalized citizens more rapidly and less expensively.

Finally, it is quite likely that other federal, state or private data sources will be identified or developed in the near future that can meet these needs effectively. Information technology evolves rapidly and CMS should leave room for development of new and better approaches.

Therefore, we recommend that the Secretary add a new subparagraph (11) to 42 CFR 435.407(b) of the interim regulation to read:

> (11) *Other electronic verification of citizenship.* At State option and subject to approval by the Secretary, a State may use a cross match with a Federal, State or local governmental agency or private data system not specifically provided for in this section. The State must describe such cross match and data system in an amendment to its state plan.

Section II. Provisions of Interim Final Rule with Comment Period, (42 CFR 435.407)

The Secretary also solicited "comments and suggestions for additional documents that are a reliable form of evidence of citizenship...or identity" as well as "comments as to whether the number of documents accepted for proof of citizenship and identity should be limited" to first and secondary level documents "in light of the exception provided for citizens and nationals receiving SSI [in 1634 states] and for individuals entitled to or enrolled in Medicare." 71 *Federal Register* at 39219-20.[6]

We strongly urge the Secretary to use his authority to authorize a broader set of documents that can be used to establish citizenship and/or identity and to give more flexibility to states. As discussed elsewhere in our comments, there are many individuals, other than SSI recipients and Medicare beneficiaries, for whom the new documentation requirements pose a significant, if not insurmountable, burden in obtaining or retaining Medicaid benefits. To further constrain these individuals' ability to meet already stringent documentation requirements is neither necessary nor justified under the statute. On the contrary, the Secretary would be well-advised to expand the list of documents that may be used to satisfy the documentation requirements.

There are two specific types of documents that we urge the Secretary to add to the regulations as satisfactory evidence of both citizenship and identity: (1) Records of payment by Medicaid or the State Children's Health Insurance Program (SCHIP) for the birth of a Medicaid applicant or beneficiary in the United States; (2) tribal enrollment cards issued by a federally-recognized tribe. In addition, we strongly urge the Secretary to follow the approach taken by the Social Security Administration in verifying the citizenship of applicants for SSI, by granting states the ability to rely on other evidence of citizenship where an individual is unable to produce any of the documents identified in the regulations and the state finds it reasonable to conclude that the individual is a citizen for purposes of Medicaid eligibility.

1. *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 (Primary Evidence of Citizenship, 42 CFR 435.407(a))*

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[6] Preliminarily, we would like to note our support of the 42 CFR 435.407(d)(3) of the interim final regulation, which permits the use of institutional admission papers from a nursing facility or similar institution and does not limit reliance on such documents to those created at least five years before the initial application, as the guidance in the June 9, 2006 letter to State Medicaid Directors from Dennis Smith (SMDL 06-012) would have done. Only a small proportion of individuals remain institutionalized for more than five years. Thus, adding a five-year waiting period effectively would have precluded the use of such evidence for most institutionalized individuals.

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, and it may take several months or more for such agencies to even have a birth certificate on file. The interim 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 is 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).

Children born in the United States are, by definition, citizens.[7] If a state Medicaid or SCHIP agency or managed care organization (MCO) paid for the child's birth in a U.S. hospital, the state knows that the child was born in the U.S. and therefore knows that the child is a U.S. citizen. This is true, regardless of whether the child's mother is a citizen or qualified alien eligible for full Medicaid benefits, or an undocumented alien or legal immigrant subject to the five year bar and therefore eligible only for coverage of labor and delivery of the child. It also is true regardless of whether or not the child is entitled to deemed newborn eligibility under section 1902(e)(4) of the Act.[8]

Thus, a record of payment for a child's birth by the state Medicaid agency, the SCHIP agency or a Medicaid or SCHIP MCO reliably and conclusively establishes citizenship and should be acceptable evidence of such. Inasmuch as Medicaid alone pays for the delivery of more than 40 percent of all U.S. births, recognizing that a Medicaid or SCHIP record of payment for the birth establishes citizenship would significantly ease the burden created by the new requirements for states, providers and families.

All newborns, regardless of the immigration status of their mothers, need well-baby care. Those born prematurely or at a low birth weight, or who otherwise have post-partum

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[7] While virtually every child born in the United States is a U.S. citizen, there is, of course, an exception: Children born to foreign diplomats temporarily residing in the United States are not granted U.S. citizenship. We submit, however, that the number of foreign diplomats (or their wives) who give birth in the United States and whose labor and delivery is covered by Medicaid is negligible – probably non-existent.

[8] We note, however, that the policy regarding deemed newborn eligibility described in the preamble is incorrect, as it purports to limit the continued deemed newborn eligibility status to infants born to women who, not only were eligible for and receiving medical assistance at the time of the child's birth, but also who remain eligible for Medicaid during the child's first year of life. It appears that, in making this statement, the Secretary was relying on regulations at 42 CFR 435.117. These regulations, however, were superseded by a subsequent change to section 1902(e)(4) of the Social Security Act. Previously, the statute did require that, to retain the deemed eligible status for the full year, the infant's mother had to remain actually eligible for Medicaid. Section 1902(e)(4) of the Act now requires only that the mother was eligible for and received Medicaid at the time of birth, that the child remain a part of her household, and that the mother either remain eligible for Medicaid or that she would remain eligible if still pregnant.

The preamble correctly states that pregnant women who are undocumented aliens or subject to the five-year bar are eligible for Medicaid at the time of the child's birth, but incorrectly concludes that infants born to such women are not eligible for deemed newborn eligibility because the mother does not remain eligible for Medicaid after the child's birth. However, an undocumented or five-year bar woman mother, if still pregnant, would remain eligible for Medicaid, albeit only for emergency services, including for labor and delivery. As noted, the statute now provides that coverage of the infant should continue so long as the mother would, if pregnant, remain eligible for Medicaid. Accordingly, children born to undocumented mothers or mothers subject to the five-year bar are entitled to a full year of deemed newborn eligibility to the same extent as children born to citizen or qualified alien mothers not subject to the five year bar. We urge the Secretary to correct this misstatement of federal law in the preamble.

complications, require critical, more costly interventions. Prohibiting states from granting coverage until documentation of citizenship is provided places hospitals and physicians treating newborns at risk for a delay in, or denial of, reimbursement and needlessly jeopardizes the health of these babies.

We strongly urge that the Secretary amend 42 CFR 435.407(a) by adding a new subparagraph (6) to state:

> (6) A record of payment for the birth of the individual, including electronic claims records, by any of the following entities: the State Medicaid agency; the agency which administers a separate child health program under Subchapter D, Part 457 of this title; or a managed care organization which administers the benefits covered under the State's Medicaid and/or separate child health program.

2. *Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirements (Primary Evidence of Citizenship, 42 CFR 435.407(a))*

While the interim regulations, at 42 C.F.R. 437.407(e)(6), recognize Native American 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 to serve as secondary evidence of citizenship and census records for the Seneca and Navajo Nations as fourth-level evidence of citizenship).

Over 560 tribes in 34 states 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. Tribal genealogy charts date back to original and historic tribal membership rolls, and each Federally-recognized tribe is responsible for issuing tribal enrollment cards to its members. These cards are used in establishing eligibility for Federal benefits as well as tribal resources and voting in tribal matters. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship.

Further, 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. The exception would be a Federally-recognized tribe located in a state that borders Canada or Mexico and which issues tribal enrollment cards to non-U.S. citizens. In such cases, 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, American Indians and Alaskan Natives (AI/AN) might not be able to produce a birth certificate or other satisfactory proof of citizenship. Many traditional AI/ANs were not born in a hospital and there is no record of their birth, except through tribal genealogy records. Thus, failure to recognize tribal enrollment cards as proof of citizenship creates an unnecessary barrier to AI/AN participation in the Medicaid program. Accordingly, we strongly urge the Secretary to revise the regulation by adding a new paragraph (7) at 42 CFR 435.407(a) to read:

(7) A Tribal enrollment card, issued by a Federally-recognized tribe, unless the tribe is located in a state that borders Canada or Mexico and issues tribal enrollment cards to non-U.S. citizens.

3. *Proof of naturalized citizenship for parent should be accepted as primary evidence of citizenship for foreign-born children (Secondary Evidence of Citizenship, 42 CFR 435.407(b))*

Foreign-born children gain "derivative" U.S. citizenship when one of their parents becomes a naturalized citizen. However, such children do not routinely receive a Certificate of Naturalization or other document proving their citizenship. Getting the proper paperwok (e.g., a passport or Certificate of Citizenship) can be a time-consuming and expensive process, which, at a minimum, will delay receipt of Medicaid for some eligible children and, at worst, may result in others never getting coverage. This result is unnecessary, since proof of the parent's naturalized status conclusively establishes the child's citizenship. Therefore, we urge the Secretary to add a paragraph (12) to section 435.407(b) to read:

(11) *Certificate of Naturalization (DHS Forms N-550 or N-570).* The Department of Homeland Security issues these forms. While a certificate of naturalization serves as primary evidence of citizenship for the individual to whom the certificate is issued, such certificate also provides secondary evidence of citizenship for the foreign-born children (including adopted children) of the parent to whom such certificate is issued.

4. *The Secretary should adopt the approach taken by the Supplemental Security Income program for U.S. citizens who otherwise lack documentation of their citizenship (Fourth Level of Evidence of Citizenship, 42 CFR 435.407(d))*

There inevitably are and will continue to be 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 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 interim rule, such individuals, if they apply for Medicaid, can never qualify. Those who are currently receiving Medicaid will eventually lose their coverage, even though they are U.S. citizens and otherwise eligible for Medicaid.

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.

The reality is that there are significant numbers of U.S. citizens who simply will not be able to provide documentary evidence of citizenship at any level provided for in the interim final rule. Unable to do so, these individuals will be denied (or, if currently receiving Medicaid, ultimately will lose) coverage and access to critical services. Their health may suffer, and the burden on hospital emergency rooms and other providers of uncompensated care will grow.

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 are capable of reliably determining 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 generally accepted 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 State Department also provides more flexible options to document citizenship in issuing U.S. passports.) The Secretary should adopt a similar approach. Specifically, 42 CFR 435.407 should be revised by adding a new subparagraph (6) to subsection 435.407(d) to provide:

> (6) In the case of an individual who is unable to produce any of the documentary evidence described in subsections (a) through (d), the state Medicaid agency, at its option, may determine that the individual is a U.S. citizen for purposes of receiving Federal financial participation under section 435.1008 if the individual or his or her guardian or other authorized representative—
>
> (i) Explains why none of the documentary evidence described in subsections (a) through (d) is available; and
>
> (ii) Provides any information he or she does have which shows that the individual was born in the United States or that the individual has voted in the United States (in an election requiring U.S. citizenship) or that otherwise indicates U.S. citizenship; and
>
> The agency finds that 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.

Insofar as the regulations permit evidence of citizenship approved by SSI to count as proof of citizenship in Medicaid, we do not see why a similar, more flexible documentation approach cannot be permitted for Medicaid applicants and beneficiaries who are not also receiving SSI.

5. *The Secretary should expand the permissible use of affidavits to establish identity (42 CFR 435.407(f) and 435.407(g))*

The DRA provides that identity can be established by "[a]ny identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act." Under 42 CFR 435.407(f) of the interim final regulations, children under the age of 16 can establish identity through a sworn affidavit signed by the child's parent or guardian. Consistent with 8 CFR 274a.2(b)(1)(v)(B)(3) and (4), which implement §274A(b)(1)(D) of the Immigration and

Nationality Act, the Secretary should extend the permissible use of affidavits to children under age 18 and disabled individuals. Specifically, we recommend that section 435.407(f) be amended as follows:

- Insert "and disabled individuals" after "Special identify rules for children" in the heading;
- Replace "children under 16" with "children under 18"; and
- Strike "If" in the second sentence and replace with "For children under 18 and disabled individuals, if".

Section I. Background, *Implementation Conditions/ Considerations* and Section III. Collection of Information Requirements (42 CFR 435.407(h))

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

First, requiring that individuals obtain and submit originals or certified copies will exacerbate the information-collection burden imposed by the regulations on applicants, beneficiaries and state Medicaid agencies, and calls into question the estimate that it will take applicants and beneficiaries only ten minutes and state agencies five minutes to comply. In addition to the time spent in locating and/or obtaining original or certified copies of documents, applicants and beneficiaries likely will have to visit state offices to submit them, as they often undoubtedly will be reluctant to mail an original. As noted above, there are approximately 38 million current beneficiaries who may be affected by the interim rule and an estimated 10 million new citizen applicants who will be required to prove their citizenship over the course of the next year. For each, the state Medicaid agency will have to meet with the individual or his/her representative, make a copy of the pertinent documents, maintain the records and, in some instances, provide assistance in obtaining an original or certified copy.

Second, requiring original or certified copies also will undermine the effort many states have made to simplify the application process – simplifications which have increased the accessibility of Medicaid for many eligible low-income families and children and other individuals. To the extent possible, for example, many states routinely obtain verification of various eligibility requirements from other state or federal agencies; indeed, as part of the eligibility redetermination process, states are required to do so. Child welfare agencies, for example, likely will have a copy of a foster child's birth certificate or other documentation of citizenship, obtained in verifying eligibility for foster care benefits. Yet, section 435.407(h)(1) of the interim final regulation precludes states from obtaining a copy of probative documentation from another agency, even if that agency itself had received an original or certified copy.

Moreover, many applicants and beneficiaries will find obtaining an original or certified copy difficult, if not prohibitive. And many more will be understandably reluctant to mail original birth certificates, passports or other such documents, or their only certified copy. They certainly will not be able or willing to mail in proof of identity, such as a driver's license or school identification card. The result will be that applicants and beneficiaries will have to make

otherwise unnecessary visits to state or county Medicaid offices. Those who cannot afford to miss work, lack transportation, are not mobile or otherwise are unable to travel to the Medicaid office during business hours will forego the application process altogether, thereby never receiving the coverage they and their families need. The inevitable result will be that eligibility determinations will be delayed and/or ultimately denied, and that health care providers will experience delays in reimbursement and increased uncompensated care.

We are not aware of any reliable research that demonstrates that undocumented immigrants are obtaining non-emergency Medicaid services by falsely claiming citizenship.[9] Nonetheless, in order to alleviate any concern that accepting copies of documents could result in undocumented immigrants becoming eligible for full Medicaid benefits, the Secretary should require that states opting to accept copies of documents must implement effective, fair and non-discriminatory procedures to ensure the integrity of the application process. For example, a state could institute a system to randomly check the original or certified documents of some applicants and beneficiaries. The State would need to terminate the eligibility of anyone found to have submitted fraudulent copies and, if the percentage of fraudulent copies was found to be unacceptable, the Secretary could require the State to take appropriate remedial measures – including, if necessary, requiring original or certified copies from all applicants and beneficiaries.

Accordingly, we urge the Secretary to revise the regulation by modifying subparagraph (1) of 42 CFR 435.407(h) as follows:

> (1) All documents must be either originals or copies certified by the issuing agency or entity, except that, at their option, States may accept copies of documents provided that the State —
>
> (i) Requires submission of an original document if the State has a reasonable suspicion that the copy is counterfeit, has been altered, or is inconsistent with information previously supplied by the applicant or beneficiary; and
>
> (ii) Has implemented effective, fair and non-discriminatory procedures for ensuring the integrity of the application process.

COMMENTS ON CHANGES MADE TO REGULATIONS GOVERNING IMMIGRANT ELIGIBILITY

With the passage of PRWORA, Congress changed the rules for Medicaid eligibility of immigrants residing in the United States. For the most part, to be eligible for full Medicaid benefits, an immigrant must fall into the definition of a "qualified alien" set forth in section 431 of PRWORA, as amended, 42 USC 1641. However, several groups of legal immigrants who are eligible for full Medicaid benefits are not included in the definition of "qualified alien."[10] In limiting eligibility of

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[9] Similarly, in CMS' response to the Office of Inspector General (IOG) Draft Report: "Self-Declaration of U.S. Citizenship for Medicaid" (OEI-02-03-00190), the CMS Administrator noted: "The [OIG] review found that, while there are vulnerabilities in states' accepting self-declaration of citizenship, states have little evidence that many non-eligible, non-citizens are receiving Medicaid as a result." See memo dated April 8, 2005 from Mark B. McClellan to Daniel R. Levinson, attached at Appendix D to the final OIG report.

[10] The following immigrants are not included in the definition of "qualified alien" in section 431 of PRWORA, but are eligible for Medicaid:

legal immigrants for Medicaid to those who fall into the definition of "qualified alien" under section 431 of PRWORA, the interim final regulation at 42 CFR 435.406(a)(2) fails to recognize the eligibility of these other groups of legal immigrants.[11]

In addition, 42 CFR 435.406(a)(2) of the interim final regulation would limit Medicaid benefits to legal immigrants whose immigration status has been verified with the Department of Homeland Security. We have two comments on this aspect of the regulation. First, as is the case with verification of U.S. citizenship, verification of immigration status is not a criterion of Medicaid eligibility. Indeed, section 1137(d)(4)(A) of the Act expressly requires states to provide benefits to otherwise eligible individuals who have declared to be in a satisfactory immigration status, pending verification of such status. Therefore, we recommend that the regulatory provisions governing eligibility based on citizenship and immigration status be separated from those governing verification.

Second, the interim final regulation would require the immigration status of all legal immigrants to be verified with DHS. However, the status of some immigrants eligible for Medicaid cannot be verified with DHS. Such immigrants include, for example, victims of a severe form of trafficking, whose status must be confirmed with the Office of Refugee Resettlement, and certain American Indians, the status of some of whom must be confirmed through tribal documents.

Accordingly, we recommend that the Secretary modify the regulations at 42 CFR 435.406 as follows:

1. Delete subparagraphs (ii) and (iv) of 42 CFR 435.406(a)(1).
2. Revise 42 CFR 435.406(a)(2) to read:

§435.406(a) * * *

(2) Individuals who declare, under section 1137(d) of the Act, to be
(i) A qualified alien as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, 8 U.S.C. 1641;

- Victims of a severe form of trafficking and certain of their family members – In accordance with section 107(b)(1)(A) of the Trafficking Victims Protection Act, 22 USC 7105(b)(1)(A), trafficking victims are eligible for means-tested benefits, including Medicaid, to the same extent as refugees (who are included in the definition of "qualified alien"); subsequent legislation also extended eligibility for such benefits to family members of trafficking victims who hold a so-called "Derivative T Visa." See 22 USC 7105(b)(1).
- Certain American Indians born outside of the United States – Under section 402(b)(2)(E) of PRWORA, as amended, there are two groups of American Indians who, although not U.S. citizens and not included in the definition of "qualified alien," are eligible for full Medicaid benefits: (1) American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply and (2) members of a Federally-recognized tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 USC 450b(e).
- Non-qualified aliens receiving SSI – Section 402(b)(2)(F) of PRWORA, as amended, grandfathered the Medicaid eligibility of non-qualified aliens receiving SSI as of the date PRWORA was enacted (August 22, 1996)

[11] The definition of "qualified alien" also was amended by legislation enacted after PRWORA. We also recommend that this be acknowledged in the text of the regulation.

(ii) A victim of a severe form of trafficking, or a family member of such a victim who holds a Derivative T Visa, as provided under 22 USC 7105(b)(1);
(iii) An American Indian described in §402(a)(2)(G) of PRWORA, as amended, 8 USC 1612(a)(2)(G); or
(iv) Receiving Supplementary Security Income Program benefits, as provided in §402(b)(2)(F) of PRWORA, as amended, 8 USC 1612(b)(2)(F).

3. Add a new paragraph (b) to 42 CFR 435.406 to read:

(b) The State Medicaid agency must —
(i) Effective July 1, 2006, for individuals declaring citizenship or national status, verify such status at initial application or redetermination, in accordance with the procedures set forth in §435.407;
(ii) For individuals declaring to be in satisfactory immigration status, the State Medicaid agency shall –
(I) Verify such status with the Department of Homeland Security (DHS), in accordance with the procedures set forth in section 1137(d)(4) of the Act, or through other such means where appropriate.
(ii) Pending completion of such verification procedures, not delay, deny, reduce, or terminate the individual's eligibility for benefits.

Again, thank you for the opportunity to comment on this interim regulation. If you have any questions, please do not hesitate to contact Sarah deLone at 202-408-1080.

Sincerely,

Robert Greenstein
Executive Director

Sarah deLone
Senior Policy Analyst

Submitter : Ms. Anna Schissel **Date:** 08/10/2006

Organization : Ms. Anna Schissel

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan,

I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether.

If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care. For example, CMS must: (1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation; (2) eliminate the requirement that documentatation be an original or certified copy; (3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification; (4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and (5) allow states to grant 'good causc' exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Submitter : Mrs. Sara Parker McKernan **Date:** 08/10/2006

Organization : Legal Assistance Resource Center of CT

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-193-Attach-1.DOC

Legal Assistance Resource Center of Connecticut, Inc.

80 Jefferson Street, Hartford, Connecticut 06106-5035
(860) 278-5688 FAX (860) 278-2957

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:

As the entity charged with representing the policy and advocacy interests of CT's Legal Services Programs, the Legal Assistance Resource Center of CT (LARCC) is particularly interested in the impact of changes to our health care system on low-income individuals. We are 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 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 substantial efforts 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.

Sincerely,

Sara Parker McKernan
Legislative Liaison/Special Project Coordinator

Submitter : Mr. John Corlett **Date:** 08/10/2006

Organization : The Center for Community Solutions

Category : Other

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

The Center for Community Solutions provides strategic leadership to improve targeted health and social conditions in Greater Cleveland through research, analysis communication and organization for action. Since our founding in 1913, health and human services issues have been a primary focus of research and policy work. Members of our staff have worked on Medicaid for years, including a former executive director who served on a governor s commission to reform Medicaid. Our comments on this interim final rule grow out of our work to improve the efficiency of Medicaid on both the state and federal level.

Our comments on the interim final rule published in the Federal Register on July 12, 2006 as the means of implementing section 603 of the Deficit Reduction Act of 2005 (DRA) are directed at the citizenship documentation requirements imposed by the rule. We are deeply concerned that CMS has proposed a final rule that will increase the likelihood that U.S. citizens will be face delay, denial or loss of Medicaid coverage.

Our concerns touch on four main areas. (1) U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all other eligibility requirements. (2) Children who are eligible for federal foster care payments should be exempt from the citizenship 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. (4) CMS should adopt the approach taken by the Social Security Administration for U.S citizens who lack documentation of their citizenship.

The DRA does not specify documentation of citizenship as a requirement for Medicaid eligibility. Once an applicant has declared citizenship and met eligibility requirements, coverage should be granted. The majority of applicants will be children, pregnant women and parents. The delay caused by this requirement will increase the severity of their health problems, and lead to higher costs for Medicaid and financial losses for health care providers. We recommend that CMS revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet all other Medicaid eligibility requirements set by that state must be provided with coverage until they have obtained the necessary documentation to prove citizenship.

Among the children who will have to comply with the interim final rule are the roughly one million children in foster care, including those receiving assistance under Title IV-E. The citizenship of these children was verified by state welfare agencies as a requirement for Title IV-E payments. The interim final rule requires Medicaid eligibility workers to duplicate the work performed by state welfare agencies. Not only is this duplication costly to both states agencies, it also causes a delay in medical coverage for foster children. This delay will cause foster parents to seek medical care only in emergency situations and in emergency rooms, further driving up financial losses to providers.

We would advise CMS that it is in the interest of both foster children and health care providers that 42 CFR 435.1008 be revised to include foster children receiving Title IV-E payments among groups exempted from documentation requirements.

Infants born in U.S. hospitals are also subject to the citizenship requirements. The interim final rule requires that an infant born in a U.S. hospital whose hospital bill was paid by a state Medicaid agency must prove citizenship and identity at the next Medicaid redetermination. This section of the interim final rule defies logic. The state Medicaid agency already paid for the birth and the child is by definition a U.S. citizen having been born on U.S. soil. The interim final rule puts the health of newborns at risk for no discernable reason.

CMS-2257-IFC-194-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)

The Center for Community Solutions provides strategic leadership to improve targeted health and social conditions in Greater Cleveland through research, analysis communication and organization for action. Since our founding in 1913, health and human services issues have been a primary focus of research and policy work. Members of our staff have worked on Medicaid for years, including a former executive director who served on a governor's commission to reform Medicaid. Our comments on this interim final rule grow out of our work to improve the efficiency of Medicaid on both the state and federal level.

Our comments on the interim final rule published in the *Federal Register* on July 12, 2006 as the means of implementing section 603 of the Deficit Reduction Act of 2005 (DRA) are directed at the citizenship documentation requirements imposed by the rule. We are deeply concerned that CMS has proposed a final rule that will increase the likelihood that U.S. citizens will be face delay, denial or loss of Medicaid coverage.

Our concerns touch on four main areas. (1) U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all other eligibility requirements. (2) Children who are eligible for federal foster care payments should be exempt from the citizenship 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. (4) CMS should adopt the approach taken by the Social Security Administration for U.S citizens who lack documentation of their citizenship.

The DRA does not specify documentation of citizenship as a requirement for Medicaid eligibility. Once an applicant has declared citizenship and met eligibility requirements, coverage should be granted. The majority of applicants will be children, pregnant women and parents. The delay caused by this requirement will increase the severity of their health problems, and lead to higher costs for Medicaid and financial losses for health care providers. We recommend that CMS revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet all other Medicaid eligibility requirements set by that state must be provided with coverage until they have obtained the necessary documentation to prove citizenship.

Among the children who will have to comply with the interim final rule are the roughly one million children in foster care, including those receiving assistance under Title IV-E. The citizenship of these children was verified by state welfare agencies as a requirement for Title IV-E payments. The interim final rule requires Medicaid eligibility

workers to duplicate the work performed by state welfare agencies. Not only is this duplication costly to both states agencies, it also causes a delay in medical coverage for foster children. This delay will cause foster parents to seek medical care only in emergency situations and in emergency rooms, further driving up financial losses to providers.

We would advise CMS that it is in the interest of both foster children and health care providers that 42 CFR 435.1008 be revised to include foster children receiving Title IV-E payments among groups exempted from documentation requirements.

Infants born in U.S. hospitals are also subject to the citizenship requirements. The interim final rule requires that an infant born in a U.S. hospital whose hospital bill was paid by a state Medicaid agency must prove citizenship and identity at the next Medicaid redetermination. This section of the interim final rule defies logic. The state Medicaid agency already paid for the birth and the child is by definition a U.S. citizen having been born on U.S. soil. The interim final rule puts the health of newborns at risk for no discernable reason.

CMS should amend 42 CFR 435.407(a) to specify that a state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentation of both identity and citizenship.

There are many U.S. citizens who will not be able to provide documentation of identity and citizenship. These citizens will not have documentation because of a natural disaster like a flood or tornado, or because they are homeless. The Social Security Administration allows people who can not prove their citizenship to explain why they lack the documents and to provide any information pointing to their citizenship that they may have. The DRA grants the Secretary of Health and Human Services discretion to expand the list of documents that establish identity and citizenship.

We urge the Secretary to exercise this discretion to revise 42 CFR 435.407 by adding a subsection (k) that would read (1) if an applicant or current beneficiary, or a representative of 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, a state Medicaid agency shall declare that applicant eligible.

It is the opinion of The Center for Community Solutions, after studying the interim final rule, that the changes we have suggested above will greatly improve the efficiency of the state agencies charged with enforcing this rule. More importantly, these changes will ensure that no one has to suffer unnecessary delay or denial of medical coverage.

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

Organization : **Voices for Children of Greater Cleveland**

Category : **Consumer Group**

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-195-Attach-1.PDF

CMS-2257-IFC-195-Attach-2.PDF

VOICES FOR CHILDREN
OF GREATER CLEVELAND

4019 PROSPECT AVENUE CLEVELAND, OH 44103 PHONE: 216-881-7860 FAX: 216-881-7863
WWW.VOICESFORCLEVELANDSCHILDREN.ORG

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)

Dear Sir or Madame:

Voices for Children of Greater Cleveland is a multi-issue child advocacy organization that works on behalf of Ohio's children. Child health is one of our key organizational priorities and we have been deeply involved with state officials in Ohio on the implementation plan for Medicaid Citizenship Documentation.

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 work with a broad range of other organizations that share concerns about this new requirement and this letter reflects the shared concerns of Voices for Children as well as those organizations who have signed below

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. Our comments below highlight five areas that CMS should modify in the final rule.

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 and Ohio's county departments of job and family services which are responsible for Medicaid eligibility determination. 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 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, Ohio applicants and beneficiaries will likely have to visit county eligibility offices to submit them. County agencies will have to meet with individuals, make copies of their documents, and maintain records.

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.

The practical consequence of this policy is very 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 are concerned about impact on two levels. Health providers will not receive Medicaid payment for services provided until the documentation has been assembled and presented to the county eligibility agency. In some cases, providers may never receive reimbursement. Families may also forego preventive care leading to children using the emergency room when a crisis arises.

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.)

These rules will cause increased bureaucracy and paperwork to an already stressed system, with no benefit to our country's abused and neglected children. Additionally, it will not save taxpayer funds (but will cause new costs), because this is a population that already requires significant eligibility processes for Title IV-E. These children are also deeply involved in the public child welfare system, and their health needs must be met.

Delaying Medicaid coverage for these children could delay essential but non-emergency medical care until it becomes an emergency. At that time, this will increase healthcare costs as foster caregivers use emergency rooms and urgent care centers to obtain emergency care.

The DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is precisely such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new documentation requirement, 71 Fed. Reg. at 39216.

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

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.

Roughly one in three Ohio births is paid for by Medicaid. Because the rule would prevent Ohio 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.

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.

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.

We are concerned about the impact on health providers who continue to provide care to these individuals and will not be reimbursed for services provided to applicants and beneficiaries who cannot document their citizenship. This will increase the amount of uncompensated care.

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 Ohio families 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 Medicaid 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.

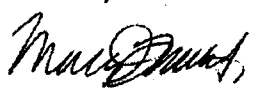
Ohio applicants and beneficiaries will have to make unnecessary visits to county eligibility offices with original and certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing 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.

Ohio has done a good job of simplifying the application and renewal process, including allowing mail-in applications and renewals for a large number of Medicaid applicants. This benefits both families—by making the process easier and more accessible—and county eligibility agencies, by making the process more efficient. 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 county eligibility offices. In some cases, having to visit a county office will discourage applicants from completing the application process. Children and families will go without coverage and remain uninsured and providers will not get reimbursed.

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

In conclusion, as child and family health advocates, we are deeply concerned that the interim final rules will have serious unintended consequences for Ohio and U.S. citizens. These suggested changes will help mitigate those consequences and help ensure that children and families can continue to receive the health care they need.

Sincerely,



Mary D. Wachtel
Director of Public Policy
Voices for Children of Greater Cleveland

In partnership with:
Alliance of Child Caring Service Providers
Applewood Centers
Center for Community Solutions
The Childhood League Center
Cleveland Sight Center
Cooper Consulting
Legal Aid Society of Greater Cincinnati
Dr. Gilda Mateo
Mt. Pleasant Community Zone
Universal Health Care Action Network of Ohio

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

Organization : Disability Policy Collaboration

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-196-Attach-1.DOC

DISABILITY POLICY COLLABORATION

A Partnership of The Arc & United Cerebral Palsy

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 Disability Policy Collaboration – a Partnership between The Arc of the United States and United Cerebral Palsy (hereafter the DPC) are writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

The Arc of the United States advocates for the rights and full participation of all children and adults with intellectual and developmental disabilities. Together with our network of members and affiliated chapters, we improve systems of supports and services; connect families; inspire communities and influence public policy.

United Cerebral Palsy (UCP) is the leading source of information on cerebral palsy and is a pivotal advocate for the rights of persons with any disability. As one of the largest health charities in America, the UCP mission is to advance the independence, productivity and full citizenship of people with disabilities through an affiliate network.

Disability Exemptions

The DPC is very pleased that the interim rule includes a clarification that many individuals with disabilities are not covered by this rule. We applaud CMS for ameliorating the impact of the new documentation requirement by recognizing that indeed the intent of the statute was to exempt individuals who are dually-eligible for Medicaid and Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI). We strongly agree with the CMS statement that

> *To adopt the literal (and in error) reading of the statute could result in Medicare and SSI eligibles, a population which are by definition either aged, blind, or disabled, and thereby most likely to have difficulty obtaining documentation, being denied the availability of an exemption which we believe the Congress intended to afford them. Accordingly, States will not be subject to denial of FFP*

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in their Medicaid expenditures for SSI recipients who receive Medicaid by virtue of receipt of SSI and Medicare eligibles based upon failure to document citizenship.

The DPC also commends CMS for acknowledging that there must be a different accommodation made for SSI recipients in certain states that do not automatically provide Medicaid to individuals who are SSI eligible. The DPC strongly supports the CMS decision to allow the use of the Social Security Administration's State Data Exchange database (SDX), which contains the information needed to identify whether an individual already has been found to be a citizen, to be cross-matched with state vital-records and establish citizenship and Medicaid eligibility.

The DPC urges CMS to provide specific information on these exemptions to the states and to all the disability-related entities in state government to ensure the proper implementation of the law. We also recommend that this same information be provided directly to disability consumer, advocacy, and provider organizations. In this way, these organizations can educate their members and clients -- as well as hold the states accountable for the proper implementation

Children and Adults with Disabilities who Would not be Exempted

Although, as indicated above, we are pleased that CMS recognized the need for an exemption for individuals on Medicare and SSI, the DPC is concerned that there are some children and adults with disabilities who will not be covered by this exemption and, therefore, will not have access to the critical health services and supports they need.

For example, there are some individuals who have met the SSDI definition of disability; are in their two-year waiting period for Medicare; are in the SSA database; but not on SSI. Some of these individuals are eligible -- based on their state's requirements for Medicaid -- through a medically-needy program, a Medicaid buy-in program, or other Medicaid coverage group. In addition, there are many minor children (under the age of 18) who are eligible for Social Security benefits as a "survivor" who receive Medicaid.

The DPC recommends that any individuals already found eligible for either SSDI or Social Security survivor benefits by the SSA (and who already have presented evidence of their citizenship or qualified immigration status to the SSA) should be exempted from these documentation requirements. Keeping these individuals from accessing the services or supports they need or taking away current service and supports is short-sighted and bad policy.

U.S. Citizen Applicants Should not Face a Delay in Benefits

The DPC is very concerned that CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. 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. We therefore recommend that once an applicant for Medicaid declares he/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.

Special Populations Needing Assistance

The DPC strongly supports the inclusion of the section of the rule entitled "special populations needing assistance". We agree that states have the responsibility to assist their citizens who because of a cognitive, mental, physical, or sensory disability would be unable to present documentary evidence in a timely manner. We believe that the term "incapacity of mind or body" is confusing and should be replaced with a more specific definition of who is being targeted.

Children in Foster Care Must Be Exempted

The DPC strongly recommends that children who are eligible for federal foster care payments be exempt from the citizenship documentation requirements. At least one-third of the half million children in foster care have some type of disability. According to *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care*,[1] whether they experience maltreatment that results in disabilities, or are victims of maltreatment *because* of their disabilities, children who enter foster care with special needs, on average, already have experienced more than 14 different environmental, social, biological and psychological risk factors before coming into care:

- 40% are born at a low birth weight or premature;
- 80% are prenatally exposed to substances;
- 30-80% have at least one chronic medical condition [e.g., asthma, HIV, TB];
- 30-50% have dental decay;
- 25% have three or more chronic health problems;
- 30-60% have developmental delays;
- 50-80% have mental and behavioral health problems;
- 20% are classified as fully disabled;
- 30-40% receive special education services.

Many of these children may not meet the SSI definition of disability so the above-mentioned exemption will not protect them. However, children with and without disabilities in the foster care system could be harmed by the implementation of this rule – and for no good reason.

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[1] United Cerebral Palsy and Children's Rights, *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care (2006), page 5 (http://www.ucp.org/uploads/ForgottenChildrenFINAL.pdf)*

State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments. In addition, we understand 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.

The potential for harm for these children, who have been through so much already is immense if their access to health care is delayed. They could lose needed prescription drugs and other medical equipment, dental care, mental health services, and all the other services afforded to them through the Early and Periodic, Screening, Diagnosis, and Treatment Program (EPSDT). In addition, loss of access to preventive services is simply bad public health policy and not cost effective.

The DPC believes that the DRA does not compel these documentation requirements for children in foster care. These requirements only lead to the unnecessary duplication of state efforts and put these children at risk of delayed Medicaid coverage. The DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is precisely such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new documentation requirement, 71 Fed. Reg. at 39216.

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

The DPC also urges CMS to add to the list of exempted groups all populations already receiving supports and services through federal programs that have existing citizenship determination processes.

Thank you for your consideration of our views.

Sincerely,

Paul G. Marchand

Paul Marchand
Staff Director
Disability Policy Collaboration

Submitter :

Date: 08/10/2006

Organization : **Mid-Minnesota Legal Assistance**

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.

CMS-2257-IFC-197-Attach-1.DOC

MID-MINNESOTA LEGAL ASSISTANCE

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MICHAEL FEICHTINGER
president

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LISA COHEN
director of administration

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)

Dear Secretary Leavitt:

Mid-Minnesota Legal Assistance submits comments to the Interim Rule on behalf of thousands of our low-income clients who receive Medicaid or who may apply for Medicaid. Mid-Minnesota Legal Assistance is a public interest law firm working on behalf of low-income Minnesotans in twenty counties across central Minnesota. We regularly represent Medicaid applicants and recipients in securing and maintaining their Medicaid benefits. We are writing to comment 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). This provision of the DRA became effective on July 1, 2006 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We appreciate that the Rule, as published, includes some significant improvements from earlier CMS letters regarding documentation requirements needed to implement section 6036 of the DRA. First, the current Rule excludes Medicare beneficiaries and most of those receiving SSI from the documentation requirements. This exclusion will significantly reduce the harm to Medicaid applicants and recipients that would have resulted had these individuals been required to provide citizenship documentation. In addition, we welcome the provision that allows Medicaid applicants and recipients to provide affidavits as proof of citizenship when they are unable to provide other forms of citizenship documentation. We believe that it is extremely important that the Rule permit alternate forms of citizenship verification for those individuals who lack other verification documents.

While these Rules extend significant protections to many Medicaid applicants and recipients, additional changes, as discussed below, should be made to ensure that no U.S. citizen is denied Medicaid because of an inability to provide citizenship verification.

1. Citizenship verification is not an eligibility requirement for Medicaid.

The Rule as written converts the provision of documentary evidence of citizenship into an eligibility requirement for citizen Medicaid applicants, as it prohibits states from providing medical assistance to a person before (s)he has presented that evidence. This approach is not legally permissible. CMS has recognized in the course of considering the draft guidance letters that § 6036 does not impose a new eligibility requirement on applicants for or beneficiaries of Medicaid. Rather, it imposes a new condition on the states for receipt of FFP.

The proposed rule ignores the plain language of 42 U.S.C. § 1137(d)(1)(A), specifically referenced by § 6036 of the DRA, which makes the "condition of eligibility" for Medicaid "a declaration in writing, under penalty of perjury" that the individual "is a citizen or national of the United States . . . ." Nothing in § 6036 purports to change this eligibility requirement, as all the amendments to the Medicaid Act in that section are made to 42 U.S.C. § 1396b, which deals with financial reimbursement to the states, not individual eligibility for benefits which are found in 42 U.S.C. § 1396a. Indeed, 42 U.S.C. § 1396a continues to provide protection to citizens in subsection b which states:

> The Secretary . . . shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan – . . . (3) any citizenship requirement which excludes any citizen of the United States. 42 U.S.C. § 1396a(b).

The proposed Rule ignores this statutory language and makes the provision of evidence of citizenship an eligibility requirement for receiving Medicaid.

In adding 42 U.S.C. § 1396b(x), Congress equalized the process under § 1137(d) for verifying U.S. citizenship and qualified alien status. Previously, although both groups had to file a sworn statement regarding their status in order to qualify for Medicaid, under § 1137(d)(1)(A), only qualified aliens had to provide documentary evidence to support their claimed status. § 1137(d)(2). Now, citizens also have to provide such evidence.

In addition, the Rule unconstitutionally deprives citizen applicants for Medicaid of the equal protection of the law. If the Rule were to stand as currently written, an applicant for Medicaid who claims qualified alien status will get Medicaid benefits during the reasonable opportunity period available to acquire verification of qualified alien status. This is required by § 1137(d)(4), which provides in relevant part that:

> (A) the State – (i) shall provide a reasonable opportunity to submit . . . evidence indicating satisfactory immigration status, and (ii) may not delay, deny, reduce or terminate the individual's eligibility for benefits under the program on the basis of . . . immigration status until such reasonable opportunity has been provided;

If, on the other hand, an applicant for Medicaid claims to be a U.S. citizen or national rather than a qualified alien, (s)he will not get Medicaid benefits during the reasonable opportunity period available to acquire verification of citizenship. This irrational result is not required by § 6036 of the DRA. The cross-reference to § 1137(d) in § 6036 strongly suggests that Congress intended that citizens now be treated under that section as qualified aliens always have been, perhaps no longer better, but certainly not worse. But, as it stands in the proposed Rule, citizen applicants are treated worse than qualified alien applicants. The statute does not require this result. The equal protection component of the Fifth Amendment of the U.S. Constitution does not allow it.

CMS should, by amending 42 C.F.R. § 435.407(j) or otherwise, clarify that applicants for Medicaid who declare they are citizens or nationals of the United States must, if otherwise eligible, be given Medicaid benefits during the reasonable opportunity period they have to acquire evidence of their status.

2. **Citizen RSDI recipients should be deemed eligible for Medicaid and should not be required to wait until they are eligible for Medicare.**

Citizens who are eligible for Social Security Disability payments (RSDI), but are still in their two-year waiting period to receive Medicare should be exempted from the documentation requirements. Such people are in all meaningful ways indistinguishable from Medicare eligible persons and most SSI beneficiaries who are currently exempted by the Rule.

3. **Birth certificates provided previously as proof of eligibility for state assistance programs should be adequate verification of citizenship required under the Deficit Reduction Act.**

CMS should exempt Medicaid applicants and beneficiaries who are citizens and who have already presented birth certificates to obtain TANF or SCHIP benefits. These individuals have already established their citizenship in the context of those programs. Indeed, in Minnesota, many Minnesota Family Investment Program caretakers have provided their children's birth certificates during the application process. (MFIP is Minnesota's TANF program). Since this state verified birth information is already in county files for these MFIP/TANF recipients, this documentation should also be allowed as proof of citizenship for Medicaid purposes as well.

CMS should amend 42 C.F.R. § 435.1008 to include the groups who have previously presented documents as populations that are exempt from the requirement that states have documentation of their U.S. citizenship or nationality on file in order to receive federal financial participation (FFP) for medical assistance provided to them.

4. **CMS should expand the duty of state Medicaid agencies to assist in verifying citizenship to include those who are cooperating but are unable to comply with the requirement to presenting satisfactory documentary evidence.**

State Medicaid agencies have a responsibility to assist individuals who are cooperating but are unable to comply with the requirement to present satisfactory documentary evidence. As written, § 435.407(g) neither provides sufficient guidance regarding a state's responsibilities nor casts a net wide enough to capture all those who will need assistance.

As recipients of federal funds, state Medicaid agencies have a responsibility under both § 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act to provide sufficient assistance to people with disabilities to afford them the same opportunity to benefit from Medicaid as is available to people without disabilities. In Minnesota, a significant number of Medicaid applicants and recipients will most likely need assistance in obtaining documentation of citizenship, as 26% of the TANF single parent families in December 2004 had an adult who received publicly funded treatment for a severe mental health diagnosis. The responsibility to assist cannot legally be shifted to a "representative", as the Rule suggests. At a minimum, CMS should clarify the circumstances under which the Medicaid agency will be responsible for providing assistance for people with disabilities. It would also be useful to provide examples of the scope of assistance that might be necessary for this population.

In addition, CMS should expand the list of reasons why a person may require special assistance to include, for example, people who are limited English proficient (LEP), and are homeless or who have been displaced by a disaster, such as a hurricane or a fire.

5. **Once a Medicaid recipient or applicant has verified citizenship, this should be transferable if the recipient moves to another state or U.S. territory.**

The Rule, at 42 C.F.R. § 435.407(h)(5), states that documentation of citizenship and identity should be a one time event. However, what is less clear is whether a person who has already established eligibility for Medicaid in Missouri, for example, can later get Medicaid in Minnesota without again providing documentation. A significant number of Medicaid applicants in Minnesota have recently moved to Minnesota from another state and could be required to verify citizenship again if the Rule is not clarified. In the first quarter of 2006, over ten percent of Medicaid applicants in Hennepin County, Minnesota had lived in other states during the past year. These individuals should not be required to provide citizenship verification again if they have already done so in another state. While

this appears to be the intent of the Rule, clarification is important, especially if the Rule is not amended to lessen the financial cost to applicants of compliance.

CMS should amend 42 C.F.R. § 435.407(h)(5) to clarify that a person who has verified citizenship in one state does not need to verify his or her status again upon moving to another state. In addition, CMS should establish a documentation hot line, or some other mechanism by which one state can quickly and easily verify whether an applicant for Medicaid has, subsequent to July 1, 2006, received Medicaid in another state and, therefore, does not again need to verify citizenship

6. **The Act does not require original or certified copies of citizenship verification and the requirement is burdensome.**

The Rule, at § 435.407(h)(1), specifies that only originals or certified copies of qualifying documents may be accepted to verify citizenship or identity. CMS offers no explanation for such a restrictive requirement, and none is readily apparent. The clear language of § 6036 of the DRA does not impose such an onerous and expensive requirement. Requiring originals or certified copies will greatly increase the cost of acquiring any necessary evidence, and it will require people who already have documents such as birth certificates to acquire new copies that comply with this burdensome provision. In addition, if § 435.407(h)(1) is not amended, it will effectively reinstate the requirement that people apply for Medicaid in person, for very few persons would be willing to send a valuable original document through the mail to a large and often impersonal bureaucracy. Requiring people to appear in person to protect their documents will have an especially burdensome impact on the working poor, many of whom cannot take time off from work without jeopardizing their jobs.

CMS should amend 42 C.F.R. § 435.407(h)(1) to say that states must accept standard copies of qualifying documents and must accept the documents from whomever the beneficiary has designated to deliver the documents.

7. **A Medicaid record of payment for a birth in a U.S. hospital should be considered satisfactory documentary evidence of citizenship.**

All children born in the United States to women who receive Medicaid should continue to receive Medicaid without the need to document their citizenship. A child in this situation is by definition a U.S. citizen, a fact indisputably known to the Medicaid agency because it will have paid for the child's birth in a U.S. hospital. CMS should instruct states that they must accept a record of Medicaid (or other insurance) payment for a birth in a U.S. hospital as sufficient proof of citizenship.

CMS should amend 42 C.F.R. § 435.407(a) or (b) to include that any record of Medicaid payment for a child's birth in a U.S. hospital is acceptable evidence of that child's citizenship.

8. **Alternative methods of verifying citizenship should be developed for U.S. citizens who lack documentation of their citizenship as is allowed by the Social Security Administration.**

The list of acceptable documents should be expanded to protect U. S. citizens who, although cooperating in verifying citizenship, are unable to provide the required documentation. 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, and individuals experiencing domestic violence. The Secretary should use his discretion under the DRA to expand the list of acceptable documents. Specifically, we urge the Secretary to borrow accepted practices 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.

The documentation regime created by the Rule also fails to provide a true method of last resort for U.S. citizens who, for reasons ranging from mental illness to domestic violence to natural disasters to past discrimination, simply cannot provide any of the listed documents. The closest thing to such a procedure in the Rule is the supposed ability to establish one's citizenship through the affidavit of others. But that procedure has been made too cumbersome for persons in the above categories to use successfully.

The Rule currently allows one to establish citizenship through the affidavit of others. However, the persons making the affidavit are also required to provide proof of their citizenship. This requirement will prevent some citizens, especially children, from getting benefits to which they are entitled. If, for example, an undocumented woman gives birth at home in this country, it is likely that no one attending that birth, much less two people, will be able to provide proof of citizenship. Yet these individuals would be the only people in a position to attest to the child's birth in the United States. Further, even if the people doing such an affidavit are citizens, the Rule requires them to document their status as if they themselves were applying for Medicaid. This requirement is inconsistent with at least the intent, if not the letter, of the Tri-Agency Guidance issued by H.H.S., which prohibits inquiry into, or denial of benefits to someone because of, the citizenship status of persons not applying for the benefit in question. See http://www.hhs.gov/ocr/immigration/triagency.html.

There will be innumerable situations in which a person is unable to produce any of the documents listed in the Rule, not because of failure to cooperate but merely because of failure to succeed. In such circumstances, the Rule should allow the person to explain the noncompliance and allow the state to decide if the offered reason is credible. This is a procedure available to applicants for the SSI program, and it is no less warranted, or necessary, here.

CMS should amend 42 C.F.R. § 435.407 to allow a person who cannot acquire any of the listed documents to explain why the documents cannot be acquired, and to allow a state to provide Medicaid to that person if it finds the explanation to be credible. If the person is incapacitated to such a degree that (s)he cannot provide an explanation, the person's guardian or representative should be able to provide it instead.

9. CMS should not require that acceptable documents be dated at least five years before the original Medicaid application date.

A number of documents listed in 42 C.F.R. § 435.407(c) and (d) can only be accepted as proof of citizenship if they are dated at least five years before the applicant's or beneficiary's *original* application for Medicaid. This requirement is very restrictive and will create unnecessary obstacles for many individuals, especially those who have been in a nursing home or other institution for many years. CMS should do away with the arbitrary five year requirement to accept documents for individuals in nursing homes or other institutions for many years who are clearly citizens but do not have access to their records.

CMS should amend 42 C.F.R. § 435.407(c) and (d) to remove any requirement that a document must have been created at least five years before a person's initial application for Medicaid in order to qualify as verification of citizenship and to borrow accepted practices 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.

10. CMS should accept all forms of tribal documents as acceptable proof of citizenship verification for Native Americans.

Many Native Americans were not born in a hospital and have no record of their birth except through tribal documents. By not recognizing tribal documents 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 and similar tribally recognized documents as satisfying the documentation requirement.

11. CMS should simplify the requirements for verifying citizenship by eliminating the tiered system of acceptable citizenship documentation.

The Rule unnecessarily establishes an elaborate priority structure for the documents that will be deemed acceptable verification of citizenship status. Neither § 6036 of the DRA nor any administrative imperative requires such a structure. The proposed hierarchy will, at a minimum, cause both state Medicaid agencies and Medicaid applicants and recipients to waste time unnecessarily seeking evidence of higher priority when perfectly adequate evidence is readily available. CMS has offered no explanation for its chosen course. Evidence either does or does not suffice to verify citizenship, and the Rule sets forth a long, if incomplete, list of evidence that CMS has deemed to be acceptable.

If evidence anywhere on that list is available to an applicant or beneficiary, that evidence should be accepted in the first instance, for whether or not a person is a citizen or national of the United States is a yes or no question. One does not become more of a citizen by providing "better" documentation of his or her citizenship. Especially where, as here, evidence listed at a "higher level" is likely to cost money that most Medicaid beneficiaries do not have, the Rule should not require that it be provided or even pursued when acceptable evidence is more readily available. In addition, the human cost in suffering because a person cannot seek treatment when (s)he does not have preferred level documents is unacceptable.

If CMS nonetheless retains the hierarchical approach in the final rule, then it should also retain the level three and level four documentation options. Without those options, the documentation rules will force even greater numbers of eligible citizens out of the Medicaid program and greatly increase the personal risk to them and the financial burden on states and municipalities that will have to provide them with uncompensated care.

Thank you for your consideration of these comments. We hope that they will provide useful in developing final regulations.

Sincerely,

Kathleen Davis, Supervising Attorney
Mary Winston Marrow, Staff Attorney
Mid-Minnesota Legal Assistance

KD/jw

0408-0148000--202700.doc

Submitter : **Ms. Tamara Copeland** **Date: 08/10/2006**

Organization : **Voices for America's Children**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment for Voices for America's Children's comments regarding the Medicaid citizenship documentation requirements.

CMS-2257-IFC-198-Attach-1.PDF

Voices
FOR AMERICA'S CHILDREN

August 11, 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 Dr. McClellan,

Voices for America's Children (Voices), a national, nonpartisan child advocacy organization representing more than 50 member organizations committed to promoting the well-being of children at all levels of government, appreciates the opportunity 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. Voices acknowledges that the Centers for Medicare and Medicaid Services (CMS) has authority to interpret the statute and implement rules that protect Medicaid access for beneficiaries and new applicants.

Voices applauds CMS for revising regulations released on June 9 to exempt individuals receiving Supplementary Security Income (SSI) or Medicare benefits from the Medicaid citizenship documentation requirements. This exemption is critical to maintaining insurance coverage for many children with complex health care needs, such as human immunodeficiency virus (HIV), cerebral palsy, muscular dystrophy, severe mental retardation, and other disabling physical and mental conditions. The continuation of benefits for individuals with presumptive eligibility status is also vital for maintaining coverage for vulnerable and at-risk populations. Voices also commends 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 children from losing their access to health care due to an inability to secure paper copies of their citizenship documentation.

Voices Concerns Regarding the Interim Final Rule

Although the interim final rule protects Medicaid coverage for a large number of low-income children, Voices has serious 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 (a) Medicaid payment records for birth should qualify as proof of infant citizenship

Requiring citizenship documentation for infants whose mothers are Medicaid beneficiaries at the time of their births raises significant concerns regarding access to health care for newborns. Such application of the new requirements unnecessarily endangers newborns who require immediate well-baby or critical care. Medicaid pays for the births of many infants born in American hospitals who 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 as proof of citizenship results in a duplication of efforts that seriously threatens the ability of low-income newborns to receive necessary health care services. Voices 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. Voices asks 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 urges CMS to accept Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants.

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 required documents.

The mandate will have an especially detrimental effect on children and families faced with homelessness. Nearly one year ago, Hurricane Katrina gave witness to how quickly lives can turn into chaos. As a result of the disaster, many families lost their homes and all of their possessions, including their personal documents. 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 children with disparate access to hospitals, such as those living in isolated areas. These children are more likely than children living in other areas to be born at home and therefore never receive a birth certificate. The cost of obtaining an original or certified birth certificate will further contribute to the difficulty individuals will experience when attempting to prove their citizenship. Medicaid applicants and beneficiaries already have strained family budgets, so the additional cost of obtaining documentation may exceed their financial limits and prevent them from securing access to health care.

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. Almost two-thirds of the nearly 9.2 million uninsured children in America are eligible for Medicaid or the State Children's Health Insurance Program. In order to ensure that all eligible children have the opportunity to receive necessary health care services, enrollment procedures must be simple and efficient. Many states have developed simplified and streamlined application processes that ease the enrollment procedure for children. These processes eliminate the need to apply for Medicaid in-person, and some even allow for electronic applications. 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 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 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 (j) New applicants should have a reasonable opportunity to obtain citizenship documentation

Voices has 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 documents while still receiving Medicaid services. Without a reasonable opportunity to obtain their documents, many low-income children will not be able to access needed Medicaid services while they wait to receive documentation from government agencies. Voices urges CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation.

435. 1008 All children in foster care should be exempt from documentation requirements

The interim final rule mandates that children in foster care and those adopted with special needs comply with the Medicaid citizenship documentation requirements. Children who are eligible for federal foster care and adoption assistance (Title IV-E) automatically

qualify for Medicaid, and their citizenship is 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 and children adopted from foster care, including those with special needs, to document their citizenship will create new barriers to their access to the health and mental health services they need. Research has repeatedly shown that children in foster care experience greater physical and mental health needs than all other children, with 80% of children in foster care demonstrating mental health needs. Exposure to extreme poverty, family violence, homelessness, and parental mental illness and substance abuse often result in complex health needs among children in foster care, exacerbating the necessity of comprehensive services for such children.

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 nearly impossible. Prolonging access to necessary services for children in foster care could ultimately result in the need for complex and expensive emergency care, as well as untreated mental health concerns that may lead to at-risk behaviors. Voices 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.

State-specific Consequences of the Interim Final Rule

With over 50 state-level child advocacy member organizations in its network, Voices for America's Children is in a unique position to share the impact of the Medicaid citizenship documentation requirements on children in selected states. Medicaid programs, population demographics, and children's health needs vary immensely across the country. Due to these variations, the interim final rule of the Medicaid citizenship documentation requirements will have a unique impact in each state.

Connecticut

Connecticut's Department of Social Services (DSS) is working to document the citizenship and identities of the 300,000 children enrolled in Medicaid in the State. Connecticut child advocates are relieved that the interim final rule allows the State to electronically verify the citizenship of applicants and beneficiaries by searching State databases, and to confirm identities through the records of other Connecticut agencies and programs such as the Department of Motor Vehicles (DMV), food stamps, and child support. However, advocates are very concerned that the State does not currently have the capacity to connect these databases. During the time required to link the networks of various State agencies and programs, Medicaid applicants and beneficiaries will not be able to rely on an electronic system to prove their citizenship and identities.

Connecticut has a large population of Medicaid applicants and beneficiaries who will never have the opportunity for electronic citizenship and identity verification. These

populations include most of the 43 percent of Connecticut residents born in other states whose citizenship information will not appear in a State electronic database. Children applying for or renewing Medicaid coverage who do not receive benefits from other state programs will most likely be unable to obtain an electronic verification of their identities. Applicants and beneficiaries for whom electronic citizenship and identity verification is unavailable must comply with the requirement to obtain original or certified copies of their documentation. This requirement places a great burden on the budgets of low-income families in Connecticut, for which the $66 to $77 fee for a driver's license, $15 fee for a state-issued identification card, or $97 fee for a passport may be out of reach.

A recent audit conducted by Connecticut's Department of Social Services found no evidence of applicants falsely declaring U.S. citizenship in any of the randomly selected cases spanning a four year period. The results of the audit lead many advocates and health care providers in Connecticut to believe that the risks created by the citizenship documentation requirements, including decreased access to necessary care for children and an increased rate of uninsured children, are unjustified and unnecessary. As in other states, advocates, providers, and agencies in Connecticut believe that they could better serve individuals applying for or receiving Medicaid if the citizenship documentation requirements granted states greater flexibility.

Iowa

Child advocates in Iowa have also expressed concerns regarding the new requirements. Since the citizenship documentation requirements went into effect on July 1, organizations providing public health services to Iowa communities have experienced difficulties linking residents to Medicaid services. Service agencies in Iowa report that confusion abounds within the Iowa Department of Human Services regarding which documents qualify as sufficient proof of citizenship and identity. Due to this uncertainty, the office must make copies of all documents and submit them to individuals within the Department who are qualified to verify the citizenship and identity of applicants. If those individuals determine that the submitted documents are insufficient proof of citizenship and identity, applicants receive letters in the mail alerting them that they or their agents must return to the Department of Human Services to resubmit their documents. In the mean time, Iowa children and families applying for Medicaid do not have access to the services they need.

Reports from an Iowa public health service agency indicate that the original or certified document requirement places a great burden on applicants and beneficiaries who are not comfortable sending their original documents through the mail. Many of these individuals would like to apply for or renew Medicaid coverage in-person, but they do not have access to transportation. These children and families must either risk losing their most important personal documents in the mail or further delay their access to medical services by waiting to apply for or renew Medicaid coverage until they secure transportation.

The original or certified document requirement causes further problems for Iowa residents who are unable to afford the cost of obtaining a birth certificate from the State.

Even when individuals are able to afford the cost of a birth certificate, they must wait for the State to process their requests and mail their birth certificates to them before they can access Medicaid services. During this time, children and families must delay necessary health care. Staff providing public health services to Iowa residents has reported that the Department of Human Services grants Iowa Medicaid consumers ten days to submit their proof of citizenship and identity. This period does not provide sufficient time to obtain the required documents from the State, or even to mail the documents to the Department of Human Services. Eliminating the original or certified document requirement would mitigate these obstacles for the 122,000 children who receive Medicaid in Iowa and new applicants for the program.

Securing Medicaid coverage for infants and young children since the implementation of the citizenship documentation requirements is particularly difficult. Requiring Iowa parents to comply with the documentation hierarchy for infants, even if the Medicaid program pays for their births, jeopardizes their access to necessary neonatal care. Primary care physicians in Iowa have reported a four-to-six week wait to obtain social security cards and birth certificates for infants from the State. The wait for these documents is even longer for infants born at home or in other non-hospital settings. Proving the identity of children under five is also very difficult. Since most children under five do not have any school records, obtaining proof of identity for them in a timely manner is a great challenge for families and service providers. Failure to modify the interim final rule of the Medicaid citizenship documentation requirements will result in continued delays of necessary health care services for infants and young children in Iowa.

Louisiana

Child advocates in Louisiana and other Gulf States are extremely concerned about the effects of the citizenship documentation requirements on children affected by Hurricane Katrina. During Hurricane Katrina, many Louisiana families lost all of their possessions, including their birth certificates, driver's licenses, and other forms of identification and proof of citizenship. The 650,000 Louisiana children who received Medicaid services before the disaster, along with new applicants, face a unique challenge in obtaining documentation.

The Medicaid citizenship documentation requirements should include a hardship provision to recognize the extra hurdles that individuals affected by Hurricane Katrina and other unforeseen disasters face in obtaining official documents. Failing to include such a provision jeopardizes the well-being of children who have an especially urgent need for Medicaid services. A Louisiana State University study found that 95 percent of children affected by Hurricane Katrina witnessed the destruction of their communities, 36 percent were separated from their caregivers at some point, and 14 percent witnessed the death of a relative. Due to the trauma they experienced, these children face health and mental health care needs that surpass those of most children applying for or receiving Medicaid. Requiring victims of Hurricane Katrina, considered by many to be the greatest acute children's health crisis in modern America, to comply with the Medicaid

citizenship documentation requirements as outlined in the interim final rule neglects their immediate need for health and mental health services.

Pennsylvania

Pennsylvania child advocates estimate that 96,000 of the 962,000 children receiving Medicaid services in Pennsylvania will face significant barriers to meeting Medicaid citizenship documentation requirements. The State, health care providers, and child advocates are very concerned about the impact the citizenship documentation requirements will have on these Pennsylvania children who are otherwise eligible for Medicaid.

The new requirements are especially frustrating for Pennsylvania because the State already operates an efficient and effective system for verifying the citizenship and identities of Medicaid applicants. This system monitors for potential errors and allows the State to always verify the citizenship of applicants in questionable cases. The State, health care providers, and advocates believe this system operated with an ideal balance of caution and flexibility when verifying the citizenship and identity of Pennsylvania Medicaid applicants. However, the State must eliminate this flexible system and instead implement the strict structure of the documentation hierarchy that jeopardizes access to health care for many of Pennsylvania's most vulnerable children.

In addition to burdening Medicaid applicants and beneficiaries, the citizenship documentation requirements will also create new challenges for Pennsylvania counties and health care facilities. The interim final rule does not recognize the implementation challenges that Pennsylvania institutions, local governments and the State must overcome, both fiscally and organizationally, in order to comply with the new citizenship documentation requirements. Pennsylvania advocates believe the requirements must be modified to acknowledge these difficulties, along with the burden they place on Pennsylvania Medicaid applicants and beneficiaries. Pennsylvania advocates believe that the Medicaid enrollment process would function more efficiently if CMS granted states greater flexibility in documenting the citizenship and identities of their Medicaid applicants.

Texas

Child advocates in Texas are deeply concerned with how the citizenship documentation requirements are affecting the State's large population of American-born children whose parents are undocumented immigrants. Although the interim final rule impacts only new applicants and the State's 2.3 million children who are Medicaid beneficiaries, many undocumented parents in Texas are now hesitant to apply for or renew Medicaid coverage for their children even though the citizenship documentation requirements do not apply to them directly. Child advocates in Texas have great concerns about any requirements that discourage families from submitting Medicaid applications for eligible children, as Texas is the state with the largest number of uninsured children who are eligible for Medicaid or SCHIP. Problems with enrollment, including an electronic system that erroneously removed 30,000 eligible children from the Medicaid program, contribute to the great challenges Texas faces in expanding health insurance for low-

income children. The new Medicaid citizenship documentation requirements will only worsen the situation for Texas' many uninsured children.

Conclusion

Voices for America's Children greatly appreciates the opportunity to share our comments on the interim final rule of the Medicaid citizenship documentation requirements. Voices looks forward to working with CMS in order to ensure that Medicaid continues to provide important health and mental health services to low-income children and families. We hope that you consider our comments and recommendations when issuing final regulations on the Medicaid citizenship documentation requirements. If you have any questions, please contact Liz Meitner, Vice President of Government Affairs and Policy, at meitner@voices.org.

Sincerely,

Tamara Copeland
CEO/President

CC: Michael Leavitt
Secretary, U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Room 16 F
Washington, D.C. 20201

Submitter : Dr. Kathleen McGinley **Date:** 08/10/2006

Organization : Consortium for Citizens With Disabilities

Category : Health Care Professional or Association

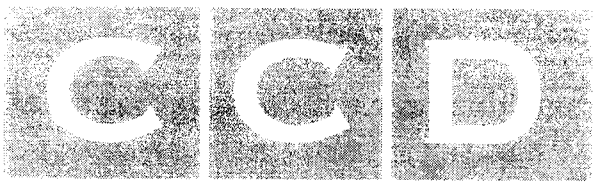
Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-199-Attach-1.DOC



CONSORTIUM FOR CITIZENS WITH DISABILITIES

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)

The Consortium for Citizens with Disabilities is a coalition of over 100 national disability organizations working together to advocate for national public policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Access to adequate health care and to long-term supports and services in the community is of such importance to CCD member organizations and the people that they represent that there are two task forces working full time on this issue. The CCD Health Task Force focuses on access to appropriate health care that meets the needs of children and adults with disabilities and their families. In the majority of cases, the only source of this health care is the Medicaid program. The CCD Long Term Services and Supports Task Force focuses on access to appropriate long-term community-based supports for children and adults with disabilities. Since our nation does not have a long-term care system Medicaid is the major - and almost sole source of these supports and services.

The CCD is strongly supportive of Medicaid because it is a program that should make a compassionate, prosperous nation proud. This essential program has been recognized on a bipartisan basis as the driving force behind the availability of individualized, community-based supports and services that enable people with disabilities of all ages to lead fuller, healthier, and more productive lives. While people with disabilities recognize that Medicaid has its shortcomings—including the institutional bias that forces children and adults with disabilities to be isolated in institutions in order to obtain the long-term services they need—Medicaid's structure is critical to future progress toward community integration. The Medicaid entitlement; the strong federal commitment demonstrated by open-ended financing; and the extensive flexibility that states currently enjoy all help Medicaid to be innovative in addressing the needs of children and adults with disabilities.

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In addition to its critical role in the lives of people with disabilities, Medicaid's impact is far broader. Medicaid is crucial to the viability of the nation's health care system. Medicaid keeps private insurance premiums lower than they otherwise would because it covers the people with the greatest needs and the highest costs; Medicaid provides critical supports to dually-eligible Medicare beneficiaries; and Medicaid financing provides essential support to the nation's public health infrastructure, including public hospitals and community health centers. According to Census Bureau figures released in August 2005, 45.8 million people — 15.7 percent of the total U.S. population — were uninsured in 2004, up slightly from 15.6 percent in the previous year. As the number of people with private insurance falls, Medicaid provides an important counter balance. Medicaid's role in picking up the slack by enrolling low-income children as their parents lose private insurance as a result of economic changes is particularly notable.

The CCD Health and Long Term Services and Supports Task Forces *(hereafter CCD) 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 1st and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

Disability Exemptions

First, CCD is pleased that the interim rule includes the clarification that many individuals with disabilities are not covered by this rule. We commend The Centers for Medicare and Medicaid Services (CMS) for ameliorating the impact of the new documentation requirement by recognizing that indeed the intent of the statute was to exempt individuals who are dually-eligible for Medicaid and Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI). We strongly agree with the CMS statement that:

> *To adopt the literal (and in error) reading of the statute could result in Medicare and SSI eligibles, a population which are by definition either aged, blind, or disabled, and thereby most likely to have difficulty obtaining documentation, being denied the availability of an exemption which we believe the Congress intended to afford them. Accordingly, States will not be subject to denial of FFP in their Medicaid expenditures for SSI recipients who receive Medicaid by virtue of receipt of SSI and Medicare eligibles based upon failure to document citizenship.*

CCD also is pleased that CMS acknowledges that there must be a different accommodation made for SSI recipients in certain states that do not automatically provide Medicaid to individuals who are SSI eligible. CCD supports the CMS decision to allow the use of the Social Security Administration's State Data Exchange database (SDX), which contains the information needed to identify whether an individual already has been found to be a citizen, to be cross-matched with state vital-records and establish citizenship and Medicaid eligibility.

CCD urges CMS to provide specific information on these exemptions to the states and to all the disability-related entities in state government to ensure the proper implementation of the law. In addition, CCD recommends that this same information be provided directly to disability consumer, advocacy, and provider organizations. In this way, these organizations can educate their members and clients -- as well as hold the states accountable for the proper implementation.

Children and Adults with Disabilities Who Would not be Exempted

As stated above, CCD is pleased that CMS recognized the need for an exemption for individuals on Medicare and SSI, However, CCD is concerned that there are some children and adults with disabilities who will not be covered by this exemption and, therefore, will not have access to the critical health services and supports they need.

For example, there are some individuals who have met the SSDI definition of disability; are in their two-year waiting period for Medicare; are in the SSA database; but not on SSI. Some of these individuals are eligible -- based on their state's requirements for Medicaid -- through a medically-needy program, a Medicaid buy-in program, or other Medicaid coverage group. In addition, there are many minor children (under the age of 18) who are eligible for Social Security benefits as a "survivor" who receive Medicaid.

CCD recommends that any individuals already found eligible for either SSDI or Social Security survivor benefits by the SSA (and who already have presented evidence of their citizenship or qualified immigration status to the SSA) should be exempted from these documentation requirements. Keeping these individuals from accessing the services or supports they need or taking away current service and supports is short-sighted and poor policy.

U.S. Citizen Applicants Should not Face a Delay in Benefits

CCD is very concerned that CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. 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. Therefore, CCD recommends that once an applicant for Medicaid declares he/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.

Special Populations Needing Assistance

The CCD supports the inclusion of the section of the rule entitled "special populations needing assistance". CCD agrees that states have the responsibility to assist their citizens who because of a cognitive, mental, physical, or sensory disability would be unable to present documentary evidence in a timely manner. CCD believes that the term "incapacity of mind or body" is confusing and should be replaced with a more specific definition of who is being targeted here.

Children in Foster Care Must Be Exempted

The CCD strongly recommends that children who are eligible for federal foster care payments be exempt from the citizenship documentation requirements. At least one-third of half million children in foster care have some type of disability. According to *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care*,[1] whether they experience maltreatment that results in disabilities, or are victims of maltreatment *because* of their disabilities, children who enter foster care with special needs, on average, already have experienced more than 14 different environmental, social, biological and psychological risk factors before coming into care:

- 40% are born at a low birth weight or premature;
- 80% are prenatally exposed to substances;
- 30-80% have at least one chronic medical condition [e.g., asthma, HIV, TB];
- 30-50% have dental decay;
- 25% have three or more chronic health problems;
- 30-60% have developmental delays;
- 50-80% have mental and behavioral health problems;
- 20% are classified as fully disabled;
- 30-40% receive special education services.

Many of these children may not meet the SSI definition of disability so the above-mentioned exemption will not protect them. However, children with and without disabilities in the foster care system could be harmed by the implementation of this rule - and for no good reason.

State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments. In addition, we understand 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.

The potential for harm for these children, who have been through so much already is immense if their access to health care is delayed. They could lose needed prescription drugs and other medical equipment, dental care, mental health services, and all the other services afforded to them through the Early and Periodic, Screening, Diagnosis, and Treatment Program (EPSDT). In addition, loss of access to preventive services is simply bad public health policy and not cost effective.

CCD believes that the DRA does not compel these documentation requirements for children in foster care. These requirements only lead to the unnecessary duplication of state efforts and put these children at risk of delayed Medicaid coverage. The DRA allows the Secretary to

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[1] United Cerebral Palsy and Children's Rights, *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care (2006), page 5.* (http://www.ucp.org/uploads/ForgottenChildrenFINAL.pdf)

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.

CCD 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.

In addition, CCD urges CMS to add to the list of exempted groups all populations already receiving supports and services through federal programs that have existing citizenship determination processes.

Pregnant Women and Children

CCD applauds CMS for clarifying that the new citizenship documentation requirements do 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. However we are concerned about the eligibility of children born in U.S. hospitals. Therefore, we recommend that 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.

CCD believes it is somewhat incongruous that 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. Under current law, infants born to U.S. citizens receiving Medicaid at the time of birth are deemed eligible for Medicaid upon birth and 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 re-determination" 71 Fed. Reg. 39216. CCD believes this requirement makes no sense. If a state Medicaid agency paid for the child's birth in a U.S. hospital the child is then, by definition, a citizen. In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant subject to the 5-year bar on Medicaid coverage or an undocumented immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, this makes no sense, since the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen.

The prevention of future disability is one of the goals of CCD member organizations. Any rule that would delay the access of a newborn to needed health care - places that child at risk a higher risk for health problems or disabilities. The risk to the health and well being of newborns from delays in coverage and the potential for increased uncompensated care for providers are completely unnecessary.

Again, CCD strongly urges 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.

U.S. Citizens who Lack Citizenship Documentation

There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. 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. CCD is concerned that under this rule some individuals who apply for Medicaid will never qualify and some individuals who are current beneficiaries will eventually lose their coverage. Again, this is poor health policy.

The DRA gives the Secretary the discretion to expand on the list of documents that are considered to be "proof" of citizenship and a "reliable means" of identification. CCD urges the Secretary to 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.

It is important to note that SSI regulations 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) CCD recommends that the Secretary 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 children and adults who are U.S. citizens and new applicants for Medicaid can get access to the services and supports they need and those who are current Medicaid recipients will maintain their coverage.

Native Americans

The interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents as proof of identity, however, the regulations do not permit tribal enrollment cards to be used as evidence of citizenship. CCD urges CMS to recognize the extremely high health care needs of many Native American children and adults. CCD urges 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.

In Conclusion

As stated previously, access to adequate health care and to long-term supports and services in the community is of such importance to CCD member organizations and the people that they represent that there are two CCD task forces working full time on this issue.

States, providers, health care advocates and beneficiaries share concerns about the DRA's documentation of citizenship requirements... We urge CMS to seriously consider the needs of children and adults who rely on Medicaid as final regulations are drafted. We also urge CMS to consider the damage that could be done to our nation as a whole if people are denied access to the health and long term services and supports they need.

Thank you for considering our views.

Sincerely,

Kathy McGinley
National Disability Rights Network
Cp-Chair, CCD Health Task Force

Kim Musheno
American Association of University Centers On Disabilities
Co-Chair, CCD Long Term Services and Supports Task Force

On behalf of:

American Association of People with Disabilities
American Congress of Community Supports and Employment Services (ACCSES)- Disability Service Providers of America (DSPA) Alliance
American Dance Therapy Association
American Music Therapy Association
American Network of Community Options and Resources
American Occupational Therapy Association
Association of University Centers on Disabilities
Easter Seals
Epilepsy Foundation
National Alliance on Mental Illness
National Association of Councils on Developmental Disabilities
National Association of County Behavioral Health and Developmental Disability Directors
National Association of State Head Injury Administrators
National Council for Community Behavioral Healthcare
National Disability Rights Network
National Mental Health Association
National Respite Coalition
Paralyzed Veterans of America

RESNA (Rehabilitation Engineering and Assistive Technology Society of North America)
The Arc of the United States
United Cerebral Palsy

Submitter : Ms. Paula Gianino **Date:** 08/10/2006

Organization : Planned Parenthood of the St. Louis Region

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-200-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.

Planned Parenthood of the St. Louis Region (PPSLR) serves over 34,000 patients each year. Some 10-20% of all our patients are Medicaid eligible. PPSLR provides comprehensive family planning and sexual health services to women, men and teens. For the majority of our patients, PPSLR is their sole source of medical care.

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 covered family planning services provide a critical safety net for tens of thousands of Missourians each year. With the complete loss of our state's family planning program in 2003, Medicaid covered services are now the sole source of preventive services for our low income residents.

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

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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 many states, including Missouri, 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.

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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. Family planning services are a smart investment saving taxpayers over $3.00 for every $1.00 invested. 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.

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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.

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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.

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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.

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Attaining the required documents presents its own challenges. The process for obtaining a birth certificate in Missouri, and other states, is costly and burdensome – taking weeks to several months – thus, delaying an individual from receiving vital services. Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the

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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.

Missouri 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, Missouri 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. 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

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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 Missouri operates. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

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Thank you for your attention to these comments.

Planned Parenthood of the St. Louis Region
Paula M. Gianino

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Contact person¶

Submitter : Ms. Paula Gianino **Date:** 08/10/2006

Organization : Planned Parenthood of the St. Louis Region

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-201-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.

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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 covered family planning services provide a critical safety net for tens of thousands of Missourians each year. With the complete loss of our state's family planning program in 2003, Medicaid covered services are now the sole source of preventive services for our low income residents.

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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 many states, including Missouri, 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.

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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. Family planning services are a smart investment saving taxpayers over $3.00 for every $1.00 invested. 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.

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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.

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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.

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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.

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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.

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At the same time, however, Missouri 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.

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Deleted: [If your state has plans to use or has the ability to use vital health databases to check for birth certificates, etc., acknowledge that it is a major improvement that some citizens in your state will not be required to track down certain documentation because of this change].

Deleted: [state name]

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 Missouri operates. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

Deleted: [state's Medicaid program]

Thank you for your attention to these comments.

Planned Parenthood of the St. Louis Region
Paula M. Gianino

Deleted: Affiliate¶
Contact person¶

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

Organization : Tri-Rivers Planned Parenthood, Inc.

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-202-Attach-1.DOC

August 10, 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 of this provision on millions of Medicaid eligible citizens and in particular the Medicaid population we currently serve in our clinics.

At Tri-Rivers Planned Parenthood approximately 15% of our client population is on Medicaid. We provide well-woman health care, screening and treatment for sexually transmitted infections, pregnancy testing, birth control methods and a range of other reproductive related services. We screen for numerous other health issues and make referrals to other provides. Our headquarters is located in Phelps County in rural, south-central Missouri and over 60% of the births at the county hospital are paid for by Medicaid. Making it more difficult to obtain Medicaid will not reduce the real tragedies that occur in the daily lives of poor, rural Missourians.

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. Of course, 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 should be reducing instead of increasing the barriers to basic health care if we want improved outcomes.

Since 1993, twenty-four states have expanded access to family planning services through 1115 family planning demonstration programs. 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 Missouri and for our affiliate, the program has allowed many individuals to access care who otherwise would not. Missouri's demonstration program is limited in scope but has allowed women who are postpartum and losing their coverage to continue receiving services. Unfortunately, the citizenship documentation requirements strike at the core of

how family planning demonstration programs are designed and could render them meaningless. With over 60% of the births in our area paid by Medicaid, we have failed by not enrolling people in Medicaid sooner so they could receive preventive services. We need to make the process easier, not harder. The citizenship documentation requirements will only erect additional unnecessary barriers. Individuals receiving benefits under section 1115 family planning demonstration programs should be exempt from the citizenship documentation requirements.

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

Thank you for your attention.

Sincerely,

Tonia Stubblefield
President & CEO
Tri-Rivers Planned Parenthood, Inc.
P.O. Box 359
Rolla, MO 65402

Submitter : **Dr. Anne Marie Murphy** **Date: 08/10/2006**

Organization : **Illinois Dept of Healthcare and Family Services**

Category : **State Government**

Issue Areas/Comments

GENERAL

GENERAL

See attached comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See attached comments

Regulatory Impact Statement

Regulatory Impact Statement

See attached comments

CMS-2257-IFC-203-Attach-1.DOC

ILLINOIS DEPARTMENT OF
HFS Healthcare and Family Services

Rod R. Blagojevich, Governor
Barry S. Maram, Director

201 South Grand Avenue East
Springfield, Illinois 62763-0002

Telephone: (217) 782-2570
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August 10, 2006

Dennis Smith, Director
Center for Medicaid and State Operations
Centers for Medicare & Medicaid Services
U. S. Department of Health and Human Services
Via electronic transmission

Centers for Medicare & 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
Via express delivery

Centers for Medicare & Medicaid Services
Office of Information and Regulatory Affairs
Office of Management and Budget
Room 10235, New Executive Office Building
Washington, D.C. 20503
Attn: Katherine T. Astrich
CMS Desk Officer
CMS-2257-IFC
katherine_T._astrich@omb.eop.gov
Via e-mail

RE: Interim Final Rule – file code CMS-2257-IFC

Dear Mr. Smith:

On behalf of the Illinois Department of Health Care and Family Services (HFS), I appreciate the opportunity to comment on the interim final rule implementing the provision of the Deficit Reduction Act (DRA) that requires states to obtain satisfactory documentary evidence of an applicant's or recipient's citizenship and identity in order to receive federal financial participation. I recognize that the Centers for Medicare and Medicaid Services (CMS) has attempted in this proposed rule to assist states and our beneficiaries where possible. However,

many challenges remain that may threaten vulnerable citizens' timely access to healthcare. Therefore, HFS is providing these comments in the hope that more changes can be made so that citizens' access to healthcare is not jeopardized. We stand ready to work with CMS on this important issue.

Because almost the entirety of the rule goes to the issue of collection of information, I am submitting these comments for program consideration as well as to address collection of information requirements. In particular, my comments at 2 (f) and 3 (b), (c), (d) and (f) go to the issue of collection of information.

As Governor Blagojevich expressed to Secretary Leavitt in his letter of June 28, 2006, Illinois agrees that only persons who qualify for Medicaid should receive its benefits. However, there is little evidence that people are being dishonest about being citizens of the United States when they apply for medical benefits. We believe the new federal rule will result in many citizens in Illinois losing access to affordable health care for no good reason. We would like to work with you to devise a responsible, safe plan for implementing the DRA citizenship documentation provision without penalizing U.S. citizens in the process.

Since Governor Blagojevich wrote, CMS determined that persons receiving Medicare or Supplemental Security Income are excluded from the application of 42 CFR 435.407 and 435.1008. I commend you for that decision and urge you to make the other adjustments we propose in the following detailed comments.

1. **Persons likely to be most adversely affected by reason that they are not able to document citizenship or identity by any means allowed under the federal rule.**

    a. 435.407 (a) – (e) - The rule makes no allowance for persons who cannot provide any documents or any persons qualified to sign affidavits of the person's citizenship as the rule sets forth. This provision will inevitably cause severe hardship to individuals in this situation.

    At this time, we cannot estimate how large this group is in Illinois. We anticipate, however, that the individuals most affected will be:

        i. Citizens with disabilities who are not enrolled in Medicare or SSI who have mental health problems or those who have cognitive impairments such that they are unable to provide either the state or individuals assisting them with information regarding their identity or the whereabouts of their birth.

        ii. Aged citizens who are not enrolled in Medicare or SSI who were born at home and who have no relatives or other individuals familiar with their birth who might provide an affidavit.

iii. At 435.407 (e) and (f) the rule requires either school records or the affidavit of a parent or legal guardian to attest to the identity of a child under 16. Under Title XIX, states are required to enroll children who are living with relatives who are not their legal guardians or children who are living with no relative. If those children are not yet in school, and their parents are not present or cooperating, according to the rule, we would have to deny Medicaid for those young citizen children.

We urge you to allow any responsible relative raising a child to attest to the child's identity and that the affidavit used for this identification not necessarily identify the child's place of birth. Since documentation of citizenship will require another document showing place of birth, the latter requirement is unnecessary. In addition, states should be permitted to accept a copy of child's birth certificate or a birth record match as evidence of both a child's identity *and* citizenship.

Finally, a state should not lose FFP for serving any individuals if it can identify the reasons they cannot obtain the documents and if there is no reason to suspect that they are not citizens.

2. Persons who will be adversely affected by having enrollment delayed.

a. Medicaid covers the poorest of Illinois' children, parents, seniors and persons with disabilities. These populations are the least able to negotiate successfully the existing barriers to enrollment. The new rule's greatest impact is far more likely to be denial of benefits for a citizen, rather than denial of benefits to undocumented persons.

Many individuals are not currently in possession of the documents required by this new provision. For instance, only 21 percent of U.S. citizens possess a passport and this percentage is likely much lower for the Medicaid population.

Applying for a certified copy of a birth certificate requires time, knowledge of all relevant details of the person's birth and enough money to pay any relevant fees. A person may have to know not only the state but also the county they were born in and must then find out how to apply for their birth certificate in that county. The person must also be able to pay for this birth certificate. Costs vary from state to state. Here in Illinois, a short form abstract of the birth certificate costs $10 and takes as long as 3 to 4 weeks to obtain. It may cost more or take longer to obtain documents from other states.

Congress has previously recognized that the Medicaid population is generally poor and many are living well below the poverty level. For instance, here in Illinois we have over 350,000 parents in the FamilyCare program who are living in households with income below 38 percent of the federal poverty level. The state also provides

health insurance to over 1 million children living in households with income below the poverty level.

Recognizing this fact, the federal Medicaid statute prohibits co-pays for children and limits co-pays for adults to nominal amounts. This is in recognition of the fact that even modest requirements for cost sharing or expenditures by poor beneficiaries will be an impediment to accessing services. Furthermore, providers are not allowed to deny services if certain Medicaid beneficiaries are unable to pay the co-pay.

With this in mind, it is obvious that a fee for a birth certificate or other documents will be a significant impediment for some citizens in accessing this federal entitlement. The proposed rules do not make exception for those who are unable to afford the fees required to procure the necessary documents. The rule may very well result in eligible needy citizens foregoing applying for benefits altogether.

On the other hand, the states should not be required to bear the burden of purchasing birth certificates for recipients or applicants. The federal government should reimburse states for 100 percent of these costs.

b. Requiring a person to wait until they have the requisite documents delays their access to vital healthcare. In Illinois, we are aware that many individuals apply for healthcare benefits when they are imminently in need of healthcare. For instance, HFS has collected data on how people heard about All Kids and FamilyCare. This data indicates that the most common way that applicants hear about these programs is at a healthcare provider.

   In June 2006, of 15,519 individuals responding to the question "How did you hear about All Kids/FamilyCare?," 3,197 responded that they heard from a healthcare provider (doctor's office, clinic, hospital, other healthcare provider). This was in a month when the state had paid advertisements for the All Kids program where a larger than normal number of respondents indicated that they had heard from a TV ad or radio ad.

   Many research studies raise concern over delaying entry into care. We expect this will result in poorer outcomes and more costly care when care is initiated. With a simple search of public health sources, we identified over 64 articles addressing this topic.

c. There are many examples of citizens who will be adversely affected by delays in eligibility determination. Some are very urgently in need of access to medical benefits.

   i. Illinois provides Medicaid coverage to women found to need follow-up diagnostic services or treatment for breast or cervical cancer discovered under

Public Health's Illinois Breast and Cervical Cancer Treatment Program for low-income, uninsured and underinsured women. If a woman is screened through this program and found to have a diagnosis of cancer or found to need follow-up testing, she is referred to HFS for Medicaid enrollment. Rapid entry into treatment is critical for this population. Any delay of enrollment and entry into treatment solely for the purpose of obtaining documents would put these women at undue risk and could well result in severe illness, even death.

Since August 2001 over 1,213 Illinois women have been enrolled. At any point in time, approximately 400 women are receiving benefits. Illinois is currently expanding this program to additional women and making the program more accessible. Clearly, a woman so diagnosed is in desperate need of immediate access to healthcare. Currently, signing up for this program can be done within a few days. Under the new rules, entry into care will likely be delayed.

ii. There are many other diseases (lung cancer, brain tumor with increasing intracranial pressure, meningitis, septicemia, pneumonia, encephalitis) which when diagnosed would likely cause a person to seek publicly funded health coverage urgently. For instance, racial health disparities in regards to mortality and morbidity are well documented in the area of cancer. The Illinois State Cancer Registry data for 2002 and 2003 show significant difference between date of diagnosis for both breast and cervical cancer and first course of treatment for African Americans compared to Caucasians.

iii. Researchers suggest that such delays may contribute to the outcome disparities between these two groups.[1]

While presumptive eligibility, a process whereby a person who appears to be eligible may be temporarily enrolled while eligibility is determined, is available for pregnant women, children and women in the breast and cervical cancer treatment program, this option is not available for adults applying for Medicaid generally. Therefore, delaying access to healthcare benefits while citizenship or identity documents are procured may have a profoundly negative effect on the sickest citizens applying for Medicaid.

iv. Accessing long term care services is another area where beneficiaries are sometimes in need of very timely access to benefits. For instance, if a senior is hospitalized and is unable to return home due to infirmity, this person may apply for Medicaid so as to access nursing home benefits which are so expensive to a private pay individual as to be inaccessible to them. This need

[1] Blackman DJ: Masi CM "Racial and ethnic disparities in breast cancer mortality: are we doing enough to address root causes?" Journal of Clinical Oncology 2006 May 10: 24(14): 2170-8

for nursing home care may be of long or short duration but the individual may not be able to be discharged from the hospital until such coverage is accessed.

It would be most unfortunate for states to be placed in the position of adding a new barrier to enrollment and probable receipt of treatment because of the Interim Final Rule. CMS must allow states to enroll applicants upon declaration of citizenship, understanding that documents would be subsequently obtained. States should not be placed at risk of lost FFP in such circumstances.

d. Neither the rule nor the earlier guidance that CMS issued on documentation requirements make any allowance for the extra burden the requirements will place on persons who have changed their names – notably, women who have taken their husband's surname. These women will frequently have different names on their birth certificates and identity documents, the most common being a driver's license. Given the overall tenor of the rule, we would expect that states might have to require that married women produce marriage certificates to demonstrate that they are the same person as the one named on their birth certificate. This will unfairly adversely affect female citizens.

   CMS should make allowance for declaration of name changes.

e. The preamble, at page 39216, first column last paragraph, lays out a scheme for determining citizenship of young children. It suggests that children whose births are paid for by Medicaid must at annual redetermination prove citizenship. If a birth is in a hospital within Illinois or any of the other 50 states and paid for by the state, then it is clear that the child is a citizen. Such citizenship status is unlikely to change within the year.

   Requiring such demonstration is illogical and serves no useful purpose while increasing the administrative burden for the state and jeopardizing access to healthcare for citizen children.

   If the child is born to an illegal alien mother but still at a hospital in the U.S. where the claim was paid by a state Medicaid program, again the child will be a citizen irrespective of the immigration status of the mother. Therefore, requiring such a child to demonstrate citizenship at birth is unnecessary and again penalizes a newborn citizen.

   CMS should expressly permit states to use State payment of the services provided at a child's birth as adequate evidence of both citizenship and identity.

f. At page 39216, third column, second paragraph, the preamble discusses the "reasonable opportunity period" and sets it at the State's administrative requirements

such that the State does not exceed the time limits established in Federal regulations for timely determinations of eligibility. This is established without regard to the fact

that obtaining these documents may take many considerably longer than obtaining other documents needed for eligibility. This has the potential to jeopardize access to Medicaid for frail seniors and persons with disability in particular that are currently relying on the program for vital healthcare.

The statute does not differentiate between new applicants and current Medicaid enrollees. However, CMS has chosen in the regulations to differentiate between these two groups in a way that significantly undermines citizens' entitlement to timely access to entitlement healthcare. This differentiation is not based on the law and discriminates between two classes of people based merely on whether they are already on the Medicaid program or are applying in the future. This differentiation is not based on the probability of their self-declaration of citizenship being more likely to be false. There is no data to suggest that new applicants are more likely to be non-citizens compared to existing enrollees. This differentiation also puts citizens at a disadvantage compared to qualified legal immigrants whose eligibility may not be delayed due to lack of immigration documents.[2]

CMS should expressly permit states to enroll new applicants pending receipt of documents.

3. Overly Burdensome and Costly Administrative Requirements

a. 435.407(h) The rule requires that only original documents be accepted. There is no compelling reason for requiring such an overly burdensome process. If carried to its limits, it will destroy Illinois' marked advances in mail-in and online application development. The statute does not direct CMS to take this approach.

This requirement, if fully implemented, would substantially reduce enrollment into many of our state's new healthcare initiatives: All Kids, FamilyCare, Illinois Healthy Women (family planning services), Health Benefits for Persons with Breast and Cervical Cancer, Health Benefits for Workers with Disabilities as well as making the process unnecessarily burdensome for others who are unable to appear for a face-to-face interview such as hospitalized patients and residents of nursing facilities and supportive living facilities. Applications for all of these benefits are handled without requiring the applicant to appear at a state office face-to-face. In fact, the state does not have the capacity to handle the onslaught of contacts this would require.

CMS should not expect individuals to place sensitive documents like passports, certificates of naturalization, drivers' licenses, state i.d. cards, birth certificates, etc., in the mail. Furthermore, CMS should not expect states to assume the responsibility

[2] Ruiz v Kizer, 1991 WL 280035 (E.D. Cal., 1991)

for keeping these sensitive documents secure or for assuring that they are returned to the right person.

On the other hand, CMS should not put states in the position of eliminating mail-in and online options for both applications and redeterminations. This would be a step backward in time. The state must be allowed to accept copies of documents. If the authenticity of the documents were questioned, we could then require originals. The statute clearly allows for such an approach and we believe that CMS should adopt such an approach.

b. Illinois conservatively estimates that approximately 368,000 extra casework hours will be required to satisfy the Interim Final Rule as published. This will require additional annual administrative expenditures, for personnel alone, of $16 million to $19 million. These costs do not take into account the costs of reprogramming our data systems, conducting additional outreach, creating additional notices (printing and postage), extending additional assistance to persons with impairments and no personal representatives, or purchasing birth certificates from other states on behalf of Illinoisans.

c. 435.407 (a)(5), (b)(1) and (h) (1) and (2) - The rule allows states like Illinois to use electronic matching against the State Data Exchange (SDX) for persons receiving SSI and the state vital records authority. We welcome this provision. However, the rule must be amended to clarify that no paper documents must be created or filed to defend citizenship verified through these means.

In addition, states should be permitted to use their own medical claims payment records as a source for proving place of birth whenever the state paid for the birth of a child in the U.S.

The rule should also expressly allow broad state discretion to use electronic data matching with other reliable sources.

d. While the Illinois child welfare authority may have acceptable documentation for children in its custody, as well as for children receiving subsidized guardianship or subsidized adoption support, those documents are not maintained in the children's Medicaid case file. They will be found in their child welfare records. The Background section of the preamble to the rule on page 39216, advises that Title IV-E children receiving Medicaid must have *in their Medicaid file* a declaration of citizenship or satisfactory immigration status and documentary evidence of same.

States should not be placed at risk of FFP for this reason. Furthermore, states should not be required to assume the burden of the extra expense of producing documentation a second time for the sole purpose of getting it in the medical eligibility file.

e. 435.407 (a) – (d) and (h)(6) The rule creates four levels of documentation with descending validity. The statute does not require such a scheme. The rule further requires that states be prepared to match files for individuals who use third or fourth tier documents against other information sources that are apparently under development at the federal level. States are charged to ensure that all third and fourth tier case records be identified and made available to conduct these automated matches at some future time upon direction by CMS.

This raises two concerns at least. First, it suggests that states may be at risk for the loss of FFP in the future for costs associated with any recipient enrolled with third or fourth tier documents. If states in good faith accepted such documentation, it should not be placed at risk for a future federal decision that certain recipients' were not really citizens.

Second, given the size and complexity of the data systems states must operate to comply with all the requirements of Title XIX, it is unreasonable to expect that states would have been able to make data systems changes in time to have met these requirements by July 1. While this provision was included in the state Medicaid Director letter of June 9, 2006, three weeks was hardly sufficient time to operationalize.

CMS must acknowledge that states will need considerable lead time to reprogram data systems to enable the kind of matching envisioned in this section. Further, CMS should not lock states into the tiered approach outlined above. The statute does not require such an approach and it unnecessarily puts at risk millions of citizens' access to healthcare and states federal support for such healthcare.

f. Preamble, III. Collection of Information Requirements - CMS's time estimates for obtaining and processing these documents, 10 minutes for individuals to acquire them and 5 minutes for states to obtain, verify and maintain such records, are also unreasonable. In a best-case scenario, Illinois conservatively estimates we will need an average of 11 minutes per individual to process the documents. Even with these modest amounts of time, given the size of our Medicaid population, we will need approximately 368,000 additional casework hours as noted previously.

We expect it will take many applicants and recipients days at a minimum and not infrequently weeks or even months to obtain the documents and submit them.

4. Risk of Loss of FFP

a. 435.406 and I. Background in the Preamble. CMS has instructed states to deny applications from persons who cannot present documents within the state's normal time for processing applications. We have 45 days for most cases, 60 days if the

person must be reviewed for disability status. These limits are set in federal law. We normally give applicants 10 days to supply missing information. Few will be able to present documents within this time period. Illinois has opted not to deny applications for lack of documents at this time. The state should not be put at risk for this decision. We should be permitted to claim FFP for any service provided to a citizen as long as copies of documents are eventually obtained that show the person was indeed a citizen at the point in time when the service was provided

This would give the state needed time to implement the new policy without unnecessarily putting the health of any citizen at risk for lack of timely entry into treatment.

b. Should CMS disallow FFP to Illinois as a result of the new law, the impact on our citizens could be profound. Loss of as little as $300 million annually, 5 percent of Illinois' FFP, could translate into reducing benefits to a quarter of a million children. This is just too high a price to pay to implement a well-intentioned but unnecessary process.

I look forward to your careful consideration of these comments and relief in the final rule.

Sincerely,

Anne Marie Murphy

Anne Marie Murphy, Ph.D.
Medicaid Director

cc: Governor Rod R. Blagojevich
Barry S. Maram, Director, Illinois Department of Healthcare and Family Services
Illinois' Congressional Delegation
Michelle Mills, CMS, Region V
Alice Holden, CMS Region V

Submitter : Ms. Laura Schneider **Date:** 08/10/2006

Organization : Lake Counrty Health Department/Community Health Ct

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

Please See Attachment

CMS-2257-IFC-204-Attach-1.DOC

August 3, 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 writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

The Lake County Health Department and Community Health Center have made protecting, preserving and expanding access to affordable health care a top priority for Lake County, Illinois. In 2005, the Department provided 124,263 medical visits to 42,067 patients. Of these medical patients, 23,755 or 56% are uninsured and do not qualify for Medicaid.

Numerous individuals who need healthcare the most — such as foster children, the homeless, and the working poor — and who are U.S. citizens may still lose Medicaid coverage and join the ranks of the uninsured, unless these rules are rescinded. Additional uninsured patients may also limit our Departments ability to serve our current patients.

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. Our comments below highlight four areas that CMS should modify in 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, 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.

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. The rule does not include roughly one million children in foster care, including those receiving federal foster care assistance under Title IV-E. This program already requires state child welfare agencies to follow the Department of Justice interim guidelines on verification of citizenship thus requiring unnecessary duplication of state agency efforts and placing foster care children at risk of delayed Medicaid. When Medicaid eligibility for children in foster care is delayed, foster parents may rely on emergency care or delaying doctor's visits for non-emergency care to the point that a child's condition deteriorates to the point that emergency care is needed.

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. 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), if not available, a medical record created near the time of birth could be used, but only in the "rarest of circumstances" 42 CFR 435.407(d)(4). However, the state Medicaid agency has already made the determination, by paying for the birth, that the child was born in a U.S. hospital and the child is by definition a citizen. The proposed rule allows for a lag time in coverage, delay or denial of reimbursement to the provider, and ultimately places the health of newborns at risk. These risks are unnecessary and can be avoided by allowing the state Medicaid agency's record of payment as satisfactory documentation.

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.

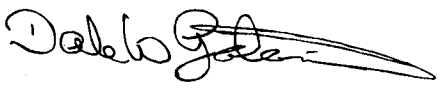
4. CMS should not require applicants and beneficiaries to submit originals or certified copies.

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.

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.

Therefore the Lake County Health Department and Community Health Center respectfully submits these comments and urges CMS to adopt the recommended changes to the Medicaid Citizenship Documentation rule. We believe that these changes will prevent unnecessary delay of Medicaid coverage that can jeopardize the health and well-being of pregnant women, children and other vulnerable populations covered under Medicaid.

Sincerely,



Dale W. Galassie, MA, MS
Executive Director

Submitter : **Ms. Lisa Guillette** **Date: 08/10/2006**

Organization : **RI Foster Parents Association**

Category : **Social Worker**

Issue Areas/Comments

GENERAL

GENERAL

Please exempt foster and adoptive children from the new citizenship requirements for Medicaid eligibility. This cumbersome requirement will cost more in paperwork processing and visits to emergency rooms for routine care than routinely allowing all foster/adoptive children access to Medicaid reimbursed services. In RI, all children entering foster care have been enrolled in a Medicaid managed care program within 48 hours of entry into care. The implementation of this requirement will result in lengthy time delays where foster children will have to go without primary and preventive care until their citizenship can be properly verified. Without additional staff to collect and process verification documents, this process will be further delayed. Foster parents caring for children who have immediate medical needs will be forced to access expensive Emergency Room services that will cost taxpayers far more money. This eligibilty requirement is inefficient and will hardly prove cost effective. Foster children should not suffer because of political posturing around immigration. Please move to exempt foster and adoptive children from the new citizenship requirements for Medicaid eligibility. Thank you.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Exempt foster and adoptive children from the new citizenship requirements for Medicaid eligibility.

Submitter : **Ms. Beatriz Anzaldua** **Date: 08/10/2006**

Organization : **HHO/Senn H.S. Health Clinic**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Please "See Attachment"

CMS-2257-IFC-207-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: FILE CODE: CMS-2257-IFC
Medicaid Citizenship Documentation Interim Final Rule,
71 Fed. Reg. 39214 (July 12, 2006)

FROM: U.S. Citizen & Taxpayer

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

I am 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 four areas that CMS should modify in 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, 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.

I 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. The rule does not include roughly one million children in foster care, including those receiving federal foster care assistance under Title IV-E. This program already requires state child welfare agencies to follow the Department of Justice interim guidelines on verification of citizenship thus, requiring unnecessary duplication of state agency efforts and, placing foster care children at risk of delayed Medicaid. When Medicaid eligibility for children in foster care is delayed, foster parents may rely on emergency care or, delay doctor's visits for non-emergency care, to the point that a child's condition deteriorates and, to the point that emergency care is needed.

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.

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. 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), if not available, a medical record created near the time of birth could be used, but only in the "rarest of circumstances" 42 CFR 435.407 (d) (4). However, the state Medicaid agency has already made the determination, by paying for the birth that the child was born in a U.S. hospital and the child is by definition a citizen. The proposed rule allows for a lag time in coverage, delay or denial of reimbursement to the provider, and ultimately places the health of newborns at risk. These risks are unnecessary and can be avoided by allowing the state Medicaid agency's record of payment as satisfactory documentation.

I 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 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.

I 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.

I, Beatriz A. Anzaldua, a U.S. Citizen, respectfully submit these comments and urge CMS to adopt the recommended changes to the Medicaid Citizenship Documentation rule. I believe that these changes will prevent unnecessary delay of Medicaid coverage that can jeopardize the health and well-being of pregnant women, children and other vulnerable populations covered under Medicaid.

Sincerely,

Beatriz A. Anzaldua
Patient Support Specialist
Senn High School Health Center/HHO

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

Organization : NACBHD

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-208-Attach-1.DOC

440 First Street, NW • Washington, DC 20001 • Phone: (202) 661-8816 • www.nacbhd.org

August 8, 2006

NACBHD
National Association of County
Behavioral Health and
Developmental Disability Directors

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 Dr. McClellan:

Thank you for the opportunity to comment on the Medicaid Citizenship Documentation Interim Final Rule. The National Association of County Behavioral Health and Developmental Disability Directors (NACBHD) is most interested in the implementation of this (as well as many other) of the provisions established by the Deficit Reduction Act of 2005 (DRA).

Who We Are

The National Association of County Behavioral Health and Developmental Disability Directors (NACBHD) is the only National voice for county/city governments and county sponsored behavioral health and developmental disability authorities in Washington, D.C. NACBHD is an affiliate of the National Association of Counties (NACo).

NACBHD's membership represents county/city governments and other locally sponsored behavioral health and developmental disability services authorities. NACBHD has members in 23 states across the country that oversee, plan, deliver and finance services for over 70% of those with mental health needs, 60% of those with addictions, and 50% of those with developmental disabilities. In 1999, county/city governments and other locally sponsored authorities contributed over $15 billion dollars to behavioral health and developmental disability services.

Interim Final Rule

To begin, NACBHD commends you and your staff for the information and clarification that has been provided to assist with our understanding of the complex and critical issues associated with citizenship and identity documentation requirements. Such assistance has been provided via conference calls and more formally via this interim rule. As partners in government and governance, NACBHD is dedicated to ensuring that those in need receive services funded under Medicaid within

the scope of law. With this as a context, NACBHD makes the following comments on the Interim Final Rule:

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. As many advocacy groups and other governmental representatives have pointed out, the preamble to the rule prohibits federal financial participation (FFP) for individuals who are determined eligible without having presented the "required evidence." 71 Fed. Reg. at 39216. The rule also requires states to "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)).

NACBHD urges CMS to establish that individuals—whether applicants or recipients—are allowed reasonable opportunity and determined eligible if all other criteria can be met. Otherwise, individuals will be unable to access needed and legitimately covered services. This delay could cause individuals to decompensate (condition worsen) thereby increasing the need for more costly interventions.

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

It has been reported to NACBHD that "roughly one million children in foster care, including—children receiving federal foster care assistance under Title IV-E"—are subject to the citizenship and identity requirements established by CMS through this interim rule. Many organizations are reporting that state child welfare agencies must verify the citizenship status of these children in the process of determining 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.

NACBHD has been informed that CMS is aware of the problem identified above and has assured the community that foster care children will be exempted from the citizenship and identity requirements. Therefore, NACBHD requests that CMS document its awareness in writing as part of this rule.

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

NACBHD agrees fully with those who request that CMS recognize that some U.S. citizens 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 does anticipate that some individuals with "incapacity of mind or body" may need the state's assistance to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not specify the

outcome of being unable to locate the documents. It also does not define "incapacity of mind or body". Such ambiguity will lead to inaction by the state and will prevent those in need from accessing services or from maintaining Medicaid eligibility.

NACBHD encourages CMS (1) to define "incapacity of mind or body" as individuals who due to a physical or mental condition are unable to comply, (2) to include assistance with documentation requirements to homeless individuals and (3) to explain the outcomes for those who are not able to locate or produce the necessary documentation beyond those onerous processes associated with written affidavits. CMS is provided the authority to expand the list of acceptable documentation beyond those in the DRA or those identified in this rule.

As you are well aware, there are a host of circumstances and requirements established by this rule that NACBHD has not included in this letter. NACBHD has presented those concerns that most directly impact the individuals for which its membership is responsible. Further, these concerns—stated here or by others—are complex and require careful discussion and analysis. Given that, NACBHD would be more than happy to consult with you and your staff on resolutions to this critical public policy initiative.

Thank you for the opportunity to comment on this proposed rule. Please feel free to have your staff contact Melissa Staats, President and CEO at (202) 661-8816 if you have any questions or comments.

Sincerely,

Margaret Hanna

Margaret Hanna, Chair
NACBHD

David Wiebe

David Wiebe, Chair
NACBHD Medicaid Committee

Submitter : Ms. Paula Gianino **Date:** 08/10/2006

Organization : Planned Parenthood of the St. Louis Region

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-209-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.

Planned Parenthood of the St. Louis Region (PPSLR) serves over 34,000 patients each year. Some 10-20% of all our patients are Medicaid eligible. PPSLR provides comprehensive family planning and sexual health services to women, men and teens. For the majority of our patients, PPSLR is their sole source of medical care.

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 covered family planning services provide a critical safety net for tens of thousands of Missourians each year. With the complete loss of our state's family planning program in 2003, Medicaid covered services are now the sole source of preventive services for our low income residents.

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 many states, including Missouri, 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. Family planning services are a smart investment saving taxpayers over $3.00 for every $1.00 invested. 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 process for obtaining a birth certificate in Missouri, and other states, is costly and burdensome – taking weeks to several months – thus, delaying an individual from receiving vital services. 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.

Missouri 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, Missouri 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. 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 Missouri 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.

Planned Parenthood of the St. Louis Region
Paula M. Gianino

Submitter : **Ms. Michelle Featheringill** **Date: 08/10/2006**

Organization : **Planned Parenthood of New Mexico**

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-210-Attach-1.DOC

CMS-2257-IFC-210-Attach-2.DOC

Planned Parenthood®
of New Mexico, Inc.

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.

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.

Currently 20 percent of the patients we see at Planned Parenthood of New Mexico are Medicaid recipients. Access to publicly funded family planning services is essential in New Mexico since 32 percent of three women aged 15-44 have no health insurance. The state has the fourth highest teen pregnancy rate in the nation. Medicaid assists many of these young women who need family planning services but cannot afford them otherwise.

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. In 2001, nearly 22,000 women in New Mexico were enrolled in state family planning waiver programs. 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. 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. The Alan Guttmacher Institute calculates that in 2000-2001, New Mexico's program resulted in a savings of $2.6 million for the state and $3.8 million for the federal government.

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 the 425,00 New Mexicans 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. 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. According to the 2000 census, 149,600 New Mexicans (8.2%) were born outside the U.S and those seeking Medicaid services may face additional obstacles to producing the documents within the time allowed by the state.

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 process for obtaining a birth certificate in New Mexico costs $10 and can take up to four weeks. 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.

New Mexico 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, New Mexico 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 New Mexico'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.

Michelle Lynn Featheringill

Michelle Lynn Featheringill
President/CEO

719 SAN MATEO NE, ALBUQUERQUE, NM (505) 265-5976

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

Organization : Georgia Legal Services Program

Category : Consumer Group

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

CMS-2257-IFC-211-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. 39214 (July 12, 2006)

The Georgia Legal Services Program provides free legal services in civil matters to Georgians with low incomes in 154 counties constituting all of Georgia outside the five-county metropolitan area. GLSP attorneys and paralegals assist more than 35,000 families each year.

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 extremely concerned that the rules will place severe burdens on citizens applying for or receiving Medicaid coverage that will result in delays in coverage and in some cases denial, or loss of Medicaid coverage for eligible persons. We should also note that the State of Georgia had heightened its verification requirements prior to adoption of the Deficit Reduction Act. While the requirements were more stringent than those previously in effect, they took into account the life circumstances of our citizens and up to now have not appeared to be unduly burdensome. Our comments below discuss five areas in which we urge you to modify the interim final rule.

1. *.CMS should not require that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship.* The reality of life for people with low incomes often includes frequent moves (sometimes after an eviction where personal property and papers vanish); long distances to services and poor transportation options, especially in rural areas; interrupted telephone service, shift work and child care issues; and illness or caring for someone who is ill. Originals of documents are unlikely to be at hand, and the barriers to getting new ones are high. The time estimate of 10 minutes for obtaining documents would apply only to someone who has both the documents and an organized home filing system. In addition, assuming a person can obtain proper documents, she should not entrust them to the expectation that the county office would receive them by mail and return them, so s/he will also have to visit DFCS. In Georgia, getting a certified copy of a birth certificate requires payment of a $10 charge (not a small sum for poor people), and a person must also present a picture ID in order to obtain it. At the same time, the person must present a certified copy of the birth certificate to obtain a driver's license. 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.

2. *U.S. citizens applying for benefits should receive coverage once they declare they are citizens and meet all eligibility requirements.* Under the DRA, the new citizenship documentation requirement applies to all Georgians applying for Medicaid except Medicare beneficiaries and SSI beneficiaries. 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 vast majority of applicants would be found eligible eventually when the documentation is produced, but many applications will be denied for "failure to cooperate," and many eligible people are likely to become uninsured because they are discouraged from completing the process. Uninsured people are more likely to experience adverse health outcomes than people with insurance. It is not in the public interest to increase the ranks of uninsured children, pregnant women, people with disabilities and parents whose only option is to seek emergency room care. The public interest would be better served by granting timely coverage for people who meet the eligibility requirements and assisting them as necessary during a reasonable opportunity period to obtain documents proving citizenship and identity.

3. *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 thousands of Georgia children in foster care, including those receiving federal foster care assistance under Title IV-E. State child welfare agencies already have the obligation to 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 Medicaid interim 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 tlinepreamble.) Forcing foster parents to take these children to the emergency room for care while additional verification is obtained is unreasonable. It already is difficult to

recruit and retain good foster parents. Even more important is that a child who has suffered trauma at home and the additional trauma of removal from the home often needs a variety of services for physical, mental and emotional problems without delay. Those needs far outweigh any benefit the state can derive from additional documentation. The DRA does not compel this result; to the contrary, it allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is precisely such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new documentation requirement, 71 Fed. Reg. at 39216. We urge CMS to revise 42 CFR 435.1008 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

4. *.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 mothers 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. The rules should be amended at 42 CFR 435.407(a) to enable states to use the records created at the time of all infants' births to be used as first-tier evidence of citizenship and identity on a par with passports. Furthermore, once this evidence has been made part of the infant's file, it should constitute adequate documentation of citizenship for all future Medicaid applications for that individual.

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. Requiring a separate application for this group of newborn citizens instead of continuing to deem them eligible during the first year like other newborn citizens whose mothers were covered by Medicaid for the birth will likely mean that many of them will not have applications filed on their behalf. Without a Medicaid card, these children will be less likely to receive early screening, and they will be less likely to have a regular source of care other than the

emergency room. CMS should direct states to provide deemed eligibility for infants born to mothers whose labor and delivery was covered by Medicaid on the same basis as other infants born to mothers whose services are covered by Medicaid. Again, the rules should be amended at 42 CFR 435.407(a) to enable states to use the records created at the time of all infants' births to be used as first-tier evidence of citizenship and identity on a par with passports, and once this evidence has been made part of the infant's file, it should constitute adequate documentation of citizenship for all future Medicaid applications for that individual.

5. *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.

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 citizens of Georgia can continue to receive the health care services they need.

Thank you for your consideration of these comments. We hope you will modify the rules in the ways we have suggested so that all Georgians who are eligible for Medicaid benefits can receive them without any delay or interruption caused by onerous, unrealistic verification requirements. Please contact me at 404-463-1598 or llowe@glsp.org if you have any questions regarding these comments.

Sincerely,

Linda S. Lowe
Health Policy Specialist

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

Organization : Georgia Legal Services Program

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See Attachment (This is a resubmission because of problems attaching document to Temporary Comment Number 88807)

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment

CMS-2257-IFC-212-Attach-1.PDF

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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)

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We are extremely concerned that the rules will place severe burdens on citizens applying for or receiving Medicaid coverage that will result in delays in coverage and in some cases denial, or loss of Medicaid coverage for eligible persons. We should also note that the State of Georgia had heightened its verification requirements prior to adoption of the Deficit Reduction Act. While the requirements were more stringent than those previously in effect, they took into account the life circumstances of our citizens and up to now have not appeared to be unduly burdensome. Our comments below discuss five areas in which we urge you to modify the interim final rule.

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and illness or caring for someone who is ill. Originals of documents are unlikely to be at hand, and the barriers to getting new ones are high. The time estimate of 10 minutes for obtaining documents would apply only to someone who has both the documents and an organized home filing system. In addition, assuming a person can obtain proper documents, she should not entrust them to the expectation that the county office would receive them by mail and return them, so s/he will also have to visit DFCS. In Georgia, getting a certified copy of a birth certificate requires payment of a $10 charge (not a small sum for poor people), and a person must also present a picture ID in order to obtain it. At the same time, the person must present a certified copy of the birth certificate to obtain a driver's license. 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.

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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 Medicaid interim 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.) Forcing foster parents to take these children to the emergency room for care while additional verification is obtained is unreasonable. It already is difficult to recruit and retain good foster parents. Even more important is that a child who has suffered trauma at home and the additional trauma of removal from the home often needs a variety of services for physical, mental and emotional problems without delay. Those needs far outweigh any benefit the state can derive from additional documentation. The DRA does not compel this result; to the contrary, it allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is precisely such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new documentation requirement, 71 Fed. Reg. at 39216. We urge CMS to revise 42 CFR 435.1008 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

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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. Requiring a separate application for this group of newborn citizens instead of continuing to deem them eligible during the first year like other newborn citizens whose mothers were covered by Medicaid for the birth will likely mean that many of them will not have applications filed on their behalf. Without a Medicaid card, these children will be less likely to receive early screening, and they will be less likely to have a regular source of care other than the emergency room. CMS should direct states to provide deemed eligibility for infants born to mothers whose labor and delivery was covered by Medicaid on the same basis as other infants born to mothers whose services are covered by Medicaid. Again, the rules should be amended at 42 CFR 435.407(a) to enable states to use the records created at the time of all infants' births to be used as first-tier evidence of citizenship and identity on a par with passports, and once this evidence has been made part of the infant's file, it should constitute adequate documentation of citizenship for all future Medicaid applications for that individual.

5. *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.

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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 citizens of Georgia can continue to receive the health care services they need.

Thank you for your consideration of these comments. We hope you will modify the rules in the ways we have suggested so that all Georgians who are eligible for Medicaid benefits can receive them without any delay or interruption caused by onerous, unrealistic verification requirements. Please contact me at 404-463-1598 or llowe@glsp.org if you have any questions regarding these comments.

Sincerely,

Linda S. Lowe
Health Policy Specialist

Submitter : **Ms. Charity Eleson** **Date: 08/10/2006**

Organization : **Wisconsin Council on Children & Families**

Category : **Consumer Group**

Issue Areas/Comments

GENERAL

GENERAL

The attachment explains our concerns and the rationale for the recommendations outlined in the previous section.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

CMS should not require applicants and beneficiaries to submit original or certified copies (s. 435.407 (h)(1))

Medicaid and SCHIP payment records for birth should qualify as proof of infant citizenship (s. 435.407 (a))

Children who are eligible for federal foster care payments should be exempt from documentation requirements (s. 435.1008)

Native American tribal enrollment cards should qualify as proof of citizenship (s. 435.407 (a))

New applicants should have a reasonable opportunity to obtain citizenship documentation (s. 435.407 (j))

The rules should exempt women applying for or receiving family planning waiver services

CMS-2257-IFC-213-Attach-1.RTF

WISCONSIN COUNCIL ON CHILDREN & FAMILIES
Voices For Wisconsin's Children

RESEARCH • EDUCATION • ADVOCACY
16 N. Carroll Street • Suite 600 • Madison, WI 53703 • (608) 284-0580 • FAX (608) 284-0583
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A MEMBER OF THE NATIONAL ASSOCIATION OF CHILD ADVOCATES

August 10, 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,

I write on behalf of the Wisconsin Council on Children and Families (WCCF), regarding the interim final regulations requiring that all U.S. citizens applying for or receiving Medicaid must document their citizenship and identity. WCCF is a statewide organization involved in research, education and advocacy on issues relating to Wisconsin's children and families. We are celebrating our 125th anniversary this year.

I want to thank you for this opportunity to comment on these regulations, and also to applaud the recent changes made by CMS to the guidance that was initially released on June 9. Yet despite those improvements, such as the continuation of benefits for individuals with presumptive eligibility status, we are extremely disappointed that the rules continue to create substantial hurdles that will delay, and in some cases deny, access to Medicaid for many children and other vulnerable citizens in our state.

WCCF's Concerns Regarding the Interim Final Rule

Although the interim final rule made several significant improvements, WCCF is very troubled by a number of your agency's interpretations of the statutes and the implications of those interpretations for eligible citizens applying for or renewing Medicaid and BadgerCare coverage. These concerns and our recommendations are outlined below.

CMS should not require applicants and beneficiaries to submit original or certified copies (s. 435.407 (h)(1))

It is vitally important in Wisconsin and other states to continue the practice of allowing people to mail in their applications for coverage, or for renewal of their coverage. The proposed regulations would effectively preclude that cost-effective practice. Our understanding is that CMS has made statements to the effect that mail-in applications would still be allowed, but it is totally unrealistic to think that applicants are going to mail in original copies of documents, such as their driver's license, birth certificate or passport.

The provision requiring that citizenship documents be original or certified copies exceeds the requirements of the Deficit Reduction Act (DRA), placing an additional burden on applicants and beneficiaries. Children and parents who would normally receive Medicaid services will be

left without any form of health insurance while they navigate the additional hurdles of personally producing the documents or waiting to obtain certified copies.

Please also consider that by requiring more in this respect than is required by the statute, you are creating an obstacle that will be especially harmful for children and families faced with homelessness. We find it very distressing to think of what these excessive requirements would have meant had they been in place last fall, resulting in yet another maddening hurdle for the tens of thousands of families in Louisiana and Mississippi who lost their jobs, homes, health care and all of their papers.

Requiring that all citizenship documentation be original or certified copies will also hinder the expansion of Medicaid coverage to the millions of children across the nation who are eligible but not enrolled in the program. Among the estimated 91,000 uninsured children in Wisconsin, roughly half are thought to be eligible for Medicaid or BadgerCare. Simple enrollment procedures are vital for expanding coverage to those eligible children, as Wisconsin strives to close the gaps in health care coverage for the children of our state.

It is also important to note that Wisconsin has made substantial investments in developing a system enabling people to apply for benefits online. The requirement in the rule to produce original or certified copies of documentation reverses the progress our state and others have made in adopting more efficient enrollment procedures that will decrease the number of eligible children who do not receive Medicaid and SCHIP coverage.

WCCF urges CMS to eliminate the requirement that Medicaid beneficiaries and applicants provide original or certified documents so states can continue to employ more cost-effective procedures for enrolling eligible children and other eligible citizens.

Medicaid and SCHIP payment records for birth should qualify as proof of infant citizenship (s. 435.407 (a))

Another portion of the rules that creates unnecessary hurdles for applicants and unreasonable costs for the counties administering Medicaid and BadgerCare is the redundant requirement for citizenship documentation for infants whose mothers are Medicaid beneficiaries at the time of their births. As you know, these newborns are automatically United States citizens at birth, and evidence of Medicaid payment for birth should be able to serve as proof of citizenship for newborns.

As you are also aware, Wisconsin is one of the states where SCHIP funds pay for the cost of prenatal care and the delivery of "unborn children." This is an option granted to the states because, according to your agency's interpretation of the statutes, "an unborn child is not an alien"(Federal Register, Vol. 67, No. 191, p. 61966). Since the child was not an alien prior to its birth, we find it very perplexing that after the child has been born, and after state and federal funds have paid for that infant's prenatal care and delivery, there suddenly becomes a question of the child's citizenship.

Medicaid pays for the births of about 28,000 infants born in Wisconsin hospitals each year, which is a little over two-fifths of all deliveries in our state. By not allowing Medicaid or SCHIP records that clearly indicate place of birth to be used as proof of a newborn's citizenship status, the interim final regulations unnecessarily endanger newborns who require immediate

well-baby or critical care. Since this result is not required by statute, we sincerely hope that it was simply an oversight and does not reflect an indifference to the lives of the newborn children, who are indisputably citizens and whose birth costs were reimbursed either by Medicaid or by SCHIP coverage of "unborn children."

WCCF urges CMS to allow payment records to be used to document citizenship for infants whose deliveries were reimbursed by Medicaid or by SCHIP coverage for "unborn children."

Children who are eligible for federal foster care payments should be exempt from documentation requirements (s. 435.1008)

The interim final rule mandates that children in foster care comply with the Medicaid citizenship documentation requirements. There are currently more than 20,000 Wisconsin children each month who are in foster care or in families receiving adoption assistance who automatically qualify for and are enrolled in Medicaid. Since their citizenship is already verified as part of their eligibility review for Title IV-E, verifying their citizenship for Medicaid purposes is unnecessary and counterproductive.

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. Research has repeatedly shown that children in foster care experience greater physical and mental health needs than all other children, with 80% of children in foster care demonstrating mental health needs. Exposure to extreme poverty, family violence, homelessness, and parental mental illness and substance abuse often result in complex health needs among children in foster care, exacerbating the necessity of comprehensive services for such children.

States are required by federal law to 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.

We strongly urge CMS to exempt all children in foster care from Medicaid citizenship documentation requirements in order to appropriately meet their health and mental health needs.

Native American tribal enrollment cards should qualify as proof of citizenship (s. 435.407 (a))

Wisconsin has a substantial Native American population that is like to be adversely affected by the failure of the interim final rule to 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 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 and parents to access the health care services they need. WCCF strongly recommends that you give

states the option to use Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants.

New applicants should have a reasonable opportunity to obtain citizenship documentation (s. 435.407 (j))

WCCF also has 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. However, 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. WCCF urges CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation.

The rules should exempt women applying for or receiving family planning waiver services

We are also very concerned about the unintended effects the interim final regulations will have for access to family planning services. Since Wisconsin's family planning waiver services have been implemented, there has been a significant decrease in the number of teen pregnancies and deliveries. From 2002 through 2004 (the most recent data), the birth rate among minors in Wisconsin has fallen from 17.0 to 15.7. The data on abortions, which is a little more current, shows that the abortion rate for teens under age 18 fell from 5.9 in 2002 to 4.9 in 2005.

We urge CMS to exempt individuals who receive services under a Medicaid family planning demonstration project from the documentation requirements.

WCCF greatly appreciates the opportunity to share our comments on the interim final rule relating to the Medicaid citizenship documentation requirements. The changes we have suggested will not conflict with the Congressional intent of targeting Medicaid to those who are truly eligible. Instead, they will ensure that states don't unnecessarily deny or delay needed health care services for people who are clearly eligible citizens, and they will also ensure that the enrollment process isn't forced to add unnecessary costs and inefficiency. If you have any questions, please contact WCCF's research director, Jon Peacock, at jpeacock@wccf.org or 608.284.0580 x 307.

Sincerely,

Charity Eleson
Executive Director

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

Organization : Metropolitan Chicago Healthcare Council

Category : Hospital

Issue Areas/Comments

GENERAL

GENERAL

see attached letter

CMS-2257-IFC-214-Attach-1.PDF

MCHC
Metropolitan Chicago Healthcare Council

222 South Riverside Plaza
Chicago, Illinois 60606-6010
Telephone 312-906-6000
Facsimile 312-993-0779
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August 10, 2006

TO: Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-1857
Submitted electronically: http://www.cms.hhs.gov/eRulemaking

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
Submitted by email: Paperwork@cms.hhs.gov

Office of Information and Regulatory Affairs
Office of Management and Budget
Room 10235
New Executive Office Building
Washington, DC 20503
Attn: Katherine T. Astrich, CMS Desk Officer, CMS-2257-IFC
Submitted by email to: Katherine_t._astrich@omb.eop.gov

RE: File Code: **CMS-2257-IFC**
Medicaid Program: Citizenship Documentation Requirements
Interim Final Rule with Comment Period published in the *Federal Register* of July 12, 2006 (71 FR 39214 – 39229)

Summary of Comments

I am writing on behalf of the Metropolitan Chicago Healthcare Council, which represents 140 healthcare entities, including more than 100 Illinois hospitals, the majority of which are located in the eight-county metropolitan Chicago area. We appreciate the opportunity to provide comments on the above referenced interim final rule with comment period, which implements the provisions of the Deficit Reduction Act of 2005 regarding new citizenship and identity documentation requirements for Medicaid recipients and applicants seeking Medicaid eligibility. These new documentation requirements will significantly impact the

ability of Medicaid eligibles to qualify for the program and hospitals' ability to assist applicants with this process. We are concerned that individuals otherwise eligible for Medicaid coverage may be inappropriately excluded from the program because they are unable to verify their citizenship or identity. We urge the Centers for Medicare and Medicaid Services to consider further expansion of exemptions from the documentation requirements for eligible populations, to permit hospitals to assist with the documentation verification process, and to recognize the effort that is actually involved for documentation to be assembled and submitted.

Background: Implementation Conditions/Considerations

The expanded list of vulnerable populations that are exempt from the new documentation requirements includes Medicare beneficiaries and disabled individuals who receive supplemental security income (SSI). We recommend that CMS also exempt non-elderly disabled individuals with severe physical and mental disabilities who do not receive SSI, children in foster care, and those involved in emergency situations where identification was lost. This will help ensure that some of the most vulnerable populations are able to receive the medical assistance to which they are entitled.

CMS indicates that states are permitted to accept documentary evidence without requiring the applicant or the recipient to appear in person, and that all documents must be either originals or copies certified by the issuing agency. This documentation must be presented to the state agency, which in our community is a local office of the Illinois Department of Human Services. Although steps are being taken to prepare local offices for this added responsibility, we believe that the new documentation requirements will severely tax the ability of local offices to perform routine functions on a timely basis. We envision that the documentation responsibilities will create further delays in processing of medical assistance applications and split-bill spenddown forms needed by hospitals for Medicaid billing.

Hospitals are key to successful Medicaid application processing, and some hospitals in our area process hundreds of Medicaid applications each month. In some cases the hospitals are already serving as agents of the state for certain Medicaid children's programs, which has greatly assisted the state in enrolling eligible children for medical assistance. We recommend that states be given the flexibility to designate qualified hospitals as agents of the state for purposes of collecting and certifying documentary evidence that are submitted with Medicaid applications.

Collection of Information Requirements

CMS estimates that it would take an individual ten minutes to acquire and provide acceptable documentary evidence to the state and for the state to verify the declaration. CMS further estimates that it will take the state five minutes to obtain acceptable documentation, verify citizenship, and maintain current records on each individual. In our opinion these timeframes are grossly understated. They appear to be based on original documentation or copies certified by the issuing agency being readily available to the applicant/recipient. The estimates fail to take into account the effort of both the applicant/ recipient and the state in securing the necessary documentation and the time required for the applicant/recipient to travel to the state agency to present the information in person, which we believe will be the most likely scenario (as opposed to mail). As the applicant/

recipient moves down the documentation hierarchy away from primary evidence of citizenship, significantly more time and effort are involved in obtaining the required documentation. This is particularly true for any situation where the state is directed to intervene to assist the patient in acquiring the necessary documents.

Further Information

Thank you again for the opportunity to review CMS' rules and to offer comments on these important requirements. As you know, Medicaid is the critical link to access to medical care for the poor and other vulnerable patient populations. It is critical that the citizenship and identity documentation process be fair and easily administered. These objectives can be accomplished through further expansion of exemptions from the documentation requirements for eligible populations, by allowing states to designate hospitals as agents for the purpose of collecting and verifying documentation, and by recognizing the full effort required by Medicaid applicants/recipients and state agencies to complete the documentation verification process.

If you have any questions about the issues raised above or you need any additional information, please feel free to contact me at 312/906-6007, email smelczer@mchc.com.

Sincerely,

Susan W. Melczer
Director, Patient Financial Services

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

Organization : **Denver Department of Human Services**

Category : **Local Government**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

On behalf of the Denver Department of Human Services, I am writing to express our very serious concerns about Interim Final Rule regarding Citizenship Documentation Requirements. In the last twelve months we have had 16,067 new applications for Medicaid in Denver. In addition, approximately 19,600 Medicaid cases had to be recertified. We are concerned that many of our most vulnerable clients who are eligible for Medicaid will lose benefits because they cannot provide the required documentation. The greatest impact will be on citizens and those who are here legally, not illegal immigrants.

These eligible individuals and family members who lose benefits will join the already enormous ranks of the uninsured who have to rely on emergency rooms for their basic health care. We still must pay for that care but it will be much more costly and those patients will not receive preventive services or care for chronic diseases. If, as is estimated nationally, 10% of Mediciad recipients lose their Medicaid benefits due to lack of proper identification, Denver Health and Hospitals will approximately $12 million.

Specific concerns include:

1. Delay in Establishing Eligibility for Medicaid (436.1004)

Obtaining the required documents may take a considerable amount of time, especially for people who are trying to get birth certificates from other states and those who never had birth certificates. The rule allows those already on the program to remain eligible while they make a good faith effort to secure the documentation. However, this "reasonable opportunity" is not given to new applicants. Such a distinction is inequitable and potentially very harmful. Individuals who apply for Medicaid and have met all of the other elibility requirements and are working to obtain the required documentation should be covered under the program.

2. Require Original or Certified Copies of Documents (435.407)

The rule requires either original documents or certified copies and this will impose an unnecessary hardship on applicants and recipients. Most Medicaid redeterminations are done by mail to make the process more convenient and to address the special needs of recipients who are incapacitated in some way, lack transportation or have young children. Recipients who have struggled to obtain documents such as birth certifcates will be reluctant to put them in the mail and they will defintely not mail documents such as passports and driver's licenses. The increased number of face-toface meetings will also increase the demands on staff and drive increased costs. We have moved to make the process of aplying for Medicaid easier and more accessible to more people who need it. This unnecessary requirement will delay coverage and cause many people to go without coverage and remain uninsured.

3.Application of the Rule to Children in Foster Care (435.1008)

Children who receive foster care assistance or subsidized adoption assistance under Title IV-E should be exempt from the rule. State and/orlocal child welfare agencies have already had to demonstrate lawful presence as part of establishing eligibiity for Title IV-E. To require this again for Medicaid duplicates the initial work, will increase costs and cause delay in benefits. Unless there is a medical emergency, children will have to wait for essential services such as prescriptions, dental care and mental health treatment. All children entering foster care are at-risk and should be covered by Medicaid immediately.

4. Populations Needing Special Assistance (435.407 and 436.407)

The rule should make it very clear that applicants with a broad range of physical and mental conditions should receive assistance in obtaining documents. Incapacities range from severe mental illness to dementia to comatose states and beyond. In addition, people who are homeless and those who are victims of natural disasters must have special assistance.

Submitter : **Ms. Elizabeth Rosenbaum Tyner** **Date: 08/10/2006**

Organization : **Planned Parethood of the Texas Capital Region**

Category : **Health Care Professional or Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-216-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.

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 Texas, Medicaid covers 39% of the state's uninsured reproductive-aged women. Planned Parenthood of the Texas Capital Region provides vital reproductive health care to Medicaid-eligible men and women in Austin. Last year, we provided 789 cervical cancer screenings and 5,314 family planning visits to Medicaid patients. Men, women and teenagers were tested and treated 1,607 times for sexually transmitted infections through the Medicaid program at Planned Parenthood in Austin last year alone. Without these services, life-threatening infections would have gone untreated, cancer would have gone undetected, and hundreds of women would have been at risk for unintended pregnancy

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.

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 many states, 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. Obtaining a birth certificate in Texas costs $22.00 and takes four to six weeks. 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. Texas Medicaid offers applicants the option of mailing or faxing in all portions of the application and supporting documentation. 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.

Texas 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)). Texas Medicaid encourages its workers to conduct a match with vital statistics as an alternative to paper birth certificates for children under age 19. It is an improvement that some citizens in Texas will not be required to track down birth certificates.

At the same time, however, Texas 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 Texas Medicaid 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.

Planned Parenthood of the Texas Capital Region
Betsy Rosenbaum Tyner

Submitter : Ms. Nancy Amidei **Date:** 08/10/2006

Organization : Ms. Nancy Amidei

Category : Social Worker

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-217-Attach-1.DOC

CMS-2257-IFC-217-Attach-2.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)

As a faculty member at the University of Washington School of Social Work, I am involved in programs that train approximately 450 social work students each year. To carry out this role, 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, disability related services, 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. A number of us have discussed the new rules and believe that as written, they will cause delays, denials, extreme hardship, and even loss of Medicaid coverage to many eligible people.

That is not acceptable, and it is why I am submitting these comments on the Interim Final Rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA), requiring that U.S. citizens and nationals applying for, or receiving, Medicaid document their citizenship and identity.

Following are some 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.

If originals and certified copies are insisted on, your estimate that compliance with the requirement will only take an applicant or beneficiary *ten* minutes, and state Medicaid agencies *five* minutes, is flatly wrong. A U.S. born faculty colleague who applied to become an adoptive parent found getting personal documents very difficult. Even with a PhD, total command of English, accurate knowledge of her birth-place, and unlimited access to long-distance phoning, she reported that it took WEEKS, not minutes, to obtain a copy of her

birth certificate from another state. The estimates in your interim regulations are completely unrealistic and would impose a burden on applicants, clients, and agencies alike.

In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state offices to submit them. The regulations may state that applicants and beneficiaries can submit documents by mail, but few applicants or beneficiaries will be willing to trust originals or certified copies of their birth certificates, driver's licenses, passports, or school identification cards to a) the mail, and b) return by the agency.

Thus, state agency personnel 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.

I strongly urge CMS to modify 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 an issuing state agency.

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.

Denying coverage to applicants while they are attempting to retrieve documentation will cause delays in Medicaid coverage for large numbers of eligible, low-income pregnant women, children, and other vulnerable Americans. This will delay needed medical care, worsen health problems for some of our community's most vulnerable members, and create financial losses for already-stretched 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.

CMS should revise 42 CFR 435.407(j) so that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria can be enrolled in Medicaid while obtaining their documentation. CMS should require states to provide applicants with Medicaid coverage during a "reasonable opportunity" period for obtaining the necessary documentation, just as current enrollees already have.

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.)

As written, the interim final regulations require unnecessary duplication of state agency efforts and puts these children at risk of delayed Medicaid coverage. 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.

Medicare and SSI recipients are explicitly exempted; foster children should be exempted as well. CMS should 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 re-determination." 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 ill infant – especially those 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.

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

Some U.S. citizens 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, or 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, 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; others, already beneficiaries, 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 – many of them low-income, elderly, or victims of natural disasters – who are 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) The Secretary should adopt a similar approach in this case.

42 CFR 435.407 should be revised 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.

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.

The rules should 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; 29 federally-recognized tribal nations are in Washington state. Tribal identification cards issued by the federal Bureau of Indian Affairs actually read that they are proof of U.S. citizenship.

Recognition by the federal government came about through treaty negotiations, federal statutes, or a federal administrative recognition process. Tribal genealogy charts date back to original and historic tribal membership rolls. 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. 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. Some tribal members may not have been born in hospitals and will have no official record of their birth other than a tribal identification card. As written, this rule 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.

I strongly urge you to specify that tribal enrollment cards issued by a federally-recognized tribe will be accepted as primary evidence of citizenship and identity.

The colleagues I have discussed this with and I believe that as written, the Interim Final Rules for citizenship verification create unnecessary bureaucratic obstacles to Medicaid applicants and beneficiaries, and are likely to cause serious harm to both low-income people and our already overburdened health and social service systems. 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,

Nancy Amidei, Senior Lecturer
University of Washington School of Social Work

Submitter : Ms. Charity Eleson **Date:** 08/10/2006

Organization : Wisconsin Council on Children and Families

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

The attached document explains the reasons for our concerns about the interim final regulations and elaborates on the recommendations outlined in the previous section.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Note: We are resubmitting these comments, because the previous attachment might not have been submitted correctly.

Our recommendations are:

CMS should not require applicants and beneficiaries to submit original or certified copies (s. 435.407 (h)(1)).

Medicaid and SCHIP payment records for birth should qualify as proof of infant citizenship (s. 435.407 (a)).

Children who are eligible for federal foster care payments should be exempt from documentation requirements (s. 435.1008).

Native American tribal enrollment cards should qualify as proof of citizenship (s. 435.407 (a)).

New applicants should have a reasonable opportunity to obtain citizenship documentation (s. 435.407 (j)).

The rules should exempt women applying for or receiving family planning waiver services.

CMS-2257-IFC-218-Attach-1.TXT

was simply an oversight and does not reflect an indifference to the lives of the newborn children, who are indisputably citizens and whose birth costs were reimbursed either by Medicaid or by SCHIP coverage of "unborn children." WCCF urges CMS to allow payment records to be used to document citizenship for infants whose deliveries were reimbursed by Medicaid or by SCHIP coverage for "unborn children." Children who are eligible for federal foster care payments should be exempt from documentation requirements (s. 435.1008) The interim final rule mandates that children in foster care comply with the Medicaid citizenship documentation requirements. There are currently more than 20,000 Wisconsin children each month who are in foster care or in families receiving adoption assistance who automatically qualify for and are enrolled in Medicaid. Since their citizenship is already verified as part of their eligibility review for Title IV-E, verifying their citizenship for Medicaid purposes is unnecessary and counterproductive. 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. Research has repeatedly shown that children in foster care experience greater physical and mental health needs than all other children, with 80% of children in foster care demonstrating mental health needs. Exposure to extreme poverty, family violence, homelessness, and parental mental illness and substance abuse often result in complex health needs among children in foster care, exacerbating the necessity of comprehensive services for such children.States are required by federal law to 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. We strongly urge CMS to exempt all children in foster care from Medicaid citizenship documentation requirements in order to appropriately meet their health and mental health needs. Native American tribal enrollment cards should qualify as proof of citizenship (s. 435.407 (a)) Wisconsin has a substantial Native American population that is like to be adversely affected by the failure of the interim final rule to 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 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 and parents to access the health care services they need. WCCF strongly recommends that you give states the option to use Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants. New applicants should have a reasonable opportunity to obtain citizenship documentation (s. 435.407 (j)) WCCF also has 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. However, 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. WCCF urges CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation. The rules should exempt women applying for or receiving family planning waiver services We are also very concerned about the unintended effects the interim final regulations will have for access to family planning services. Since Wisconsin's family planning waiver services have been implemented, there has been a significant decrease in the number of teen pregnancies and deliveries. From 2002 through 2004 (the most recent data), the birth rate among minors in Wisconsin has fallen from 17.0 to 15.7. The data on abortions, which is a little more current, shows that the abortion rate for teens under age 18 fell from 5.9 in 2002 to 4.9 in 2005. We urge CMS to exempt individuals who receive services under a Medicaid family planning demonstration project from the documentation requirements. WCCF greatly appreciates the opportunity to share our comments on the interim final rule relating to the Medicaid citizenship documentation requirements. The changes we have suggested will not conflict with the Congressional intent of targeting Medicaid to those who are truly eligible. Instead, they will ensure that states don't unnecessarily deny or delay needed health care services for people who are clearly eligible citizens, and they will also ensure that the enrollment process isn't forced to add unnecessary costs and inefficiency. If you have any questions, please contact WCCF's research director, Jon Peacock, at HYPERLINK "mailto:jpeacock@wccf.org" jpeacock@wccf.org or 608.284.0580 x 307. Sincerely, Charity Eleson Executive Director–

Submitter : Mr. Bill Taylor **Date:** 08/10/2006

Organization : L. A. County Department of Public Social Services

Category : Local Government

Issue Areas/Comments

GENERAL .

GENERAL

See Attachment

CMS-2257-IFC-219-Attach-1.DOC

COMMENTS ON FEDERAL REGISTER

JULY 12, 2006 – INTERIM FINAL RULE – DEPARTMENT OF HEALTH AND HUMAN SERVICES – CENTERS FOR MEDICARE AND MEDICAID SERVICES – MEDICAID PROGRAM: CITIZENSHIP DOCUMENTATION REQUIREMENTS

FILE CODE – CMS-2257-IFC

The interim final rule should be revised to provide Medicaid applicants and beneficiaries, as well as state and local Medicaid agencies, with more options for documenting satisfactory citizenship status. The rule should be revised to allow any method for verifying citizenship that is acceptable for proving citizenship for purposes of obtaining a Social Security number (SSN) card under the Social Security Administration's (SSA) Program Operations Manual System (POMS) guidelines.

This revision would allow States to verify citizenship status against the Department of Homeland Security (DHS) System for Alien Verification for Entitlements (SAVE) database – the same verification system currently used by states to verify satisfactory immigration status, as required under Section 1137(d) of the Social Security Act, and the same database used by many employers to verify work authorization for new job hires.

SSA allows staff to query SAVE in recognition of the fact that DHS has citizenship data for all naturalizations from 1906 to present and that what matters is whether an individual actually is a U.S. citizen, not whether someone has a citizenship document. To ensure integrity of the information provided, POMS guidelines require that DHS be requested to manually verify citizenship when an automated SAVE records match does not verify satisfactory citizenship or immigration status.

The interim final rule should provide citizens with the same protections afforded to legal immigrants. Low-income naturalized citizens who lack a passport, certificate of naturalization, or certificate of citizenship, therefore, should not be required to undergo the major cost and time of obtaining such documents when their citizenship can be verified by DHS. Enabling states to use any method for documenting citizenship that is acceptable for SSN purposes also would greatly simplify implementation of the new citizenship requirements for states. Instead of developing new internal instructions, states would be able to take advantage of the detailed POMS instructions already developed by SSA. This is especially justified because, under the interim final rule, SSA guidelines already, in effect, are being used to verify citizenship in states in which Supplemental Security Income (SSI) recipients receive Medicaid by virtue of receipt of SSI.

Second, the rule should be revised to allow verification of citizenship through use of the SAVE database, including through secondary verification with DHS, as explained in the previous recommendation on allowing any documentation that is accepted by SSA.

Third, revise the rule to allow states to accept copies of a U.S. passport, certificate of naturalization or certificate of citizenship.

The validity of copies can be verified with the U.S. Passport Agency or DHS, if necessary. It would ease the burdens on low-income Medicaid applicants and beneficiaries of having to obtain replacement documents as well as the administrative burdens on state and local Medicaid agencies. Accepting copies would eliminate the need for applicants and beneficiaries to make unnecessary visits to local Medicaid offices to provide their original documents since it is highly unlikely that they would mail important original documents. Presenting these documents in person would greatly increase traffic at offices and increase the workload for States currently using the mail-in process for Medicaid eligibility and redeterminations.

Finally, the interim final rule should be revised to permit states to begin providing coverage to applicants based on their sworn declaration of U.S. citizenship, and to afford them a reasonable opportunity to provide the necessary documentation, just as Federal law and regulations now provides for non-citizens who declare that they have a satisfactory immigration status.

This change would align the regulations with the Deficit Reduction Act (DRA), which does not require benefits to be delayed or denied pending documentation of citizenship. This change would also be consistent with other provisions of the interim final rule that provide for Medicaid benefits to beneficiaries to not be terminated until after these individuals have been given a reasonable opportunity to present documentary evidence of citizenship. Additionally, there is no justification for treating citizens more restrictively than non-citizens in this situation. It is especially inappropriate to treat citizens worse when it is far simpler for non-citizens to demonstrate their satisfactory immigration status than for citizens to demonstrate their citizenship under the interim final rule.

If you have any questions regarding our comments and suggestions, please contact Bill Taylor, Human Services Administrator III, of the Intergovernmental Relations Section at (562) 908-8517.

Prepared by:
Los Angeles County
Department of Public Social Services
August 10, 2006

Submitter : Ms. Judi Hilman **Date:** 08/10/2006

Organization : Utah Medicaid Policy Partnership

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See attachment. Thank you on behalf of the Utah Medicaid Policy Partnership.

CMS-2257-IFC-220-Attach-1.DOC

COMMENTS ON FEDERAL REGISTER

JULY 12, 2006 – INTERIM FINAL RULE – DEPARTMENT OF HEALTH AND HUMAN SERVICES – CENTERS FOR MEDICARE AND MEDICAID SERVICES – MEDICAID PROGRAM: CITIZENSHIP DOCUMENTATION REQUIREMENTS

FILE CODE – CMS-2257-IFC

The interim final rule should be revised to provide Medicaid applicants and beneficiaries, as well as state and local Medicaid agencies, with more options for documenting satisfactory citizenship status. The rule should be revised to allow any method for verifying citizenship that is acceptable for proving citizenship for purposes of obtaining a Social Security number (SSN) card under the Social Security Administration's (SSA) Program Operations Manual System (POMS) guidelines.

This revision would allow States to verify citizenship status against the Department of Homeland Security (DHS) System for Alien Verification for Entitlements (SAVE) database – the same verification system currently used by states to verify satisfactory immigration status, as required under Section 1137(d) of the Social Security Act, and the same database used by many employers to verify work authorization for new job hires.

SSA allows staff to query SAVE in recognition of the fact that DHS has citizenship data for all naturalizations from 1906 to present and that what matters is whether an individual actually is a U.S. citizen, not whether someone has a citizenship document. To ensure integrity of the information provided, POMS guidelines require that DHS be requested to manually verify citizenship when an automated SAVE records match does not verify satisfactory citizenship or immigration status.

The interim final rule should provide citizens with the same protections afforded to legal immigrants. Low-income naturalized citizens who lack a passport, certificate of naturalization, or certificate of citizenship, therefore, should not be required to undergo the major cost and time of obtaining such documents when their citizenship can be verified by DHS. Enabling states to use any method for documenting citizenship that is acceptable for SSN purposes also would greatly simplify implementation of the new citizenship requirements for states. Instead of developing new internal instructions, states would be able to take advantage of the detailed POMS instructions already developed by SSA. This is especially justified because, under the interim final rule, SSA guidelines already, in effect, are being used to verify citizenship in states in which Supplemental Security Income (SSI) recipients receive Medicaid by virtue of receipt of SSI.

Second, the rule should be revised to allow verification of citizenship through use of the SAVE database, including through secondary verification with DHS, as explained in the previous recommendation on allowing any documentation that is accepted by SSA.

COMMENTS ON FEDERAL REGISTER (continued)

FILE CODE – CMS-2257-IFC

Third, revise the rule to allow states to accept copies of a U.S. passport, certificate of naturalization or certificate of citizenship.

The validity of copies can be verified with the U.S. Passport Agency or DHS, if necessary. It would ease the burdens on low-income Medicaid applicants and beneficiaries of having to obtain replacement documents as well as the administrative burdens on state and local Medicaid agencies. Accepting copies would eliminate the need for applicants and beneficiaries to make unnecessary visits to local Medicaid offices to provide their original documents since it is highly unlikely that they would mail important original documents. Presenting these documents in person would greatly increase traffic at offices and increase the workload for States currently using the mail-in process for Medicaid eligibility and redeterminations.

Finally, the interim final rule should be revised to permit states to begin providing coverage to applicants based on their sworn declaration of U.S. citizenship, and to afford them a reasonable opportunity to provide the necessary documentation, just as Federal law and regulations now provides for non-citizens who declare that they have a satisfactory immigration status.

This change would align the regulations with the Deficit Reduction Act (DRA), which does not require benefits to be delayed or denied pending documentation of citizenship. This change would also be consistent with other provisions of the interim final rule that provide for Medicaid benefits to beneficiaries to not be terminated until after these individuals have been given a reasonable opportunity to present documentary evidence of citizenship. Additionally, there is no justification for treating citizens more restrictively than non-citizens in this situation. It is especially inappropriate to treat citizens worse when it is far simpler for non-citizens to demonstrate their satisfactory immigration status than for citizens to demonstrate their citizenship under the interim final rule.

If you have any questions regarding our comments and suggestions, please contact Bill Taylor, Human Services Administrator III, of the Intergovernmental Relations Section at (562) 908-8517.

Prepared by:
Los Angeles County
Department of Public Social Services
August 10, 2006

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

Organization : Sharon Vaught

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

My parents have lived in Atchison cty missouri all their lives.My mother is 86 and my father is 93..neither have birth certificates. It is impossible to prove their citizenship under the current requirements of MO Medicaid. I strongly believe that anyone who has Medicare should be exempt from these requrements.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

My .

Submitter : Ms. Ella Joan Fenoglio **Date:** 08/10/2006

Organization : Lawyer

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

As you know, the Deficit Reduction Act of 2005 passed earlier this year included a provision that changed the proof-of-citizenship requirements for U.S. citizens applying for or receiving Medicaid. The provision is unnecessary, as a study by the U.S. Department of Health and Human Services already concluded that few, if any, non-citizens illegally receive Medicaid.

I believe the new proof-of-citizenship rules will greatly harm many children who are American citizens and who qualify for Medicaid benefits. My chief concern is that only passports and original or certified copies of birth certificates will be accepted as proof of citizenship. Many families do not have ready access to original birth certificates because they have been displaced by a house fire, natural disaster, sudden homelessness, or any number of other misfortunes. In addition, the cost of obtaining a birth certificate will contribute to the financial hardships that make such families eligible for Medicaid in the first place.

Another issue is that new applicants will not be able to receive Medicaid services while their parents gather the required documentation. It takes an average of four to six weeks to obtain a birth certificate from the state of New Mexico and that s too long for a sick child to wait to see a doctor.

The new rules will likely have a disproportionate impact on minorities, particularly Native Americans. Certificates of Indian Blood or tribal enrollment cards should count as proof of citizenship as they have in the past.

The rules also place unnecessary burdens on children in foster care, who should be exempt, as their citizenship is already verified as part of their eligibility review for Title IV-E.

These new rules will likely hinder the expansion of Medicaid coverage to the millions of children nationwide who are eligible but not enrolled. Of the 21,000 New Mexico children under the age of five without health insurance, 16,000 qualify for Medicaid. Simple enrollment procedures are vital for expanding Medicaid coverage to these children.

Submitter : Dr. Bruce Goldberg **Date:** 08/10/2006

Organization : Oregon Department of Human Services

Category : State 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-223-Attach-1.DOC

Oregon
Theodore R. Kulongoski, Governor

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http://www.oregon.gov/DHS/

DHS

August 10, 2006

Mark B. McClellan, M.D., Ph.D
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS 2257-IFC
P.O. Box 8017
Baltimore, Maryland 21244-8017

RE: Medicaid Citizenship Documentation Provisions of the Interim Final Rule with Comment Period, Regulatory Impact Statement 71 Federal Register 39214 (July 12, 2006); File Code CMS-2257-IFC

Dr. McClellan:

Thank you for providing the opportunity to comment on the Interim Final Rule regarding the citizenship requirements stemming from Section 6036 of the Deficit Reduction Act (DRA). Oregon also appreciates the efforts that have been made by the Centers for Medicare and Medicaid Services (CMS) to allow states to participate in conference calls with federal staff to address issues and receive clarification regarding the Act. This willingness on the part of CMS to solicit and consider suggestions for changes or clarifications to the rule will increase the effectiveness of states' implementation of the requirements while allowing the greatest possible level of flexibility afforded under the statute.

Oregon respectfully submits the following comments regarding implementation of the rules contained in Section 6036.

General clarification and guidance

These comments cover a number of subjects that apply to the broad sense of the rule.

Equitable application of reasonable opportunity period:

- The rule creates inequity between Medicaid recipients and applicants. Although both groups are given a "reasonable opportunity period" to provide citizenship and identity documentation, they are not treated the same during that period. ***Recipients*** continue to receive medical assistance during the reasonable opportunity period. ***New applicants*** do not receive medical assistance during this period.

Comment:

- Oregon requests that applicants who are otherwise eligible for medical assistance be afforded the same treatment as recipients, and receive medical assistance during the reasonable opportunity period, with federal matching funds provided.

Legalized Alien/Alien not lawfully admitted 42 CFR 440.255:

- It is not clear whether the rules allow an applicant who meets all eligibility criteria for the Medicaid program except the ability to document citizenship to receive emergency medical assistance under 42 CFR 440.255, known in Oregon as CAWEM.

Comment:

- Oregon requests clear guidance from CMS as to whether undocumented ***citizens*** are eligible to receive emergency medical assistance under Title XIX. If citizens are eligible for emergent medical assistance, Oregon seeks clarification as to whether this is a mandatory coverage group or an optional coverage group. Oregon considers babies born under these circumstances to be, by birthright, citizens of the United States and therefore will continue to provide medical care under Medicaid to these babies for the first 12 months of their lives, as currently allowed.

Use of original documents:

- The majority of Medicaid applications in Oregon are mailed in for processing. In order to comply with the CMS standard of first seeking higher tiered evidence, Oregon citizens would be mailing "originals or copies certified by the issuing agency." These documents may include a passport, a birth certificate, a U.S. Citizen I.D. card, a driver license and a Certificate of Degree of Indian Blood. These are vital and sensitive documents to which individuals may need access on a regular basis.

Comment:

- The Act does not require the use of "originals or certified copies." Oregon requests that CMS allow states to accept copies, rather than originals, of these types of documents, given that states would have the ability to confirm the information contained therein.

Family planning waiver:

- The citizenship requirement for individuals seeking family planning services may lead to a delay in providing those services. Potential delays may increase the likelihood of unintended pregnancies and increase the cost of Medicaid services offered under the Oregon Health Plan and the Citizen/Alien Waived Emergency Medical program.

Comment:

- Oregon requests that individuals seeking assistance under Oregon's family planning waiver be exempt from the citizenship requirement.

Use of affidavits:

- It is not clear in the rule whether individuals providing affidavits must demonstrate their citizenship and identity in the same manner as prescribed by the rule for Medicaid recipients and new applicants.

Comment:

- Oregon requests clarification of the citizenship and identity document requirements for individuals providing affidavits for others.

Use of the term "affidavit":

- As used in the rule, the term "affidavit" is inappropriate.

Comment:

- Oregon requests the rule not use the term "affidavit" in describing what more clearly is a "declaration." Affidavit has specific legal constructs, which are unnecessary and burdensome for these purposes

Three-year eligibility gap:

- It is the stated intent of the rule that once citizenship and identity are established and recorded in an individual's permanent case file, they should not need repeating unless ***later evidence*** raises the question of citizenship. Adding the three-year gap in eligibility caveat does nothing to increase either the validity or reliability of the previously established documentation, nor does it increase the likelihood a state may uncover through this process conflicting evidence to the previous determination.

Comment:

- Oregon requests CMS to withdraw this caveat, which is not found in law and places an extensive and undue burden on states.

Five-year record requirement:

- The effect of the five-year requirement is to exclude use of documentation that may be issued within the five-year period, but is based on records of long standing with the issuing entity. Primarily, the documents subject to the requirement are or would be issued by a government entity or hospital. In many instances, the date of issuance is not the date of origination.

Comment:

- Oregon requests every reference to the five-year requirement as it pertains to allowable evidentiary documents be removed. The five-year period is not found nor suggested in the Act, and compliance would not be administratively cost-effective or efficient.

Implementation concerns

Auditing procedures:

- The rule does not include information about audit, oversight and monitoring procedures. This lack of information prevents states from identifying and complying with expectations from the earliest stages of implementation.

Comment:

- Oregon requests that CMS expedites the development of its audit, oversight and monitoring procedures, and shares those procedures with states as they are developed.

Implementation cost estimates:

- Preliminary estimates by CMS of the time and effort that will be spent on compliance by clients and the states are unreasonably low and misleading in regard to the burden the rule places on states.

Comment:

- Oregon requests that CMS amends these estimates to more accurately reflect the resource, training and systems burden of this mandate, and puts into context the recommendations being made by Oregon. CMS has the opportunity to act in the spirit of the federal-state partnership intended to share the responsibility of providing health care for certain low-income children, families and individuals, and for individuals who are aged and disabled.

Data matches:

- As written, the rule for conducting data matches needs to be clarified to allow the state the maximum amount of flexibility afforded under the law.

Comment:

- Oregon requests that CMS outline acceptable principles and/or standards for states to use in assessing the allowability of certain database applications. Rather than specifying in rule which particular database can be used, Oregon requests CMS to provide acceptable standards of dependability. This approach would enable the states to have flexibility within the intent of the rule regarding allowable electronic transmission of data such as trading computerized databases, sending faxes and permitting increased reciprocity among states.

Exemptions from citizenship and identity requirements

Additional groups exempt from citizenship and identity requirements:

- The rule creates an inequity in the groups of people who can qualify for exemptions from the citizenship documentation requirements by including Medicare and Supplement Security Income (SSI) recipients, but not including comparable groups.

Comment:

Oregon recommends CMS approve the following groups of individuals as meeting the citizenship and identity requirements.

- **SSDI (Title II, Disability Benefits) recipients**: These individuals are subject to the same verification provisions as those required of Medicare recipients. Therefore, Oregon requests that all recipients of SSDI be afforded the same exempt status as Medicare recipients.
- **Former recipients of SSI**: Oregon requests CMS include these individuals in the same exempt group as current recipients. This would include clients deemed eligible for Medicaid based on their Disabled Adult Child (DAC) and/or Pickle status.
- **Foster care and subsidized adoption recipients**: Verification of citizenship is a requirement for this population group and should be sufficient in fulfilling the intent of the law. Oregon requests that an exemption for this group be added to the rule.
- **Infants through Safe Haven/Safe Surrender/Baby Moses settings**: Mothers in crisis may safely relinquish their babies to a safe haven (e.g., birthing clinic, doctor's office, fire department, hospital, or police or sheriff office) where the baby will be protected and provided medical care. Because relinquishing parents are not required to provide personal information, little may be known about these infants. Oregon requests that an exemption for this group be added to the rule.

Document requirements

Expanding acceptable documents:

- The list of acceptable documents for demonstrating citizenship and/or identity does not appear to follow a consistent rationale and needs to be expanded.

Comment:

Oregon recommends CMS add the following documents to those that may be used to establish citizenship ***and*** identity.

- **Certificate of Degree of Indian Blood (CDIB) and/or tribal enrollment cards issued by a federally recognized tribe**: Oregon asks that the Certificate of Degree of Indian Blood (CDIB) and/or tribal enrollment cards be added to Tier 1 as an acceptable form of citizenship ***and*** identity. All branches of the federal government and governmental entities have long recognized their unique government-to-government relationship with federally recognized tribes. Congress has recognized that a special relationship between the United States and Indian tribes exists in the form of treaties, such as the Treaty of Amity (known as the Jay Treaty of 1794), individual treaties with Indian tribes, intergovernmental agreements, and status and court findings. In addition, Congress granted citizenship in 1924 to members of federally recognized tribes. Enrollment records of federally recognized tribal governments are highly reliable, comprehensive and extremely accurate. Oregon requests CMS deem documents issued by a federally recognized tribe (either CDIBs or enrollment cards) as satisfactory evidence of identity and citizenship.

Oregon recommends CMS add the following documents to the list of documents that may be used to demonstrate citizenship.

- **State Medicaid-paid claims for births and copies of birth records submitted to the State Vital Records**: These documents are reliable records and should be accepted as proof of citizenship.
- **Reasonably established records of births**: Children born in the Oregon where a record of birth is reasonably established should be considered to have met the burden of proof for citizenship.
- **Social Security cards**: Oregon requests clarification of the CMS rationale for not accepting Social Security cards as proof of citizenship or legal immigration status.

Oregon recommends CMS add the following documents to the list of documents that may be used to establish identity.

- **Voter registration cards**: Voter registration cards, as government-issued documents, should be considered to represent reliable proof of identity.
- **Birth certificates, immunization records or other hospital or clinic records**: When these types of records contain all necessary information (especially for children under 16), they should be considered acceptable documents for identity.
- **Court order for removal of a child**: Oregon believes that in the circumstance of a child's court order for removal, the related court documents are absolute proof of identity.
- In addition, Oregon requests that CMS develop a process to work with states in consideration of additional documents (citizenship and/or identity) not yet recognized.

Each of these recommendations, if adopted, would afford Oregon and other states the ability to responsibly and effectively implement Section 6036 of the DRA and the subsequent rules while reducing the administrative burden.

Thank you for the opportunity to comment.

Sincerely,

Bruce Goldberg

Bruce Goldberg, M.D.
Director

Submitter : **Mr. Mark Tajima** **Date: 08/10/2006**

Organization : **Los Angeles County**

Category : **Local Government**

Issue Areas/Comments

GENERAL

GENERAL

Please see Attachment.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Comments on application of Medicaid citizenship documentation requirements to children who qualify for Medicaid by virtue of their receipt of Title IV-E assistance.

CMS-2257-IFC-224-Attach-1.DOC

COMMENTS ON THE APPLICATION OF THE MEDICAID CITIZENSHIP DOCUMENTATION REQUIREMENTS IN THE INTERIM FINAL RULE TO TITLE IV-E FOSTER CARE RECIPIENTS
71 Federal Register 39214; File Code CMS-2257-IFC

The interim final rule applies the new citizenship documentation requirements under Section 6036 of the Deficit Reduction Act (DRA) to children who qualify for Medicaid by virtue of their receipt of Title IV-E assistance. In addition, the rule amended 42 CFR Part 435.406 to require all Medicaid applicants and recipients to declare under penalty of perjury whether they are U.S. citizens and to require self-declared citizens to provide documentary evidence of citizenship. For the first time since section 1137(d) of the Act was added in 1986, Title IV-E children receiving Medicaid must have a declaration of citizenship or satisfactory immigration status and documentary evidence of citizenship or satisfactory immigration status in their Medicaid file (see 71 Federal Register 39216).

Recommendations

The interim final rule should be revised to exempt Title IV-E recipients from the DRA's citizenship documentation requirements and to not require that a declaration of U.S. citizenship or satisfactory immigration status be in the Medicaid file of each Title IV-E child. The declaration of citizenship and satisfactory immigration status requirements in Section 1137(d) of the Social Security Act ("Act") do not apply to the Title IV-E program. Moreover, under section 1903(a)(10)(A)(i)(1) of the Act, all children receiving Title IV-E assistance are entitled to Medicaid benefits, and do not separately apply for Medicaid.

Title IV-E agencies currently establish whether the citizenship and/or immigration status of a foster child qualifies them for title IV-E benefits, and, once Title IV-E eligibility has been established, the children automatically qualify for Medicaid. The acceptable citizenship documents in the interim final rule are far more restrictive and inflexible than the citizenship verification methods allowed in most states, which recognize that parents who have abused or abandoned their children often are uncooperative.

For example, in California, if a foster child's derivative citizenship through the naturalization of his/her parents can be established with the assistance of U.S Citizenship and Immigration Services (CIS) of the Department of Homeland Security (DHS), an otherwise eligible child appropriately will be determined to be eligible as a citizen for purposes of Title IV-E (and indirectly Medicaid) even if the child lacks a U.S. passport or certificate of citizenship. In contrast, under the interim rule, a passport or certificate of citizenship must be obtained for such a child, and it would be costly, complicated, and take time to obtain such documents, especially without the cooperation of the child's parents. Verification of a Medicaid recipient's citizenship status by DHS should be acceptable, just as DHS verification of satisfactory immigration status currently is acceptable for purposes of Medicaid eligibility and federal financial participation. The lack of a particular citizenship document should not preclude an individual whose citizenship has been verified from receiving Medicaid benefits.

Under section 1903(x)(2)(C) of the Act, added by the DRA, the Secretary of Health and Human Services ("Secretary") has the discretion to exempt individuals from the documentation requirements if he finds other satisfactory documentary evidence of citizenship has previously been presented. Thus, even if Title IV-E children were

otherwise covered by section 6036, the Secretary should exercise this discretion and revise the interim rule to permit State Medicaid agencies to accept the IV-E agency's verification of citizenship. This revision also would be consistent with how the interim final rule in 42 CFR Part 403.407(e)(10) provides States with the option to use a cross match with the data system of State public assistance agencies, including child protective services agencies (Title IV-E agencies), to establish an individual's identity if the agencies established and certified the identity of individuals.

Section 6036 of the DRA clearly applies the new citizenship documentation requirements as a condition for receipt of federal financial participation (FFP) under Medicaid and no other program. Title IV-E agencies, therefore, should not be required to apply two sets of standards for verifying citizenship – one for Title IV-E and another for Medicaid. To do so will impose unnecessary increased administrative costs and burdens on Title IV-E agencies.

The interim final rule also should be revised to provide Title IV-E children are not required to make a declaration of citizenship or satisfactory immigration status under penalty of perjury in order to qualify for Medicaid. Under section 1137(d) of the Act, such a declaration is not required for purposes of Title IV-E eligibility or FFP, and it does not make any sense to require children who qualify for Medicaid by virtue of their receipt of Title IV-E to make such a declaration. Foster children, especially very young children, cannot be expected to know their citizenship or immigration status.

It is noteworthy that, because Medicaid eligibility for Title IV-E children is not determined on a household or family basis, an adult member of the child's family or household is not allowed to sign a declaration of citizenship or satisfactory immigration status, pursuant to section 1137(d)(1)(A). Even if it were allowed, Medicaid eligibility and FFP for foster children should not be contingent on the cooperation of their abusive parents to make such a declaration. Parents who abused or abandoned their children cannot be expected to make declarations of citizenship and to provide satisfactory documentary evidence of citizenship on behalf of their children.

It also should be recognized that neither foster children nor their abusive parents file applications for Title IV-E or Medicaid. Instead, child protective agencies, which are responsible for the well-being of abused or neglected children who have been taken from their parents' custody, determine Title IV-E (and Medicaid) eligibility. The purpose of the DRA's Medicaid citizenship documentation requirements is to prevent potential fraud by individuals seeking to qualify for Medicaid benefits. There is no evidence that any parent has abused or neglected their children for the purpose of securing Medicaid benefits for their children through the foster care system.

Submitter : Mr. Mark Tajima **Date:** 08/10/2006

Organization : Los Angeles County

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Comments relating to acceptable citizenship documents for naturalized U.S. citizens.

CMS-2257-IFC-225-Attach-1.DOC

COMMENTS ON THE IMPACT OF THE MEDICAID CITIZENSHIP DOCUMENTATION REQUIREMENTS IN THE INTERIM FINAL RULE PUBLISHED ON JULY 12, 2006 ON NATURALIZED UNITED STATES CITIZENS
71 Federal Register 39214; File Code CMS-2257-IFC

Under the interim final rule, the acceptable citizenship documents for virtually all naturalized United States citizens are limited to a U.S. passport, certificate of naturalization, or certificate of citizenship.[1] Unlike U.S. born citizens, naturalized citizens are not allowed to use affidavits. Moreover, state Medicaid agencies are not allowed to verify citizenship with U.S. Citizenship and Immigration Services (CIS) in the Department of Homeland Security (DHS), which has the capacity to verify naturalized citizenship status, just as it currently verifies the immigration status of all Medicaid applicants and recipients who declare that they have satisfactory immigration status pursuant to Section 1137(d) of the Social Security Act ("Act"). For naturalized citizens, the acceptable documentation is far more limited than allowed by the Social Security Administration for purposes of obtaining a Social Security number (SSN) card.[2]

This limitation on acceptable citizenship documents will be extremely problematic for the numerous naturalized citizens who are likely to lack these documents. The number of naturalized citizens has been growing far more rapidly than the number of native-born U.S. citizens. Between 1990 and 2004, the number of naturalized citizens increased from 8 million in 1990 to more than 13.1 million according to U.S. Census Bureau estimates. Moreover, in 2004, 1.328 million naturalized citizens had incomes below the poverty level and 17.2% lacked health insurance.[3]

A significant number of naturalized citizens are likely to lack a U.S. passport or certificate of citizenship/naturalization because children under age 18 who derive their citizenship through the naturalization and/or citizenship status of their parent(s) do not receive any of these documents when they become citizens. The interim final rule fails to take into account that lawful permanent resident children under age 18 and foreign-born adopted children typically do not file a separate naturalization application to become U.S. citizens. Instead, they derive their citizenship through the naturalization/citizenship of their parents. Unlike their parents who receive a certificate of naturalization, a child who receives derivative citizenship must apply to CIS (formerly INS) for a certificate of citizenship as documentary evidence of citizenship. Most children who receive derivative citizenship do not immediately apply for a certificate of citizenship, and many, if not most, never have done so. In all likelihood, Medicaid-eligible individuals are less likely to have obtained a certificate of citizenship given the relatively high cost of obtaining one. Any naturalized citizen who lost a certificate of naturalization/citizenship also will face major difficulties in obtaining a replacement certificate.

As explained in greater detail below, a U.S. passport, certificate of naturalization, or certificate of citizenship all will be difficult, time-consuming, and costly for Medicaid eligible individuals to obtain, all of which means that limiting acceptable citizenship documentation to these three documents will be a major barrier to the receipt of Medicaid benefits to numerous naturalized citizens. The relatively high cost of obtaining such documents most likely will prevent many of them for receiving needed Medicaid benefits. For Medicaid applicants who ultimately obtain and present such documents, the interim rule will significantly delay their receipt of Medicaid benefits. This is because, under the interim rule, applicants who declare U.S. citizenship, will

not receive Medicaid benefits until after they had submitted satisfactory documentary evidence of citizenship.

Below is a detailed explanation of the difficulty and cost of obtaining a certificate of citizenship, certificate of naturalization, and U.S. passport. It is noteworthy that it will take naturalized citizens who must obtain them far more time than the five minutes to acquire and provide acceptable documentation to a state, as estimated by the Centers for Medicaid and Medicare Services (see 71 Federal Register 39220). Moreover, it will be even more complicated for child protective agencies to obtain such acceptable documents for Title IV-E foster children because their natural parents often times are not cooperative or even impossible to locate in cases where parents abandon their children and then move out-of-state.

Certificate of Citizenship: The current application fee for a certificate of citizenship, which is the only permanent record of citizenship for persons who derived/acquired U.S. citizenship through parent(s) is $255 ($215 for an adopted child). There are additional costs associated with obtaining such a certificate, including the cost of passport photos, a certified foreign birth certificate, if necessary, and travel to and from the CIS office for a required in-person interview by CIS officer. An applicant literally may have to travel hundreds of miles to the nearest CIS office because there only are 79 CIS (formerly INS) offices, excluding those located in Puerto Rico and U.S. territories. The vast majority of states have a single CIS office, and there are not any CIS states located in Alabama, Mississippi, North Dakota, or South Dakota. Including travel costs, the total cost of obtaining a certificate of citizenship easily can exceed $500.

The high cost of obtaining a certificate of citizenship can prevent very low income individuals from obtaining one, thereby, also preventing them from receiving Medicaid benefits. It will be especially costly for low-income families with children. While there is no cost for a legal immigrant family, headed by two parents, with three children to document their satisfactory immigration status for Medicaid eligibility purposes, it would cost them $765 alone in application fees to obtain a certificate of citizenship for each child after having paid a combined total of $800 in naturalization application fees for the parents. It is noteworthy that, if the children had become naturalized citizens, they still would have qualified for Medicaid as qualified aliens, provided that they met the five-year residency requirement.

Besides the high cost of obtaining a certificate of citizenship, Medicaid applicants will be penalized by the long time that it takes to obtain one. It currently can take nearly two years to obtain a certificate of citizenship, depending upon the CIS office. As of July 17, 2006, the Phoenix office was interviewing persons who submitted applications on September 30, 2004. In California, the backlog extends back to March 1, 2005 for the Fresno office and January 5, 2006 for the Los Angeles office. As noted earlier, under the interim final rule, an otherwise eligible Medicaid applicant will not be provided Medicaid benefits until they have submitted satisfactory documents.

Certificate of Naturalization: The current application fee for a replacement certificate of naturalization (or citizenship) is $220, and there is an additional cost of passport photos that must be submitted with an application. It can take over one year to obtain a replacement certificate of naturalization. In fact, given the long delay, CIS' A Guide to Naturalization recommends that naturalized citizens apply for a U.S. passport to more quickly obtain documentation of citizenship.

U.S. Passport: In lieu of obtaining a certificate of citizenship/naturalization, naturalized citizens, including those who received derivative citizenship, may obtain a U.S. passport as proof of U.S.

citizenship. However, the U.S. Passport Agency in the Department of State verifies citizenship independent of DHS, and its passport records are not linked to automated DHS data bases, including not the System for Alien Verification for Entitlements (SAVE) data base used to verify eligibility for public assistance entitlements and employment. Moreover, U.S. passports expire. Therefore, many naturalized citizens do not apply for passports unless needed for foreign travel, and low-income Medicaid eligible individuals, especially those with major health problems, are far less likely to travel outside of the country, and, therefore, also are far less likely to have U.S. passports.

The application fee for a passport, which has a normal processing time of six weeks, is $97 ($82 if under age 16). The cost of an expedited passport, which is processed within two weeks, is an additional $60 plus overnight delivery fees. There is an additional cost of passport photos that must be submitted with an application. In addition for children under age 18, parents will incur additional costs associated with travel to a passport-issuing office because children must appear in p erson. F or c hild p rotective ag encies, o btaining a p assport w ill be ev en m ore complicated as they will have to show legal guardianship and make arrangements for foster children to appear in person.

In practice, it will be difficult and also take a time for Medicaid applicants and recipients to prepare and submit passport applications. In fact, it may not be possible for most naturalized citizens who lost their certificates of naturalization (or citizenship) to obtain a U.S. passport. According to passport application instructions, a certificate of naturalization or certificate of citizenship must be submitted with a passport application. Although it is not explained in the application instructions, the U.S. Passport Agency will provide a passport with an expiration date of approximately one year to a naturalized citizen who submits a "letter of verification" issued by DHS or a U.S. District Court indicating that he/she is a naturalized citizen. Many naturalized citizens, however, will not be able to obtain such letters. This is because DHS no longer issues letters of verification except on a very limited emergency case-by-case basis due to concerns that such letters are vulnerable to document fraud, and because the U.S. District Court only issues letters for persons who naturalized before October 1994. Moreover, a receipt for a replacement certificate of naturalization application is required to obtain a letter of verification as well as a U.S. passport, adding $220 to the cost of obtaining a passport. In practice, it is highly unlikely that Medicaid applicants and recipients will know how to obtain a passport without a certificate of naturalization. This is because the U.S. Passport Agency does not publicize how to do so, and DHS and U.S. District Courts do not publicize how to obtain a letter of verification that is needed to obtain a passport without a certificate of naturalization.

In sum, limiting acceptable citizenship documents for naturalized citizens to a U.S. passport, certificate of naturalization, or certificate of citizenship inappropriately will greatly delay or prevent the receipt of Medicaid benefits to a large number of naturalized citizens. In turn, this would result in higher uncompensated health costs for health providers, especially for public hospitals and other safety net providers. Obtaining such documents will be especially burdensome for child protective agencies responsible for IV-E foster children.

Recommended Changes

The interim final rule should be revised to provide Medicaid applicants and recipients, as well as state and local Medicaid agencies, with more options for documenting satisfactory citizenship status. First and f oremost, the r ule should be revised to allow any method f or verifying citizenship that is acceptable for proving citizenship for purposes of obtaining a Social Security number (SSN) card under the Social Security Administration's (SSA) Program Operations

Manual System (POMS) guidelines. States then would be allowed to verify citizenship status against DHS' SAVE data base – the same verification system currently used by states to verify satisfactory immigration status, as required under Section 1137(d) of the Social Security Act, and the same data base used by many employers to verify work authorization for new job hires.

SSA allows staff to query SAVE in recognition of the fact that DHS has citizenship data for all naturalizations from 1906 to present and that what matters is whether an individual actually is a U.S. citizen, not whether someone has a citizenship document. Because the automated SAVE data base is not wholly reliable, POMS guidelines require that DHS be requested to manually verify citizenship when an automated SAVE records match does not verify satisfactory citizenship or immigration status.

The interim final rule should provide citizens with the same protections afforded to legal immigrants. Low-income naturalized citizens who lack a passport, certificate of naturalization, or certificate of citizenship, therefore, should not be required to undergo the major cost and time of obtaining such documents when their citizenship can be verified by DHS. Enabling states to use any method for documenting citizenship that is acceptable for SSN purposes also would greatly s implify im plementation o f t he new c itizenship r equirements for s tates. Instead o f developing new internal instructions, states would be able to take advantage of the detailed POMS instructions already developed by SSA. This is especially justified because, under the interim final rule, SSA guidelines already, in effect, are being used to verify citizenship in states in which Supplemental Security Income (SSI) recipients receive Medicaid by virtue of receipt of SSI.

Second, the rule should be revised to exempt Title IV-E recipients from the DRA's citizenship documentation requirements. The declaration of citizenship and satisfactory immigration status requirements in Section 1137(d) of the Social Security Act ("Act") do not apply to Title IV-E. Under section 1903(a)(10)(A)(i)(1) of the Act, all children receiving Title IV-E assistance are entitled to Medicaid benefits, and do not separately apply for Medicaid. Moreover, since Section 1137(d) was added to the Act in 1986, foster children never have been required to declare whether their citizenship or satisfactory immigration status for Medicaid purposes for practical as well as statutory reasons – foster children, especially very young children cannot be expected to know their citizenship or immigration status.

State and local agencies which administer Title IV-E already establish whether the citizenship or immigration status of children make them eligible for Federal financial participation. They should not be required to apply two sets of standards – one for Title IV-E and another for Medicaid. Nothing in the DRA's legislative history suggests that Congress intended that be done. Doing so would impose unnecessary increased administrative costs and burdens on Title IV-E agencies in California because the interim rule's citizenship documentation procedures vary from those currently used. In Los Angeles County, both citizenship and immigration status may be verified using SAVE and secondary verifications with DHS because abusive parents may not cooperate in presenting citizenship or immigration documents.

Third, s tates s hould be al lowed t o v erify c itizenship s tatus u sing S AVE, inc luding through secondary verifications with DHS, as explained in the previous recommendation on allowing any documentation that is accepted by SSA.

Fourth, the interim final rule should be revised to allow states to accept copies of a U.S. passport, certificate of naturalization, or certificate of citizenship. The validity of copies can be

verified with the U.S. Passport Agency or DHS, if necessary. It would ease the burdens on low-income Medicaid applicants and recipients of having to obtain replacement documents as well the administrative burdens on state and local Medicaid agencies. It is highly unlikely that applicants and recipients will mail important original documents, which means that they, instead, would present documents in person, greatly increasing traffic at offices. There would be an especially huge workload increase in states, such as California, where mail-in applications currently are used for Medicaid redeterminations of eligibility.

Fifth, the interim final rule should be revised to allow states to accept signed affidavits submitted by naturalized citizens accompanied by copies of any supportive documents and/or information, such as the date of naturalization, alien registration number, and, in the case of persons who received derivative citizenship, information on their parent's naturalization. It is noteworthy that, unlike affidavits submitted by persons born in the U.S. who lack birth records, all naturalization cases can be verified by DHS. Yet, the interim final rule inappropriately precludes the use of affidavits by persons born outside the U.S.

Sixth, the interim final rule should be revised to allow states to accept a letter of verification or any other official document from the Department of Homeland Security (DHS) or a U.S. District Court indicating that a person is a naturalized citizen. The rule should allow an individual to use any official government document indicating citizenship status. Such documents, such be considered secondary evidence of citizenship.

Finally, the interim final rule should be revised to permit states to begin providing coverage to applicants based on their sworn declaration of U.S. citizenship, and to afford them a reasonable opportunity to provide the necessary documentation, just as Federal law and regulations now provides for non-citizens who declare that they have a satisfactory immigration status. There is no justification for treating citizens more restrictively than non-citizens in this situation. It is especially unfair to treat citizens worse when it is far simpler for non-citizens to demonstrate their satisfactory immigration status than for citizens to demonstrate their citizenship under the interim final rule.

[1] The only other possible citizenship documents are a U.S. Citizen Identification Card issued from 1960 to April 1983 to naturalized citizens living near the Canadian or Mexican borders or evidence of U.S. Civil Service employment before June 1, 1976, both of which will not be possessed by the vast majority of naturalized citizens.

[2] See Social Security Administration's (SSA) Program Operations Manual (POMS) Section RM 00203.310 Evidence of U.S. Citizenship for an SSN Card

[3] Source: U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2004"

Submitter : Mr. Phillip Saperia **Date:** 08/10/2006

Organization : The Coalition of Voluntary Mental Health Agencies

Category : Other Health Care Provider

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

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 : Matt Hamilton **Date:** 08/10/2006

Organization : L.A. Gay & Lesbian Center

Category : Other Health Care Provider

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-227-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)

I am writing on behalf of the L.A. Gay & Lesbian Center to share with you our profound concerns regarding the new Medicaid citizenship documentation requirement and its potential impact on the ability of gay, lesbian, bi-sexual and transgender persons, as well as people living with HIV disease to access needed, lifesaving, primary care, mental health services, and HIV medical care and treatment. The L.A. Gay & Lesbian Center is the world's largest organization serving the medical care, supportive service and cultural arts needs of the gay, lesbian, bi-sexual and transgender persons. As such, we serve a very large and diverse community of people who access their primary care and HIV-related health care services at the Center using Medicaid as their third party payor.

Part of the Center's organizational mission is to ensure that all gay, lesbian, bi-sexual and transgenderd persons in the United States and its territories, have unhindered access to needed, high-quality, affordable health care services. The L.A. Gay & Lesbian Center strongly supports comprehensive, affordable, single payor, health insurance for all residents of this nation.

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. As a matter of Policy we see this rule as yet another dangerous step toward the imposition of an identity card requirement for all U.S. citizens, and believe that it is a very sad comment on where the United States government believes it needs to be focusing its energy at this point in time.

We are pleased to support CMS's decision to exclude SSI and Medicare beneficiaries from the new citizenship documentation requirements, which may help to mitigate the impact of this new policy on gay, bi-sexual and transgender persons living with HIV/AIDS. However, we remain deeply concerned that the unintended consequence of the policy applied under the current implementation rules will be to needlessly delay, or deny, Medicaid coverage to gay, lesbian, bi-sexual and transgendered U.S. citizens in need of medical care.

The Center urges CMS to minimize the likelihood that this new policy will impede gay, lesbian, bi-sexual and transgender U.S. citizens from obtaining or maintaining Medicaid coverage by modifying the final rule as described below.

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 Center provides health and mental health services to a number of Native Americans, and we agree with the National Association of State Medicaid Directors which 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] The Center urges CMS to allow the use of tribal identification cards as primary documentary evidence of an individual's U.S. citizenship.

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. Not recognizing tribal identification cards as proof of U.S. citizenship will cause great hardship for many gay, lesbian, bi-sexual and transgendered Native Americans, and create a barrier to their enrollment in, and/or maintenance of Medicaid coverage.

The Center asks that all tribal enrollment cards be added to 42 CFR 435.407(a) as acceptable primary documentary evidence of an individual's U.S. citizenship.

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 requested 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. The Center strenuously urges 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 many people to obtain, especially for individuals who may have been born at home and do not have access to a birth certificate, or official records of their birth, or for individuals who lost documents in natural disasters such as hurricanes, or fires.

There are many Medicaid recipients and new enrollees, 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 not have any of the documents that are listed in the hierarchy at all (see comments related to 435.407(k)).

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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.

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

The new rule requires individuals to submit original documents (or copies certified by the issuing agency) to satisfy the citizenship requirements, 71 Fed. Reg. at 39225. This provision poses a significant burden for both individuals, as well as for city 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. Adopting these processes has reduced Medicaid administrative costs by eliminating the timely interview process and reducing staff time spent reviewing each new application and each renewal. These modifications have also been shown to make Medicaid more accessible to those who need it, 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 burdensome and costly for cities and states. Furthermore, it is impractical for anyone to mail in a driver's license to document their identity for Medicaid purposes, as they will need to drive before they get it back. This provision will only delay coverage for new applicants and force them to schedule appointments with the Medicaid agency to fulfill this requirement. Many gay, lesbian, bi-sexual and transgenderd persons will be discouraged from completing the application process all together.

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 first obtain, and then 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. The Center urges CMS to eliminate the requirement in 42 CFR 435.407(h)(1) that original documents or certified copies be submitted as proof.

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 and receive services 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 gay, lesbian, bi-sexual and transgendered persons.

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 that prohibits people who are otherwise eligible for Medicaid from enrolling in and receiving needed services from 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, however coercive this may be. 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, individuals with immediate health care needs will be denied care and may ultimately require more expensive care if their condition worsens.

The Center urges 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.

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 documentation that CMS has determined as appropriate. These individuals may be homeless, victims of fire or natural disasters, drug addicted, or individuals who are incapacitated, or who live with 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 reasonably 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.

Any 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 will not be able to meet the affidavit requirements. As a result, gay, lesbian, bi-sexual and transgendered 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 gay, lesbian, bi-sexual and transgendered persons who cannot produce "acceptable" documentation under the new rule will still be allowed to get, or keep their needed Medicaid coverage.

The Center urges CMS to add a new provision at 42 CFR 435.407(k) which would adopt the SSI safety net rule.

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 status, or lead to 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. The Center urges CMS to add an exemption at 42 CFR 435.1008 for foster children receiving Title IV-E assistance.

Exempt additional groups that have already proven citizenship for Medicare and other federal disability programs from documentation requirements.

As previously mentioned, the Center strongly supports CMS's decision to exclude current Medicare and SSI beneficiaries from the citizenship documentation requirements. This exemption reduces program redundancy while also eliminating unnecessary burdens on certain groups of U.S. citizens. We feel implementation of the citizenship documentation requirements would be further improved by extending this exemption to other groups that have met the citizenship requirement for other federal programs.

The Center strongly urges CMS to exempt the following groups from the new documentation requirement:

- Former Medicare or SSI beneficiaries
- People eligible for Social Security Disability payments that are in the two-year waiting period required for Medicare coverage
- People who have received TANF or SCHIP benefits
- People who have successfully verified citizenship for Medicaid coverage, including those who relocate to a new state

Medicaid plays a critical role in providing access to health care for many low-income gay, lesbian, bi-sexual and transgendered citizens – many whose lives are complicated by much more than HIV disease. The Center urges you to revise the final rule for the new citizenship documentation requirement to recognize the realities of their daily lives, so that the new policy does not result in Medicaid recipients and new applicants losing, or being denied coverage that provides access to critical health care benefits.

Thank you for your attention to these comments. If you have any questions, please feel free to contact me at 323.318.4645, or by email at mhamilton@lagaycenter.org.

Sincerely,

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

Organization : **Child Care Association of Illinois**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

August 10, 2006

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

Re: Medicaid Program; Citizenship
Documentation Requirements
Interim Final Rule

The Child Care Association of Illinois submits the following comments on the interim rule to implement section 6036 of the Deficit Reduction Act, published in the Federal Register on July 12. Section 6036 governs the citizenship documentation requirements as they apply to children in our nation s foster care system. The Child Care Association of Illinois (CCAI) is a membership association of 75 social service agencies across Illinois that provide child welfare. Our agencies provide 85% of the direct care for foster children in Illinois. Many of our member agencies provide special services for children under various Medicaid arrangements.

The CCAI is concerned about the failure to exempt foster children from new citizenship documentation requirements. Since foster children already must document citizenship requirements to receive Title IV-E, adding an additional set of requirements that duplicate existing regulations will be costly and unnecessary to an already overburdened child welfare system. If documentation cannot be produced, then the states are absorbing a double dose of penalty in the form of withheld Title IV-E and Medicaid. The end result of this cost shifting will be that states will have to cut other vital services provided to foster care children in order to close budget gaps created purely by this new rule.

We urge HHS/CMS to add an exemption at 42 CFR 435, 1008 for foster children.

Questions can be directed to Margaret Berglind at 312-819-1950, or ilccamb@aol.com.

Thank you for the opportunity to comment.

Submitter : Mr. Howard O'Dell **Date:** 08/10/2006

Organization : ChoicePoint Government Services Inc.

Category : Private Industry

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-229-Attach-1.DOC

ChoicePoint
GOVERNMENT SERVICES

Date: August 11, 2006
To: Department of Health and Human Services, Centers for Medicare and Medicaid Services
Re: ChoicePoint Government Services Comments on Citizenship Documentation Requirements, Interim Final Rule, **file code CMS-2257-IFC**

ChoicePoint Government Services Inc. ("ChoicePoint") is pleased to provide comments to the Centers for Medicare and Medicaid Services ("CMS"), regarding the Interim Final Rule, Citizenship Documentation Requirements, issued July 12, 2006. As a recognized leader in providing decision-making and fraud-reducing information to government agencies, we appreciate the challenges and opportunities that CMS faces ensuring that citizens who need healthcare services are able to get them, and that abuse of the system is identified, eliminated, and prevented wherever possible.

Our comments will offer thoughts and suggestions around the identification and citizenship verification process. As an experienced provider of data solutions, we are continually working with our clients on developing innovative and effective solutions to solve their data challenges. The comments here are high level, but we would welcome an opportunity to speak with CMS in more detail about these potential solutions.

Comment on: Provisions of the Interim Final Rule with Comment Period, [Page 39216]
First, we would like to offer some general observations based on our experience in the industry:

- Electronic verification is the preferred method for citizenship determination due to ease, quickness, accuracy and cost efficiency.
- Paper documents can easily be altered and copied, and thus carry high risk.
- There is no standard birth certificate format in the U.S. (often varies by county within a state) making false documentation easy.
- There exists a tremendous amount of electronic accessible public and private data that can be used to verify identity and citizenship
- Agencies at the Federal level should take lead on enabling access to state vital statistic data and other data that can be used for identity and citizenship determinations

Comment on: Provisions of the Interim Final Rule with Comment Period, [Page 39216], [Page 39217]
Accessing Data via a Fusion Center
Clearly, one of the key factors for states in being able to verify citizenship efficiently and accurately is having a mechanism that can access the data sources that can provide this type of information. We offer for consideration a fusion center type approach, in which regional centers could be set up in various geographic locations throughout the country, and would house vital statistic data which state case workers could access via a web-

based interface. The solution would be built on functionality that could expand the capabilities of states to get timely, accurate, and useful information on applicants. The fusion center concept has already proven itself in the law enforcement community as an effective and efficient way to not only share information from several data sources, but to provide the kind of intelligence that supports analysis and investigative techniques. In this arena, a fusion center approach could give states the ability to access vital records from out-of-state data sources, leveraging a distributed database access model. In short, a fusion center could

- Provide the ability to simultaneously query multiple data sources
- Provide support for existing and future data sources
- Provide access to data via standard Web browser or API from other applications

Comment on: Provisions of the Interim Final Rule with Comment Period, [Page 39216]

Data Matching

We understand that states need to have the ability to verify the identity of the individual applicant, and then be able to verify that that applicant is indeed a U.S. citizen. The Interim Final Rule document points out that one of the options states have to do this is via executing matches against the SDX to verify the identity of an individual, and the status of their citizenship. A fusion center solution would be of benefit for data matching as well, employing advanced data matching algorithms that could bring together disparate pieces of information about an individual, and synthesize those pieces of information in a verification process.

Analytics

One of the more significant dimensions that a fusion center would add would be the ability to incorporate analytics in the identity and citizenship verification process. This would involve not just bringing together various pieces of data, but bringing the data sets together and visualizing them in such a way as to give case workers a multi-dimensional view, thus increasing the probability of successful verification of identity and citizenship.

Comment on: Provisions of the Interim Final Rule with Comment Period, [Page 39216],

Other Considerations

For states willing to assist applicants who were not born in the state in which they are applying for Medicaid and do not have sufficient documentation, a web based solution for securing a birth certificate for an individual should be considered. Though not instantaneous, such a system does provide a more tamper-proof mechanism for securing a certified copy of the original document.

We hope that these comments are helpful to you. Again, we would be glad to talk with you in more detail as you review the documentary evidence for Medicaid recipient citizenship and identity. We thank you for the opportunity to respond. For any comments/questions regarding this document, please contact Bob Chouinard at:

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

Organization : Westside Family Health Center

Category : Other Health Care Provider

Issue Areas/Comments

GENERAL

GENERAL

Barriers to access to health care remain one of the largest problems facing people today. Requiring verification of citizenship places another hurdle in front the very people who need help. Many people simply do not have access to the documentation required and don't begin to know where to go. They will walk away - discouraged and defeated in their quest for health. In the months and years ahead, we will see them in our emergency rooms and hospitals because they could not access the preventive care they needed in a timely fashion.