Submitter : **Ms. Robin Lunge** **Date: 08/11/2006**

Organization : **Vermont Health Access Oversight Committee**

Category : **State Government**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See attachment

CMS-2257-IFC-231-Attach-1.DOC

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STATE OF VERMONT
GENERAL ASSEMBLY

HEALTH ACCESS OVERSIGHT COMMITTEE

*** * * DRAFT * * ***

August 8, 2006

Centers for Medicare and Medicaid Services
Submitted electronically to:
http://www.cms.hhs.gov/eRulemaking

RE: File Code CMS-2257-IFC

We are writing on behalf of the Health Access Oversight Committee, a bicameral, bipartisan committee of the Vermont legislature, which focuses on issues relating to Medicaid and access to health care. The committee is concerned that the new federal documentation of U.S. citizenship requirements contained in the Deficit Reduction Act (DRA) will result in Vermonters having difficulty accessing Medicaid and the Vermont-specific health care programs funded with Medicaid dollars, which are operated under a Section 1115 Waiver of federal Medicaid law. The committee is also very concerned about the increase in administrative costs and burden on Vermont's Office of Vermont Health Access and Department for Children and Families resulting from the DRA requirements.

We endorse the comments submitted by the American Public Services Association (APHSA) and the National Association of State Medicaid Directors (NASMD) as well as having several specific suggestions.

First, the July 1, 2006 implementation date required by the DRA is unreasonable, especially considering that the regulations will not be finalized until later this summer, at the earliest. The additional administrative burdens on the state will require changes to the eligibility screening process, including additional funding. These changes are extremely difficult to achieve by the implementation date required. The funding is especially difficult, since Vermont has a part-time legislature, which will not be in session until January 2007 and, therefore, cannot authorize any changes to the funding until well after

the implementation requirement. At minimum, additional time for verifying Vermonters currently receiving Medicaid or Vermont's Health Access Program should be allowed.

Second, Vermont is operating under a unique Section 1115 Waiver, which establishes a spending cap on most of Vermont's Medicaid and waiver programs. It is unreasonable to impose an additional, costly administrative burden on a state which has waiver-capping expenditures. Any administrative costs for verifying citizenship should not be considered as spending under Vermont's Global Commitment Waiver.

Comments on Provisions of the Interim Final Rule with Comment Period
435.407 Types of Documentary Evidence

Third, we request that the exemption extended to individuals receiving Supplemental Security Income (SSI) and Medicare be extended to additional populations, such as foster care children, subsidized adoption Medicaid recipients, independent living youth and individuals receiving Social Security Disability Income (SSDI). States are currently required to verify citizenship for all children receiving federal foster care maintenance payments, adoption assistance payments or independent living services. For children entering foster care, it is unlikely that documentation of citizenship would be readily available and unlikely that the parent(s) would be willing or able to provide the identification given the contentious nature of removing children. For individuals receiving SSDI, the federal law requires the same application process and documentation requirements as for SSI, thus these groups of people should be treated that same.

Fourth, we are very pleased that the state is able to accept verification from other agencies, such as Medicare or vital records. This type of verification should be allowable for any applicant who has proven citizenship and identity to another government agency, including matches with the public assistance recipient information system, the U.S. Department of Veterans Affairs, Social Security, and the U.S. Citizenship and Immigration Services database. In addition, when Medicaid has paid claim forms for a child's birth, this should be adequate proof that the child was born in this country and thus is a citizen. In addition, interstate data matches with state agencies which have received proof of citizenship or identity would reduce administrative burdens and decrease duplicative verification requirements.

Fifth, applicants and recipients should be treated equally and the state should have the option of providing coverage to an applicant, as well as a recipient, during a reasonable period pending proof of citizenship. States are mandated to provide a legal immigrant who has been in the U.S. for over 5 years coverage for Medicaid for a reasonable period pending receipt of the documentation. 42 U.S.C. §1320b-7(d)(4)(A). Citizens should be treated equally with legal immigrants. At minimum, the state should have the option to provide Medicaid coverage while an applicant has a pending passport application or a pending request for a certified copy of a birth certificate. In both of these instances, there is likely to be strong evidence that an applicant is a citizen. Allowing an individual to become eligible for coverage based on a pending application is consistent with the "reasonable opportunity" required by the statute, which allows an individual time to present evidence of citizenship.

Sixth, for the third and fourth levels of documentation, there is a requirement that the document be made 5 years prior to the date of application. This requirement should be deleted. At a minimum, for an individual who has been receiving Medicaid, it should be clarified that the 5-year period runs before the date of the reapplication and not the initial application.

Seventh, in subsection (h)(1), there is a requirement for original or certified copies of documents. This is more stringent than the evidentiary rules used in court. In circumstances where there is a reasonable explanation why an original or certified copy cannot be produced, the state should be able to accept other forms of reliable verification, as determined by the state through state regulation.

Seventh, in subsection (h)(6), the regulations may require the state to verify electronically citizenship or identity if the individual uses third or fourth tier documentation. If electronic verification is available, the state should be able to use this type of verification in lieu of documentary evidence as this method simplifies the process for applicants and for the state. The electronic verification has sufficient reliability to provide quality assurance in Medicaid. Access to health care is a priority in Vermont and other states. When a reliable and simple verification process is available, the state should be allowed by CMS to use that process in lieu of physical paper documentation as it increases the legitimate state interest in maximizing access to health care for its citizens.

Eighth, we support the expansion of acceptable documentation to prove citizenship or identity detailed in the APHSA/NASMD comments.

Thank you for the opportunity to comment on the interim regulations.

Sincerely,

Ann Pugh, Co-Chair
Health Access Oversight Committee

Jeanette White, Co-Chair

Submitter : Mr. Michael Campbell **Date:** 08/11/2006

Organization : Pennsylvania Health Law Project

Category : Consumer Group

Issue Areas/Comments

GENERAL

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See Attachment

CMS-2257-IFC-232-Attach-1.DOC

CMS-2257-IFC

Comments to the Proposed
Medicaid Program; Citizenship Documentation Regulations:
42 CFR Parts 435, 436, 440, 441, 457, and 483

Prepared by the Pennsylvania Health Law Project
on behalf of the
Philadelphia Welfare Rights Organization,
and the Consumer Subcommittee of the Pennsylvania
Department of Public Welfare Medical Assistance Advisory Committee.

General Comments:

1. **Medicaid coverage for otherwise eligible applicants should not be delayed if Citizenship and Identity verification is pending.**

   The Interim Final Rule states that current Medicaid recipients are afforded a "reasonable opportunity" to submit citizenship documentation and will maintain Medicaid eligibility pending the citizenship verification. The rule articulates no such protection for new Medicaid applicants. To the contrary, 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.

   Nothing in the DRA requires or even authorizes a delay in providing coverage to eligible citizens until they can obtain the necessary documentation, as CMS recognized in an earlier guidance on the subject. 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 American citizenship under penalty of perjury and met all eligibility requirements for Medicaid, enrollment in Medicaid pending submission of the appropriate documentation of citizenship should therefore be granted.

   Such a delay, if in fact this is what the rule intends, is both administratively inefficient and would greatly prejudice applicants and providers alike, by delaying necessary treatment while some of the most fragile and vulnerable citizens track down documentation and supply it to the Medicaid agency. Such an interpretation would violate other

provisions of federal law. The Medicaid statute requires states to make medical assistance available for qualified individuals. (42 USCS § 1396a(a)(10)) States must provide such methods of administration for proper and efficient operation of the state plan. (42 USCS § 1396a(a)(4)). Requiring vulnerable citizens to forgo necessary treatment for days, weeks or even months while tracking down birth records, and placing providers who treat them in the interim at great financial risk represents the antithesis of a proper and efficient Medicaid program.

For Medicaid eligible applicants, this delay and/or complete inability to enroll in Medicaid will mean significant problems including:

- Going without needed medical care because they do not seek treatment
- Going without needed medical care because they are refused treatment
- Being in much more advanced stages of disease when they do get care
- Receiving lower quality medical care because medical providers fear they will not be reimbursed
- Being left with insurmountable medical bills due to uninsured status
- Being too sick to collect the Citizenship documentation required to enroll in Medicaid, thus foregoing preventive care and ending up in an emergency room

For the health care system there are equally catastrophic outcomes:

- Hospitals, doctors, and other health care providers will go uncompensated for care they provide, sometimes care they are required to provide by Federal law
- Huge financial losses from health care provider uncompensated care will be passed on to the health system through further skyrocketing health care costs
- The health system will be dealing with more advanced and urgent health scenarios from potential Medicaid consumers who were delayed or prevented from enrollment
- Public health concerns, such as the avian flu, influenza epidemics, etc., will be a much greater risk with the sickest, poorest segment of the population unable to get needed health care

2. **Children in foster care receiving Title IV-E assistance should be exempt from the documentation requirement.**

CMS has exempted SSI recipients and Medicare beneficiaries from the new requirement because citizenship documentation occurs during the SSI application process and Medicare beneficiaries have met certain documentation requirements . Title IV-E children who receive Medicaid also have to document their citizenship to receive IV-E services (incorrectly stated in the preamble at 71 Fed Reg. 29316). State child welfare agencies must verify the citizenship status of these children (roughly one million) when determining eligibility for Title IV-E assistance. As such, they should not have to document citizenship again in order to gain Medicaid coverage.

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, or be able to purchase medically necessary medical equipment – until the child's condition deteriorates to the point that it requires emergency care.

States should be granted authority to exempt foster children receiving Title IV-E assistance much like SSI or Medicare recipients from the Citizenship Verification requirements. The DRA does not compel the unnecessary duplication of state agency efforts that 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 and CMS should elect to exempt foster care children receiving such payments from the new documentation requirement. To conclude otherwise would violate the provisions of 42 USCS § 1396a(a)(4)

In addition, other individuals who have proved their citizenship should be exempt from these requirements. Examples include those on Social Security Disability Insurance who are in the waiting period for Medicare, or TANF families and children and S-CHIP applicants and beneficiaries of OASDI survivor, retirement and disability auxiliary benefits from SSA, those whose citizenship has been verified by SSA for early age 62 retirement, and age 60 widow or widower OASDI beneficiaries. States should be encouraged to save administrative costs and expense by using verification done by themselves or other state agencies rather than

duplicating the same efforts and unnecessarily delaying Medicaid coverage.

3. **Additional hardship exceptions or a "safety net" for individuals in special circumstances should be created, at the States' discretion, for those who cannot prove citizenship.**

The Final Interim Rules provide too little authority for states to except vulnerable populations.

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, people with mental conditions who may not remember details of their birth much less their identity.

The rule directs states to assists individuals with "incapacity of mind or body" to obtain evidence of citizenship but it does not address the situation in which the state cannot locate the necessary documents or they cannot be obtained. The use of written affidavits to establish citizenship and to be used only in "rare circumstances" is a last resort. 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 applicants' claim to citizenship cannot be located or don't exist.

The DRA gives the Secretary discretion to expand the list of documents included in the DRA that are considered "proof" of citizenship and a "reliable means" of identification. State Medicaid agencies have the capacity to recognize when a U.S. citizen simply cannot produce the documentation.

The regulations of the SSI program allow people who cannot provide the required documentation to explain why not and to provide any information they do have. A similar approach should be adopted for Medicaid. A section should be added to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentation of citizenship or national status for purposes of FFP if the State is (1) unable to obtain primary, secondary, third level, or fourth level evidence 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.

States should be granted authority to certify for special individuals from the Citizenship Verification requirements. If SSI has such a "safety net" it would follow that the Medicaid program should have a similar option for the State.

4. **States should be allowed to automatically verify citizenship for individuals for whom there are unmistakable and unambiguous state records indicating U.S. citizenship.**

   States should be allowed to verify citizenship for individuals for whom the state has a definitive record proving citizenship. For example, state Medicaid programs can verify the U.S. birth, and thus citizenship, of individuals for whom the Medicaid program has itself paid for the birth in a hospital located in the United States.

   Medicaid payment records for births in U.S. hospitals should suffice as proof of citizenship and identity for newborns. According to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal. Yet there is no question that these children are American citizens by virtue of their birth in a U.S. hospital and the state Medicaid program paid for their birth.

   To make the state require a birth certificate for a birth that the state itself paid for in a state hospital is administratively illogical and wasteful. It creates additional paperwork and potential delays or loss of coverage for infants, many of whom will have immediate health care needs. It violates 42 USCS § 1396a(a)(4).

5. **The Federal Rule should provide guidance as to how states should exchange data, and the Federal role in this process should be much more active.**

   As individuals will be applying for Medicaid in 50 different states, with birthplaces in 50 different states and territories, the Federal government has an unmistakable role in the coordination of the millions of interstate data transfers this new rule will cause. The Federal government should be creating a centralized data exchange program to facilitate this process, and organize it in regulation.

6. **The Federal Rule should explicitly include, as is discussed in the Comments to the Interim Final Rule, an exception for good faith and an affirmative obligation on States to assist good faith consumers.**

The Comments to the Interim Final Rule (at Federal Register, Vol. 71, No. 133, p. 39216) state the intention of the regulations to provide an exception for consumers who act in "good faith", and that states "must" assist these good faith applicants. These obligations, however, do not appear in the regulations themselves. The regulations do include requirements for "reasonable opportunity period[s]", but to no carve out such a good faith exception, or impose any requirement to assist upon the state.

7. **The final rule should not further limit types of evidence that may be used to document citizenship**

CMS has explicitly asked for comments regarding whether the documentation that can be used to prove citizenship should be limited to only Tier 1 and 2. We urge that CMS not limit in any way the types of documents that can be used. Most Medicaid applicants will not have passports or the financial means to obtain one. There are many people who will only be able to provide documents listed at the third and fourth tiers of others whol will have none of these documents.

8. **Comment to 435.407(h)(1): Copies of documents should be sufficient proof of citizenship**

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. We consider this to be highly impractical and an undue burden placed upon individuals and state agencies, in violation of 42 USCS § 1396a(a)(4) For example, an applicant may have a copy of their birth certificate from a distant state, but may have to undergo a full process to get another "certified" copy of the same certificate, at their own administrative and financial cost, and to the detriment of their Medicaid application (and likely their health).

We consider this requirement for originals and certified copies will cause significant unnecessary delay and burden. It is impractical to require Medicaid applicants and recipients to send passports, drivers licenses and birth certificates through the mail to a busy welfare office, where undoubtedly some of such documents will be lost or stolen. We note that many states will be able to take a photocopy and independently verify it, accomplishing the same function of requiring an original or certified copy. We consider it of the utmost importance and recommend that the regulations

allow copies of documents such as birth certificates and driver's licenses, and suggest that any concerns around authenticity are best remedied through a Federal interstate data verification system.

Many states have simplified their application procedures by eliminating face-to-face interviews and adopting a mail-in application process. These processes reduce administrative costs by eliminating timely interview processes and reducing staff time required for each application and renewal. While CMS clarifies in 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, in violation of 42 USCS § 1396a(a)(4). 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 document back to people would be quite costly to states. Furthermore, it is impractical for someone to mail in a driver's license because they will probably need it to drive. This provision of the rule only delays coverage for new applicants and forces both applicants and recipients to schedule appointments with Medicaid agencies to fulfill this requirement, which is especially burdensome for working applicants and recipients.

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 the state 5 minutes to obtain this documentation. These time estimates are highly erroneous because the rule requires individuals to submit original documents to the state. Thus, in addition to locating and 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 documents, and maintain records.

Section specific comments:

§435.406.

The Final Interim Rule selects July 1, 2006, as the effective date for the Citizenship Verification. Given the significant implementation and preparation efforts this regulation creates for consumers, providers, and States, we recommend the date be set later. This also allows greater time for coordination of Federal data exchange.

This comment also applies to §436.406(a)(iv).

§435.407.

The scheme of this regulation creates "tiers" among the different types of citizenship documentation. While we understand that certain forms of documentation might have marginally higher rates of accuracy, we consider the tier system to be extremely impractical. For example, a consumer may already have in his possession an article of "Third Tier" preference upon applying for Medicaid, but the application may not move forward until the applicant has to go through the process of producing a higher tier document or an excuse for not providing it. This places undue administrative and financial burden on the citizen, and further stresses the administrative processes of the states involved, only to produce a document of slightly higher confidence. The Medicaid system is best served by a more flexible approach, which allows for the production of any documentation that proves citizenship, thereby reducing administrative burden and costs for all parties.

This comment applies also to §436.406.

§435.407(c)(1).

This regulation permits use of a record "created 5 years before the initial application date". While we consider this standard logical for new applicants, it would be grossly unfair to current recipients being redetermined. That recipient may have been enrolled Medicaid for 20 years, and be prohibited from using a 24-year old document establishing place of birth. This language should be changed to "5 years ago". It is unreasonable to think consumers would act falsely five years in advance to prepare for a future Medicaid redetermination, and this concern is microscopic when balanced against the injustice of denying a current recipient the use of a document which is decades old.

This comment also applies to: §435.407(c)(2); §435.407(d)(2); §435.407(d)(4) [in two places]; §436.407(c)(1); §436.407(c)(2); §436.407 (d)(2); §436.407 (d)(4) [in two places].

§435.407(g).

The comments to the Interim Final Rule indicate that, among other things, this regulation is crafted with homeless individuals in mind. We consider this to be an extremely important and wise provision. However, the language of the regulation omits mentioning homeless individuals. We

recommend the regulation be amended to explicitly include homeless individuals, as it was intended.

This comment applies also to §436.407(g).

§435.407(h)

The comment applies also to §436.407(h).

§435.407(j)

This regulation provides consumers with a "reasonable opportunity" to present documentation. We consider this a vital regulation and applaud its inclusion. However, we recommend two additions. First, the regulation requires states to allow their normal verification time for obtaining citizenship documentation. We consider that, due to the complexity of the administrative task (procuring a passport or out of state birth certificate), and the fact that the consumer cannot control the delay of these processes, that states should be required to allow a longer time period - their standard time period plus 30 days. Second, we recommend that reasonable opportunity include an affirmative obligation on the state to provide assistance and guidance to the consumer trying to procure documentation. Each of 50 states is in an infinitely better position than each of millions of consumers to identify and share the process for procuring a passport or a birth certificate from a distant state.

The comment applies also to §436.407(j).

Submitter : Mr. Phillip Saperia **Date:** 08/11/2006

Organization : The Coalition of Voluntary Mental Health Agencies

Category : Other Health Care Provider

Issue Areas/Comments

GENERAL

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See Attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment

Regulatory Impact Statement

Regulatory Impact Statement

See Attachment

CMS-2257-IFC-233-Attach-1.PDF

The Coalition of Voluntary Mental Health Agencies, Inc.

August 10, 2006

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

Re: Provisions of the Medicaid Citizenship Documentation Interim Final Rule with Comment Period, 71 Fed. Reg. 39214 (July 12, 2006)

I write on behalf of The Coalition of Voluntary Mental Health Agencies on the Provisions of the Interim Final Rule regarding the Citizenship Documentation Requirement. The Coalition is the umbrella trade association and public policy advocacy organization of New York's behavioral health community, representing over 100 non-profit behavioral health agencies. Taken together, these agencies serve more than 350,000 adults and children and deliver the entire continuum of behavioral health care in every neighborhood of a diverse New York City and its environs.

Founded in 1972, the mission of the Coalition is to coordinate: the efforts of government and the private sector toward efficient delivery of quality behavioral health services to children, adults and families and the development and provision of housing, mental health treatment, rehabilitation and support services to all people with mental illness and substance abuse problems, including the fragile elderly, those who are homeless and those who struggle with AIDS, violence and other special needs.

We are deeply concerned that the citizenship documentation requirement will pose additional barriers and prove to be more burdensome for Medicaid applicants, beneficiaries and state agencies. We fear certain populations will not be able to provide citizenship documentation and will ultimately lose Medicaid coverage. These include individuals with mental illness or addictions, unstable housing arrangements, the homeless, elderly and the institutionalized. With the implementation of the citizenship documentation requirement, these individuals are at greater risk of losing Medicaid coverage and their access to health care. Below, please note the Coalition's recommendations as it pertains to the Interim Final Rule.

Recommendation #1

U.S. Citizens applying for Medicaid should be granted "presumptive eligibility" status once they declare citizenship and meet all other eligibility criteria (§435.407 (j) and §436.407 (j) and §435.1008 and §436.1004; 71 Fed. Reg. at 39216).

The interim final rule directs states to provide current Medicaid beneficiaries who claim to be U.S. citizens with a "reasonable opportunity" of time to present evidence of citizenship before terminating coverage. Medicaid applicants, on the other hand, cannot access Medicaid unless they provide satisfactory evidence of citizenship. Obtaining the necessary documentation can take a significantly long period of time, and it is unfair to delay their coverage. Individuals who apply for Medicaid and who meet all other eligibility criteria should be granted "presumptive Medicaid eligibility" so they can receive medical care until they can produce sufficient documentation within a "reasonable opportunity" of time.

In an era of increased reliance on Medicaid, State "Medicaiding" of mental health and health programs and a Federal reduction in Medicaid spending, the viability of community mental health and health organizations and the services they deliver is at stake. Often, mental health and health providers serve Medicaid beneficiaries and applicants. With the implementation of the citizenship documentation requirement, many of these individuals will experience long delays in obtaining coverage and/or lose coverage entirely. This can be devastating to an individual who relies solely on Medicaid to receive mental health and health treatment. This may in turn, prevent an individual from receiving mental health care that is essential to their well-being. Furthermore, many providers will experience delays in reimbursement and an increase in uncompensated care. Individuals who lose coverage will find the emergency room as their only recourse for treatment, which will ultimately increase states' expenditures.

We urge CMS to allow for a period of presumptive eligibility to applicants who declare U.S. citizenship and who meet all other Medicaid eligibility criteria.

Recommendation #2

Children in foster care who are receiving Title IV-E assistance should be exempt from the citizenship documentation requirement (§435.1008 and §436.1004; 71 Fed. Reg. at 39216).

The interim final rule requires all children in foster care to document their citizenship status. However, in order for a child to receive Title IV-E payments, a state child welfare agency must verify a child's citizenship status (incorrectly stated in the preamble at 71 Fed Reg. at 39216). Many children enter the child welfare program with significant health and mental health

needs. Delays in treatment, even a short delay, could result in the significant exacerbation of symptoms and the need for costly acute inpatient care. State welfare agencies that verify citizenship should not be compelled to comply with a redundant requirement.

Utilizing electronic matching promotes program efficiency. Many states have linked the application, documentation and eligibility determination rules for several of its public benefit programs, including TANF and Social Security. In order to receive SSI and/or Medicare individuals must document their citizenship status. Since they have always been required to provide this documentation, CMS has exempted all SSI recipients and Medicare beneficiaries from the citizenship documentation requirement. This exemption reflects the previous documentation requirements and prevents any additional burden on both the states and this population. Since foster care children already must document citizenship to receive Title IV-E assistance, much like SSI or Medicare recipients must document their citizenship, they should also be exempt from the Medicaid citizenship documentation requirement.

We urge CMS to revise the final rule to exempt foster care children receiving Title IV-E assistance from the citizenship documentation requirement.

Recommendation #3

The final rule should clarify the steps states must take in assisting special populations, such as the severely and persistently mentally ill, who need assistance in obtaining the required citizenship documentation (§ 435.407 (g) and § 436.407 (g); 71 Fed. Reg. at 39219).

The interim final rule stipulates "states must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner and the individual lack a representative to assist him or her" (71 Fed. Reg. at 39225 and 39228). However, the interim final rule does not specify the criteria needed to be considered a special population. The severely and persistently mentally ill and the homeless population are two examples of populations that need assistance in documenting U.S. citizenship and identity.

Severely and Persistently Mentally Ill (SPMI) Population

Access to Medicaid is essential to stabilizing severely and persistently mental ill (SPMI) individuals. Many severely and persistently mentally ill individuals have a history of multiple hospitalizations and unstable housing. Cognitive losses are not uncommon to this group. Undoubtedly, there will be individuals who are severely and persistently mentally ill who cannot obtain documents from any of the hierarchy tiers and cannot meet the affidavit requirements. This requirement will ultimately penalize needy and vulnerable U.S. citizens for not having access to the required documentation.

Homeless Population

Access to Medicaid is essential to improving the health and quality of life of individuals who are homeless. Oftentimes, they live on the streets or move from one shelter to another and do not keep track of their original birth certificate, social security card, driver's license or Medicaid card. The majority of homeless individuals will have difficulty applying for any form of documentation because they have no valid photo-ID or permanent address. Obtaining any form of identification is a Catch-22. In order to receive a non-drivers license photo ID card, one must have a U.S. passport, Medicaid card or a social security card. In order to obtain a birth certificate, one must have a valid photo-ID, a utility/telephone bill or a letter from a government agency. In order to receive a social security card, one must have a birth certificate, passport, driver's license or a state-issued non-driver identification card. Lastly, in order to obtain a U.S. passport, one must have a birth certificate, letter of no record or a driver's license. It can be extremely difficult for a homeless individual to obtain any form of documentation proving U.S. citizenship or identity. It is also highly unlikely that they will be able to provide two acceptable affidavits. Once again, this requirement will ultimately penalize needy U.S. citizens for not having access to the required documentation.

The citizenship documentation requirement also poses additional challenges for President Bush's and the U.S. Department of Health and Human Services' plan to end chronic homelessness in a decade. This new requirement will work against any progress and success the Federal Initiative *Ending Chronic Homelessness* has had thus far.

The interim final rule does not make clear the steps that must be taken and who is responsible for the administrative costs in assisting special populations. If the federal government requires states to assist special populations, they should be required to cover any additional administrative costs that result from implementing this requirement.

In all cases where the state is assisting individuals to obtain documentation, "presumptive Medicaid eligibility" should be provided so that an individual can receive medical care in the meantime. Furthermore, if an individual does not know their own name or place of birth, the state can not provide assistance in obtaining the required citizenship documentation. Clarification is needed on the steps states must take in circumstances where an individual has no knowledge of their legal name or date and place of birth.

We urge CMS to indicate in the final rule the steps states must take in assisting special populations, such as the severely and persistently mentally ill, in obtaining citizenship documentation.

Recommendation #4

Medicaid payment records for births in the U.S. should be considered satisfactory and reliable evidence of citizenship documentation (§ 435.407(a) (e) and 436.407(a) (e); 71 Fed. Reg. at 39216).

The Federal law mandates that newborn infants born to women who are Medicaid beneficiaries be automatically enrolled in Medicaid and remain eligible for one year. To continue receiving Medicaid coverage, a child must show citizenship and identity documentation at their next redetermination of eligibility. However, these children are citizens by virtue of the fact that they are born in the United States and a historical review of Medicaid payment records should reaffirm citizenship.

Often times, children can not prove citizenship through state vital record matches. Due to time delays and processing lags, vital records are not created immediately at the time of birth. The citizenship documentation requirement creates additional paperwork and potential delays or loss of coverage and puts the health of newborns and infants at risk. Furthermore, doctors who provide care to newborns and infants will most likely receive delayed payment and/or never receive payments for services rendered.

We urge CMS to revise the final rule to allow Medicaid payment records for births in the U.S. as primary documentation for the child and as an acceptable data match system.

Recommendation #5

The final rule should NOT further limit the types of evidence that may be used to document citizenship (§ 435.407(c) and (d); 71 Fed. Reg. at 39219 – 39220).

While we applaud CMS for exempting SSI recipients and Medicare beneficiaries from the citizenship documentation requirement, most Medicaid applicants and recipients do not have passports or the financial means to obtain one. Birth certificates may also be difficult 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. 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 that has been established.

It is unjust to penalize U.S. citizens just because they do not have access to original documents. The majority of individuals affected by 9/11 and Hurricane Katrina have lost all forms of citizenship documentation. It can take up to several months for an individual to receive a new passport, birth certificate or social security card. It is crucial that individuals be granted "presumptive Medicaid eligibility". We strongly recommend that additional

exemptions be made for special populations, including the physically disabled and mentally ill.

Limiting the types of evidence that may be used to document citizenship and identity will negatively impact the access U.S. Citizens have to health care. While the new documentation requirement is intended to ensure that only U.S. Citizens receive Medicaid, this provision will impose more harm and burden on beneficiaries and applicants.

We strongly urge CMS NOT to limit the types of documents in the final rule that can be used to document citizenship and identity status.

Comments re: Information Collection Requirements of the Regulations

Recommendation #6
Copies of documents should be sufficient proof of citizenship (§ 435.407 (h)(1)); 71 Fed. Reg. at 39216).

Requiring individuals to submit original documentation or copies certified by the issuing agency adds additional burden for both individuals and state agencies. Many states have streamlined the application process by adopting a mail-in application and renewal process, thereby reducing the number of 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.

The interim final rule requires beneficiaries to mail original documents to local social service offices, or require in-person encounters. This requirement is a harmful provision and encourages people to submit important documents that are best kept in their own possession. State Medicaid officials believe that the cost and complexity of obtaining or replacing original or certified copies of citizenship documentation could become a barrier to applying for and retaining Medicaid coverage.

The costs and procedures of obtaining original documentation will be costly, time consuming and complicated for the majority of U.S. Citizens and pose significantly high administrative costs. Requiring states to obtain original or certified documentation would force government agencies to spend more time, money and resources collecting this information.

Furthermore, the interim final rule estimates that it will take recipients and applicants 10 minutes to collect and present documentation of their citizenship and identity to the state and 5 minutes for the state to obtain this documentation from each individual, verify citizenship and maintain records (71 Fed. Reg. at 39220). Currently, a visit to the Department of Motor Vehicles can take up to three hours simply to update an individual's license. These

estimates are miscalculated and greatly underestimate the time needed to produce, collect and verify the documentation.

We urge CMS to revise the final rule to allow copies of documents to be used as evidence of U.S. citizenship.

CONCLUSION

We would like to thank CMS for the opportunity to submit comments on the Interim Final Rule on the new Medicaid citizenship documentation requirement. While we applaud CMS for exempting all SSI recipients and Medicare beneficiaries, we are deeply concerned that this requirement will harm vulnerable beneficiaries with severe mental illnesses. Unless more changes are made this requirement will do more harm and penalize millions of U.S. citizens who are fully eligible for Medicaid.

If you have any questions, please contact Heather Rabinowicz, Policy Associate, at (212) 742-1600 ext. 109.

Sincerely,

Phillip A. Saperia
Executive Director

Submitter : Ms. Ellen Vollinger **Date:** 08/11/2006

Organization : Food Research and Action Center

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

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

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

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

Submitter : Rev. Mark Pawlowski **Date:** 08/11/2006

Organization : Planned Parenthood of South Central Michigan

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-235-Attach-1.DOC

August 11, 2006

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

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

Dear Administrator McClellan:

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

Planned Parenthood of South Central Michigan serves the counties of Allegan, Barry, Branch, Calhoun, Kalamazoo, and St. Joseph. So far in 2006 Planned Parenthood of South Central Michigan served close to 3000 Medicaid patients in our Kalamazoo and Battle Creek health centers. Our services are extremely important to the Medicaid clients. We provide affordable family planning and reproductive health care and education to women, teens and men. We help to ensure that everyone in our service area has access to our services and that our communities use us as an educational resource.

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

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

As of July 1, 2006 the State of Michigan initialized Plan First!, Michigan's new family planning waiver which provides access to birth control and related health care to women ages 19-44 at 185% of poverty and below. The intent of this program is to reduce the number of unplanned pregnancies and reduce to expense to Medicaid. Planned Parenthood of South Central Michigan began providing services with the new family planning waiver on August 1, 2006. The Michigan Department of Community Health estimates that we will serve 3,436 Medicaid Waiver clients in FY07 (10/06-

9/07). The process for documentation of citizenship will hinder and delay the clients we are able to reach, putting them at risk of an unintended pregnancy.

Since 1993, twenty-four states have expanded access to family planning services through over 1100 family planning demonstration programs. Under these programs, states have received CMS approval to extend Medicaid-covered family planning services to individuals who do not meet the requirements for standard Medicaid enrollment in order to prevent unintended pregnancies. Streamlining enrollment and extending coverage are fundamental to the success of these programs which have assisted millions of low-income people who would otherwise have no source for family planning services. For Michigan, family planning demonstration programs are at the cornerstone of improvements in quality of health care. Unfortunately, the citizenship documentation requirements strike at the core of how family planning demonstration programs are designed and could ultimately render them meaningless.

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

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

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

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

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

Section 6036 of the DRA applies to all individuals (with the exception of Medicare beneficiaries and most SSI beneficiaries) who apply for Medicaid. For those individuals who are already

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

As a result, in this year alone, approximately 10 million U.S. citizens applying for Medicaid will face the possibility of a gap in coverage while they are in the process of producing the required documentation. The State of Michigan's average annual growth for Medicaid enrollment from 1999 to 2004 has increased 5.3%, according to a report sponsored by the Michigan Senate. It should not be lost that the majority of these citizens will be low-income pregnant women, children, and other vulnerable Americans. Undoubtedly, this will result in delays in care, worsening health care problems and eventually placing a heavier burden on the health care system. This will have an especially negative impact on individuals in need of family planning services, cervical and breast cancer screening, and STI testing services. Some U.S. citizens who may get discouraged or are unable to produce the documents within the time allowed by the state will be denied coverage. Furthermore, because an active outreach program has not been implemented, many citizens are likely unaware of the documentation requirements and are not prepared to comply.

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

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

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

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

Attaining the required documents presents its own challenges. The State of Michigan charges $26.00 for Birth Certificates and the time it may take to receive all needed documentation will delay services for our clients. Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220). Of

course, delays in care will occur as a result of the document acquisition process —an especially harmful issue for those who will have to forgo reproductive health care services while they are attempting to attain the required documentation.

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

The requirement for the submission of original or certified copies also stands to curtail efforts our state has made to streamline the Medicaid enrollment process. The requirement that only original and certified documents can be accepted is unreasonable and will undermine efforts to streamline and optimize enrollment of eligible individuals into the Medicaid program. Michigan's Medicaid Waiver program allows for submission of applications by Fax which would not correlate with having an "original or certified copy" of citizenship documentation. This could delay the approval of family planning services for all women applying for this vital family planning coverage.

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

We strongly urge CMS to eliminate the requirement at 42 CFR 435.407(h)(1) that only originals or copies certified by the issuing agency can be accepted. Michigan should not be forced to implement a citizenship documentation process that is both burdensome and counterproductive. We recognize that the regulations are a significant improvement over the June 9th CMS guidance in that they explicitly allow states to use vital health databases to document citizenship and other state and federal databases to document identity (see 71 Fed. Reg. 39216 and 42 CFR 435.407(e)(10)).

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

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

In the interim final rule, CMS solicits comments on whether individuals would have difficulty proving citizenship and identity if only primary or secondary level documents were permitted (see 71 Fed. Reg. 39220). Given that many beneficiaries and applicants will face significant hurdles in documenting citizenship according to the provisions of the interim final rule, it would be

enormously detrimental if the regulations were limited so severely in the final rule. Instead, CMS should approach the final rule in terms of broadening the scope of acceptable documentation. For instance, section 435.407(a) should be amended to allow Native American tribal identification documents to be used to prove both citizenship and identity.

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

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

In conclusion, we strongly urge you to lessen the regulations on citizenship documentation for Medicaid enrollment. It will delay proper health care intervention with clients and will hinder access and availability for those people living in the State of Michigan and nationally from receiving the care they deserve.

Thank you for your attention to these comments.

Rev. Mark Pawlowski, C.E.O.
Planned Parenthood of South Central Michigan

Submitter : **Ms. Marcia Lowry** **Date: 08/11/2006**

Organization : **Children's Rights**

Category : **Attorney/Law Firm**

Issue Areas/Comments

GENERAL

GENERAL

Attached is a comment on the interim final rules for the new Medicaid citizenship and identity documentation requirements as they impact children in foster care and children with special needs adopted from foster care.

CMS-2257-IFC-236-Attach-1.PDF

August 10, 2006

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

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

I am writing on behalf of Children's Rights to comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement Section 6036 of the Deficit Reduction Act (DRA, P.L. 109-171). The provision, which went into effect July 1, requires applicants for and recipients of Medicaid to provide proof of U.S. citizenship or nationality and identity. We are particularly concerned about the impact these regulations will have on the ability of children in foster care and those children with special needs adopted from foster care to get the health and mental health care that they often urgently need.

Children's Rights is one of the country's leading child advocacy organizations, an independent watchdog holding state-run child welfare agencies accountable for providing quality services to endangered children. We conduct legal advocacy, research, policy analysis and public education with the goal of ensuring that abused and neglected children known to government child welfare systems receive appropriate protection, care and services, including the receipt of adequate medical and mental health services, and the opportunity to grow up in permanent families.

While we have numerous concerns about the barriers the new documentation requirements create for children getting timely and appropriate health and mental health care, we are focusing our comments today particularly on our concerns about the application of the interim final rules on children in foster care and children with special needs adopted from foster care.

Clarification of the documentation requirement as it applies to children in foster care and those adopted with special needs from foster care is especially important because children in foster care are often children with very special health and mental health needs who are in need of immediate attention and any delay in receiving medical attention could threaten their lives. Many of them have chronic conditions that require ongoing care and the prospect of discontinuing care while documentation is being sought is potentially life threatening.

Given such problems, we recommend that the Centers for Medicare and Medicaid Services (CMS) take steps in the final regulations to exempt these children from the documentation requirements.

330 Seventh Avenue, 4th floor • New York, NY 10001
Tel: 212-683-2210 • Fax: 212-683-4015 • info@childrensrights.org • www.childrensrights.org

Children who receive federal Title IV-E foster care payments are categorically eligible for Medicaid, and children in state-supported foster care are eligible for Medicaid in every state by virtue of the fact that they are in state-supported foster care. Children who are categorically eligible do not technically apply for Medicaid. This makes them similar to the children and adults who are eligible for SSI and are automatically eligible for Medicaid, a group for whom you have clarified that the new documentation requirements do not apply. We urge you to exempt children in foster care from the documentation requirements as well, as the DRA enables you to do.

A similar argument can be made for children with special needs who are adopted from foster care and are placed in families with Title IV-E adoption assistance payments. These children too are categorically eligible for Medicaid by virtue of their IV-E eligibility. Children receiving state adoption assistance payments also are eligible for Medicaid because they are receiving state adoption assistance payments.

Children's Rights recommends that CMS amend the interim final rule at 42 CFR 435.1008 to add children eligible for Medicaid on the basis of their receipt of foster care payments, and adoption assistance payments, to the list of groups exempted from the citizenship and identity requirements.

We also recommend that CMS drop the provision currently in the interim final rule that says "Title IV-E children receiving Medicaid must have in their Medicaid file a declaration of citizenship or satisfactory immigration status and documentary evidence of the citizenship or immigration status claimed on the declaration." [71 Fed.Reg. at 39216] This provision is duplicative of work that the child welfare agency already does and adds burden and cost to the states. States generally verify citizenship when determining a child's eligibility for IV-E foster care payments, and it is not a good use of resources for it to be documented again by the Medicaid agency. The child welfare agency should be able to notify the Medicaid agency that it has such documentation on file. Similarly, when the state assumes custody of a child in its care, it should be assumed that they have established the identity of the child and they should be allowed to certify to that fact with the Medicaid agency.

The achievements of Children's Rights during the past decade have made critical differences in the lives of tens of thousands of children involved with public child welfare systems nationwide, including better access to appropriate health care services. We urge you to join us in ensuring that children in foster care and children with special needs adopted from foster care continue to receive the medical care they need and to which they are entitled by adding children eligible for Medicaid on the basis of their receipt of foster care payments and adoption assistance payments to the list of groups exempted from the citizenship and identity requirements.

Sincerely,

Marcia Robinson Lowry

Marcia Robinson Lowry
Executive Director

Submitter : **Ms. Alisa Simon** **Date: 08/11/2006**

Organization : **Philadelphia Citizens for Children and Youth**

Category : **Other**

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-237-Attach-1.DOC

TO: The Honorable Michael Leavitt
Secretary, United States Department of Health and Human Services

Deleted: Senator Rick Santorum

FROM: **Peter Zurflieh, Community Justice Project**
Doug Hill, County Commissioners Association of Pennsylvania
Richard Weishaupt, Community Legal Services
Jon Stein, Community Legal Services
Arnold Tiemeyer, Lutheran Advocacy Ministry in Pennsylvania
Pam Bryer, Maternal and Child Health Consortium of Chester County
Joanne Fischer, Maternity Care Coalition
Carol Goertzel, Pathways PA
Michelle Denk, Pennsylvania Association of County Drug & Alcohol Administrators
Sr. Clare Schiefer, Pennsylvania Catholic Health Association
Suzanne Yunghans, Pennsylvania Chapter, American Academy of Pediatrics
Terry Casey, Pennsylvania Child Care Association
Chuck Songer, Pennsylvania Children and Youth Administrators
George Kimes, Pennsylvania Community Providers Association
Bernadette Bianchi, Pennsylvania Council of Children, Youth and Family Services
Rev. Sandra Strauss, Pennsylvania Council of Churches
Mike Campbell, PA Health Law Project, on behalf of Philadelphia Welfare Rights Organization
Blair Hyatt, Pennsylvania Head Start Association
Joan Benso, Pennsylvania Partnerships for Children
Gloria Guard, People's Emergency Center
S. Mary Scullion, Project H.O.M.E.
Alisa Simon, Philadelphia Citizens for Children and Youth
Eileen Connelly, SEIU PA State Council
Terry Fromson, Women's Law Project
Maryann Haytmanek, Women Work

DATE: **August 10, 2006**

RE: **Medicaid Citizenship Verification Requirements**

We know you share our commitment that Pennsylvania children, families and vulnerable citizens should have access to quality, affordable health care and that government should not construct barriers to Pennsylvanians' access to such care.

Given this shared concern and commitment, we are writing to urge your support for improved regulations that ultimately work to reduce the challenges as well as unintended consequences embodied with the Deficit Reduction Act and the initial resulting Medicaid Citizenship Verification regulations.

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As you are may be aware, in Pennsylvania, 1.8 million people, including over 962,000 children, rely on the Medicaid program for their health care. Medicaid is one of the largest insurers for most Pennsylvania hospitals and nursing homes.

The citizenship and identity documentation requirements of the DRA, now identified and interpreted, under your leadership, by The Center on Medicare and Medicaid Services (CMS), have the potential for serious consequences including denied access to health care for many Pennsylvania women, children, the elderly, and other vulnerable citizens.

Deleted: The Deficit Reduction Act (DRA requires states to document both citizenship and identity for all Medicaid applicants and recipients claiming U.S. citizenship. The Center on Medicare and Medicaid Services (CMS) in the Department of Health and Human Services was charged with developing regulations implementing the new law, which was supposed to go into effect July 1, 2006.

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Utilizing national statistics suggesting that some 1.7 million adults (8 percent) and between 1.4 and 2.9 million children (10 percent) nationally enrolled in Medicaid do not have the documentation required by the new law, **we are projecting that approximately 96,000 children and 58,000 adults in the Commonwealth would face significant hurdles to producing the needed documentation**.

Given the direct impact on so many Pennsylvanians, especially vulnerable children, we are deeply troubled by CMS' very narrow interpretation of the law. We are concerned that the interpretation is both unrealistic and frankly has the potential to be very punitive.

The acceptable documentation CMS has established (including requiring a certified birth certificate for every applicant or recipient) at best will challenge vulnerable Pennsylvanians, and at worse, lead to denied access to health care. Additionally, the rules appear to dismiss real life realities including the fact that states might not now be prepared to work together electronically to ease the pursuit and receipt of certified documents like birth certificates.

Pennsylvania has always applied a common sense approach to requiring documentation of citizenship and identity in the Medicaid eligibility process. Using a system that is alert to potential error, the Commonwealth has always verified citizenship in questionable cases and is careful but flexible in establishing identity.

States, health care providers and advocates are rightfully alarmed about the implications of the CMS regulations for individuals' health care access, as well as the fiscal burden such requirements will impose on counties and health care facilities already struggling with unfunded mandates.

1. We have joined together to identify constructive and reasonable regulatory solutions that will ensure that health insurance for so many Pennsylvanians, for whom citizenship is not in doubt, is not disrupted or denied.

We, therefore, respectfully request your leadership and intervention toward addressing the following areas of concern within the regulations:

- **Equal treatment of applicants and beneficiaries** – Access to Medicaid will be denied to individuals applying to the program until all the required documents are presented and deemed acceptable. While the CMS regulations allow for a "reasonable opportunity" for current beneficiaries to provide documentation, no such protection and opportunity is afforded applicants. The regulations should recognize that all vulnerable individuals – whether current beneficiary or applicant -- will likely need some "reasonable opportunity" to fully comply with the new standards is fair, appropriate, and necessary.

- **Revisit populations to be exempted** – We applaud CMS' willingness to exempt Medicare beneficiaries and in many cases individuals receiving SSI. However, the regulations are deficient in that they jeopardize already vulnerable populations (i.e. adoptive and foster children receiving IV-E Assistance, homeless or mentally impaired individuals, those struggling with Alzheimer's, etc.). It is particularly disconcerting that the DRA specifically recognizes foster and adoptive children as a special population to be protected, but CMS ignored such recognition, exposing them to burdensome requirements.

- **Offer absolute assurances that all newborns have access to Medicaid** -- CMS regulations prohibit the use of Medicaid records of birth as adequate documentation, even though the state Medicaid agency has

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Enactment of a technical legislative amendment to provide states with reasonable flexibility and protections for especially vulnerable populations, including reasonable opportunities for individuals to pursue the necessary documentation without being denied access to health care, and exemption of certain populations like children in foster care. ¶
¶
Revision of CMS regulations and recognition of the real life (and health) hurdles for recipients as well as the technological challenges of institutions and states.

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Medicaid Citizenship Verification Memo¶
August 7, 2006¶
Page 2¶
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paid for the birth in a U.S. hospital. Such a policy is counterproductive and likely will lead to denied coverage at a crucial moment in a young child's life.

- **Stipulate that copies of documents are sufficient** – While the law does not require original documents, the CMS regulations do set such an unreasonable threshold. CMS must recognize the reliability of computer records and allow states reasonable flexibility. CMS has insisted that states see original copies of birth and identification documents in every case, insisting that people obtain new copies of birth certificates, letters from hospitals on hospital letterhead attesting to the birth of infants and young children, and even requiring that original photo IDs be mailed to the Medicaid office. Since many people do not have originals and still others are going to be very reluctant to mail them to busy welfare offices, the end result will be wasted time and effort to bring them into the office.

- **Assist states in the development of electronic verification opportunities** – CMS should take the lead in developing a national system that would allow states to verify U.S. birth by computer. A national approach is needed if states are to participate in a system that allows for computer verification of birth in the U.S. Consideration must also be given to the fact that states do not now have the infrastructure to do cross-matching with other states, which could lead to a disruption of benefits despite the fact the person was eligible in one state and moved to another state.

- **Institute a hardship provision** -- CMS regulations have no hardship provision to deal with natural disasters that, as we now know from Katrina, can leave individuals without basic necessities, let alone a paper trail to qualify for life-sustaining services like Medicaid. The regulations also overlook protections that should be afforded in the event of other tragedies like house fires and the ramifications of a person fleeing a domestic violence situation.

- **Allow the use of any of the listed documents as proof of citizenship** – CMS has established an overly rigid hierarchical structure of acceptable citizenship documents, forcing applicants or recipients to try and obtain "primary evidence" even if they already have another reliable document proving their citizenship. This policy will likely produce absurd and highly inefficient results.

We thank you in advance for your thoughtful consideration and action. We look forward to your intervention and leadership on behalf of Pennsylvania children and families. Please do not hesitate to contact Richard Weishaupt at 215-981-3773 or Alisa Simon at 215-563-5848 with questions or concerns.

Submitter : **Mr. Chad Smith** **Date: 08/11/2006**

Organization : **Cherokee Nation**

Category : **Other Government**

Issue Areas/Comments

GENERAL

GENERAL

August 10, 2006

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

Subject: Citizenship Documentation Requirements 71 Federal Register 39214
File Code: CMS-2257-IFC

On behalf of the Cherokee Nation, please accept the following comments to the interim final rule published in the Federal Register on July 12, 2006, at Vol. 71, No. 133, regarding implementation of the new regulations requiring persons currently eligible for or applying for Medicaid to provide proof of U.S. citizenship and identity. The Cherokee Nation agrees with and is supportive of the ongoing efforts of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG), the National Indian Health Board (NIHB), and the National Congress of American Indians (NCAI) to ensure that Tribal enrollment cards and/or Certificate of Degree of Indian Blood (CDIB) are accepted as legitimate documents of proof of U.S. citizenship.

As is often the case, federal legislation that overhauls existing programs or creates new programs do not address the needs of Indian Country, and in many instances hinder the ability of American Indians and Alaska Natives to access such programs. The Deficit Reduction Act (DRA) is yet another example which is requiring an inordinate amount of attention to ensure Indian Country is not negatively affected. While the intent of the provision requiring documentation of U.S. citizenship in order to remain eligible or to apply for Medicaid is to prevent illegal aliens from accessing Medicaid, the provision will create unnecessary burdens on otherwise eligible American Indians and Alaska Natives to access Medicaid.

In recognition of the unique legal and political status of Tribes and Tribal members, Executive Order 13175, and the Secretary of Health and Human Services Tribal Consultation Policy, the Cherokee Nation strongly urges that the implementation of regulations be delayed until this issue is adequately discussed and a solution is reached. It is critical that prior to implementing any regulation affecting a federal entitlement program, the impact on the federal trust responsibility to American Indian and Alaska Native Tribal governments is fully considered. Delaying the implementation of a final rule will not have a negative impact and will allow Congress, the Centers for Medicare and Medicaid Services, the Indian Health Service, and Tribal governments to determine if the regulation is consistent with treaties, court decisions, statutes, and regulations that address the unique status of American Indians and Alaska Natives. Specifically, federal regulations protecting the ability of members of federally recognized Tribal governments to access Medicaid and other federal public benefits under exceptions within the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) should be considered. Additionally, the delay will provide the federal government the opportunity to focus efforts on implementing outstanding regulations under the Medicare Modernization Act (MMA), such as the limitation on charges for services furnished by Medicare Participating Inpatient Hospitals to American Indians and Alaska Natives.

Should you require additional information, please feel free to contact the Cherokee Nation at (918) 453-5000. Thank you for your consideration in this matter.

Sincerely,

Chad Smith, Principal Chief
Cherokee Nation

Submitter : Ms. Amy Knudsen **Date: 08/11/2006**

Organization : Iowa Coalition for Housing & the Homeless

Category : Individual

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See attached comments

CMS-2257-IFC-239-Attach-1.DOC

Iowa Coalition for Housing & the Homeless
713 East Locust Street
Des Moines, IA 50309

August 11, 2006

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

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

Iowa Coalition for Housing & the Homeless is pleased to submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirement of the Deficit Reduction Act of 2005 (DRA). Iowa Coalition for Housing & the Homeless is a statewide non-profit with over 200 members that works on issues of affordable housing and homelessness.

At least 42 million individuals who are already on Medicaid will be affected by this new documentation requirement. We are deeply concerned that many of these individuals, as well as the thousands of people who apply for Medicaid each year, will face the loss or denial of Medicaid coverage because they cannot meet the requirements of the Interim Final Regulation to prove their citizenship and/or identity.

Positive Aspects of the Rule

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

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

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

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

Concerns about the Rule

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

According to the preamble to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal (newborns are categorically-eligible for one year if their mothers were categorically-eligible at the child's birth and would have continued to be eligible if they were still pregnant during this time). 71 Fed. Reg. at 39216. The preamble also states that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their birth before they can get any coverage at all. 71 Fed. Reg. at 39216. Yet, in both situations, there is no question that these children are American citizens by virtue of their birth in U.S. hospitals. Moreover, the states have first-hand knowledge of the citizenship of these children because Medicaid paid for their births.

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

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

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

435.407(a)-(d) The document hierarchy established in the rule goes beyond the statutory requirements of the DRA.

The Interim Final Rule and June 9, 2006 State Medicaid Director letter establish a hierarchical structure for documents that individuals can use to prove citizenship. The documents are tiered according to their "reliability." 71 Fed. Reg. at 39218. Documents such as a U.S. passport or Certificate of Naturalization are in the first tier and thus deemed more "reliable" than documents in Tiers 2, 3 and 4. The rule also requires states to obtain higher-level documentation where it is available, before moving on to documentation from a lower tier. 71 Fed. Reg. at 39222-39224.

While we are pleased that CMS has used the authority granted in the DRA expanded the list of documents that can be used to prove citizenship beyond those included in the statute, we are concerned that the hierarchy employed in the Interim Final Rule goes beyond the statutory requirements of Section 6036 of the DRA. The hierarchy will cause significant time delays for applicants and headaches for agency staff and beneficiaries and applicants as individuals attempt to demonstrate that they cannot get a higher tier document before moving to the subsequent tier. The hierarchy also makes little sense: If a fourth tier document eventually becomes sufficient proof for an individual, then why cannot it be sufficient documentation at the outset?

We urge CMS to amend 42 CFR 435.407(a)-(d) and eliminate the document hierarchy.

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

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

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

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

435.407(c) and (d) The requirement that third and fourth level evidence must be issued at least 5 years before an individual's application for Medicaid is arbitrary and overly burdensome.

Most of the third and fourth level evidentiary documents listed in the Interim Final Rule are acceptable documentation only if they are dated at least five year's prior to the applicant's or

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

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

recipient's original application for Medicaid. 71 Fed. Reg. at 39223-39224. This requirement will undoubtedly result in hardship for many individuals, especially those who are applying for, or are long time recipients of, nursing home care and may not possess documents that meet this time restriction. Furthermore, there is no apparent explanation in the Interim Final Rule for this stringent requirement.

We urge CMS to amend 42 CFR 435.407(c) and (d) by removing the requirement that third and fourth level documentary evidence must have been created five years prior to the individual's application for Medicaid.

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

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

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

The new rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. 71 Fed. Reg. at 39225. This provision of the rule poses a significant burden for both individuals and state agencies. Over the years many states have simplified and streamlined application procedures for Medicaid, including adopting a mail-in application process and eliminating face-to-face interviews. These processes reduce Medicaid administrative costs by eliminating the timely interview process and reducing staff time required for each application and renewal. They have been shown to make Medicaid more effective by increasing participation in Medicaid among people who are eligible for it. While CMS clarifies in the preamble of the rule that the documentation requirement does not prohibit utilization of mail-in application and renewal processes, the requirement that individuals submit original documents undermines those efforts. It is highly unlikely that individuals will want to mail in their original documents and rely on the Medicaid agency to return them. Moreover, mailing original documents back to people would be quite costly for states. Furthermore, it is impractical for someone to mail in a driver's license to document their identity for Medicaid purposes because they may need to drive before they get it back. This provision of the rule will only delay coverage for new applicants forced to schedule

appointments with the Medicaid agency to fulfill this requirement. Some applicants may even be discouraged from completing the application process.

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

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

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

435.407(h)(5) Meeting the citizenship documentation requirement in one state should suffice for any other state.

The Interim Final Rule states that documentation of citizenship and identity should be a one-time event. 71 Fed. Reg. at 39225. The Rule includes no provision for ensuring that individuals who meet the documentation requirement in one state and get onto Medicaid, then move to a different state can enroll Medicaid in their new state without providing documentation a second time. The Interim Final Rule should be clarified and amended at 42 CFR 435.407(h)(5) so that individuals truly only have to provide documentary evidence of citizenship once as the regulations intend.

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

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

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

There is no statutory requirement to prohibit people who are otherwise eligible for Medicaid from enrolling in the program immediately. As written in Section 6036 of the DRA, the citizenship documentation requirement is a requirement for states to receive federal matching funds, not an eligibility requirement for individuals. Once someone has declared under penalty of perjury that s/he is an American citizen and met all eligibility requirements for Medicaid, s/he should be enrolled in Medicaid pending submission of the appropriate documentation of citizenship. Without this change, coverage for working families, children, pregnant women, and parents will be delayed. And without this coverage, individuals with health care needs will delay seeking care and may ultimately require more expensive care if their condition worsens.
We urge CMS to revise 42 CFR 435.407(j) so that applicants who declare they are U.S. citizens and meet all the Medicaid eligibility criteria are enrolled in Medicaid, while they have a "reasonable opportunity period" to obtain the documentation necessary to prove their U.S. citizenship and identity.

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

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

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

meet the affidavit requirements. As a result, U.S. citizens who are otherwise eligible for Medicaid will be denied or lose coverage.

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

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

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

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

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

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

435.1008 CMS should use its authority to exempt additional groups of people from the citizenship documentation requirement.

The Interim Final Rule exempts Medicare and SSI recipients from the documentation requirement. 71 Fed. Reg. at 39225. Section 6036 of the DRA authorizes the Secretary of HHS to exempt other groups who have submitted proof of U.S. citizenship or nationality from the requirement.There are a number of other categories of Medicaid applicants and recipients who

should be exempt from the documentation requirement because they already establish proof of their U.S. citizenship through the application process for other government benefit programs. These groups include:

- SSDI recipients in the two year waiting period for Medicare, who have met all the eligibility criteria for Medicare—including providing proof of citizenship—and are just waiting to fulfill the two year time period.
- Former SSI and Medicare beneficiaries, who for whatever reason are no longer eligible for those programs, but have established proof of citizenship in the past, and are now eligible for Medicaid.
- Former and current TANF recipients who receive Medicaid on the basis of receipt of TANF. These individuals have proven their citizenship through the TANF program.

We urge CMS to amend 42 CFR 435.1008 and exempt the categories of individuals mentioned above.

Conclusion

We thank CMS for making strides to ameliorate the harm of the new Medicaid citizenship documentation requirement, but we believe that unless the steps described above are not taken, the citizenship documentation requirement will result in Medicaid recipients and new applicants losing or being denied coverage for critical health care benefits.

Thank you for your attention to these comments. If you have any questions, please contact Amy Knudsen at Iowa Coalition for Housing & the Homeless at (515) 288-5022.

Submitter : **Date: 08/11/2006**

Organization : **Planned Parenthood of East Central Michigan**

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-240-Attach-1.DOC

August 11, 2006

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

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

Dear Administrator McClellan:

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

Planned Parenthood of East Central Michigan (PPECM) provides affordable and accessible comprehensive reproductive and associated health care services of the highest quality with special concern for underserved, low-income and adolescent populations. We offer contraceptive health care services, breast and cervical cancer screenings, diagnosis and treatment for sexually transmitted infections (including HIV testing and counseling), mid-life services, vasectomy, and pregnancy and options counseling at our four health centers. In a state with one of the highest jobless rates in the country (6.3%, according to the Bureau of Labor Statistics), families struggle everyday to access quality, affordable health care. At PPECM, men and women are able to receive preventative health care and family planning services at a cost they can afford. Family planning programs are crucial in preventing unintended pregnancy, reducing the number of abortions, infant mortalities, low birth weight babies and sexually transmitted infections by allowing people to make informed choices about the number, spacing and timing of their pregnancies and helping them maintain their reproductive health.

As a not-for-profit agency that participates in the Family Planning Program (Title X), PPECM is able to provide health care services at three of our health centers, on the basis of household income, on a sliding fee scale, and to Medicaid recipients, with or without an HMO. We also extend these guidelines to clients with insurance plans that do not cover reproductive health care services. 86% of our clients are at or below 150% of the Federal Poverty Level. Of the 9,279 clients we served last year, 2,658 of those (29%) received Medicaid.

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

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

Michigan has an established service delivery system for family planning. Services such as physical and pelvic exams, breast and cervical cancer screenings, counseling and screening for STI's, and counseling on pre-pregnancy issues and contraception are provided to 233,810 Michiganders through 239 publicly funded clinics across the state. The goal of Michigan's Family Planning Program is to reduce unintended/unwanted pregnancies and infant mortality by providing access to comprehensive family planning services; to reduce preventable infectious disease incidence and mortality; to prevent unwanted/unintended teen pregnancies by providing family planning services to teens; and to assure the full range of necessary high quality family planning services are accessible and acceptable to all populations. Family planning programs are available to all women and men regardless of income or ability to pay.

Clients below 185% of the poverty level are not charged for family planning services. Those whose income falls between 186% and 250% of the poverty level are assessed fees based on their income and family size. Those above 250% of the poverty level are assessed full fees. The program places emphasis on serving teens, with 31% of the users being under the age of 20. According to the Alan Guttmacher Institute, 174,654 women and 5,585 men were served by Michigan family planning programs in 2004. 112,740 of those users were below 100% of the poverty level.

Medicaid plays a significant role in providing family planning services to Michigan citizens. Family planning services are a required health service for Medicaid enrollees in qualified health plans. The health plans are required to reimburse other publicly funded family planning clinics, such as ours, for family planning services provided to an enrollee. In 2001, Medicaid spent $11,936 (43% of their total expenditures) to provide these crucial services to men and women in the state.

On July 1, 2006 the State of Michigan initialized Plan First!, Michigan's new family planning waiver which provides access to birth control and related health care to women ages 19-44 at 185% of poverty and below. This has enabled women in the state to receive free family planning services, who do not qualify for Medicaid. Planned Parenthood of East Central Michigan is currently providing services with this new family planning waiver, and it is estimated that of the 6,597 clients we served in 2005 who were not covered under Medicaid, approximately 66% would qualify for coverage under Plan First!. However, the process for documentation of citizenship will hinder and delay the clients we are able to reach, putting them at risk of an unintended pregnancy.

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

Since 1993, twenty-four states have expanded access to family planning services through 1115 family planning demonstration programs. Under these programs, states have received CMS

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

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

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

In addition to expanding access to such vital health care services, family planning demonstration programs save money. **In Michigan, every dollar spent on family planning saves an estimated $3 in Medicaid costs for pregnancy related and newborn care.** A 2003 study commissioned by CMS showed that in each of the states studied, the program actually saved money by averting unintended pregnancies. For instance, South Carolina realized a savings of $56 million over a three-year period while Oregon's program saved almost $20 million in a single year.

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

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

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

Section 6036 of the DRA applies to all individuals (with the exception of Medicare beneficiaries and most SSI beneficiaries) who apply for Medicaid. For those individuals who are already receiving Medicaid benefits, the interim final rule stipulates that they will continue to be eligible for services while they are in the process of producing the required documentation during a "reasonable

opportunity" period allotted to them. However, for those individuals who are newly applying to the program, the interim final rule firmly establishes that they will not be eligible for services until citizenship is proven (see 71 Fed. Reg. at 39216 and 42 CFR 435.407(j)). As a result, U.S. citizens applying for Medicaid who have met all eligibility criteria and are in the process of producing the documentation will experience significant delays in Medicaid coverage. This will have a substantial impact on individuals in need of time-sensitive reproductive health care services.

As a result, in this year alone, approximately 10 million U.S. citizens applying for Medicaid will face the possibility of a gap in coverage while they are in the process of producing the required documentation. **Over one million citizens were enrolled in Medicaid in Michigan alone, as of December 31, 2004.** It should not be lost that the majority of the citizens affected will be low-income pregnant women, children, and other vulnerable Americans. Undoubtedly, this will result in delays in care, worsening health care problems and eventually placing a heavier burden on the health care system. This will have an especially negative impact on individuals in need of family planning services, cervical and breast cancer screening, and STI testing services. Some U.S. citizens who may get discouraged or are unable to produce the documents within the time allowed by the state will be denied coverage. Furthermore, because an active outreach program has not been implemented, many citizens are likely unaware of the documentation requirements and are not prepared to comply.

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

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

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

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

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

Attaining the required documents presents its own challenges. **The State of Michigan charges $26 for a birth certificate. However, this fee is $36 if the certificate is purchased via the state's website, or if the request is expedited. Delivery time is also an issue. It can take from one to**

two business days (via Federal Express), or up to two weeks via regular mail. While a vital record can be requested in-person, there is an additional fee of $10, and a person may be required to wait two to three hours for same-day service. Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220). Of course, delays in care will occur as a result of the document acquisition process —an especially harmful issue for those who will have to forgo reproductive health care services while they are attempting to attain the required documentation.

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

The requirement for the submission of original or certified copies also stands to curtail efforts our state has made to streamline the Medicaid enrollment process. Michigan's Medicaid Waiver program allows for submission of applications by facsimile, which would not meet the "original or certified copy" requirement of citizenship documentation. This could delay the approval of family planning services for all women, and delay their access to vital health care services. The requirement that only original and certified documents can be accepted is unreasonable and will undermine efforts to streamline and optimize enrollment of eligible individuals into the Medicaid program.

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

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

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

Michigan should not be forced to implement a citizenship documentation process that is both burdensome and counterproductive. We recognize that the regulations are a significant improvement over the June 9th CMS guidance in that they explicitly allow states to use vital health databases to document citizenship and other state and federal databases to document identity (see 71 Fed. Reg. 39216 and 42 CFR 435.407(e)(10)).

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

While requiring states to help "special populations" in securing citizenship documentation is an important safeguard, it is unclear if this provision covers all individuals who may be in need of state assistance (see 42 CFR 435.407(g)). The provision applies to those who cannot acquire the

documents because of "incapacity of mind or body." Conceivably, there are many groups of people who may be lost in this provision, such as victims of natural disasters and certain homeless individuals. CMS should erect a clear safety net for these populations as well. Furthermore, CMS should ensure that for these populations, eligibility for services cannot be denied as a result of a state's incapacity to locate the documentation.

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

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

Conclusion

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

Thank you for your attention to these comments.

James Richardson, CEO/Executive Director
Planned Parenthood of East Central Michigan

Submitter : Ms. Annette Kowal **Date:** 08/11/2006

Organization : Colorado Community Health Network

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-241-Attach-1.DOC

colorado communityhealth network

quality care • quality investment

August 10, 2006

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

The Colorado Community Health Network (CCHN) is submitting comments on the Citizenship Documentation Interim Final Rule, 71 Fed. Reg. 39214 (July 12, 2006).

CCHN is the primary care association in Colorado. We represent Colorado's 15 Federally Qualified Health Centers, also known as Community Health Centers. Community Health Centers are the medical home for one third of our state's Medicaid enrollees and in 2005, provided care to more than 396,000 Coloradans.

The successful enrollment of eligible Coloradans in Medicaid is of the utmost importance to us. We are concerned that many US citizens will be unable to comply with the provisions of this interim final rule and offer the comments below in the hopes that the rule will be modified before it is finalized to ensure that eligible US citizens do not face delay or loss of Medicaid coverage.

First, we are concerned with the requirement that documents be originals or certified copies. Applicants face a choice of traveling to a county office with the document or mailing a sole copy to a county office.

As you know, low-income and disabled Medicaid applicants face transportation barriers that can be quite significant in the rural and frontier areas of Colorado that do not have public transportation. The nearest county office for some applicants may well be over a mountain pass. Taking the necessary time away from work to visit a county office during its office hours is not a realistic option for many low-income applicants.

Alternately, surrendering an original document to be mailed to an agency which may not have a process in place to return these documents is an expensive risk for applicants. Protections such as certified mail add expense to both the applicant and the county.

600 grant street • suite 800 • denver, co 80203 • 303-861-5165 • 303-861-5315 (fax) • www.cchn.org

Second, we believe citizen applicants meeting all other eligibility criteria should be given adequate time to secure needed documents and receive benefits in the meantime. The DRA clearly states that documentation of citizenship is not a requirement for Medicaid eligibility. Once an otherwise eligible applicant for Medicaid declares that he/she is a citizen, eligibility should be granted.

In Colorado, the reasonable opportunity period for missing documents is 10 days, which is not enough time for many applicants to secure and mail or take in documents. Delaying enrollment delays care, increases the likelihood of poorer health outcomes and increases costs for health care providers like Community Health Centers and taxpyers. In many cases, Medicaid itself pays thousands of dollars for emergency care that could have been prevented with a simple office visit.

This is especially critical because citizen applicants will remain unaware of the documentation requirements until they apply to Medicaid, usually when they are in need of health care. Delayed enrollment for a Medicaid-eligible patient at a Community Health Center means a delay in payment for care delivered. And we know that many eligible citizens may never be able to comply with the requirements, leaving no reimbursement at all. Colorado's Community Health Centers have a mission to provide care to those in need, and this mission takes money to fulfill.

We strongly 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 while documents are secured. We also recommend that CMS specify a minimum opportunity period of 30 business days to give applicants a more realistic time frame within which to provide the required documents.

Third, foster care children (those eligible for federal Title IV-E foster care payments) should be exempt from the citizenship documentation requirement. Children separated from their parents are very likely to also be separated from their legal documents. The DRA exempts groups receiving Medicaid on the condition of enrollment in other federal programs that have their own citizenship requirements. Title IV-E foster children receive Medicaid as a condition of their foster care status and this program follows existing Department of Justice citizenship verification guidelines.

We urge CMS to revise 42 CFR 435.1005 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

Finally, a state Medicaid agency's record of payment for the birth of an infant in a US hospital should be considered documentary evidence of citizenship and identity. Children born to women on Medicaid or emergency Medicaid at US hospital are clearly US citizens. Requiring documentation of citizenship is an unnecessary expense and one that takes time to acquire. Birth certificates are not issued upon release from the hospital because state vital records take time to update.

While the interim final rule allows for certain hospital records to qualify as third-tier proof of citizenship, we recommend that proof of a US birth held by a state Medicaid agency be moved from a third-tier document to automatic proof of citizenship for newborns and even older children. This is especially important for newborns as their care can be quite expensive; ensuring automatic enrollment for these Medicaid births will ensure access to primary and

specialty care for the child and timely reimbursement for providers like Community Health Centers.

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.

Thank you again for this opportunity to provide input on the Citizenship Documentation Interim Final Rule, 71 Fed. Reg. 39214 (July 12, 2006). Community Health Centers in Colorado and across the country are committed to caring for Medicaid enrollees. Just as the health of an individual is impacted by Medicaid coverage, so too is the financial health of the Community Health Centers that care for them.

Sincerely,

Annette Kowal
Chief Executive Officer

CC: CMS Region 8 Denver Office
Steve Tool, Executive Director, CO Dept. of Health Care Policy and Financing (HCPF)
Barbara Prehmus, Medical Assistance Director, HCPF
Betty Sweeney, Community Liaison, Denver Metro Office of Senator Ken Salazar

Submitter : Ms. Brenda Shore **Date:** 08/11/2006

Organization : United South and Eastern Tribes, Inc. (USET)

Category : Other Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-242-Attach-1.PDF

UNITED SOUTH AND EASTERN TRIBES, INC.
711 Stewarts Ferry Pike • Suite 100 • Nashville, TN 37214
Telephone: (615) 872-7900 • Fax: (615) 872-7417

August 10, 2006

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

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

To Whom It May Concern:

On behalf of the twenty-four federally recognized American Indian Tribal Governments that compose the United South and Eastern Tribes, Inc (USET), the attached comments are provided in response to the Interim Final Rule: Medicaid Program, Citizenship Documentation Requirements that was posted in the Federal Register on July 12, 2006.

USET Tribal Governments have always maintained that the government-to-government relationship exists between the Federal Government and federally recognized Tribal Governments. Therefore, the enclosed comments are made in accordance with this principle.

Should you have any questions regarding the comments please contact Ms. Dee Sabattus at (615) 872-7900 or dsabattus@usetinc.org.

Sincerely,

Brenda E. Shore
Interim Executive Director

enc: (2)
cc: USET Tribal Health Directors
Michael O. Leavitt, Secretary of HHS
Mark B. McClellan, Administrator, CMS
Charles W. Grim, Director, IHS
National Indian Health Board
Dee Sabattus, Health Policy Analyst
File

UNITED SOUTH AND EASTERN TRIBES, INC.
COMMENTS IN RESPONSE TO MEDICAID PROGRAM: CITIZENSHIP DOCUMENTATION REQUIREMENTS, 71 FEDERAL REGISTER 39214 (JULY 12, 2006); FILE CODE: CMS-2257-IFC

INTRODUCTION

Established in 1969, the United South and Eastern Tribes, Incorporated (USET) is comprised of twenty-four federally recognized Tribal Governments. The Tribes are located in twelve different States from Maine continuing south to Florida then across to eastern Texas. USET serves its member Tribes by advocating for the improvement of health care delivery to American Indian/Alaska Natives (AI/AN), promoting Indian leadership, improving the quality of life for AI/ANs, and protecting Indian rights and natural resources on Tribal lands. As well as upholding the Federal Government's trust responsibility to AI/AN Tribal Governments.

The USET Tribal Governments have always maintained that the government-to-government relationship exists between the Federal Government and federally recognized Tribal Governments. Therefore, the following comments are made in accordance with this principle and are provided on behalf of the twenty-four federally recognized Tribal Governments that compose USET.

BACKGROUND

Since the formation of the Union, the United States (U.S.) has recognized Indian Tribes as sovereign nations. Thus, creating a unique government-to-government relationship between Indian Tribes and the Federal Government. The Federal Government has enacted numerous regulations that establish and define the trust relationship with Indian Tribes.

There are 563 federally recognized Indian Tribes in the U.S. whose Tribal constitution(s) include provisions establishing membership. Tribal constitutions include strict provisions establishing membership in the Tribe, which are approved by the Department of Interior.

Further, and as a result of the 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 Indian Tribes. To this day, Tribal genealogy charts establish direct descendency from these Tribal members. With very few exceptions, federally recognized Indian Tribes issue Tribal enrollment cards or Certificate of Degree of Indian Blood (CDIB) to members and descendents of federally recognized Indian Tribes who are born in the U.S. or to persons descended from someone who was born in the U.S. Therefore, Tribal enrollment cards or CDIBs should serve as satisfactory documentation of U.S. citizenship.

SUMMARY

On 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 (TTAG) in the development of this guidance. While, 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. However, the SMD guidance failed to include Tribal enrollment cards or CDIBs as legitimate documents validating proof of citizenship. USET is very disappointed that the interim regulations did not recognize Tribal enrollment cards or CDIB's as proof of U.S. Citizenship.

In developing the interim regulations, CMS might have been concerned that some Indian Tribes issue enrollment cards to non-citizens and therefore determined that Tribal enrollment cards or CDIBs are not reliable documentation of U.S. citizenship for Medicaid eligibility purposes. 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 U.S. citizens, U.S. 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 U.S. who either (1) were born in Canada and are at least 50% Native American blood, or (2) who are members of a federally recognized Indian Tribe are eligible for Medicaid and other Federal public benefits, *regardless of their immigration status.* Documentation required for the purposes of the PRWORA consists of a Tribal membership card or other Tribal documentation demonstrating membership in a federally recognized Indian Tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act.

USET believes that since PRWORA finds Tribal membership cards satisfactory proof of documentation for eligibility purposes, the requirements under the Deficit Reduction Act (DRA) should be the same. Thus, USET recommends 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; USET recommends that the CMS recognize these Tribal documents as legitimate documents of citizenship as a Tier 2 document.

Should CMS choose not to recognize Tribal enrollment cards or CDIBs as proof of U.S. citizenship, AI/AN Medicaid beneficiaries might not be able to produce a birth certificate and/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 records. By not recognizing Tribal enrollment card or CDIBs as proof of citizenship CMS is creating a barrier to AI/ANs access to Medicaid benefits, thus diminishing the trust responsibility the Federal Government has to Indian Tribes.

CONCLUSION

As stated in an official letter to Congressional leaders by the Chairwoman of the National Indian Health Board, "Tribal Governments find it 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. A Tribal document that is currently recognized by Federal agencies to confer Federal benefits by virtue of 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."

USET urges CMS to amend the interim regulations to address Tribal concerns by recognizing Tribal enrollment cards or CDIBs as Tier 1 documents, or in the alternative, Tier 2 documents. Recognizing these documents as sufficient proof of U.S. citizenship will benefit not only AI/ANs but all of the health care providers located near Indian country that provide services to AI/AN Medicaid beneficiaries.

USET appreciates the opportunity to submit comments regarding the interim final rule on behalf of twenty-four federally recognized Tribal Governments. It is evident that CMS is supportive of Tribal interest, however, as pointed out in the comments above we do have some concerns regarding the citizenship requirements.

Submitter : Mr. Marvin Ventrell **Date:** 08/11/2006

Organization : National Association of Counsel for Children

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-243-Attach-1.PDF

Choctaw Health Department
Mississippi Band of Choctaw Indians
210 Hospital Circle
Choctaw, MS 39350

Date: August 04, 2006

To: Centers for Medicare & Medicaid Services:

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 descendency from these Tribal members. With very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards or CDIBs to members and descendants of Federally Recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, Tribal enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

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

The interim regulations, at 42 C.F.R. 437.407(e)(6) and (e)(8)(vi), recognize Native American tribal documents as proof of identity. Section 437.407(e)(9) recognizes CDIBs as evidence of identity because they include identifying information such as the person's name, tribal affiliation, and blood quantum. Since the CMS already recognizes Native American tribal documents or CDIBs as satisfactory documentation of identity, there is sufficient basis for CMS to recognize Tribal enrollment cards or CDIBs as satisfactory documentation of primary evidence of both U.S. citizenship AND identity. The term Native American tribal document is found in the Department of Homeland Security,

Form I-9, where Native American tribal documents suffice for identity and employment eligibility purposes. The interim regulations do not define the term 'Native American tribal document" but certainly, Tribal enrollment cards or CDIBs fall within the scope of a "Native American tribal document." Thus, I recommend that section 435.407 (a) of the regulations be amended to include Tribal enrollment cards or CDIBs as Tier 1 documents.

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

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

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

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

Thank you for your thoughtful consideration of my comments.

Sincerely yours,

James D. Wallace, Health Director
MBCI

Submitter : Mr. Doug Berman **Date:** 08/11/2006

Organization : Providers of Health Care For the Homeless

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment

Regulatory Impact Statement

Regulatory Impact Statement

See Attachment

CMS-2257-IFC-244-Attach-1.DOC

THE NEW YORK CITY
PROVIDERS OF HEALTH CARE FOR THE HOMELESS

12 West 21st Street, 8th Floor
New York, NY 10010
212 - 366-4459 x 206

10 August 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 Federal Register 39214 (July 12, 2006)

The New York City Providers of Health Care to the Homeless (PHCH) is submitting the following comments in regards to the Interim Final Rule issued on July 12, 2006 that pertain to new citizenship documentation requirements as part of the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109-171). The PHCH is a coalition of federally qualified health centers that serve homeless people and is committed to ensuring barrier-free access to high quality comprehensive health services by experienced providers sensitive to the lifestyles and medical and behavioral conditions of homeless individuals and families.

PHCH is most concerned with Section 6036 of the DRA effective July 1, 2006 that requires U.S. citizens and nationals applying for or receiving Medicaid document both their citizenship and identity. We are deeply concerned that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage due to the new requirement and call on CMS to alter rules so that qualified applicants and beneficiaries do not join the ranks of the uninsured. Our comments below highlight areas that CMS should modify in the final rule.

Section 435.407(g) Special Populations

Homeless individuals clearly fall under Section 435.407(g), establishing that states must assist certain individuals in securing proper documentation. As providers of health care to homeless populations, we are all too aware that documentation is often not readily available, nor do individuals have funds or wherewithal to obtain a certified copy of the original document from state agencies. Most state agencies require a fee for a certified copy of original documentation. Yet, for homeless people and families, these funds may be prohibitive. State agencies should be allowed to waive any fees for documentations for

populations with financial hardship. And, given the transience of homeless individuals and families, document requests which must be made and fulfilled by mail are unlikely to reach the recipient in a timely manner, if at all. Additionally, many people may justifiably be reticent to let original documents out of their possession.

Further, many individuals who become homeless because of a natural disaster, or were born in localities where a natural disaster has occurred, will not be able to produce or secure documentation. Yet there is no "reasonable time" for an unmet and urgent medical need.

The DRA does allow the use of written affidavits "only ..in rare circumstances" 42 CFR 435.407(d)(5). However, the requirements for these affidavits are rigorous, and it is likely that in many instances they cannot be met because they require two qualified individuals with personal knowledge. Homeless people are often estranged from family members and from the systems that could assist them.

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

Section 435.1008 Exemptions

PHCH commends CMS for exempting SSI and Medicare beneficiaries from the documentation and identification requirements. PHCH calls on CMS to consider exempting other populations who have already proven citizenship and identification for other federal programs, such as TANF families and children, and former SCHIP enrollees who qualify for Medicaid. All children and adults who currently participate in federal programs where citizenship has already been determined should be exempted from these requirements.

Section 436.1004 Delay in Enrollment

Individuals who apply for Medicaid and have met all thresholds for eligibility except for new citizenship and identification documentation should be covered under Medicaid when they have attested to being citizens. Obtaining these documents will be difficult not only for applicants but also for social workers and enrollment facilitators, therefore

applicants should be enrolled while waiting for state agencies to fulfill documentation requests. Persons who are reapplying are presumed to be eligible even when waiting for documentation, but new applicants, under this rule, will not be able to enroll until all requirements are met. This is irresponsible and does not take into account immediate need for treatment of health conditions. Further, it will burden the safety net providers, such as homeless health centers, who are required to provide care regardless of insurance status.

Section 436.407(h)(6) Linkages to State Agencies

Taking into account the lives of persons who are homeless, PHCH also urges CMS to allow verification of city, state and federal records to count as documentation and identification. Many state agencies already require individuals to prove citizenship, or document citizenship as recordkeeping. CMS should allow states, and foster systems to cross match with public assistance, state mental health authorities, law enforcement, veteran's affairs, and corrections data systems to establish identity as long as the original agencies establishes and certifies true identity. Agencies such as those that handle food stamps, child support, corrections, juvenile detention, motor vehicle, veteran's affairs or child protective services are all options for states to explore in helping Medicaid applicants who have difficulty providing proper documentation.

However, when taking into consideration the human error of data programs, CMS should allow individuals to provide other documentation of citizenship in the case of mismatched data.

Outreach

CMS must make a concerted outreach effort, in conjunction with the states and possibly the Health Resources and Services Administration to inform health providers and individuals of the new requirements. Currently, many administrators and front line providers do not have information on how each state will implement the new rule, how to collect such documents, or how to inform patients of the new requirements. Patients facing an imminent renewal of Medicaid benefits must be informed by their state Medicaid offices, with assistance from CMS.

Thank you for the opportunity to comment on the Interim Final Rule.

Sincerely,

Douglas Berman
Coordinator

Submitter : **Mrs. Cile Mathews** **Date: 08/11/2006**

Organization : **The Florence Crittenton Agency, Inc.**

Category : **Social Worker**

Issue Areas/Comments

GENERAL

GENERAL

The Honorable Michael O. Leavitt
Secretary of Health and Human Services

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

Dear Secretary Leavitt:

The Florence Crittenton Agency is a non-profit organization that provides residential services to high-risk teen girls, and also counseling services to families who are at risk for having a child/children taken from the home. Some of these children are placed in foster/adoptive homes and rely on assistance through Medicaid. It is my concern that these new requirements to prove U.S. citizenship or nationality and identity will create a tremendous burden on foster children, foster families, and an already overburdened child welfare system. Furthermore, the new requirements are duplicative in the case of foster children, as according to federal law, foster children already must have documented citizenship to receive Title IV-E assistance.

The guidance creates a critical burden on state and local child welfare systems, children served by these systems and the families that care for them. We are concerned that guidance may have the effect of causing confusion and possibly delaying or denying health care for those children and their families who may not have easy access to the required documentation. Limiting access may also drain financial resources in the child welfare system when funds are diverted from needed care, prevention and treatment services to meet health care needs.

Over 150,000 of the 523,000 children in foster care are age 5 or younger. We believe it is safe to assume they will not have a passport, which is the primary document called for by CMS/HHS to establish both identity and citizenship. At the other end of the age spectrum, for the more than 20,000 youth that leave or "age-out" of the system each year, we are clearly creating an additional barrier to health care. These youth are faced with enormous challenges including limited access to services. To truly make a transition to independence and adulthood, access to supports for these foster youth needs to be made easier, not more difficult.

There is a clear need to address the situation facing children in the child welfare system due to these new Medicaid requirements. We endorse the recommendations of the American Public Human Services Association (APHSA) and the National Association of State Medicaid Directors (NASMD). In particular, we support:
" The exemption of foster and adoptive children from these requirements as this would result in the most direct way to address the needs of this population.
" The use of tribal enrollment cards and the enrollment process as this would impact on many tribal communities and their child welfare population.
If these changes are not included then we propose the following actions as a secondary response. Under Title IV-E children are already required to have documentation of their citizenship status. This new CMS/HHS guidance will require that state Medicaid agencies duplicate the documentation work of state child welfare. Children who are eligible for federal Title IV-E foster care - about half of the children in foster care - are automatically eligible for Medicaid coverage (mandatory Medicaid). The remaining children not eligible for federal IV-E foster care are covered at state option in most, if not all, of the fifty states.
" We propose that children who have been determined as eligible for federal Title IV-E foster care be considered as having met the burden of citizenship and identifications. In addition, for those state systems that have established a process of determining alien status for the entire foster care population -- both IV-E eligible and non IV-E eligible -- in determining Medicaid eligibility that standard should apply to the state's entire foster care population. We endorse the proposals that would allow youth 17 and younger to be treated as minors.

Cile Mathews
Executive Director

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Submitter : **Laurel Cliff** **Date: 08/11/2006**

Organization : **Laurel Cliff**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan, I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether. If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care.

For example, CMS must:
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(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter : Rachel Nyden **Date:** 08/11/2006

Organization : Rachel Nyden

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Ms. Cynthia Fuqua **Date:** 08/11/2006

Organization : Ms. Cynthia Fuqua

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : **Natalie Tobier** **Date: 08/11/2006**

Organization : **Natalie Tobier**

Category : **Individual**

Issue Areas/Comments

GENERAL

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Submitter : **Chip Phillips** **Date: 08/11/2006**

Organization : **Chip Phillips**

Category : **Individual**

Issue Areas/Comments

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Thank you for your consideration.

Submitter : **Ms. Michelle Sanborn** **Date: 08/11/2006**

Organization : **Children's Alliance**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

The Children s Alliance, an association of children and family service agencies throughout Kentucky, respectfully recommends the Centers for Medicare and Medicaid Services (CMS) carefully evaluate the interim rule to implement section 6036 of the Deficit Reduction Act of 2005, which was published in the Federal Register on July 12, 2006. It is our belief that this rule will have a significant negative impact on children in foster care throughout our nation.

We believe that imposing new requirements to prove citizenship or identity will create an undue burden on foster children and families, as well as, require duplicative work for an already overloaded child welfare system. We request CMS exempt foster children from the new citizenship documentation requirement.

Failure to exempt foster children from this ruling would result in the delay or denial of necessary health care services for children in foster care. Most of the children who enter the foster care system present with some form of physical, emotional or behavioral condition which would require immediate medical assistance. We encourage CMS to work in partnership with the child welfare system to ensure immediate and adequate health care is provided to our most needy children.

Please exempt foster children from the new citizenship documentation requirement.

Sincerely,

Michelle M. Sanborn
Director of Public Policy

Submitter : **Ms. Raven Brown** **Date: 08/11/2006**

Organization : **Ms. Raven Brown**

Category : **Individual**

Issue Areas/Comments

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Submitter : **Ms. Cara D'Amico** **Date: 08/11/2006**

Organization : **Ms. Cara D'Amico**

Category : **Individual**

Issue Areas/Comments

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Thank you for your consideration.

Submitter : **Ms. Joanna Heitz** **Date: 08/11/2006**

Organization : **Ms. Joanna Heitz**

Category : **Individual**

Issue Areas/Comments

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Thank you for your consideration.

Submitter : Ms. Lori Applebaum **Date:** 08/11/2006

Organization : Ms. Lori Applebaum

Category : Individual

Issue Areas/Comments

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Submitter : Ms. Rebekah Wilce **Date:** 08/11/2006

Organization : Ms. Rebekah Wilce

Category : Individual

Issue Areas/Comments

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Thank you for your consideration.

Submitter : Ms. Deborah Weinstein **Date:** 08/11/2006

Organization : Coalition on Human Needs

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment.

CMS-2257-IFC-257-Attach-1.DOC

COALITION ON HUMAN NEEDS

1120 Connecticut Avenue, NW • Suite 920 • Washington, DC 20036 • 202.223-2532 • www.chn.org

August 11, 2006

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

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

To the Centers for Medicare and Medicaid Services:

Thank you for the opportunity to submit comments about the Medicaid Citizenship Documentation Interim Final Rule, published in the Federal Register on July 12 to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). The Coalition on Human Needs is an independent alliance of national organizations including service providers, religious organizations, policy experts, labor, civil rights, and other advocates on behalf of low-income and vulnerable Americans. We focus on federal policies and their impact on people in need.

We believe strongly that the Interim Final Rule fails to utilize practical alternatives allowable under the DRA to lessen the danger that ***citizens*** unable to produce a narrow set of documents will face delays or denials of Medicaid coverage. The members of the Coalition on Human Needs have long-time experience in serving families stricken by poverty, disability, or disaster. We know that people in the throes of crisis or long-term difficulties find it extremely difficult to secure and save documents like birth certificates or passports. Ensuring that the 10 million vulnerable U.S. citizens subject to this Rule get the care they are eligible for and badly need requires CMS to accept readily available and reliable proofs of citizenship. If CMS does not expand the needlessly restrictive documentation requirements in the Interim Final Rule, we are convinced that many thousands of eligible citizens will be wrongly denied Medicaid coverage.

We urge CMS to revise the Interim Final Rule in the following ways:

Documentary evidence of citizenship should be broadened beyond the Interim Final Rule's requirement of originals and certified copies. 42 CFR 435.407(h)(1) Several of the comments below provide alternatives to this too narrow requirement. Requiring originals or certified copies adds greatly to the burden of applicants, beneficiaries, and the state, and makes wholly inaccurate the estimate in the Interim Final Rule that compliance will take only 10 minutes for applicants or beneficiaries and five minutes for the state. For people who do not now possess the documents, tracking them down and getting them to the Medicaid office will take hours or more likely days. In our member organizations' experience, such a time and transportation burden will mean that eligible working poor families and/or people with disabilities will be denied coverage.

Citizen applicants and beneficiaries should receive benefits once they declare citizenship and meet eligibility requirements. Nothing in the DRA requires CMS to prevent states from approving or renewing eligibility until documentary evidence such as a birth certificate is supplied. 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 coverage during a period in which they have a "reasonable opportunity" to secure the required documents. The need for this change is urgent: current beneficiaries asked to provide documents with very little notice may be dropped from ongoing necessary medical treatment. People newly applying because of a serious medical condition may face dangerous delays in treatment. If they receive care without Medicaid coverage, even later eligibility may not forestall aggressive payment collection efforts that damage the family's credit.

Children eligible for federal foster care payments should be exempt from the requirement to produce documentation of citizenship.
42CFR 435.1008 exempts from the documentation requirements citizen children who are eligible for Medicaid through their receipt of Supplemental Security Income (SSI). The rationale for exempting child SSI recipients is expressed in the DRA, which authorizes the Secretary to exempt individuals who have already produced citizenship documents to establish eligibility for other programs. Such a rationale applies equally to the half- million children receiving foster care assistance under Title IV-E. State child welfare agencies do verify the citizenship status of children qualifying for IV-E foster care. There is no justification for requiring repeated documentation to enroll or continue these children in the Medicaid program. CMS should exempt IV-E-eligible children from the documentation requirements. Children in foster care are disproportionately likely to suffer mental or physical disabilities or illnesses. The American Academy of Pediatrics Committee on Early Childhood, Adoption and Foster Care has recommended immediate medical screening for children going into foster care because of their greater likelihood of health problems. Failure to ensure immediate and continued access to medical care both threatens the health of children in foster care and acts to discourage adults from becoming foster parents. The system relies on foster parents who are prepared to help children suffering from health problems, but can only do so with access to Medicaid.

The record of payment by a state Medicaid agency for the birth of a child in a U.S. hospital should be accepted as evidence of citizenship and identity. 42 CFR 435.407(a) should be amended to specify that record of payment by a state Medicaid agency for the birth of a child in a U.S. hospital is acceptable documentation of identity and citizenship. Children born in the United States are by law U.S. citizens. Proof of their birth in a U.S. hospital through Medicaid agency payment records is unassailable evidence of citizenship. The Interim Final Rule recognizes that birth records in state Vital Statistics files will not be available for newborns, and that hospital record extracts (42 CFR 435.407(c)(1)) or, only in the "rarest of circumstances," a medical record from a clinic, doctor, or hospital could be evidence of citizenship (42 CFR 435.407(d)(4)). While it is a good step for CMS to recognize that evidence other than Vital Statistics records can be satisfactory evidence of citizenship, it is straightforward and conclusive to use the Medicaid agency's own record of payment for verification swift enough to ensure that the newborn receives treatment for conditions such as low birthweight and that important screening and treatment occur at medically recommended intervals. The need for early screening and treatment to prevent developmental delays or chronic conditions is well documented by medical researchers.

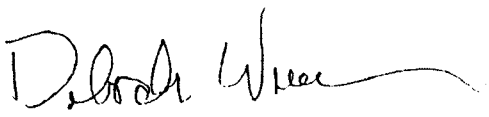
CMS should allow Medicaid agencies to certify that they have found satisfactory evidence of citizenship in cases in which the specified forms of verification are not available. Although the DRA gives the Secretary the authority to include additional documents for proof of citizenship or identification, the Interim Final Rule does not provide reasonable alternatives in cases such as natural disasters in which most documents proving citizenship would have been destroyed. CMS should adopt the approach taken for SSI by the Social Security Administration in similar situations (20 CFR 416.1610). The rule should be amended by adding a section (k) to 42 CFR 435.407, giving state Medicaid agencies authority to certify satisfactory evidence of citizenship or national status if (1) an applicant or beneficiary, or a representative serving on behalf of the individual, is unable to secure primary, secondary, third, or fourth level evidence during the reasonable opportunity period, and (2) it is reasonable for the Medicaid agency to conclude from available information that the individual is a citizen or national. The example of the 2005 hurricanes makes it clear that failure to include in the rule discretion similar to that exercised by the Social Security Administration will cause eligible citizens to lose access to Medicaid unnecessarily. CMS should be prepared to serve eligible people, whether they have experienced personal disasters such as fire or major community disasters such as hurricanes or earthquakes.

The Final Rule should eliminate the proposed requirement to submit originals or certified copies of documents. 42 CFR 435.407(h)(1) should be changed to clarify that a state Medicaid agency may accept copies or notarized copies of documents to prove citizenship or national status. The DRA does not specify originals or certified copies. Requiring them is particularly damaging to efforts to provide ongoing support to working poor families, who would risk their jobs if forced to spend hours in clerk and Medicaid offices in order to obtain and show documents. The desire to serve low-income working clients has led many states to approve mail-in eligibility determination. Working parents or other beneficiaries simply cannot mail in originals or certified copies; limiting the documentation requirement in this way will force beneficiaries to abandon the mail-in approach and to waste hours of their own time and the state's in submitting documents. Similarly, originals or certified copies of documents for children in foster care may be hard to come by, while copies should be in the child's case record at the child welfare agency.

CMS should allow the use of tribal enrollment cards by federally recognized tribes to meet the citizenship documentation requirement. 42 CRF 435.407(a) should be modified to specify that a tribal enrollment card from a federally recognized tribe should be accepted as a primary form of proof of citizenship, like a passport.

The Coalition on Human Needs strongly urges CMS to incorporate these changes in its final rule. Providing this additional flexibility to state Medicaid agencies will avoid the loss or interruption of medical care for many vulnerable citizens – children, people with disabilities, survivors of disaster, working poor families, Native Americans, and others. People with urgent medical needs will be among those most likely to have difficulty supplying birth certificates or other original/certified copy documentation. CMS should not place these vulnerable citizens at risk through restrictive documentation rules not required by the law.

Sincerely,



Deborah Weinstein
Executive Director

Members of the Coalition on Human Needs

ACORN
AFSCME
Alliance for Children and Families
American Association of People with Disabilities
American Association of University Women
American Friends Service Committee
American Jewish Committee
American Network of Community Options and Resources
American Psychological Association
Americans for Democratic Action
America's Second Harvest
The Arc and UCP Disability Policy Collaboration
Association for Career and Technical Education
Association of Maternal and Child Health Programs
Bread for the World
Campaign for America's Future
Catholic Charities USA
Center for American Progress
Center for Community Change
Center for Economic and Policy Research
Center for Law and Social Policy
Center for People in Need
Center for Women Policy Studies
Center on Budget & Policy Priorities
Child Welfare League of America
Children's Defense Fund
Community Action Partnership
Congressional Black Caucus Foundation, Inc.
Congressional Hunger Center
Consortium for Citizens with Disabilities
Corporation for Enterprise Development
Craig Associates
Easter Seals, Inc.
Economic Policy Institute
Evangelical Lutheran Church in America
Every Child Matters Foundation
Families USA
Fight Crime: Invest in Kids
Food Research & Action Center
Friends Committee on National Legislation
General Board of Church & Society, United Methodist Church
General Board of Global Ministries, United Methodist Church
Generations United
Housing Assistance Council
Human Services Coalition of Oregon
Illinois Facilities Fund
Institute for Women's Policy Research
Jewish Council for Public Affairs
Joni B Goodman, Washington Representative
Legal Momentum
Lutheran Services in America
Mennonite Central Committee
National Advocacy Center of the Sisters of the Good Shepard
National Alliance to End Homelessness
National Association for the Education of Young Children
National Association of School Psychologists
National Association of Social Workers
National Coalition for the Homeless
National Committee to Preserve Social Security & Medicare
National Community Action Foundation
National Community Reinvestment Coalition
National Council of Jewish Women
National Council of La Raza
National Council of the Churches of Christ in the USA
National Disability Rights Network
National Education Association
National Head Start Association
National Housing Trust
National Human Services Assembly
National Immigration Law Center
National Low Income Housing Coalition
National Ministries, American Baptist Churches USA
National Neighborhood Coalition
National Partnership for Women and Families
National Priorities Project
National WIC Association
National Women's Law Center
National Youth Employment Coalition
NETWORK, A National Catholic Social Justice Lobby
OMB Watch
Oregon Food Bank
Parents' Action for Children
People for the American Way
policyAmerica
Poverty and Race Research Action Council
Presbyterian Church (U.S.A.) Washington Office
Progressive Challenge, Institute for Policy Studies
Religious Action Center
Research Institute for Independent Living
RESULTS
Salvation Army, National Social Services Office
Sargent Shriver National Center on Poverty Law
Seekers Church
Service Employee International Union
U.S. Conference of Catholic Bishops
Unitarian Universalist Service Committee
United Church of Christ - Justice and Witness Ministries
United Jewish Communities
United Way of America
Voices for America's Children
Volunteers of America
Wider Opportunities for Women
The Workforce Alliance
Work, Welfare, and Families
YWCA USA

Submitter : Mrs. Jaime Gazes **Date:** 08/11/2006

Organization : Mrs. Jaime Gazes

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : **Ms. Cherry Duke** **Date: 08/11/2006**

Organization : **Ms. Cherry Duke**

Category : **Individual**

Issue Areas/Comments

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Submitter : **Ms. Taina Montalvo-Teller** **Date: 08/11/2006**

Organization : **Ms. Taina Montalvo-Teller**

Category : **Individual**

Issue Areas/Comments

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Submitter : Molly Findley **Date:** 08/11/2006

Organization : Molly Findley

Category : Individual

Issue Areas/Comments

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Submitter : Mr. Mark Reynolds **Date:** 08/11/2006

Organization : Neighborhood Health Plan of RI

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

attachment

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

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

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

Submitter : Lee Sudakoff **Date:** 08/11/2006

Organization : Lee Sudakoff

Category : Individual

Issue Areas/Comments

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Submitter : Mr. Barry Levy **Date:** 08/11/2006

Organization : Mr. Barry Levy

Category : Individual

Issue Areas/Comments

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Submitter : Ms. Jamie Roseman **Date:** 08/11/2006

Organization : Ms. Jamie Roseman

Category : Individual

Issue Areas/Comments

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Submitter : **Mr. Erik Wood** **Date: 08/11/2006**

Organization : **Mr. Erik Wood**

Category : **Individual**

Issue Areas/Comments

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Submitter : Mrs. robin & Tom Bady Rigney **Date:** 08/11/2006

Organization : Mrs. robin & Tom Bady Rigney

Category : Individual

Issue Areas/Comments

GENERAL

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For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
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(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter : Ms. Ann Rivera **Date:** 08/11/2006

Organization : Ms. Ann Rivera

Category : Individual

Issue Areas/Comments

GENERAL

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Submitter : **Anna Bullard** **Date: 08/11/2006**

Organization : **Anna Bullard**

Category : **Individual**

Issue Areas/Comments

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Submitter :

Date: 08/11/2006

Organization :

Category : Individual

Issue Areas/Comments

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Thank you for your consideration.

Submitter : **Mr. Thomas McCarley** **Date: 08/11/2006**

Organization : **Planned Parenthood**

Category : **Individual**

Issue Areas/Comments

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Thank you for your consideration.

Submitter : Mr. Lawrence Gatton **Date:** 08/11/2006

Organization : Los Angeles County - Department of Health Services

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-272-Attach-1.DOC

Health Services
LOS ANGELES COUNTY

Los Angeles County Board of Supervisors

Gloria Molina
First District

Yvonne B. Burke
Second District

Zev Yaroslavsky
Third District

Don Knabe
Fourth District

Michael D. Antonovich
Fifth District

Bruce A. Chernof, MD
Director and Chief Medical Officer

John R. Cochran III
Chief Deputy Director

William Loos, MD
Acting Senior Medical Officer

Lawrence Gatton, Chief
Revenue Services
13 N. Figueroa Street, Suite 527
Los Angeles, CA 90012

Tel: (213) 240-8366
Fax: (213) 482-9179

www.lgatton@ladhs.org

To improve health through leadership, service and education.

www.ladhs.org

August 10, 2006

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

To Whom It May Concern:

We have reviewed the CMS interim final rules in the Federal Register 42 CFR Part 435, 436, 440, 441, 457, and 483 – CMS-2257-IFC Medicaid Program; Citizenship Documentation Requirements and have the following questions:

1) Page 39216 states "States, at their option, may use matches with the SDX (if the State does not provide automatic Medicaid eligibility to SSI recipients) or vital statistics agencies in place of a birth certificate to assist applicants or recipients to meet the requirements of the law."

   Question: Since documentation verifying citizenship only needs to be provided once, if a patient previously had SSI coverage, and is now applying for Medi-Cal, may we use the SDX as verification of citizenship and if so, how far back can we go?

2) Page 39219 states "We specify in paragraph (i) that once a person's citizenship is documented and recorded in the individual's permanent case file, subsequent changes in eligibility should not ordinarily require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship, or there is a gap of more than 3 years between the individual's last period of eligibility and a subsequent application for Medicaid."

   Question: As long as documents providing verification of citizenship are retained beyond 3 years, is it necessary for an applicant to provide verification of citizenship if applying for Medi-Cal after 3 years?

3) Page 39220 states "We are removing § 435.408 and § 436.408 because the immigration status described as permanently residing in the United States under color of law no longer has any effectiveness because of the enactment of 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act which provides that "notwithstanding any other law" an alien who is not a qualified alien

as defined in 42 USC 1641 is not eligible for any Federal public benefit." Underline added above for emphasis.

Question: Is this statement regarding Immigration Reform and Control Act (IRCA) only or Persons Residing Under Color of Law (PRUCOL) in general?

4) The document fails to address citizenship verification for infants born in a hospital in the United States on or after July 1, 2006.

Question: Shouldn't infants born in a hospital in the United States on or after July 1, 2006 be added to the exempt population?

We have tried not to duplicate comments that National Association of Public Hospitals and California Association of Public Hospitals have provided separately to you.

If you have questions or require additional information, please call me at (213) 240-8366.

Respectfully,

Lawrence Gatton, Chief
Revenue Services

LG:mj (1MARYJ\Medi-Cal\DRA 0806-comments.doc)

c: Pat Adams
John R. Cochran
JoAnn Dave
Jonathan Freedman
Gary W. Wells

Submitter : Ms. Erica Sackin **Date:** 08/11/2006

Organization : Ms. Erica Sackin

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Dr. Amish Nishawala **Date:** 08/11/2006

Organization : The Children's Aid Society

Category : Physician

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : **Ms. Judith Waxman** **Date: 08/11/2006**

Organization : **National Women's Law Center**

Category : **Consumer Group**

Issue Areas/Comments

GENERAL

GENERAL

see attached

CMS-2257-IFC-275-Attach-1.WPD

August 11, 2006

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

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

Dear Secretary Leavitt:

The National Women's Law Center is an advocacy organization that has worked since its inception in 1972 to advance and protect the progress of women and girls in core aspects of their lives, especially their reproductive rights and health. The Center uses public policy research and analysis, litigation, advocacy, coalition building, and public education to bring women's concerns to policy makers, advocates and the public at large. We are writing today 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 applying for or receiving Medicaid document their citizenship and identity.

We are deeply concerned and disappointed that CMS has not acted sufficiently to minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage under the interim rule. Our comments below highlight four areas that CMS should modify in the final rule in order to minimize any Medicaid disruptions or delays for U.S. citizens.

In particular, we are concerned that the new citizenship documentation requirements would impede access to critical, time-sensitive and cost-effective care and severely limit the ability of section 1115 family planning state-initiated programs to enable low-income women to avoid unplanned pregnancy. Any action that would prevent large numbers of low-income women in need of publicly funded family planning services from being able to enroll in Medicaid, even if they are American citizens, would be particularly tragic at this moment in time, when the need for publicly funded family planning is rising—a million more women have joined the ranks of those in need just since 2000—while public funding targeted for family planning is stagnating or even declining. As an organization committed to ensuring access to publicly funded family planning services and supplies to individuals in need, we hope to highlight our concerns on this issue.

CMS Should Accept a Declaration of Citizenship from Otherwise-Eligible Applicants and Beneficiaries

Under the DRA, the new citizenship documentation requirement applies to nearly all individuals who apply for Medicaid,[1] placing these people at risk of losing, at least temporarily, essential health care coverage. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This construct clearly disadvantages beneficiaries who do not have ready access to adequate documentation. Thus, although the rule itself provides that states "must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid," it denies coverage while the individual works to submit evidence of his or her citizenship. 42 CFR 435.407(j).

The interim rule departs from the DRA under which documentation of citizenship is not a criterion of Medicaid eligibility. Under the DRA, an applicant for Medicaid who declares that he or she is a citizen and meets all other eligibility requirements should be granted eligibility. There is nothing in the DRA that requires a delay in providing coverage. Yet CMS, through the interim rule, has prohibited states from granting coverage to eligible citizens until they can obtain formal 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 the citizens who will be subject to the new citizenship documentation requirement are children, pregnant women and parents. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children and other vulnerable Americans. This is likely to delay their medical care, worsen their health problems and create financial losses for health care providers.

The 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 lose Medicaid coverage permanently. Because there has been no outreach program to educate U.S. citizens about the interim rule, most applicants are likely to be unaware of it, and there are likely to be significant delays in assembling the necessary documents.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens 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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[1] There are exceptions to the documentation requirements for Medicare beneficiaries and, in most states, SSI beneficiaries.

CMS Should Adopt the Approach Taken by the Social Security Administration for U.S. Citizens who Lack Documentation.

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, homeless individuals whose records have been lost, and individuals who may have been born at home and do not have access to a birth certificate or official record of their birth. 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.

Only as a last resort, the interim final rule allows the use of written affidavits to establish citizenship 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 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 required 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 has been unable to obtain 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.

CMS Should Not Require the Submission of 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 rule. (42 CFR 435.407(h)(1)). This requirement adds greatly to the

burden of complying with the regulations and calls into question the CMS estimate that it will only take applicants and beneficiaries ten minutes and state agencies five minutes to comply.

Requiring original or certified copies makes compliance far more difficult and makes it more likely that health care providers will experience delays in reimbursement as well as increased uncompensated care.

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. This will result in time-consuming visits to state offices by beneficiaries and applicants with original and certified copies. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards.

We urge CMS to revise the regulation by modifying the requirement at 42 CFR 435.407(h)(1) to allow states 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.

CMS Should Allow Individuals Receiving Benefits under Section 1115 Family Planning Demonstrations to Declare Citizenship

Recent family planning trends are disturbing. According to data from the latest National Survey of Family Growth, middle- and upper-class women are continuing decades of progress in reducing unplanned pregnancy and abortion. At the same time, however, poor women are facing more unplanned pregnancies and growing rates of abortion. Since 1994, unplanned pregnancy rates among poor women rose by 29%, even as rates among higher income women fell by 20%. In 2001, a poor woman was four times as likely to have an unintended pregnancy, five times as likely to have an unintended birth and more than three times as likely to have an abortion as her higher-income counterpart.

Over the past decade, 24 states have obtained federal approval in the form of a waiver under section 1115 to expand eligibility for family planning services and supplies under Medicaid to individuals who otherwise would not be covered. These programs provide a narrow set of benefits, as defined by the terms of their approval by CMS, and have had a significant impact. A national evaluation of several of these efforts conducted under a contract with CMS found evidence that the programs expanded access to care and improved the geographical availability of services. All six states studied surpassed the federal requirement that the programs be budget neutral, producing millions of dollars in savings to both the federal and state governments.

By throwing what could be a sizable impediment in the path of individuals seeking to enroll in these programs, the interim final rule could turn the clock back on this progress, threatening the access to care, reductions in unplanned pregnancy and cost-savings that have been a hallmark of these programs. Many low-income women will likely be hard-pressed to meet the documentation requirements of the interim final rule, especially when only original documents or "copies certified by the issuing agency" are considered acceptable. The problem posed by the

documentation requirements is particularly acute when it comes to accessing such a time-sensitive service as family planning.

Moreover, the cost of enforcing the citizenship documentation requirement for individuals applying for coverage under the 1115 family planning demonstrations is likely to be especially significant when compared to the extremely low cost of the limited set of benefits covered. As a result, implementing these requirements would significantly increase the cost per enrollee, a cost that would be shared by both the federal and state governments.

We therefore urge CMS to modify §435.406 and §436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. Requiring these individuals to document citizenship using the processes described in the interim final rule would delay or even preclude the receipt of this time-sensitive care, resulting in an increase in unplanned pregnancies, unplanned births and abortions among low-income Americans. Denying women access to this cost-effective care would result in significant costs to both the federal and state governments.

We would like to thank you for the time you have taken to consider these comments and hope that you will find them helpful as you contemplate finalizing the proposed rule.

Sincerely,

Judith G Waxman, Vice President
The National Women's Law Center

Submitter : **Ms. pamela brandt** **Date: 08/11/2006**

Organization : **Ms. pamela brandt**

Category : **Individual**

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Ms. Miriam Aukerman

Date: 08/11/2006

Organization : Legal Aid of Western Michigan

Category : Attorney/Law Firm

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-277-Attach-1.DOC

LEGAL AID OF WESTERN MICHIGAN

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MCHAEL C. CHIELENS, *EXECUTIVE DIRECTOR*

August 11, 2006

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

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

Legal Aid of Western Michigan (LAWM) provides free legal assistance to low-income people and seniors in seventeen counties in Western Michigan. A large percentage of our clients rely on Medicaid. Over the last several years, LAWM has increasingly worked to address the severe legal barriers confronting prisoners returning to the community. We have recently established a Reentry Law Project which provides legal representation to individuals with criminal records who have legal problems obtaining public benefits, employment, housing, or other services.

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. We are particularly concerned about the impact that the rule will have on returning prisoners, many of whom lack identification to demonstrate their citizenship or identity. Our comments below highlight four areas that CMS should modify in the final rule.

1. U.S. citizens, including returning prisoners, 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.

In Michigan, as in many states, a large percentage of individuals exiting the prison system lack documentation such as birth certificates and photo identification cards. There are multiple reasons why former offenders often lack I.D. Some do not have I.D. on them at the time of arrest, and their I.D. and other documents are then lost or destroyed while they are incarcerated. In other cases, I.D.s are retained by prosecuting officials as evidence. In some cases individuals do enter the prison system with I.D., but that I.D. is lost by correctional officials during the person's incarceration, particularly if the prisoner is repeatedly transferred between different correctional facilities.

Upon release, it can take a great deal of time before a former prisoner obtains documents such as birth certificates and photo identification. Our office routinely sees former offenders who have spent several months attempting to get I.D. Some clients go without I.D. for over a year. Again, there are multiple reasons for the difficulty former offenders have in obtaining I.D.. Many states take several weeks or even months to provide copies of birth certificates. The increased volume of requests for such documents resulting from the DRA is likely to cause even greater delays. In addition, many former prisoners have very little money, and therefore cannot easily afford the fees charged for obtaining copies of birth certificates and other documents. It can take considerable time for those individuals to identify service providers who will assist them in covering the costs. Local service providers in Grand Rapids report that on average its costs $55 to acquire the necessary documents – an amount that many former offenders cannot afford. In

communities where funds are not available from community agencies, former prisoners must wait till they can scrape together the money for these documents. Since prisoners who lack I.D. cannot lawfully work without I.D., or even cash a check without I.D. (such as a check from a prison trust account), it is often not easy for them to get the money they need to pay for documents.

For former prisoners, obtaining a state-issued I.D. is a particular problem, since many former offenders do not have any documentation other than prison paperwork, and the Michigan Secretary of State will not issue photo identification in reliance on Department of Corrections' documents. Some former offenders are caught in a "Catch-22," where the Secretary of State insists upon a birth certificate to issue an I.D., but such an I.D. is needed in order to obtain a birth certificate. Although bipartisan legislation has been introduced in Michigan several times in the last couple of years, in recognition of the difficulties that former prisoners have in obtaining I.D., to date no provisions have been made that will enable former prisoners automatically to get identification upon release. A few states have recognized the difficulty that former prisoners have in obtaining I.D. For example, Illinois and Montana have laws requiring the Department of Motor Vehicles to exchange DOC-issued I.D. for state-issued I.D. However, in many states, including Michigan, it remains extremely difficult for former prisoners to get I.D.

Under the interim final rule, many former prisoners 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.

Delays in providing Medicaid coverage to released prisoners will have significant, negative consequences for public safety. Approximately 16% of returning prisoners suffer from mental illness. *See* Urban Institute, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, at 11 (2001). Delays in providing necessary mental health treatment for these individuals increase the likelihood that they will harm themselves or others. Moreover, research has demonstrated that the initial period after release is pivotal for the transition back to community life, and that problems during this initial period increase recidivism. *Id.* at 18. Delays in addressing the health needs of returning prisoners reduce the chances that prisoners will successfully reenter the community.

Delays in providing Medicaid coverage will also strain the capacity of "safety net" medical providers. In Michigan and elsewhere, such providers 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. CMS should use the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship and identity.

For the reasons outlined above, many former prisoners will have difficulty obtaining documentation of their citizenship and identity. The rule does not address situations where an individual's documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. The rule does direct 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. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens, including many former prisoners, 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 accepts 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 former prisoners face additional obstacles to obtaining the documents specified in the interim final rule. Under policies of the Michigan Secretary of State, 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 many former prisoners.

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.
- A gas, water, sewer, electricity, land-line phone, or cable television.
- Bank statement.
- Life, home, auto, or health insurance policy.
- Mortgage document or rental lease agreement.
- 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 former prisoners cannot meet these requirements. Some are homeless. Others are staying temporarily with others because they have no money with which to pay for rent, utilities, insurance, etc. Those individuals will not have a lease, mortgage agreement, or utility bill. Many former prisoners do not have bank accounts, and some are prohibited from opening bank accounts as a condition of parole. Those who are unemployed will

not be able to provide pay stubs. Accordingly, some former prisoners will simply be unable to provide the documents necessary to establish residency.

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.

3. CMS should specifically provide that identification or documents from correctional institutions can be considered in establishing identity and citizenship.

Because of the particular difficulties that former prisoners face in obtaining documentation, CMS should specifically provide that identification or documents from correctional institutions can be considered in establishing identity and citizenship. As outlined above, many former prisoners will not be able to provide any other form of documentation. Documentation prepared by correctional officials - such as Department of Corrections' identification cards or parole orders - is obviously prepared by an official, government source, with extensive information about the individual's identity.

With respect to citizenship, it should be noted that prisoners who are not in this country legally are subject to an immigration hold. Upon completion of their sentence, those individuals are then deported. Thus, the fact that a prisoner is released into the United States is strong, if not absolutely conclusive, evidence of U.S. citizenship.

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

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. However, 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. 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 often 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.

The requirement of an original or certified copy is particularly onerous for former prisoners who documents have been lost or destroyed. Former prisoners may have photocopies, but not originals. Moreover, it is frequently easier to obtain photocopies of documents - which may be available in the files of prosecutors, defense attorneys, social service agencies, or the Department of Human Services - than it is to obtain original documents. For example, our office currently represents a released prisoner for whom we have spent several months attempting to get I.D. Although we have been unable thus far to get state I.D. for this individual, a copy of his old state I.D. is in his file at the Department of Human Services. It would be ridiculous to deny such an individual Medicaid because he has been unable - even with the assistance of counsel - to obtain a current state identification card.

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 former prisoners 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 these individuals. Moreover, delays or denials of necessary health care will increase recidivism and pose a threat to public safety.

Sincerely,

LEGAL AID OF WESTERN MICHIGAN

s/Miriam Aukerman

Miriam Aukerman
Reentry Law Project
Staff Attorney

Submitter : Ms. Dawn Dunlop

Date: 08/11/2006

Organization : Ms. Dawn Dunlop

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan, I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether. If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care.

Submitter : Ms. Melicia Laroco **Date:** 08/11/2006

Organization : Ms. Melicia Laroco

Category : Individual

Issue Areas/Comments

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For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
(3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification;
(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter : Ms. Colleen Eccles **Date:** 08/11/2006

Organization : Ms. Colleen Eccles

Category : Individual

Issue Areas/Comments

GENERAL

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(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter : Ms. Miriam Aukerman **Date: 08/11/2006**

Organization : Legal Aid of Western Michigan

Category : Attorney/Law Firm

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment. (Please note. This is a resubmission because the computer indicated an error with the prior submission.)

CMS-2257-IFC-281-Attach-1.DOC

LEGAL AID OF WESTERN MICHIGAN

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MCHAEL C. CHIELENS, *EXECUTIVE DIRECTOR*

August 11, 2006

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

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

Legal Aid of Western Michigan (LAWM) provides free legal assistance to low-income people and seniors in seventeen counties in Western Michigan. A large percentage of our clients rely on Medicaid. Over the last several years, LAWM has increasingly worked to address the severe legal barriers confronting prisoners returning to the community. We have recently established a Reentry Law Project which provides legal representation to individuals with criminal records who have legal problems obtaining public benefits, employment, housing, or other services.

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. We are particularly concerned about the impact that the rule will have on returning prisoners, many of whom lack identification to demonstrate their citizenship or identity. Our comments below highlight four areas that CMS should modify in the final rule.

1. U.S. citizens, including returning prisoners, 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.

In Michigan, as in many states, a large percentage of individuals exiting the prison system lack documentation such as birth certificates and photo identification cards. There are multiple reasons why former offenders often lack I.D. Some do not have I.D. on them at the time of arrest, and their I.D. and other documents are then lost or destroyed while they are incarcerated. In other cases, I.D.s are retained by prosecuting officials as evidence. In some cases individuals do enter the prison system with I.D., but that I.D. is lost by correctional officials during the person's incarceration, particularly if the prisoner is repeatedly transferred between different correctional facilities.

Upon release, it can take a great deal of time before a former prisoner obtains documents such as birth certificates and photo identification. Our office routinely sees former offenders who have spent several months attempting to get I.D. Some clients go without I.D. for over a year. Again, there are multiple reasons for the difficulty former offenders have in obtaining I.D.. Many states take several weeks or even months to provide copies of birth certificates. The increased volume of requests for such documents resulting from the DRA is likely to cause even greater delays. In addition, many former prisoners have very little money, and therefore cannot easily afford the fees charged for obtaining copies of birth certificates and other documents. It can take considerable time for those individuals to identify service providers who will assist them in covering the costs. Local service providers in Grand Rapids report that on average its costs $55 to acquire the necessary documents - an amount that many former offenders cannot afford. In

communities where funds are not available from community agencies, former prisoners must wait till they can scrape together the money for these documents. Since prisoners who lack I.D. cannot lawfully work without I.D., or even cash a check without I.D. (such as a check from a prison trust account), it is often not easy for them to get the money they need to pay for documents.

For former prisoners, obtaining a state-issued I.D. is a particular problem, since many former offenders do not have any documentation other than prison paperwork, and the Michigan Secretary of State will not issue photo identification in reliance on Department of Corrections' documents. Some former offenders are caught in a "Catch-22," where the Secretary of State insists upon a birth certificate to issue an I.D., but such an I.D. is needed in order to obtain a birth certificate. Although bipartisan legislation has been introduced in Michigan several times in the last couple of years, in recognition of the difficulties that former prisoners have in obtaining I.D., to date no provisions have been made that will enable former prisoners automatically to get identification upon release. A few states have recognized the difficulty that former prisoners have in obtaining I.D. For example, Illinois and Montana have laws requiring the Department of Motor Vehicles to exchange DOC-issued I.D. for state-issued I.D. However, in many states, including Michigan, it remains extremely difficult for former prisoners to get I.D.

Under the interim final rule, many former prisoners 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.

Delays in providing Medicaid coverage to released prisoners will have significant, negative consequences for public safety. Approximately 16% of returning prisoners suffer from mental illness. *See* Urban Institute, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, at 11 (2001). Delays in providing necessary mental health treatment for these individuals increase the likelihood that they will harm themselves or others. Moreover, research has demonstrated that the initial period after release is pivotal for the transition back to community life, and that problems during this initial period increase recidivism. *Id.* at 18. Delays in addressing the health needs of returning prisoners reduce the chances that prisoners will successfully reenter the community.

Delays in providing Medicaid coverage will also strain the capacity of "safety net" medical providers. In Michigan and elsewhere, such providers 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. CMS should use the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship and identity.

For the reasons outlined above, many former prisoners will have difficulty obtaining documentation of their citizenship and identity. The rule does not address situations where an individual's documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. The rule does direct 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. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens, including many former prisoners, 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.

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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 former prisoners face additional obstacles to obtaining the documents specified in the interim final rule. Under policies of the Michigan Secretary of State, 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 many former prisoners.

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- Paycheck or pay stub with the name and address of the employer.
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not be able to provide pay stubs. Accordingly, some former prisoners will simply be unable to provide the documents necessary to establish residency.

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.

3. CMS should specifically provide that identification or documents from correctional institutions can be considered in establishing identity and citizenship.

Because of the particular difficulties that former prisoners face in obtaining documentation, CMS should specifically provide that identification or documents from correctional institutions can be considered in establishing identity and citizenship. As outlined above, many former prisoners will not be able to provide any other form of documentation. Documentation prepared by correctional officials - such as Department of Corrections' identification cards or parole orders - is obviously prepared by an official, government source, with extensive information about the individual's identity.

With respect to citizenship, it should be noted that prisoners who are not in this country legally are subject to an immigration hold. Upon completion of their sentence, those individuals are then deported. Thus, the fact that a prisoner is released into the United States is strong, if not absolutely conclusive, evidence of U.S. citizenship.

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

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. However, 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. 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 often 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.

The requirement of an original or certified copy is particularly onerous for former prisoners who documents have been lost or destroyed. Former prisoners may have photocopies, but not originals. Moreover, it is frequently easier to obtain photocopies of documents - which may be available in the files of prosecutors, defense attorneys, social service agencies, or the Department of Human Services - than it is to obtain original documents. For example, our office currently represents a released prisoner for whom we have spent several months attempting to get I.D. Although we have been unable thus far to get state I.D. for this individual, a copy of his old state I.D. is in his file at the Department of Human Services. It would be ridiculous to deny such an individual Medicaid because he has been unable - even with the assistance of counsel - to obtain a current state identification card.

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 former prisoners 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 these individuals. Moreover, delays or denials of necessary health care will increase recidivism and pose a threat to public safety.

Sincerely,

LEGAL AID OF WESTERN MICHIGAN

s/Miriam Aukerman

Miriam Aukerman
Reentry Law Project
Staff Attorney

Submitter : Mr. Joshua Wallman **Date:** 08/11/2006

Organization : Mr. Joshua Wallman

Category : Individual

Issue Areas/Comments

GENERAL

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For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
(3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification;
(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter : Shelli Milks

Date: 08/11/2006

Organization : Shelli Milks

Category : Individual

Issue Areas/Comments

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(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Submitter : **Ms. Tracy Fischman** **Date: 08/11/2006**

Organization : **Planned Parenthood Chicago Area**

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-284-Attach-1.DOC

CMS-2257-IFC-284-Attach-2.DOC

August 11, 2006

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

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

Dear Administrator McClellan:

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

Planned Parenthood/Chicago Area has ten health centers in the city and suburbs providing low- or no-cost comprehensive reproductive healthcare services to nearly 50,000 Chicago Area patients each year. These health care services include routine gynecological exams, testing and treatment for sexually transmitted infections, HIV testing, birth control, cervical cancer detection and treatment, and surgical and medication abortion as well as adoption referrals. For many of our patients, a trip to a Planned Parenthood health center represents the only medical attention received all year. These services are essential to helping women not only lead healthy lives, but also plan their families so that they can achieve self-sufficiency and independence.

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

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

This past year approximately 11% of clients (12,300 individuals) seen at Planned Parenthood/Chicago Area were Medicaid beneficiaries. In Illinois 24% of all clients (35,603 individuals) seen by agencies in the Illinois Family Planning Program were on Medicaid. Thus, Medicaid is an important part of the program statewide, not just at Planned Parenthood agencies.

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

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

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

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

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

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

Requiring family planning demonstration program patients (who otherwise would not qualify for Medicaid coverage) to comply with a requirement for the broader Medicaid population completely undermines the programs by erecting unnecessary enrollment barriers. Furthermore,

the citizenship documentation requirements would ultimately create a larger financial burden for the federal and state governments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Thank you for your attention to these comments.

Sincerely,

Tracy Fischman
Vice President, Public Policy
Planned Parenthood/Chicago Area

18 S. Michigan, 6th FL
Chicago, IL 60603

Submitter : Karen Karen L. Bowen **Date:** 08/11/2006

Organization : Oshkosh Human Relations Council

Category : Other

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Please See Attachment.

CMS-2257-IFC-285-Attach-1.DOC

CMS-2257-IFC-285-Attach-2.DOC

August 11, 2006

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

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

Our organization, the Oshkosh Human Relations Council of Oshkosh , Wisconsin, seeks to make Oshkosh a better place to live for all people. We are pleased to submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirement of the Deficit Reduction Act of 2005 (DRA).

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

Positive Aspects of the Rule

Families USA commends CMS for ameliorating the impact of the new documentation requirement by:

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

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

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

Concerns about the Rule

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

According to the preamble to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal (newborns are categorically-eligible for one year if their mothers were categorically-eligible at the child's birth and would have continued to be eligible if they were still pregnant during this time). 71 Fed. Reg. at 39216. The preamble also states that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their birth before they can get any coverage at all. 71 Fed. Reg. at 39216. Yet, in both situations, there is no question that these children are American citizens by virtue of their birth in U.S. hospitals. Moreover, the states have first-hand knowledge of the citizenship of these children because Medicaid paid for their births.

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

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

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

435.407(a) 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

[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.

title to land, cash, etc."[2] We urge CMS to allow the use of tribal identification cards as primary documentary evidence of an individual's U.S. citizenship and identity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is no statutory requirement to prohibit people who are otherwise eligible for Medicaid from enrolling in the program immediately. As written in Section 6036 of the DRA, the citizenship documentation requirement is a requirement for states to receive federal matching funds, not an eligibility requirement for individuals. Once someone has declared under penalty of perjury that s/he is an American citizen and met all eligibility requirements for Medicaid, s/he should be enrolled in Medicaid pending submission of the appropriate documentation of citizenship. Without this change, coverage for working families, children, pregnant women, and

parents will be delayed. And without this coverage, individuals with health care needs will delay seeking care and may ultimately require more expensive care if their condition worsens. We urge CMS to revise 42 CFR 435.407(j) so that applicants who declare they are U.S. citizens and meet all the Medicaid eligibility criteria are enrolled in Medicaid, while they have a "reasonable opportunity period" to obtain the documentation necessary to prove their U.S. citizenship and identity.

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

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

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

As an alternative to the affidavit system described in the Interim Final Rule, CMS could look to the SSI program, which does have a true "safety net." If an SSI applicant who has declared U.S. citizenship cannot produce one of the required documents that indicate U.S. citizenship, they may explain why they cannot provide any of those documents, and instead, may provide any information they do have that might indicate they are a U.S. citizen. 20 CFR 416.1610. Adopting

this procedure by adding a new provision to 42 CFR 435.407 would go a long way towards ensuring that citizens who cannot produce "acceptable" documentation under the new rule still be allowed to get or keep their Medicaid coverage.

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

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

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

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

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

Conclusion

We thank CMS for making strides to ameliorate the harm of the new Medicaid citizenship documentation requirement, but we believe that unless the steps described above are not taken, the citizenship documentation requirement will result in Medicaid recipients and new applicants losing or being denied coverage for critical health care benefits.

Thank you for your attention to these comments. If you have any questions, please contact Rachel Klein at Families USA at (202) 628-3030. Members of the Oshkosh Human Relations Council are not experts in this area, but we thank the folks at Families USA for their assistance in forwarding these comments for us.

Sincerely,

Karen Bowen

Oshkosh Human Relations Council

Submitter : **Miss. Vanessa Jones** **Date: 08/11/2006**

Organization : **Miss. Vanessa Jones**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan, I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether. If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care.

For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
(3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification;
(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter : Mr. Howard Bedlin **Date:** 08/11/2006

Organization : National Council on Aging

Category : Other

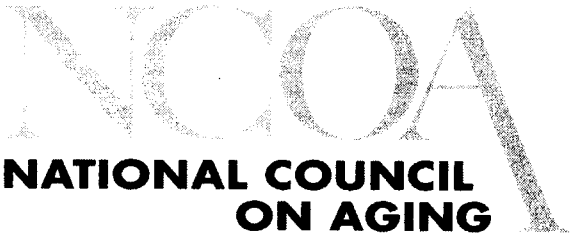
Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

CMS-2257-IFC-287-Attach-1.DOC



August 11, 2006

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

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

Dear Dr. McClellan:

Following are comments on behalf of the National Council on Aging (NCOA) on the interim final rule to implement § 6036 of the Deficit Reduction Act of 2005 (DRA) which was released on July 12, 2006. To begin, we are grateful to CMS that the interim final rule does not require Medicaid recipients who also receive Medicare or SSI to prove citizenship, as their citizenship status has already been satisfactorily documented by Social Security. Exempting people who receive Medicaid and Medicare or SSI from the requirements, relieves many of our nation's most vulnerable citizens from this significant burden.

While we appreciate that CMS is exempting people who get Medicaid and Medicare or SSI from having to prove their citizenship, we are still concerned with other provisions of the interim final rule.

- People who receive early retirement benefits from Social Security at age 62, but are not yet eligible for Medicare, should not have to prove their citizenship status again to get Medicaid, as they have already done so for their Social Security benefits. This follows the same logic as the exemption for seniors who receive Medicaid and Medicare or SSI.

- We are also concerned with the eleven "209(b)" states that do not automatically confer Medicaid eligibility to SSI recipients. Under the interim final rule as written, states could still require that these Medicaid applicants prove their citizenship status, even though the state could themselves do a data match with SSA. Just because a state has opted not to automatically provide Medicaid benefits to SSI recipients does not mean the states should

be able to force them to prove citizenship when it has already been documented with Social Security. We are requesting that CMS require states to complete a data match for all people who receive SSI and apply for or receive Medicaid, as that information is readily available and would not be burdensome to the states.

- The interim final rule requires that people provide original or certified copies of their proof of citizenship documentation. By requiring original or certified documents, CMS is going beyond the requirements of the DRA statute making it more difficult for Medicaid recipients and applicants to comply with the statute. The interim final rule places additional burdens on Medicaid recipients and applicants by making it more likely that needed Medicaid services will be delayed or denied while attempting to get original or certified copies. We do not believe that photo copies of documents will be any less reliable in ensuring that only U.S. citizens or eligible aliens receive Medicaid benefits.

- In the interim final rule, CMS has established a hierarchy of documents that are acceptable as proof of citizenship and/or identity even though the DRA statute itself did not require a hierarchy of documents. This hierarchical system may prove to be impossible for some people to comply with, including people who are homeless, victims of natural disasters who have lost everything, and those with mental difficulties which limit their ability to comply with such a hierarchical system. While the interim final rule does allow, in rare circumstances, for an applicant to submit an affidavit by two people in support of their citizenship status, this, too, may be difficult or impossible to comply with. This is, in large part, because of the requirement that one of the two attesters cannot be related to the applicant and both people need to be able to document their own citizenship. Many applicants for Medicaid may not know two people who are familiar with the circumstances surrounding their claim for citizenship, especially if one of the people cannot be related to them.

  We recommend that a "safety net" be established in the final rule similar to the one used in the SSI program. This safety net allows people who are otherwise unable to provide traditional documentation of their citizenship to explain why they cannot obtain the documentation and allows them to provide other forms of proof of citizenship that they have to document their citizenship status.

- Some people may need considerable time in order to gather the necessary documentation to prove their U.S. citizenship status, because they may need to request their birth certificate or apply for a passport from the appropriate government office. States should be given flexibility in providing people who are new Medicaid applicants a reasonable opportunity to obtain necessary documentation. So long as a person is actively trying to get the required documentation and they self-attest to their citizenship status, provided all other eligibility requirements are met, the person should be allowed to participate in the Medicaid program. The interim final rule allows this "reasonable opportunity" period for Medicaid recipients who are completing their recertification during which they can

continue to receive Medicaid benefits. We strongly believe that both new applicants and people completing their recertifications should be treated equally. Medicaid provides a safety-net in health care for some of our country's most vulnerable citizens. Delaying benefits to those otherwise eligible may result in significant health consequences for people.

We appreciate the challenge you are facing in implementing § 6036 of the Deficit Reduction Act. However, we urge you to meet the requirements imposed on you under the Act, while keeping in mind the burden these requirements place on millions of U.S. citizens who rely on Medicaid every day.

If we can be of any further assistance to you, please contact Sara Duda, NCOA's Director for Benefits Access Policy at (202) 479-6678.

Sincerely,

Howard Bedlin
Vice-President, Public Policy & Advocacy
National Council on Aging

Submitter : Dr. Jean Taylor **Date:** 08/11/2006

Organization : Dr. Jean Taylor

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan,
I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether. If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care.
For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
(3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification;
(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Submitter : Stephanie Gitlin **Date:** 08/11/2006

Organization : Stephanie Gitlin

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Rebecca Sills **Date:** 08/11/2006

Organization : Rebecca Sills

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Mr. Steven Banks **Date:** 08/11/2006

Organization : The Legal Aid Society

Category : Attorney/Law Firm

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-291-Attach-1.PDF

199 WATER STREET NEW YORK, N.Y. 10038 TEL: 212-577-3300 FAX:212-809-1574 www.legal-aid.org

August 11, 2006

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

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

Dear Secretary Leavitt:

The Legal Aid Society is the nation's oldest and largest provider of legal services to the indigent. The Society provides a full range of civil legal services, including representation and advocacy related to access to health coverage and care. For 130 years, The Legal Aid Society has been part of the social fabric of New York City. Society staff members represent low income families, children in foster care and individuals from diverse immigrant communities in all five boroughs who are faced with a myriad of critical civil and criminal problems.

We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We would like to commend CMS in its steps to reduce the harm to and burden on Medicaid applicants and recipients and state Medicaid agencies caused by the new documentation requirement. The exemption of Medicare and SSI recipients, allowing states to use existing electronic databases to cross-match citizenship and identity records, and the stipulation that states must help those with special needs to obtain documentary evidence alleviate some burden. However, many aspects of the Rule remain problematic and overly burdensome for Medicaid applicants and recipients.

Our comments below address several areas that CMS should correct in its final publication of the Rule.

1. **Applicants for Medicaid benefits should receive benefits once they declare they are citizens and meet all eligibility requirements.**

The new citizenship documentation requirements set forth by the DRA are not additional criteria for Medicaid eligibility. The eligibility requirement for Medicaid remains the declaration of citizenship or qualified alien status. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted.

The language of the CMS Rule prohibits states from granting coverage to eligible citizens until they obtain documents to prove citizenship. The preamble to the Rule states that applicants "should not be made eligible until they have presented the required evidence." However, under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. There is nothing in the DRA that requires a delay in providing coverage. Instead the DRA specifically references § 1137(d)(1)(A) of the Social Security Act which makes the "condition of eligibility" for Medicaid "a declaration in writing under penalty of perjury" that the individual "is a citizen or national of the United States . . .."

We ask that CMS conform the final Rule to the DRA and clarify that establishing documentation of citizenship is a condition of federal financial participation, not eligibility.

2. **Populations in receipt of federal benefits for which their citizenship was previously demonstrated should be exempt from the Rule.**

CMS has statutory authority under 42 U.S.C. § 1396b(x)(2)©) to exclude groups other than those listed by Congress from the documentation requirements. We commend CMS for utilizing this authority to exempt Medicare and SSI beneficiaries from the documentation requirements. And we request that CMS also exempt certain other categories of Medicaid recipients and applicants who have already established their citizenship for other government benefit programs.

Below, we have listed two specific groups which should be added to the groups already exempted by the CMS rule.

a. **Children receiving foster care benefits under Title IV-E of the Social Security Act should be added to the list of those exempted from providing documentation**.

Children in receipt of Federal Title IV-E benefits should be exempted from the documentation requirement set forth in this rule. Most states must verify citizenship status when determining a child's IV-E eligibility. In this regard, Title IV-E beneficiaries are indistinguishable from SSI recipients. Unnecessarily burdening abused and neglected children with additional documentation requirements is terrible public policy. It puts members of this vulnerable population, many of whom suffer from poor health, at risk of delay or denial of health coverage that is critical to their well-being.

We urge CMS to include Title IV-E children in the group of applicants and recipients who are exempt from providing documentation.

b. Individuals receiving Social Security Disability benefits should be added to the list of those exempted from providing documentation.

Individuals who have been found eligible for Social Security Disability payments, but are still in their two-year waiting period for the receipt of Medicare should be exempted from the documentation requirement set forth in this rule. These individuals are factually indistinguishable from SSI and Medicare recipients, and extending the exemption to them is logical.

We request that CMS include SSD recipients in the group of applicants and recipients who are exempt from providing documentation.

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.

The Rule provides that a child born to a "categorically needy," non-citizen woman in receipt of Medicaid when the child is born must apply (and thus provide proof of citizenship and identity) *at birth.* A child born to a woman in receipt of the full scope of Medicaid is no different than a child born to a woman who, because of her immigration status, is covered by Medicaid only for labor and delivery. A child in either situation is, by definition, a U.S. citizen, a fact indisputably known to the Medicaid agency because it has paid for the child's birth in a U.S. hospital.

We ask that CMS instruct states that they must accept a record of Medicaid payment for a birth in a U.S. hospital as sufficient proof of citizenship.

4. CMS should simplify the documentation and verification process.

The Rule estimates that it will ordinarily take an applicant or beneficiary ten minutes "to acquire and provide" the documentation required by this rule and that it will take state Medicaid agencies five minutes "to obtain acceptable documentation, verify citizenship and maintain current records." Considering the strict guidelines the Rule gives for what documents are allowed and how they may be submitted, the time estimates quoted are grossly unrealistic.

Below we have outlined a few ways in which CMS may simplify the documentation process to achieve more timely results in documentation compliance.

a. The Rule should require states to use electronic data matching as a first step to documenting citizenship and identity.

The Rule allows states to cross-match with the Social Security Administration's State Data Exchange (SDX) to meet documentation requirements without using the hierarchal process outlined in the Rule. We ask that CMS change the Rule to require states to use electronic data

matching as a first step to documenting citizenship and identity – particularly for those who are likely to need assistance.

We also request that CMS clarify that once applicants or recipients have met the documentation requirement in one state, they will not be required to demonstrate citizenship again for Medicaid enrollment if they move to another state.

b. The Rule should allow copies of documents to be sufficient proof of citizenship.

The rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. Nothing in the language of the DRA imposes this requirement on Medicaid applicants or recipients. This provision unnecessarily places a significant burden on both individuals and state agencies.

Most Medicaid recipients have household incomes that are at or below the federal poverty level. Often the cost of obtaining certified copies of records is between $15 and $20. Eligibility for regular Medicaid for a family of three in New York allows a maximum monthly household income of $1,017. Requiring this family to expend $60 from its monthly budget to obtain a certified copy to document citizenship or identity when a plain copy would document the same facts is unjust and poor public policy.

Additionally, the requirement that medical records submitted for documentation of citizenship must be created at least five years before the initial application date unduly burdens poor individuals and families.

We ask that CMS eliminate the requirement that only original or certified copies may satisfy documentation and that states be allowed to accept copies of documents when there is no reason to believe the copies are counterfeit, altered or inconsistent with information previously supplied by the applicant or recipient, regardless of when the document was created.

c. The Rule should not further limit the types of evidence that may be used to document citizenship.

CMS requested comments regarding whether the documentation used to prove citizenship should be limited to only Tiers I and II. CMS should not further limit the types of documents that can be used to document citizenship status. Restricting documentary evidence to Tiers I and II would overly burden applicants and recipients and state Medicaid agencies. The timing for applicants and recipients to procure and submit documents from such a limited list would greatly overreach the ten minute estimate provided by CMS.

We request that CMS not limit the types of citizenship and identity documentation to Tiers I and II.

d. The Rule should include a safety net for those who cannot prove citizenship.

The Rule fails to adequately address situations in which an individual is simply unable to provide any of the listed documents (in Tiers I through IV). The only substitute measure provided by the

rule allows states to accept an affidavit by two individuals, at least one of whom is unrelated to the applicant or recipient, who have personal knowledge of the event establishing the applicant or recipient's claim of citizenship. It is likely that many individuals will not be able to meet the requirements of the affidavit provision.

Many homeless individuals who may be eligible for Medicaid will not have any of the documents outlined in the Rule. Survivors of life-altering natural disasters (like Hurricane Katrina survivors) will also be unlikely to have any documents required for documentation. It will be extremely difficult, if not impossible, for these individuals to now obtain these documents. Similarly, many if not most individuals who are homeless or displaced will not have access to individuals who can attest to their citizenship.

We ask that CMS include a safety net provision for applicants and recipients with special circumstances like the ones listed above. An alternative to the affidavit system could be modeled after the SSI program which provides applicants with an opportunity to explain why they cannot provide the required documents and allows them to provide any information they may have that indicates they are a U.S. citizen.

e. <u>The Rule should place a clearer burden on the states to assist with applicant and recipient documentation for those with special needs.</u>

We commend CMS' requirement that states assist individuals with "incapacity of mind or body" who cannot comply with the documentation requirements. However, we ask that CMS further specify that states have an affirmative obligation to help these individuals as well as other individuals with special needs (such as the homeless or those affected by natural disasters).

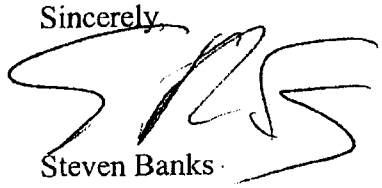
f. <u>The Rule should allow parents to attest to their children's identity to age 18.</u>

Currently, parents of children under the age of 16 can sign an affidavit to document the identity of the child. Children aged 17 and 18 are similarly situated to children who are 16. We see no reason why parents should not be allowed to attest to the identity of their children under the age of 18. We ask that CMS extend the age to 18.

Thank you for this opportunity to comment. We again commend CMS on its efforts to help Medicaid recipients and applicants as they face these new citizenship and identity documentation requirements. We believe that the above changes to the existing rule would benefit the overall Medicaid program by ensuring coverage for those in need and preventing state Medicaid agencies from becoming overly burdened.

If you have questions please feel free to contact Lisa Sbrana at 212-577-3394.

Sincerely,



Steven Banks
Attorney-in-Chief

Submitter : **Ms. Jennifer Benedict** **Date: 08/11/2006**

Organization : **Great Basin Primary Care Association**

Category : **Health Care Professional or Association**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Attachment

CMS-2257-IFC-292-Attach-1.DOC

515West Fourth Street
Carson City, NV 89703
(775) 887-0417 x 116
(775) 887-3562

Great Basin Primary Care Association

500 N Rainbow Blvd., # 300
Las Vegas, NV 89107
(702) 221-1973
(702) 221-1974

Website Address: www.gbpca.org / E-mail Address: jbenedicte@gbpca.org

August 9, 2006

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

RE: Medicaid Citizenship Documentation
Interim Final Rule, 71 Fed.Reg. 39214

To Whom It May Concern:

Great Basin Primary Care Association represents 27 organizations throughout Nevada who have joined together to improve the health status of Nevada's medically underserved populations. We support and advocate for Nevada's safety-net on behalf of Federally Qualified Health Centers, including tribal health centers, to ensure quality, affordable, and comprehensive primary care services are available to all people.

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 very concerned with a number of rules listed in the regulations, including the application of the rule to foster children (who should be exempt), and the documentation dates (which should be reduced from 5 years to 2 years), but we would like to focus on two items, in particular: the original documentation requirement and the Native Americans documentation requirements, both which will have a negative effect on Federally Qualified Community Health Centers and Tribal Health Centers.

Evidence of Identity – Original Documentation

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. This requirement makes the documentation process much more difficult and calls into question the estimate that it will only take applicants and beneficiaries ten minutes and state agencies five minutes to comply. It also means that health care providers will be more likely to experience delays in reimbursement and face an increase in uncompensated care.

This could have an even greater negative effect on Federally Qualified Community Health Centers (FQHCs), who must see all patients regardless of ability to pay. Currently, Medicaid patients make up about a third of Nevada's FQHC case load, and compensation from Medicaid

not only allows them to serve Medicaid patients, but it also helps them to cover the expenses of serving the uninsured. If Medicaid patients were to lose their coverage due to inability to locate the proper documentation, FQHCs could be faced with a financial crisis. This is because patients who lose coverage will continue to be FQHC patients but will be receiving services on a sliding scale fee instead. Basically, this translates into a decreasing number of Medicaid patients while increasing the number of uninsured patients.

Requiring originals and certified copies to document citizenship will also 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 to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by the issuing state agency. States should be able to accept copies when the state has no reason to believe that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or beneficiary.

Native Americans Evidence of Identity

While Native American tribal documents can be used as proof of identity, the regulations do not permit tribal enrollment cards to be used as evidence of citizenship. The federal government recognizes over 560 tribes in 34 states, each of which issues enrollment cards to its members for purposes of receiving services from 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. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship.

If the list of documents that can be used by Native Americans to prove citizenship and identity is not expanded, it is likely that many Native Americans will be unable to meet the new requirement and will go without Medicaid coverage. This could be devastating to our Native American population, as many live in rural areas that already have limited access health care services. We need to be removing barriers for Native Americans instead of building new ones.

We implore CMS to revise the regulation to specify that a tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity.

In a time where health care costs are increasing exponentially, we need to be more focused on helping citizens secure the health care services they need instead of creating more obstacles for them to maneuver through.

Thank you,

Jennifer Benedict
Public Policy Analyst
Great Basin Primary Care Association

Submitter : **Ms. Ciel VanderVeen** **Date: 08/11/2006**

Organization : **Ms. Ciel VanderVeen**

Category : **Individual**

Issue Areas/Comments

GENERAL

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For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
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(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Submitter : **Date: 08/11/2006**

Organization :

Category : **Individual**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

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Thank you for your consideration.

Submitter : Ms. Rebecca Marx **Date:** 08/11/2006

Organization : Ms. Rebecca Marx

Category : Individual

Issue Areas/Comments

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Submitter : **Date: 08/11/2006**

Organization :

Category : **Individual**

Issue Areas/Comments

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Thank you for your consideration.

Submitter : Mrs. Jennifer Nanez **Date:** 08/11/2006

Organization : Pueblo of Acoma Behavioral Health

Category : Social Worker

Issue Areas/Comments

GENERAL

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Dear Senator Bingaman,

I m writing to ask you to please comment on the interim final rule for the new Medicaid citizenship documentation requirements.

As you know, the Deficit Reduction Act of 2005 passed earlier this year included a provision that changed the proof-of-citizenship requirements for U.S. citizens applying for or receiving Medicaid. The provision is unnecessary, as a study by the U.S. Department of Health and Human Services already concluded that few, if any, non-citizens illegally receive Medicaid.

I believe the new proof-of-citizenship rules will greatly harm many children who are American citizens and qualify for Medicaid benefits. My chief concern is that only passports and original or certified copies of birth certificates will be accepted as proof of citizenship. Many families do not have ready access to original birth certificates because they have been displaced by a house fire, natural disaster, sudden homelessness, or any number of other misfortunes. In addition, the cost of obtaining a birth certificate will contribute to the financial hardships that make such families eligible for Medicaid in the first place.

Another issue is that new applicants will not be able to receive Medicaid services while their parents gather the required documentation. It takes an average of four to six weeks to obtain a birth certificate from the state of New Mexico and that s too long for a sick child to wait to see a doctor.

The new rules will likely have a disproportionate impact on minorities, particularly Native Americans. Certificates of Indian Blood or tribal enrollment cards should count as proof of citizenship as they have in the past.

The rules also place unnecessary burdens on children in foster care, who should be exempt, as their citizenship is already verified as part of their eligibility review for Title IV-E.

These new rules will likely hinder the expansion of Medicaid coverage to the millions of children nationwide who are eligible but not enrolled. Of the 21,000 New Mexico children under the age of five without health insurance, 16,000 qualify for Medicaid. Simple enrollment procedures are vital for expanding Medicaid coverage to these children.

Thank you for your time and attention to this important matter.

Sincerely,

Jennifer S. Nanez, LMSW
Pueblo of Acoma Behavioral Health Services
Pueblo of Acoma, NM

Submitter : **Miss. Necole Gresh** **Date: 08/11/2006**

Organization : **Cumberland County Children and Youth Services**

Category : **Social Worker**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Please exempt foster and adoptive children from the new citizenship requirements for Medicaid eligibility

Submitter : **Jack Davis** **Date: 08/11/2006**

Organization : **Jack Davis**

Category : **Individual**

Issue Areas/Comments

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(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Submitter : Ellen Pinnes **Date:** 08/11/2006

Organization : Disability Coalition; Protection & Advocacy

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Issues as detailed in attached comments.

CMS-2257-IFC-300-Attach-1.DOC

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Baltimore, Maryland

August 11, 2006

Re: Medicaid Citizenship Documentation Interim Final Rule
File Code CMS-2257-IFC

This letter presents comments from The Disability Coalition of New Mexico and Protection & Advocacy System of New Mexico (P&A) on the interim final rule implementing §6036 of the Deficit Reduction Act of 2005 (DRA), published in the Federal Register on July 12 at 71 Fed.Reg. 39212-39229. The Disability Coalition is a coalition of persons with disabilities, family members and organizations advocating for the interests of people with disabilities. P&A is a private non-profit organization whose mission is to promote the legal and civil rights of persons with disabilities.

Section 6036 requires that a state, in order to receive federal Medicaid matching monies (federal financial participation, or FFP), obtain documentation of the citizenship of U.S. citizens receiving or applying for Medicaid. The statute sets out certain documents that may be used to prove citizenship or identity and authorizes the Secretary of Health and Human Services to specify others that may be used.

We are pleased that the interim final rule makes some positive changes to the earlier guidance provided by the Centers for Medicare and Medicaid Services (CMS). In particular, we strongly support the following provisions of the rule: 1) correcting Congress's "scrivener's error" by exempting recipients of Medicare or Supplemental Security Income (SSI) benefits from the documentation requirement; 2) clarifying that documentation is not a prerequisite to presumptive eligibility; and 3) allowing states to obtain needed information through data matching with other agencies.

However, we continue to have a number of concerns about the provisions of the interim final rule, and we urge that a number of changes be made.

1) The process set out by CMS, which specifies a "hierarchy" of acceptable documentation, is extremely complicated and will impose a significant burden both on Medicaid applicants/recipients and on state agencies responsible for establishing program eligibility. The process should be simplified to allow states to accept any documentation that shows citizenship and/or identity rather than limiting them to those documents listed by CMS and requiring them to work rigidly down the hierarchy. If the hierarchy of listed documents is retained, a procedure

similar to that used for SSI, which allows individuals to explain why they cannot submit the specified documents and to submit alternative information, should be added to the rule.

2) In addition to Medicare and SSI recipients, individuals whose citizenship has been established for other federally-funded programs (e.g., TANF, Social Security retirement or disability benefits) should not be required to present documentation of citizenship again. Individuals in the two-year waiting period for Medicare or disability benefits also should be exempted. While the exemption for dual-eligibles and SSI recipients will benefit many people with disabilities, many others (along with many non-disabled persons eligible for Medicaid) do not qualify for that exemption. In any case where citizenship has already been established, there should be no requirement that the process be duplicated.

3) State child welfare agencies have already established citizenship for children receiving federal foster care assistance under Title IV-E. That determination should be accepted by the state Medicaid agency rather than requiring duplication of the work of a sister agency. We note that approximately one-third of foster children have disabilities. Uninterrupted health coverage is especially important for these children.

4) Identification or enrollment cards issued by American Indian tribes recognized by the federal government should be accepted as proof of citizenship. Members of our First Nations should not be required to submit further proof that they are citizens of this country.

5) The rule allowing cross matches with federal and state agencies should specifically include state mental health agencies as well as food stamps, child support, corrections, motor vehicle and child protective services agencies. §§435.407(e)(10) and 436.407(e)(10). This will assist persons with mental illness, who will be among the groups experiencing the greatest difficulty in complying with the documentation requirement.

6) The rule provides that newborns must present evidence of citizenship at the one-year renewal for those born to mothers receiving Medicaid and before receiving Medicaid coverage for those born to mothers not on Medicaid, even if Medicaid pays for the birth. 71 Fed.Reg. at 39216. Under the U.S. Constitution, all persons born in and subject to the jurisdiction of the United States are American citizens. U.S. Const, 14th Am. Therefore, a record of birth in a hospital located in this country should be accepted as proof of the child's citizenship rather than requiring separate submission of documentation, either for initial coverage or at renewal.

In addition, citizen children should not be discriminated against based on their mothers' citizenship status, and coverage should begin immediately for all newborns. Delay in instituting Medicaid coverage can lead to delays in obtaining needed care. This is especially critical for children born with special needs or for whom delays in care may lead to such needs.

7) The requirements applicable to the use of affidavits are unnecessarily restrictive. Such documents should not be limited to "rare circumstances" as stated in the rule, §§435.407(d)(5) and 436.407(d)(5), but should be permissible whenever obtaining specified documents imposes an undue burden on the applicant/recipient. In addition, there is no justification for requiring that

affiants themselves be citizens, as required by §§435.407(d)(5)(iii) and 437.407(d)(5)(iii). Any person with relevant knowledge should be allowed to make a sworn affidavit.

8) The requirement that certain documents used to prove citizenship or identity be at least five years old is arbitrary and should be eliminated. At the least, the provision should be revised to provide for a shorter and more reasonable period to avoid placing an unnecessary burden on applicants and recipients. §§435.407(c), (d) and 436.407(c), (d).

9) The rule requires that all documents presented to prove identity and citizenship be originals or certified copies. §§435.407(h)(1) and 436.407(h)(1). This adds to the difficulty and expense of obtaining the documents, and goes beyond what is necessary to assure their validity. Also, although CMS has said that in-person interviews will not be required and that mail-in application and renewal procedures will be allowed to continue, the fact that the regulation requires that documents be originals or certified copies means that in-person interviews will be necessary in most cases. Recipients and applicants will be understandably reluctant to part with original or certified copies of documents and will therefore be forced to submit them in person, adding to the burden on both beneficiaries and state workers. We urge CMS to allow presentation of non-certified copies, with originals or certified copies required only when there is reason to question the authenticity of the material presented.

10) The rule provides that the state should assist persons whose "incapacity of mind or body" makes them unable to comply with the requirements and lack representatives to assist them. §§435.407(g) and 436.407(g). We are pleased that CMS has recognized that persons with disabilities should receive assistance when needed. However, we believe that this provision should be broadened to require state agencies to help anyone who needs assistance to comply with the requirements. In particular, homeless persons and those displaced by natural disasters should be offered assistance. (If the current approach is retained, we suggest that the terminology "incapacity of mind or body" be changed to refer to persons needing assistance "due to a mental or physical condition".)

11) We are pleased that Medicaid coverage will continue for recipients while they obtain necessary documentation. The same provision should apply to applicants, rather than delaying coverage – and access to needed care – while documents are sought. §§435.407(j) and 436.407(j). The requirement for documentation is not a condition of Medicaid eligibility; it applies only to a subsequent claim for FFP. The declaration of citizenship required by §1137(d) of the Social Security Act should be sufficient to establish eligibility, and the individual should be given a reasonable opportunity to obtain documentation. Delaying coverage until all documentation has been submitted on behalf of a person who meets all the eligibility requirements for Medicaid will lead to delayed or forgone care, with detrimental impacts on health and subsequent higher expenditures for the Medicaid program.

Finally, we note that CMS has pointed to the long-standing requirement the Medicaid recipients provide documentation of citizenship in states like New York, in justifying the provisions now imposed on the federal level. New York's program differs in substantial respects from the requirements laid out in the interim final rule and is much more flexible. For example, New York does not impose a hierarchy of acceptable documentation, does not require that

documents be originals or certified copies, offers significant assistance to beneficiaries in obtaining documents, automatically enrolls newborns, and uses data matches for programs beyond just Medicare and SSI.[1] The provisions of the interim final rule are significantly more burdensome than those in New York.

Thank you for your consideration of these comments.

Submitted by:

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

Submitter : **Susannah Canfield** **Date: 08/11/2006**

Organization : **Susannah Canfield**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan, I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether. If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care.

For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
(3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification;
(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.
Thank you for your consideration.

Submitter :

Date: 08/11/2006

Organization : **Navajo Nation**

Category : **Other Government**

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-302-Attach-1.DOC

THE NAVAJO NATION
P.O. BOX 9000 • WINDOW ROCK, ARIZONA • 86515

PRESIDENT
JOE SHIRLEY, JR
VICE PRESIDENT
FRANK J. DAYISH, JR.

August 11, 2006

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

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

To Whom It May Concern:

The Navajo Nation welcomes the opportunity to provide comments to the interim final rules, 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 US. citizenship and identity.

The interim final rules provide that the Bureau of Indian Affairs ("BIA") Tribal Census Records of the Navajo ("Navajo Nation Census Records") shall be recognized as Tier Four (4) documentation to show proof of citizenship that must be accompanied with a second documentation from Tier Five (5) to prove identity. Under Tier Five, Native American Tribal Documents, which appears to include Certificates of Indian Bloods, can be used to prove identity. Given that Navajo Nation Census Records establish both proof of citizenship and identity, the DRA final rules should expressly indicate such determination.

Currently the Navajo Nation has approximately 85,000 Navajo Medicaid beneficiaries who receive medical care at Indian Health Service ("IHS") facilities and Public Law 93-638 healthcare facilities located throughout the Navajo Nation. Of the 85,000, about 17,600 are our Navajo elders who rely solely on Medicaid for their healthcare needs, and the majority of them do not have birth certificates. Moreover, many of our Navajo elders are former veterans, notably our honored Navajo Code Talkers, who have served their country in time of war and peace. It will be unjustifiable and unconscionable to deny our Navajo elders, along with all of our Navajo Medicaid beneficiaries, services because they simply lack the resources to comply with the new documentation requirements.

Because the Navajo Nation lies within Arizona, New Mexico and Utah, the Navajo Nation must establish partnerships and collaborations with each of the three states to ensure that all of our Navajo Medicaid beneficiaries are provided adequate service and education regarding the new documentation requirements. Since the issuance of the new documentation requirements, the Navajo Nation has not only faced inconsistencies on the interpretation of the new requirements among the states, but has also observed adverse affects on current and potential Navajo Medicaid beneficiaries. For example, many of our Navajo elders do not have birth certificates because they were born at home. Many of these elders are currently enrolled or would be eligible for Medicaid. However, with the new documentation requirements, our elders would be faced with a significant barrier in order to receive Medicaid services by them having to prove their U.S. citizenship by documents they have never possessed.

Also, of the three States, New Mexico has interpreted the new documentation requirements to mean that the Navajo Nation Census Records can be used to show proof of both citizenship and identity. However, the other states have not determined whether they will agree with New Mexico's interpretation (given that the interim rules are not clear on this issue); thus it is important the new documentation requirements be clarified on this matter in order to eliminate any inconsistent treatment of our Navajo people.

The Navajo Nation, therefore, strongly urges that the new documentation requirements be amended to clearly recognize the use of Navajo Nation Census Records to prove both citizenship and identity.

INTRODUCTION

The interim final rules recognize that Navajo Nation Census Records are a Tier Four level proof of citizenship. The pertinent provisions of interim final rules states:

(d) Fourth level evidence of citizenship. Fourth level evidence of citizenship is documentary evidence of the lowest reliability. Fourth level evidence should only be used in the rarest of circumstances. This level of evidence is used only when primary evidence is unavailable, both secondary and third level evidence do not exist or cannot be obtained with the State's reasonable opportunity period, and the applicant alleges a U.S. place of birth. In addition, a second document establishing identity must be presented as described in paragraph (e) of this section [. . .]

(2) One of the following documents that show a U.S. place of birth and was created at least 5 years before the application for Medicaid. This document must be one of the following and show a U.S. place of birth:

(i) Seneca Indian tribal census record.

(ii) Bureau ofIndian Affairs tribal census records of the Navajo Indians [. . .].

Taken alone, the Navajo Census Records should be sufficient to provide proof of citizenship and identity because such records are accompanied by valid and reliable citizenship and identity documents.

When the Centers for Medicare and Medicaid Services ("CMS") set out to implement Section 6036 of the DRA, that required proof of citizenship for Medicaid eligibility, they established a hierarchy of reliable citizenship documents each with a different standard of reliability:

Tier One is "primary evidence of citizenship and identity is documentary evidence of the highest reliability."
Tier Two is "satisfactory reliability."
Tier Three is considered "satisfactory reliability that is used when neither primary nor secondary evidence of citizenship is available."
Tier Four evidence of citizenship is "documentary evidence of the **lowest reliability** [. . .] and should **only** be used in the **rarest of circumstances."**

Contrary to this hierarchy, the Navajo Census Records are clearly not of the "lowest reliability" that "should [not] be only used in the rarest of circumstances." Given the history of how these records were established and the formal census process employed by the Navajo Nation, the Navajo Census Records are highly reliable and should be held as documentation use to prove both citizenship and identity.

NAVAJO NATION CENSUS **RECORDS SHOULD BE RECOGNIZED** AS **LEGITIMATE PROOF OF** U.S. **CITIZENSHIP AND IDENTITY**

Pursuant to the 1924 federal law granting U.S. citizenship to American Indians and Alaska Natives ("AI/AN"), in 1928, the BIA implemented a formal census process for the Navajo Nation and created the Navajo Nation Census Records of all emolled Navajos at the time. The BIA based its emollment on a person's blood-quantum. In order for a person to be emolled as a member of the Navajo Nation he or she must have had at least one-fourth Navajo blood. The Navajo Nation has since maintained this emollment requirement.

The BIA continued to control the Navajo Nation Census Records until 1982. In 1982, the Navajo Nation, pursuant to Public Law 93-638, Indian Self-Determination and Education Assistance Act as amended, assumed the BIA's responsibility for the census process and the Navajo Nation Census Records. However, the BIA monitors the Navajo Nation's process on an annual basis. From 1982 to the present, the Navajo Nation has continued to follow the BIA's census process and maintain the Navajo Nation Census Records.

The Navajo Nation employs a highly reliable and rigorous census process, as adopted from the BIA, as well as emollment requirements, codified in the Navajo Nation Code Annotated at 1 N.N.C. § 701 *et seq.* and 1 N.N.C. § 751 *et seq.* Generally, to be an emolled member with the Navajo Nation, a person must not only have one-fourth Navajo blood, but the person must also present an original birth certificate and documentation verifying identity (i.e. driver's license, social security card). If the Navajo Nation deems such documentation and other information requested sufficient, the Navajo Nation will issue the person a Navajo Certificate of Indian Blood ("NCIB"). The NCIB is the official document used to show proof of emollment into the Navajo Nation.

Pursuant to Navajo Nation laws, the Navajo Nation may utilize the Navajo Nation Census Records to determine if the person is related to a person on the Census Records to establish that the person is at least one-fourth Navajo blood.l This generally applies to our Navajo elders requesting their NCIBs or seeking enrollment with the Navajo Nation. In most cases, our Navajo elders do not have birth certificates, because they were born at home. However, the Navajo Nation will require other forms which may indicate that the elder was born in the U.S., such as, but not limited to, hospital affidavits, baptismal certificates, family trees, marriage certificates, and/or affidavits from relatives,

community members and/or leaders.

Because the BIA, an arm of the federal government, created the Navajo Nation Census Records, in which the Navajo Nation relies on for its enrollment, it is quite disingenuous that Navajo Nation Census Records are considered the "lowest of reliability" and can only be used to show proof of identity. The Navajo Nation's codified enrollment requirements and census process are of the highest reliability that should be given great deference and recognized as such
in the final DRA rules.

The Navajo Nation, therefore, strongly asserts that the Secretary of the Department of Health and Human Services should exercise rationally based discretion and adopt final rules that clearly recognize the Navajo Nation Census Records serve the dual purpose of proving citizenship and identity.

OTHER TRIBAL ENROLLMENT DOCUMENTATION SHOULD ALSO BE GIVEN DEFERENCE TO BE RECONGIZED AS LEGITIMATE PROOF OF U.S. CITIZENSHIP AND IDENTITY

The Navajo Nation strongly supports the position of the CMS Tribal Technical Advisory Group ("TTAG") and other Federally-recognized Indian tribes that Native American tribal documents and Certificates of Degree of Indian Blood ("CDIB") should be recognized as legitimate documents of proof of U.S. citizenship. Prior to the publication of the interim rules, CMS TTAG, the National Indian Health Board ("NIHB"), and the National Congress of American Indians ("NCAr') requested the Secretary of the Department of Health and Human Services to exercise his discretion under the DRA to recognize Tribal enrollment cards or CDIB cards as legitimate documents of proof of citizenship in issuing these regulations, but again tribal comments were ignored. While Native American tribal documents and CDIB cards are

1The pertinent Navajo Nation law, 1 N.N.C. § 701, states:The membership of the Navajo Nation shall consist of the following persons:

A. All persons of Navajo blood whose names appear on the official roll of the Navajo Nation maintained by the Bureau ofIndian Affairs.
B. Any person who is at least one-fourth degree of Navajo blood, but who has not previously been emolled as a member of the Navajo Nation, is eligible for membership and emollment.
C. Children born to any emolled member of the Navajo Nation shall automatically become members of the Navajo Nation and shall be emolled, provided they are at least one-fourth Navajo blood.

recognized as legitimate documents for identification purposes, such documents should also be recognized as legitimate documents for proof of citizenship.

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 US. 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 that only U.S. citizens,

- U.S. 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 (l) 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 as amended. 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.

Further, since the CMS already recognizes Native American tribal documents and CDIBs as satisfactory documentation of identity in the interim rules, there is sufficient basis for CMS to recognize Tribal enrollment cards and CDIBs as satisfactory documentation of primary evidence of both citizenship and identity. The term "Native American tribal document" is found in the Department of Homeland Security, Form 1-9, where Native American tribal documents suffice for identity and employment eligibility purposes. Though the interim rules do not define the term "Native American tribal document," Tribal enrollment cards or CDIBs certainly fall within the scope of a "Native American tribal document."

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

Therefore, the DRA final rules should be amended to include Tribal enrollment cards and
CDIBs as documents used to show proof of citizenship. Because like our Navajo people, many
American Indians and Alaskan Natives were not born in hospital and likely cannot produce a
birth certificate or satisfactory documentation of place of birth to prove citizenship.

CONCLUSION

By not recognizing the Navajo Nation Census Records and other Tribal Documents including CDIBs and NCIBs as satisfactory documentation to prove U.S. citizenship and identity, the CMS is creating a tremendous barrier to all current and future Navajo and AI/AN Medicaid beneficiaries. However, to recognize such documents and to amend the interim rules to reflect the Navajo Nation's concerns will not only benefit our Navajo people but all healthcare providers located near and within the Navajo Nation. The same will be true for AI/AN Medicaid beneficiaries and Indian healthcare programs operated by IHS, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals.

As we, the Navajo Nation, respect the govemment-to-government relationship with the U.S. so should the U.S. respect the Navajo Nation's census process in determining its citizenship and membership, who are also U.S. citizens and residence of their respective states. On the contrary, the interim rules do not implicate this relationship to the highest degree, especially because these rules adversely affect our Navajo veterans who receive Medicaid benefits. The Navajo Nation is enriched with many proud distinguished service people who bravely sacrificed their lives, at the altar of freedom, in defense of the U.S. Even before the DRA, many service people did not have birth certificates. It is, thus, an affront to our honored Navajo Code Talkers that proudly served in World War **II,** and military service people, like myself, who are attributed with having great significance in turning the tide of the war, to endure this type of short cited rulemaking.

Ahe'h6e (Thank you) for your time and deepest consideration of the Navajo Nation's comments on the DRA interim rules.

Respectfully,

cc: Michaela. Leavitt, Secretary ofHHS Mark B. McClellan, M.D., Ph.D., Administrator, CMS Charles W. Grim, D.D.S., M.H.S.A., Director, IHS Joe Shirley Jr., President of the Navajo Nation Herbert Yazzie, Chief Justice of the Navajo Nation Lawrence Morgan, Speaker of the Navajo Nation Council Valerie Davidson, Chair, CMS Tribal Technical Advisory Group
National Indian Health Board

- [ ] U.S. Senators (AZ, NM, UT)
- [ ] U.S. House of Representatives (AZ, NM, UT)

Submitter : Tiffany Almy

Organization : Tiffany Almy

Category : Individual

Date: 08/11/2006

Issue Areas/Comments

GENERAL

GENERAL

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For example, CMS must:
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Thank you for your consideration.

Submitter : **Ms. Madhu Katta**

Organization : **Ms. Madhu Katta**

Category : **Individual**

Date: 08/11/2006

Issue Areas/Comments

GENERAL

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Thank you for your consideration.
Madhu

Submitter :

Date: 08/11/2006

Organization : **Navajo Nation**

Category : **Other Government**

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-305-Attach-1.DOC

THE NAVAJO NATION
P.O. BOX 9000 • WINDOW ROCK, ARIZONA • 86515

PRESIDENT
JOE SHIRLEY, JR
VICE PRESIDENT
FRANK J. DAYISH, JR.

August 11, 2006

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

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

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1The pertinent Navajo Nation law, 1 N.N.C. § 701, states:The membership of the Navajo Nation shall consist of the following persons:

A. All persons of Navajo blood whose names appear on the official roll of the Navajo Nation maintained by the Bureau ofIndian Affairs.
B. Any person who is at least one-fourth degree of Navajo blood, but who has not previously been emolled as a member of the Navajo Nation, is eligible for membership and emollment.
C. Children born to any emolled member of the Navajo Nation shall automatically become members of the Navajo Nation and shall be emolled, provided they are at least one-fourth Navajo blood.

recognized as legitimate documents for identification purposes, such documents should also be recognized as legitimate documents for proof of citizenship.

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 US. 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 that only U.S. citizens,

- U.S. 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 (l) 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 as amended. 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.

Further, since the CMS already recognizes Native American tribal documents and CDIBs as satisfactory documentation of identity in the interim rules, there is sufficient basis for CMS to recognize Tribal enrollment cards and CDIBs as satisfactory documentation of primary evidence of both citizenship and identity. The term "Native American tribal document" is found in the Department of Homeland Security, Form 1-9, where Native American tribal documents suffice for identity and employment eligibility purposes. Though the interim rules do not define the term "Native American tribal document," Tribal enrollment cards or CDIBs certainly fall within the scope of a "Native American tribal document."

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

Therefore, the DRA final rules should be amended to include Tribal enrollment cards and
CDIBs as documents used to show proof of citizenship. Because like our Navajo people, many
American Indians and Alaskan Natives were not born in hospital and likely cannot produce a
birth certificate or satisfactory documentation of place of birth to prove citizenship.

CONCLUSION

By not recognizing the Navajo Nation Census Records and other Tribal Documents including CDIBs and NCIBs as satisfactory documentation to prove U.S. citizenship and identity, the CMS is creating a tremendous barrier to all current and future Navajo and AI/AN Medicaid beneficiaries. However, to recognize such documents and to amend the interim rules to reflect the Navajo Nation's concerns will not only benefit our Navajo people but all healthcare providers located near and within the Navajo Nation. The same will be true for AI/AN Medicaid beneficiaries and Indian healthcare programs operated by IHS, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals.

As we, the Navajo Nation, respect the govemment-to-government relationship with the
U.S. so should the U.S. respect the Navajo Nation's census process in determining its citizenship and membership, who are also U.S. citizens and residence of their respective states. On the contrary, the interim rules do not implicate this relationship to the highest degree, especially because these rules adversely affect our Navajo veterans who receive Medicaid benefits. The Navajo Nation is enriched with many proud distinguished service people who bravely sacrificed their lives, at the altar of freedom, in defense of the U.S. Even before the DRA, many service people did not have birth certificates. It is, thus, an affront to our honored Navajo Code Talkers that proudly served in World War **II,** and military service people, like myself, who are attributed with having great significance in turning the tide of the war, to endure this type of short cited rulemaking.

Ahe'h6e (Thank you) for your time and deepest consideration of the Navajo Nation's comments on the DRA interim rules.

Respectfully,

cc: Michaela. Leavitt, Secretary ofHHS Mark B. McClellan, M.D., Ph.D., Administrator, CMS Charles W. Grim, D.D.S., M.H.S.A., Director, IHS Joe Shirley Jr., President of the Navajo Nation Herbert Yazzie, Chief Justice of the Navajo Nation Lawrence Morgan, Speaker of the Navajo Nation Council Valerie Davidson, Chair, CMS Tribal Technical Advisory Group
National Indian Health Board

- U.S. Senators (AZ, NM, UT)
- U.S. House of Representatives (AZ, NM, UT)

Submitter : **Tila Duhaime** **Date: 08/11/2006**

Organization : **Tila Duhaime**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan,
I urge you to rescind the new rules requiring eligible Medicaid applicants and enrollees to produce original or certified documentation of their citizenship or documented status. It is a burdensome and unnecessary barrier that will result in thousands of eligible Americans facing significant delays or losing their health care coverage altogether. If you refuse to reverse this new rule, I ask that you seriously consider including amendments that will alleviate the burden and ensure access to care.
For example, CMS must:
(1) ensure that new Medicaid applicants receive care while they are making a good faith effort to attain the required documentation;
(2) eliminate the requirement that documentation be an original or certified copy;
(3) eliminate the requirement that applicants or recipients under the age of 18 provide photo identification;
(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Submitter : Ms. Penelope Pestle
Organization : The Reentry Roundtable of Kent County, Michigan
Category : Other Association
Date: 08/11/2006

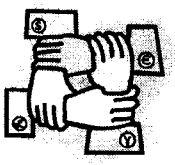
Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-307-Attach-1.PDF



Reentry Roundtable

c/o The Delta Strategy
Grand Rapids Community College
143 Bostwick N.E.
Grand Rapids, Michigan 49503

"Supporting people by removing obstacles that interfere with leading productive crime free lives."

August 11, 2006

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

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

The Reentry Roundtable of Kent County, Michigan is a collaboration of more than 40 business, government and nonprofit organizations focused on successful reentry for ex-offenders. Our ultimate goal is to reduce recidivism and increase in public safety.

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. This brief letter highlights concerns that are particular to the population of ex-offenders who reenter our communities at the rate of millions a year.

Impact of lack of timely health care: The interim final rules do not adequately protect ex-offenders who are U.S. Citizens applying for or receiving Medicaid coverage from inappropriate delay, denial, or loss of Medicaid coverage and impose burdens and requirements that are not required by the DRA. Ex-offenders frequently emerge from serving their sentences with significant acute and chronic physical and mental health problems which need immediate treatment. These health issues include Hepatitis C and HIV/AIDS which, if unmanaged, can pose a significant and deleterious impact on health of these individuals and the residents in the communities they rejoin. This, in turn, will create substantial financial hardship for health care institutions that serve these populations.

In addition, many former offenders suffer from mental illness, and, without proper treatment may be aggressive towards themselves or others. For public safety reasons, it is critical that individuals with mental health issues have access to the necessary treatment immediately upon release.

Lack of I.D. required by the new rules: Many ex-offenders leave prison or jail with no identification except jail or prison-issued I.D.s or other documents issues by correctional institutions which would not validate U.S. citizenship. This is a result of many factors, none of them easily correctable:

- Many reentering individuals have been incarcerated for long enough periods of time that their families have moved repeatedly or are deceased. Often their possessions are misplaced, lost or destroyed.
- Many ex-offenders come from families of low socio-economic status and in families such as these, there is often little priority placed on carefully maintaining documents.
- In addition, many enter the prison system under aliases, making positive identification extremely difficult.
- Some state Departments of Corrections, such as Michigan's, are focusing on the I.D. issue, working with their secretaries of state on resolution. However, recent Homeland Security concerns and regulations have made it even more difficult to resolve this issue and equip each and every reentering ex-prisoner with appropriate and complete I.D.s.

The Reentry Roundtable of Kent County makes the following recommendations:
1--Jail or prison-issued I.D.s or other documents issues by correctional institutions coupled with a declaration of U.S. citizenship and compliance with eligibility should qualify ex-offenders to receive Medicaid benefits immediately. The expectation would be that they would seek copies of birth certificates and state-issued photo I.D.s

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).

Also, in most instances, an immigration hold is placed on prisoners who are not lawfully in the United States. At the conclusion of their sentences they are then deported. This means that prisoners who are released are, in most instances, going to be lawfully present in the United States. Thus, even if prison paperwork does not document citizenship per se, it is strong evidence of citizenship.

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

The DRA gives the U.S. Secretary of Health and Human Services 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. 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. In addition, because, in most cases, 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. Many ex-offenders staying temporarily with others, because they have no money with which to pay for rent, utilities, insurance, etc., do not possess such documents.

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.

3--CMS should not require applicants and beneficiaries to submit originals or certified copies. 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. 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 difficult to obtain and expensive.

Conclusion

On behalf of the reentering ex-offenders whom we serve who will be unable to produce the documents required by the interim final rules, 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 ex-offenders, their families and their communities. Recidivism will increase when health concerns prevent employment of these individuals. Community safety will deteriorate.

Sincerely,

Penelope M. Pestle
Coordinator, Public Policy Committee
Reentry Roundtable of Kent County

Submitter : **Ms. Karen Hudes** **Date: 08/11/2006**

Organization : **Ms. Karen Hudes**

Category : **Individual**

Issue Areas/Comments

GENERAL

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Dear Dr. McClellan,

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For example, CMS must:
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(4) exempt individuals who receive services under a Medicaid family planning demonstration project from these documentation requirements; and
(5) allow states to grant "good cause" exemptions from the documentation requirement for US citizens who are unable to produce the required documents.

Thank you for your consideration.

Karen Hudes

Submitter :

Date: 08/11/2006

Organization :

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See attachment

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

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

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

Submitter : Ms. Kate Haley

Organization : Ms. Kate Haley

Category : Individual

Date: 08/11/2006

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Mr. Jonathan Suk **Date:** 08/11/2006

Organization : Mr. Jonathan Suk

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : **Ms. Linda Neiberg** **Date: 08/11/2006**

Organization : **Ms. Linda Neiberg**

Category : **Individual**

Issue Areas/Comments

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Thank you for your consideration.

Sincerely,
Linda Neiberg