

CMS-2257-IFC-2 Medicaid Program; Citizenship Documentation Requirements

Submitter : Michael Jesperson

Date & Time: 07/15/2006

Organization : Michael Jesperson

Category : Individual

Issue Areas/Comments
Provisions of the Interim
Final Rule with Comment
Period

Provisions of the Interim Final Rule with Comment Period

Don't let people use Tribal documents to apply for Federal Aid. I went to a local Tribal office a few weeks ago and told them I needed an ID, even though I'm not native I know have a tribal ID. They are too easy to get and should not be considered legal ID.

CMS-2257-IFC-3 Medicaid Program; Citizenship Documentation Requirements

Submitter : Antonio Farnelli

Date & Time: 07/15/2006

Organization : Antonio Farnelli

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

I believe using tribal documents to establish United States citizenship is not a good idea for any purpose.

CMS-2257-IFC-4 Medicaid Program; Citizenship Documentation Requirements**Submitter :** Dr. Paul Terracciano**Date & Time:** 07/15/2006**Organization :** Dr. Paul Terracciano**Category :** Physician**Issue Areas/Comments****Provisions of the Interim****Final Rule with Comment****Period**

Provisions of the Interim Final Rule with Comment Period

Citizenship for medicaid money is flawed. We, as a nation will continue to take care the impoverished. All this means is the states have started to raise property taxes to support local medicaid programs whether or not the federal gov will reimburse them. Documentation at the state level is not to be relied upon. Especially in light of our population census which cannot reflect what is really happening at the local level and as reflected in the elementary school enrollments. No documentation just means the hospitals and working tax paying employees will continue to support the non- payment for these individules. The UNDERGROUND -cash economy... which these medicaid receiptients live and work is growing at a faster rate than the above ground-TAXED economy. Individules with Medicaid entitlement benefits present to area hospitals have babies and then pay extra... out- of- pocket for private rooms. The mission of the hospitals across the nation does not change. These individules know that the less they are documented the more services they can apply for. No marriage certificate means more money. Child born in US means more money. More children means more money. International cell phones used by individules verify these flaws within our society at the speed of light.COBRA and EMTALA laws are in the right and just place to prevent abuses. However,WE as a nation need to ask ourselves and our children ... how much imported poverty can you support now and in the future??

CMS-2257-IFC-5 Medicaid Program; Citizenship Documentation Requirements

Submitter :

Date & Time: 07/17/2006

Organization :

Category : Nurse

Issue Areas/Comments

Provisions of the Interim

Final Rule with Comment

Period

Provisions of the Interim Final Rule with Comment Period

Definitely to obtain Medical Assistance you must be a citizen of the United States. Tax paying citizens can no longer support the non-citizen population. I support the bill that only citizens are eligible and require documentation to receive this benefit.

Submitter : Dr. Beverly Sand
Organization : Dr. Beverly Sand
Category : Individual

Date: 07/24/2006

Issue Areas/Comments

GENERAL

GENERAL

The interim regulations still leave many vulnerable U.S. citizens who are eligible for Medicaid at risk of being denied access to necessary health care because they are unable to produce the required documents on a timely basis.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Children in Foster Care Are Particularly Affected

Children in foster care are generally eligible for Medicaid and have high rates of both medical and mental health problems, yet many will have difficulty documenting citizenship. States have an affirmative obligation to provide medical care to children in foster care. Children entering foster care and those currently receiving foster care services should have immediate access to Medicaid coverage without delay, when eligible.

Foster families (and states) are highly likely to have trouble obtaining birth certificates or other documents in a timely manner, putting these children at risk of foregoing necessary health care. Moreover, many children in foster care already had their citizenship status verified when their eligibility was established for Title IV-E federal foster care payments. Yet the regulations do not provide an exemption for this population. Title IV-E (like SSI) is linked with Medicaid, once eligibility for foster care payments is established. In light of this fact, Title IV-E children should be exempt from the citizenship requirements.

Children in foster care who do not qualify under Title IV-E will also face problems. They are likely to come from environments where documents are not readily available, and obtaining a birth certificate takes time and money that many foster families find in short supply. States have wide discretion to define a reasonable opportunity to obtain proof of citizenship, and their definition may not reflect the time a foster family needs to work through the process of obtaining the documents. States should be able to accept child welfare records or electronic exchanges of information between the child welfare and Medicaid agency to verify citizenship.

Regulatory Impact Statement

Regulatory Impact Statement

Vulnerable Disabled and Aged Populations

Although the regulations exempt individuals who are on Medicare and SSI, the rule fails to consider the group of disabled applicants/recipients who have been found eligible for Social Security Disability Income (SSDI) but are in the waiting period for Medicare or SSDI. Similarly, gaps remain for TANF families and children and SCHIP applicants or recipients who receive either Old Age Survivor and Disability Income (OASDI), retirement or disability auxiliary benefits from the Social Security Administration (SSA), or early age-62 retirees and age 60 widow(er) OASDI beneficiaries, whose citizenship has already been verified by SSA.

Insufficient Assistance

The regulations require states to assist individuals with an incapacity of mind or body in securing documents of citizenship status when they are unable to comply in a timely manner and lack a representative who could assist them. The preamble, but not the actual regulations includes people who are homeless as well as those who have amnesia, mental illnesses or physical incapacity. Victims of natural disasters, whose documents may have been destroyed, should be (but are not) included.

Arbitrary Date for Submission of Documents

The regulations provide for certain documents (such as medical records and hospital admission papers) to be accepted as a third- or fourth-level proof of citizenship. However, it is arbitrary to require that such documents be issued at least five years before the application for Medicaid. Many eligible beneficiaries will have moved once or more in the previous five years and may be unable to locate such papers. It should suffice that documents (such as medical records) exist by the effective date of the regulations. Given the recent release and short time frame for the effective date of these new rules, it is highly unlikely that a person considering fraudulent behavior would have known to produce such specific documents.

Once and Only Once

The regulations should specify that once any state has determined evidence of citizenship and identity, the requirement is deemed met in all states where the individual later resides and for all time. States should be required to maintain records of citizenship indefinitely.

Submitter : Mr. Jorge Arenas
 Organization : Mr. Jorge Arenas
 Category : Academic

Date: 07/24/2006

Issue Areas/Comments

GENERAL

GENERAL

Gentlemen,

Kindly consider the modern fact that the team approach is the most effective and that the character of a person can be measured by the way he/she deals with children and the elderly. Healthy young adults don't apply for Medicaid, it is the section of society that has fallen ill for some reason. An ill person is just that, ill. This society has the choice of providing adequate early care and treatment, or wait until the individual's illness advances and is sooner or later transported to an emergency room for more expensive treatment or to a morgue. Illnesses do not ask for documentation of race, creed, country of origin, or nationality they simply take over the person's body to damage it in some different ways that ultimately end in death. This nation was created by people from different nationalities. Many a U. S. consumer is not concerned with the legality of the workers that produced, manufactured, assembled, transported, etc. the product they are purchasing. The majority of the population simply wishes to purchase goods at the cheapest possible price. Is it now morally right to withhold medical care from those that arrived in this country to better themselves and in the process benefit the U. S. economy? Please reconsider. Do the right thing. Millions of dollars are spent in non essential projects, kindly eliminate the item from proceedings and allow that both U. S. residents and all individuals that are paying taxes be allowed to receive Medicaid benefits.

At the same time, I must applaud the stipulation that once an individual qualifies, he/she should never have to qualify again.

Regulatory Impact Statement

Regulatory Impact Statement

Many U.S. citizens who are Medicaid-eligible including people with mental illnesses, foster children and the homeless remain at risk of being denied access to essential health and mental health services because they cannot produce the necessary documents on a timely basis.

Children in foster care are generally eligible for Medicaid and have high rates of both medical and mental health problems, yet many will have difficulty documenting citizenship. States have an affirmative obligation to provide medical care to children in foster care. Children entering foster care and those currently receiving foster care services should have immediate access to Medicaid coverage without delay, when eligible.

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Submitter : Mrs. Rebecca Housewright
Organization : Community Living Options
Category : Health Care Professional or Association

Date: 07/24/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

Docket Number: CMS-2257-IFC - Medicaid Program; Citizenship Documentation Requirements

Regulatory Impact Statement

Regulatory Impact Statement

Please don't take away benefits from impoverished, helpless and defenseless citizens of the United States. The decision you make will impact so many people that need the medical assistance. Without it you will see more crime rates both in adults and children, suicide, and homeless people. America needs to stop and really take a clear view of what is happening to this country. Don't hurt your own people while you fight for other countries wars. War has been in existence there since beginning of time. Take care of the people here in the United States so people can not end up in costly prisons, mental hospitals, juvenile detention centers. By supporting this action you are going to bring death, starvation and abuse to your own citizens.

Submitter : Mr. W. Marc Ducker

Date: 07/25/2006

Organization : Mr. W. Marc Ducker

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

Regarding these proposed materials, I fully concur with the comments submitted by the Judge David L. Bazelon Center for Mental Health Law
1101 15th Street, NW, Suite 1212, Washington, DC 20005
Phone: 202-467-5730
Fax: 202-223-0409
Email: webmaster@bazelon.org

Submitter :

Date: 07/25/2006

Organization :

Category : Other Health Care Provider

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-11-Attach-1.DOC



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Paul A. Dandridge, Esq.
Chairman of the Board

Richard J. Cohen, Ph.D., *FACHE*
President

July 25, 2006

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

Dear Mr. McClellan:

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of the Philadelphia Health Management Corporation (PHMC). PHMC is a nonprofit public health organization based in Philadelphia, PA, that runs programs that serve Medicaid clients.

Delay in establishing eligibility for Medicaid (§436.1004)

Individuals who apply for Medicaid and have met all of the other eligibility requirements and are cooperating and diligently working to prove their citizenship should be covered under the program. Given that obtaining the required documents may take considerable time for some people, and given that the vast majority of applicants will be citizens or lawful immigrants, delaying their coverage for this paperwork is inappropriate.

Yet while the rule permits those already on the program to remain eligible while documentation is gathered, this same rule does not apply to new applicants. There is no good reason for this distinction, and we urge that all applicants who meet other requirements be covered, and that they be given a reasonable period of time in which to complete the citizenship requirements.

2. Application of the rule to children in foster care (§435.1008)

We strongly oppose the provisions in the final rule that would apply the citizenship rule to children entering foster care. These children have already

suffered at the hands of adults and to deny them access to medical care until their citizenship can be proved is unconscionable. Few will be found not to be either citizens or legal immigrants, but for some potentially lengthy period of time they will have no Medicaid coverage under this rule.

It will not be easy for states to find the necessary documentation to make these children eligible, given that their birth families may not cooperate. Moreover, states already verify citizenship of about half of the children in foster care when they determine them eligible for federal foster care payments. Yet the regulations require citizenship to be proven again.

3. Gaps in the exemptions (§435.1008)

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

In addition, other individuals have also already proved their citizenship, including TANF families and children and S-CHIP applicants and recipients who get OASDI survivor, retirement and disability auxiliary benefits from SSA, and those whose citizenship has been verified by SSA for early age 62 retirement, age 60 widows or widower OASDI beneficiaries.

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

4. Documentation Dates (§435.407(c)& (d) and §436.407(c) and (d)—third and fourth level evidence)

There is no rationale for a requirement that certain documents are only considered valid if issued at least five years before the application for Medicaid. This is an entirely arbitrary date that may cause significant hardship, particularly if the individual is unable to secure such old records.

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

5. Evidence of identity (§435.407(e) and §436.407(e))

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

6. Populations needing special assistance (§435.407(g) and §436.407(g))

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

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

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

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

7. Time frame for collecting documents (§435.407(j) and §436.407(j))

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

8. Outreach

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

9. Presumptive eligibility groups

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

10. Rules apply across states (§435.407(h) and §436.407(h))

We applaud CMS for clarifying that this process need only be gone through once. However, it is also not completely clear that once these documents have been procured and citizenship status has been proved that this is sufficient not only for future eligibility determinations in that state, but across all states.

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

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

Sincerely,



Richard J. Cohen, Ph.D.
President and CEO

Submitter : Ms. E. Bernadette Huber

Date: 07/26/2006

Organization : Iowa Tribe of Oklahoma

Category : Other Government

Issue Areas/Comments

GENERAL

GENERAL

The Iowa Tribe of Oklahoma strongly objects to the interim regulations that do not recognize a Tribal enrollment card or Certificate Degree of Indian (CDIB) as legitimate documents of proof of U.S. citizenship.

CMS-2257-IFC-12-Attach-1.TXT

CMS-2257-IFC-12-Attach-2.DOC

Iowa Tribe of

Oklahoma R.R.

1, Box 721 Perkins, Oklahoma 74059 (405) 547-2402 Fax: (405) 547-1032 July 26, 2006 Centers for Medicare & Medicaid

Services Department of Health and Human Services Attention: CMS-2257-IFC PO Box 8017 Baltimore MD 21244-8017

Electronically submitted: <http://www.cms.hhs.gov/eRulemaking> To whom it may concern:

Subject: Comments to Interim

Final Rule: Medicaid Program: Citizenship Documentation Requirements, 71 Federal Register 39214 (July 12, 2006); File Code:

CMS-2257-IFC Thank you for the opportunity to provide comments to the interim final rule published in the Federal Register on July

12, 2006, at Vol. 71, No. 133, amending Medicaid regulations to implement the new documentation requirements of the Deficit

Reduction Act (DRA) requiring persons currently eligible for or applying for Medicaid to provide proof of U.S. citizenship and identity.

I am disappointed that the interim regulations do not recognize a Tribal enrollment card or Certificate of Degree of Indian Blood (CDIB)

as legitimate documents of proof of U.S. citizenship. The June 9, 2006 State Medicaid Directors (SMD) guidance indicates that the

Centers for Medicare and Medicaid Services (CMS) consulted with the CMS Tribal Technical Advisory Group (CMS TTAG) in the

development of this guidance. While Native American tribal documents and CDIBs are recognized as legitimate documents for

identification purposes, the CMS SMD guidance did not include Tribal enrollment cards or CDIBs as legitimate documents of proof of

citizenship. Prior to the publication of the interim regulations, the National Indian Health Board (NIHB), the CMS TTAG, and the

National Congress of American Indians (NCAI) requested the Secretary of the Department of Health and Human Services to exercise

his discretion under the DRA to recognize Tribal enrollment cards or CDIBs as legitimate documents of proof of citizenship in issuing

the regulations. However, tribal concerns expressed by the national Indian organizations and the CMS TTAG

were not incorporated

into the interim regulations. As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, Tribal

governments find it "rather ironic that Native Americans, in the true sense of the word, must prove their U.S. citizenship through

documentation other than through their Tribal documentation. This same Tribal documentation is currently recognized by Federal

agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special

relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution." There are 563

Federally-recognized Tribes in the U.S. whose Tribal constitutions include provisions establishing membership in the Tribe. The

Tribal constitutions, including membership provisions, are approved by the Department of Interior. Documentation of eligibility for

membership is often obtained through birth certificates but also through genealogy charts dating back to original Tribal membership

rolls, established by Treaty or pursuant to Federal statutes. The Tribal membership rolls officially confer unique Tribal status to

receive land held in trust by the Federal government, land settlements, and other benefits from the Federal government. Based on

heroic efforts of Indians serving in the military during World War I, the Congress in 1924 granted U.S. citizenship to members of

Federally Recognized Tribes. To this day, Tribal genealogy charts establish direct descendancy from these Tribal members. With

very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards or CDIBs to members and descendants of Federally

Recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, Tribal

enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA. In

developing the interim regulations, the CMS might have been concerned that some Tribes issue enrollment cards to non-citizens and

determined that Tribal enrollment cards or CDIBs are not reliable documentation of U.S. citizenship for Medicaid eligibility purposes

under the DRA. However, members of Indian Tribes, regardless of citizenship status, are already eligible for Federal public benefits,

including Medicaid, under exceptions to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Title IV of the PRWORA provides that with certain exceptions only United States citizens, United States non-citizen nationals, and

“qualified aliens” are eligible for federal, state, and local public benefits. Pursuant to Federal regulations at 62 Federal Register 61344

(November 17, 1997) non-citizen Native Americans born outside of the United States who either (1) were born in Canada and are at

least 50% American Indian blood, or (2) who are members of a Federally recognized tribe are eligible for Medicaid and other Federal

public benefits, regardless of their immigration status. The documentation required for purposes of the PRWORA is a membership

card or other tribal document demonstrating membership in a federally-recognized Indian tribe under section 4(e) of the Indian

Self-Determination and Education Assistance Act. Thus, tribal membership cards issued to members of Federally-recognized

tribes, including non-U.S. citizen tribal members, are satisfactory proof of documentation for Medicaid eligibility purposes under the

PRWORA. The documentation requirements under the DRA should be the same. The interim regulations, at 42 C.F.R.

437.407(e)(6) and (e)(8)(vi), recognize Native American tribal documents as proof of identity. Section 437.407(e)(9) recognizes

CDIBs as evidence of identity because they include identifying information such as the person’s name, tribal affiliation, and blood

quantum. Since the CMS already recognizes Native American tribal documents or CDIBs as satisfactory documentation of identity,

there is sufficient basis for CMS to recognize Tribal enrollment cards or CDIBs as satisfactory documentation of primary evidence of

both U.S. citizenship AND identity. The term Native American tribal document is found in the Department of Homeland Security,

Form I-9, where Native American tribal documents suffice for identity and employment eligibility purposes. The interim regulations do

not define the term “Native American tribal document” but certainly, Tribal enrollment cards or CDIBs fall within the scope of a “Native

American tribal document.” Thus, I recommend that section 435.407 (a) of the regulations be amended to include Tribal enrollment

cards or CDIBs as Tier 1 documents. In the alternative, if CMS will not amend the regulations at 435.407(a) to include Tribal

enrollment cards or CDIBs as primary evidence of citizenship and identity, I recommend that the CMS recognize Tribal enrollment

cards or CDIBs as legitimate documents of citizenship as a Tier 2 document, secondary evidence of citizenship. The regulations

only allow identification cards issued by the Department of Homeland Security to the Texas Band of Kickapoos as secondary

evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship. However, in light

of the exception found in the PRWORA, the regulations at 435.407(b) should be amended to include Tribal enrollment cards for all

563 Federally-recognized Tribes as secondary evidence of U.S. citizenship. The Senate Finance Committee in unanimously

reporting out S. 3524 included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a

"document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe" to

serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that "with respect to those

federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are

not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation

of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory

documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection." S. 3524 also

provides for a transition period that "until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory

evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has

not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of

proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

I would urge CMS to amend the

interim regulations to address tribal concerns by recognizing Tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2

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documents. As explained above, with very few exceptions, Tribes issue enrollment cards or CDIBs to their members after a thorough

documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent, the

Secretary has concerns that some Tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the

PRWORA should address these concerns. If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either

as a Tier 1 or Tier 2 document, AI/AN Medicaid beneficiaries might not be able to produce a birth certificate or other satisfactory

documentation of place of birth. Many traditional AI/ANs were not born in a hospital and there is no record of their birth except

through tribal genealogy records. By not recognizing Tribal enrollment cards as satisfactory documentation of U.S. citizenship, the

CMS is creating a barrier to AI/ANs access to Medicaid benefits. As you know, the Indian health care programs, operated by the

IHS, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals, that provide services to

AI/ANs are dependent on Medicaid reimbursements to address extreme health care disparities of the AI/AN population compared to

the U.S. population. Recognizing Tribal enrollment cards or CDIBs as sufficient documentation of U.S. citizenship will benefit not

only Indian health care programs but all of the health care providers located near Indian country that provide services to AI/AN

Medicaid beneficiaries. Thank you for your thoughtful consideration of my comments. Sincere regards E. Bernadette Huber, Tribal

Chairman Enclosure Cc: Senator Tom Coburn
Frank Lucas NIHB PAGE

Senator Ernest Istook

Representative

Iowa Tribe of Oklahoma

Propose: to establish a Constitution Review Committee to review the Constitution and Bylaws of the Iowa Tribe of

Oklahoma Title



Iowa Tribe of Oklahoma

R.R. 1, Box 721
Perkins, Oklahoma 74059
(405) 547-2402
Fax: (405) 547-1032

July 26, 2006

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

Electronically submitted: <http://www.cms.hhs.gov/eRulemaking>

To whom it may concern:

Subject: Comments to Interim Final Rule: Medicaid Program: Citizenship Documentation Requirements, 71 Federal Register 39214 (July 12, 2006); File Code: CMS-2257-IFC

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As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, Tribal governments find it "rather ironic that Native Americans, in the true sense of the word, must prove their U.S. citizenship through documentation other than through their Tribal documentation. This same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution."

There are 563 Federally-recognized Tribes in the U.S. whose Tribal constitutions include provisions establishing membership in the Tribe. The Tribal constitutions, including membership provisions, are approved by the Department of Interior. Documentation of eligibility for membership is often obtained

through birth certificates but also through genealogy charts dating back to original Tribal membership rolls, established by Treaty or pursuant to Federal statutes. The Tribal membership rolls officially confer unique Tribal status to receive land held in trust by the Federal government, land settlements, and other benefits from the Federal government.

Based on heroic efforts of Indians serving in the military during World War I, the Congress in 1924 granted U.S. citizenship to members of Federally Recognized Tribes. To this day, Tribal genealogy charts establish direct descendency from these Tribal members. With very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards or CDIBs to members and descendants of Federally Recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, Tribal enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

In developing the interim regulations, the CMS might have been concerned that some Tribes issue enrollment cards to non-citizens and determined that Tribal enrollment cards or CDIBs are not reliable documentation of U.S. citizenship for Medicaid eligibility purposes under the DRA. However, members of Indian Tribes, regardless of citizenship status, are already eligible for Federal public benefits, including Medicaid, under exceptions to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Title IV of the PRWORA provides that with certain exceptions only United States citizens, United States non-citizen nationals, and "qualified aliens" are eligible for federal, state, and local public benefits. Pursuant to Federal regulations at 62 Federal Register 61344 (November 17, 1997) non-citizen Native Americans born outside of the United States who either (1) were born in Canada and are at least 50% American Indian blood, or (2) who are members of a Federally recognized tribe are eligible for Medicaid and other Federal public benefits, *regardless of their immigration status.*

The documentation required for purposes of the PRWORA is a membership card or other tribal document demonstrating membership in a federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. Thus, tribal membership cards issued to members of Federally-recognized tribes, including non-U.S. citizen tribal members, are satisfactory proof of documentation for Medicaid eligibility purposes under the PRWORA. The documentation requirements under the DRA should be the same.

The interim regulations, at 42 C.F.R. 437.407(e)(6) and (e)(8)(vi), recognize Native American tribal documents as proof of identity. Section 437.407(e)(9) recognizes CDIBs as evidence of identity because they include identifying information such as the person's name, tribal affiliation, and blood quantum. Since the CMS already recognizes Native American tribal documents or CDIBs as satisfactory documentation of identity, there is sufficient basis for CMS to recognize Tribal enrollment cards or CDIBs as satisfactory documentation of primary evidence of both U.S. citizenship AND identity. The term Native American tribal document is found in the Department of Homeland Security, Form I-9, where Native American tribal documents suffice for identity and employment eligibility purposes. The interim regulations do not define the term "Native American tribal document" but certainly, Tribal enrollment cards or CDIBs fall within the scope of a "Native American tribal document." Thus, I recommend that section 435.407 (a) of the regulations be amended to include Tribal enrollment cards or CDIBs as Tier 1 documents.

In the alternative, if CMS will not amend the regulations at 435.407(a) to include Tribal enrollment cards or CDIBs as primary evidence of citizenship and identity, I recommend that the CMS recognize Tribal enrollment cards or CDIBs as legitimate documents of citizenship as a Tier 2 document, secondary evidence of citizenship. The regulations only allow identification cards issued by the Department of Homeland Security to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship. However, in light of the exception found in the PRWORA, the regulations at 435.407(b) should be amended to

include Tribal enrollment cards for all 563 Federally-recognized Tribes as secondary evidence of U.S. citizenship.

The Senate Finance Committee in unanimously reporting out S. 3524 included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a "document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe" to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that "with respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection." S. 3524 also provides for a transition period that "until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

I would urge CMS to amend the interim regulations to address tribal concerns by recognizing Tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2 documents. As explained above, with very few exceptions, Tribes issue enrollment cards or CDIBs to their members after a thorough documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent, the Secretary has concerns that some Tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, AI/AN Medicaid beneficiaries might not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing Tribal enrollment cards as satisfactory documentation of U.S. citizenship, the CMS is creating a barrier to AI/ANs access to Medicaid benefits. As you know, the Indian health care programs, operated by the IHS, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals, that provide services to AI/ANs are dependent on Medicaid reimbursements to address extreme health care disparities of the AI/AN population compared to the U.S. population. Recognizing Tribal enrollment cards or CDIBs as sufficient documentation of U.S. citizenship will benefit not only Indian health care programs but all of the health care providers located near Indian country that provide services to AI/AN Medicaid beneficiaries.

Thank you for your thoughtful consideration of my comments.

Sincere regards,

E. Bernadette Huber, Tribal Chairman

Enclosure

Cc: Senator Tom Coburn
Senator Ernest Istook
Representative Frank Lucas
NIHB

Submitter : Ms. Rhonda Seltz
Organization : FAMIS Outreach Project
Category : Other Health Care Professional

Date: 07/27/2006

Issue Areas/Comments

GENERAL

GENERAL

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

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

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

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

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

Submitter : Ms. Zelinda Hart

Date: 07/28/2006

Organization : Ms. Zelinda Hart

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

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

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

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

Submitter :

Date: 07/28/2006

Organization :

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

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

CMS-2257-IFC-16 Medicaid Program; Citizenship Documentation Requirements

Submitter : Ms. Lisa Specter-Dunaway

Date & Time: 07/28/2006

Organization : CHIP of Virginia

Category : Other Association

Issue Areas/Comments

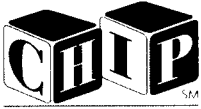
GENERAL

GENERAL

See attachment

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

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



CHIP of Virginia

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

July 28, 2006

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

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

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

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

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

Information collection requirements of the regulations:

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

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COMMENTS ON CITIZENSHIP
DOCUMENTATION
REQUIREMENT

The attached letter provides sample
comments on the interim final regulations
to implement the requirement that U.S.
citizens applying for and receiving
Medicaid present "satisfactory
documentary evidence" of their citizenship.
The interim final regulations were
published for comment on July 12, 2006.
The regulations can be found at 71 Federal
Register 39214.
http://a257.gakamaitech.net/7/257/2422
/01Jan20061800/cdoocket.access.gpo.gov/2
006/pdf/06-6053.pdf

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

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

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

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organization submitting comments and
its interest in the issue]

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[number] areas that CMS should modify
in the final rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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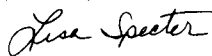
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for eligible children and parents to enroll in Medicaid. Mail-in applications are also more efficient for state Medicaid agencies. Requiring originals and certified copies to document citizenship will make it harder for working families to enroll in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

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

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

Sincerely,



Lisa Specter-Dunaway
President/CEO

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

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

¶ While the interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. (The regulations only allow identification cards issued by DHS to the Texas Band of Kickapoo 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 C.F.R. 435.407(a) to specify that a tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity. ¶

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

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**TEMPLATE FOR COMMENTS ON CITIZENSHIP DOCUMENTATION
REQUIREMENT**

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

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

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

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

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

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

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

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

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

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

Date

Page 2: [2] Deleted

Judith Cash

7/28/2006 12:18:00 PM

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

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

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

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

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

Page 5: [3] Deleted

Judith Cash

7/28/2006 12:23:00 PM

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

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

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

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

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

Date: 07/28/2006

Issue Areas/Comments

GENERAL

GENERAL

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

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

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

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

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

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

I close with one last statement, and that is a child has no choice of where he is born, what his environment is or how he cared for.

Why would we place another restriction on the "hope" of a child?

The children are the "hope" of the future, and there health depends on it.

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

Sincerely,

Julia Gatti
CHIP of Roanoke

Submitter : Catherine Smith
Organization : Catherine Smith
Category : Individual

Date: 07/28/2006

Issue Areas/Comments

GENERAL

GENERAL

Proof of citizenship should absolutely be a requirement.

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

Provisions of the Interim Final Rule with Comment Period

Proof of citizenship should absolutely be required.

Submitter : Ms. Jenny S K Rockwell
Organization : Ms. Jenny S K Rockwell
Category : Individual

Date: 07/28/2006

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter : Ms. Mary McKay

Date: 07/29/2006

Organization : NA

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : Dr. Douglas Pierce Sr.
Organization : Child Health Investment Partnership of Roanoke, VA
Category : Physician

Date: 07/29/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

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

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

07/14/06
WBF

ORIGINAL

FROM THE DESK OF
WILLIAM B. FERRELL, JR.

TREASURER

JUL 14 2006

To CENTERS FOR MEDICARE Date JULY 8, 06
AND Medicaid ATTN: CMS-2257-IFC

DEAR Sir/MADAM....

My Comment ON YOUR REGULATION TO
PROVE CITIZENSHIP FOR MEDICAID IS....

WHAT IN THE WORLD, IS SOMETHING
SO BASIC, SO NECESSARY, JUST NOW
BEING IMPLEMENTED? SHAME ON
THE FEDERAL GOVT AND STATES
FOR HAVING TO EVEN START, WHAT IS
OBVIOUS....

Wm. Ferrell
HC 63 Box 45 E
Exchange, WV 26619

Family Medicine Foundation of West Virginia

P.O. Box 359, Flatwoods, WV 26621
Email: fam.med.foundation@citynet.net

Telephone: (304) 765-7839
Fax: (304) 765-3838

Website: www.fammedfoundation.com

Hayes, Yolanda K. (CMS/OSORA)

2

From: Braxton, Shawn L. (CMS/OSORA)
Sent: Wednesday, July 12, 2006 1:09 PM
To: Hayes, Yolanda K. (CMS/OSORA)
Subject: FW: Public Submission

Please file this comment with the comments for CMS-2257

>-----Original Message-----

>From: Whitcraft, Rosie [mailto:rosie.whitcraft@fda.hhs.gov]
>Sent: Wednesday, July 12, 2006 12:19 PM
>To: Jones, Martique S. (CMS/OSORA); Braxton, Shawn L. (CMS/OSORA)
>Subject: FW: Public Submission

>
>
>

>-----Original Message-----

>From: no-reply@erulemaking.net [mailto:no-reply@erulemaking.net]
>Sent: Wednesday, July 12, 2006 10:15 AM
>To: OC AIMS Support
>Subject: Public Submission

>
>

>Please Do Not Reply This Email.

>

>Public Comments on Medicaid Program; Citizenship Documentation
>Requirements:=====

>

>Title: Medicaid Program; Citizenship Documentation Requirements
>FR Document Number: 06-06033
>Legacy Document ID:
>RIN: 0938-AO51
>Publish Date: 07/12/2006 00:00:00
>Submitter Info:

>
>

>First Name: barbara
>Last Name: sachau
>Category: Individual - I0001
>Mailing Address: 15 elm st
>City: florham park
>Country: United States
>State or Province: NJ
>Postal Code: 07932
>Organization Name: b sachau

>

>Comment Info: =====

>

>General Comment:public comment on federal register of 7/12/06
>vol 71 #133 pg
>39214
>medicare/medicaid 42 cfr parts 435 et seq
>cms 2257-ifc
>rin 0938-ao51

>

>no sneaking illegal immigrant criminal who flouted our laws to
>just sneak
>into the
>united states should be eligible for any medicare/medicaid
>benefits. come in

>

>legally or not at all. documentation showing citizenship must
>be submitted.

>if the

>documents are fake, call the immigration dept to take the
>person away and
>deport
>them immediately. it is clear taxpayers in the united states
>are spending
>billions
>upon billions of dollars for the costs of getting these
>illegal sneaks out
>of the
>united states. meanwhile, these illegal sneaks are getting
>free education,
>free
>medical care and they cost us billions to get them out of
>here. and tell
>george
>bush not to amend these laws after they are passed.
>
>it is time to stop this huge amount of american tax dollars
>going into these
>
>sneaking lawbreakers. come in legally OR NOT AT ALL.
>B. SACHAU
>15 ELM ST
>FLORHAM PARK NJ 07932
>
>
>

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

Date: 07/30/2006

Issue Areas/Comments

GENERAL

GENERAL

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

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

Please see attachment for detailed comments.

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

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

July 30th, 2006

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

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

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

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

Positive Aspects of the Rule

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

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

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

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

Concerns about the Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

Thank you for your attention to these comments.

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

Submitter : Mr. Todd Wilder

Date: 07/31/2006

Organization : Mr. Todd Wilder

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter : Mr. Chris Lee

Date: 07/31/2006

Organization : Mr. Chris Lee

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

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

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

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

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

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

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

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

Provisions of the Interim Final Rule with Comment Period

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

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

Date: 07/31/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

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

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

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

Dear Sir or Madam:

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

Thank you.

Michael

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

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

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

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

Regulatory Impact Statement

Regulatory Impact Statement

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

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

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

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

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

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

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

Date: 07/31/2006

Issue Areas/Comments

GENERAL

GENERAL

see attachment

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

CENTER FOR CIVIL JUSTICE

320 South Washington, 2nd Floor

Saginaw, Michigan 48607

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

Fighting poverty through advocacy, education, and empowerment.

July 31, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. We have encountered, for example, individuals who were born at home in rural areas where there was no hospital or public birth record. These individuals - especially if they are middle-aged - are often unable to locate contemporaries who have first hand knowledge of their birth. We also have encountered individuals who were unable to obtain birth records because they lack sufficient information about the date, place, or circumstances of their birth (such as the identity of birth parents). In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship.

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

The regulations for the SSI program allow people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have. (20 C.F.R. 416.1610) The Secretary should adopt a similar approach for both identity and citizenship. Specifically, 42 C.F.R. 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 clients we represent who are U.S. citizens, can continue to receive the health care services they need.

The same approach should be used for verifying identity. The interim rules fail to allow for alternative proofs, except in the case of a child under age 16 whose parent or guardian is available and able to sign an affidavit attesting to the child's date and place of birth. 42 C.F.R. 435.407(f). In Michigan, Medicaid applicants and recipients who are homeless face additional obstacles to obtaining the documents specified in the interim final rule. Under Michigan Secretary of State policy, in order to obtain a Michigan ID or driver's license, individuals must provide both proof of identity and proof of a street address. This is an insurmountable obstacle for Michigan Medicaid applicants and recipients who are homeless and thus do not have a fixed and

permanent address. In addition, because a photo ID is needed to obtain a certified birth certificate in Michigan and other states, these individuals may be unable to obtain documentation of citizenship as well as identity.

The Michigan Secretary of State currently requires individuals to provide documents that show a street residence address for the individual, and specifies that individuals may use

- Valid student ID from a Michigan school, college, or university displaying a Michigan address
- Michigan school, college, or university records containing the student's name and Michigan address such as tuition invoices, receipts, class schedules, report cards, or transcripts
- Paycheck or pay stub with the name and address of the employer (please provide the phone number of the employer if it is not listed on the document)
- A gas, water, sewer, electricity, land-line phone, or cable television (NOTE: cell phone bills are not acceptable)
- Bank statement
- Life, home, auto, or health insurance policy (no insurance binders or registration certificates. Must provide the phone number of the insurance agent if it is not listed on the document.)
- Mortgage document or rental lease agreement (please provide the phone number of the leasing agency or landlord for rental lease agreements)
- Government documents issued by federal, state, or local units of government (such as tax assessments or receipts, professional licenses)

See <http://www.michigan.gov/sos/0,1607,7-127-1627-106092--,00.html>. Many individuals who are homeless or who are staying temporarily with others because they have no money with which to pay for rent, utilities, insurance, etc. do not possess the listed documents. Although the Secretary of State has indicated some willingness to allow individuals to use a homeless shelter address, this is allowed only if the individual is residing there for an extended period of time - not if they merely receive services while living on the street. Furthermore, the Secretary of State's office has indicated that they will not issue a State ID based upon proof of residence at a domestic violence shelter unless the shelter is willing to disclose its address, which rarely is the case.

In order to ensure that Medicaid is not denied or terminated because an applicant or recipient who is a U.S. citizen is unable to produce the documents listed in 42 C.F.R. 435.407(e) as verification of identity, we urge CMS to include a provision allowing the state Medicaid agency to certify that it has obtained satisfactory documentary evidence of identity 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.

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

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement, but 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. Such copies are more difficult to obtain and more expensive. This requirement makes it more likely that health care providers will experience delays in reimbursement and increased uncompensated care.

Applicants and beneficiaries will have to make unnecessary visits to state offices with original and certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. High caseloads, staffing shortages, and the enormous volume of paper handled by the Department of Human Services offices that process Medicaid eligibility result in lost documents on a fairly frequent basis. Moreover, applicants and recipients will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards that are needed on a daily basis.

Michigan does not require individuals to appear at DHS offices at application or recertification for Medicaid, making it possible for working families, persons with disabilities, and the elderly to obtain and maintain Medicaid health care coverage. Requiring the submission of original or certified copies of documents would result in the denial or termination of Medicaid will make it much more difficult - if not impossible - for a large number of children and families to qualify for Medicaid, because they live in rural areas and lack transportation, or because their work schedules conflict with DHS office hours.

The requirement of an original or certified copy also will drive up the cost of compliance with the rule. Applicants and recipients - or the state agency on their behalf - will have to pay higher fees for obtaining official certification of documents that they may already have copies of on file.

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

Conclusion

On behalf of the low income clients that we serve who will be unable to produce the documents required by the interim final rules, or who will suffer hardship in producing the necessary documentation, we urge you to make the modifications outlined above. Unless such changes are incorporated in the final rules, we foresee significant harm to the health of the low income parents and children we serve, who will suffer delays in obtaining necessary health care, be more likely to require expensive health care, or simply be unable to access the health care they need.

Sincerely,

CENTER FOR CIVIL JUSTICE

Jacqueline Doig
Staff Attorney

Submitter : Mrs. Kathleen Murphy
Organization : Mrs. Kathleen Murphy
Category : Individual

Date: 08/01/2006

Issue Areas/Comments

GENERAL

GENERAL

I am a native-born American citizen and a graduate of an Ivy League university. Until recently, I had never even *left* the US. Yet, when I applied for a new driver's license which required similar proof of citizenship, I was left at a loss. My birth certificate was not enough. I was able to negotiate my way through the requirements because I have a university degree and I worked for a government agency. But what about all those who are entitled to benefits--especially US citizens--but who don't have my experience or literacy skills? It seems that in our rush to make sure that only the "deserving" get help from our government, we are throwing the baby out with the bathwater.

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

Date: 08/01/2006

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter : Mrs. Nanetta Phillips

Date: 08/01/2006

Organization : Mrs. Nanetta Phillips

Category : Federal Government

Issue Areas/Comments

GENERAL

GENERAL

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

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

Provisions of the Interim Final Rule with Comment Period

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

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

Date: 08/01/2006

Issue Areas/Comments

GENERAL

GENERAL

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

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

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

Shameful actions for the authors and supporters of this rule.

Also:

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

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

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

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

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

Respectfully,
Gilbert Ramos, LCSW

Submitter : Ms. nancy Poe

Date: 08/02/2006

Organization : Ms. nancy Poe

Category : Academic

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

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

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

Date: 08/02/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

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

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

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

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

At times American born children go without food stamps, because of illegal parent being afraid of being turned in to INS. Some legal immigrants are afraid this will affect the process of applying for citizenship or getting their permanent residency. This new rule will only hinder more families who are entitled to benefits.

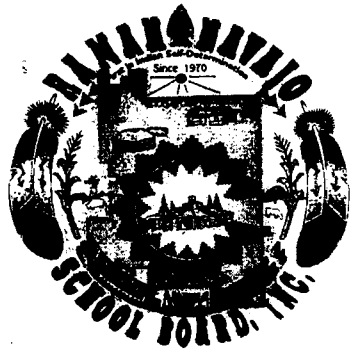
In addition there are many different problems that clients face when applying for benefits. Whether being a single parent trying to make ends meet, being disabled or elderly and not able to leave the home, not able to comprehend beyond a certain level, homebound with no computer, not having the know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

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

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

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

JUL 31 2006



RAMAH NAVAJO SCHOOL BOARD, INC

P.O. Box 10 • Pine Hill, New Mexico 87357 • (505) 775-3256 • Fax (505) 775-3240

EXECUTIVE OFFICE

July 28, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
ATTN: CMS-2257-IFC
Mail Stop C4-26-05
7500 Security Blvd.
Baltimore, Maryland 21244-1850

Re: Comments to Interim Final Rule: Medicaid Program: Citizenship
Documentation Requirements, 71 Federal Register 39214
(July 12, 2006); File Code: CMS-2257-IFC

To whom it may concern:

Thank you for the opportunity to provide comments to the interim final rule published in the July 12, 2006 *Federal Register* (Vol. 71, No. 133), amending Medicaid regulations to implement the new documentation requirements of the Deficit Reduction Act (DRA) requiring persons currently eligible for, or applying for, Medicaid to provide proof of U.S. citizenship and identity.

I am disappointed that the interim regulations do not recognize American Indian/Alaska Native tribal enrollment cards or Certificates of Degree of Indian Blood (CDIB) as legitimate documents for proof of U.S. citizenship. The June 9, 2006 State Medicaid Directors (SMD) guidance indicates that the Centers for Medicare and Medicaid Services (CMS) consulted with the CMS Tribal Technical Advisory Group (CMS/TTAG) in the development of this guidance. While American Indian/Alaska Native tribal documents and CDIBs are recognized as legitimate documents for identification purposes, the CMS/SMD guidance did not include tribal enrollment cards or CDIBs as legitimate documents for proof of citizenship. Prior to the publication of the interim regulations, the National Indian Health Board (NIHB), the CMS/TTAG, and the National Congress of American Indians (NCAI) requested the Secretary of the Department of Health and Human Services to exercise his discretion under the DRA to recognize tribal enrollment cards or CDIBs as legitimate documents of proof of citizenship in issuing the regulations. However, tribal concerns expressed by the national Indian organizations and the CMS/TTAG were not incorporated into the interim regulations.

As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, tribal governments find it:

“rather ironic that Native Americans, in the true sense of the word, must prove their U.S. citizenship through documentation other than through their Tribal documentation. This

same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution."

There are 563 federally-recognized tribes in the United States, whose tribal constitutions include provisions establishing membership in the respective tribes. The tribal constitutions, including membership provisions, are approved by the Department of the Interior. Documentation of eligibility for membership is often obtained through birth certificates, but also through genealogy charts dating back to original tribal membership rolls established by treaty or pursuant to federal statutes. The tribal membership rolls officially confer unique tribal status to receive land held in trust by the federal government, land settlements, and other benefits from the federal government. Based on heroic efforts of Indians serving in the military during World War I, the Congress in 1924 granted U.S. citizenship to members of federally-recognized tribes. To this day, tribal genealogy charts establish direct descendancy from these tribal members. With very few exceptions, federally-recognized tribes issue tribal enrollment cards or CDIBs to members and descendants of federally-recognized tribes, who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, tribal enrollment cards should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

In developing the interim regulations, CMS might have been concerned that some tribes issue enrollment cards to non-citizens and, therefore, concluded that tribal enrollment cards are not reliable documentation of U.S. citizenship for Medicaid eligibility purposes under DRA. However, members of American Indian and Alaska Native tribes, regardless of citizenship status, are already eligible for federal public benefits, including Medicaid, under exceptions to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Title IV of the PRWORA provides that with certain exceptions only U.S. citizens, non-citizen nationals, and "qualified aliens" are eligible for federal, state, and local public benefits. Pursuant to federal regulations (62 Federal Register 61344, November 17, 1997) non-citizen American Indians born outside of the United States, who either (1) were born in Canada and are at least 50% American Indian blood, or (2) who are members of a federally-recognized tribe, are eligible for Medicaid and other federal public benefits, *regardless of their immigration status*. The documentation required for purposes of the PRWORA is a membership card or other tribal document demonstrating membership in a federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. Thus, tribal membership cards issued to members of federally-recognized tribes, including non-U.S. citizen tribal members, are satisfactory proof of documentation for Medicaid eligibility purposes under the PRWORA. The documentation requirements under the DRA should be the same.

The interim regulations (42 CFR 437.407(e)(6) and (e)(8)(vi)) recognize American Indian tribal documents as proof of identity. Section 437.407(e)(9) recognizes CDIBs as evidence of identity because they include identifying information such as the person's name, tribal affiliation, and blood quantum. Since CMS already recognizes American Indian tribal documents or CDIBs as satisfactory documentation of identity, there is sufficient basis for CMS to recognize tribal CDIBs as satisfactory documentation of primary evidence of both U.S. citizenship *and* identity. The term "Native American tribal document" is found in the Department of Homeland Security (Form I-9), where Native American tribal documents suffice for identity and employment eligibility purposes. The interim regulations do not define the term 'Native American tribal

document,” but certainly tribal enrollment cards or CDIBs fall within the scope of a “Native American tribal document.”

Therefore, I recommend that section 435.407 (a) of the regulations be amended to include tribal enrollment cards or CDIBs as Tier 1 documents.

In the alternative, if CMS will not amend the regulations at 435.407(a) to include tribal enrollment cards or CDIBs as primary evidence of citizenship and identity, I recommend that the CMS recognize tribal enrollment cards or CDIBs as legitimate documents of citizenship as a Tier 2 document, secondary evidence of citizenship. The regulations only allow identification cards issued by the Department of Homeland Security to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo tribes as fourth-level evidence of citizenship. However, in light of the exception found in the PRWORA, the regulations at 435.407(b) should be amended to include tribal enrollment cards for all 563 federally-recognized tribes as secondary evidence of U.S. citizenship.

The Senate Finance Committee, in unanimously reporting out S. 3524, included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a “document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe” to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that:

“[w]ith respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection.”

S. 3524 also provides for a transition period that “until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act.” Although S. 3524 has not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

I would urge CMS to amend the interim regulations to address tribal concerns by recognizing tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2 documents.

As explained above, with very few exceptions, tribes issue enrollment cards or CDIBs to their members after a thorough documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent the Secretary has concerns that some tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

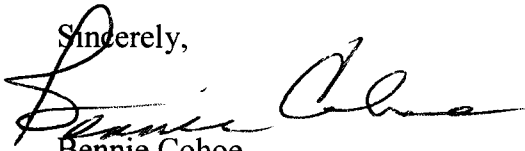
If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, AI/AN Medicaid beneficiaries might not be able to produce a birth

certificate or other satisfactory documentation of place of birth. Many traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as satisfactory documentation of U.S. citizenship, CMS is creating a barrier to AI/ANs access to Medicaid benefits.

As you know, the Indian health care programs operated by IHS, tribes, tribal organizations and urban Indian organizations, as well as public and private hospitals that provide services to AI/ANs, are dependent on Medicaid reimbursements to address extreme health care disparities of the AI/AN population compared to the U.S. population. Recognizing tribal enrollment cards or CDIBs as sufficient documentation of U.S. citizenship will benefit not only Indian health care programs, but all of the health care providers located near Indian country that provide services to AI/AN Medicaid beneficiaries.

Thank you for your consideration of my comments.

Sincerely,



Bennie Cohoe
Executive Director

cc: New Mexico Congressional Delegation
NIHB
RNSB Board of Trustees
Carolyn Finster, Pine Hill Health Center Administrator
Sam Alonzo, Sr., Superintendent
Chrono & EO Files

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES AUG - 1 2006



BRIAN SCHWEITZER
GOVERNOR

JOAN MILES
DIRECTOR

STATE OF MONTANA

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HUMAN AND COMMUNITY SERVICES DIVISION
PO BOX 202925
HELENA, MT 59620-2925

July 18, 2006

To: Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
PO Box 8017
Baltimore, MD 21244-8107

From: John Chappuis *John Chappuis*
Director, Montana Medicaid

Linda Snedigar *Linda Snedigar*
Supervisor, Montana Medicaid Eligibility

Re: Comments on the Interim Final Rule for Citizenship Documentation Requirements

The Montana Department of Public Health and Human Services submits these comments regarding the Citizenship and Identity Documentation Requirements, file code CMS-2257-IFC.

We commend CMS for determining there was a scrivener's error and that SSI and Medicare recipients are exempt from both the citizenship and identity requirements. We would request that Foster Care and Subsidized Adoption Medicaid recipients be treated similarly and also be exempt since they are an equally vulnerable population for whom someone else (the IV-E agency) has already determined eligibility.

We believe that the documentation lists are too restrictive, particularly in regards to Native Americans. Our experience has been that tribal enrollment records are extremely accurate and can be used to document citizenship. This would be helpful particularly for the oldest Native American recipients who may have been born at home and don't have birth certificates, don't have enough work quarters to qualify for Medicare, and have never received SSI.

Montana has always verified citizenship and we believe that we should be allowed to continue our practice of using the "preponderance of evidence" in the rare situations where exhaustive research has been done and everything points to citizenship but there

are none of the listed documents in existence. An affidavit from persons familiar with the participant's circumstances may serve this purpose under the current interim rules but we believe the "preponderance of evidence" option should be included. This has not, in our experience, been proven later to provide a determination in error in regards to citizenship.

Montana has used a duplicate of the information sent from the hospitals to the State's Vital Records Bureau for registering births to prove the citizenship of infants. We believe this should be added to the list of allowable documents.

We believe the "reasonable opportunity" period needs to be at least 90 days in length, due to the delay in receiving birth certificates from other states. We also believe that we should be allowed to request copies of documentation from another state's Medicaid agency and to consider them verified without being placed at-risk. This would relieve some of the burden on both recipients and state agencies.

The requirement for a picture ID is problematic for some populations. While allowing SSI or Medicare receipt to serve as identity verification is helpful to most of the nursing home population, there are still some elderly who are not eligible for either. This group plus the younger adults who may have been chronically ill or brain injured since an early age and who have not received SSI or Medicare are also not likely to ever have had a picture ID. We would recommend that an identity affidavit is an option for this group of adults as it is for children, or that the facility medical records including a picture be acceptable as identity verification.

AUG - 1 2006

To: Office of Legislation

Fr: Meredith Sumpter, Health Advisor to Senator Lisa Murkowski

July 18, 2006

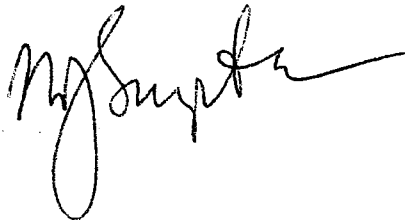
I have enclosed for the HHS and CMS offices of legislations' consideration a suggestion that would address the challenges the proposed Medicaid citizenship documentation guidelines present to Alaska Natives.

Under the 'Documentary Evidence' guidance presented to Congress last week, HHS might include within the fourth bullet point of acceptable fourth level documentation to verify proof of citizenship the roll of persons on the Alaska Native Claims Settlement Act (ANCSA). The ANCSA roll is limited by federal law to persons who are U.S. citizens. As such, ANCSA enrollees are already receiving federal health benefits designated for American Indians and Alaska Natives.

I have included in this fax 43 USC Sec. 1604, which sets in statute the ANCSA enrollment, and 43 USC Sec. 1602, which clearly defines "Natives" on the ANCSA roll as citizens of the U.S.

While this suggested change would not address the citizenship documentation concerns of many American Indian tribes -- concerns that should be addressed -- Senator Murkowski hopes Secretary Leavitt will consider adding the ANCSA roll to the list of acceptable citizenship documentation.

Please call me should you have any questions: 202 228 3099.



LISA MURKOWSKI

ALASKA

MAJORITY DEPUTY WHIP

COMMITTEES:

ENERGY AND NATURAL RESOURCES

CHAIRMAN, SUBCOMMITTEE ON
WATER AND POWER

FOREIGN RELATIONS

CHAIRMAN, SUBCOMMITTEE ON
EAST ASIAN AND PACIFIC AFFAIRS

ENVIRONMENT AND PUBLIC WORKS

INDIAN AFFAIRS

The Honorable Michael Leavitt
Secretary

Health & Human Services

200 Independence Avenue, S.W.

Washington, D.C. 20201

United States Senate

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June 30, 2006

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(907) 543-1639

Dear Mr. Secretary:

I write to express my concern that the Department's current interpretation of Section 6036(b) of the Deficit Reduction Act of 2005 will not allow the States to consider evidence of eligibility for programs and services that the federal government makes available to our Native people in determining eligibility for Medicaid. This will unjustly require that my State of Alaska and other states declare Native people who have historically received Medicaid benefits ineligible for the program simply because they cannot produce the proper documents. I urge the Department to issue additional guidance that allows tribal enrollment documentation to be used to establish citizenship and identity for persons applying for Medicaid.

Virtually all Alaska Natives with a blood quantum of $\frac{1}{4}$ or more alive on December 17, 1971, who are citizens of the United States, were enrolled by the US Department of the Interior to participate in the Alaska Native Claims Settlement Act and their names appear on an official federal roll. Moreover, many if not all Alaska Natives and their eligible descendants possess Certificates of Indian blood which are required to access the Alaska Native health care delivery system.

I am deeply troubled that the Department's present interpretation of Section 6036(b) will not allow any of this official government information to be utilized in determining eligibility for Medicaid even though Section 6036(b) affords you significant discretion in permitting alternative documentation to be used for purposes of establishing nationality and identity.

I would urge that you consult with our federally recognized Indian tribes and with your own Intradepartmental Council on Native American Affairs (ICNAA) to determine whether the very same documentation used to establish eligibility for federal Indian programs can be relied upon by the States to establish eligibility for Medicaid. I fear that the financial stability of our Indian health care delivery system as well as the health of our Native people will be jeopardized if we continue down the present path.

I thank you for your consideration of this request, and look forward to continuing to work with you to improve our nation's access to health care.

Sincerely,



Lisa Murkowski
United States Senator

HOME PAGE AND WEB MAIL

MURKOWSKI.SENATE.GOV

See Pg. 3

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Room 352-G
200 Independence Avenue, SW
Washington, DC 20201



Public Affairs Office

MEDICAID FACT SHEET

July 06, 2006

Contact: CMS Public Affairs
(202) 690-6145

HHS ISSUES FINAL REGULATIONS WITH COMMENT ON CITIZENSHIP GUIDELINES FOR MEDICAID ELIGIBILITY

Overview of New Requirements on Citizenship Documentation for Medicaid Benefits

On July 06, 2006 HHS placed on display at the Federal Register interim final regulations to be published July 12, 2006 for states to implement a new requirement. Effective July 1, persons applying for Medicaid must document their citizenship. The new documentation requirement is outlined in Section 6036 of the Deficit Reduction Act of 2005 (DRA) and is intended to ensure that Medicaid beneficiaries are citizens without imposing undue burdens on them or the states.

Recognizing the diversity of beneficiaries served by Medicaid, the regulations provide for a range of ways that citizenship status and personal identity may be documented. Because seniors and people with a disability who receive Medicare or Supplemental Security Income already have met certain documentation requirements, the regulation does not include new documentation requirements for these groups. This exemption reflects the special treatment of these groups in the statute, implying that they should be exempt from additional documentation requirements.

For all other individuals, in addition to the range of documents outlined in the regulation, states can also document citizenship and identity through data matches with government agencies. Additional types of documentation, such as school records, may also be used for identity of children. If other forms of documentation cannot be obtained, documentation may be provided by a written affidavit, signed under penalty of perjury, from two citizens, one of whom cannot be related to the applicant or recipient, who have specific knowledge of a beneficiary's citizenship status. Applicants or recipients must also submit an affidavit stating why the documents are not available. Affidavits are only expected to be used in rare circumstances. Current beneficiaries should not lose benefits during the period in which they are undertaking a good-faith effort to provide documentation to the state.

The interim final regulations match most of the guidance that was provided to State Medicaid Directors on June 9, 2006. Comments from the public will be accepted through August 11, 2006.

American citizenship or legal immigration status has always been a requirement for Medicaid eligibility; however, beneficiaries could assert their status by checking a box on a form. The DRA requires actual documentary evidence before Medicaid eligibility is granted or renewed beginning July 1, 2006. The provision requires that a person provide both evidence of citizenship and identity. In many cases, a single document will be enough to establish both citizenship and identity such as a passport. However, if secondary documentation is used, such as a birth certificate, the individual will also need evidence of their identity. Once citizenship has been proven, it need not be documented again with each eligibility renewal unless later evidence raises a question.

Guidance Details

Documentary Evidence

The law specifies certain forms of acceptable evidence of citizenship and identity, and provides for the use of additional forms of documentation as established by federal regulations, when appropriate. Today's regulations outline acceptable additional forms of documentary evidence.

The regulations adopt a hierarchical approach already in use by other programs in which documentary evidence of citizenship and identity is sought first from a list of primary documents. If an applicant or recipient presents evidence from the listing of primary documentation, no other information would be required. When such evidence cannot be obtained, the state will look to the next tier of acceptable forms of evidence.

In particular, the following forms of documentation may be accepted:

- Acceptable primary documentation for identification and citizenship:
 - A U.S. Passport.
 - A Certificate of Naturalization (DHS Forms N-550 or N-570).
 - A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561).
- Acceptable secondary documentation to verify proof of citizenship (an identity document is also required):
 - A U.S. birth certificate (data matches with a State Vital Statistics Agency may be used in place of a birth certificate, at the State's option).
 - A Certification of birth issued by the Department of State (Form DS-1350).
 - A Report of Birth Abroad of a U.S. Citizen (Form FS-240).
 - A Certification of Birth Abroad (FS-545).
 - A U.S. Citizen I.D. card (DHS Form I-197).
 - An American Indian Card issued by the Department of Homeland Security with the classification code "KIC". (Issued by DHS to identify U.S. citizen members of the Texas Band of Kickapooos living near the U.S./Mexican border).
 - Final adoption decree

- Evidence of civil service employment by the U.S. government before June 1976,
- An official military record of service showing a U.S. place of birth
- A Northern Mariana Identification Card. (Issued by the INS to a collectively naturalized citizen of the United States who was born in the Northern Mariana Islands before November 4, 1986).
- Acceptable third level documentation to verify proof of citizenship:
 - Extract of U.S. hospital record of birth established at the time of the person's birth and was created at least 5 years before the initial application date and indicates a U.S. place of birth.
 - Life or health or other insurance record showing a U.S. place of birth and was created at least 5 years before the initial application date.
- Acceptable fourth level documentation to verify proof of citizenship:
 - Federal or State census record showing U.S. citizenship or a U.S. place of birth.
 - Institutional admission papers from a nursing home, skilled nursing care facility or other institution and was created at least 5 years before the initial application date and indicates a U.S. place of birth.
 - Medical (clinic, doctor, or hospital) record and was created at least 5 years before the initial application date and indicates a U.S. place of birth unless the application is for a child under 5.
 - Other document that was created at least 5 years before the application for Medicaid. These documents are Seneca Indian tribal census record, Bureau of Indian Affairs tribal census records of the Navaho Indians, U.S. State Vital Statistics official notification of birth registration, an amended U.S. public birth record that is amended more than 5 years after the person's birth or a statement signed by the physician or midwife who was in attendance at the time of birth.
 - Written affidavit. Written affidavits may be used only in rare circumstances when the state is unable to secure evidence of citizenship from another listing. If the documentation requirement needs to be met through affidavits, the following rules apply: There must be at least two affidavits by individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit). At least one of the individuals making the affidavit cannot be related to the applicant or recipient and cannot be the applicant or recipient. In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity. If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well. The State must obtain a separate affidavit from the applicant/recipient or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained. The affidavits must be signed under penalty of perjury.
- Acceptable documentation to verify proof of identity:
 - A current state driver's license bearing the individual's picture or State identity document also with the individual's picture.
 - Certificate of Indian Blood, or other U.S. American Indian/Alaska Native tribal document.

ANCSA
Roll included
here



- A school identification card with a photograph of the individual.
- U.S. military card or draft record.
- Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.
- Military dependent's identification card.
- Native American Tribal document.
- U.S. Coast Guard Merchant Mariner card.
- Data matches with other agencies can be used to verify identity such as those with Federal or State governmental, public assistance, law enforcement, or corrections agencies, at the State's option. Such agencies may include food stamps, child support, corrections, including juvenile detention, motor vehicle, or child protective services.
- For Children under 16, an Affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

Driver's License Documentation to Establish Both Citizenship and Identification

Section 6036(a)(3)(B)(iv) of the DRA permits the use of a valid state-issued driver's license or other identity document described in Section 274A(b)(1)(D) of the Immigration and Nationality Act, but only if the state issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a Social Security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen. CMS is not currently aware that any state has these processes in place at this time. Therefore, until such time that a state has this requirement in place, this documentation may not be accepted.

Reasonable Opportunity

At the time of application or redetermination, the state must give an applicant or recipient a "reasonable opportunity" to present documents establishing U.S. citizenship or nationality and identity. The guidance advises:

- An individual who is already enrolled in Medicaid will remain eligible if he/she continuously shows a good faith effort to present satisfactory evidence of citizenship and identity.
- Applicants for Medicaid should not be made eligible until they have presented the required evidence.
- If the applicant or recipient tries in good faith to present satisfactory documentation, but is unable because the documents are not available, the state should assist the individual in securing these documents.
- If the applicant or recipient cannot obtain the necessary documents and needs assistance (i.e., is homeless, mentally impaired, or physically incapacitated), and lacks someone who can act on their behalf, then the state must assist the applicant or recipient to document U.S. citizenship and identity.

Compliance

As with other Medicaid program requirements, states must implement an effective process for assuring compliance with documentation of citizenship in order to obtain federal matching funds, and effective compliance will be part of Medicaid program integrity monitoring. In particular, audit processes will track the extent to which states rely on more indirect (third and fourth level) categories of documentation, and on affidavits, with the expectation that such categories would be used relatively infrequently and less over time, as state processes and beneficiary documentation improves.

States will receive the normal 50 percent match for administrative expenses related to implementation of the new law.

Outreach

The Centers for Medicare & Medicaid Services, the agency that oversees the Medicaid program, has launched an outreach program to educate states and interested groups about the new requirement. These outreach efforts include presentations to interested groups and tools that states may use to help applicants and recipients understand the requirement. The tools include talking points, questions and answers, a sample press release, drop-in article and lists of acceptable documents. The agency will also work closely with states to help them reach out to their current Medicaid enrollees and the general public outlining the new rules. CMS has already begun to hold training sessions with state officials including regular telephone consultations during which the agency provides whatever technical assistance the states request. CMS has also provided speakers at national conferences of interested groups such as tribal organizations and advocacy groups for minority communities.

For more information about the citizenship documentation requirement, go to:

http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp#TopOfPage

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43 USC Sec. 1604

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS

CHAPTER 33 - **ALASKA NATIVE** CLAIMS SETTLEMENT

-HEAD-

Sec. 1604. Enrollment

-STATUTE-

(a) Eligible **Natives**; finality of decision

The Secretary shall prepare within two years from December 18, 1971, a **roll** of all **Natives** who were born on or before, and who are living on, December 18, 1971. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) Residence; order of priority in enrollment of **Natives** not permanent residents; regional family or hardship enrollment

The **roll** prepared by the Secretary shall show for each **Native**, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c) of this section, a **Native** eligible for enrollment who is not, when the **roll** is prepared, a permanent resident of one of the twelve regions established pursuant to section 1606(a) of this title shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to -

(1) the region where the **Native** resided on the 1970 census date if he had resided there without substantial interruption for two

or more years;

(2) the region where the **Native** previously resided for an aggregate of ten years or more;

(3) the region where the **Native** was born; and

(4) the region from which an ancestor of the **Native** came: (!1)

The Secretary may enroll a **Native** in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) Election of enrollment in thirteenth region, if established, of **Native** nonresidents; dependent household members as bound

A **Native** eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for **Natives** who are non-residents of **Alaska**, if such region is established pursuant to section 1606(c) of this title. If such region is not established, he shall be enrolled as provided in subsection (b) of this section. His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.

-SOURCE-

(Pub. L. 92-203, Sec. 5, Dec. 18, 1971, 85 Stat. 690.)

-MISC1-

LATE ENROLLMENT OF OTHERWISE QUALIFIED **NATIVES**

Pub. L. 94-204, Sec. 1, Jan. 2, 1976, 89 Stat. 1145, provided:

"That (a) the Secretary of the Interior (hereinafter in this Act [enacting sections 1625 to 1627 of this title, amending sections 1615, 1616, 1620, and 1621 of this title, and enacting provisions set out as notes under sections 1604, 1605, 1611, 1613, 1618, and

1625 of this title] referred to as the 'Secretary') is directed to review those applications submitted within one year from the date of enactment of this Act [Jan. 2, 1976] by applicants who failed to meet the March 30, 1973, deadline for enrollment established by the Secretary pursuant to the **Alaska Native** Claims Settlement Act (hereinafter in this Act referred to as the 'Settlement Act') [this chapter], and to enroll those **Natives** under the provisions of that Act who would have been qualified if the March 30, 1973, deadline had been met: Provided, That **Natives** enrolled under this Act shall be issued stock under the Settlement Act together with a pro rata share of all future distributions under the Settlement Act which shall commence beginning with the next regularly scheduled distribution after the enactment of this Act: Provided further, That land entitlement of any **Native** village, **Native** group, Village Corporation, or Regional Corporation, all as defined in such Act, shall not be affected by any enrollment pursuant to this Act, and that no tribe, band, clan, group, village, community, or association not otherwise eligible for land or other benefits as a '**Native** village', as defined in such Act, shall become eligible for land or other benefits as a **Native** village because of any enrollment pursuant to this Act: Provided further, That no tribe, band, clan, village, community, or village association not otherwise eligible for land or other benefits as a '**Native** group', as defined in such Act, shall become eligible for land or other benefits as a **Native** group because of any enrollment pursuant to this Act: And provided further, That any '**Native** group', as defined in such Act, shall not lose its status as a **Native** group because of any enrollment pursuant to this Act.

"(b) The Secretary is authorized to poll individual **Natives** properly enrolled to **Native** villages or **Native** groups which are not

recognized as Village Corporations under section 11 of the Settlement Act [section 1610 of this title] and which are included within the boundaries of former reserves the Village Corporation or Corporations of which elected to acquire title to the surface and subsurface estate of said reserves pursuant to subsection 19(b) of the Settlement Act [section 1618(b) of this title]. The Secretary may allow these individuals the option to enroll to a Village Corporation which elected the surface and subsurface title under section 19(b) or remain enrolled to the Regional Corporation in which the village or group is located on an at-large basis: Provided, That nothing in this subsection shall affect existing entitlement to land of any Regional Corporation pursuant to section 12(b) or 14(h) (8) of the Settlement Act [section 1611(b) or 1613(h) (8) of this title].

"(c) In those instances where, on the **roll** prepared under section 5 of the Settlement Act [this section], there were enrolled as residents of a place on April 1, 1970, a sufficient number of **Natives** required for a **Native** village or **Native** group, as the case may be, and it is subsequently and finally determined that such place is not eligible for land benefits under the Act on grounds which include a lack of sufficient number of residents, the Secretary shall; in accordance with the criteria for residence applied in the final determination of eligibility, redetermine the place of residence on April 1, 1970, of each **Native** enrolled to such place, and the place of residence as so redetermined shall be such **Native's** place of residence on April 1, 1970, for all purposes under the Settlement Act: Provided, That each **Native** whose place of residence on April 1, 1970, is changed by reason of this subsection shall be issued stock in the **Native** corporation or corporations in which such redetermination entitles him to membership and all stock

issued to such **Native** by any **Native** Corporation in which he is no longer eligible for membership shall be deemed canceled: Provided further, That no redistribution of funds made by any **Native** Corporation on the basis of prior places of residence shall be affected: Provided further, That land entitlements of any **Native** village, **Native** group, Village Corporation, Regional Corporation, or corporations organized by **Natives** residing in Sitka, Kenai, Juneau, or Kodiak, all as defined in said Act, shall not be affected by any determination of residence made pursuant to this subsection, and no tribe, band, clan, group, village community, or association not otherwise eligible for land or other benefits as a '**Native** group' as defined in said Act, shall become eligible for land or other benefits as a **Native** group because of any redetermination of residence pursuant to this subsection: Provided further, That any distribution of funds from the **Alaska Native** Fund pursuant to subsection (c) of section 6 of the Settlement Act [section 1605(c) of this title] made by the Secretary or his delegate prior to any redetermination of residency shall not be affected by the provisions of this subsection. Each **Native** whose place of residence is subject to redetermination as provided in this subsection shall be given notice and an opportunity for hearing in connection with such redetermination as shall any **Native** Corporation which it appears may gain or lose stockholders by reason of such redetermination of residence."

ESTABLISHMENT BY COURT ORDER OF 13TH REGIONAL CORPORATION FOR
BENEFIT OF NONPERMANENT RESIDENTS; LAND SELECTION ENTITLEMENTS;
PREVIOUSLY ISSUED STOCK; ELECTION FOR ENROLLMENT; LAND ENTITLEMENTS
OF CORPORATIONS OR **NATIVE** VILLAGE OR GROUP ELIGIBILITY

Pub. L. 94-204, Sec. 8, Jan. 2, 1976, 89 Stat. 1149, provided
that:

"(a) Notwithstanding the October 6, 1975, order of the United States District Court for the District of Columbia in the case of **Alaska Native** Association of Oregon et al. against Rogers C. B. Morton et al., Civil Action Numbered 2133-73, and **Alaska** Federation of **Natives** International, Inc., et al. against Rogers C. B. Morton, et al., Civil Action Numbered 2141-73 (- F. Supp. -) [417 F. Supp. 459], changes in enrollments of any **Alaska** Regional or Village Corporation nor any **Native** village or group eligibility.

"(b) Stock previously issued by any of the twelve Regional Corporations in **Alaska** or by Village Corporations to any **Native** who is enrolled in the thirteenth region pursuant to said order shall, upon said enrollment, be canceled by the issuing corporation without liability to it or the **Native** whose stock is so canceled: Provided, That, in the event that a **Native** enrolled in the thirteenth region pursuant to said order shall elect to re-enroll in the appropriate Regional Corporation in **Alaska** pursuant to the sixth ordering paragraph of that order, stock of such **Native** may be canceled by the Thirteenth Regional Corporation and stock may be issued to such **Native** by the appropriate Regional Corporation in **Alaska** without liability to either corporation or to the **Native**.

"(c) Whenever additional enrollment under the Settlement Act [this chapter] is permitted pursuant to this Act [enacting sections 1625 to 1627 of this title, amending sections 1615, 1616, 1620, and 1621 of this title, and enacting provisions set out as notes under sections 1604, 1605, 1611, 1613, 1618, and 1625 of this title] or any other provision of law, any **Native** enrolling under such authority who is determined not to be a permanent resident of the State of **Alaska** under criteria established pursuant to the Settlement Act shall, at the time of enrollment, elect whether to be enrolled in the thirteenth region or in the region determined

pursuant to the provisions of section 5(b) of such act [section 1604(b) of this title] and such election shall apply to all dependent members of such **Native's** household who are less than eighteen years of age on the date of such election.

"(d) No change in the final **roll** of **Natives** established by the Secretary pursuant to section 5 of the Settlement Act [section 1604 of this title] resulting from any regulation promulgated by the Secretary of the Interior providing for the disenrollment of **Natives** shall affect land entitlements of any Regional or Village Corporation or any **Native** village or group eligibility."

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1605, 1606 of this title.

-FOOTNOTE-

(!1) So in original. The colon probably should be a period.



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43 USC Sec. 1602

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS

CHAPTER 33 - ALASKA NATIVE CLAIMS SETTLEMENT

-HEAD-

Sec. 1602. Definitions

-STATUTE-

For the purposes of this chapter, the term -

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla (!) Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census

enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(d) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(e) "Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(f) "State" means the State of Alaska;

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this chapter;

(h) "Person" means any individual, group, firm, corporation, association, or partnership;

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this chapter. (!2)

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 1605 of this title;

(l) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 1616 of this title;

(m) "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Group Corporation;

(n) "Group Corporation" means an Alaska Native Group Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of a Native group in accordance with the terms of this chapter;

(o) "Urban Corporation" means an Alaska Native Urban Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this chapter;

(p) "Settlement Common Stock" means stock of a Native Corporation issued pursuant to section 1606(g)(1) of this title that carries with it the rights and restrictions listed in section 1606(h)(1) of this title;

(q) "Replacement Common Stock" means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to section 1606(h)(3) of this title;

(r) "Descendant of a Native" means -

(1) a lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

(2) an adoptee of a Native or of a descendant of a Native,
whose adoption -

(A) occurred prior to his or her majority, and

(B) is recognized at law or in equity;

(s) "Alienability restrictions" means the restrictions imposed on
Settlement Common Stock by section 1606(h)(1)(B) of this title;

(t) "Settlement Trust" means a trust -

(1) established and registered by a Native Corporation under
the laws of the State of Alaska pursuant to a resolution of its
shareholders, and

(2) operated for the benefit of shareholders, Natives, and
descendants of Natives, in accordance with section 1629e of this
title and the laws of the State of Alaska.

-SOURCE-

(Pub. L. 92-203, Sec. 3, Dec. 18, 1971, 85 Stat. 689; Pub. L.
96-487, title XIV, Sec. 1401(d), Dec. 2, 1980, 94 Stat. 2492; Pub.
L. 100-241, Sec. 3, Feb. 3, 1988, 101 Stat. 1789; Pub. L. 106-194,
Sec. 3, May 2, 2000, 114 Stat. 243.)

-REFTEXT-

REFERENCES IN TEXT

Section 6(g) of the Alaska Statehood Act, as amended, referred to
in subsec. (e), is section 6(g) of Pub. L. 85-508, July 7, 1958, 72
Stat. 339, which is set out as a note preceding section 21 of Title
48, Territories and Insular Possessions.

-MISC1-

AMENDMENTS

2000 - Subsec. (t)(2). Pub. L. 106-194 substituted "benefit of
shareholders, Natives, and descendants of Natives," for "sole
benefit of the holders of the corporation's Settlement Common
Stock".

1988 - Subsec. (h). Pub. L. 100-241, Sec. 3(1), inserted "group," after "individual,".

Subsec. (k). Pub. L. 100-241, Sec. 3(2), struck out "and" at end.

Subsec. (l). Pub. L. 100-241, Sec. 3(3), substituted semicolon for period.

Subsec. (m). Pub. L. 100-241, Sec. 3(4), substituted "Group Corporation;" for "Native Group."

Subsecs. (n) to (t). Pub. L. 100-241, Sec. 3(5), added subsecs. (n) to (t).

1980 - Subsec. (m). Pub. L. 96-487 added subsec. (m).

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1615, 1626, 1641 of this title; title 15 section 632; title 16 sections 470w, 620e, 1722, 3102; title 20 sections 2326, 7546; title 25 sections 13f, 472a, 1903, 2012, 3103; title 26 section 646; title 29 section 2911; title 38 section 3764; title 42 sections 300f, 6949a, 9832, 10101, 12511, 12584; title 45 section 1202. .

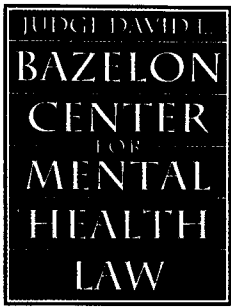
-FOOTNOTE-

(!1) So in original. Probably should be "Metlakatla".

(!2) So in original. The period probably should be a semicolon.



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July 19, 2006

AUG - 1 2006

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

Dear Mr. McClellan:

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of the Bazelon Center for Mental Health Law. The Bazelon Center is a legal advocacy organization, based in Washington D.C., concerned with the rights of persons with mental illness.

1. Delay in establishing eligibility for Medicaid (§436.1004)

Individuals who apply for Medicaid and have met all of the other eligibility requirements and are cooperating and diligently working to prove their citizenship should be covered under the program. Given that obtaining the required documents may take considerable time for some people, and given that the vast majority of applicants will be citizens or lawful immigrants, delaying their coverage for this paperwork is inappropriate.

Yet while the rule permits those already on the program to remain eligible while documentation is gathered, this same rule does not apply to new applicants. There is no good reason for this distinction, and we urge that all applicants who meet other requirements be covered, and that they be given a reasonable period of time in which to complete the citizenship requirements.

2. Application of the rule to children in foster care (§435.1008)

We strongly oppose the provisions in the final rule that would apply the citizenship rule to children entering foster care. These children have already

suffered at the hands of adults and to deny them access to medical care until their citizenship can be proved is unconscionable. Few will be found not to be either citizens or legal immigrants, but for some potentially lengthy period of time they will have no Medicaid coverage under this rule.

It will not be easy for states to find the necessary documentation to make these children eligible, given that their birth families may not cooperate. Moreover, states already verify citizenship of about half of the children in foster care when they determine them eligible for federal foster care payments. Yet the regulations require citizenship to be proven again.

3. Gaps in the exemptions (§435.1008)

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

In addition, other individuals have also already proved their citizenship, including TANF families and children and S-CHIP applicants and recipients who get OASDI survivor, retirement and disability auxiliary benefits from SSA, and those whose citizenship has been verified by SSA for early age 62 retirement, age 60 widows or widower OASDI beneficiaries.

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

4. Documentation Dates (§435.407(c)& (d) and §436.407(c) and (d)—third and fourth level evidence)

There is no rationale for a requirement that certain documents are only considered valid if issued at least five years before the application for Medicaid. This is an entirely arbitrary date that may cause significant hardship, particularly if the individual is unable to secure such old records.

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

5. Evidence of identity (§435.407(e) and §436.407(e))

CMS should cite the state mental health authority among the state agencies' data systems with which a cross match may be made. Individuals with serious mental illness are likely to be among those who have great difficulty obtaining the necessary documents due to functional issues, and, in addition, the stress of this process could trigger relapse. Therefore

every effort should be made for making this process as easy as possible for such individuals. State mental health agencies and the community providers who serve this population will have medical records and other data bases that enable confirmation of identity.

6. Populations needing special assistance (§435.407(g) and §436.407(g))

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

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

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

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

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

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

8. Outreach

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

9. Presumptive eligibility groups

The proposed rule does not specifically make it clear that those who meet presumptive eligibility standards are still presumptively eligible, regardless of the status of their proof of

citizenship. This should be rectified, or the presumptive eligibility categories will have little meaning.

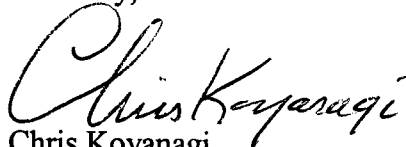
10. Rules apply across states (§435.407(h) and §436.407(h))

We applaud CMS for clarifying that this process need only be gone through once. However, it is also not completely clear that once these documents have been procured and citizenship status has been proved that this is sufficient not only for future eligibility determinations in that state, but across all states.

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

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

Sincerely,

A handwritten signature in cursive script that reads "Chris Koyanagi". The signature is written in black ink and is positioned above the printed name and title.

Chris Koyanagi
Policy Director



Mitchell H. Katz, MD
Director of Health

AUG - 1 2006

July 21, 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: File Code CMS-2257-IFC

To Whom it May Concern:

The San Francisco Department of Public Health (SFDPH) submits this comment letter in response to the CMS interim final rule issued on July 6 regarding Section 6036 of the Deficit Reduction Act (DRA). According to Section 6036 of the DRA, all U.S. citizens applying for Medicaid (known as Medi-Cal in California) or renewing eligibility, must prove their citizenship using appropriate documentation. SFDPH appreciates the opportunity to comment on the interim final rule on this topic, and hopes that these comments and recommendations will be taken into account before the final rule is produced.

SFDPH provides health care in San Francisco to a significant number of Medi-Cal beneficiaries. San Francisco General Hospital (SFGH), the publicly-owned long-term care facility Laguna Honda Hospital (LHH), and the primary care clinics in SFDPH's Community Health Network comprise San Francisco's safety net, and Medicaid is their primary source of income. As of October 2005, there were 122,873 Medi-Cal enrollees in San Francisco. SFGH served 39,942 Medi-Cal enrolled patients in 2005, representing 41 percent of all patients served. The vast majority of patients residing at LHH at any given time are enrolled in Medi-Cal (over 90%), currently representing approximately 963 patients. Any changes to Medicaid that limit or delay enrollment for eligible U.S. citizens and legal immigrants threatens the financial viability of these institutions, negatively impacting access to care for the vulnerable populations accessing care through the public safety net.

Proof-of-Citizenship Documentation

The interim final rule lists acceptable documents that Medi-Cal beneficiaries and recipients are required to produce as proof of citizenship. The list is a hierarchy of documentation, including 4 tiers of proof of citizenship and 1 tier of proof of identity. States are instructed to ask for documents at the highest level of reliability before accepting a document of lesser reliability. Individuals are given a "reasonable opportunity period" to secure the documents. This means that applicants unable to obtain documents in the higher tiers could take months until being allowed to produce acceptable and available documentation in one of the lower tiers. This hierarchy of documents is rigid and complex and will be burdensome for states to implement and difficult for applicants and beneficiaries to understand.

SFDPH recommends that the final rule grant states more flexibility and discretion in implementing the DRA requirements by eliminating or simplifying the “tiered” approach to citizenship documentation.

Proof of Citizenship Documentation as a Requirement for Eligibility

The interim final rule requires that applicants remain ineligible for Medicaid while beneficiaries retain eligibility throughout this documentation process. According to Section 6036 of the DRA, the proof of citizenship requirement was not a condition of eligibility. As described in the preceding section, this process could take a significant amount of time especially for those that have to rely on the lower tiers of documentation. As individuals are increasingly encouraged for the good of their own health and because it makes sense financially, to seek preventive care and because health coverage makes this possible, it does not make sense to delay health coverage while people obtain adequate paperwork to prove citizenship and identity.

SFDPH recommends that the proof of citizenship requirement be separated from eligibility, allowing both current beneficiaries and new enrollees who are eligible for Medicaid be enrolled while these documents are pending during the “reasonable opportunity period.”

Electronic Data Matches

SFDPH was pleased to see that counties may verify citizenship by using SDX or state vital statistics agencies in place of a birth certificate for Medicaid applicants or recipients. However, SFDPH is concerned that this does not cover the range of important data that is now, or will be in the future, available. SFDPH believes that county agencies should do everything in their power to access information on behalf of applicants and recipients instead of requiring paper documents, especially in this age of increasing technology. For example, since driver’s licenses are acceptable forms of documentation in both tier one (for proof of citizenship when the state requires proof of citizenship before the driver’s license is issued) and tier five (for proof of identity), Medicaid agencies should be able to develop a way to work with Departments of Motor Vehicles to share information. Technological solutions are more accurate and less costly than relying on a paper-based system.

SFDPH recommends that states and localities be allowed, and even encouraged, to electronically document citizenship as a first step in the process, not a last case scenario. In addition, SFDPH recommends that states are encouraged to develop additional data matches with state and county agencies to verify citizenship.

Requiring Documentation for Children Receiving Title IV-E Benefits

The interim final rule requires Title IV-E children receiving Medicaid to have proof of citizenship documents in their Medicaid file. As noted by the Center on Budget and Policy Priorities, this requirement ignores the “longstanding linkage between Medicaid and foster care and forces state Medicaid agencies to duplicate the work of state child welfare agencies by documenting the citizenship of children whose citizenship (or legal status) has already been verified.” SFDPH recommends that these children be exempted from the proof of citizenship requirements.

SFDPH recommends that CMS allow states discretion to broaden the list of public benefit programs whose beneficiaries are exempt from the DRA’s citizenship verification requirements, including at least Title IV-E beneficiaries (foster children).

Original Documents or Copies Certified by the Issuing Agency

Providing original or certified documents is not practical, and would force states to spend more time and resources obtaining documents from government agencies and encourage families to part with personal records best kept in their own possession.

SFDPH recommends that CMS permit states to accept copies of citizenship documents.

Providing Assistance in Securing Documentation

The interim final rule indicates that states “should assist” applicants and beneficiaries in obtaining citizenship documents. In the case of special populations (including homeless, mentally impaired and other individuals), states “must assist.” In the case of special populations, states are required to assist when these individuals have no one to act for them and are not able to locate the documentation.

SFDPH recommends that CMS encourage agencies to assist all individuals in obtaining documentation and also require them to assist vulnerable populations at the beginning of the application process (not after the individuals have themselves tried and failed).

Outreach and Other Funding/Billing Issues

This extra burden of this new requirement will be felt among enrollees, current beneficiaries and Medicaid enrollment agencies. Because of this, educational efforts will be important as will reimbursement for these efforts and the work done by eligibility workers to obtain proper documentation. While the State Medicaid Directors Letter (SMDL), distributed by CMS on June 9, encourages states to educate beneficiaries and potential applicants about the changes, there are many issues still unresolved, making accurate educational efforts difficult at this time. The SMDL only mentions an outreach plan and the availability of federal financial participation for state administrative costs, with no detail about either issue.

SFDPH recommends that CMS allocate funds to states for outreach, education and application assistance related to DRA implementation.

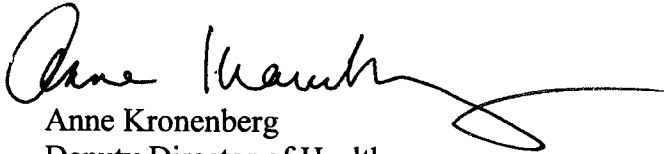
Length of Time to Produce Documents

The interim final rule estimates that it will take individuals ten minutes to acquire and provide to the state acceptable documentation and that it will take the states five minutes to obtain acceptable documentation, verify citizenship and maintain current records on each individual. This appears to assume that applicants and beneficiaries will have both proof of citizenship from the first tier and proof of citizenship on hand when asked. The Center on Budget and Policy Priorities reported that approximately 8 percent of low-income adults and 10 percent of families with children do not have a birth certificate or passport at home. A significant portion of applicants and beneficiaries will take much longer than 10 minutes to secure proper documentation. For example, obtaining a birth certificate by mail from SFDPH’s vital records office can take up to 60 days.

SFDPH recommends that CMS review the timeline offered in the interim final rule, taking into account that quite a few families and adults will have to search for acceptable documents.

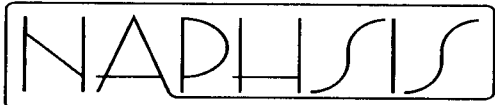
Thank you for the opportunity to comment on the interim final rule. Should you have any questions regarding our comments, please contact Frances Culp, Senior Health Program Planner, at (415) 554-2795 or frances.culp@sfdph.org.

Sincerely,



Anne Kronenberg
Deputy Director of Health
Director of Policy and Planning

CC: Trent Rhorer, Director, San Francisco Department of Human Services
Julian Potter, Dir., Public Policy, City and County of San Francisco
Amiee Albertson, Dir. of Intergovernmental Affairs, City and County of San Francisco
Leland Yee, California State Assembly
Mark Leno, California State Assembly
Carole Migden, California State Senate
Jackie Speier, California State Senate
Dianne Feinstein, United States Senate
Tom Lantos, United States House of Representatives
Nancy Pelosi, United States House of Representatives



AUG - 1 2006

801 Roeder Road, Suite 650
Silver Spring, MD 20910
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NATIONAL ASSOCIATION FOR PUBLIC HEALTH STATISTICS AND INFORMATION SYSTEMS

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New York City

Executive Director
GARLAND LAND
NAPHSIS

July 26, 2006

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

To Whom It May Concern:

The National Association for Public Health Statistics and Information Systems (NAPHSIS) represents the 57 vital records jurisdictions that record and issue birth records. We wish to comment on the Medicaid Program; Citizenship Documentation Requirements, specifically the choice of wording in two instances.

In Section 435.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... and Section 436.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... the regulation states the birth record "must have been issued before the person was five years of age". As stated, no person could present a birth record unless the vital records office issued the certified copy before the person was five years old. We believe the intent of the regulation was that the birth record was recorded by the vital records office before the person was five years old, and therefore the word "issued" should be replaced with the word "recorded". This same sentence appears in the earlier section II. *Provisions of the Interim Final Rule with Comment Period*, Secondary Evidence of Citizenship, and the word "recorded" appears in place of "issued", as we believe it should.

In Section 435.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... and Section 436.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... the regulation states, "An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship." Similarly, in Section 435.407 *Types of acceptable documentary evidence of citizenship*. (d) Fourth level evidence of citizenship, (2) One of the following..., (iv) and Section 436.407 *Types of acceptable documentary evidence of citizenship*. (d) Fourth level evidence of citizenship, (2) One of the following..., (iv) the regulation states, "An amended U.S. public birth record that is amended more than 5 years after the person's birth". An "amended" record is one in which a change was made to the record by court order or some other documentary evidence based upon the items and nature of the change. We assume the intent of the regulation was to prevent acceptance of "delayed" records that were filed more than five years after birth. In each of these cases we recommend that the word "amended" be changed to "delayed".

If you have any questions about the filing or issuance of birth records feel free to call upon me.

Sincerely,

Garland Land
Executive Director

AUG - 1 2006

116 Lexington Ave.
Elmira, N.Y. 14905-1907
July 20, 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

Dear Sirs: Re: CMS-2257-IFC

Thank you for the opportunity to comment on the above much discussed item.

I. Background

At the present time the issue of illegal aliens in this country is a huge one. There must be a fair way of finding who is and is not in this country legally.

Implementation Conditions/Considerations

It would be a good idea to exempt "aliens" who have previously provided satisfactory documentation.

Compliance

Yes, information on fraud should be shared among all states and agencies.

II. Provisions of the Interim Final Rule with Comment Period

There must be a provision for certain poor, elderly, persons with disabilities, minority or other persons who through no fault of their own can't provide the needed documentation.

Perhaps a state Medicaid agency determination of citizenship should be binding on other state and federal agencies to prevent duplication of effort.

Fourth Level of Evidence of Citizenship

You note that copies or notarized copies are not acceptable~what if they are all that is available?

Thank you for the opportunity to comment.

Sincerely,



David Eichenauer

DE/se

AUG - 1 2006

July 24, 2006

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

Dear Mr. McClellan:

Re: CMS-2257_IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted as a concerned citizen and person who has worked in the mental health field for twenty-two years. I have seen first hand the misguided efforts of legislators, public administrators and the medical community erode the treatment for this extremely vulnerable segment of our population. I would like to add my voice to comment on the following specific areas of the Interim Final Rule.

1. The application of the rule to children in foster care (436.1004)
Children in foster care have already suffered at the hands of uncaring adults and inadequate state systems which were theoretically designed to protect and care for them. To require these abused, neglected and often abandoned children entering the foster care system to be required to provide passports in order to access necessary medical care is unconscionable. The secondary levels of "proof" required by the rule are impossible requirements where the parent is absent or uncooperative. The effect of this rule would delay the access to care for these children for an indeterminate length of time and potentially delay desperately needed physical and mental health care.
2. The application of the rule to persons needing special assistance (435.407(g) and 436.407(g))
States should be required to assist homeless persons to secure the required documentation. The struggles of homeless individuals to access medical and mental health care are enormous. These individuals have no fixed address, little or no income and little or no access to transportation. Outreach programs are limited. We find the vast majority of mentally ill have extreme difficulty finding and maintaining housing and as a result these individuals are often homeless. It is unreasonable to expect these people to travel to the state agency and pay upwards of \$45.00 for a certified copy of a birth certificate. For most, these are hurdles cannot be overcome. They have no place to store or maintain these documents

even if they obtain them. This information is readily available at the state level. While the Preamble suggests that this assistance is mandatory, the homeless populations are not specifically named in the regulation.

Also, state assistance should be mandated where people have been displaced by natural or man-made disaster.

3. The lack of exemption for SSDI, OASDI, TANF and S-CHIP applicants (435.1008)

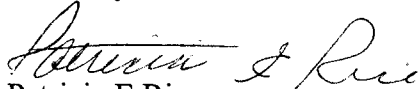
I heartily endorse and am grateful for the exemption which states that SSI and Medicare applicants will not be subject to these requirements. The premise that these individuals have already provided the necessary documentation should also apply to those who are in the waiting periods for Medicare or disability payments. All children and adults who participate in federal programs where citizenship has already been proven should not be required to fulfill these requirements again.

4. Evidence of identity (435.407(e) and 436.407(e))

The ruling has clearly intended that state systems coordinate and cross match systems to make compliance with this portion of the DRA as easy as possible. However, the omission of state mental health authorities in the cross-match process is yet another example of the woeful neglect of this vulnerable population by the public health system. These individuals have considerable functional barriers to adhering to the requirements of this ruling. State mental health agencies and community providers have medical records and other data bases that enable confirmation of identity for the people they serve.

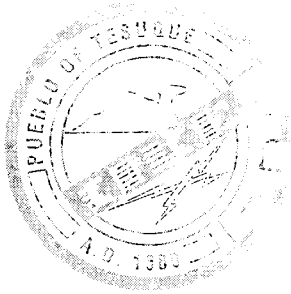
Thank you for the opportunity to comment on the Interim Final Ruling. I am appreciative of the work that has been done to implement this portion of the DRA. I particularly endorse CMS clarifying that this process only need to go through once. Also, that CMS has clarified that people need not come in person to prove their citizenship. This is often a hurdle the seriously mentally ill cannot overcome.

Sincerely,



Patricia E Rice
107 South Division
Spokane, WA 99202

AUG - 1 2006



Office of the Governor
Pueblo of Tesuque
Route 42 Box 360-T
Santa Fe, New Mexico 87506

July 26, 2006

Via: U.S. Mail

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

To whom it may concern:

Subject: Comments to Interim Final Rule: Medicaid Program: Citizenship Documentation Requirements, 71 Federal Register 39214 (July 12, 2006); File Code: CMS-2257-IFC

Thank you for the opportunity to provide comments to the interim final rule, published in the Federal Register on July 12, 2006, at Vol. 71, No. 133, amending Medicaid regulations to implement the new documentation requirements of the Deficit Reduction Act (DRA) requiring persons currently eligible for or applying for Medicaid to provide proof of U.S. citizenship and identity.

I write on behalf of the Pueblo of Tesuque, a federally recognized Indian tribe located in northern New Mexico, to express our disappoint with the interim regulations which do not recognize a Tribal enrollment card or Certificate of Degree of Indian Blood (CDIB) as legitimate documents of proof of U.S. citizenship. The June 9, 2006 State Medicaid Directors (SMD) guidance indicates that the Centers for Medicare and Medicaid Services (CMS) consulted with the CMS Tribal Technical Advisory Group (CMS TTAG) in the development of this guidance. While Native American tribal documents and CDIBs are recognized as legitimate documents for identification purposes, the CMS SMD guidance did not include Tribal enrollment cards or CDIBs as legitimate documents of proof of citizenship. Prior to the publication of the interim regulations, the National Indian Health Board (NIHB), the CMS TTAG, and the National Congress of American Indians (NCAI) requested the Secretary of the Department of Health and Human Services to exercise his discretion under the DRA to recognize Tribal enrollment cards or CDIBs as legitimate documents of proof of citizenship in issuing the regulations. However, tribal concerns expressed by the national Indian organizations and the CMS TTAG were not incorporated into the interim regulations.

As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, Tribal governments find it "rather ironic that Native Americans, in the true sense of

the word, must prove their U.S. citizenship through documentation other than through their Tribal documentation. This same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution."

There are 563 Federally-recognized Tribes in the U.S. whose Tribal constitutions include provisions establishing membership in the Tribe. The Tribal constitutions, including membership provisions, are approved by the Department of Interior. Documentation of eligibility for membership is often obtained through birth certificates but also through genealogy charts dating back to original Tribal membership rolls, established by Treaty or pursuant to Federal statutes. The Tribal membership rolls officially confer unique Tribal status to receive land held in trust by the Federal government, land settlements, and other benefits from the Federal government. Based on heroic efforts of Indians serving in the military during World War I, the Congress in 1924 granted U.S. citizenship to members of Federally Recognized Tribes. To this day, Tribal genealogy charts establish direct descendancy from these Tribal members. With very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards or CDIBs to members and descendants of Federally Recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, Tribal enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

In developing the interim regulations, the CMS might have been concerned that some Tribes issue enrollment cards to non-citizens and determined that Tribal enrollment cards or CDIBs are not reliable documentation of U.S. citizenship for Medicaid eligibility purposes under the DRA. However, members of Indian Tribes, regardless of citizenship status, are already eligible for Federal public benefits, including Medicaid, under exceptions to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Title IV of the PRWORA provides that with certain exceptions only United States citizens, United States non-citizen nationals, and "qualified aliens" are eligible for federal, state, and local public benefits. Pursuant to Federal regulations at 62 Federal Register 61344 (November 17, 1997) non-citizen Native Americans born outside of the United States who either (1) were born in Canada and are at least 50% American Indian blood, or (2) who are members of a Federally recognized tribe are eligible for Medicaid and other Federal public benefits, *regardless of their immigration status*. The documentation required for purposes of the PRWORA is a membership card or other tribal document demonstrating membership in a federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. Thus, tribal membership cards issued to members of Federally-recognized tribes, including non-U.S. citizen tribal members, are satisfactory proof of documentation for Medicaid eligibility purposes under the PRWORA. The documentation requirements under the DRA should be the same.

The interim regulations, at 42 C.F.R. 437.407(e)(6) and (e)(8)(vi), recognize Native American tribal documents as proof of identity. Section 437.407(e)(9) recognizes CDIBs

as evidence of identity because they include identifying information such as the person's name, tribal affiliation, and blood quantum. Since the CMS already recognizes Native American tribal documents or CDIBs as satisfactory documentation of identity, there is sufficient basis for CMS to recognize Tribal enrollment cards or CDIBs as satisfactory documentation of primary evidence of both U.S. citizenship AND identity. The term Native American tribal document is found in the Department of Homeland Security, Form I-9, where Native American tribal documents suffice for identity and employment eligibility purposes. The interim regulations do not define the term "Native American tribal document" but certainly, Tribal enrollment cards or CDIBs fall within the scope of a "Native American tribal document." Thus, I recommend that section 435.407 (a) of the regulations be amended to include Tribal enrollment cards or CDIBs as Tier 1 documents.

In the alternative, if CMS will not amend the regulations at 435.407(a) to include Tribal enrollment cards or CDIBs as primary evidence of citizenship and identity, I recommend that the CMS recognize Tribal enrollment cards or CDIBs as legitimate documents of citizenship as a Tier 2 document, secondary evidence of citizenship. The regulations only allow identification cards issued by the Department of Homeland Security to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship. However, in light of the exception found in the PRWORA, the regulations at 435.407(b) should be amended to include Tribal enrollment cards for all 563 Federally-recognized Tribes as secondary evidence of U.S. citizenship.

The Senate Finance Committee in unanimously reporting out S. 3524 included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a "document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe" to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that "[w]ith respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection." S. 3524 also provides for a transition period that "until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

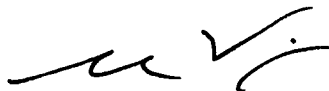
I would urge CMS to amend the interim regulations to address tribal concerns by recognizing Tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2 documents. As explained above, with very few exceptions, Tribes issue enrollment cards

or CDIBs to their members after a thorough documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent, the Secretary has concerns that some Tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, AI/AN Medicaid beneficiaries might not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing Tribal enrollment cards as satisfactory documentation of U.S. citizenship, the CMS is creating a barrier to AI/ANs access to Medicaid benefits. As you know, the Indian health care programs, operated by the IHS, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals, that provide services to AI/ANs are dependent on Medicaid reimbursements to address extreme health care disparities of the AI/AN population compared to the U.S. population. Recognizing Tribal enrollment cards or CDIBs as sufficient documentation of U.S. citizenship will benefit not only Indian health care programs but all of the health care providers located near Indian country that provide services to AI/AN Medicaid beneficiaries.

Thank you for your thoughtful consideration of my comments.

Sincerely,



Gil Vigil
Governor

Cc: U.S. Senator Pete Domenici
U.S. Senator Jeff Bingaman
U.S. Representative Tom Udall
U.S. Representative Heather Wilson
U.S. Representative Steve Pearce
NIHB



California Medical Association

Established 1856

July 28, 2006

AUG - 1 2006

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

RE: Medicaid Program; Citizenship Documentation Requirements

Dear Mark McClellan, MD:

On behalf of the California Medical Association (CMA) and its member physicians, I am writing to submit comments on your interim final rules for the new Medicaid Program's Citizenship Documentation Requirements. Specifically, the Deficit Reduction Act amends Medicaid to now require that all applicants and recipients document their citizenship in order to receive Medicaid. We are very concerned that the implementation of this requirement will result in many otherwise eligible American citizens failing to obtain Medicaid benefits.

Although we appreciate the Centers for Medicare and Medicaid Services (CMS) attempt to be as flexible as possible with regards to the documentation necessary to fulfill this requirement (i.e., offering the multiple tiers of documentation) we continue to have ongoing concerns with the proposed regulations that we urge you to address.

We applaud your recent decision to exempt persons enrolled in Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI). However, **we are very concerned that this decision does not go far enough to protect the most vulnerable Americans such as those in nursing homes, those with dementia, the homeless, the mentally ill, the frail elderly not eligible for Medicare, and others without the wherewithal to obtain the necessary documentation.** We urge you to consider expanding upon the populations to be exempted from the requirement to ensure that the most needy and Americans are able to obtain the care they need.

As written, these regulations create two classes of citizens: new applicants for Medicaid and those already on Medicaid. Even if a new applicant is eligible for Medicaid except for obtaining the necessary citizenship documentation, s/he is unable to access Medicaid services. On the other hand, a similarly situated person already on Medicaid will be able to continue receiving health care benefits so long as s/he makes a "good faith effort" to

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 San Francisco office: 221 Main Street, Suite 580, San Francisco CA 94105-1930 • 415.541.0900



12

California Medical Association

Established 1856

July 28, 2006

AUG - 1 2006

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

RE: Medicaid Program; Citizenship Documentation Requirements

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