

**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 SERVICES  
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 : Suzanne Mode  
Organization : OPEIU, Local 8  
Category : Other

Date: 08/11/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

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

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

**Submitter :** Mr. Brian Peters  
**Organization :** Michigan Health & Hospital Association  
**Category :** Health Care Professional or Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

See attachment.

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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Please direct your questions or comments to 1 800 743-3951.

**Submitter :** Ms. Carol Beckett

**Date:** 08/11/2006

**Organization :** Ms. Carol Beckett

**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. Claudette Beaulieu  
**Organization :** Connecticut Department of Social Services  
**Category :** State Government

**Date:** 08/11/2006

**Issue Areas/Comments**

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-317-Attach-1.DOC



August 10, 2006

The Honorable Mark McClellan  
Assistant Secretary  
Centers on Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2257-IFC  
P.O. Box 8017  
Baltimore, MD 21244-8017

Re: CMS-2257-IFC

Dear Assistant Secretary McClellan:

I am writing to provide comments on interim final rules concerning the **Medicaid Program: Citizenship Documentation Requirements** published in the Federal Register on July 12, 2006. (These comments have also been submitted electronically.) The Department of Social Services is the Medicaid single state agency in Connecticut and has implemented these new requirements consistent with the initial State Medicaid Director guidance and these interim rules.

This has been an extremely difficult and burdensome implementation effort, exacerbated by the constant changes in interpretation of the Deficit Reduction Act citizenship verification provisions as reflected in the various documents issued by your agency and through the numerous conference calls on the subject. Although we appreciate your agency's efforts to make yourselves available to respond to questions and concerns raised by the states in interpreting your guidance and rules, we believe you should have delayed the implementation effective date to allow more time for these concerns and issues to be addressed and for states to put in place the necessary systems to effectively apply these new rules. The manner in which direction was given has generated a great deal of confusion and has almost certainly resulted in eligibility staff making errors in applying the new rules. In light of this we urge you to hold all states harmless from any penalties that might be applied as a result of any errors made during the first six months of implementation (January 2007).

In general, we believe the rule is too prescriptive in limiting the types of documents that are acceptable to prove citizenship and identity. The specific omission of religious documents, such as baptismal certificates, is especially troubling. In addition, the list of acceptable identity documents is too narrow. Many low income individuals do not have driver's licenses, essentially requiring that they incur the cost and undergo the burden of securing a state identification card from the Department of Motor Vehicles in order to meet the identity requirement. We ask that you include other forms of identification, such as employer ID's. You should also permit the Medicaid agency to consider the requirement met if the client submits documents equivalent to those that would be

required to secure a state identification card, without actually having to have them incur the expense of securing a card.

With that said, we want to acknowledge and thank you for improvements in the interim final rule such as the exemption of SSI and Medicare recipients from the verification requirement as Congress clearly intended. We also appreciate the change made to allow us to use data matches with vital records agencies as a secondary level verification source for citizenship.

We also want to express appreciation for interpretations we have received in conference calls and in meetings with Center for Medicaid and State Operations Director Dennis Smith and other CMS staff concerning the treatment of foster care children as recipients, allowing us to provide immediate medical assistance to such children prior to verifying citizenship, and in permitting certain newborn children to postpone verification for one year. We would like to see the foster care exemption addressed in the final rule or in other formal CMS guidance.

Please note that any such exemption should apply to all foster care children upon initial placement. Because it takes the state child welfare agency from sixty to ninety days to complete a IV-E eligibility determination following initial placement, IV-E status is not immediately known. However it is critical that such children have immediate Medicaid coverage. For Medicaid purposes they should be presumed to be IV-E eligible during this initial determination period during which time the child welfare agency normally secures an original birth certificate that is then provided to us to verify citizenship.

Regarding newborn children, we are very concerned that there are other newborn children, those not born to a Medicaid recipient, whose Medicaid eligibility will be delayed due to the citizenship verification requirement, resulting in an inability to access critical care during the first few weeks of life. These are most often children born to Medicaid ineligible non-citizen parents. Securing hospital records or birth certificates for these children can take several weeks. The interim rule at 435.407(c)(1), depending upon how it is interpreted, may foreclose a viable citizenship verification option for these children. If the phrase "extract of a hospital record" means a hospital medical record then this will lead to delays in securing such documents because of the time it takes for hospitals to transcribe the original records and make them available to outside parties. If it can include a notification of birth from a hospital official, which is our current practice in Connecticut, then the verification process can be expedited and these newborn children assured of the essential care that they require. We've enclosed a copy of our Notification of Newborn form that we have recently revised to provide space for hospitals to produce this document on their letterhead. These forms should be acceptable proof of citizenship under the hospital record extract criteria. We would like to see this matter addressed either in the final rule or in other documentary guidance from your agency.

In addition to the above-suggested change concerning newborn children we have the following specific comments:

1. We object to the requirement that only original documents or certified copies of documents be acceptable. This creates an unreasonable burden on Medicaid applicants and recipients as well as the state agencies by effectively requiring that the applicant/recipient bring the documents to the state office to be seen and copied or scanned. In Connecticut we do not require face-to-face interviews for

Medicaid. This requirement creates an obstacle to program access for Medicaid applicants who have difficulty providing documents in this manner because of age, disability, work schedules and lack of transportation. It also, especially during the initial year of implementation when all current recipients will need to submit documents, creates an overwhelming operational problem for our local regional offices, which must deal with the tremendous increase in client flow through our office reception areas. Mailing documents such as passports, naturalization papers or drivers licenses is not a feasible or reasonable alternative for most clients. Medicaid clients will not want to take the risk of having such valuable documents lost or misplaced through the mail. We have examined our quality control data for the last seven years and have not found any instances of a client misrepresenting their citizenship status. The risk of accepting copies of documents is therefore extremely low when weighed against the administrative burden that original document submittal creates. We urge you to reconsider this requirement and permit the submittal of copies of the documents. We can use subsequent data matches to confirm the authenticity of these documents and identify the rare instances of fraudulent documents if indeed there are any.

2. At the APHSA Summer Meeting in Washington D.C. on July 11, 2006, Dennis Smith was asked if state agencies could delegate the responsibility for viewing the original documents to agencies or providers that are under contract or other formal agreement with the state to assist Medicaid applicants with the application process. Examples in Connecticut include our contracts with our community action agencies for Human Services Infrastructure, our Healthy Start contracts with FQHCs, a formal agreement with our child welfare agency for foster care and adoptive children, and our Qualified Entity agreements with community agencies and providers for Presumptive Eligibility for Children. Mr. Smith responded that such an arrangement would be acceptable. We appreciate this interpretation and would like to see it addressed in the final regulations or in other formal guidance on this subject.
3. The interim rule requires that state agencies copy Certificates of Naturalization as acceptable documentation. It is a felony under Federal law (18 USC 1426(h)) with severe civil and criminal penalties to copy this document. The final rule must address this issue, either by exempting this document from the requirement to have a copy placed in the case record or by HHS/CMS securing a specific waiver from the Department of Homeland Security that will permit the copying of naturalization documents for purposes of Medicaid citizenship verification. In the interim we have advised our staff not to violate the federal law and to narrate in the case record a description of the naturalization document.
4. During a question and answer session at the National Association of State Medicaid Director's meeting in San Francisco recently, Mr. Smith was asked about how to determine whether a document is available before accepting a lower level document. In particular he was asked: If the Medicaid client did not possess the document and could only secure it by paying a fee, could the document be considered unavailable? His response was that the document could be considered unavailable. We would like to see the final rule or federal guidance that confirms this statement by indicating that a document is unavailable if it is not in the applicant's or recipient's possession, it can only be

secured by paying a fee, and the applicant or recipient is unable or unwilling to pay such fee. Medicaid applicants and recipients are by definition low income individuals. They must make difficult choices every day concerning what to spend their limited resources on. In the cases of some families, purchasing birth certificates for multiple family members can be so costly as to put the family at risk of not having basic necessities. In light of this Mr. Smith's answer was the correct one.

5. Section 435.407(f) speaks to special rules for children under 16. Although there is a reference to school records, including nursery or daycare records, there is no primary listing of documents acceptable for such children including school records as an acceptable identity document, other than school identification with a photograph. We're uncertain if not providing this list of documents was an error or oversight. For younger children at the pre-secondary level, school identifications are not available. Other school records, including report cards, should be acceptable to establish the identity of a child as should medical records and Amber Alert ID's provided by law enforcement officials. We encourage you to expand upon the types of documents acceptable for children.
6. In one of your staff's conference calls with the states clarification was provided that the affidavits that may be submitted for citizenship verification and for children's identity do not have to be notarized. We would like to see this interpretation reflected in the final rule or in other formal guidance on this subject, as this is not consistent with the normal interpretation of what is an affidavit.
7. On page 39216 there is a statement that "States may also, at their option, use matches with State vital statistics agencies in place of birth certificates to establish citizenship." We very much appreciate this provision, as we believe this is probably the most cost-effective approach to verifying citizenship and we are working with our state vital records administrator to establish an automated match with our Medicaid records. We were also informed in response to a question raised at the aforementioned APHSA meeting that such matches can include manual matches of birth certificate information. We have developed a process to submit a manual form with the information we have on file to the state vital records administrator and she has agreed to verify the information so submitted. (Form attached.) We were told that this is an acceptable data match process and would like to see this interpretation reflected in the final rule or in other formal CMS guidance on this subject.
8. There will be a small number of applicants or recipients who will not be able to submit documentary evidence of citizenship or identity because the records do not exist and there do not exist two living individuals with personal knowledge of the events establishing the applicant's or recipient's claim of citizenship. Because of the exemptions for Medicare and SSI recipients we believe the number of such individuals will be very small. In light of this we believe it would not be overly burdensome for CMS to have an exception process whereby the State Medicaid agency could request CMS regional office review and approval of citizenship status based on other evidence that the state would submit relative to the citizenship claim. We recommend that an exception approval process be included in the final rule.

9. The statute requires that your department undertake outreach activities concerning these citizenship verification requirements. Your agency has chosen to delegate this responsibility to the state and has agreed to make federal matching funds available at the normal FFP rate. Since the statute clearly makes this outreach activity the responsibility of your agency any costs incurred by the states as a result of your delegation of this responsibility should be fully funded by the federal government.

Thank you for providing us with the opportunity to comment on the interim final rules. Please contact Kevin Loveland, Director of Assistance Programs, at 860-424-5031 or [kevin.Loveland@po.state.ct.us](mailto:kevin.Loveland@po.state.ct.us) if you have any questions about these comments.

Sincerely,

Claudette J. Beaulieu  
Deputy Commissioner

CJB:kl

cc. Patricia A. Wilson-Coker, Commissioner  
Michael P. Starkowski, Deputy Commissioner  
Kevin Loveland  
David Parrella

**Submitter :** Ms. Erin Coffey

**Date:** 08/11/2006

**Organization :** Ms. Erin Coffey

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

- (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. Erin Coffey  
**Organization :** Ms. Erin Coffey  
**Category :** Individual

**Date:** 08/11/2006

**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;
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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 :** Mr. Joshua Cahan  
**Organization :** Jewish Theological Seminary  
**Category :** Academic

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

As a leader in a religious community, I am deeply saddened at yet another mechanism which serves to deny the basic protections of social welfare to poor and underprivileged citizens. It is an act of denying their fundamental humanity, at a time when, with the economy struggling, it is our moral obligation to work to INCREASE their access to basic services like health care. PLEASE reverse this distressing legislation.

Sincerely,  
Rabbi Joshua Cahan



**Submitter :**

**Date: 08/11/2006**

**Organization :**

**Category : Health Care Provider/Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

CMS-2257-IFC-321-Attach-1.DOC

CMS-2257-IFC-321-Attach-2.DOC

August 10, 2006

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

RE: Interim Final Rule to Implement Section 6036 of the Deficit Reduction Act of 2005

Dear Administrator McClellan:

Planned Parenthood Public Policy Network of Washington ("The Network") is urging you to consider the negative consequences of the proposed Medicaid reforms on Washington's ability to provide vital family planning services to low-income men, women and families to our communities.

"The Network" represents the five Planned Parenthood Affiliates of Washington, providing clinical and education services through 40 Planned Parenthood clinics in 18 counties around the state. In 2004, Washington state Planned Parenthood staff members, interns and volunteers provided approximately 230,000 people with the means to access reproductive health services, physical exams, cancer screening, disease testing and prenatal care. For many of these individuals, family planning is their sole point of entry into Washington's health care system.

If the interim rule is enacted without changes, Washington could lose its ability to provide family planning services to thousands of men and women. Family planning services yield tremendous cost-savings and public health benefits with minimal state financial investment, and it is our strong belief that limiting access to these services under the proposed reforms will only exacerbate public health and budget concerns in the long run.

For example, in Washington, the proposed reforms are expected to:

- Prioritize administrative management of this policy over spending scarce resources on health coverage and direct clinical services;
- Create tens of thousands of new uninsured people who are actually eligible for public programs. This is an enormous step backward for our state, which is in the process of developing innovative ways to cover the uninsured in Washington;
- Possibly remove 80,000-100,000 of Washington's eligible beneficiaries from Medicaid simply because they lack the documentation required to certify eligibility.
- Cost Washington between \$5 and \$16 million dollars, including the possible hiring of 68 to 250 FTEs.

This provision is unlikely to achieve its intent of removing ineligible non-citizens from the program. In fact, it likely will show that the non-citizen population is largely not enrolled in Medicaid (it is worth noting that a recent report by the Inspector General of the Department of Health and Human Services found no substantial problem with fraudulent enrollments). About one in 12 (or 8%) of U.S. born adults 18 or older with incomes less than \$25,000 do not have a passport or birth certificate. The reality is that by targeting low-income people, this policy goes after the population least likely to possess necessary documents such as passports and birth certificates.

Previous experience in Washington State tells us that citizens lose coverage when administrative barriers are increased. Implementation of this provision is sure to result in an increase in the rate of uninsured low-income patients.

### **Citizenship Requirements and Family Planning**

We are especially concerned about the impact that 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.

Access to family planning enables responsible decision making and promotes healthy families. In Washington, publicly funded family planning clinics helped women avoid 31,400 unintended pregnancies in 2004. For many individuals, family planning clinics are the only source of health care and the only place where individuals go to get health education, cancer screening, pre-natal care and disease testing.

For Washington, our Section 1115 waiver (called "Take Charge") is the cornerstone of family planning. "Take Charge" has enjoyed unprecedented enrollments and enthusiastic forecasts about helping the state's low-income residents plan their families and reduce the rate of unintended pregnancies. For example, Washington family planning providers served 164,327 patients through our waiver last year. What this means for the men in women in our communities is that they now have access to the pregnancy prevention, physical exams and cancer screening-- regardless of ability to pay.

The Take Charge program has been overwhelmingly successful. Despite increases in population growth, the program has contributed to a 3.5% decrease in the state's abortion rates and a 2.5% decrease in the state's birth rates. For every dollar spent on Take Charge! Washington saves approximately \$3.30 in future care and services.

### **Recommendations Moving Forward**

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

The very point of a family planning waiver is to eliminate as many barriers as possible to the provision of family planning services. The easier that we make it for people to prevent a pregnancy, the more successful we are in preventing the social and financial costs of unintended pregnancies and STDs in Washington. (Note: almost 50% of all births in Washington are paid for by Medicaid).

The interim final rule threatens the viability and impact of our waiver by erecting unnecessary barriers and making it prohibitively difficult for many of our clients to access the pregnancy prevention services that they need. Furthermore, the citizenship documentation requirements force our state to redirect badly needed reimbursements for services to the administration of this rule. The reality is that citizenship verification requirements will only prove what we already know - that the clients served under our waiver are citizens.

We strongly urge CMS to exempt family planning waivers from the documentation requirements in the final rule. Doing so will ensure that we can continue making incredible strides in reducing unintended pregnancies and Medicaid paid births in this state. Without such an exemption, we fear that the administrative costs and burdens associated with implementing this program will override our ability to provide services under the waiver.

#### **Individuals seeking family planning services should receive benefits once they declare citizenship.**

Under the DRA, individuals applying to Medicaid will not be eligible for services until citizenship is proven. This is exceptionally problematic for individuals seeking family planning services. Because most of the men and women who come into our clinics are *already* sexually active when they come to us for contraceptive services – asking them to wait days, weeks or even months before we can provide family planning services to them is sure to result in soaring rates of unintended pregnancies and sexually transmitted diseases.

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

Washington State plans to access vital health databases to check for birth certificates. This is a major improvement because some citizens in Washington will not be required to track down their own documentation.

However, there are bound to be many citizens—those not born in Washington, for example – whose verification will not be as easy. Young people, homeless individuals, victims of domestic violence, and Native American or tribal populations are examples of patients that we commonly serve who will also experience disproportionate hurdles to proving their citizenship and receiving services. Again, these are men and women who are looking to us to help them prevent unintended pregnancy and who should not be turned away once they have already overcome sometimes significant barriers to make it to our clinics.

We ask that CMS erect a clear safety net for these kinds of populations who are likely to be negatively and disproportionately affected by these new requirements. 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. One such solution might be to not limit the accepted documentation to the primary and secondary level of documents. It is important that CMS 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 our ability to provide vital – and cost effective – family planning programs in Washington. We hope that you will implement policies that will lessen the severity of this rule and make it easier – not harder – for men and women to access family planning services in Washington.

Thank you,

Elaine Rose, Executive Director  
Amy Luftig, Deputy Director of Public Policy  
Planned Parenthood Network of Washington  
2001 E Madison St.  
Seattle, WA 98122

**Submitter :** Laura Gibbs  
**Organization :** Laura Gibbs  
**Category :** Congressional

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

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Thank you for your consideration.

**Submitter :** Ms. Kate Black  
**Organization :** Ms. Kate Black  
**Category :** Individual

**Date:** 08/11/2006

**Issue Areas/Comments**

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Thank you for your consideration.

**Submitter :** Ms. Nora Valencia

**Date:** 08/11/2006

**Organization :** Ms. Nora Valencia

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

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Thank you for your consideration.

Submitter : Ms. Dara Lurie

Date: 08/11/2006

Organization : Ms. Dara Lurie

Category : Individual

Issue Areas/Comments

**GENERAL**

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- Thank you for your consideration.



**Submitter :** Ms. Patricia McGeown  
**Organization :** Upper Hudson Planned Parenthood  
**Category :** Health Care Provider/Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-2257-IFC-326-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: Medicaid Citizenship Documentation Interim Final Rule  
71 FR 39214 (July 12, 2006)  
CMS-2257-IFC**

Dear Administrator McClellan:

Upper Hudson Planned Parenthood (UHPP) is a community-based non-profit organization providing advocacy, education and reproductive health care services in New York's Capital Region. Last year, UHPP served 11,500 women and men of all ages. We are a major provider for the ever-increasing number of low-income New Yorkers in desperate need of health care. More than half (54% in 2005) of our patients rely on Medicaid or Medicaid waiver family planning programs to pay for their health care services. We are very concerned that several provisions in the interim rules, if not changed, will prevent countless numbers of otherwise eligible citizens from obtaining health care coverage.

We are deeply concerned and disappointed that CMS has not acted to minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage. Our comments below highlight six areas that CMS should modify in the final rule, including the information collection requirements of the interim regulations. As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries, and state and local Medicaid agencies. The requirement for originals and certified copies also calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring individuals to obtain and submit originals or certified copies adds to the time compliance will take. In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state or local offices to submit them. State and

local agencies will have to meet with individuals, make copies of their documents, and maintain records, all of which take more time than the five minute estimate.

**Family planning waiver programs should be exempted from the citizenship and identity documentation requirements.**

Section 1115 family planning waiver programs are unique programs that should be exempted from the documentation requirements. Under this program, New York extends 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 family planning expansion programs, which have assisted low-income people who would otherwise have no source for family planning services.

The primary purpose of family planning waiver expansion programs is to reduce the number of unintended pregnancies, which in turn acts to reduce poverty and dependency on social services; improve health outcomes for both women and children and reduce the public cost of unintended pregnancy. Family planning waiver programs are extremely cost-effective in that they reduce the need for costlier health care associated with unintended pregnancy. The cost of providing coverage for family planning services through Medicaid waiver programs are far lower than the cost of providing pregnancy-related services to beneficiaries who, if they became pregnant, would be eligible for far more costly Medicaid-covered prenatal, delivery and postpartum care. A 2003 study commissioned by CMS to assess the impact of family planning waiver demonstration programs showed that in each of the states studied, family planning waiver programs resulted in significant savings for both state and federal government and caused a reduction in unintended pregnancies.<sup>[1]</sup>

The interim final rule—which in the preamble states: “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))--completely threatens the viability and impact of these programs by requiring individuals who receive these services to produce citizenship and identity documentation.

Enrollers who are implementing the interim rules are already reporting that otherwise eligible citizens are unable to enroll in New York’s family planning expansion program because they either cannot obtain the necessary documentation or cannot afford to obtain their documentation. 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 these successful and highly cost-effective programs by erecting unnecessary barriers to enrollment. We urge CMS to exempt family planning waiver programs from the documentation requirements.

**Documentation requirements should be changed to allow citizens to submit copies of documents.**

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<sup>[1]</sup> Edwards J, Bronstein J and Adams K, “Evaluation of Medicaid Family Planning Demonstrations,” The CNA Corporation, CMS Contract No. 752-2-415921, Nov. 2003. *See also*, Alan Guttmacher Institute, “Medicaid: A Critical Source of Support for Family Planning in the United States,” April 2005.

As recognized in the June 9 CMS guidance, New York State has successfully required documentation of citizenship and identity for years. However, the success of New York's system is based on its realistic requirements which include allowing applicants to submit copies of documents. New York State also allows for a wider range of documents to prove citizenship and identity.<sup>[2]</sup> CMS should expand the types of documents that can be provided and should allow copies in order to be more reflective of New York's successful system. If not changed, these new requirements will seriously undermine New York's long-standing system and threaten the well-being of otherwise eligible citizens who will be unable to produce required documents.

Allowing copies of documents will also aid in ensuring eligible citizens are not denied needed health care. It has been shown that easing application and recertification procedures aids in the enrollment and retention of persons in health programs. The interim rules place a critically important aspect of New York's recertification process at risk. New York allows for mail-in recertification, which eliminates the need for enrollees to appear at their local department of social services office. The original documentation places that policy at risk, as it is very unlikely people will be willing to place original copies of their documents into the mail. Moreover, it would be completely impractical to mail in proof of identity, such as a driver's license or school identification card.

Obtaining the required documents presents its own challenges and burdens. It costs thirty dollars to obtain a birth certificate from New York's Vital Records Registry, and \$45.00 if it is sought on an expedited basis. This also calls into question the time estimates for compliance. Many people—perhaps due to natural disasters, fire, flood or theft--do not have the required documents. This is a financial barrier that many citizens will find difficult, if not impossible to meet.

Not only is the requirement onerous, it is also unnecessary. Section 6036 of the DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. 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.

**Citizens should not be denied benefits while making a good faith effort to obtain documents.**

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

Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted. There is nothing in the DRA that requires a delay in providing

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<sup>[2]</sup> For an in-depth examination of New York's system, see Boozang P., Dutton M., Hudman J., "Citizenship Documentation Requirements in the Deficit Reduction Act of 2005: Lessons From New York," Kaiser Commission on Medicaid and the Uninsured of the Henry J. Kaiser Foundation, June 2006. The publication can be downloaded from: <http://www.kff.org/medicaid/7534.cfm>.

coverage. Yet CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income 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 who can not, in good conscience, turn away patients in need of health care services.

While the statutory logic of this policy is unclear, the real-world consequences are frighteningly 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, may experience significant delays in Medicaid coverage. Some U.S. citizens who get discouraged or cannot get the documents they need within the time allowed by the state will never get coverage.

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.

**Medicaid applicants or recipients under the age of 18 should not be required to submit photo identification.**

Provisions in the interim rule which require minors over the age of 16 to submit photo identification are unrealistic. Although many New York City-area schools may issue photo identification, this is not a common requirement in the more rural regions of New York State. This requirement will impose significant access issues for those minor citizens who do not have ready access to photo identification. In addition, although the interim rule does allow a parent or guardian to attest to the identity of a minor under the age of 16, this provision in itself will also prove unworkable for the many New York children that are living in informal arrangements with kin or friends. We urge CMS to broaden section 42 CFR 436.407(f) to allow for a broader range of documents--such as school records and report cards, athletic records, library cards, and baptismal or church records--to establish the identity of minors under the age of 18.

**Category of populations needing special assistance should be expanded.**

CMS should clarify that states must offer assistance to those citizens who are unable to obtain documents on their own behalf due to mental, physical or legal infirmity. 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, certain homeless individuals as well as Medicaid applicant and recipients under the age of 18, who are barred by New York law from obtaining a certified copy of their own birth certificate. CMS should erect a clear safety net for these vulnerable 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.

**CMS should allow states to grant good cause exemptions from documentation requirements.**

There are U.S. citizens who will not be able to produce the required documentation. States should have the discretion to grant good cause exemptions from the documentation requirements when there is no reason to believe the person is not a citizen.

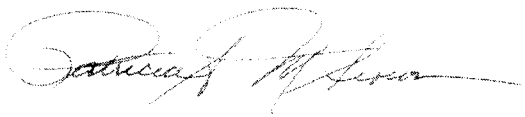
The rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not address the situation in which a state is unable to locate the necessary documents for such an individual. Nor does the rule address the situation in which an individual does not have "incapacity of mind or body" but his or her documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows for 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 unreasonably 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 U.S. citizens who simply will be unable to produce the required documents.

CMS can look to the regulations for the SSI program as an example of reasonable flexibility that maintains program integrity while providing adequate protections for some of our most vulnerable citizens. These rules 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, such as the creation of a good cause exemption when 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 vulnerable people who are U.S. citizens can receive the health care services they need.

Thank you for the attention to these comments. We hope that you will find them helpful as you consider the best ways to improve the interim rule.

Sincerely,



Patricia A. McGeown  
President/CEO  
Upper Hudson Planned Parenthood

**Submitter :** Ellen Spilka

**Date:** 08/11/2006

**Organization :** Ellen Spilka

**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. Anthony Rodgers  
**Organization :** Arizona Health Care Cost Containment System  
**Category :** State Government

**Date:** 08/11/2006

**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 General Comment attachment

**Regulatory Impact Statement**

Regulatory Impact Statement

See General Comment attachment

CMS-2257-IFC-328-Attach-1.PDF





***Our first care is your health care***  
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

*Janet Napolitano, Governor*  
*Anthony D. Rodgers, Director*

*801 East Jefferson, Phoenix AZ 85034*  
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August 11, 2006

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2257-IFC  
P.O. Box 8017  
7500 Security Boulevard  
Baltimore, MD 21244-8017

**Re: File Code CMS-2257-IFC**

Please accept the following comments from the Arizona Health Care Cost Containment System (AHCCCS), Arizona's Medicaid program in response to the Federal Register Notice of July 12, 2006, on the Interim Rules regarding Citizenship Documentation Requirements in the Medicaid program. Arizona has a number of concerns with respect to the documentation requirements described in the interim regulations as detailed below.

### **I. Background**

#### **1. Data Base Matches, 39215-39216:**

The statute states that "aliens", which now has been interpreted by CMS as intended to say "individuals" are exempt from additional documentation if they are receiving SSI or Medicare. AHCCCS recommends that CMS clarify the following:

- Whether, if the state exempts the Medicare recipient and the person loses Medicare coverage, it is sufficient to only be concerned with the loss of exemption at the time of the next redetermination;
- Whether, if at the next redetermination, the exempt person is no longer exempt, would the state be required to document US citizenship and identity;
- AHCCCS also recommends that the Secretary exempt people who receive Social Security benefits from the citizenship documentation requirements. AHCCCS is concerned about US citizens who receive Social Security Disability benefits but who are not yet eligible for Medicare because of the 24 month waiting period.
- Whether, if a beneficiary's citizenship and identity have been appropriately documented by another state, that states should be able to enter into agreements that allow them to accept the other state's citizenship certification and identification verification.

#### **2. Title IV-E children, Page 39216:**

AHCCCS recommends exempting Title IV-E children from the DRA documentation requirements, as they are eligible for Medicaid based on their Title IV-E status. Section 1902(a)(10) was not amended by the DRA. If these children are not exempt, then CMS should amend 42 C.F.R. §435.115.

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3. Newborns, Page 39216:

Reference is made only to categorically needy mothers, but 42 CFR §435.117 also allow newborns of medically needy mothers to be eligible as deemed newborns. CMS should determine whether this is an oversight or if this provision does not apply to medically needy newborns.

The interim regulations state that new requirements do not apply to the "deemed newborn" until the next redetermination of eligibility. CMS should clarify that this is referring to the child's redetermination at one year, not the mother's.

The state has a process by which notification is communicated to the Medicaid agency through a secure telephone process and providers must use their Medicaid provider numbers before the call is accepted. There are other secure measures in place to ensure that the notification is valid. Arizona is a Managed Care state and instead of paying a Medicaid claim for the birth of the child, Arizona capitates the managed care plan upon notification of the child's birth. The child is posted as a deemed newborn and the Arizona waiver concerning the child's continued eligibility is followed. AHCCCS recommends that:

- If the state has a process where the Provider notifies the Medicaid Agency of the child's birth to the Medicaid eligible pregnant woman, the provider notification should equal the intent of the hospital record;
- Notification housed and kept forever in the Medicaid Member data base should be sufficient to document the child was born in the state;
- No additional documentation should be required when the child turns age 1 or no longer qualifies as a "deemed newborn."

4. Originals or Copies certified by the issuing agency, Page 39216:

Arizona is concerned that only originals and certified copies can be accepted as satisfactory documentary evidence of citizenship, adding to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies. In Arizona, there are many entities that take applications for Medicaid benefits and send the collected information to the Medicaid eligibility agency for an eligibility determination. Also, the requirement for originals and certified copies calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring individuals to obtain and submit originals and certified copies adds to the time for compliance. In addition to locating or obtaining documents, applicants and beneficiaries will likely have to travel to state offices to submit them. State agencies will have to meet with individuals, make copies of their documents, and maintain records. In addition, there will be times when an eligibility interviewer goes to an applicant's home, where it will be impossible to make copies of documents. CMS should make provisions allowing for the official eligibility staff to complete and sign a form with all the identifying information from the original, attesting the information on the Agency form is identical to the original viewed.

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5. Social Security Number (SSN) Matches, page 39216:

While the regulations do not list the verification of a SSN as a form of verifying identity, this section of the preamble requires states to complete the SSN match as a check against fraud. The SSN match is already required as part of 1137 of the Act. This suggests a form of identity verification and therefore states should be able to use this as an official document to establish identity when none of the others listed are available. This seems to be more reliable than other acceptable documents such as an insurance policy which has the person's place of birth on it.

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

1. Documents to show place of birth, page 39218:

This section requires documents to show "a US place of birth, or that the person is a US citizen." This suggests that the place of birth is not always required on the document if the acceptable document states "US Citizen" and does not appear to be consistent with the language in the regulations themselves.

Section 435.407(b)(10) allows for the use of military records to verify citizenship if the documents show a US place of birth. There have been instances where military records show the individual is a Citizen but it does not list the place of birth. AHCCCS suggests addressing the inconsistency through regulations.

2. Age 16 vs. Age 18, page 39219:

A child is usually not considered an adult until age 18. CMS should clarify the basis for limiting some requirements for a child under age 16 instead of age 18. See also page 8, #10 below.

3. Affidavits; Fourth Level of Evidence and 435.407 (d)(5)(3), Page 39219:

It is unclear why an affidavit is not acceptable for a naturalized citizen if the person signing the affidavit was present at the naturalized ceremony. Also, replacing lost naturalized documents can cost over \$200 and require up to a year to obtain. CMS should make provisions for valid reason for exceptions of reasonable opportunity to obtain these documents.

**III. Collection of Information Requirements**

Time Allocated to be in compliance:

The estimated time of 15 minutes, even as an average, is actually the lower end of the calculation if someone has all the needed items at hand at the time of application. This estimate appears to be seriously understated.

**IV. Regulatory Impact Statement**

CMS has determined that a regulatory impact analysis does not need to be completed and the rule will have no consequential effect on State, local or tribal governments or the private sector. We already know this is affecting tribal governments and is burdening Vital Record entities in all states. For applicants and members who do not have the funds to purchase these documents, state budgets are increased for the cost of paying for these documents.

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While CMS acknowledges there will be an increased burden on eligibility workers, they do not expect the added requirement to overburden the eligibility process. The document hierarchy in and of itself is over burdensome and costly, especially when documentation is required as to why each tier of documentary evidence is not available and is required before proceeding to the next tier of documents. The total financial impact to Arizona for documenting citizenship and identity for new and existing Medicaid recipients is estimated to be about \$12,000,000 for fiscal year 2007. The new responsibility will require hiring additional staff to ensure timely determination of eligibility in light of the added time needed to meet the new requirements. It will also necessitate setup costs, as well as costs associated with obtaining documentation to verify citizenship and identity. Additional activities for staff include explaining the new requirements, assisting applicants in obtaining documents, collecting and recording required documents, reviewing and verifying documentation and conducting research to verify documentation. Arizona's legislature appropriated a total of \$10,400,000 of total funds to comply with the new documentation requirements. AHCCCS strongly encourages CMS to complete a Regulatory Impact Statement and Analysis.

#### V. Provisions

##### 1. Inconsistency of Rules; Households; §435.406(a)(1)(iii), page 39222:

Section 435.406(a)(1)(iii) of the rule seems to be inconsistent with Section 1903(x)(2) and 42 USC 1320b-7(d)(1)(A) to the extent that it requires every applicant and recipient to meet the citizenship requirements if eligibility is determined for a family or household. The rule states "an individual for purposes of the citizenship requirements is a Medicaid applicant or recipient..." However, Section 1903(x)(2) only imposes the documentation requirements "with respect to an individual declaring to be a citizen or national of the United States" as required by 42 USC 1320b-7(d)(1)(A). That statute only requires a declaration from "any adult member ... stating whether the individual is a citizen or national of the United States" when eligibility is being determined on a family or household basis. Therefore, it does not appear that the DRA amendments require documentation of citizenship and identity for all members of the household - when eligibility is determined on a family or household basis, documentation is only required for one adult member of the family or household.

##### 2. Use of Hierarchy; Evidence of Citizenship; §435.407(b), page 39222:

Section 435.407(b) appears to be inconsistent with Section 1903(x)(3)(A) to the extent that it specifies that documentation described in Section 1903(x)(3)(C)(i) through (iv) is acceptable documentation of citizenship only if "primary evidence" - that is, documentation described in Section 1903(x)(3)(B) and 435.407(a) - is not available. The Act at Section 1903(x)(3)(A) states that either documentation described in subsection (B) or described in subsection (C) is acceptable. It does not establish a hierarchy. CMS may have authority to condition the use of other documentation specified by the Secretary under the authority of Section 1903(x)(3)(C)(v) on the unavailability of more reliable forms of documentation; however, there does not appear to be a statutory basis for the Secretary to condition the acceptability of U.S. birth certificates, Form FS-545, Form DS-1350, Form I-97, or Form FS-240 on the unavailability of a U.S. Passport, Certificate of Naturalization or Certificate of United States Citizenship. If the applicant presents a U.S. birth certificate along with any of the forms of identification specified in Section

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1903(x)(3)(D)(i), Congress has determined that the documentation is as acceptable as, for instance, a U.S. passport. CMS should clarify the statutory basis to require the applicant to establish the unavailability of a U.S. passport or documentation of naturalization.

AHCCCS recommends CMS to consider tribal enrollment documents including the Certificate of Degree of Indian Blood (CDIB) as acceptable documents for **both** citizenship and identity. While Native American tribal documents and CDIBs are stated as acceptable documentary evidence for identity, they are not stated as acceptable documentary evidence for citizenship.

Congress granted U.S. citizenship to members of federally recognized tribes in 1924. There are 563 federally-recognized tribes in the United States, although only three were mentioned in the interim final regulations. Provisions specific to membership of each tribe is included in the tribe's constitution and are approved by the U.S. Department of Interior. Documentation of eligibility for membership is often obtained through birth certificates and 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.

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 Act of 1996. 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 requires 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 DRA documentation requirements should be consistent with these regulations.

In addition, The Program Operations Manual System permits SSI Cash eligibility for these individuals based solely on the person's ability to provide proof that they are a member of a federally recognized tribe. As such, an alien-born Native American can achieve eligibility simply by documenting enrollment with a tribal enrollment card. Under the interim final regulations, however, tribal enrollment cards can only be used to verify identity, not citizenship. It does not seem logical that an alien born Native American only needs to provide a tribal enrollment card, while a Native American born in the U.S. is required to provide two forms of documentation.

In conclusion, if tribal enrollment documents/cards and CDIBs are not recognized as proof of U.S. citizenship, Native American Medicaid members and applicants might not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many traditional

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Native Americans were not born in a hospital and have no record of birth except through genealogy records. Furthermore, by not recognizing tribal enrollment documents/cards and CDIBs as satisfactory evidence of U.S. citizenship, a number of Native Americans without records of birth will be faced with barriers to receiving Medicaid benefits.

**3. Use of Birth Certificate beyond 5 years of Birth; §435.407(b)(1), pages 39222-39223:**

For the same reasons as stated above, 435.407(b)(1) appears to be inconsistent with Section 1903(x)(3)(A) and (C)(i) to the extent that the rule makes a birth certificate that was issued more than 5 years after birth "fourth level" evidence of citizenship. By virtue of Section 1903(x)(3)(C)(i), Congress has determined that any U.S. birth certificate, regardless of the timing of issuance, is primary proof of citizenship. There does not appear to be a statutory basis to require the applicant to establish the unavailability of the documentation described in proposed sections 435.407(a), (b), or (c) due to the date the U.S. birth certificate was issued. AHCCCS recommends CMS to validate that policy lists an amended birth record document amended after 5 years of age is considered 4th level rather than 2nd level.

**4. Individuals who can not provide documentation; §435.406(b), page 39222:**

Regulation 435.406 (b) which was (c) under the previous regulations, needs to be clarified as to whether the emergency services listed in 440.255(c) is available to undocumented citizens as well as undocumented aliens. The section 440.255 title includes only aliens, but 406(b) seems to imply that it could apply to all persons who do not meet the specific requirements noted in (a).

**5. Passports with Limitations; §435.407(a)(1), page 39222:**

CMS should add a note explaining why a passport with limitation is not acceptable for citizenship if it meets all the other identifying requirements.

**6. Reasonable Opportunity Period; §435.407(d); pages 39222-39224:**

To be consistent with subsections (d), AHCCCS suggests to include language from both 435.407(b) and (c), indicating that higher levels of documentation are "not available" when they cannot be obtained within the reasonable opportunity period.

**7. Acceptable 4<sup>th</sup> Level Documentation; §435.407(d); page 39224:**

This provision allows for other documents that were created at least 5 years before the application for Medicaid to be used as acceptable fourth level of documentation. AHCCCS would request to see the list expanded from Seneca Indian tribal census records and Bureau of Indian Affairs tribal census records of the Navajo Indians to include any tribal documents that show the place of birth.

**8. Citation Correction; §435.407(e)(8); page 39224:**

The citation to the Immigration Regulations in section 435.407(e)(8) of the rule appears to be incorrect. It should be 8 CFR 1274a.2(b)(1)(v)(B).

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9. Voter Registration Cards and Canadian Driver's License; §435.407(e)(8); page 39224:

The authority to exclude the use of voter registration cards and Canadian driver's licenses as acceptable forms of evidence of identity as stated in the proposed note to §435.407(e)(8) is unclear. Section 1903(x)(3)(D)(i) states that "...any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act" is acceptable proof of identity. That provision of the Immigration and Nationality Act, 8 U.S.C. § 1324a, provides that either a driver's license or similar state-issued identification card or "such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section." Per regulations the Attorney General has published, specifically at 8 CFR 1274a.2(b)(1)(v)(B), voter registration cards and Canadian driver's licenses are acceptable proof of identity for anyone 16 years of age or older. 8 CFR 1274a.2(b)(1)(v)(B)(1)(iii) and (ix). The inclusion of all of the documents listed in 8 CFR 1274a.2(b)(1)(v)(B) was required by Congress by its reference, in Section 1903(x)(3)(D)(i), to section 274A(b)(1)(D) of the Immigration and Nationality Act. The DRA provision is a clear Congressional statement that such documents are reliable. Section 1903(x)(3)(D)(ii) authorizes the Secretary to *expand* the list of acceptable evidence of identity, rather than *restrict* the list established by Congress.

10. Identity rules for Children; §435.407(f), page 39224-39225:

Section 435.407(f) of the rule, relating to special identity rules for children, appears to be inconsistent with 8 CFR 1274a.2(b)(1)(v)(B)(2). Section 1903(x)(3)(D)(i) requires the Secretary to accept as proof of identity all of the documents listed in 8 CFR 1274a.2(b)(1)(v)(B). Under subsection (b)(1)(v)(B)(2) of that regulation, persons under the age of 18 who cannot produce the documentation listed in 8 CFR 1274a.2(b)(1)(v)(B)(1), can establish identity by providing:

- a school record or report card;
- clinic, doctor, or hospital records, or;
- daycare or nursery school records.

Subsection (f) of the interim final rule seems inconsistent with the Act because (1) it does not include clinic, doctor or hospital records, and (2) limits the acceptability of these documents to persons under the age of 16 while the Immigration regulation makes these documents acceptable for anyone under 18 years of age who cannot produce one of the documents listed in 8 CFR § 1274a.2(b)(1)(v)(B)(1). Consistent application of the immigration provision and its implementing regulation was mandated by Congress, and the interim final regulation should be modified to conform to that regulation.

11. Application Process; §435.407(h)(3), page 392225:

AHCCCS strongly supports section 435.407(h)(3) which reiterates CMS' long-standing position that the applicant need not appear in person to apply for Medicaid; however, this principle is seriously undermined by the requirement in 435.407(h)(1) precluding the Medicaid agency from accepting copies of the documents required by the rule. It imposes significant and unnecessary barriers to eligibility - it is not reasonable to expect an applicant to mail in the original of essential and important documents (such as driver's licenses, passports, and certifications of

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naturalization) so that the agency can copy them and return them to the applicant. In practical terms, applicants and recipients will either have to present the documents in person at a Medicaid office or will have to incur the unnecessary expense and delay associated with obtaining a certified copy of these documents from the issuing agency. And, in some instances (such as driver's licenses), those agencies may be legally unable to provide a duplicate unless there is an attestation that the original has been lost, destroyed, stolen, etc. See for example, Arizona Revised Statutes, section 28-3170. Therefore, the requirement in 435.407(h)(1) should be revised to permit applicants and recipients to provide legible copies of the required documentation.

Thank you for the opportunity to comment on the interim regulations. Please do not hesitate to contact me at (602) 417-4111 if I may be of assistance as you discuss these issues.

Sincerely,

A handwritten signature in black ink that reads "Anthony D. Rodgers". The signature is written in a cursive style with a large initial "A" and "R".

Anthony D. Rodgers  
Director



Submitter : Mrs. Laura Busanic

Date: 08/11/2006

Organization : Mrs. Laura Busanic

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. Brett Crocitto  
**Organization :** Mr. Brett Crocitto  
**Category :** Individual

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

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Thank you for your consideration.

**Submitter :** Ms. Tanya Rodriguez  
**Organization :** Ms. Tanya Rodriguez  
**Category :** Individual

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

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Thank you for your consideration.

**Submitter :** Mr. Richard Blumenthal  
**Organization :** Office of Attorney General, Connecticut  
**Category :** State Government

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-332-Attach-1.PDF

CMS-2257-IFC-332-Attach-2.PDF

# State of Connecticut

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



Hartford  
August 11, 2006

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

I am writing to urge the Centers for Medicare and Medicaid Services (CMS) to withdraw or substantially amend the interim final rule regarding the documentary evidence necessary to prove citizenship of an applicant for Medicaid assistance. I support the citizenship requirement but urge that documentation be made sufficiently flexible as well as accurate

The current interim rule is unnecessarily harsh and excessively restrictive and is certainly not required by the Deficit Reduction Act of 2005. In fact, the interim rule may actually thwart the CMS goal of providing Medicaid assistance programs to citizens of the United States, irreparably harming those citizens that are the most vulnerable

The Medicaid program has long required that beneficiaries attest to the fact that they are citizens of the United States to qualify for such assistance. This attestation does not require any independent documentary verification. Nonetheless, an HHS report found "no substantial evidence" of any problems with non-citizens obtaining Medicaid benefits by falsifying attestations. This finding was corroborated by a recent four year audit of Connecticut Medicaid cases by the Connecticut Department of Social Services, which did not find a single instance where an applicant falsely declared citizenship

With this factual background, the Centers for Medicare and Medicaid Services should ensure that any identification requirements be flexible and facilitate citizens' receipt of vital Medicaid program benefits instead of establishing rigid barriers that deny services to those entitled to them.

If the interim rule is not completely withdrawn as it should be, CMS should consider amending its regulations to:

- Allow applicants to receive Medicaid benefits while seeking additional documents, providing the applicants have attested under oath to their citizenship. The attestation should be presumptive evidence of citizenship. It has been demonstrated that the financial integrity of the Medicaid program is not threatened by reliance on attestation.

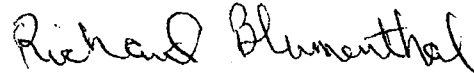
Department of Health and Human Services  
ATTN: CMS-2257-IFC  
August 11, 2006  
Page 2

Yet, an individual citizen may suffer greatly if denied vital Medicaid benefits if other documentation of citizenship is not readily available. This is particularly important for the elderly or infirm who may have difficulty obtaining additional documentation.

- Exempt children in foster care from the documentation requirements. Children whose foster care is covered under the Title IV-E program already meet citizenship requirements. Additional documentation is simply unnecessary.
- Exempt newborn children born in United States hospitals from the documentation requirements for Medicaid benefits. Children born in the United States are, by definition, citizens. There is no justification for requiring additional documentation when the state Medicaid agency pays for the hospital delivery costs of the child.

Thank you for your consideration of these comments

Very truly yours,



RICHARD BLUMENTHAL

RB/RFK/pas

**Submitter :** Ms. Cathleen Graham  
**Organization :** Indiana Assoc Residential Child Care Agencies  
**Category :** Other Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

IARCCA is an Association of 99 agencies which provide residential treatment, therapeutic foster care, home-based services to families, and independent living services to about 7,000 of Indiana's children in out-of-home care on an annual basis. IARCCA member agencies are greatly concerned about any new barriers that this rule will generate; our member agencies already have great difficulty in securing Medicaid for children in care as they first come into placement. We believe that these rules will do a dis-service to these vulnerable children. Please consider exempting foster children from these new requirements.

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

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

Citizenship documentation for foster children and children in the emergency shelter care situations who have been removed from their parents due to abuse or neglect - These children should be exempted from the provisions stated in the interim final rule due to the nature of their entry into foster care.

**Regulatory Impact Statement**

**Regulatory Impact Statement**

Children coming into foster care and children currently in the foster care system are victims of abuse or neglect. It is difficult to find documentation on a timely basis for these children; they have none of the primary documentation of a passport or driver's license. There may be a birth certificate, but often their records have been lost. There will be hours of case manager time required to find documentation that will enable these children to get the medical care and coverage that they so desperately need. These hours of time will translate into higher administrative costs in the Title IV-E program.

The burden for the cost of medical care for these children might be shifted then to the states or local jurisdictions, if foster children are not able to be qualified for Medicaid on a timely basis.

In Indiana, over 20,000 children are abused or neglected each year. As they come into the foster care system, their documents are often lost, or there is controversy with their parents about the need for the child(ren) to have been removed in the first place, leading to difficulty in obtaining documents which may exist. To have these additional burdens placed on a child welfare system that is already performing poorly in most states will not lead to improved outcomes for children, as required in the federal Adoption and Safe Families Act of 1997.

Children who come to emergency shelters and emergency foster homes often have complex medical needs due to exposure to drugs or alcohol; physical manifestations of the abuse or neglect, including sexually transmitted diseases due to sexual abuse; and other mental and physical problems as a result of the acts or omissions of their parents. To place these additional burdens on the states which become their caretakers will result in fewer children receiving the timely and quality medical care that they need.

Submitter : Ms. Jasmin Ramos

Date: 08/11/2006

Organization : Ms. Jasmin Ramos

Category : Individual

Issue Areas/Comments

**GENERAL**

GENERAL

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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.

Jasmin Ramos



**Submitter :** Mrs. Karie Brown  
**Organization :** Mrs. Karie Brown  
**Category :** Individual

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

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Thank you for your consideration.

Karie Brown

Submitter : Alexis Momeyer

Date: 08/11/2006

Organization : Alexis Momeyer

Category : Individual

Issue Areas/Comments

**GENERAL**

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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. Grace Adams

**Date:** 08/11/2006

**Organization :** Ms. Grace Adams

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

Sorry I was confused first time. I still think it is better to treat sick aliens than to take a chance either on an American catching whatever they have or on them winding up in an Emergency Room and being a bunch of bad debt for the hospital that operates the Emergency Room. However, the point on documentation is that the Medicaid people out in the field handling the day to day managing of the paperwork on eligibility didn't feel that they were running into any problems on fraud due to merely asking applicants whether or not they are citizens of the United States of America. So why make a problem and make a bunch of clerks on state government payrolls completely waste their time, even just five minutes per applicant, on checking documents. If you have the state government clerks call the Social Security Administration to give social security number, name, and date of birth, and get back a yes or no answer about U. S. citizenship, your Social Security Administration phone bank people are going to be overwhelmed.

**Submitter :** Dr. Thomas Dorsey

**Date:** 08/11/2006

**Organization :** Dr. Thomas Dorsey

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

All people ought to have access to good health care.

**Submitter :** Mrs. Carrie Magness

**Date:** 08/11/2006

**Organization :** Mrs. Carrie Magness

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

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Dear Dr. McClellan,

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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. Cecile Richards  
**Organization :** Planned Parenthood Federation of America  
**Category :** Health Care Provider/Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-340-Attach-1.PDF



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:

On behalf of Planned Parenthood Federation of America (PPFA), I am 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. As America's largest and most trusted provider of reproductive health care services, we are deeply concerned about the impact this provision will have on millions of Medicaid eligible citizens.

PPFA affiliates operate more than 860 health centers nationwide, providing medical services and sexuality education for millions of women, men, and teenagers each year. One out of four American women receives medical services from Planned Parenthood sometime in her life, and 74 percent of our clients have incomes at or below 150 percent of the federal poverty level. For many of our patients, we are the only medical provider they see.

As you know, Medicaid is a critical source of health care for approximately 50 million Americans. It is also a significant source of funding for family planning and other preventive health care services we provide our patients. In fact, Medicaid is the largest source of public funding for family planning services, accounting for more than 60% of all publicly-funded care. Medicaid provides health insurance coverage to one in ten women of reproductive age and pays for more than one-third of all births in the United States.

A significant portion of Planned Parenthood patients are covered by Medicaid. Each year, Planned Parenthood affiliates around the country provide contraceptive services, HIV and sexually transmitted infections screenings, mammograms and other preventive health care to our patients through Medicaid. We are acutely aware of how important this program is to ensuring our patients receive timely and quality health care services, and we are troubled by the likelihood that Medicaid eligible citizens will face significant and costly delays in care and outright denials of coverage as a result of the citizenship documentation requirements.

We are disappointed that the Centers for Medicare and Medicaid Services (CMS) did not capitalize on the opportunity to lessen the negative impact of section 6036. Actually, in several

instances, the interim final rule sets forth requirements that are more burdensome than what the statute calls for. Below, we highlight areas where CMS should modify the interim final rule to more effectively ensure that patients have timely access to the health care services they are eligible for and need.

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

Since 1993, twenty-four states have expanded access to family planning services through 1115 family planning demonstration programs. Under these programs, states have received CMS approval to extend Medicaid-covered family planning services to individuals who do not meet the requirements for standard Medicaid enrollment in order to prevent unintended pregnancies. Streamlining enrollment and extending coverage are fundamental to the success of these programs, which have assisted millions of low-income people who would otherwise have no source for family planning services. For many states, they are at the cornerstone of improvements in quality of health care in the state. 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 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), 436.406(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. Requiring these patients (who otherwise would not qualify for Medicaid coverage) to comply with a requirement for the broader Medicaid population completely undermines family planning demonstration programs by erecting unnecessary enrollment barriers.

In addition to expanding access to vital health care services, family planning demonstration programs save money. A 2003 study commissioned by CMS showed that in each of the states studied, the program actually saved money by averting unintended pregnancies. For instance, South Carolina realized a savings of \$56 million over a three-year period while Oregon’s program saved almost \$20 million in a single year. The citizenship documentation requirements will erode savings and ultimately create a larger financial burden for the federal and state governments.

We strongly urge CMS to amend 42 CFR 435.406 and 436.406 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 as stipulated by the interim final rule) 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 by the state. 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.

As a result, in this year alone, approximately 10 million U.S. citizens applying for Medicaid will face the possibility of a gap in coverage while they are in the process of producing the required documentation. It should not be lost that the majority of these citizens will be low-income pregnant women, children, and other vulnerable Americans. Undoubtedly, this will result in delays in care, worsening health care problems and eventually placing a heavier burden on the health care system. This will have an especially negative impact on individuals in need of family planning services, cervical and breast cancer screening, and STI testing services. Furthermore, 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. 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.

Delaying eligibility under the citizenship documentation provision does not clearly reflect 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.

Attempting to acquire the documents presents its own challenges. Costs for copies of birth certificates vary from \$10 to \$30, and the timeline for obtaining them can be prohibitive—at up to one month in some states. 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, there are the delays in care that will occur as individuals are in the process of acquiring the certified or original documentation—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 states have made to streamline the Medicaid enrollment process. Over the years, many states have adopted simpler enrollment processes in order to reduce costs and ensure that those who are Medicaid eligible are enrolled in the program. In many instances, this has included the adoption of enrollment processes (such as mail-in enrollment) that will be more difficult to implement if only original or certified documentation copies are accepted.

Not only is this 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. 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.**

States 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 9<sup>th</sup> 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)). That some states will be able to verify the citizenship and identity of Medicaid recipients and eligible applicants without passing the burden onto them is an important policy shift.

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

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

In the interim final rule, CMS solicits comments on whether individuals would have difficulty proving citizenship and identity if only primary or secondary level documents were permitted (see 71 Fed. Reg. 39220). Given that many beneficiaries and applicants will face significant hurdles in documenting citizenship as outlined by 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 Medicaid programs operate throughout the country. By all accounts, the statute placed a roadblock at the foot of a health care system already straining at the seams. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

While a commendable improvement over the guidance issued on June 9<sup>th</sup>, many of the provisions set forth by the interim final rule are intolerant to the advantageous notion of timely access to health care services. As stated above, states should be given more leeway to implement the provision, and all patients should be given adequate coverage while they are making a good faith effort to acquire citizenship documentation. Furthermore, Medicaid-eligible citizens should not

have to submit original or certified copies. For the millions who rely on services through family planning demonstration waivers, it is simply common sense that they should not be subject to the provision, as the impact would completely undermine the purpose of these vital programs.

Our concern lies with the millions of patients we serve each year—mostly low-income women who are in need of time-sensitive reproductive health care services. The delays and denials of coverage our patients will encounter will undoubtedly jeopardize their health. It is unconscionable that some Medicaid-eligible patients will have to forgo testing and treatment for STIs, that some clients will postpone screening for breast and cervical cancer, and that women will face unintended pregnancies as a result of these requirements. It is ironic that the federal and state governments will incur higher costs as a result.

Thank you for your attention to these comments.

Sincerely,

*Cecile Richards*

Cecile Richards  
President

**Submitter :** Mrs. Kathleen McGarvey  
**Organization :** Health Consumer Alliance  
**Category :** Consumer Group

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

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

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

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

**Submitter :** Mr. Ero Gray

**Date:** 08/11/2006

**Organization :** Mr. Ero Gray

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

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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 :** Miss. Bryce Covert

**Date:** 08/11/2006

**Organization :** Miss. Bryce Covert

**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 :** Mr. Robert Malson  
**Organization :** District of Columbia Hospital Association  
**Category :** Hospital

**Date:** 08/11/2006

**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-344-Attach-1.DOC



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Tel: (Office) 202/289-4926 • (Cell) 202/528-2721 • Fax: 202/289-1915 • E-mail: [rmalson@dcha.org](mailto:rmalson@dcha.org) • Web: [www.dcha.org](http://www.dcha.org)

**Robert A. Malson**  
President

August 11, 2006

Mark McClellan, M.D., Ph.D.  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
P.O. Box 8017  
Baltimore, Maryland 21244-8017

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

Dear Dr. McClellan:

On behalf of the District of Columbia Hospital Association (DCHA), I want to take this opportunity to express our concerns about the interim final rule implementing section 6036 of the Deficit Reduction Act (DRA) of 2005. DCHA represents 17 member hospitals providing health care to residents of the District of Columbia and surrounding jurisdictions. The proposed rule implementing the DRA citizenship documentation requirements will make it impossible for Medicaid-eligible citizens and naturals to qualify for Medicaid coverage. Our hospitals believe the proposed rule will increase the amount of uncompensated care that hospitals will have to provide and negatively impact our already overburdened administrative systems.

**Implementation Conditions**

DCHA members are pleased that individuals will continue to receive Medicaid during the "presumptive eligibility" period. Our hospitals also appreciate the changes that CMS made to the original proposed rule, following comments from hospitals, federal and local policymakers and community groups, which exempt certain individuals from the documentation requirements. The original proposal mandated documentation requirements that clearly went beyond congressional intent. DCHA found the original plan particularly onerous since the Health and Human Services (HHS) Inspector General found no substantial evidence that the illegal immigrants were falsely claiming to be citizens to gain entry into Medicaid.

Children's National Medical Center • George Washington University Hospital • Georgetown University Hospital • Hadley Memorial Hospital  
Howard University Hospital • Malcolm Grow Medical Center, Andrews AFB, MD • National Naval Medical Center, Bethesda, MD  
National Rehabilitation Hospital • Providence Hospital • Psychiatric Institute of Washington • Riverside Hospital  
Saint Elizabeths Hospital, D.C. Department of Mental Health • Sibley Memorial Hospital • The Specialty Hospital of Washington  
Veterans Affairs Medical Center • Walter Reed Army Medical Center • Washington Hospital Center

Mark McClellan, M.D., Ph.D.

August 11, 2006

Page 2

We offer the following recommendations for your consideration:

- Expand the exemptions to include the non-elderly disabled who have severe physical and mental disabilities, but do not receive supplemental security income.
- Exempt Title IV-E children who are eligible for federal foster care payments.
- For newborns whose mothers are categorically eligible for Medicaid, allow a state Medicaid agency's record of payment for these children's birth to serve as allowable proof of citizenship.
- Add children to the list of vulnerable groups that states must assist in accessing necessary documents.
- New applicants should be deemed eligible for Medicaid and given a reasonable grace period to produce necessary citizenship documentation.

#### **Federal Financial Participation for Administrative Expenditures**

CMS seems to be taking an overly aggressive enforcement approach regarding state implementation of the documentation requirements. The proposed rule indicates that CMS will increase auditing and agency monitoring of states and that non-compliance with citizenship verification requirements will result in withholding of the federal financial participation. DCHA urges CMS to acknowledge the work that states are doing to comply with these new documentation requirements. Instead of moving to immediately withdraw the federal payment, CMS should provide a grace period, including an opportunity for corrective action by states, through January 1, 2007.

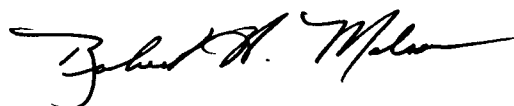
#### **Provisions of the Interim Final Rule with Comment Period**

DCHA continues to be concerned about the types of documentation that CMS is requiring individuals to provide to meet the requirements of the DRA. We request that CMS consider the following changes to the requirements in the proposed rule:

- Naturalized citizens should be allowed to provide the same forms of documentation as citizens born in the United States.
- Eliminate the requirement that states can only accept documents that were created at least five years before an individual applied for Medicaid.
- Allow states to use copies or notarized copies of documents to satisfy the requirement.

Thank you for allowing DCHA the opportunity to provide comments on the proposed rule. The Medicaid program is an important component of the health care safety net. Federal and state policymakers must work closely together to make sure eligible U.S. citizens are not denied access to this important program.

Sincerely,



Robert A. Malson  
President

Submitter : Ms. Devon Miller

Date: 08/11/2006

Organization : Ms. Devon Miller

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 :** Maggie Schlitter  
**Organization :** Maggie Schlitter  
**Category :** Individual

**Date:** 08/11/2006

**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.

Sincerely,  
Maggie Schlitter

**Submitter :** Ms. Kate Kayden  
**Organization :** Ms. Kate Kayden  
**Category :** Individual

**Date:** 08/11/2006

**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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- (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.

Kate Kayden

**Submitter :** Mr. Karl Beck  
**Organization :** Mr. Karl Beck  
**Category :** Individual

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

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**Submitter :** Ms. Joanna Arnow  
**Organization :** Ms. Joanna Arnow  
**Category :** Individual

**Date:** 08/11/2006

**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. Kathie Westpheling

**Date:** 08/11/2006

**Organization :** Association of Clinicians for the Underserved (ACU)

**Category :** Other Practitioner

**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-350-Attach-1.DOC



August 10, 2006

Comments submitted by:  
Association of Clinicians for the Underserved (ACU)  
1420 Spring Hill Road Suite 600, McLean VA 22102

RE: File code CMS-2257-IFC

Since 1986, Medicaid recipients and applicants have had to declare, under penalty of perjury, that the recipient of care is a citizen or aliens with satisfactory immigration status. The proposed regulation would require documentary proof of citizenship, and oral statements to that effect are no longer sufficient. Without such documentation, the state will not get Federal Financial Participation (FFP) with respect to care for that individual.<sup>1</sup>

The law has created a hierarchy of documentation. Primary evidence of citizenship includes a U.S. Passport, a Certificate of Naturalization or a Certificate of U.S. Citizenship. Secondary documentation has a lower assumption of proof, so states must first seek primary documents. Secondary documents include state birth certificates, a Report of Birth Abroad (for U.S. citizens), and American Indian Cards, adoption decree, U.S. ID card or official military record showing the U.S. as a place of birth. Third level evidence includes a life or health insurance record at least 5 years old, showing a place of birth in the U.S. or an extract of a U.S. hospital record of birth. Fourth level documentation includes official census records showing either U.S. citizenship or U.S. place of birth, institutional admission papers from a nursing home or other institution that are at least 5 years old, and indicate a U.S. place of birth, a medical

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<sup>1</sup> 71 Fed. Reg 1333, amending 42 CFR Parts 435, 436, 440, 441, 457 & 483. Jul 12, 2006.

record that is at least 5 years old that indicates a U.S. place of birth, other documents over 5 years old, and written affidavits.<sup>2</sup>

Children are also subject to the new regulation; they must have, in their files, documentary evidence of citizenship, or satisfactory immigration status. CMS believes that the new requirement will change little, as states were previously required to determine eligibility; this determination was often based on citizenship. CMS estimates it will take five to 10 minutes to complete this process for each applicant. However, the Center on Budget and Policy Priorities (CBPP) estimates that getting the documents could take weeks, and cost low-income patients money they do not have. CBPP cites fees for obtaining birth certificates ranging from \$5 to \$23, while passports cost upwards of \$85. Additionally, CBPP states that it can take up to 12 weeks to get a birth certificate in the state of California.

CMS has exempted those with Medicare or Supplemental Security Income, as those programs already require documentation. CMS estimates that about 35,000 people will lose their benefits, although advocacy groups place the number in the millions. CBPP estimates that coverage may be jeopardized for 3 to 5 million citizens, and that 49 million Americans will be required to give some sort of documentation.<sup>3</sup>

The scope of effect of this law on care is not certain. While there will be a burden placed on the healthcare provider to verify citizenship, it is unlikely that people will be turned away from clinics or emergency rooms. Instead, the cost will shift to the state and local governments, as Medicaid will no longer reimburse the facility or provider. This, in turn, will decrease the

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<sup>2</sup> U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, *HHS Issues Citizenship Guidelines for Medicaid Eligibility*, Jun. 9, 2006, available at <http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=1878>.

<sup>3</sup> Center on Budget and Policy Priorities, *The New Medicaid Citizenship Documentation Requirement: A Brief Overview*, Apr. 20, 2006.

ability to treat other non-citizens. It appears that the Emergency Medical Treatment and Active Labor Act (EMTALA) is still in force, which requires that Emergency Rooms stabilize any person presenting at the facility.<sup>4</sup> Undocumented citizens and non-citizens will still have access to basic ER treatment, but will not have access to preventative or maintenance treatment.

Another concern is that the elderly, homeless, and mentally ill will not be able to comply with the documentation requirements. Many in these groups do not have the required documentation – it may have been lost or forgotten. For example, victims of Hurricane Katrina may not have access to birth certificates, now lost due to flooding. Those with severe mental illnesses or who have been adopted may not know who they are, or were, on their birth certificate, and may not be able to produce the required identification.<sup>5</sup> There are reports of elderly Medicaid patients who were born before their counties started keeping official birth records.<sup>6</sup>

The African-American population may be strongly impacted. Due to the history of segregation in the United States, many African American women were not able to give birth in

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<sup>4</sup> U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, *CMS Implements \$1 Billion Program to Help Hospitals, Others, Recoup Unpaid Emergency Room Costs*, Jul. 22, 2004, available at <http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=1123>. (“The Centers for Medicare & Medicaid Services (CMS) today announced a new program to provide \$1 billion over four years to help hospitals and other providers recoup the costs of providing needed medical care to uninsured patients who cannot pay their hospital bills regardless of their citizenship status.”)

<sup>5</sup> Annette Wells and Lynnette Curtis, *Proof of Citizenship: Medicaid changes worry caregivers*, Las Vegas Review-Journal, Jun. 14, 2006.

<sup>6</sup> One Arkansas citizen has filed suit against the rules. Ruby Bell, who is 95, was born three years before Arkansas began issuing birth certificates. See: Susan Levine and Mary Otto, *Medicaid Rule Called a threat to Millions: Proof of Citizenship Needed for Benefits*, Washington Post, Jun. 30, 2006 at A01.

hospitals, and their children, therefore, lack birth certificates. One in five African Americans born between 1939 and 1940 do not have birth certificates.<sup>7</sup> Further, a full “nine percent of African American adults reported they did not have the needed documents” to comply with the new regulations.<sup>8</sup>

The proposed CMS regulations will be unduly burdensome to the specific population relying on Medicaid for health care. The hardest hit will be the transient, minorities, and those with mental illnesses. These are the very people Medicaid is designed to serve, and part of President’s Johnson’s vision when he declared a War on Poverty. Such a war cannot leave behind the very people who bear the brunt of poverty. At best, the proposed legislation will halt the few cases of fraud that have not been proven to exist. At worst, CMS will be harming the very people it is charged with aiding.

About The Association of Clinicians for the Underserved:

Since, 1996, when participants and alumni of the National Health Service Corps established ACU, its mission has been to improve the health of America’s underserved populations and to enhance the development and support of the health care clinicians serving these populations. A 12 member Board of Directors, representing various health disciplines, health care models, academic programs and a community member, governs ACU. ACU’s membership includes more than 600 professionals and students, as well as over 75 community-based health care organizations, and national, state, or regional organizations and professional societies. To learn more about the ACU, please refer to our website at [www.clinicians.org](http://www.clinicians.org)

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<sup>7</sup> Statement by U.S. Senator Daniel K. Akaka, *Medicaid Documentation Repeal*, Feb. 16, 2006.

<sup>8</sup> Statement by U.S. Senators Daniel K. Akaka and Mark Udall, *Medicaid Documentation Repeal*, Feb. 16, 2006.

**Submitter :** Mr. Nathan Lewis  
**Organization :** Florida Department of Children & Families  
**Category :** State Government

**Date:** 08/11/2006

**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-351-Attach-1.DOC

## **Florida's Comments to CMS on the Medicaid Citizenship Documentation Requirements-Interim Final Rule CMS-2257-IFC**

The Florida Department of Children & Families (DCF) determines Medicaid eligibility. The following comments have been developed from issues both prior and subsequent to, implementation of the new verification requirement policy for U.S. citizens to receive Medicaid.

### ***Implementation Conditions/Considerations:***

#### **Presumptively Eligible Newborns:**

Section 1902(e)(4) of the Social Security Act discusses the eligibility of newborns for presumptive (or deemed) eligibility for one year, so long as the mother remains eligible, or would have, if pregnant. In the Interim rule, the phrase "or would remain if pregnant" was omitted.

According to clarification received from CMS (formerly HCFA), U.S. citizen babies born to illegal alien mothers (or women in the five year ban), who become eligible for Medicaid for labor and delivery charges through the Emergency Medicaid for Aliens (EMA) Program, are currently deemed eligible for the first year. According to the Interim rule, they are not.

Therefore, an application and documentation would be required prior to approval of Medicaid for these newborns. There are a significant number of newborns born to EMA moms in Florida. We ask this paragraph be removed from, or corrected in the Interim rule language.

### ***Provisions of the Interim Final Rule with comment period:***

#### **Citizenship Documentation:**

We request that proof of **any** Social Security benefit (including SSDI, retirement prior to age 65, and survivor's benefits) be sufficient for U.S. citizenship verification. SSA verifies the individual's citizenship or qualified noncitizen status prior to issuance of benefits.

Because the Naturalization certificates say it is illegal to copy them, we request clarification on how a copy can be required for the case record.

We request states be given some latitude to exercise prudent judgment, on a case by case basis, when deciding which documents are acceptable. Justification would be recorded in the case notes.

### **Secondary citizenship verification documentation:**

Many individuals born to U.S. military families do not have the Department of State forms that are listed in the secondary verification section (FS-240, FS 545, or DS 1350). They have an official birth certificate issued by the other country with a stamp "U.S. citizen". We request this item be added to the list of secondary verifications.

### **Identification Documentation:**

It is difficult to verify identity on a preschool child. There are several possible sources of identity for both children and adults that are not in the interim rule.

We suggest that the following be added as acceptable documentation of ID:

- Numident validation,
- Fingerprint cards (with or without a photo) for children done by agencies other than police departments,
- Any court order with identifying information (ex. child support, custody, or dependency),
- State Online Query (SOLQ) –Data match from SSA,
- Data match from Unemployment and/or Worker's Compensation, and
- Screen print from Department of Corrections or Florida Department of Law Enforcement (FDLE) website, which has a photo and other identifying information, and
- Immunization records.

### **Affidavits for Citizenship or Identity:**

Florida Statutes mandate that if the word "affidavit" is used, the document must be notarized. CMS has stated that for this policy, notarization is not needed. We ask the term be changed to attestation.

All of our applications have the "signed under penalty of perjury language". Is it permissible to use this in lieu of a separate attestation for children under 16?

### **Time Frames:**

The ten minute estimate for the applicant/recipient to obtain citizenship and identity documents is very understated, in our opinion.

The five minute estimate to process the documents, assist when asked, and answer questions related to this new requirement is also understated.



**Written Clarification on Children in Care policy:**

CMS has verbally stated that foster care children may be treated as recipients, rather than applicants for this policy. Please add something to this effect to the interim rule.

Thank you for the opportunity to comment. If you have any questions, please contact Nathan Lewis at (850) 414-5927.

**Submitter :** Ms. Diane Korach

**Date:** 08/11/2006

**Organization :** Inwood House

**Category :** Social Worker

**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;
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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. Cassandra Jenkins  
**Organization :** Children's Campaign, Inc.  
**Category :** Consumer Group

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

Children's Campaign, Inc. is a cutting-edge advocacy organization devoted to making children's issues the focus of public attention and action while staying within the well-documented boundaries of permissible activities for a 501(c)(3) organization. Our overall mission is to improve public policy for children. We appreciate the opportunity to comment on the interim final rule for the Medicaid citizenship documentation requirements outlined in the Federal Register (Vol. 71, No. 133, July 12, 2006, pages 39214-39215).

Children's Campaign, Inc. greatly appreciates the opportunity to share our comments on the interim final rule of the Medicaid citizenship documentation requirements. If you have any questions, please contact me at [cjenkins@iamforkids.org](mailto:cjenkins@iamforkids.org) or (850) 425-2600.

PLEASE SEE ATTACHMENT

CMS-2257-IFC-353-Attach-1.DOC

August 11, 2006

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

Dear Mr. McClellan,

Children's Campaign, Inc. is a cutting-edge advocacy organization devoted to making children's issues the focus of public attention and action while staying within the well-documented boundaries of permissible activities for a 501(c)(3) organization. Our overall mission is to improve public policy for children. We appreciate the opportunity to comment on the interim final rule for the Medicaid citizenship documentation requirements outlined in the *Federal Register* (Vol. 71, No. 133, July 12, 2006, pages 39214-39215).

Earlier this year, Congress passed the Deficit Reduction Act of 2005 (DRA) [P.L. 109-362], which includes a provision in section 6036 requiring that all U.S. citizens applying for or receiving Medicaid document their citizenship and identity. The Children's Campaign acknowledges that the Centers for Medicare and Medicaid Services (CMS) have authority to interpret the statute and implement rules that protect Medicaid access for beneficiaries and new applicants.

The Children's Campaign applauds CMS for revising earlier regulations released on June 9 to exempt individuals receiving Supplementary Security Income (SSI) or Medicare benefits from the Medicaid citizenship documentation requirements. This exemption is critical to maintaining insurance coverage for many children with complex health care needs, such as human immunodeficiency virus (HIV), cerebral palsy, muscular dystrophy, severe mental retardation, and other disabling physical and mental conditions. The continuation of benefits for individuals with presumptive eligibility status is also vital for maintaining coverage for vulnerable and at-risk populations. The Children's Campaign also commends CMS for permitting states to use data matches with vital records in order to verify the citizenship and identity of Medicaid beneficiaries and new applicants. This provision will prevent many of the 1,236,913 children receiving Medicaid services in Florida from losing their access to health care due to an inability to secure paper copies of their citizenship documentation.

### ***Children's Campaign, Inc. Concerns Regarding the Interim Final Rule***

Although the interim final rule protects Medicaid coverage for a large number of low-income children, the Children's Campaign has concerns about how the citizenship documentation requirements will impact certain children applying for or renewing Medicaid coverage. These concerns and recommendations are outlined below:

#### **435.407 (j) New applicants should have a reasonable opportunity to obtain citizenship documentation**

The Children's Campaign has concerns about the lack of benefits available for children who are new Medicaid applicants and do not have citizenship documentation available at the time of their application. The interim final rule provides current beneficiaries renewing their Medicaid coverage a reasonable opportunity to obtain citizenship documentation while still receiving benefits. New applicants with the same income and categorical eligibility status as current beneficiaries do not receive the same opportunity to gather the required documentation while still receiving Medicaid services. Without a reasonable opportunity to obtain their documents, many low-income children will not be able to access Medicaid services while they wait to receive documentation from government agencies. The Children's Campaign urges CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation.

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

The interim final rule mandates that children in foster care comply with the Medicaid citizenship documentation requirements. The 39,534 children who receive federal foster care and adoption assistance (Title IV-E) in Florida automatically qualify for Medicaid, and their citizenship is already verified as part of their eligibility review for Title IV-E. Therefore, verifying their citizenship in order to confirm their Medicaid eligibility is a duplicative effort.

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

By law, states must provide medical care for children in foster care. Therefore, if states are unable to access Medicaid funding for children in foster care, they must finance the necessary health care services with state funds. When state resources are scarce, such an arrangement will likely delay preventive health care for

children in foster care and make early intervention for their health and mental health needs impossible. Prolonging access to necessary services for children in foster care will ultimately result in the need for complex and expensive emergency care. The Children's Campaign strongly urges CMS to exempt all children in foster care from Medicaid citizenship documentation requirements in order to appropriately meet their health and mental health needs.

**435.407 (h)(1) Qualifying documents should not be limited to original or certified copies**

The provision requiring that citizenship documents be original or certified copies exceeds the requirements of the DRA, placing an additional burden on applicants and beneficiaries. This requirement leaves children who would normally receive Medicaid services without any form of health insurance while they wait to obtain these specific documents.

The mandate will have an especially detrimental effect on children and families faced with homelessness. Nearly one year ago, Hurricane Katrina gave witness to how quickly lives can turn into chaos. As a result of the disaster, many families lost all of their existing records. In addition to Florida's Gulf-coast and Panhandle regions being impacted by Hurricane Katrina, we experienced three other hurricanes (Wilma, Rita and Dennis) and several storms and fires during 2005 which impacted the ability of families in Florida to locate their documents. Requiring these families to provide original or certified documents before they can receive Medicaid services greatly threatens the ability of affected children to access necessary health and mental health services. Obtaining a birth certificate will also be extremely difficult for populations with disparate access to hospitals such as those living in very rural areas, African Americans and Native Americans, who are more likely than others to be born at home and therefore never receive a birth certificate. Due to federal immigration policies, Florida is home to one of the largest immigrant populations in the country. Florida is an ethnically diverse state with large numbers of legal immigrants from virtually every continent in the world. In addition, the cost of obtaining a birth certificate will contribute to the difficulty individuals receiving or applying for Medicaid coverage will experience when attempting to prove their citizenship.

Requiring that all citizenship documentation be original or certified copies will likely hinder the expansion of Medicaid coverage to the millions of children who are eligible but not enrolled in the program. According to preliminary estimates for the 2004 Florida Health Insurance Study, approximately 502,000 Florida children are uninsured. Of these, 374,000 live in families with incomes at or below 200% of the federal poverty level. According to the Florida KidCare Coordinating Council, this estimate may understate current levels of children who are uninsured. Therefore, simple enrollment procedures are vital for expanding Medicaid coverage to eligible children in order to decrease the number of children who are uninsured. Many states have developed simplified and streamlined application processes that ease the enrollment procedure for children. These

processes eliminate the need to apply for Medicaid in-person, and some even allow for electronic applications. Providing original or certified documents will require applicants to apply for Medicaid in-person, or to send the only copies of their most important personal documents through the mail. This requirement reverses the progress states have made in adopting more efficient enrollment procedures that have the potential to decrease the number of eligible children who do not receive Medicaid coverage. The Children's Campaign urges CMS to eliminate the requirement that Medicaid beneficiaries and applicants provide original or certified documents so that states can continue to more effectively enroll eligible children.

**435.407 (a) *Medicaid payment records for birth should qualify as proof of infant citizenship***

The Children's Campaign also has concerns about requiring citizenship documentation for infants whose mothers are Medicaid beneficiaries at the time of their births. Such application of the new requirements unnecessarily endangers newborns who require immediate well-baby or critical care. Medicaid pays for the births of approximately 112,000 infants born in Florida hospitals each year. These newborns are automatically United States citizens by law. However, the interim final rule does not permit the use of Medicaid records indicating payment for childbirth as proof of a newborn's citizenship status. Failure to accept these records results in a duplication of efforts that seriously threatens the ability of low-income newborns to receive necessary health care services. The Children's Campaign urges CMS to exempt infants born to mothers with Medicaid coverage from the requirements to provide proof of citizenship as directed in the interim final rule. The Children's Campaign asks that evidence of Medicaid payment for birth serve as proof of citizenship for newborns.

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

The interim final rule does not allow states to accept Native American tribal enrollment cards as proof of citizenship. Such cards are the only proof of citizenship that many Native Americans have in their possession. Native Americans are disproportionately more likely to be born at home, and therefore less likely than other populations to have official birth certificates. Failure to accept tribal enrollment cards will greatly impede the ability of many Native American children to access the health care services they need. The Children's Campaign urges CMS to accept Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants.

Children's Campaign, Inc. greatly appreciates the opportunity to share our comments on the interim final rule of the Medicaid citizenship documentation requirements. If you have any questions, please contact me at [cjenkins@iamforkids.org](mailto:cjenkins@iamforkids.org) or (850) 425-2600.

Sincerely,

*Cassandra D. Jenkins*

Cassandra D. Jenkins  
Children's Campaign, Inc.

cc: Roy Miller, President



**Submitter :**

**Date: 08/11/2006**

**Organization :** Health Coalition for Children and Youth

**Category :** Consumer Group

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-354-Attach-1.DOC

August 9, 2006

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

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

The **Health Coalition for Children and Youth** (HCCY) is a group of health care providers, advocates and stakeholders representing the health care needs of Washington's children and youth. We are convened by the Children's Alliance and have been working on children's health issues for the last decade. We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

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

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

Under the DRA, the new citizenship documentation requirement applies to all individuals (other than Medicare beneficiaries and, in most states, SSI beneficiaries) who apply for Medicaid. The preamble to the law states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. However, 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).

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

Every month 55,000 Washingtonians apply for Medicaid and will be subject to this requirement. Most of these applicants are children, pregnant women and parents and are most likely eligible, yet they will be subject to proving it via the required paperwork before they are allowed to enroll. The effect of this is will be an unnecessary delay in coverage while paperwork is gathered, sometimes at significant costs and distances to enrollees and applicants. As organizations with an interest in promoting the health of Washington's children, we are gravely concerned about what such delays will mean for early and timely access to the preventive health care services that children need. It has been shown repeatedly that denying access to early care leads to more children receiving care in emergency

rooms and being hospitalized for conditions that often could have been treated earlier in a doctor's office.

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

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

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

When Medicaid eligibility for children in foster care is delayed, foster parents may end up using emergency care as they will not have a Medicaid card. The child may not be able to receive essential non-emergency care — such as prescription drugs, psychological care, dental care or the purchase of medical supplies for conditions such as asthma — until the child's condition deteriorates to the point that it requires emergency care. Research has repeatedly shown that children in foster care experience greater physical and mental health needs than all other children. 80% of children in foster care have mental health needs. Exposure to extreme poverty, family violence, homelessness, and parental mental illness and substance abuse often create complex health needs among children in foster care, exacerbating their need for comprehensive health insurance. Children in foster care are the most vulnerable children in our country and face significant obstacles in finding a secure home for a myriad of reasons. Making the process to obtain medical care for foster only adds another threat to their security.

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

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

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

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

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

This is a serious threat to newborns born with health problems because there is the possibility that until documentation is obtained for that newborn, hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement. This is also a threat to healthy newborns receiving access to routine and regular well-baby care that prevent health problems later.

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

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

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

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

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

Applicants and beneficiaries will have to make unnecessary visits to state offices with original and certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards.

Years ago, in efforts to streamline the Medicaid application and re-determination process, Washington State eliminated the face-to-face requirement for Medicaid eligibility determination. This change has resulted in a more simplified and cost-effective process for families applying for Medicaid. Limiting the documents required to prove citizenship and identity to originals and certified copies will place a major barrier to applying and renewing Medicaid because it is highly unlikely that people will send originals in the mail and they will be forced to come into the office with the documents. In addition, obtaining originals and certified copies can cost significant amounts of time and money, both scarce resources for working families. Finally, many of copies of these documents are available in other state agency files. This should be the first avenue that the states be directed to do in pursuit of the necessary documentation.

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

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

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

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

Washington has the fifth largest population of American Indian/Alaska Native (AI/AN) and serves many individuals from the state with the sixth largest population, Alaska. If tribal enrollment cards are not recognized as proof of citizenship and identity, significant numbers of Medicaid beneficiaries seeking health care services in our state will not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many Traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as proof of citizenship and identity, CMS is creating a barrier to AI/AN's participation in the Medicaid program. Therefore, the federal regulation should be revised to specify that tribal enrollment cards issued by a federally-recognized tribe should be acceptable primary

evidence of citizenship and identity. County, public and private providers serving these patients may be at risk for losing Medicaid reimbursements.

### **Conclusion**

We urge you to consider the comments that we have submitted. We fear that the new citizenship documentation requirement of the DRA will inevitably result in more than a million eligible citizens losing Medicaid coverage simply because it is a new administrative hurdle. Yet it is our perspective that the manner in which the new rule is implemented will determine exactly how many residents actually do. Under the current guidance, the implementation and documentation requirements go far beyond the intent of the DRA itself and place the burden of proof on the process of obtaining the documents, rather than on the question of an enrollee's or applicant's citizenship status. If the DRA is implemented as outlined in the current guidance, it is unquestionable that the number of eligible citizens who will lose coverage will be far more than anyone could have predicted- devastating not only those individuals, but also the financial stability of the health care system in Washington State and across the nation.

Sincerely,

The Health Coalition for Children and Youth

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Children's Alliance ~ Children's Home Society of Washington ~ Children's Hospital and Regional Medical Center ~ Community Health Network of Washington ~ Community Health Plan ~ Community-Minded Enterprises ~ Fremont Public Association ~ Group Health Cooperative ~ Inland Northwest Health Services King County Project Access ~ Lutheran Public Policy Office of Washington State ~ March of Dimes, Washington State Chapter ~ Northwest Health Law Advocates ~ Northwest International Health Action Coalition ~ Public Health-Seattle King County ~ Swedish Medical Center ~ School Nurse Organization of Washington ~ SEIU 1199NW ~ Statewide Poverty Action Network ~ Washington Association of Churches ~ Washington Association of Community and Migrant Health Centers ~ Washington Chapter American Academy of Pediatrics ~ Washington Citizen Action ~ Washington Dental Service Foundation ~ Washington Health Foundation ~ Washington State Nurses Association ~ Washington State Hospital Association ~ Washington State Oral Health Coalition ~ WithinReach (formerly Healthy Mothers Healthy Babies) ~ Yakima County Health Care Coalition

**Submitter :** Mr. Scott DeuPree  
**Organization :** Santa Barbara County Probation Department  
**Category :** Local Government

**Date:** 08/11/2006

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

1. We urge CMS to revise 42CFR 435.407(j) to state that applicants who declare they are US 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.

3. We urge the CMS to revise 42 CFR 435.407(h)(1) to allow the state to accept copies or notarized copies of documents in lieu of original documents or documents certified by the issuing state agency.

2. 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.

**Regulatory Impact Statement**

**Regulatory Impact Statement**

1. The DRA requires citizenship documentation. There is nothing in the DRA that requires a delay in providing coverage. Yet the CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. The effect of this requirement is to either delay treatment or shift its costs to local government and local private providers. Santa Barbara County Probation refers both juvenile and adult offenders in need of Medicaid eligible services to Medicaid. The delays anticipated by this regulation will slow the implementation of necessary treatment and reduce the effectiveness of our program which is research show to be strongly related to our ability to provide swift and certain outcomes.

2. 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 children receiving Title IV-E payments should be exempted. Minors entering the Title IV-E foster care program via Probation typically are in significant need of mental health services. Additionally placement in a foster home requires physical examinations and related immunizations and medical services. A delay in Medicaid eligibility will result in longer stays in Juvenile Halls, delayed treatment and a shift in costs to local government with no benefit and in some cases harm to U.S citizen minor.

3. The DRA does not require original or certified copies. This additional burden added by the CMS will significantly increase the amount of time and cost required of local agencies in order to establish Medicaid eligibility.

**Submitter :** Ms. Joan Malin

**Date:** 08/11/2006

**Organization :** Planned Parenthood of New York City

**Category :** Health Care Provider/Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment.

CMS-2257-IFC-356-Attach-1.PDF





**Planned Parenthood**  
of New York City, Inc.

August 11, 2006

VIA WEB FORM & U.S. MAIL

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, implementing 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 New York City (PPNYC), a leader in reproductive health care for almost 90 years, is one of New York City's oldest community-based safety-net providers. PPNYC offers a full range of reproductive health services and is committed to ensuring access to care for those who are most in need: those for whom age or income are obstacles to high quality care. In 2005, our three health centers in the Bronx, Brooklyn and Manhattan, provided reproductive health care including family planning services to more than 46,000 individuals from all five boroughs of New York City. The majority of our clients are at or below the poverty level, many have public health insurance or are uninsured, and more than two-thirds are women of color.

We are specifically concerned about the impact of this provision on PPNYC clients: the nature of the services offered at our health centers—time-limited and sensitive family planning and sexual health care—makes our clients particularly vulnerable to any delays or cuts in access to care resulting from these regulations. If our clients cannot access these documents—whether because of concerns about confidentiality, financial hardship or other obstacles—they may delay or forgo essential reproductive health care, risking unintended pregnancy and delaying treatment for sexually transmitted infections and other health concerns that may have serious consequences for them and their partners.

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. In summary, we ask that: (1) Family planning waiver programs be exempted from the citizenship and identity documentation requirements; (2) States be directed to provide Medicaid benefits to applicants once they declare citizenship, during the “reasonable opportunity” period granted to applicants to produce the necessary documents; (3) Applicants and recipients be permitted to submit copies of documents rather than only originals and certified copies of documents; (4) CMS expand the category of populations entitled to special assistance securing necessary documents to be more inclusive; and (5) States be permitted to grant “good cause” exemptions from the documentation requirements.

**Family planning waiver programs should be exempted from the citizenship and identity documentation requirements.**

Section 1115 family planning waiver programs are unique programs that should be exempted from the documentation requirements. Under New York’s section 1115 waiver, New York extends Medicaid-covered family planning services to individuals who do not meet the requirements for standard Medicaid enrollment. Streamlining enrollment and extending coverage are fundamental to the success of New York’s family planning expansion program, which has assisted low-income people who otherwise have no source for family planning services.

Nearly 80% of visits to PPNYC are for family planning services, and approximately 40% of the family planning visits are for clients with Medicaid coverage. The document requirement may be devastating to these patients, possibly resulting in greater rates of unintended pregnancy and sexually transmitted infections. Without such exemption, the DRA will significantly undermine the primary purpose of these expansion programs: to reduce the number of unintended pregnancies, which in turn acts to reduce poverty and dependency on social services; improve health outcomes for both women and children; and reduce the public cost of unintended pregnancy. Family planning waiver programs are extremely cost-effective in that they reduce the need for costlier health care associated with unintended pregnancy. The cost of providing coverage for family planning services through Medicaid waiver programs is far lower than the cost of providing pregnancy-related services to beneficiaries who, if they became pregnant, would be eligible for far more costly Medicaid-covered prenatal, delivery and postpartum care. A 2003 study commissioned by CMS to assess the impact of family planning waiver demonstration programs showed that in each of the states studied, family planning waiver programs resulted in significant savings for both state and federal government and caused a reduction in unintended pregnancies.<sup>1</sup>

The interim final rule—which in the preamble states: “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))--completely threatens the viability and impact of these programs by requiring individuals who receive these services to produce citizenship and identity documentation.

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<sup>1</sup> Edwards J, Bronstein J and Adams K, “Evaluation of Medicaid Family Planning Demonstrations,” The CNA Corporation, CMS Contract No. 752-2-415921, Nov. 2003. *See also*, Alan Guttmacher Institute, “Medicaid: A Critical Source of Support for Family Planning in the United States,” April 2005.

Enrollers implementing the interim rules are already reporting that otherwise eligible citizens are unable to enroll in New York's family planning expansion program because they either cannot obtain the necessary documentation or cannot afford to obtain their documentation. Requiring family planning demonstration program patients to comply with a requirement for the broader Medicaid population completely undermines these successful and highly cost-effective programs by erecting unnecessary barriers to enrollment. We urge CMS to exempt family planning waiver programs from the documentation requirements. Doing so will ensure that New York's family planning waiver demonstration program will continue to make important strides in enhancing access to time-sensitive services and reducing the rate of unintended pregnancies.

**Applicants who declare citizenship should not be denied benefits while making a good faith effort to obtain documents.**

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.

While the statutory logic of this policy is unclear, the real-world consequences are severe: 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 may 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, indeed, may never get coverage at all. Undoubtedly, this will result in delays in care, worsening health care problems and, ultimately, a heavier burden on our 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.

This requirement was not mandated by the DRA statute—and indeed is inconsistent with the statute's intent. There is nothing in the DRA that requires any delay in providing coverage for health care services. 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 urge CMS to revise 42 CFR 435.407(j) to require states to provide Medicaid coverage during the "reasonable opportunity period" to applicants who declare they are U.S. citizens

or nationals and who meet the state's Medicaid eligibility criteria. This will enable applicants to access needed health services while obtaining the necessary documentation.

**Documentation requirements should be changed to allow citizens to submit copies of documents.**

As recognized in the June 9 CMS guidance, New York State has successfully required documentation of citizenship and identity for years. However, the success of New York's system is based on its realistic requirements which include allowing applicants to submit copies of documents. New York State also allows for a wider range of documents to prove citizenship and identity.<sup>2</sup> CMS should expand the types of documents that can be provided and should allow copies in order to be more reflective of New York's successful system. If not changed, these new requirements will seriously undermine New York's long-standing system and threaten the wellbeing of otherwise eligible citizens who will be unable to produce required documents.

Allowing copies of documents will also aid in ensuring eligible citizens are not denied needed health care. It has been shown that easing application and recertification procedures aids in the enrollment and retention of persons in health programs. The interim rules place a critically important aspect of New York's recertification process at risk. New York allows for mail-in recertification, which eliminates the need for enrollees to appear at their local department of social services office. Prior to the mail-in recertification system, more than half of New York City Medicaid beneficiaries lost their coverage through involuntary disenrollment because of barriers in the recertification process.<sup>3</sup> The original documentation requirement will undermine the mail-in recertification system, as it is very unlikely people will be willing to send original copies of these documents in the mail. Moreover, it would be completely impractical to mail in proof of identity, such as a driver's license or school identification card. Requiring submission of original and certified copies will likely roll back any advances in retention that New York City enjoyed following launch of the mail-in recertification process.

Obtaining the required documents presents its own challenges and burdens. It costs thirty dollars to obtain a birth certificate from New York's Vital Records Registry, and \$45.00 if sought on an expedited basis. Many people—perhaps due to natural disasters, fire, flood or theft—do not have the required documents. This is a financial barrier that many citizens will find difficult, if not impossible, to meet. Furthermore, the time that it may take applicants to obtain original or certified copies of the required documents may unreasonably delay critical care, increasing their risk of unintended pregnancy and delaying treatment of sexually transmitted infections.

Because of the sensitive nature of the services that PPNYC provides, many of our clients have serious concerns about maintaining confidentiality and, for whatever reason, cannot

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<sup>2</sup> For an in-depth examination of New York's system, see Boozang P., Dutton M., Hudman J., "Citizenship Documentation Requirements in the Deficit Reduction Act of 2005: Lessons From New York," Kaiser Commission on Medicaid and the Uninsured of the Henry J. Kaiser Foundation, June 2006. The publication can be downloaded from: <http://www.kff.org/medicaid/7534.cfm>.

<sup>3</sup> Bachrach D., Tassi A., "Coverage Gaps: The Problem of Enrollee Churning in Medicaid and Managed Care and Child Health Plus Plans," NYS Coalition of Pre-Paid Health Services Plans, December 2000.

share details about their health care with their spouse or other family members. They may, however, be dependent upon such person in order to locate or obtain original copies of documents proving their citizenship. As a result, some of our patients may delay or forgo care altogether.

Not only is the requirement to provide originals or certified copies onerous, it is unnecessary and not mandated by the DRA. Section 6036 of the DRA does not require applicants and beneficiaries to submit original or certified copies to satisfy the new citizenship documentation requirement. We strongly urge CMS to eliminate the requirement at 42 CFR 435.407(h)(1) and permit states to accept copies of documentation instead.

### **Category of populations needing special assistance should be expanded.**

CMS should clarify that states must offer assistance to those citizens who are unable to obtain documents on their own behalf due to mental, physical or legal infirmity. 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, certain homeless individuals, and Medicaid applicants and recipients under the age of 18, who are barred by New York law from obtaining a certified copy of their own birth certificate. CMS should erect a clear safety net for these vulnerable populations as well. Furthermore, CMS should ensure that, for these populations, eligibility for services are not denied as a result of a state’s incapacity to locate the documentation.

### **CMS should allow states to grant good cause exemptions from documentation requirements.**

There are U.S. citizens who will not be able to produce the required documentation. States should have the discretion to grant good cause exemptions from the documentation requirements when there is no reason to believe the person is not a citizen.

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 individuals who are otherwise unable to obtain these documents despite their or a representative’s best efforts. Under the rule, in these situations, individuals who apply for Medicaid may never qualify, and current beneficiaries will ultimately lose their coverage.

As a last resort, the interim final rule allows for 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 unreasonably 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 U.S. citizens who simply will be unable to produce the required documents.

CMS can look to the regulations for the SSI program as an example of reasonable flexibility that maintains program integrity while providing adequate protections for some of our most vulnerable citizens. These rules 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, such as the creation of a good cause exemption when 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 vulnerable people who are U.S. citizens can receive the health care services they need.

Thank you for your attention to these comments. We hope that you will find them helpful as you consider the best ways to improve the interim rule.

Sincerely,

Joan Malin  
President and CEO  
Planned Parenthood of New York City

**Submitter :** Felicity Erwin

**Date:** 08/11/2006

**Organization :** Felicity Erwin

**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.

**CMS-2257-IFC-358**

**Submitter :** Mr. Brendan Peter  
**Organization :** LexisNexis Special Services Inc.  
**Category :** Private Industry

**Date:** 08/11/2006

**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

Identity Authentication.

CMS-2257-IFC-358-Attach-1.DOC





**In Response to the**

**Centers for Medicare and Medicaid Services**

**Interim Final Rule on**

**Citizenship and Identity Authentication**  
**Requirements in the Medicaid Program**

**August 11, 2006**

Submitted by:

Brendan M. Peter  
Senior Director, Industry Affairs  
LexisNexis Special Services Inc.  
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August 11, 2006

Center for Medicare & Medicaid Services  
Department of Health and Human Services  
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Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Re: Medicaid Citizenship and Identity Authentication Requirements

Dear Sir or Madam:

Please consider the following comments from LexisNexis concerning the above:

**Introduction**

As one of the world's premier information solutions companies, providing identity authentication solutions to both governmental agencies and commercial entities, LexisNexis appreciates the opportunity to provide the Centers for Medicare & Medicaid Services' (CMS) with these comments on the interim final rule published by CMS to address citizenship and identity authentication requirements imposed on the Medicaid program under Sec. 6036 of the Deficit Reduction Act of 2005.

For 30 years, LexisNexis has provided various information-based solutions that have aided in authenticating identities, locating people and assets, protecting the critical infrastructure, conducting background screening and supporting a variety of other risk management initiatives. LexisNexis has worked closely with federal and state government agencies in promoting national security, counter terrorism and law enforcement activities and with major law firms, financial institutions, utilities, insurance companies and Fortune 500 companies in protecting against identity theft, responding to fraudulent transactions, evaluating financial risk and promoting responsible information sharing. In the area of identity management, issues of identity assurance, data modeling and privacy and security safeguards have become company hallmarks. LexisNexis welcomes the opportunity to work with CMS as these regulations and their implementation by the states is further refined. More information on LexisNexis and our approach to information-based identity authentication is included as Appendix A to this submission.

**Information-Based Identity Authentication and the CMS Interim Final Rule**

The interim final rules published by CMS present significant potential vulnerabilities by requiring state Medicaid officials to only check identity source

documents to provide the person is who they say they are. Each of the identity and citizenship documents presented by CMS is vulnerable to fraud at the enrollment, issuance, and usage phases. The current regulations rely solely on document authentication, and no attempt is made to verify the information provided by the applicant via the documents submitted. Given the inherent unreliability of the referenced documents (drivers license, etc), it is respectfully submitted that the standard fails to provide a meaningful process for identity authentication and, for that reason, LexisNexis recommends that information-based identity authentication be included as a requirement to bolster the identity authentication process.

In the final versions of the regulations, there undoubtedly must be a fine balance struck with the competing interests of effectiveness, time, cost and privacy impact with the overriding goal of providing critical medical assistance to low and moderate income families and individuals in nursing facilities . It is respectfully submitted that the automated process of information-based identity authentication will provide substantial assistance in properly striking that balance and for that reason it should be incorporated into the process envisioned by CMS.

#### **The LexisNexis InstantID Platform and its Application to Medicaid Citizenship and Identity Authentication Business Processes**

The InstantID® platform offered by LexisNexis would be the primary means by which we recommend incorporating information-based identity authentication into the state enrollment and re-certification processes required under the Deficit Reduction Act. This proven methodology was first deployed in 1997 and has been endorsed by the American Banker's Association (ABA) as meeting the necessary "know your customer" criteria to open bank accounts under the USA Patriot Act. The ABA vetted multiple vendors and found that the InstantID platform was the only commercial solution that could meet the challenges presented by the Act for members of the ABA.

The InstantID application verifies information across multiple databases using a powerful proprietary search and comparison process. InstantID then validates such information as name, address, and social security or Federal Identification number. It also identifies potentially high-risk data elements, such as prison addresses, campground addresses, disconnected phone numbers, Social Security numbers of deceased persons, etc.

InstantID is designed to work with a variety of processes and is available via online Web-based searches, batch processing, or through systems integration in existing processing platforms.

#### ***Features***

InstantID verifies information on both individuals and businesses. InstantID returns auditable results, including:

- Validation and verification of data provided by the applicant;
- Results from a check of Office Of Foreign Assets Control (OFAC) terrorists lists;
- Results from a Social Security number deceased file search;
- Federal ID number found via business name-address search;
- Validation and verification of a business' authorized agent; and
- Fraud red flag indicators with explanations of the discrepancies found

A detailed product sheet on the InstantID platform is attached to this submission for review and consideration.

### **Applicability of USA Patriot Act Requirements to CMS**

As we note above, the InstantID platform was developed with the ABA in response to Sec. 326 of the USA Patriot Act. Section 326 requires the Secretary of Treasury to prescribe regulations setting forth minimum standards for financial institutions and their customers regarding the identity of a customer in connection with the opening of an account at a financial institution. The minimum requirements mandate that financial institutions create reasonable procedures for: 1) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; 2) maintaining records of information used to verify a person's identity; and 3) checking terrorist watchlists provided by any government agency to determine whether a person seeking to open an account is on a list.

The Department of Treasury, along with other financial regulatory bodies, promulgated regulations implementing Section 326 of the USA PATRIOT Act on May 9, 2003. When promulgated, The Department of Treasury proclaimed the purpose of the regulation as to "[p]revent money laundering, terrorist financing, identity theft and other forms of fraud."<sup>1</sup> The identity theft and fraud purpose is strikingly similar in importance to intend Congress had in imposing the requirements of Sec. 6036 of the Deficit Reduction Act.

The Patriot Act Section 326 regulations require each financial institution to implement a written Customer Identification Program that includes risk-based procedures to verify the identity of each customer to the extent reasonable and practicable to help the institution form a reasonable belief that it knows the true identity of each customer.<sup>2</sup> The CIP must include "identity verification

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<sup>1</sup> Department of Treasury, Office of Public Affairs, "Treasury and Federal Financial Regulators Issue Final Privacy Act Regulations on Customer Identification," April 30, 2003. ([www.treas.gov/press/releases/js335.htm](http://www.treas.gov/press/releases/js335.htm)).

<sup>2</sup> 31 CFR § 103.121(b)(1-2) (Department of Treasury Regulation).

procedures.”<sup>3</sup> As part of the identity verification procedures, the regulations require, among other things, that certain customer information be provided, to include, at a minimum, name, date of birth, address and an identification number (for a US person, this would be the taxpayer number, i.e., a social security number).<sup>4</sup> In addition, the regulation mandates that the customer-supplied information be verified through documentary, non-documentary or, as determined by the circumstances, some combination of both.<sup>5</sup>

With regard to documentary verification of customers, the regulations specify that “[f]or an individual, unexpired government-issued identification evidencing nationality or residence or bearing a photograph or similar safeguard, such as a driver’s license or passport” can be used.<sup>6</sup>

For customer verification through non-documentary methods, the CIP states as follows:

**These methods may include contacting a customer; independently verifying the customer’s identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement. (Emphasis added).**<sup>7</sup>

By providing a method through which financial institutions can and should use public databases to verify an individual’s identity, the Section 326 regulations acknowledge that there are times when conducting a review of source documents, or even conducting a limited background search, is simply not enough to accurately verify an individual’s identity. In fact, the American Bankers Association, the largest association of US banks, has specifically endorsed to its members the use of the LexisNexis information-based identity authentication solution, as a means for meeting the Section 326 CIP regulatory requirements.

From all accounts, the CIP regulation, which had a compliance date of October 1, 2003, has worked successfully. It is respectfully submitted that it should therefore be a model for the identity proofing provisions of this proposed regulation.

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<sup>3</sup> Id. at § 103.121(b)(2).

<sup>4</sup> Id. at § 103.121(b)(2)(i).

<sup>5</sup> Id. at § 103.121(b)(2)(ii).

<sup>6</sup> Id. at § 103.121(b)(2)(ii)(A)

<sup>7</sup> Id. at § 103.121(b)(2)(ii)(B)(1)

## **Federated Search Queries of Relevant State and Federal Databases to Enhance Identity Authentication and Proof of Citizenship**

LexisNexis recommends that CMS also develop a federally-sponsored federated data query capability to assist states in simultaneously querying appropriate federal and state databases that will corroborate birth, citizenship, and social security records provided by Medicaid beneficiaries. Such a capability would dramatically reduce the burdens placed on states to re-engineer their Medicaid enrollment systems to query multiple state and federal portals by centralizing queries for states through a single interface. It will also substantially reduce the burden on applicants and recipients of medical assistance to comply with a document-based system. As other organizations have noted in their comments to CMS, many individuals participating in the Medicaid program may not have original versions of the documents permitted. An information-based system would enable identity confirmation without necessitating that every individual present physical documents. LexisNexis has significant experience in designing, implementing, and supporting similar systems for other federally-mandated programs and would like to highlight one such example as we believe it provides an appropriate model on which a CMS-sponsored system could function.

In 2003, LexisNexis was selected by the Transportation Security Administration (TSA) to assist in developing an application to handle the workflow associated with background checks required for commercial driver's holding hazardous materials endorsements to their state-issued licenses. As a result of this engagement, LexisNexis developed a platform for the TSA's Office of Transportation Vetting and Credentialing (OTVC). This office is now known as Terrorist Threat Assessment Center (TTAC). The platform developed by LexisNexis is known as the "Screening Gateway" (SG). Since the application was finalized, the use of the SG has been expanded to broker additional background checks for TSA's registered traveler and Transportation Workers Identification Credentialing (TWIC) programs.

The Screening Gateway consists of several distinct components allowing for functionality to include the receipt of data from various information sources including American Association of Motor Vehicle Associations (AAMVA) for the applicant data via the Commercial Driver's License Information System (CDLIS) and the Criminal Justice Information System database (CJIS); search routines for accessing Immigration and Customs Enforcement (ICE) and Citizenship and Immigration Services (CIS) data; Social Security Administration (SSA) and Federal Bureau of Investigation (FBI) name-based criminal records searches; and, finally, the ability to aggregate, analyze, and segment all of these data sources to provide a "yes", "no", or "unable to determine" status for each applicant. TSA adds new data sources for different program requirements as needed, but the front-end application to which state Departments of Motor Vehicles (DMVs) interact isolates them from any additional data queries occurring at the federal level. Every state DMV has engineered their driver

licensing systems to interface with the screening gateway application, and the application has significantly reduced costs to states by consolidating multiple queries at a single interface.

The software applications that are part of the screening gateway receive the originating applicants data from various sources and includes the full name, full address, date of birth, Social Security number, commercial driver's license number, sex, place of birth, race, citizenship and ICE identification number (Alien number), based upon which application the data is being used. The data entering the gateway creates an applicant profile, logging the receipt of data, and initiates subsequent searches against external databases (e.g., ICE, SAVE, IAFIS, watch lists), as required. The search results are aggregated, analyzed and segmented in an automated process to break down the specific applicant into Security Risk Factor (SRF) categories of "yes", "no" and "unable to determine". The interface to the SG allows for manual review of any applicant's data, the SRF codes and any overrides of an application categorization based upon adjudication and the inclusion of data supporting the manual override.

LexisNexis believes that a similar application should be developed by CMS to provide states with a common portal to query multiple federal and state databases to augment the document-based approaches currently contemplated that place a substantial burden on individuals with very modest resources. For example, instead of developing direct interfaces to SSA's State Data Exchange (SDX) and other data sources, a CMS application could provide pre-connected interfaces to SSA, the SAVE system at DHS-CIS, state Department passport and visa systems, and state-based vital document search capabilities through organizations like NAPHSIS and others.

Memorandums of Understanding (MOUs) can be negotiated by CMS with appropriate federal agencies to access their databases and interfaces can be created quickly to search and return appropriate information to make more informed decisions from federal source data. When combined with the infusion of commercial data sources, the introduction of a federated search portal will greatly enhance the fidelity of the system for proving identity and citizenship, while potentially improving the enrollment process for Medicaid beneficiaries.

### **Security and Privacy Best Practices**

LexisNexis is a world leader in information security and privacy best practices. Security and privacy protections are built into LexisNexis technology offerings from the first line of code, and our solutions are configurable to provide varied security controls for different classes of users (i.e., applicant, administrator, user, etc.). For the purpose of brevity, the following provides a general overview of the security framework we employ in our technology offerings:

- Authentication to our systems and services is generally provided by a username and password and one other criteria such as a biometric scan or a security token;
- Authorization is controlled via access policies applied at the delivery layer. Not only will policies affect who can access what, but also what access can be granted to whom;
- Confidentiality is ensured through strong encryption of the traffic between the client and the servers. At a minimum 3DES will be applied, but AES encryption via a VPN can also be included for the most secure locations;
- Integrity is maintained through the hashing of network traffic through the use of AES network connections;
- Non-repudiation is enforced by an auditing system which will store all the logs in a virtual vault designed to log all user and administrator activities, including attempts to change the logs (this is a commercially available technology).

Further, the InstantID platform has been vetted by several large systems integrators to ascertain if information from the actual query could potentially be compromised. The findings of these integrators reveal that data queries are stored in cache and overwritten by subsequent queries.

LexisNexis' unique privacy expertise includes experience in privacy consulting for the Federal government. We understand the complexities and issues involved in the data collection, aggregation and processing of personal data from disparate sources. We draw upon the knowledge of a privacy team consisting of both in-house consultants and partners with expertise in relevant information policy and privacy legislation including the Privacy Act of 1974 and the E-government Act of 2002 to provide relevant and effective solutions for our clients.

Moreover, we have substantial experience coordinating the privacy policy development and compliance efforts for national security programs and drafting privacy impact assessments (PIA) and System of Record Notices (SORNs) with our government customers.

LexisNexis is committed to safeguarding individual privacy, and employs a comprehensive methodology that takes into account the privacy and policy issues inherent in each phase of the data lifecycle ("Information Supply Chain"). The underlying concept of this methodology is what we have termed as "Policy-based Information Sharing." By this we mean that policies are built-in from the start and ingrained in the core architecture of the technology powering the system.

Even though the RT program is voluntary in nature, LNSSI recommends applying this concept to develop robust policies and procedures aimed at protecting the privacy rights and civil liberties of the American public and the user community. Moreover, we would recommend working with all the affected parties and the



user community to support efforts aimed at fostering trust. Such efforts may (and should) include the revision of the existing Privacy Impact Assessment (PIA) for the Medicaid program; development of the appropriate System of Record Notices (SORNs); establishment of standards based on Fair Information Principles (FIPs); and outreach and education programs to the program officials, user community, and the public. It is prudent practice and policy to conduct these activities so program officials and participants then have the relevant information to make informed decisions on the design of the system and individual decisions about participation. Doing so also builds internal and public trust by demonstrating the agency's commitment to complying with all applicable privacy laws, regulations, and agency policies and best practices.

Based upon our experience with other government data sharing programs, a number of legal and policy issues must be addressed at the start of the program. Perhaps the most important pertains to verifying and measuring the accuracy and quality of the data obtained from commercial or private sources. Next among them is the question of how data will be maintained in the system, who will have access to this data (e.g. role based access and identity authentication) and how the data will be secured against unauthorized use or abuse. Some of the other pertinent issues include:

- Identification and understanding of the types of personal data collected;
- Effective oversight of the system (e.g. audit tools and accountability);
- Separation of government and private sector data through either physical or logical separation;
- Policies governing data retention; and
- Process for policy enforcement and redress.

Private sector data may be derived from a number of sources including both publicly and non-publicly available and may be used to augment existing data held by the government. As previously mentioned, LexisNexis takes seriously its responsibility for protecting personally identifiable information maintained in its information products and strictly enforces compliance with its data privacy policy. The LNSSI privacy policy which is modeled on the Fair Information Principles (FIPs) is posted on our website at LexisNexis.com for the public to review. We would apply the same high ethical standards to the development of policies and procedures governing the use of private sector data in an ISE. LNSSI would leverage its existing business practices and our experience with other information sharing programs to provide a cost effective solution for protecting the privacy and other legal rights of Americans while assuring that eligible individuals have timely access to essential medical services.

## **Conclusion**

Because the process for confirming citizenship and authenticating identity will occur only once for each Medicaid beneficiary covered under the CMS regulations, CMS must make every effort possible to institute a process as robust as possible to ensure the greatest confidence in individual identity. As we note above, purely document-based approaches to identity authentication are prone to significant fraud. The introduction of information-based identity authentication processes will greatly enhance the effectiveness of state efforts. The design and implementation of a federated search query capability by CMS for states to utilize will also greatly increase the fidelity that the documents individuals present can be relied upon more authoritatively. LexisNexis recommends that CMS significantly enhance the regulations beyond what is currently proposed to use available technology to improve the Medicaid program for administrators and the vulnerable citizens it serves.

We greatly appreciate the opportunity to provide these comments on the interim final rule and are available to assist CMS in any way in this very important effort. Please feel free to contact me with any comments or questions.

## **Appendix A: Information on LexisNexis and Information-Based Identity Authentication**

LexisNexis is the world's largest provider of credible, in-depth information on people and businesses, maintaining one of the largest professional information services in the world with 24 x 7 x 365 operational capacity, and performance-monitoring capabilities coupled with industry leading customer service support. In order to provide these information-based services, the company has gained unparalleled expertise in the management, storage, standardization, integration of disparate data sources and the delivery of that information via multiple protocols for a wide range of services and business processes. LNSSI's range of identity authentication services integrates over 36,000 sources of information online and over 4.9 billion searchable documents.

More specifically, the LexisNexis services offer:

- 4.5 trillion characters online
- 110 million images/attachments
- 4.9 billion documents, all searchable
- Over 32,500 databases
- 7.4 million documents added each day

No other company in the world has the depth of knowledge that LexisNexis has in the identity authentication process. This experience includes evaluating multiple disparate data sources, integrating and aggregating data sets, prioritizing data sources based upon relevance and reliability, developing predictive and commercially proven mathematical models, and developing a processing platform that permits 100 parallel analyses sources in a sub-second response time.

The LexisNexis identity authentication process is capable of identifying potential "mis-keyed" data, thus reducing one form of "false positives." Statistical analytics such as Bayesian Belief and Logistic Regression models have been used to establish risk scores that are used in a wide range of industry and government applications. The identity authentication process also includes the ability to return reason codes identifying high risk factors such as disconnected phone numbers, prison or commercial mail receiving addresses, and use of a Social Security number associated with a deceased person, to name a few.

To meet the business requirements of government and commercial industries, a complex methodology has been deployed to address terrorism and identity theft and economic crimes. Those crimes require the identity authentication process to incorporate the following:

- Standardization and normalization of data to systematically identify mis-keys, geographic impossibilities and other anomalies;

- Validation of data to determine if it exists and is appropriately formatted based upon the originator of the data;
- Verification of the input data across multiple and extensive data sources composed of hundreds of millions of records;
- Use of matching logic to determine high risk factors such as deceased Social Security numbers, mail drops, non-existent mail addresses, disconnected telephones or mobile phones, etc.;
- Scoring technology to provide a quantitative measure of risk using proven mathematical models commonly used today in association with identity authentication processes; and
- Use of data indexing and metadata to allow for audit, model refreshment, and privacy policy enforcement.

This risk assessment infrastructure is designed for identity authentication at near-real-time or through batch processing, extensibility to other data sources, dynamic and automated configurability, and for the use of various algorithms across tiers of data sources. Over the years, LexisNexis' expertise has allowed this infrastructure to evolve and succeed in the area of identity authentication.

### **Information-Based Identity Authentication**

LexisNexis' approach to identity authentication is information-based. Information-based identity authentication determines identity on the basis of identifying information provided by an applicant, through the use of qualified databases and commercially developed scoring models and algorithms. In this way, it supplements the process of verifying the applicant's identity through simply authenticating identification credentials provided by the applicant.

In the past, absent direct contact with employers, references, neighbors and others, an entity attempting to determine the identity of a person, previously unknown to the entity, would have to do so solely through the reliability of the person's credentials, such as a birth certificate, driver's license, social security card, etc. If the applicant matched the entire set of source documents presented at the time of registration, a credential was granted. However, as recently discussed in a published white paper entitled *Identity Fraud: A Critical National and Global Threat*, "[i]t has been widely conceded that driver's licenses and similar credentials are easily counterfeited or obtained fraudulently. [Therefore], in the absence of a universally accepted credential, the only practical solution must be to employ an information-based authentication system."<sup>8</sup> With identity theft plaguing our society and fears of terrorists using false or fictitious identities recognized as a real threat by the 9/11 Commission, it is essential that our

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<sup>8</sup> *Identity Fraud: A Critical National and Global Threat*, Dr. Gary Gordon, Professor Utica College, and Norman Willox, Jr. Chief Officer for Privacy, Industry and Regulatory Affairs, October 2003, page 27. To view, please visit [http://www.ecii.edu/identity\\_fraud.pdf](http://www.ecii.edu/identity_fraud.pdf).

identity management systems incorporate all available technologies in assuring that an applicant is who he or she claims to be.<sup>9</sup>

Information-based identity authentication employs a three-tiered approach to give a credentialing provider as much assurance as possible concerning the authenticity of an applicant's identity. The first tier, or Level One, is "validation."<sup>10</sup> Validation is the lowest level of risk management and serves two purposes: 1) to determine if the identifying information presented by an individual is real and not fabricated, and 2) to determine whether the information conforms to an established format. To check whether the information is real and not fabricated, a table or schedule of records is consulted. "If the identifier provided by the individual, such as an address, phone number, or date of birth satisfies an existing logic or format, then the identifier is considered to be 'real.'"<sup>11</sup>

Ascertaining whether an identifier conforms to an established format involves determining if the data set presented matches the code established for that particular identifier (e.g., the first three digits of a Social Security Number represent the state where the card was granted and, since most people born in the United States obtain a social security number at or shortly after birth, the state indicated by these digits should match the state provided by the applicant as the place of birth.).<sup>12</sup>

Level Two of information-based identity authentication is called "verification." Identity verification analyzes whether the information provided by an applicant belongs together, whereas validation looks at the information in isolation.<sup>13</sup> Determining whether the information belongs together is accomplished by the parallel searching of various databases such as public records, change of address requests, phone numbers, etc. As explained in *Identity Fraud: A Critical National and Global Threat*, "If a person supplies his name, address, phone number, and Social Security Number on an application, a search is constructed to confirm whether all four identifiers appear in the given combination in several databases."<sup>14</sup> If the identifiers in the given combination match the data as it appears in multiple databases, then the information is verified. Crucial to this step is an evaluation of the databases to be used for comparison matching. Those that are refreshed most often with accurate and comprehensive data should be chosen for the verification phase.<sup>15</sup>

Level Three is Authentication. Authentication involves the use of specifically tailored modeling and scoring algorithms that are used to provide assistance in

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<sup>9</sup> 9/11 Commission Report, July 22, 2004. To view, please visit <http://www.9-11commission.gov/report/911Report.pdf>.

<sup>10</sup> *Identity Fraud: A Critical National and Global Threat*, at 32.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

determining the probability that the claimed identity of an individual is authentic. Once an applicant provides the requested information, the authentication engine models and scores that information. There are three potential scores that can result from the authentication engine and that are used to ultimately make a decision about the authenticity of an individual's claimed identity; an affirmative score, meaning the person's claimed identity has been authenticated based upon the rules set for a particular application; a negative score, representing an unsatisfactory authentication score; and an "exception" score, meaning the process is inconclusive on authentication.<sup>16</sup>

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<sup>16</sup> Id.

**Submitter :** Ms. Shapour Benard

**Date:** 08/11/2006

**Organization :** Ms. Shapour Benard

**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. Gail Nayowith

**Date:** 08/11/2006

**Organization :** Citizens' Committee for Children of New York, Inc.

**Category :** Health Care Professional or Association

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

See Attachment



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
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 :** Nicole Donovan

**Date:** 08/11/2006

**Organization :** Nicole Donovan

**Category :** Other Health Care Professional

**Issue Areas/Comments**

**GENERAL**

**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 : Laz Harris  
Organization : Laz Harris  
Category : Individual

Date: 08/11/2006

Issue Areas/Comments

**GENERAL**

GENERAL

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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. MaryLee Allen  
**Organization :** Children's Defense Fund  
**Category :** Other Association

**Date:** 08/11/2006

**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-363-Attach-1.DOC

CMS-2257-IFC-363-Attach-2.DOC



Children's Defense Fund

August 10, 2006

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

Re: Medicaid Citizenship  
Documentation Interim Final Rule, 71  
Fed.Reg. 39214 (July 12, 2006), File  
Code CMS-2257-IFC

The Children's Defense Fund (CDF) appreciates the opportunity 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, 2006, requires applicants for and recipients of Medicaid to provide proof of U.S. citizenship or nationality and identity. The Children's Defense Fund has long been an advocate for children's access to quality health care. We have worked for many years to overcome administrative barriers that prevent eligible children from enrolling in Medicaid. We now are deeply concerned that the interim final rule goes beyond the scope of Congress' language in the DRA and threatens to harm America's most vulnerable citizens by denying them necessary health and mental health care.

As the Centers for Medicare & Medicaid Services prepare the final rule, CDF believes that important adjustments are necessary to align the regulation with the intent of DRA language and state capabilities. We are pleased that the interim final rule corrects a scrivener's error in the statute and allows SSI-eligible and presumptive eligible individuals, which include many children with disabilities, to be exempt from the rule. However, several requirements included in the interim final rule are likely to hurt some of America's neediest children and place many more children among the ranks of the uninsured by increasing administrative barriers for Medicaid applicants and recipients. We are concerned that the regulations will undermine years of progress states have made in easing enrollment for low-income children and families and that the requirements will needlessly delay or deny health care for many applicants and recipients.

While proponents of the DRA documentation provision argued that its purpose was to prevent illegal immigrants from accessing public health coverage, the Department of Health and Human Services' Office of Inspector General reported in 2005 that there

was no substantial evidence that illegal immigrants are obtaining Medicaid by falsely claiming to be citizens. Instead, we are concerned that the most likely outcome of the new rules will be that citizens who are legally entitled to Medicaid will delay or do without coverage because of the lack of acceptable documentation or confusion about what is required. The new rule also will likely deter families who are legal immigrants from applying for Medicaid for fear that they must be citizens to access it.

These new rules implementing the documentation requirements will also have serious adverse consequences for vulnerable groups of children and families that may not have been anticipated when they were drafted. For example, they could further jeopardize coverage for child and adult victims of Hurricane Katrina, some of whom have lost all of their relevant records in the storm. They may delay health and mental health treatment for abused and neglected children seeking refuge in foster care and may disrupt medical care for individuals with chronic illness or disability. They may penalize the three million legal children of undocumented immigrants as their parents fail to enroll them in Medicaid for fear of deportation. CDF's office in Houston, Texas, for example, has already heard from immigrant parents of citizen children that they are reluctant to bring them to clinics for health care for this very reason. The new rule may also create enormous new fiscal pressures on hospitals and providers who may go ahead and treat these Medicaid-eligible patients but, because of lack of adequate documentation, will no longer be eligible to receive Medicaid funds for their care. These treatment costs will then get transferred to families and other individuals.

CDF urges you to address these concerns when CMS publishes its final rule regarding Medicaid citizenship documentation. Our specific recommendations follow.

1. **Applicants for Medicaid should receive the same "reasonable opportunity" to provide the necessary documentation as recipients of Medicaid.**

The interim final rule requires Medicaid programs to deny coverage to individuals applying for Medicaid until they have satisfied the documentation requirement. While the regulation correctly allows current recipients a "reasonable opportunity" to obtain appropriate documents, families who are new to the program must go without coverage until they provide a birth certificate or other acceptable document. Nothing in the DRA requires CMS to delay Medicaid coverage until the documentation is confirmed. For a child with a disability whose parents have a sudden change in economic status – such as losing a job – Medicaid is an integral part of the economic and health safety net. Acquiring immediate Medicaid coverage can also be essential for children who cannot attend school until they have received immunizations and physical examinations. Delaying care may threaten a child's mental as well as physical development.

**CDF urges CMS to amend the interim final rule [42 CFR 435.407(j)] to provide parity in the treatment of Medicaid applicants and recipients and to require states to provide Medicaid coverage for eligible applicants who declare they are U.S. citizens or nationals and give them a "reasonable opportunity" to obtain the**

**necessary documentation of their citizenship and identity.**

2. **Children in foster care should be exempt from the citizenship documentation requirement.**

CDF is especially concerned about the impact of the new documentation requirement on children in foster care who often have very special health and mental health needs that require immediate treatment. We believe that they should be exempt from the documentation requirements for both citizenship and identity.

Children who receive 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 in foster care who are categorically eligible for Medicaid do not technically apply for the program. This makes them similar to the children and adults who are eligible for SSI and are automatically eligible for Medicaid, a group who are exempt from the new documentation requirements. We urge you to exempt children in foster care from the documentation requirements as well. The law clearly gives CMS the authority to do so and we urge you to take advantage of it.

Since state child welfare agencies certify citizenship for many of these children anyway for purposes of their eligibility for foster care payments and also establish their identity when they take them into care and assume custody of them, they seem to be clear candidates to be exempt. By doing so, CMS will make it more likely that they will receive necessary health and mental health treatment and services in a timely and appropriate manner and will not have their well-being threatened by delays as required documentation is sought. Exempting them will also relieve Medicaid agencies of a timely, costly, and unnecessary administrative burden.

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.

The need to exempt children in foster care and those adopted with special needs from foster care is especially important for several reasons. First, children in foster care are often children with very special health and mental health needs who are in need of immediate attention. Many of them have chronic conditions that require ongoing care and even the prospect of temporary discontinuity of care while documentation is being sought is threatening. These children already are vulnerable when they enter care and this new requirement increases their vulnerability. Second, if Medicaid is not available and the child welfare agency must pick up the tab for health and mental health treatment for children in its care, normally paid for by Medicaid, the costs incurred by the child welfare agency will mean that scarce dollars are taken away from other important needs of these children. And third, because many children enter foster care from situations

where parents have been charged with abuse or neglect, delays are likely in obtaining the necessary documentation, in part because of the parents' hesitancy or unwillingness to cooperate with the agency in providing the necessary documentation to fulfill this requirement. There may also be cases where the whereabouts of the parent are unknown, further complicating and delaying the documentation process.

**CDF 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.**

If CMS is unwilling to exempt this group of children from the new documentation requirement, as we strongly recommend you do, we propose at a minimum that CMS consider children in foster care and children with special needs adopted from foster care as recipients of Medicaid, rather than applicants, since they do not technically apply for the assistance. Documentation for them would be required only at the point of their redetermination of eligibility and they would then be given a reasonable opportunity for providing necessary documentation, without any delay or disruption in the care and treatment they are receiving. We understand that Dennis Smith, Director of the Center for Medicaid and State Operations, has stated that this was the intent of the provision when meeting with state Medicaid and human service directors earlier this summer.

**If CMS does not exempt these children from the new rule, CDF urges you to make it explicit in the final rule that foster children and children adopted from foster care who are eligible for Medicaid by virtue of their status as foster or adopted children should be considered as recipients only, and not applicants, for purposes of the new documentation requirements. Such an interpretation would allow the state a reasonable opportunity to find the necessary documentation. Without such a clarification, confusion could lead to erroneous decisions on behalf of these children that could threaten their well-being when treatment is delayed.**

In complying with the new documentation requirements, it should be sufficient for the state child welfare agency to confirm for the Medicaid agency both the child's citizenship status and identity. States generally verify citizenship when determining a child's eligibility for IV-E foster care payments, and it does not seem to be a wise use of resources for it to be documented again when the same child applies for Medicaid. Similarly, when the state assumes custody of a child in its care, it should be assumed that the agency, and often the court as well, have established the identity of the child and the child welfare agency should be allowed to certify that fact to the Medicaid agency.

**CDF thus recommends 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 represents an additional burden and cost to the states.**



3. **Newborns in U.S. hospitals should be exempt from the citizenship documentation by virtue of their mothers' enrollment in Medicaid.**

Under current federal law, infants born to mothers enrolled in Medicaid are considered eligible for Medicaid for a year from the time of their birth, as long as the mother remains eligible. When a Medicaid agency pays for a child's birth in a U.S. hospital through coverage of the pregnant woman, it already has a record both of the child's eligibility and its place of birth. Hospitals certify the child's citizenship and identity (when they prepare the birth certificate) and his/her Medicaid eligibility (since the hospital is accepting payment from Medicaid). The interim final rule, however, fails to exempt this category of children from the new documentation requirement, adding a burden for the mother, the hospital, and the state agency. Infants, especially those born with complications, need to receive immediate and ongoing care. This needless requirement could place infants at risk for delayed treatment if providers fear they will not be compensated until the documentation requirement is fulfilled.

**CDF recommends that CMS amend the interim final rule [42 CFR 435.407(a)] to include the reasonable exemption for newborns born in U.S. hospitals to Medicaid-enrolled mothers by making clear that the state Medicaid agency's record of payment for the birth of a child in a U.S. hospital is satisfactory documentary evidence of both citizenship and identity.**

4. **Medicaid agencies should be able to certify citizenship or national status for applicants or recipients who have lost all documents due to special circumstances, such as natural disasters.**

Although the interim final rule requires states to assist individuals with "incapacity of mind or body" in obtaining required documents, the new rule does not include reasonable procedures for individuals who completely lack any of the documents listed in the interim final rule for reasons beyond their control. Victims of hurricanes and natural disasters and homeless individuals may not be able to access original documents under any circumstances. Even the interim final rules affidavit allowance may not meet the needs of such individuals, as finding people to verify the applicant's birth may be impossible. The interim final rule also states that affidavits may only be used in "rare circumstances" [42 CFR 435.407(d) (5)], indicating that states may be penalized for accepting such documents. In special circumstances, such as homelessness or natural disasters, states should be allowed to certify the citizenship of an individual who has explained the circumstances of his lack of documentation unless there is good reason to question his assertion of citizenship or nationality. This allowance would ensure Medicaid-eligible children who are victims of disasters, terrorism, or homelessness are not penalized for a lack of documentation.

**CDF urges you to amend the interim final rule [42 CFR 435.407] to allow a state Medicaid agency, at its option, to certify it has obtained satisfactory documentary evidence of citizenship or national status if the applicant or beneficiary has been**

**unable to obtain the listed documentation during the reasonable opportunity period and it is reasonable to conclude the individual is a citizen or national.**

5. **States should allow notarized or other copies of documentation.**

The requirement in the interim final rule for original or certified copies of the relevant documentation is likely to needlessly delay Medicaid coverage for eligible children. Obtaining a birth certificate or other proof of citizenship is not as easy as this requirement implies. CDF's review of state department of vital records websites postings found that thirty-one states require a photographic identification card before obtaining a birth certificate; 11 states allow only a legal guardian or parent to obtain a certificate for a child; every state charges a fee; and many states have response times as long as 6-10 weeks. These obstacles to obtaining original birth certificates mean that children and others who are Medicaid-eligible will have to wait, perhaps for months, to obtain coverage. In the case of chronically ill children, this lapse in coverage represents a particularly serious health threat.

Moreover, expecting Medicaid applicants to mail in originals of birth certificates or passports, as the interim final rule requires, is simply unrealistic. Such a requirement serves as a de facto face-to-face interview mandate, as most applicants will be unwilling to part with such a valuable and not easily replaceable document via mail. Even those states that allow Bureau of Vital Statistics data matches for birth certificates will under the interim final rule have to obtain original proof of identity from many applicants and recipients of Medicaid. Further, many Medicaid-eligible children have working parents who may have to miss work to secure and submit original documents; and applicants who live in rural areas may have to travel miles to the closest Medicaid office. In an era when all but five states have dropped the face-to-face interview for a child applying for Medicaid due to wide-acknowledgement of the barriers it creates to enrollment, it is unsound to return to the practice.

To require children who are desperately in need of care to provide originals of documentation to receive Medicaid creates needless barriers to their care. There is nothing in the authorizing legislation that requires Medicaid applicants and recipients to submit originals or certified copies.

**CDF urges CMS to amend the final rule [42 CFR 435.407(h)(1)] to allow notarized, electronic, or other copies of identity and citizenship documents when the state has no reason to believe the copies are counterfeit or have been altered.**

In conclusion, CDF is concerned that the interim final rule, unless modified, will present significant barriers to enrollment and health coverage for children who need help from the Medicaid program. CDF's recommended changes will help ensure children access to health and mental health care and the continuity of care they need and are fully eligible to receive. As an advocate for the millions of children currently enrolled in Medicaid and Medicaid-expansion programs throughout the country, CDF strongly urges CMS to revise the interim final rule to reflect these important changes. We also urge you

to extend informative and simple outreach and education materials to enrollees and Medicaid recipients through community organizations, health facilities, and other social service programs about the final regulations when they are issued.

Thank you for your consideration of CDF's recommended changes in the final rule. We would be happy to discuss them with you in further detail.

Sincerely,

Alison Buist  
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[abuist@childrensdefense.org](mailto:abuist@childrensdefense.org)

MaryLee Allen  
Director, Child Welfare and Mental  
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Children's Defense Fund  
25 E St. NW  
Washington, DC 20001

**Submitter :** Irene Rutchcik

**Date:** 08/11/2006

**Organization :** Irene Rutchcik

**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 :** Sarah Berman  
**Organization :** Sarah Berman  
**Category :** Individual

**Date:** 08/11/2006

**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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- (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 :

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.

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  - (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 :** Jeanne Murphy  
**Organization :** Jeanne Murphy  
**Category :** Individual

**Date:** 08/11/2006

**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. I am particularly concerned about the public health implications of requiring people to produce one of the very specific and limited documents prior to getting care that may be necessary to prevent the spread of contagion.

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 obtain 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. Alison Hirschel  
**Organization :** Michigan Poverty Law Program  
**Category :** Attorney/Law Firm

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attached comments

CMS-2257-IFC-368-Attach-1.DOC

CMS-2257-IFC-368-Attach-2.DOC



## **MICHIGAN POVERTY LAW PROGRAM**

**611 Church Street, Suite 4A**

**Ann Arbor, Michigan 48104**

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**[www.mplp.org](http://www.mplp.org)**

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)

The Michigan Poverty Law Program (MPLP) is a cooperative effort between Legal Services of South Central Michigan and the University of Michigan Law School (UMLS). Our goals are: to coordinate advocacy for the poor among the local legal services programs and other poverty advocates in the state; to assure that a full range of advocacy continues on behalf of the poor; and to support the advocacy of Michigan's legal services field programs. MPLP and the poverty advocates with whom we work seek to protect and promote the rights of the one in seven Michigianians — approximately one and a half million people -- who must depend on Medicaid for their health care.

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

We have grave concerns that the interim final rule will result in the loss, denial, or delay of essential benefits to Michigan citizens who are in fact eligible for Medicaid but who cannot meet the unnecessarily stringent and bureaucratic documentation requirements. We urge you to modify the final rule in five crucial ways that will minimize harm and reduce the costs of compliance for states and for applicants and recipients.

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

The interim final rule applies the documentation requirements to all U.S. children except those eligible for Medicaid based on their receipt of SSI benefits. The preamble to the interim final rule states that Title IV-E children receiving Medicaid “must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship...claimed on the declaration.” 71 Fed. Reg. at 39216. Among the children subject to the requirements are roughly one million children in foster care, including those receiving federal foster care assistance under Title IV-E. In Michigan, more than 25,000 children receive assistance under Title IV-E. As required by federal law, Michigan’s Department of Human Services (DHS) already verifies the citizenship status of these children in the process of determining their eligibility for Title IV. See DHS Children’s Foster Care Manual, PR-Foster Care Payment Eligibility.

The DRA does not require this duplication of effort for children receiving foster care assistance under Title IV-E. Indeed, the DRA permits the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship yet the Secretary has inexplicably failed to use that discretion for this especially vulnerable population of Medicaid recipients. Requiring the duplication of proof of citizenship puts an unnecessary burden on the state and on the foster or adoptive families seeking to care for these children. It puts the children at risk of delayed Medicaid coverage which can include harmful delays in receiving medications, dental care, psychological services, medical supplies for conditions such as asthma, and other essential care and services.

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

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

Another group of children unnecessarily subjected to the documentation requirements are infants born in U.S. hospitals whose births are paid for by state Medicaid agencies. If a state Medicaid agency pays for a birth in a U.S. hospital, regardless of whether the baby’s mother is a citizen, a legal immigrant, or an undocumented immigrant, the child is, by definition, a U.S. citizen. Yet the interim final rule gives examples of additional documentation that could be used to show proof of citizenship. *See* 42 C.F.R. 435.40(c)(1) and 42 C.F.R. 435.407(d)(4). The preamble to the interim final rule suggests that some children born in U.S. hospitals whose births are paid for by Medicaid must show citizenship and identity documentation “at the next redetermination.” 71 Fed. Reg. 39216. It further asserts that others, whose mothers are legal or undocumented immigrants, must apply for Medicaid and provide proof of citizenship, 71 Fed. Reg. 39216, even though these children are deemed to have applied for Medicaid and eligible for one year. *See* 42 U.S.C. 1396e(4).

The risk to the health of newborns from delays in coverage, the potential for additional uncompensated care for providers, and the unnecessary additional burdens for families and states simply make no sense. Michigan is making significant efforts to improve maternal and child health care and ease access to Medicaid for eligible women and children. This cumbersome requirement will thwart some of those laudable efforts.

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

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

A number of Michigan citizens applying for or receiving Medicaid will not be able to provide any of the documents listed in the interim final rule. Among the most likely applicants and recipients in this category are victims of natural disasters, homeless people, people for whom there was never any public birth record, people with inadequate knowledge of the place and circumstances of their birth, and people with significant disabilities. Although the rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), it does not address what will happen if the state is unable to locate the documents or if a person who is not incapacitated cannot, despite his or her best efforts or those of his or her representative, obtain the necessary documents. Thus, applicants who cannot obtain necessary documentation will never be approved and recipients who cannot obtain the documents 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. For example, a resident of a nursing home without involved family or advocates and no contact with contemporaries, will very likely not have access to two qualified individuals with personal knowledge of the events establishing his or her claim to citizenship.

The DRA gives the Secretary discretion to expand on the list of documents included in the law that are considered to be "proof" of citizenship and a "reliable means" of identification. **We urge 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.**

There is excellent precedent for this. 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 whatever information they do have. 20 CFR 416.1610. The Secretary should adopt a similar approach for both identity and citizenship. **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 of the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.** This approach would ensure that the recipients and applicants with whom we work who are U.S. citizens can continue to receive the health care services they need.

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

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

First, original and certified copies are more expensive, more time consuming, and more difficult for the applicant or recipient, or the state on his or her behalf, to obtain. Second, Michigan does not require face to face interviews for Medicaid applicants and those seeking redetermination. Pursuant to the interim final rule, however, applicants and beneficiaries will have to make unnecessary visits to state offices with original and certified copies. Although the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards which they need on a daily basis. Thus, these applicants and beneficiaries will have to clog state offices to receive benefits or continuing benefits and will likely face long delays. Some, who experience transportation barriers, suffer from disabilities making travel difficult, or have inflexible work schedules will not be able to come in at all.

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

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

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

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

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

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 citizens who get discouraged or cannot get the documents they need within the time allowed by the state will never get coverage. Because there has been no outreach program to educate U.S. citizens about the new requirement, most applicants are likely to be unaware of it, and there are likely to be significant delays in assembling the necessary documents.

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

Thank you for your consideration of these comments. We urge you to take the steps described above to minimize harm to low income Michigan citizens who depend on Medicaid but who might be denied crucial health care if senseless and unnecessary barriers to establishing their eligibility or continued eligibility are not eliminated.

Sincerely,

Alison E. Hirschel  
Elder Law Support Attorney

**Submitter :** Ms. Nancy Ford  
**Organization :** Nevada Division of Welfare & Supportive Services  
**Category :** State Government

**Date:** 08/11/2006

**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

Interim Final Rule on Citizenship Documentation Requirements

CMS-2257-IFC-369-Attach-1.DOC

**Submitter :** Ms. Nancy Donahue

**Date:** 08/11/2006

**Organization :** Ms. Nancy Donahue

**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.

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

Provisions of the Interim Final Rule with Comment Period



KENNY C. GUINN  
*Governor*

STATE OF NEVADA  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF WELFARE AND SUPPORTIVE SERVICES

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MICHAEL J. WILLI DEN  
*Director*

NANCY KATHRYN FORD  
*Administrator*

August 11, 2006

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

Dear Dr. McClellan:

I am writing with Nevada's comments to the Interim Final Rule for the Medicaid Program; Citizenship Documentation Requirements published in the Federal Register on July 12, 2006. The state is very concerned about the implications contained in the Interim Final Rule and its effect on some of the most vulnerable applicants and recipients. The following comments are submitted for your consideration:

- In the preamble to the regulatory changes it appears CMS used the opportunity of the passage of the Deficit Reduction Act to reinterpret its policy of deemed eligibility for the newborn citizen children of non-qualified aliens which is based on a section of the statute that was not amended. Nevada has received in writing no less than twice affirmation that these children are treated the same as any other child born to a woman who is otherwise eligible on the date of the child's birth.

The first interpretation received was in 1993 affirming the eligibility of these newborns without a separate application. This was provided by staff in HCFA (now CMS) Region IX in the form of a letter sent to the Arizona State Medicaid Agency affirming these children's deemed eligibility. In 2004, CMS staff was contacted to determine if these children would still be deemed eligible if the mother would be eligible if still pregnant. The response from CMS in July 2004 states in part: "First, our policy interpretation from 1993 still stands, in that 1903(v) allows non-qualified aliens (including undocs) to be considered eligible and at the same time only have emergency services covered. Experiencing an emergency condition is not a criteria for eligibility....She is 'eligible if still pregnant' because she is Medicaid eligible, but for emergency services only. Unlike postpartum care, deemed newborn eligibility is not dependent upon the mom applying before the birth. If Medicaid pays for the birth, the newborns have deemed eligible status, even if they applied after the pregnancy ended."

This huge change in statutory interpretation is not required by the Deficit Reduction Act of 2005. It imposes an undue documentary burden on health care providers, families and agency staff in cases where the newborn's citizenship is known and not questioned. Nevada would like to know the legal, logical or practical concern that is being addressed by this dramatic change in interpretation.

Many of these children are born to unmarried partners; therefore, the father's income is not used to determine the mother's eligibility. The pregnant woman would still remain eligible, if still

*Working for the Welfare of ALL Nevadans*



pregnant, and the state would continue to disregard the father's income in determining eligibility and not used for determining the 'deemed eligibility' of the newborn for a period of one year. If states are required to implement this change, it would require the income of the father, disregarded in determining the pregnant mother's eligibility, be used to determine the eligibility of the newborn. Many times these are some of our most vulnerable newborns requiring serious post-natal care of which they may be deprived using the father's income to determine the newborn's eligibility during the critical first year of life.

It appears to the state, CMS used the very tone of the Deficit Reduction Act to revisit an interpretation provided at least 13 years ago and reverse their long-standing interpretation of the 'deemed eligibility' of these newborns. In the preamble, CMS states the child could be eligible as a poverty level child or 1931 child. In these cases an application must be filed for the child.

Nevada requests clarification of the separate application requirements; does this apply to all children born to non-qualified aliens or only those determined eligible, but for emergency services only, prior to the birth of the baby? In cases where application for the mother for emergency services is made after the birth of the baby and the newborn is identified on the application, would a separate application be required for the newborn after the mother is determined eligible for emergency labor and delivery or could the newborn be considered in the same application?

- The preamble further speaks to the "reasonable opportunity period" to provide this documentary evidence and should be consistent with the state's administrative requirements such that the state does not exceed the time limits established in federal regulation for timely determination of eligibility in 42 CFR § 435.911. In those cases where the individual is making a good faith effort to obtain documentation but is unable to do so, the state must assist the individual in securing evidence of citizenship.

While Nevada is able to match its own state Vital Statistics database, it has no capability to match Vital Statistics databases in other states. Is it CMS' intent, by several references in the preamble and proposed regulations themselves, states must assist the applicant/recipient in obtaining documentation of citizenship, such as obtaining birth certificates for these individuals? The vast majority of the state's Medicaid caseload is comprised of TANF parents and children, poverty level children and pregnant women. In most cases the best documentation these families are able to provide is a copy of a birth certificate or hospital certificate, very few applicants/recipients have original birth certificates. To require only original documents or copies certified by the issuing agency seems overly burdensome to both the clients and the agency and seems to be arbitrary and capricious.

If it is the intent states are required to assist in obtaining birth certificates, etc., Nevada, as well as many other states, were caught totally by surprise with this requirement and did not include funds in the budget building process to purchase birth certificates for possibly as many as 100,000+ applicants/recipients. This will serve as a barrier to medical coverage and also unfairly disadvantage a great number of individuals, especially in states such as Nevada, which has a very transient population, low-paying occupations and serves a great many TANF level or poverty level children.

- Further guidance in the preamble provides Title IV-E children receiving Medicaid, while not required to declare citizenship for IV-E, must have in their Medicaid file a declaration of

citizenship or satisfactory immigration status and documentary evidence of the citizenship or satisfactory immigration status claimed on the declaration.

Children receiving IV-E foster care payments should be exempt from the declaration and documentation requirements of Section 6036 of the Deficit Reduction Act. Many foster children are infants and young children not yet possessing the skills to read and write, or don't know where they came from and possibly don't know their parents. These are already troubled, neglected or abused children. Once again, this requirement appears to be arbitrary and capricious and will serve to disadvantage states and the most vulnerable population they serve.

- In new section 435.07(h), Documentary Evidence, requires all documents be originals or copies certified by the issuing agency and states must maintain copies of citizenship and identification documentation in the case record or electronic database and make these copies available for compliance audits. For reasons previously stated, this requirement is unduly burdensome to states and applicants/recipients alike.

Staff in Nevada, and certainly in many other states, are reluctant to violate one federal law to satisfy a requirement of another federal law. In this instance, two Department of Homeland Security documents, the Certificate of Naturalization and Certificate of Citizenship are emblazoned with a banner stating to the effect "DO NOT DUPLICATE OR REPRODUCE IN ANY WAY". In addition, many states, Nevada included, now have this same statement printed on the certified copies of birth certificates they issue. However, as previously stated section 435.07(h) is asking states now to violate these other statutes, be it federal or state.

At a recent conference, Dennis Smith of CMS and members of his staff clarified it must be a staff member of the State Medicaid Agency which views and copies the original or certified copy of the documents verifying citizenship. Once again, this is overly burdensome to state agencies by increasing foot traffic in already overcrowded waiting areas; and to medical providers, clinics, doctors, hospitals, including Disproportionate Share Hospitals (DHSs) and Federally Qualified Health Clinics (FQHCs), which serve a majority of the Medicaid population. Many of Nevada Medicaid applicants/recipients live in rural or outlying areas, some a great distance from a Medicaid office, and are reluctant to mail original or certified copies of documents through the US Postal Service.

In public workshops held throughout the state explaining the new citizenship documentation requirements, there was strong objection from the provider community to mailing in clients' original documents to the Medicaid office. Most hospitals, clinics, doctors and other providers are already overworked and understaffed and expressed they have neither the time nor the manpower to appear personally at the appropriate Medicaid office to have their original documents copied to assist in establishing Medicaid eligibility in order for them to be reimbursed. This requirement should be changed.

- New sections 435.407(c) and (d) provide several options for third and fourth level evidence of citizenship, although determined by CMS to be the least reliable, and much of the acceptable documentation requires it be created 5 years before the initial application date. Several of the items contain the caveat "For children under 16, the document must have been created near the time of birth or 5 years before the date of application." How does CMS intend to define "near the time of birth", or is this determination left up to the states?

As previously stated, Nevada is a transient state and also the fastest growing state in the nation. However, many residents in need of medical assistance and unable to provide first or second level verification of citizenship, may have hospital or obtainable local medical records which could establish citizenship, but for the 5 years prior to the date of application rule. It is unknown how this 5 year prior to the date of application rule was decided, however, this rule is unreasonable and the Secretary should reconsider this time constraint to avoid disadvantaging otherwise eligible Medicaid applicants/recipients.

- New section 435.407(f), Special Identity Rules For Children, outlines possible identity documents for children under 16, such as school records, nursery or daycare records. It also allows the use of an affidavit when no other identity documents are available, provided it is completed by a parent or guardian, signed under penalty of perjury and an affidavit was not used to document citizenship. As it is not mentioned in the regulation, the state assumes if the parent or guardian of the child is a non-qualified or undocumented alien, they could complete the identity affidavit. It appears there is no prohibition against this as there is in the affidavit of citizenship.
- Early on in E-TAG discussions, the question was asked if applicants claiming to be citizens but unable to document their citizenship would be treated as illegal or non-qualified aliens and therefore entitled to "Emergency Services". The state saw nothing in the preamble or the Interim Final Rule itself addressing this issue and is looking to determine if CMS made a decision on this question.

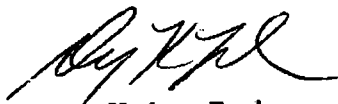
In addition to the eligibility question, it was asked if citizenship is verified for all children in an otherwise Medicaid eligible household, but the mother, who was born at home in rural Alabama, cannot verify her citizenship, is Medicaid denied to the citizen children? This seems punitive to citizen households who must meet a higher standard of proof than non-citizen households.

As you can see Nevada, as I am sure many other states as well, is concerned about the over-burdensome, cumbersome and in some instances, unfair requirements contained in the final rule. In this day of limited resources, consideration must be taken of additional requirements placed on staff, Medicaid applicants/recipients and the provider community.

The state is hopeful the Secretary will reconsider some decisions in the Interim Final Rule when the final rule is published to make the intent of the statute workable for all concerned.

Thank you for the opportunity to comment.

Sincerely,



Nancy Kathryn Ford  
Administrator

pc: Kenny C. Guinn, Governor  
Michael J. Willden, Director, Department of Health & Human Services

**Submitter :** Ms. Carol Miller

**Date:** 08/11/2006

**Organization :** National Association of Social Workers/Texas

**Category :** Social Worker

**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-371-Attach-1.DOC

**Submitter :** Mr. Ryan Clary  
**Organization :** Project Inform  
**Category :** Consumer Group

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

Attached is Project Inform's comments on the Medicaid citizenship interim rule.

CMS-2257-IFC-372-Attach-1.DOC



National Association of Social Workers

August 11, 2006

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

Dear Dr. McClellan:

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of NASW/Texas Chapter. NASW/Texas Chapter represents 5,500 social work professionals from throughout Texas.

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

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

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

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

We strongly oppose the provisions in the final rule that would apply the citizenship rule to children entering foster care. These children have already suffered at the hands of adults and to deny them access to medical care until their citizenship can be proved is unconscionable.

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

3. Gaps in the exemptions (§435.1008)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Outreach

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

9. Presumptive eligibility groups

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



have little meaning.

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

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

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

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

Sincerely,

*Carol Miller*

Carol Miller, LMSW  
Government Relations Coordinator  
National Association of Social Workers/Texas Chapter  
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**Submitter :** Ms. Kathy Yorkievtz  
**Organization :** PA Department of Public Welfare  
**Category :** State Government

**Date:** 08/11/2006

**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

I am writing to respectfully submit Pennsylvania's comments on the Medicaid Citizenship Documentation Requirements contained in the Interim Final Rule published July 12, 2006, in the Federal Register (71 FR 39214) for the Centers for Medicare and Medicaid Services (CMS).

**Regulatory Impact Statement**

Regulatory Impact Statement

The Pennsylvania Department of Public Welfare has and will continue to make a good faith effort to comply with the statute and Interim regulations. In the course of planning for implementation, we have identified areas we would like CMS to clarify or change in order to achieve compliance with less burden on current and potential Medicaid clients and less administrative burden for the states. Specifically, we are providing recommendations that we believe will streamline the documentation process, including, adding different types of documentation that could be accepted, and addressing the resource burden this mandate imposes on states. We also request that CMS exempt additional groups from this requirement. In addition, we must have the flexibilities outlined in this letter to ensure that those who need Medicaid services are actually able to access those services.

CMS-2257-IFC-373-Attach-1.RTF

August 10, 2006

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

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

I am writing on behalf of Project Inform to share our concerns regarding the new Medicaid citizenship documentation requirement and its potentially negative impact on the ability of people with HIV/AIDS and other vulnerable populations to access care and treatment services. Project Inform is a national healthcare and treatment advocacy organization serving over 80,000 people nationwide.

We strongly support your decision to exclude SSI and Medicare beneficiaries from the new citizenship document requirement. However, we remain concerned about any unintended consequences of the policy under current implementation rules that would delay or deny Medicaid coverage to U.S. citizens, including those living with HIV/AIDS.

To that end, we urge the following modifications as you develop the final rule:

**Grant Medicaid benefits to applicants once they declare they are citizens and meet all eligibility requirements.**

Under the Deficit Reduction Act (DRA), documentation of citizenship is not a criterion of Medicaid eligibility. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted. There is nothing in the DRA that requires a delay in providing coverage.

Yet CMS has prohibited states from granting coverage to eligible U.S. citizens until they can obtain documents such as birth certificates. Early and reliable access to medical care is critical to effective HIV treatment. We are concerned that CMS' strict interpretation of this requirement will result in unnecessary treatment delays for our patients with HIV disease, especially given that most people with HIV/AIDS qualify for Medicaid on the basis of disability and advanced disease state and can't afford treatment delay.

We recommend modifying the final rule to require states to provide Medicaid coverage to all applicants who declare that they are U.S. citizens or nationals that also meet the state's Medicaid eligibility criteria during the reasonable opportunity period for obtaining necessary documentation.

**Adopt the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship.**

The rule fails to recognize that many of our country's most vulnerable citizens are unlikely to have documents proving citizenship and many are unaware that these documents are now required in order to obtain or retain Medicaid coverage. Among these are victims of hurricanes and other natural disasters whose records have been destroyed and homeless individuals whose records have been lost. We strongly recommend including a safeguard provision in the final rule that protects U.S. citizens who lack citizenship documentation for legitimate reasons.

The SSI program has done so by allowing people who cannot present any of the proof of citizenship documents to explain why they cannot provide the documents and to provide any information they do have. We strongly urge CMS to adopt the approach of SSA and allow a Medicaid agency to certify that it has obtained satisfactory documentation of citizenship or national status if an applicant or beneficiary or an appointed representative has been unable to obtain citizenship documentation during the reasonable opportunity period and it is reasonable to conclude that the individual is in fact a U.S. or national based on available information. This provision would better ensure that U.S. citizens that do not have ready access to these documents would be able to obtain the health care services that they need.

**Allow applicants and beneficiaries to submit copies or notarized copies of documents.**

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. While the regulations state that applicants and beneficiaries can submit documents by mail, most applicants and beneficiaries will be reluctant to mail in originals or certified copies of their birth certificates.

This requirement makes the eligibility and re-determination process unnecessarily burdensome and costly for U.S. citizens who are already facing numerous challenges in their lives. Our goal should be to create a more efficient and streamlined process for connecting people with health care services under Medicaid rather than one that discourages enrollment.

We recommend that CMS revise the regulation by modifying the rule to make it clear that a state has the option to accept 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.

**Exempt additional groups that have already proven citizenship for Medicare and other federal disability programs from documentation requirements.**

As previously mentioned, we strongly support the CMS decision to exclude current Medicare and SSI beneficiaries from the citizenship documentation requirements since they were already required to do so to qualify for these programs. The exemption reduces program redundancy while also eliminating unnecessary burdens on certain groups of U.S. citizens or nationals. We feel implementation of the citizenship documentation requirements would be further improved by extending exemptions to other groups that have met the citizenship requirement for other federal programs.

We strongly urge you to exempt the following groups from the new documentation requirement:

- Former Medicare or SSI beneficiaries
- People eligible for Social Security Disability payments who are in the two-year waiting period required for Medicare coverage
- People who have received TANF or SCHIP benefits
- People who have successfully verified citizenship for Medicaid coverage, including those who relocate to a new state

Medicaid plays a critical role in providing access to health care for many low-income U.S. citizens living with HIV/AIDS and other life-threatening and chronic illnesses. We urge you to revise the final rule for the new citizenship documentation requirement to recognize the realities of their daily lives so that the new policy does not come between them and lifesaving care.

Thank you for considering our comments.

Sincerely,

Anne Donnelly and Ryan Clary  
Director and Associate Director, Health Care Advocacy Program  
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**Submitter :** Ms. Rhonda Farer

**Date:** 08/11/2006

**Organization :** Ms. Rhonda Farer

**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. Gerald Starr

Date: 08/11/2006

Organization : Bakersfield Memorial Hospital; dba Memorial Center

Category : Hospital

Issue Areas/Comments

**GENERAL**

GENERAL

The impact of these new regulations create costly workload for those of us on the frontlines in mental health care. We are already highly regulated and poorly reimbursed when compared to the rest of the acute care reimbursement/insurance programs. The recommendations above will both reduce cost and facilitate the care process for those populations that are already at risk and disadvantaged.

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

Provisions of the Interim Final Rule with Comment Period

1. CMS should expand this exemption to include the non-elderly disabled who have severe mental and physical disabilities, the homeless, and anyone receiving Medicaid for five or more years.
2. CMS should exempt Title IV-E children on foster care and children born on Medi-Cal.
4. States be allowed to accept and use copies of the required documents.
3. CMS should make every effort to ensure that states clearly understand that agency oversight is not intended to prevent those entitled to Medicaid benefits to be prevented from receiving them

**Regulatory Impact Statement**

Regulatory Impact Statement

**Submitter :** Ms. Rutledge Hutson  
**Organization :** Center for Law & Social Policy (CLASP)  
**Category :** Academic

**Date:** 08/11/2006

**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-376-Attach-1.DOC



# CLASP

CENTER FOR LAW AND SOCIAL POLICY

August 11, 2006

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

RE: Medicaid Citizenship Documentation, Interim Final Rule,  
71 Fed. Reg. 39241 (July 12, 2006), File Code CMS-2257-IFC

I am writing on behalf of the Center for Law and Social Policy (CLASP) 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 (Pub. L. 109-171) (DRA).

CLASP seeks to advance the economic security, educational and workforce opportunities and family stability of low-income children, youth and families. One component of this work involves advocacy on behalf of children who are involved with or at risk of becoming involved with the child welfare system. As such, we are particularly concerned about the detrimental effects the interim rule will have on children in foster care and children with special needs who have been adopted from foster care.

### **Delay in Access to Medical Care is Particularly Problematic for Children in Foster Care and Children with Special Needs Adopted from Foster Care**

Children in foster care and children with special needs who have been adopted from foster care often have significant and urgent physical and mental health needs. Delaying access to medical care while particular documents are located will simply add to the trauma the child is experiencing. If the child welfare agency covers the medical costs during the period while documents are located, scarce resources will be diverted from other critical services and supports, including those which prevent abuse or neglect from occurring or avoid the need for foster care. The delay could be significant in many cases. Children in foster care are generally there because their parents abused or neglected them. These parents may not be able or willing to help the child welfare agency locate the requisite documents. Fortunately, the DRA offers a solution to these problems and CMS should avail itself of the statute's flexibility.

The citizenship documentation provisions of the DRA were intended to prevent undocumented immigrants from inappropriately receiving access to Medicaid. The statute requires individuals who declare their citizenship or nationality in order to establish eligibility for Medicaid to provide “satisfactory documentary evidence” of such citizenship or nationality. However, certain groups of individuals are exempt from this requirement. Specifically, those who are receiving Medicaid by virtue of their receipt of Supplemental Security Income (SSI) and those who are receiving Medicaid and are receiving or are eligible for Medicare, are exempt from the documentation requirements because their citizenship has already been established by the Social Security Administration.<sup>1</sup> Section 6036 of the DRA also authorizes the Secretary to apply such exemptions to others where satisfactory evidence of citizenship or nationality has already been presented.

- **CMS should exempt children eligible for Medicaid on the basis of their receipt of foster care maintenance payments or adoption assistance payments from the citizenship and identity documentation requirements**

CLASP urges CMS to amend 42 CFR 435.1008 to add children in foster care and children with special needs who are adopted from foster care to the list of groups exempt from the documentation requirements. There are several reasons it is unnecessary for children in foster care or children with special needs who are adopted from foster care to present evidence of citizenship or nationality.

*Child welfare agencies already verify the citizenship of these children* as they determine eligibility for assistance under Title IV-E of the Social Security Act. Child welfare agencies also establish the identity of children when they take them into care and assume custody of them and when they assist with the adoption of children with special needs who have been in their care. Given the involvement of the child welfare agencies and courts, the Secretary should use the authority provided in the DRA to determine that satisfactory evidence of citizenship or nationality has already been provided and should exempt children in foster care and children with special needs adopted from foster care from the documentation requirements.

*Children who are eligible for federal foster care maintenance payments and adoption assistance under Title IV-E are categorically eligible for Medicaid.*<sup>2</sup> They need not apply for Medicaid nor make a declaration of citizenship or nationality to establish eligibility. They are automatically eligible simply by virtue of their receipt of Title IV-E. These children are analogous to recipients of SSI who are, in many states, automatically eligible for Medicaid by virtue of their receipt of SSI.

<sup>1</sup> CLASP commends CMS for determining that this was Congressional intent and that a scrivener’s error inadvertently applied this exemption only to aliens, not citizens.

<sup>2</sup> 42 U.S.C. 672(h); 42 U.S.C. 1396a(a)(10)(A)(i)(I); 42 U.S.C. 673(b)(1); and 42 U.S.C. 1396a(a)(10)(A)(i)(I);

Children who are not eligible for Title IV-E foster care assistance are analogous to recipients of SSI in states that do not automatically make such individuals eligible for Medicaid, but rather require them to apply to receive Medicaid. Like such SSI recipients, children in foster care are eligible for Medicaid because of their status as foster children, even if they are not eligible for Title IV-E.<sup>3</sup> Similarly, children with special needs who are adopted from foster care and are receiving state-funded adoption assistance must be provided with either Medicaid or comparable health coverage.<sup>4</sup> Thus, children receiving Medicaid with their state funded adoption assistance are receiving Medicaid by virtue of their status as adopted children with special needs.

In the interim final rule, CMS has indicated that states that do not automatically provide Medicaid to SSI recipients may use the Social Security Administration's State Data Exchange (SDX) to verify citizenship. We agree with others who have commented on the interim rule arguing that all SSI recipients should be exempt because SSA has verified their citizenship status before granting them SSI. Similarly, CMS should exempt all children in foster care and all children with special needs adopted from foster care.

If CMS decides not to do so, CLASP encourages CMS to allow state Medicaid agencies to rely upon child welfare agencies verifications of citizenship, much as it allows Medicaid agencies to rely upon SDX. When a child comes into foster care the state child welfare agency must verify a child's citizenship as part of the Title IV-E eligibility determination. There is no reason to require the Medicaid agency to duplicate these efforts. For the same reason, CLASP also recommends that CMS remove the provision in the preamble to the interim rule that states that "Title IV-E children receiving Medicaid . . . must have in their Medicaid file a declaration of citizenship or satisfactory immigration status and documentary evidence of the citizenship or immigration status claimed on the declaration."

- **CMS should provide applicants for Medicaid the same "reasonable opportunity" to obtain the necessary documentation as current recipients of Medicaid**

The interim rule requires states to deny Medicaid to applicants until they have provided satisfactory documentation of their citizenship and identity while it allows current recipients a "reasonable opportunity" to provide the necessary documentation at the time of redetermination. Nothing in the DRA requires the denial of coverage until documentation is provided. The DRA did not alter the eligibility requirements for Medicaid. Instead it requires that a declaration of citizenship or nationality (which is the eligibility requirement) be properly verified and documented. CMS should clarify the definition of "reasonable opportunity," as it applies to applicants, in 42 CFR 435.207(j) to permit states to provide Medicaid benefits to individuals who meet the eligibility criteria for Medicaid for a reasonable period while documents are gathered. To do otherwise threatens the health of those with on-going, serious medical conditions.

<sup>3</sup> These children are listed in the regulations as reasonable classifications of children for the Ribicoff option and all states have included such children in their options. 42 U.S.C. 1396a(a)(10)(A)(ii); 42 C.F.R. 435.222

<sup>4</sup> 42 USC 671(a)(21)

- **If CMS is unwilling to exempt children in foster care and children with special needs who are adopted from foster care from the documentation requirements, these children should be treated as recipients**

If CMS will not exempt children in foster care and children with special needs who are adopted from foster care from the documentation requirements, CMS should clarify in 42 CFR 435.407(j) that these children are to be treated as recipients. As noted above, these children do not apply for Medicaid and thus should be treated as recipients. We understand that officials from CMS have stated verbally that it is their intention to treat children in foster care as recipients in this manner, but it is important that this clarification be put in writing and that clarification include children with special needs who are adopted from foster care. This approach would provide child welfare agencies more time to obtain the necessary documentation and avoid delaying or disrupting the medical care children need.

- **CMS should allow additional items to document both citizenship and identity including: (1) for children in foster care or children with special needs adopted from foster care, a certification from the child welfare agency; (2) a final order or decree of adoption; (3) data from birth records in the Child Support database; (4) Medicaid claims data showing that Medicaid paid for the birth of a child; and (5) a birth certificate**

CMS should amend 42 CFR 435.407(a) to allow additional items to document both citizenship and identity. For children in foster care or children with special needs adopted from foster care, a Medicaid agency should be able to accept a certification of citizenship and identity from a child welfare agency. Since child welfare agencies have information about the identity of and have verified the citizenship of children in foster care, the Medicaid agency should be able to rely on a certification from the child welfare agency without any additional documentation.

Final orders or decrees of adoption should be sufficient to establish both citizenship and identity. Such documents provide the information needed to establish identity (e.g. name, parents' names etc.) and citizenship (e.g. information about place of birth). The same is true for birth records obtained from the child support database maintained under Title IV-D of the Social Security Act. In addition, these documents have been reviewed by courts and state agencies. Particularly for a child, who is unlikely to have photo identification and whose appearance can change dramatically overtime, these documents should be sufficient and CMS should amend 42 CFR 435.407(a) accordingly.

For a child whose birth is paid for by Medicaid, the claims data will provide sufficient information about identity and citizenship. It will include the child's name, mother's name and, of course, the child's place of birth. For a newborn, this is probably the most accurate information available to meet the documentation requirements and CMS should amend 42 CFR 435.407(a) to include such claims data.

Finally, a birth certificate should be sufficient to establish both citizenship and identity, particularly for children, and CMS should amend 42 CFR 435.407(a) accordingly. This approach is consistent with the requirements of documenting citizenship in SSI where a certified birth certificate is sufficient proof of citizenship.<sup>5</sup>

In addition, the documents listed in the interim rule as sufficient proof of identity typically are documents obtained based on the presentation of a birth certificate and, as such, any proof of identity derives from the birth certificate. There is, therefore, no reason to require the presentation of two documents. Such a requirement is particularly problematic for children who often don't have any identity documents. For children in foster care or children with special needs adopted from foster care who lack identity documents, the only remaining option available under the interim rule is an affidavit. Birth parents of such children may be unwilling to make such affidavits and foster or adoptive parents or officials of child welfare agencies may not have personal knowledge of the date and place of birth of the child. Their knowledge may be based upon a review of the child's birth certificate. To require additional evidence of identity when a birth certificate is available is duplicative and could delay access to much needed medical care.

- **CMS should permit states to accept copies of requisite documents**

The interim final rule requires individuals to present original documents or certified copies of such documents. This requirement is unnecessarily burdensome. It can be both time consuming and costly to obtain original documents or certified copies and attempting to obtain such documents may delay access to medical care. In addition, the requirement makes a face-to-face interview more likely. Individuals who have original documents are not likely to send them through the mail and hope they are returned. The requirement of a face-to-face interview, albeit a *de facto* requirement, creates an unnecessary burden on both individuals and states. CMS should amend 42 CFR 435.407(h)(1) to allow states to accept copies or notarized copies of documents unless there is some reason to suspect falsification.

- **CMS should allow for situations where documentation cannot be obtained despite best efforts**

There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. Among these are victims of hurricanes and other natural disasters whose records have been destroyed, and homeless individuals whose records have been lost. The interim rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, but it does not address the situation in which a state is unable to locate the necessary documents 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.

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<sup>5</sup> 20 CFR 416.1610(a)(1)

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but “ONLY ... in rare circumstances”. 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 recipient’s claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving their citizenship.

Fortunately, 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. CLASP urges CMS to use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

An analogous approach is found in the SSI program for an individual who cannot present any of the required documents. SSI allows such individuals, as proof of citizenship, to explain why they cannot provide the documents and to provide any information they do have.<sup>6</sup> CMS should adopt a similar approach for Medicaid applicants and recipients. Specifically, CMS should amend 42 CFR 435.407 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 under section 435.1008 if: (1) an applicant or current recipient, or a representative or the state on the individual’s behalf, has been unable to obtain sufficient 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 citizens can continue to receive the health care services they need.

CLASP appreciates your consideration of our comments and would be happy to meet with you to discuss them in further detail. We hope that as CMS reviews these and other comments, the interim rule can be amended to better protect the physical and mental health needs of some of the nation’s most vulnerable populations, including children in foster care and children with special needs adopted from foster care.

Sincerely,

Rutledge Q. Hutson  
Senior Staff Attorney

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<sup>6</sup> 20 CFR 416.1610

**Submitter :** Mr. Daniel Tainow

**Date:** 08/11/2006

**Organization :** Mr. Daniel Tainow

**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. Larry Rodick

**Date:** 08/11/2006

**Organization :** Planned Parenthood of Alabama, Inc.

**Category :** Health Care Professional or Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-378-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 Alabama, Inc., includes services areas in both Mississippi and Alabama. In our Mississippi health centers, we provide our clients with birth control, emergency contraception and pregnancy testing. While we do not accept Medicaid at our facilities in Mississippi, we do, by request, provide proof of pregnancy for those clients seeking Medicaid assistance.

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

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

Medicaid is essential to family planning services in the state of Mississippi. As of 2001, Medicaid expenditures in Mississippi totaled \$4.49 million for family planning services. With 17.1 percent of Mississippi women of reproductive age covered by Medicaid as of 2003, and 21.3 percent of women of that age group being uninsured at that time, it is clear that Medicaid is central to family planning in Mississippi. With 43.3 percent of total public family planning expenditures in the state attributable to Medicaid as of 2001, Medicaid is fundamental to women of reproductive age in need of reproductive health services.

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

The Medicaid Family Planning Waiver program in Mississippi is part of Early and Periodic Screening, Diagnostic and Treatment services. The waiver program makes medical exams, education, lab services, follow-up doctor visits and birth control available to women from 13 to 44 years of age. These services are provided to women with a family income at or below 185 percent of the Federal poverty guidelines. Under the Medicare family planning waiver 19,514 Mississippians received family planning services in 2004.

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, especially poor states like Mississippi, 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, including an estimated 600,000 Mississippians, applying for Medicaid will face the possibility of a gap in coverage while they are in the process of producing the required documentation. It should not be lost that the majority of these citizens will be low-income pregnant women, children, and other vulnerable Americans. Undoubtedly, this will result in delays in care, worsening health care problems and eventually placing a heavier burden on the health care system. This will have an especially negative impact on individuals in need of family planning services, cervical and breast cancer screening, and STI testing services. Some U.S. citizens who may get discouraged or are unable to produce the documents within the time allowed by the state will be denied coverage. Furthermore, because an active outreach program has not been implemented, many citizens are likely unaware of the documentation requirements and are not prepared to comply.

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

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

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

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

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

Attaining the required documents presents its own challenges. In Mississippi, the cost for obtaining a certified Long Form copy of one's birth certificate is \$12.00 for the certificate alone, with 7-10 business day processing period. To expedite the process to 3-5 business days requires a shipping charge of \$24. This process could be further complicated for Mississippi residents born on the Gulf Coast due to the widespread destruction of records as a result of Hurricane Katrina.

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. Enrollment in Mississippi Medicaid coverage requires filling out the appropriate paper work, which the state allows to be mailed to the regional Medicaid office. Mississippi allows mail-in enrollment to simplify the process and ensure that those eligible for coverage are able to gain access to coverage easily. This mail-in process also extends to the application for enrollment in family planning 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.**

Mississippi 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 9<sup>th</sup> 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, Mississippi is still bound by a proscriptive process that does not adequately allow it to respond to the unique needs of their population. In general, the hierarchy of document reliability that CMS chose creates a much larger burden than is necessary to implement section 6036. Specifically, there are several areas where CMS should amend the interim final rule.

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

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

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

## **Conclusion**

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

Thank you for your attention to these comments.

**Planned Parenthood of Alabama, Inc.**  
**Larry Rodick, President/CEO**

**Submitter :**

**Date: 08/11/2006**

**Organization :**

**Category : Health Plan or Association**

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-379-Attach-1.DOC



*Serving Suffolk, Westchester, Rockland and Putnam Counties*

August 11, 2006

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

**Re: Medicaid Citizenship Documentation Interim Final Rule  
71 FR 39214 (July 12, 2006)  
CMS-2257-IFC**

Dear Administrator McClellan:

Planned Parenthood Hudson Peconic (PPHP) is a nonprofit organization that provides a full range of reproductive health care services at its 13 medical centers in Suffolk, Westchester, Rockland, and Putnam counties in New York State. In 2005, PPHP provided family planning services, including contraceptive services, HIV and sexually transmitted infections testing and treatment, colposcopy, and other preventive health care to 38,849 clients in 69,760 visits to our centers. In addition, seven PPHP medical centers provided 6,233 prenatal care visits in 2005. More than 90% of PPHP patients have incomes at or below 200% of the federal poverty level. For many of our clients, PPHP is their only source of health care. Many of our patients rely on Medicaid or Medicaid waiver family planning programs to pay for their health care services, and we are very concerned that several provisions in the interim rules, if not changed, will cause countless numbers of otherwise eligible citizens from obtaining health care coverage.

We are concerned and disappointed that CMS has not acted to minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage. Our comments highlight six areas that CMS should modify in the final rule, including the information collection requirements of the interim regulations. As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries, and state and local Medicaid agencies. The requirement for originals and certified copies also calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring individuals to obtain and submit originals or certified

copies add to the time compliance will take. In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state or local offices to submit them. State and local agencies will have to meet with individuals, make copies of their documents, and maintain records, all of which take more time than the five minute estimate.

**1. Family planning waiver programs should be exempted from the citizenship and identity documentation requirements.**

Section 1115 family planning waiver programs are unique programs that should be exempted from the documentation requirements. Under this program, New York extends 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 family planning expansion programs, which have assisted low-income people who would otherwise have no source for family planning services.

The primary purpose of family planning waiver expansion programs is to reduce the number of unintended pregnancies, which in turn acts to reduce poverty and dependency on social services; improve health outcomes for both women and children and reduce the public cost of unintended pregnancy. Family planning waiver programs are extremely cost-effective in that they reduce the need for costlier health care associated with unintended pregnancy. The cost of providing coverage for family planning services through Medicaid waiver programs are far lower than the cost of providing pregnancy-related services to beneficiaries who, if they became pregnant, would be eligible for far more costly Medicaid-covered prenatal, delivery and postpartum care. A 2003 study commissioned by CMS to assess the impact of family planning waiver demonstration programs showed that in each of the states studied, family planning waiver programs resulted in significant savings for both state and federal government and caused a reduction in unintended pregnancies.<sup>[1]</sup>

The interim final rule—which in the preamble states: “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))--completely threatens the viability and impact of these programs by requiring individuals who receive these services to produce citizenship and identity documentation.

Enrollers who are implementing the interim rules are already reporting that otherwise eligible citizens are unable to enroll in New York’s family planning expansion program because they either cannot obtain the necessary documentation or cannot afford to obtain their documentation. 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 these successful and highly cost-effective programs by erecting unnecessary barriers to enrollment. We urge CMS to exempt family planning waiver programs from the documentation requirements.

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<sup>[1]</sup> Edwards J, Bronstein J and Adams K, “Evaluation of Medicaid Family Planning Demonstrations,” The CNA Corporation, CMS Contract No. 752-2-415921, Nov. 2003. *See also*, Alan Guttmacher Institute, “Medicaid: A Critical Source of Support for Family Planning in the United States,” April 2005.



**2. Documentation requirements should be changed to allow citizens to submit copies of documents.**

As recognized in the June 9 CMS guidance, New York State has successfully required documentation of citizenship and identity for years. However, the success of New York's system is based on its realistic requirements which include allowing applicants to submit copies of documents. New York State also allows for a wider range of documents to prove citizenship and identity.<sup>[2]</sup> CMS should expand the types of documents that can be provided and should allow copies in order to be more reflective of New York's successful system. If not changed, these new requirements will seriously undermine New York's long-standing system and threaten the well-being of otherwise eligible citizens who will be unable to produce required documents.

Allowing copies of documents will also aid in ensuring eligible citizens are not denied needed health care. It has been shown that easing application and recertification procedures aids in the enrollment and retention of persons in health programs. The interim rules place a critically important aspect of New York's recertification process at risk. New York allows for mail-in recertification, which eliminates the need for enrollees to appear at their local department of social services office. The original documentation places that policy at risk, as it is very unlikely people will be willing to place original copies of their documents into the mail. Moreover, it would be completely impractical to mail in proof of identity, such as a driver's license or school identification card.

Obtaining the required documents presents its own challenges and burdens. It costs thirty dollars to obtain a birth certificate from New York's Vital Records Registry, and \$45.00 if it is sought on an expedited basis. This also calls into question the time estimates for compliance. Many people—perhaps due to natural disasters, fire, flood or theft--do not have the required documents. This is a financial barrier that many citizens will find difficult, if not impossible to meet.

Not only is the requirement onerous, it is also unnecessary. Section 6036 of the DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. 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.

**3. Medicaid applicants or recipients under the age of 18 should not be required to submit photo identification.**

Provisions in the interim rule which require minors over the age of 16 to submit photo identification are unrealistic. Although many New York City-area schools may issue photo identification, this is not a common requirement in other regions of New York State. This

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<sup>[2]</sup> For an in-depth examination of New York's system, see Boozang P., Dutton M., Hudman J., "Citizenship Documentation Requirements in the Deficit Reduction Act of 2005: Lessons From New York," Kaiser Commission on Medicaid and the Uninsured of the Henry J. Kaiser Foundation, June 2006. The publication can be downloaded from: <http://www.kff.org/medicaid/7534.cfm>.

requirement will impose significant access issues for those minor citizens who do not have ready access to photo identification. In addition, although the interim rule does allow a parent or guardian to attest to the identity of a minor under the age of 16, this provision in itself will also prove unworkable for the many New York children that are living in informal arrangements with kin or friends. We urge CMS to broaden section 42 CFR 436.407(f) to allow for a broader range of documents--such as school records and report cards, athletic records, library cards, and baptismal or church records—to establish the identity of minors under the age of 18.

**4. Category of populations needing special assistance should be expanded.**

CMS should clarify that states must offer assistance to those citizens who are unable to obtain documents on their own behalf due to mental, physical or legal infirmity. 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, certain homeless individuals as well as Medicaid applicant and recipients under the age of 18, who are barred by New York law from obtaining a certified copy of their own birth certificate. CMS should erect a clear safety net for these vulnerable 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.

**5. Citizens should not be denied benefits while making a good faith effort to obtain documents.**

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

Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted. There is nothing in the DRA that requires a delay in providing coverage. Yet CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income 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 who, in good conscience, can not turn away patients in need of health care services.

While the statutory logic of this policy is unclear, the real-world consequences are 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, may experience significant delays in Medicaid coverage. Some U.S. citizens who get discouraged or cannot get the documents they need within the time allowed by the state will never get coverage.

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.

**6. CMS should allow states to grant good cause exemptions from documentation requirements.**

There are U.S. citizens who will not be able to produce the required documentation. States should have the discretion to grant good cause exemptions from the documentation requirements when there is no reason to believe the person is not a citizen.

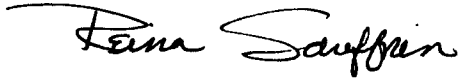
The rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not address the situation in which a state is unable to locate the necessary documents for such an individual. Nor does the rule address the situation in which an individual does not have "incapacity of mind or body" but his or her documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows for 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 unreasonably 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 U.S. citizens who simply will be unable to produce the required documents.

CMS can look to the regulations for the SSI program as an example of reasonable flexibility that maintains program integrity while providing adequate protections for some of our most vulnerable citizens. These rules 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, such as the creation of a good cause exemption when 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 vulnerable people who are U.S. citizens can receive the health care services they need.

We hope that you will find these comments helpful as you consider the best ways to improve the interim rule and thank you for your attention.

A handwritten signature in black ink that reads "Reina Schiffrin". The signature is written in a cursive style with a long horizontal line extending from the start of the word "Reina".

Reina Schiffrin  
President /CEO  
Planned Parenthood Hudson Peconic

**Submitter :** Mr. William Thomas

**Date:** 08/11/2006

**Organization :** Mr. William Thomas

**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.

Many thanks.

**Submitter :** Dr. Claibourne Dungy  
**Organization :** Ambulatory Pediatric Association  
**Category :** Health Care Professional or Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-381-Attach-1.PDF



# AMBULATORY PEDIATRIC ASSOCIATION

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August 11, 2006

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

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

Dear Sir/Madam:

I am writing today on behalf of the 2,000 experts in child health who are members of the Ambulatory Pediatric Association (APA). The APA is the national organization for general pediatricians and other child health experts who provide healthcare to millions of impoverished children across the United States of America. Members of the APA train the next generation of doctors, and perform research to improve the healthcare and health outcomes of children and adolescents. APA members direct healthcare programs in every state that serve vulnerable children and adolescents, including those on Medicaid and in foster care.

I write today to comment on the Interim Final Rule addressing Citizenship Documentation Requirements published on July 12, 2006 (the "rule") to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This section of the DRA requires Medicaid enrollees to document their citizenship and identity effective July 1, 2006. At least 28 million low-income children will be affected by this new requirement.

**The APA is deeply concerned that the rule will hurt children who actually qualify for Medicaid but who may have difficulty proving that they qualify. Therefore, as currently set forth below, the APA views these aspects of the rule as deeply concerning.**

## Newborns

The interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. Among the children subject to the documentation requirements are infants born in U.S. hospitals. These infants may not have birth records on file with state Vital Statistics agencies due to application or processing delays. The rule provides that in such circumstances, extracts of a hospital record created near the time of birth could be used as proof of citizenship, 42 CFR 435.407(c)(1), and if this "third level" of evidence is not available, a medical (clinic, doctor, or hospital) record created near the time of birth

could be used, but only in the “rarest of circumstances,” 42 CFR 435.407(d)(4). A health insurance record, including a record of Medicaid payment for the birth in a U.S. hospital, would not satisfy the interim final rule unless it was created at least 5 years before the initial application date, effectively nullifying the use of this evidence for infants born on or after July 1, 2005, the oldest of which will be turning age one as of July 1, 2006. 42 CFR 435.407(c)(2).

Under current law, infants born to U.S. citizens receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman’s household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). The preamble to the interim final rule states that, in such circumstances, “citizenship and identity documentation for the child must be obtained at the next redetermination,” (71 Fed. Reg. 39216), even though the state Medicaid agency paid for the child’s birth in a U.S. hospital and the child is, by definition, a citizen. In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant (subject to the 5-year bar on Medicaid coverage), or an undocumented immigrant, the preamble states that in order for the newborn to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, the state Medicaid agency paid for the child’s birth in a U.S. hospital and the child is by definition a citizen.

As discussed above, the preamble to the interim final rule takes the position that an applicant is not eligible for Medicaid until the documentation requirements have been satisfied. Newborns who must apply for Medicaid are subject to this same non-payment policy. Pediatricians treating newborns in these circumstances will be at risk for delay or denial of payment for the treatment of newborns who are low-birthweight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements. This risk is completely unnecessary because the state Medicaid agency has already made the determination, by paying for the birth that the child qualifies for Medicaid benefits. ***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.***

#### **Applicants and Reasonable Opportunity**

Under the DRA, the new citizenship documentation requirement applies to children who apply for Medicaid on or after July 1, 2006. 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.” No time period is specified, but the rule does state that the “reasonable opportunity” should be “consistent with the time allowed to submit documentation to establish other facets of eligibility for which documentation is requested.” 71 Fed. Reg. at 39225. The preamble to the rule, but not the rule itself, states that applicants “should not be made eligible until they have presented the required evidence.” 71 Fed. Reg. at 39216.

There is no statutory basis for this statement. The DRA is silent as to when federal matching funds will be available to states for Medicaid services furnished to applicants who establish their eligibility for Medicaid, but, despite good faith efforts, have not been able to obtain the required documentation. Moreover, documentation of citizenship, while a requirement for enrollment resulting from the DRA, is not a requirement for Medicaid eligibility.

If the rule is implemented, children who are U.S. citizens who meet all of the state’s eligibility criteria, but whose parents or guardians try, but fail, to obtain the necessary documentation, will be denied Medicaid coverage. As



an example, those children whose birth certificates were destroyed by Hurricane Katrina and have no other way to prove their citizenship will simply be denied coverage and may be in a position to never receive services under the program.

***The rule creates an untenable situation for child health providers for a number of reasons.*** First, child health providers may not receive Medicaid payment for services rendered until their patients' documentation has been assembled and presented to the state Medicaid agency. If child health providers request payment for services furnished to applicants in these circumstances, they may be deemed to be submitting false claims and subjected to significant legal liability. Second, the rule creates a bad policy result by increasing uncompensated care. Child health providers who try to balance a private pay population with patients paid for by public funds will find it even more difficult to provide services to the Medicaid population as their proportion of uncompensated care rises. If these providers decide instead to forego providing services to the Medicaid population, access to needed health care will decline.

***We urge CMS to revise 42 CFR 435.407(j) to clarify that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid.*** The reasonable opportunity period should then begin for applicants to obtain the documentation required by the rule. Additionally, we urge CMS to revise 42 CFR 435.1008 to clarify that, consistent with current CMS regulations at 42 CFR 435.914, eligibility for such applicants is effective the third month before the month of application through the expiration of the "reasonable opportunity" period. In the absence of this clarification, states and pediatricians will have no assurance that federal Medicaid matching funds are available for medically necessary covered services. Finally, the APA urges CMS to add children to the list of vulnerable groups that states must assist in accessing necessary documents.

### **Children in Foster Care**

The interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. Among the children subject to the documentation requirements are those in foster care, including those receiving federal foster care assistance under Title IV-E. It is unreasonable to expect foster children and foster parents who did not receive proper identification from foster care services to obtain such documentation.

Under current Administration for Children and Families (ACF) policy, state child welfare agencies must verify the citizenship status of all foster care children in the process of determining eligibility for Title IV-E payments. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship . . . and documentary evidence of the citizenship . . . claimed on the declaration." 71 Fed. Reg. at 39216. CMS should clarify that foster care children should be treated as current beneficiaries rather than applicants for this purpose. There is no language to this effect in either the rule itself or the preamble.

The DRA does not require that foster children be treated as applicants, and thus denied coverage. This CMS interpretation of the DRA creates unnecessary duplication of state agency effort and puts these children at risk of delayed Medicaid coverage. In fact, the DRA stipulates that the citizenship documentation requirement shall not apply to individuals who are eligible for Medicaid "on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented." Section 1903(x)(2)(C) of the Social Security Act. The receipt of Title IV-E payments is precisely such a basis of eligibility, yet CMS has elected not to exempt foster care children receiving such payments from the new documentation requirement. 71 Fed. Reg. at 39216. We urge you to revise 42 CFR 435.1005 to add children

eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

### **States' Inability to Locate Adequate Documentation**

The rule should not penalize legitimate Medicaid beneficiaries if states are unable to locate proof of identification or citizenship. Under the rule, the only individuals exempted from citizenship documentation requirements are Medicare beneficiaries and most SSI beneficiaries. There are U.S. citizens who will have as much, if not more, difficulty obtaining documentation of citizenship but for whom the rule still applies. Among these are victims of natural disasters whose records have been destroyed, and homeless individuals whose records have been lost. The rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not address the situation in which a state is unable to locate the necessary documents 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 may never qualify, and if such individuals are current beneficiaries, they will lose their coverage once their "reasonable opportunity" period expires.

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 will not 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. Again, the rule will deny coverage to some current Medicaid beneficiaries, even though the last resort of written affidavits has been made available by CMS: some current beneficiaries will not meet the rigorous standards necessary for the submission of these affidavits and will eventually lose their Medicaid coverage once the "reasonable opportunity" period ends.

### **Additional Burdens on Beneficiaries and States**

The rule states that applicants and beneficiaries may not use photocopies or even notarized copies of birth certificates or other documents, and that only originals or copies certified by the issuing agency will be accepted. 71 Fed. Reg. 39216. The utilization of paper, while especially burdensome on state governments, is in direct contravention with stated policy objectives of the federal government to move towards electronic means for data retention. In addition, the requirement for certified copies or originals is costly for Medicaid beneficiaries.

CMS also states that collecting and presenting documentation of citizenship and identity will only take beneficiaries 10 minutes, and that it will take states 5 minutes to obtain acceptable documentation, verify citizenship and maintain records (see "Collection of Information Requirements" at 71 Fed. Reg. At 39220). *On its face, this estimate appears to be grossly in error.*

Additionally, the requirement that states conduct a social security number match, which appears in the preamble, but not in the regulation, provides yet another hurdle for states and beneficiaries. Beyond the burden on states to collect and verify social security numbers, some beneficiaries may be subject to mistakes in the Social Security system, and thus be denied needed care purely as a result of bureaucracy. Also, children are not automatically given social security numbers. Social Security numbers are not issued until a parent of a child submits an application requesting a number. *Thus, states may lose the federal match for services rendered to children who may not yet have social security numbers but whose parents provide an affidavit as*

*to their identity.* This may unwittingly encompass many of the children that the Medicaid program is designed to serve.

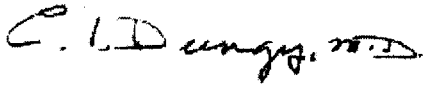
**Positive Aspects of the Rule**

The APA commends CMS for a number of provisions in the rule. First, use of the SDX system appears to be a positive aspect of the regulation that may make it easier to prove some Medicaid beneficiaries qualify. The addition of an affidavit allowed for purposes of establishing identity for children under 16 (42 CFR 435.407(f)) is another positive provision. It is also positive that CMS indicates that individuals may submit documents by mail or other means. Finally, the APA appreciates that presumptive eligibility is preserved under the rule.

**Conclusion**

The purpose of the DRA citizenship documentation requirements is to ensure that individuals receiving non-emergency Medicaid benefits are U.S. citizens or nationals or legal immigrants not subject to the five-year bar. Because the Medicaid population subject to these requirements is by definition vulnerable - the large majority are children under 18 in low-income families - documentation requirements that appear reasonable in an affluent population may have unintended effects when applied to Medicaid applicants and current beneficiaries. The rule acknowledges this reality with respect to Medicaid beneficiaries and many SSI recipients, but it does not effectively address the situation of most newborns, applicants, children in foster care, and those for whom documents are unavailable through no fault of their own. Unless serious revisions are made, a reduction in the accessibility and quality of care for the low-income children Medicaid was intended to protect will result.

Sincerely,



Sincerely,  
Claibourne I. Dungy, MD, MPH  
President

**Submitter :** Ms. Raquel Millman

**Date:** 08/11/2006

**Organization :** Ms. Raquel Millman

**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. Elizabeth Ungar

**Date:** 08/11/2006

**Organization :** Ms. Elizabeth Ungar

**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.

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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 :** Mr. Dennis Johnson  
**Organization :** The Children's Health Fund  
**Category :** Health Care Provider/Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-384-Attach-1.PDF



The Children's  
Health FUND

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 Children's Health Fund 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). CHF is a non-profit organization and designated as a 501(c)3 by the Internal Revenue Service. Since its inception in 1987, CHF has supported direct patient care to medically underserved children and families in both rural and urban areas. To date, our national network of child health programs have served over 350,000 children through 21 programs in 14 states. The most recent additions to our national network include three programs, New Orleans and Baton Rouge, LA, and Biloxi, MS, that were established to meet the need in communities ravished by Hurricanes Katrina and Rita. Because most of the children and families that access our programs depend on Medicaid for health insurance, and given our experience in treating hurricane survivors, we are uniquely qualified to comment on the new interim final rule that will shape how CMS implements the citizenship requirements of the DRA.

CHF is most concerned with Section 6036 of the DRA effective July 1, 2006 which requires U.S. citizens and nationals applying for or receiving Medicaid document 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 do not join the ranks of the uninsured. Our comments below highlight areas that CMS should modify in the final rule.

**Children in Foster Care**

The interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for Medicaid by virtue of being enrolled in federal Supplemental Security Income program. The Children's Health Fund is especially concerned that these requirements apply to foster care children, whose

citizenship is already documented by state welfare agencies. Children who are in the foster care system, or have been in the foster care system at some point, are subject to new citizenship documentation requirements even though state child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments.

In a large study of the health status of children entering foster care, on physical examination more than 90% had an abnormality in at least one body system; 25% failed vision screening; and 15% failed hearing screening. For children over 36 months of age, 15% verbalized or were suspected of suicidal ideation and 7% of homicidal ideation. (Chernoff et al., *Pediatrics*, 1995). Many of the run away children that CHF programs treat have had experience with foster care systems in their state. If foster care agencies could ensure that children stay enrolled in Medicaid, these children will have one less barrier to accessing care for chronic diseases.

### **Newborn Children**

The regulations state that a child born to a citizen woman whose birth is covered by Medicaid for reasons of being categorically needy is automatically enrolled in Medicaid. However, the preamble also makes a distinction between a child born to a citizen and a child born to an undocumented immigrant. A child born to an undocumented immigrant is not granted automatic enrollment into Medicaid, which was previously the policy of CMS and state Medicaid agencies. These newborn children are citizens by nature of being born in the country and new requirements would deny coverage for lack of paperwork when citizenship is clear. Given these circumstances, CHF recommends that CMS give the same consideration for all citizen children in granting automatic enrollment in Medicaid upon birth.

### **Section 435.1008 Exemptions**

CHF commends CMS for exempting SSI and Medicare beneficiaries from the documentation and identification requirements. CHF 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 past SCHIP enrollees who qualify for Medicaid. All children on a federal program where citizenship has already been determined should be exempted from these requirements.

### **Section 435.407(g) Special Populations**

#### *Homeless Persons*

Homeless individuals clearly fall under Section 435.407(g), special populations needing assistance, establishing that states must assist individuals in securing proper documentation. As providers of health care to homeless populations, documentation is often not readily available, nor do individuals have funds 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. State agencies must be compelled to abide by this rule to assist individuals who have a difficult time providing documentation and provide waivers for any fees for documentations for populations suffering financial hardship.

CMS must implement a provision to the rule to allow these special populations to access Medicaid coverage while waiting for documentation from the state. Section 436.407(i) allows that state a "reasonable opportunity" to gather documentation from a Medicaid applicant, however, Section 436.1004 and § 435.1008 establishes that states will lose their federal match (FFP) if expenditures are incurred while the state is establishing citizenship and identification. Surely a state trying to abide by a federal rule to establish documentation and identity should be allowed to bill for services that were provided with the premise of being reimbursed through Medicaid. If not, this will result in a huge burden for community health centers, small providers and charity care providers.

*Include disaster survivors in the definition of special populations*

Additionally, CHF urges CMS to include in the final rule an amendment to special populations to include persons who live or lived in federally declared disaster areas during the time of a man-made or natural disaster. After Hurricanes Katrina and Rita, survivors lost not only their homes and possessions but also important documentation, including citizenship and identification records. State agencies in affected states will see an increase in requests and may not be able to handle requests for information, depending on the level of harm to state agency records.

CMS must consider the plight of disaster survivors, who emerge with complicated health problems, and the ability of state agencies to provide aid, whether through direct assistance or tracking records proving citizenship and identification. CMS should exempt disaster survivors from these requirements.

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

Many state agencies already require individuals to prove citizenship, or document citizenship as recordkeeping. CMS should allow states to verify citizenship by cross referencing with agencies that handle food stamps, child support, corrections, juvenile detention, motor vehicle, veteran's affairs or child protective services.

In New York City, for example, city case workers must document all information shelter applicants present at the point of entry into the shelter system. These case workers should be able to easily help a family enroll in Medicaid if they do not have the proper documentation but are already receiving city, state or federal assistance. Linking data will make it easier for applicants to quickly get on Medicaid.


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,

A handwritten signature in black ink, appearing to read 'DJohnson', with a long horizontal flourish extending to the right.

Dennis Johnson  
Executive Vice President

**Submitter :** Ms. Marilyn Briskin

**Date:** 08/11/2006

**Organization :** Ms. Marilyn Briskin

**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 :** Richard Berner  
**Organization :** Richard Berner  
**Category :** Individual

**Date:** 08/11/2006

**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. Ophelia Reeder  
**Organization :** McKinley Community Health Alliance  
**Category :** Health Care Professional or Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-387-Attach-1.RTF

# McKinley Community Health Alliance

P.O. Box 1726  
Gallup, NM 87305

"It is the goal of the McKinley Community Health Alliance to affect change in systems (i.e. health care, schools, business, government, etc.) that perpetuate health, education, economic, and environmental disparities by engaging individuals and agencies to understand and address the underlying "root" causes of poverty/income inequity, institutional racism, and multi-generational trauma."

8 August 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-2257-IFC

To Whom It May Concern:

The McKinley Community Health Alliance is a working partnership of more than 100 citizen activists, educators, human service providers, and health-care workers from throughout McKinley County, New Mexico and the neighboring region. We are the comprehensive health council for the McKinley area. Over 75% of us / our citizens are Native American.

**We implore you to amend the new documentation requirements of the Deficit Reduction Act to allow states to accept tribal enrollment cards and Certificates of Degree of Indian Blood as legitimate proof of U.S. citizenship and identity for Native Americans.**

- Per capita expenditures for Indian health care are approximately one third that for other Americans.
- Health indicators for Indian people in the United States are consistently much worse, in almost every area, than those for the general population.
- Here in McKinley County the Native population is largely poor, rural, and lacking in basic infrastructure (e.g. running water, telephones, paved roads).
- Ours has been a "health professional shortage area" since that designation was created.

**The DRA, as it stands, creates further barriers to Medicaid enrollment for First Americans.**

It has already increased the administrative burden on states, tribes and the Indian Health Service to obtain other types of evidence of citizenship, especially for elders. It has the potential to increase costs for uncompensated care in our struggling community hospital, and to reduce revenues to the chronically underfunded Indian Health Service.

**We fear that the dramatic health disparities we are working to address will only widen.**

Please authorize the use of tribal enrollment cards and CDIB cards as documents proving U.S. citizenship for Native Americans.

Sincerely,

*Ophelia Reeder*

On behalf of the McKinley Community Health Alliance  
Ophelia Reeder, Coordinator

**Submitter :** Stephen McConnell  
**Organization :** Alzheimer's Association  
**Category :** Consumer Group

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-388-Attach-1.DOC



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

August 10, 2006

Dear Mr. McClellan:

*Re: CMS-2257-IFC, Interim Final Rule regarding Citizenship Documentation Requirements*

The Alzheimer's Association appreciates the Department's decision that states will not be subject to denial of federal financial participation (FFP) for Medicaid based on failure to document citizenship for applicants and beneficiaries who have Medicare or have (or are eligible to have) Medicaid because they receive Supplemental Security Income (SSI). This decision exempts the majority of people with Alzheimer's disease and other dementias from the need to prove their U.S. citizenship at the time of application or recertification for Medicaid.

The Alzheimer's Association also appreciates the Department's decision to require states to assist Medicaid applicants and beneficiaries with mental impairments to document their U.S. citizenship. The Association suggests that this requirement would be clearer if it were reworded to require states to "assist individuals who, because of a mental or cognitive impairment, are unable to comply with the requirement to provide satisfactory documentary evidence."

The Alzheimer's Association remains concerned about the impact of the citizenship documentation requirements on Medicaid applicants and beneficiaries with Alzheimer's disease and other dementias in the 209(b) states (CT, HI, IL, IN, MN, MO, NH, ND, OH, OK, and VA) that do not automatically provide Medicaid to individuals who receive SSI. The Interim Final Rule does not exempt these individuals from the documentation requirements. The Alzheimer's Association requests that the Department exempt these individuals from the requirement or, at a minimum, strongly encourage the 209(b) States to do so.

The Alzheimer's Association is also concerned about the impact of the citizenship documentation requirements on people with Alzheimer's disease and other dementias who might be eligible for Medicaid in particular states for any of the following reasons: 1) they receive state supplemental income payments; 2) they have income above the SSI benefit level but below the Federal Poverty Level; 3) they have income above Medicaid levels but are "medically needy" because of their medical expenditures; 4) they are eligible for SSDI and are in the 2-year waiting period for Medicare; or 5) they are eligible for SSI and are in the 5 month waiting period before receiving payments. Again, the Alzheimer's Association requests that the Department exempt these individuals from the citizenship documentation requirements or, at a minimum, strongly encourage the relevant states to do so.

the compassion to care, the leadership to conquer



August 11, 2006

2

The Department has requested comments regarding whether the documents that can be used to prove citizenship should be limited to only Tier 1 and Tier 2 documents. The Alzheimer's Association recommends against limiting the acceptable documents to only those now listed in Tier 1 and Tier 2. As you know, New York State has required documentation of citizenship for Medicaid applicants since the mid-1970s and allows a wide variety of documents, even beyond the documents allowed in all four tiers in the Interim Final Rule. New York state officials report that the use of a wide variety of documents has not resulted in problems in ensuring program integrity.<sup>1</sup>

The Interim Final Rule requires that states accept only original documents or copies certified by the issuing agency as proof of U.S. citizenship. This requirement will be burdensome for applicants, beneficiaries, issuing agencies, and states. The Alzheimer's Association suggests that states be allowed to accept copies of these documents. New York State has accepted copies for over 30 years, and state officials report that this practice has not resulted in problems.<sup>1</sup>

Thank you for your consideration of these comments. If you have questions about the comments, please call Bonnie Duffy at (202) 638-8661, or Katie Maslow at (202) 638-8667.

Sincerely,



Stephen McConnell  
Vice President  
Advocacy & Public Policy

---

<sup>1</sup> Boozang P, Dutton M, and Hudman J. *Citizenship Documentation Requirements in the Deficit Reduction Act of 2005: Lessons from New York*. (Washington DC: Kaiser Commission on Medicaid and the Uninsured, June 2006).

**Submitter :** Ms. Sarah Apfel  
**Organization :** Ms. Sarah Apfel  
**Category :** Individual

**Date:** 08/11/2006

**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;
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- (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. Nancy M. Schlichting  
**Organization :** Henry Ford Health System  
**Category :** Hospital

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE AND MEDICAID SERVICES  
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. Ophelia Reeder  
**Organization :** McKinley Community Health Alliance  
**Category :** Health Care Professional or Association

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2257-IFC-391-Attach-1.DOC

# McKinley Community Health Alliance

P.O. Box 1726  
Gallup, NM 87305

"It is the goal of the McKinley Community Health Alliance to affect change in systems (i.e. health care, schools, business, government, etc.) that perpetuate health, education, economic, and environmental disparities by engaging individuals and agencies to understand and address the underlying "root" causes of poverty/income inequity, institutional racism, and multi-generational trauma."

8 August 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-2257-IFC

To Whom It May Concern:

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**We fear that the dramatic health disparities we are working to address will only widen.**

Please authorize the use of tribal enrollment cards and CDIB cards as documents proving U.S. citizenship for Native Americans.

Sincerely,

*Ophelia Reeder*

On behalf of the McKinley Community Health Alliance  
Ophelia Reeder, Coordinator

**Submitter :** Ms. Stephanie Sundine  
**Organization :** Ms. Stephanie Sundine  
**Category :** Individual

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

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  - (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. Valerie Bogart  
**Organization :** Selfhelp Community Services, Inc.  
**Category :** Home Health Facility

**Date:** 08/11/2006

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment



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

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

**Submitter :** Ms. Melissa Stafford Jones  
**Organization :** CAPH  
**Category :** Health Care Provider/Association

**Date:** 08/11/2006

**Issue Areas/Comments**

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-394-Attach-1.DOC



CALIFORNIA ASSOCIATION OF PUBLIC HOSPITALS AND HEALTH SYSTEMS

August 11, 2006

Mark B. McClellan, M.D., MPH  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
PO Box 8017  
Baltimore, MD 21244-8017

**Re: Comments for CMS-2257-IFC  
Medicaid Citizenship Verification Interim Final Rule  
71 Fed. Reg. 29214 (July 12, 2006)**

Dear Dr. McClellan:

The California Association of Public Hospitals and Health Systems (CAPH) appreciates the opportunity to provide the following comments on the interim final rule, published in the Federal Register on July 12, 2006, at Vol. 71, No. 133. The interim final rule amends Medicaid regulations to require Medicaid applicants and current beneficiaries to provide proof of U.S. citizenship and identity.

California's public hospitals play a critical role in providing care for low income and vulnerable patients, including Medi-Cal beneficiaries. These 21 hospital systems form the core of the safety net in California, providing inpatient and outpatient services, operating burn and trauma centers, and training half of the doctors in the state.

As you know, the Centers for Medicare and Medicaid Services (CMS) and the State of California recently negotiated a five year Medi-Cal Hospital/Uninsured Care Demonstration project, commonly referred to as the hospital financing waiver. Under the new waiver, public hospitals rely on federal payments for services delivered to Medi-Cal patients as an extremely important source of revenue. Maintaining enrollment of eligible persons in Medi-Cal is therefore critical to the successful operation of the waiver going forward and to public hospital financial stability.

CAPH shares the goal that individuals who are US citizens can receive the Medi-Cal benefits to which they are entitled. Our members are concerned, however, that many people may be unable to obtain the necessary documentation to receive Medi-Cal benefits. The interim final rule which would limit acceptable documentation would therefore create the unintended consequence of denying Medi-Cal enrollment to many low-income Californians who would otherwise meet all eligibility requirements.

We therefore request that CMS allow for flexibility in the rules to prevent otherwise eligible Medi-Cal beneficiaries who are U.S. citizens from being denied coverage. Public hospitals in California operate health systems, with primary care clinics, specialty care services, and other

important services that help patients with chronic conditions and other illnesses manage their conditions. Participation in the Medi-Cal program helps these patients obtain access to these services, which provide cost-effective, preventive care that reduces acute episodes and emergency room utilization. If patients are not able to participate in the Medi-Cal program because they cannot meet the documentation requirement in the interim final rule, the patients will still need and receive health care at public hospitals; however, the care is more likely to be costly emergency and inpatient care when the patients are very ill.

As an example of the effectiveness of preventive care for Medi-Cal patients, public hospital clinics across California are providing chronic disease management for patients with diabetes, many of whom are Medi-Cal beneficiaries. Clinicians and other health educators at the clinic use databases to track patients' blood sugar levels and other health indicators and call those with high levels for clinic visits before they experience an acute episode and require emergency care. Clinic workers also work with patients to help them make healthy choices about diet and exercise and feel more in control of their diabetes. Together, these disease management practices can reduce costs and keep patients healthier.

Given the benefits of the Medi-Cal program to public hospitals and their patients, CAPH supports the specific recommendations by the National Association of Public Hospitals and Health Systems (NAPH) to ensure flexibility when the final rule is implemented. In summary, these comments are listed below:

- CMS should remove arbitrary restrictions placed on the use of certain documents, including: the requirement that affiants have "personal knowledge" of the events establishing an applicant's or recipient's claim of citizenship, the prohibition on the use of affidavits by naturalized U.S. citizens, and the five year restriction on the use of certain documents;
- CMS should make it easier for U.S. citizens to obtain necessary documentation by clarifying the ability of states to claim federal financial participation ("FFP") for costs associated with obtaining documents on behalf of Medicaid recipients or applicants and the ability of providers to obtain documents on behalf of Medicaid recipients or applicants;
- CMS should broaden its definition of "special populations needing assistance" to include other vulnerable patients who have unique circumstances, such as homelessness, that create special challenges. CAPH notes that this group is intended to be included in the "special populations needing assistance," as it states in the preamble to the interim final rule. CAPH proposes expanding the definition of homeless population to include those with a history of homelessness, as they are likely to face similar challenges in obtaining documentation.
- The final rules should ensure that new applicants who are otherwise Medicaid eligible should not be forced to wait for coverage until their citizenship verification has been finalized;
- CMS should require states to utilize electronic data matches as a way to speed compliance with citizenship verification and to lessen the burden on Medicaid recipients and applicants. (We note that California is already pursuing such an effort); and

- CMS should ensure that Title IV-E foster children and newborn infants are not denied Medicaid coverage.

In addition, CAPH proposes that CMS expand the list of acceptable documents to include census records; a doctor's record of post-natal care; early school record; and a family's bible record. The U.S. Department of State allows individuals seeking a U.S. passport to provide these documents when no others are available. CAPH encourages CMS to follow similar guidelines for documents needed to establish proof of citizenship for Medicaid eligibility.

CAPH believes that the inclusion of these recommendations will help ensure that U.S. citizens in California who are eligible for Medi-Cal will be enrolled and receive the benefits to which they are entitled. In so doing, public hospitals and other safety net institutions in California who rely on federal Medi-Cal payments will be able to continue providing high quality care to those in need.

We appreciate the opportunity to comment on the interim final rules. If you have any questions, please contact Erica Murray at 510-874-7117 or [emurray@caph.org](mailto:emurray@caph.org).

Sincerely,



Melissa Stafford Jones  
President and Chief Executive Officer

**Submitter :** Dr. Bruce Goldberg  
**Organization :** Oregon Department of Human Services  
**Category :** State Government

**Date:** 08/11/2006

**Issue Areas/Comments**

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

Provisions of the Interim Final Rule with Comment Period

See attached letter from Oregon Department of Human Services regarding Medicaid Citizenship Documentation Provisions of the Interim Final Rule with Comment Period, Regulatory Impact Statement 71 Federal Register 39214 (July 12, 2006); File Code CMS-2257-IFC.

In the event of transmission problems Oregon Department of Human Services is mailing a hard copy to the address identified in the federal register.

CMS-2257-IFC-395-Attach-1.DOC

CMS-2257-IFC-395-Attach-2.DOC



# Oregon

Theodore R. Kulongoski, Governor

## Department of Human Services

Office of the Director  
500 Summer Street NE, E-15  
Salem, OR 97301-1097  
Voice (503) 945-5944  
FAX (503) 378-2897  
<http://www.oregon.gov/DHS/>

August 10, 2006



Mark B. McClellan, M.D., Ph.D  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attn: CMS 2257-IFC  
P.O. Box 8017  
Baltimore, Maryland 21244-8017

**RE: Medicaid Citizenship Documentation Provisions of the Interim Final Rule with Comment Period, Regulatory Impact Statement 71 Federal Register 39214 (July 12, 2006); File Code CMS-2257-IFC**

Dr. McClellan:

Thank you for providing the opportunity to comment on the Interim Final Rule regarding the citizenship requirements stemming from Section 6036 of the Deficit Reduction Act (DRA). Oregon also appreciates the efforts that have been made by the Centers for Medicare and Medicaid Services (CMS) to allow states to participate in conference calls with federal staff to address issues and receive clarification regarding the Act. This willingness on the part of CMS to solicit and consider suggestions for changes or clarifications to the rule will increase the effectiveness of states' implementation of the requirements while allowing the greatest possible level of flexibility afforded under the statute.

Oregon respectfully submits the following comments regarding implementation of the rules contained in Section 6036.

### **General clarification and guidance**

These comments cover a number of subjects that apply to the broad sense of the rule.

#### **Equitable application of reasonable opportunity period:**

- The rule creates inequity between Medicaid recipients and applicants. Although both groups are given a "reasonable opportunity period" to provide citizenship and identity documentation, they are not treated the same during that period. *Recipients* continue to receive medical assistance during the reasonable opportunity period. *New applicants* do not receive medical assistance during this period.

*Comment:*

- Oregon requests that applicants who are otherwise eligible for medical assistance be afforded the same treatment as recipients, and receive medical assistance during the reasonable opportunity period, with federal matching funds provided.

**Legalized Alien/Alien not lawfully admitted 42 CFR 440.255:**

- It is not clear whether the rules allow an applicant who meets all eligibility criteria for the Medicaid program except the ability to document citizenship to receive emergency medical assistance under 42 CFR 440.255, known in Oregon as CAWEM.

*Comment:*

- Oregon requests clear guidance from CMS as to whether undocumented *citizens* are eligible to receive emergency medical assistance under Title XIX. If citizens are eligible for emergent medical assistance, Oregon seeks clarification as to whether this is a mandatory coverage group or an optional coverage group. Oregon considers babies born under these circumstances to be, by birthright, citizens of the United States and therefore will continue to provide medical care under Medicaid to these babies for the first 12 months of their lives, as currently allowed.

**Use of original documents:**

- The majority of Medicaid applications in Oregon are mailed in for processing. In order to comply with the CMS standard of first seeking higher tiered evidence, Oregon citizens would be mailing “originals or copies certified by the issuing agency.” These documents may include a passport, a birth certificate, a U.S. Citizen I.D. card, a driver license and a Certificate of Degree of Indian Blood. These are vital and sensitive documents to which individuals may need access on a regular basis.

*Comment:*

- The Act does not require the use of “originals or certified copies.” Oregon requests that CMS allow states to accept copies, rather than originals, of these types of documents, given that states would have the ability to confirm the information contained therein.

**Family planning waiver:**

- The citizenship requirement for individuals seeking family planning services may lead to a delay in providing those services. Potential delays may increase the likelihood of unintended pregnancies and increase the cost of Medicaid services offered under the Oregon Health Plan and the Citizen/Alien Waived Emergency Medical program.

*Comment:*

- Oregon requests that individuals seeking assistance under Oregon’s family planning waiver be exempt from the citizenship requirement.

**Use of affidavits:**

- It is not clear in the rule whether individuals providing affidavits must demonstrate their citizenship and identity in the same manner as prescribed by the rule for Medicaid recipients and new applicants.

*Comment:*

- Oregon requests clarification of the citizenship and identity document requirements for individuals providing affidavits for others.



### **Use of the term “affidavit”:**

- As used in the rule, the term “affidavit” is inappropriate.

#### *Comment:*

- Oregon requests the rule not use the term “affidavit” in describing what more clearly is a “declaration.” Affidavit has specific legal constructs, which are unnecessary and burdensome for these purposes

### **Three-year eligibility gap:**

- It is the stated intent of the rule that once citizenship and identity are established and recorded in an individual’s permanent case file, they should not need repeating unless *later evidence* raises the question of citizenship. Adding the three-year gap in eligibility caveat does nothing to increase either the validity or reliability of the previously established documentation, nor does it increase the likelihood a state may uncover through this process conflicting evidence to the previous determination.

#### *Comment:*

- Oregon requests CMS to withdraw this caveat, which is not found in law and places an extensive and undue burden on states.

### **Five-year record requirement:**

- The effect of the five-year requirement is to exclude use of documentation that may be issued within the five-year period, but is based on records of long standing with the issuing entity. Primarily, the documents subject to the requirement are or would be issued by a government entity or hospital. In many instances, the date of issuance is not the date of origination.

#### *Comment:*

- Oregon requests every reference to the five-year requirement as it pertains to allowable evidentiary documents be removed. The five-year period is not found nor suggested in the Act, and compliance would not be administratively cost-effective or efficient.

## **Implementation concerns**

### **Auditing procedures:**

- The rule does not include information about audit, oversight and monitoring procedures. This lack of information prevents states from identifying and complying with expectations from the earliest stages of implementation.

#### *Comment:*

- Oregon requests that CMS expedites the development of its audit, oversight and monitoring procedures, and shares those procedures with states as they are developed.

### **Implementation cost estimates:**

- Preliminary estimates by CMS of the time and effort that will be spent on compliance by clients and the states are unreasonably low and misleading in regard to the burden the rule places on states.

#### *Comment:*

- Oregon requests that CMS amends these estimates to more accurately reflect the resource, training and systems burden of this mandate, and puts into context the recommendations being made by Oregon. CMS has the opportunity to act in the spirit of the federal-state partnership intended to share the responsibility of providing health care for certain low-income children, families and individuals, and for individuals who are aged and disabled.

### **Data matches:**

- As written, the rule for conducting data matches needs to be clarified to allow the state the maximum amount of flexibility afforded under the law.

#### *Comment:*

- Oregon requests that CMS outline acceptable principles and/or standards for states to use in assessing the allowability of certain database applications. Rather than specifying in rule which particular database can be used, Oregon requests CMS to provide acceptable standards of dependability. This approach would enable the states to have flexibility within the intent of the rule regarding allowable electronic transmission of data such as trading computerized databases, sending faxes and permitting increased reciprocity among states.

## **Exemptions from citizenship and identity requirements**

### **Additional groups exempt from citizenship and identity requirements:**

- The rule creates an inequity in the groups of people who can qualify for exemptions from the citizenship documentation requirements by including Medicare and Supplement Security Income (SSI) recipients, but not including comparable groups.

#### *Comment:*

Oregon recommends CMS approve the following groups of individuals as meeting the citizenship and identity requirements.

- **SSDI (Title II, Disability Benefits) recipients:** These individuals are subject to the same verification provisions as those required of Medicare recipients. Therefore, Oregon requests that all recipients of SSDI be afforded the same exempt status as Medicare recipients.
- **Former recipients of SSI:** Oregon requests CMS include these individuals in the same exempt group as current recipients. This would include clients deemed eligible for Medicaid based on their Disabled Adult Child (DAC) and/or Pickle status.
- **Foster care and subsidized adoption recipients:** Verification of citizenship is a requirement for this population group and should be sufficient in fulfilling the intent of the law. Oregon requests that an exemption for this group be added to the rule.
- **Infants through Safe Haven/Safe Surrender/Baby Moses settings:** Mothers in crisis may safely relinquish their babies to a safe haven (e.g., birthing clinic, doctor's office, fire department, hospital, or police or sheriff office) where the baby will be protected and provided medical care. Because relinquishing parents are not required to provide personal information, little may be known about these infants. Oregon requests that an exemption for this group be added to the rule.

## Document requirements

### Expanding acceptable documents:

- The list of acceptable documents for demonstrating citizenship and/or identity does not appear to follow a consistent rationale and needs to be expanded.

#### *Comment:*

Oregon recommends CMS add the following documents to those that may be used to establish citizenship *and* identity.

- **Certificate of Degree of Indian Blood (CDIB) and/or tribal enrollment cards issued by a federally recognized tribe:** Oregon asks that the Certificate of Degree of Indian Blood (CDIB) and/or tribal enrollment cards be added to Tier 1 as an acceptable form of citizenship *and* identity. All branches of the federal government and governmental entities have long recognized their unique government-to-government relationship with federally recognized tribes. Congress has recognized that a special relationship between the United States and Indian tribes exists in the form of treaties, such as the Treaty of Amity (known as the Jay Treaty of 1794), individual treaties with Indian tribes, intergovernmental agreements, and status and court findings. In addition, Congress granted citizenship in 1924 to members of federally recognized tribes. Enrollment records of federally recognized tribal governments are highly reliable, comprehensive and extremely accurate. Oregon requests CMS deem documents issued by a federally recognized tribe (either CDIBs or enrollment cards) as satisfactory evidence of identity and citizenship.

Oregon recommends CMS add the following documents to the list of documents that may be used to demonstrate citizenship.

- **State Medicaid-paid claims for births and copies of birth records submitted to the State Vital Records:** These documents are reliable records and should be accepted as proof of citizenship.
- **Reasonably established records of births:** Children born in the Oregon where a record of birth is reasonably established should be considered to have met the burden of proof for citizenship.
- **Social Security cards:** Oregon requests clarification of the CMS rationale for not accepting Social Security cards as proof of citizenship or legal immigration status.

Oregon recommends CMS add the following documents to the list of documents that may be used to establish identity.

- **Voter registration cards:** Voter registration cards, as government-issued documents, should be considered to represent reliable proof of identity.
- **Birth certificates, immunization records or other hospital or clinic records:** When these types of records contain all necessary information (especially for children under 16), they should be considered acceptable documents for identity.
- **Court order for removal of a child:** Oregon believes that in the circumstance of a child's court order for removal, the related court documents are absolute proof of identity.
- In addition, Oregon requests that CMS develop a process to work with states in consideration of additional documents (citizenship and/or identity) not yet recognized.

Each of these recommendations, if adopted, would afford Oregon and other states the ability to responsibly and effectively implement Section 6036 of the DRA and the subsequent rules while reducing the administrative burden.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Goldberg". The signature is written in black ink and is positioned to the left of the typed name.

Bruce Goldberg, M.D.  
Director

**Submitter :** Ms. Hope Carr

**Date:** 08/11/2006

**Organization :** Ms. Hope Carr

**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 :** Texas Health and Human Services Commission

**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.

**Regulatory Impact Statement**

Regulatory Impact Statement

See Attachment.

CMS-2257-IFC-397-Attach-1.PDF



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS  
EXECUTIVE COMMISSIONER

August 7, 2006

ACTION

MEMORANDUM FOR THE EXECUTIVE COMMISSIONER

THROUGH: Anne Heiligenstein  
Deputy Executive Commissioner for Social Services

Linda Franco  
Associate Commissioner for Family Services

FROM: Jennifer Mathys  
Director for Policy and Training

SUBJECT: Interim Final Rule Comments, Medicaid Citizenship Documentation  
Requirements

Purpose

To request your approval to submit the attached comments on the Centers for Medicare and Medicaid Services (CMS) interim final rule on the Medicaid citizenship documentation requirement. Approval is needed by close of business August 10, 2006 to meet the CMS August 11, 2006, deadline.

Background/Summary

CMS published the interim final rule for the citizenship and identity documentation requirements for Medicaid eligibility in the *Federal Register* on July 12, 2006. The final due date for comments is August 11, 2006.

Discussion

The Office of Family Services met with the Health and Human Services Commission (HHSC) Office of General Counsel and the Department of Family and Protective Services (DFPS) to prepare comments on the interim final rule. The comments include the sections of the rule that

Action Memorandum for the Executive Commissioner  
August 7, 2006  
Page 2

the Texas HHSC supports and sections of the rule that are administratively cumbersome and adversely impact citizens' ability to access Medicaid benefits.

**Recommendation**

The Office of Family Services recommends that the comments be approved and the attached letter to Mark B. McClellan, M.D., Ph.D be signed and returned to Office of Family Services for submission to CMS.

**Executive Commissioner's Decision**

Approve	_____	Disapprove	_____
Modify	<u>AW 8/10/06</u>	Needs More Discussion	_____
Pend for Future Consideration	_____		

cc: Chris Traylor, Chief of Staff

see modifications to the letter.

AW





TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS  
EXECUTIVE COMMISSIONER

August 11, 2006

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

Dear Dr. McClellan:

The Texas Health and Human Services Commission (HHSC) submits the attached comments in response to the Centers for Medicare and Medicaid Services' (CMS) interim final rule regarding the Medicaid Program: Citizenship Documentation Requirements (CMS-2257-IFC).

HHSC recognizes the importance of Section 6036 of the Deficit Reduction Act of 2005 and the effort made by CMS to craft interim final rules. Because of the significant impact on the state's Medicaid population, HHSC offers comments and recommendations to help ensure a successful implementation process.

Thank you for the opportunity to provide comments. HHSC is committed to working with CMS for a successful implementation and looks forward to the final regulations.

Please let me know if you have any questions or need additional information. Anne Heiligenstein, Deputy Executive Commissioner for Social Services, serves as the lead staff on this matter and can be reached at (512) 424-6620 or by email at [Anne.Heiligenstein@hhsc.state.tx.us](mailto:Anne.Heiligenstein@hhsc.state.tx.us).

Sincerely,

A handwritten signature in cursive script, appearing to read "Albert Hawkins".

Albert Hawkins

Attachment

**Texas Health and Human Services Commission  
Comments on Deficit Reduction Act of 2005 (DRA), Section 6036  
Improved Enforcement of Documentation Requirements**

**Department of Health and Human Services (DHHS), Centers for Medicare and Medicaid Services (CMS), Medicaid Program; Citizenship Documentation Requirements, Interim Final Rule, Comments: File Code CMS-2257-IFC**

I. Background

Implementation Conditions/Considerations

Texas agrees with the conclusion that Supplemental Security Income (SSI) recipients and Medicare beneficiaries are not required to provide proof of citizenship and identity, since citizenship and identity were established when individuals obtained SSI or Medicare entitlement or enrollment. The State Data Exchange (SDX) and Wired Third Party Query/State On-Line Query data exchanges with the Social Security Administration are sufficient evidence of citizenship and identity. Consideration is needed for allowing receipt of Social Security Disability Insurance (SSDI) as meeting the requirement.

Foster children should be categorically excluded from the citizenship verification requirements in HHS guidance to the DRA.

- The foster care population is one of the most vulnerable and fragile in the entire system: the children often come into care because they are removed in an emergency, which means they will not be in possession of necessary documents; the children have additional health care needs, many of which are immediate by virtue of their very reason for coming into care, abuse or neglect; foster children are often young and unable to provide documents; parents of children who have been removed are often uncooperative. The Secretary should extend recognition of special, vulnerable populations to foster children: in construing Subsection (i)(22), the Secretary reads "aliens" to refer to "individuals" because of a scrivener's error. In doing so, the Preamble to the regulations states: "To adopt the literal reading of the statute could result in Medicare and SSI eligibles, a population which are by definition either aged, blind, or disabled, and thereby most likely to have difficulty obtaining documentation of citizenship, being denied the availability of an exemption which we believe the Congress intended to afford them." Congress left open the question of whether foster children should be exempted and for all the reasons enumerated above, they should.
- The foster care population is not in a position to defraud the Medicaid system. The children who receive Medicaid benefits by virtue of their placement in foster care have essentially no control over whether they are removed from home, when they are removed from their homes, or where they are ultimately placed. They do not actually "apply" for benefits, as that term is commonly understood. They should not, therefore be made to undergo the same process as individuals who apply for benefits or have applied for benefits in the past using what is commonly understood to be an "application" rather than inclusion by virtue of foster care placement.

- The citizenship verification requirements apply by their terms to “an individual who declares under Section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits....” Foster children do not and should not make such a declaration.
- Regulations promulgated pursuant to the DRA should also reflect longstanding recognition of the special circumstances of the foster care population. Federal law has heretofore given effect to the fragile nature of the foster care population by not requiring a separate Medicaid application. To do so now jeopardizes the children’s already fragile health and is inconsistent with other federal law. *See* 42 U.S.C. § 1396a(a)(10)(i)(I).
- The Secretary should exercise the discretion to exempt certain populations under Section 3145 of the Act and craft an exemption for foster children. The Act gives the Secretary the authority to exempt individuals “on such ... basis as the Secretary may specify under which satisfactory evidence of citizenship or nationality had been previously presented.” Foster children fit within such an exemption because their citizenship status must ultimately be verified for FFP.

A Medicaid agency must provide Medicaid benefits to a child who is considered categorically needy based on the child’s mother eligibility and receipt of Medicaid on the date of the child’s birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible for one year so long as the woman remains eligible as categorically needy and the child is a member of the woman’s household. CMS states that citizenship and identity documentation for the child must be obtained at the next redetermination of eligibility. In order for a pregnant woman to be determined and remain eligible for Medicaid in Texas, they must be a Texas resident. In order for a provider to receive a Texas Medicaid payment for the birth of a child, they must enroll in the Texas Medicaid Program. Texas only enrolls in the Texas Medicaid Program providers who are licensed to practice in the United States (US). Therefore, Texas Medicaid payment for a birth is verification that the child is a U.S. citizen. The child’s status as a citizen does not change after the one-year period of categorically needy Medicaid coverage ends. Therefore to require this documentation again is burdensome and adds to the administrative costs.

CMS asked for comments and suggestions on electronic data matches with governmental systems of records that contain reliable information about citizenship and identity. Texas supports option at 435.407(e)(10) and appreciates allowing discretion for states to determine the accuracy of cross matches with Federal or State governmental agencies.

Historically, CMS has not been prescriptive on state documentation requirements. The Deficit Reduction Act (DRA) does not specify documents must be originals or certified copies. It is an undue burden on applicants, recipients, and Medicaid agencies to require documents to be the original or certified copies. There may be a cost to individuals to obtain certified copies, if an original is not available. Also, the interim final rule does not require an interview; however, imposing the requirement that only original and certified copies of documents are acceptable will result in increasing interviews. Many individuals are reluctant to mail original or certified copies of documents. The anticipated increase in face-to-face contacts from individuals who will only provide original documents or certified copies in person is a significant workload impact on

staffing. Even though Federal Financial Participation (FFP) is available for administrative costs at the program administration match rate, states incur costs for the administrative expenses. The interim final rule needs to merely direct that states obtain accurate information on citizenship and identity rather than being overly prescriptive on how accuracy is determined.

### Compliance

Please explain the methodology CMS will use to review implementation of Section 6036 of the DRA. How will CMS monitor the extent that states are obtaining primary evidence?

The requirement on eventually requiring states to match files for individuals who only have third or fourth levels of evidence, and possibly the first and second levels, is contrary to the requirement that this is a one-time activity. This also adds significant administrative costs for states and CMS to build new interfaces that is not required by the DRA provision. Texas recommends that CMS build a national database, states submit eligibility files, and CMS returns the documentation on citizenship and identity.

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

Texas recommends allowing permission to use the "preponderance of evidence" in situations where extensive investigation has been done, all efforts indicate citizenship, but the specified documents are non-existent.

Texas also recommends allowing tribal enrollment records that are extremely accurate to document citizenship. This would allow older Native American recipients who may have been born at home and do not have birth certificates, do not have enough work quarters to qualify for Medicare, and have never received SSI to adequately document their citizenship. The Native American Tribal documents listed, as documentation of identity should also be accepted for citizenship. These are reliable forms of identification and contain the necessary information to document citizenship as well. Enrollment in any federally recognized tribe should be allowed to verify citizenship. A foreign born member of a federally recognized tribe need only verify that they are an enrolled member of a tribe to be eligible for SSI. This means that although a foreign born member of a recognized tribe is excluded from alien verification requirements, a U.S. born Native American is not.

Different levels of reliability are indicated for birth records established within five years of birth and those acquired after 5 years. If one must prove whom they are to get a certified copy of a birth certificate from governmental vital statistic departments, the 5-year difference is irrelevant.

Section 6036(a)(3)(A) of the DRA allows that any document listed in (3)(B) or a document listed in (3)(C) and (3)(D) are satisfactory evidence for citizenship and identity. The provision does not lay out a required hierarchy. The levels of evidence in the interim final rule are in excess of the requirement in the DRA. The interim final rule indicates that the third level of evidence may only be used when primary or secondary evidence of citizenship cannot be obtained. Does this mean that an individual must attempt to acquire documents under the primary and secondary levels and present proof that attempts failed? Requiring individuals to attempt to acquire primary or secondary level of documents, when a third or fourth level document is available, increases the burden on clients and the state.

Also, the requirement outlined under I. Background on eventually requiring states to match files for individuals who only have third or fourth levels of evidence, and possibly the first and second levels, will add to the administrative burden for states and CMS that is not required by the DRA provision.

#### Fourth Level of Evidence of Citizenship

The interim final rule requires individuals providing affidavits to prove their citizenship status and identity. The affidavits must include information explaining why documentary evidence is not available and the affidavits are signed under penalty of perjury. Requiring documentation of the citizenship status and identity of the individuals providing the affidavits is imposing a burden on individuals who are not applying for benefits and who may not be related to an applicant or recipient. The citizenship status of a person providing an affidavit does not increase the reliability of the document. In fact, a qualified alien may actually have information about a person that establishes U.S. citizenship and identity. This may especially be true for individuals who lost documentation through a disaster, but has qualified alien neighbors, friends and relatives that can attest to citizenship and identity. Texas' experience with evacuees from Hurricanes Katrina and Rita resulted in the need to expedite the eligibility process for a significant number of people who had minimal to no documentation. The rules need to include exceptions for managing disasters such as Katrina and Rita.

Requiring a third affidavit from the applicant or recipient to attest to the reason why documentary evidence is not available does not need to be a requirement. The affidavits from the other two individuals already established the information on the absence of other documentary evidence. Also, affidavits are anticipated to be a significant source for special needs individuals to meet this documentation requirement. Special needs individuals may not have the cognitive capability to provide the third affidavit, resulting in denial even though two other individuals attest to an applicant's or recipient's citizenship status and identity.

If there is a gap of more than three years between an individual's last period of eligibility and a subsequent application, the interim final rule requires that documentation again be obtained. The justification is to not impose a longer record retention period on states. Some states may already retain records for more than three years. The regulation needs to defer to the state retention requirements and not specify a specific period of time. CMS can review this when they review and monitor states for compliance.

Comments are solicited on the number of documents required and the impact of only allowing primary and secondary level evidence.

- Section 6036(a)(3)(A) of the DRA allows that any document listed in (3)(B) or a document listed in (3)(C) and (3)(D) are satisfactory evidence for citizenship and identity. The provision does not lay out a required hierarchy. The levels of evidence in the interim final rule are in excess of the requirement in the DRA. Also, the requirement outlined under I. Background, p. 39217 on eventually requiring states to match files for individuals who only have third or fourth levels of evidence, and possibly the first and second levels, will add to

the administrative burden and cost for states and CMS that is not required by the DRA provision.

- It is anticipated that significant numbers of applicants and recipients will only have the third or fourth level documents. Eliminating these as acceptable sources of documentation will create an undue burden on individuals and result in denial of individuals who can only prove citizenship by a third or fourth level document.

### III. Collection of Information Requirements

#### Citizenship and Alienage (435.406)

The estimate of 10 minutes for individuals to acquire and provide the state acceptable documentary evidence and to verify the declaration is significantly underestimated. Individuals may have to travel to government offices or safe deposit box locations to obtain originals and certified copies of documents and again travel to the Medicaid office, if they are reluctant to mail documents. Scheduling and wait times need to be considered. The estimate of 5 minutes for state staff to inform individuals, assist applicants and recipients, accept the documents, and maintain records also is significantly underestimated. Anticipating an increase in face-to-face contacts requires additional time for scheduling and interviews. Additional workload is created, as applications are pended waiting for the documentation. Applicants who cannot provide the documentation within the required processing requirements will reapply, again increasing the workload.

### IV. Waiver of Notice of Proposed Rulemaking and the 30-Day Delay in the Effective Date

Texas appreciates the Secretary's timely publication of guidance to permit documents in addition to those listed in Section 1903(x) of the Act as added by Section 6036 of the DRA as it is in the best interest to prevent unnecessary denials of Medicaid eligible citizens.

#### RULE

435.407(c)(1) – *Third Level Evidence of Citizenship* – Whether a hospital record is documented on hospital letterhead in less than 5 years of the initial application date is irrelevant. Because of HIPAA and other privacy restrictions on protecting personal health information, in practice, an individual would need to establish who they are so they have a right to access the personal health record before a medical facility can release the information.

435.407(c)(2) – *Third Level Evidence of Citizenship* – Insurance records requiring biographical information, including place of birth, whether established in less than 5 years of the initial application date is irrelevant. That information is required to obtain the insurance coverage.

435.407(d)(4) – *Fourth Level Evidence of Citizenship* – Medical records requiring biographical information, including place of birth, whether established in less than 5 years of the initial application date is irrelevant. Because of Health Insurance Portability and Accountability (HIPAA) and other privacy restrictions on protecting personal health information, in practice, an

individual would need to establish who they are so they have a right to access the personal health record before a medical facility can release the information.

435.407(d)(5) – *Fourth Level Evidence of Citizenship* – Texas recommends allowing affidavits to document both citizenship and identity. If an affiant knows of a person’s citizenship status, the affiant would also know the identity of the person. Affidavits also need to be allowed for citizenship and identity for any age applicant or recipient.

435.407(f) – *Special Identity Rules for Children* – Documents for children need to be allowed through age 18. There is not a substantial difference in the documents available for children up to age 18 to impose the burden of trying to obtain additional documents.

435.407(i)

The April 18, 2006 draft State Medicaid Director letter defined the reasonable opportunity for applicants to provide evidence of citizenship and identity as consistent with the time available to Qualified Aliens who have signed a declaration under Section 1137(d) to submit evidence of immigration status. This letter also indicated that:

- Federal Financial Participation (FFP) will be available with respect to citizen applicants during the reasonable opportunity period and eligibility determination process, to the extent as described in Section 1137(e)(2) and (e)(4) with respect to Qualified Alien applicants.
- These provisions assure FFP during a reasonable opportunity to present documents while not delaying eligibility and during a fair hearing process respecting the sufficiency of the documents presented or compliance by the applicant with the requirement to present.

The guidance in the April 18, 2006, State Medicaid Director letter needs to replace the reasonable opportunity requirement in the interim final rule to assure consistent treatment of Citizen and Qualified Alien applicants. In fact, on page 39219 under II. Provisions of the Interim Final Rule With Comment Period, Fourth Level of Evidence of Citizenship, it allows that states may use the reasonable period they provide to all applicants and recipients claiming satisfactory immigration on the Declaration required by Section 1137(d) of the Act.

Also, the interim final rule emphasizes that states must comply with requirements for pursuing fraud and abuse. Federal regulations at 42 CFR 435.907(b) require an applicant to sign an application form under penalty of perjury. The application forms include statements attesting to citizenship or alien status. If eligibility is allowed for an applicant who attests to be a citizen on the signed application form and the individual is later determined not to be a citizen, fraud procedures will be pursued.

Submitter :

Date: 08/11/2006

Organization :

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 :** Melissa Laurie

**Date:** 08/11/2006

**Organization :** Melissa Laurie

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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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 :** Mr. Ghideon Ezaz

**Date:** 08/11/2006

**Organization :** None

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

I read the recommendation from the OIG and CMS's response to the recommendation. It seems clear that random selection and verification as is done with the IRS or with FAFSA seems to suffice to keep fraudulent behaviour in check. Requiring all individuals to present these documents not only creates additional barriers for the needy, it also creates the potential for discrimination. Furthermore, any new barrier that is added decreases the chances that people who are otherwise eligible for Medicaid would receive the services that they are ENTITLED to. You should make a strong recommendation to Congress that this requirement must be repealed.