

Submitter : Mr. Mark Covall

Date: 08/03/2006

Organization : National Association of Psychiatric Health Systems

Category : Psychiatric Hospital

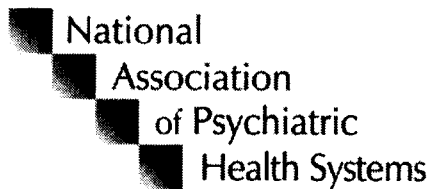
Issue Areas/Comments

GENERAL

GENERAL

"See attachment"

CMS-2257-IFC-37-Attach-1.PDF



701 13th Street, NW, Suite 950
Washington, DC 20005-3903
Phone: 202/393-6700
Fax: 202/783-6041
E-mail: naphs@naphs.org
Web: www.naphs.org

August 3, 2006

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

Re: CMS-2257-IFC

Dear Mr. McClellan:

As an association representing behavioral healthcare provider organizations and professionals, the National Association of Psychiatric Health Systems (NAPHS) appreciates the opportunity to provide comments on the Interim Final Rule regarding Citizenship Documentation Requirements as published in the July 12, 2006, *Federal Register*. We want to thank you for reducing the burden of producing citizenship documentation requirements on the dually eligible and disabled population.

About NAPHS

Founded in 1933, NAPHS advocates for behavioral health and represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Our members are behavioral healthcare provider organizations, including more than 600 specialty hospitals, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, behavioral group practices, and other providers of care. Our members deliver all levels of care, including partial hospitalization services, outpatient services, residential treatment, and inpatient care.

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

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

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

However, we have the following concerns about regulation for Medicaid recipients and applicants.

Areas of Concern

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

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

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. 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 disagree with the provision in the final rule that would apply the citizenship rule to children entering foster care. These children have already suffered and the chances for them to access medical care until their citizenship can be proved are remote. Few will be found not to be either citizens or legal immigrants, but for some potentially lengthy period of time they will have no Medicaid coverage under this rule.

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

3. Gaps in the exemptions (§435.1008)

We applaud CMS for issuing the rule that individuals on SSI or Medicare will not be subjected to these requirements. However, there are some 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 databases 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 vague. In place of the vague phrase "incapacity of mind" to describe the people who must be assisted, it would be more appropriate to require that states must assist individuals who, "due to a physical or mental condition" are unable to comply with the requirement to present satisfactory documentary evidence.

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

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

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

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

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

8. Outreach

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

We would be happy to provide additional background or information on any of the issues raised in our comments above. Please do not hesitate to contact me at 202/393-6700, ext. 100, or mark@naphs.org.

We look forward to working with CMS and the Department of Health and Human Services to ensure that Medicaid continues to be available for those who are vulnerable.

Sincerely,



Mark Covall
Executive Director

Submitter : Ms. Mary O'Brien
Organization : Visiting Nurse Services
Category : Health Care Provider/Association

Date: 08/03/2006

Issue Areas/Comments

GENERAL

GENERAL

Comments from staff:

I am including comments that front-line staff have regarding the changes.

Here are some of the concerns that MCH Outreach and EPSDT staff have regarding the new Medicaid rules:

" Price of getting a birth certificate (\$10-15) and that's if the parents have all the needed documentation to get a birth certificate.

" The increased rigor of applying for Medicaid will discourage semi-literate adults or non-English speaking families from even attempting to gain access to health insurance which means fewer financially eligible families will make it on to Medicaid.

" Many families who are currently Medicaid recipients will find the re-application process so difficult they will not get back onto Medicaid.

" The impact on women and children who are the victims of domestic abuse. For many abused women, taking flight from a dangerous situation means leaving literally with the clothes on their back. Taking the time to gather important documents may be too risky. The abuser may even withhold these documents in order to keep the victim in the home.

Thanks for the opportunity to provide feedback!

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

Provisions of the Interim Final Rule with Comment Period

In regard to Final Rule, 71 Fed.Reg.39214

We are alarmed about the consequences of delaying eligibility to Medicaid enrollees until only original or certified copies of citizenship are displayed. We would like to see 42 CFR 435.407(j) revised to say that applicants who say they are U.S. citizens or nationals and meet their state's eligibility requirements should be eligible for benefits immediately. They should be granted a reasonable timeframe to produce documentation.

Regulatory Impact Statement

Regulatory Impact Statement

The impact of this regulation will result in delay of Medical coverage for large numbers of eligible low-income pregnant women and other vulnerable Americans. This will result in delay of medical care, possible worsening of health conditions and financial losses for health care providers.

Submitter : Ms. Jan Gilbert

Date: 08/03/2006

Organization : PLAN

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

My comments are in an attachment

CMS-2257-IFC-39-Attach-1.DOC

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 Progressive Leadership Alliance of Nevada is a multi-issue, statewide coalition of 40 member organizations addressing problems from racism to poverty to environmental justice. PLAN is committed to social and economic justice.

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

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

We are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies. The requirement for originals and certified copies also calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring that individuals obtain and submit originals and certified copies adds to the time compliance will take.

In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state offices to submit them. State agencies will have to meet with individuals, make copies of their documents, and maintain records.

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

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

This year, about 10 million U.S. citizens are expected to apply for Medicaid who are subject to this requirement. Most of these citizens are children, pregnant women and parents who will be subject to the new citizenship documentation requirement. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children and other vulnerable Americans. This is likely to delay their medical care, worsen their health problems and create financial losses for health care providers.

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

We are particularly concerned about access to care by children, seniors, individuals in communities of color, particularly Native Americans, who in Nevada may not have access to proper documentation.

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 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

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

The DRA does not compel this result, which requires unnecessary duplication of state agency efforts and puts these children at risk of delayed Medicaid coverage. To the contrary, the DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation

of citizenship. The IV-E program is precisely such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new documentation requirement, 71 Fed. Reg. at 39216. We urge CMS to revise 42 CFR 435.1008 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

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

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

Because the rule would prevent states from granting coverage until documentation of citizenship is provided, hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement for the treatment of newborns who are low-birthweight, have post-partum

complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements.

The risk to the health of newborns from delays in coverage and the potential for increased uncompensated care for providers are completely unnecessary. The state Medicaid agency has already made the determination, by paying for the birth, that the child was born in a U.S. hospital. We strongly urge that 42 CFR 435.407(a) be amended to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

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

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship.

We urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility. The regulations for the SSI program allow people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have. (20 CFR 416.1610) The Secretary should adopt a similar approach.

Specifically, 42 CFR 435.407 should be revised by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

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

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

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

Most states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Eliminating the face-to-face interview requirement was one of a number of steps states took to simplify their eligibility processes and make it easier for eligible children and parents to enroll in Medicaid.

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

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

Native Americans should be able to use a tribal enrollment card issued by a federally recognized tribe to meet the documentation requirement. While the interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. 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.

The Progressive Leadership Alliance of Nevada appreciates this opportunity to comment on the proposals of DRA and hope you will consider the recommended changes that we have made.

Thank you,

Jan Gilbert
Northern Nevada Coordinator
Progressive Leadership Alliance of Nevada
6185 Franktown Road
Carson City, Nevada 89704
775-882-3440

Submitter : Mr. Joel Ferber
Organization : Legal Services of Eastern Missouri
Category : Attorney/Law Firm

Date: 08/03/2006

Issue Areas/Comments

GENERAL

GENERAL

Please See Attachment

CMS-2257-IFC-40-Attach-1.DOC



Legal Services of Eastern Missouri, Inc.

***4232 Forest Park Avenue
St. Louis, Missouri 63108***

JOEL D. FERBER
(314) 534-4200, Ext. 1202

Facsimile (314) 534-1028

August 3, 2006

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

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

Dear Dr. McClellan:

Legal Services of Eastern Missouri (LSEM) is a nonprofit legal services organization whose mission is to deliver high-quality, free, civil legal assistance and equal access to justice to low-income residents in 21 counties of Eastern Missouri. Medicaid and access to health care are high priorities for LSEM. We have represented many thousands of Medicaid recipients in negotiations, in administrative hearings, and in state and federal courts. We also engage in administrative advocacy and work with the Missouri Department of Social Services (DSS) to improve practices and procedures in the Missouri Medicaid program. On a daily basis, we help low-income Missouri *citizens* obtain access to health care through the Medicaid program. These efforts will become much more difficult under the new regulations unless significant modifications are made in the final regulations. The current interim final rule goes well beyond the DRA requirements in imposing new barriers on low-income citizens who qualify for the Medicaid program.

We are extremely concerned that 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), will result in significant barriers for many Missouri Medicaid applicants and recipients and, therefore, are writing to submit our comments on the interim final rule. 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 commend CMS for ameliorating the impact of the new documentation requirements by recognizing the "scrivener's error" in the statute and exempting individuals on SSI or Medicare from the new documentation requirements, by allowing the use of the SDX and state vital records databases to cross-match citizenship records,

by allowing states to use state and federal databases to conduct identity cross-matches, and by clarifying that the new documentation requirements do not apply to “presumptively eligible” pregnant women and children in the Medicaid program. These important steps will alleviate the burden of the documentation requirements for millions of vulnerable citizens across the country. They are also a significant improvement over the June 9th Guidance on the citizenship documentation requirement.

However, we are deeply disappointed that CMS has not acted to further 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 several provisions that CMS should modify in the final rule. Among our greatest concerns are:

(1) the requirement that individuals produce original documents or certified copies to prove citizenship;

(2) the inability of *applicants* to obtain coverage while citizenship is being documented;

(3) the failure to exclude foster children from the documentation requirement;

(4) the lack of safeguards for individuals who cannot produce the required documentation;

(5) the imposition of unnecessary and burdensome requirements that newborns document their citizenship *even where the State paid for their births -- in Missouri*;

(6) the inclusion of a hierarchy of documents that is *not* included in the DRA; and

(7) the lack of any meaningful outreach requirements or initiatives from CMS.

Aside from these policy concerns, the regulations go well beyond the requirements of the DRA and violate other provisions of the Medicaid Act and the United States Constitution, in particular by denying benefits to individuals who meet the *eligibility requirements* of the Medicaid program.

A. 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 condition 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 Medicaid coverage pending documentation of citizenship and identity.** Yet CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. This denial of Medicaid coverage to individuals *who meet the program's eligibility requirements* violates the federal Medicaid Act and the due process rights of low-income people who are denied coverage under this provision.¹

This year, about 10 million U.S. citizens are expected to apply for Medicaid across the country. Most of these applicants will be 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. Thousands of these adversely impacted Americans are Missouri citizens who will suffer delays in receiving medically necessary health medical care and diminished health status. Meanwhile, the increase in uncompensated care will create financial losses for health care providers in Missouri.

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

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

The Secretary . . . shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan - . . . (3) any citizenship requirement which excludes any citizen of the United States.

The interim final rule as proposed ignores all of this statutory language and makes the provision of evidence of citizenship an eligibility requirement for receiving Medicaid.

In fact, the consequences of the new documentation requirements could be devastating. Doctor visits may be delayed for lack of Medicaid coverage, and essential life-saving health care services, e.g. cancer treatments or dialysis, could end up not being provided for lack of Medicaid coverage. These documentation requirements will also have terrible consequences for children. **We are concerned that families will forego preventive care as a result of these documentation requirements and children will end up in an emergency room when a crisis arises.**

We urge CMS to revise 42 CFR 435.407(j) to state that *applicants* who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation. *This is the procedure that the law allows and states now use for lawfully present non-citizens*, and it makes sense to apply that policy across the board, rather than apply one set of requirements (that are more restrictive) for United States Citizens and another set of requirements for lawfully present non-citizens). It is also consistent with the plain language of the DRA and other applicable Medicaid laws.

The interim final rule also unconstitutionally deprives *citizen applicants* for Medicaid of the equal protection of the law. Under the current rule, an applicant for Medicaid who claims *qualified alien status* will get Medicaid benefits during the reasonable opportunity period available to acquire verification of qualified alien status. This is required by § 1137(d)(4), which provides in relevant part that:

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

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

CMS should, by amending 42 C.F.R. § 435.407(j) or otherwise, clarify that applicants for Medicaid who declare they are citizens or nationals of the United States

must, if otherwise eligible, be given Medicaid benefits during the reasonable opportunity period they have to acquire evidence of their status.

B. 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. This contradicts the language of the DRA and is also bad policy. Congress was explicit in directing to whom the new documentation requirements would apply. It did not impose those requirements on all Medicaid recipients, but rather only on 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 under this title [*i.e.*, Medicaid] . . . 42 U.S.C. § 1396b(i)(22)

Children receiving foster care benefits under Title IV-E are simply *not covered* by the above language and therefore may not be subjected to the citizenship documentation requirements. Foster children do not declare under § 1137(d)(1)(A) of the SSA to be citizens or nationals of the United States for the purpose of getting Medicaid. Indeed, that section of the SSA does not require that they file any declaration at all in order to receive Title IV-E foster care benefits, for Title IV -E is not a program to which the declaration process applies. See § 1137(b) [42 U.S.C. § 1320b-7(b)].²

Even if the new regulation were legal, it serves no useful purpose and will deny necessary health care to foster children. State child welfare agencies already 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

² When such children do demonstrate their citizenship (or have it demonstrated on their behalf), they do so for the purpose of getting foster care benefits. They then get Medicaid because they have been found to qualify for foster care, not because they independently meet all of the other Medicaid eligibility requirements. For example, if a state had an asset limit for foster care services that was higher than its asset limit for Medicaid, foster care children not meeting the lower Medicaid asset limit would nonetheless still receive Medicaid. Consequently, because foster children never declare to be citizens under 1137(d)(1)(A), they do not fall within the ambit of 42 U.S.C. § 1396b(i)(22) and may not legally be subjected to its documentation requirements.

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.

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

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.

C. The rule should exempt people eligible for Social Security Disability Benefits who do not qualify for Medicare, as well as former Medicare or SSI recipients.

CMS should use its authority under 42 U.S.C. §1396b(x)(2)(C), to exempt other categories of Medicaid recipients and applicants who have already established their citizenship for other government benefit programs. The most obvious group in this category are *former* beneficiaries of Medicare or SSI, *i.e.*, people who have been on either of those programs in the past (at least since 1996 and perhaps from some earlier date) but who no longer are for whatever reason. It is the fact of having already established citizenship that is the basis for exempting current Medicare and SSI recipients. That fact does not change simply because a person is now, for example, over the asset limit for SSI and therefore no longer eligible for that program. CMS should therefore clarify that proof of previous receipt of Medicare or SSI will also exempt a person from the citizenship documentation requirements.

Another category that should be exempted from the documentation requirements is people who have been found eligible for Social Security Disability payments, but have too large a benefit to qualify for SSI and are still in their two-year waiting period for the receipt of Medicare. Such people are in all meaningful ways indistinguishable from those that the Rule exempts, so extending the exemption to them is only fair.

D. 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 United States 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 United States citizen. This provision thus denies health care to American children whom everyone already knows are citizens and requires completely unnecessary expenditure of administrative resources by providers and state agencies with no rational purpose.³

³ This is a purely arbitrary distinction that focuses on the wrong person. The Medicaid eligibility in question is that of the *child*, not the parent. As to the children, there is absolutely no meaningful, or legal, distinction between the children that CMS proposes to cover from birth and those that it does not. A child in either situation is by definition a U.S. citizen, a fact indisputably known to the Medicaid agency because it will have paid for the child's birth in a U.S. hospital. CMS should instruct states not only that they may, but that they must, accept a record of Medicaid (or other insurance) payment for a birth in a U.S. hospital as sufficient proof of citizenship. Any other approach with regard to any child is so arbitrary as to be a violation of the due process component of the Fifth Amendment. And a different approach that is applied only to some children and not to others, when all are demonstrably citizens simply by the known fact of their birth, also violates the equal protection component of the Fifth Amendment.

CMS should amend 42 C.F.R. § 435.407(a) or (b) to include a record of Medicaid payment for a child's birth as acceptable evidence of that child's citizenship, regardless of the immigration status of the child's mother.

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

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.

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

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

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship. **This affidavit requirement is so onerous that Missouri has not even included it as an option in the State's policy manual.**

While some providers may continue to provide care to these individuals, they will not be reimbursed for the services provided to these applicants and beneficiaries who

cannot document their citizenship. **This will increase the amount of uncompensated care that providers already provide to people who are uninsured, thereby raising health care costs for everyone.** Of course, many thousands of Medicaid-eligible individuals will be denied health care altogether under these highly restrictive requirements.

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

The regulations for the SSI program allow people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have. (20 CFR 416.1610) The Secretary should adopt a similar approach. Specifically, 42 CFR 435.407 should be revised by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if: (1) an applicant or current beneficiary, or a representative 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 upon the information that has been presented. This approach would ensure that low-income Missourians who are U.S. citizens, but cannot find or provide documentation, can continue to receive the health care services they need.

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

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

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

Applicants and beneficiaries will have to make unnecessary visits to state offices with original and certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth

certificates. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards (nor should they). The regulations must be revised to respond to this insurmountable problem for many beneficiaries.

Missouri does *not* require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Missouri Income Maintenance Manual § 0105.025.00 (2006). Eliminating the face-to-face interview requirement was one of a number of steps Missouri took to simplify their eligibility processes and make it easier for eligible children and parents to enroll in Medicaid. Mail-in applications are also more efficient for DSS and other states' Medicaid agencies. Requiring originals and certified copies to document citizenship will make it harder for working families to enroll in Medicaid and increase the workload of DSS and other states' Medicaid agencies. This unnecessary requirement that goes beyond the requirements Congress imposed in the DRA will also delay coverage while applicants wait for appointments at state Medicaid agencies. In some cases, having to visit a state office will discourage applicants from completing the application process. Children and families will go without coverage and remain uninsured and providers will not get reimbursed. To the extent that the new regulations cause Missouri to reduce or eliminate the use of alternatives to face-to-face interviews, this will greatly strain state agency staff who are already overburdened when that workforce has already been significantly reduced due to state budget cuts.

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

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

G. The Identity Requirements in the interim final regulation are more restrictive than allowed by the DRA.

The DRA specifies that any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act is satisfactory documentary

evidence of personal identity.⁴ The new regulation inexplicably restricts the documentation that states can use to verify identity. 42 C.F.R. § 436.407 (e) (8) and (f). For example, the Immigration and Nationality Act and its implementing regulations allow the following forms of verification of identity that are not allowed under the new CMS regulations:

- For those who are disabled and unable to produce any of the documents above [for identity], the same types of alternative documentation of identity listed for those under the age of 18, except that a parent, legal guardian, representative of a nonprofit organization, association or rehabilitation program may sign the forms for the person. **This method is *not* included in the new CMS regulations. This is a serious problem because individuals with disabilities may need to have a nursing home administrator or other program director attest to their identity.**
- For individuals under age 18 who are unable to produce any of the documents above [for identity]:
 - (a) School record or report card;
 - (b) Clinic doctor or hospital record; or
 - (c) Daycare or nursery school record.

But CMS inexplicably only allows the use of these records for children under 16. 42 C.F.R. § 436.407(f).

- The DRA allows the use of driver's license issued by a Canadian government authority but new CMS regulations provide that this document *cannot* be used, even though this is acceptable proof of identify under the Immigration and Nationality Act). 42 C.F.R. § 436.407(e)(8);
- The DRA allows the use of a voter's registration card but new CMS guidance says this *cannot* be used, even though this is acceptable proof of identify under the Immigration and Nationality Act. *Id.*

CMS should modify 42 C.F.R. § 436.407(e) and (f) to incorporate all forms of documentation of identity that are allowable under the Immigration and Nationality Act, and hence, allowable under the DRA.

⁴ The identity documentation items listed below are specified by the Department of Justice in final regulations that implement section 274A(b)(1)(D), found at 8 C.F.R. § 274a.2 (available at: http://www.access.gpo.gov/nara/cfr/waisidx_02/8cfr274a_02.html).

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

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

I. CMS should not require that document be dated at least five years before the original Medicaid Application Date

A number of documents listed in 42 C.F.R. § 435.407(c) and (d) can only be accepted as proof of citizenship if they are dated at least five years before the applicant's or beneficiary's *original* application for Medicaid. CMS has offered no explanation for this extraordinarily restrictive requirement, but its existence will often work a great hardship on people, especially those who have been in a nursing home or other institution for many years. People often enter nursing homes following a stroke or other severe medical event, and are usually not on Medicaid when they are first admitted. If they then remain in the facility permanently, after the passage of years their nursing home admission papers may be the only document available that indicates their citizenship. But that document will rarely have been created five years before their original application for Medicaid.

While § 435.407(d) does not currently require that nursing home admission papers be dated five years before application, we understand that CMS considers that omission a mistake that it plans to correct with the final rule. Thus, numerous people who have been in nursing homes or other institutions for many years will have no way to retain their Medicaid coverage, despite the fact that they are clearly citizens and have a nursing home record that establishes that fact. Especially in the absence of any attempted explanation by CMS of what it believes it is accomplishing with such onerous requirement, the five year appears so arbitrary and capricious as to be in violation of the both the Administrative Procedures Act and the due process requirement of the Fifth Amendment.

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

J. Implement a Real Outreach and Education Program

We urge CMS to revise the rules to comply with its statutorily-mandated obligation to conduct outreach regarding the DRA citizenship provisions.

As you know, the DRA requires the Secretary of Human and Health Services to establish an outreach program "as soon as practicable" after the enactment of the DRA. DRA § 6036(c). That outreach program is supposed to educate Medicaid applicants and beneficiaries about the new citizenship and identity documentation requirements that were imposed by the DRA. *Id.* In addition, the June 9, 2006 Letter to State Medicaid Directors states that CMS will "implement an outreach plan to explain the requirements of section 1903(x)." (Section 1903(x) refers to the citizenship and identity documentation requirements for Medicaid programs.). The new rules do not describe or otherwise address any "outreach program" designed to inform and assist those affected by the new documentation requirements.

Although the DRA was enacted on February 8, 2006 and the citizenship documentation requirement became effective on July 1, 2006, there have been no outreach efforts from CMS in Missouri. Nor has the State of Missouri initiated an outreach program. The new requirements are already confusing for many Medicaid applicants and recipients and educating these individuals is essential to ensuring that *eligible* applicants are not needlessly denied Medicaid coverage upon application and that current beneficiaries are not needlessly terminated from Medicaid coverage. For example, **at least one county office has already sent out requests for information that ask recipients to produce very specific documents that they are not legally required to produce under the DRA, federal regulations or state policy (for example, when electronic birth records are available).**

CMS should begin its outreach program immediately or *suspend implementation* of the documentation requirement in Missouri pending the fulfillment of this important condition for implementation in the DRA. This outreach should occur across the State and should address the variety of constituencies that depend on Medicaid for their health insurance and/or long term care. Outreach should be tailored to address the needs of special populations, including persons with disabilities, consistent with state and federal obligations under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

We also encourage you to work with DSS in implementing necessary outreach regarding the new requirement. It should not fall on overburdened nonprofit agencies and low-income Medicaid recipients to implement the outreach that the federal law requires of CMS.

Detailed outreach requirements should be incorporated into the final regulations and outreach requirements should be communicated to the States in guidance while these regulations are being finalized.

K. Ensure That Outreach Efforts Include Information to help Avoid Spillover into the Food Stamp Program

We urge CMS to undertake public education to ensure that state agencies, eligibility workers, and clients understand that the new requirements affect only Medicaid, not the Food Stamp Program. Medicaid traditionally operates in conjunction with food stamps and other benefits programs, and the programs are frequently administered by the same workers. It is vital that CMS work with states and USDA to educate caseworkers and the public about what the rule requires regarding the Medicaid program and makes clear that the provision does not affect food stamp requirements. Given the scope of hunger and food insecurity in our nation, we can ill afford any spillover effects of the Medicaid rule onto the Food Stamp Program. We must guard against intensifying problems that vulnerable families face in accessing resources to put food on the table.

Conclusion

As the foregoing discussion demonstrates, it is in the best interests of the Nation, the State of Missouri, and the millions of people who depend on the Medicaid program for their health care to ensure that any documentation requirements imposed by the federal government do not interfere with the mission of the Medicaid program – delivering medically necessary health care services to low-income individuals and families – and do not increase the administrative and fiscal burden placed upon the State of Missouri.

Thank you for the opportunity to submit these comments.

Very truly yours,

Joel D. Ferber
Attorney at Law

James Frost
Attorney at Law

CMS-2257-IFC-41

Submitter : Robert Hoelzle

Date: 08/03/2006

Organization : Robert Hoelzle

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-41-Attach-1.DOC

CMS-2257-IFC-41-Attach-2.PDF

Bob Hoelzle
1314 W. Indianhead Dr.
Tallahassee, Fl. 32301
(850) 219-0311

August 3, 2006

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

Dear Sir/Madam:

This letter is in response to your request for input regarding the recent Deficit Reduction Act legislation, and the implementation of rules regarding Medicaid applicants having to provide proof of both citizenship and identity in order to receive Medicaid benefits.

I believe the intent of the legislation is to prevent non-eligible non-citizens from accessing Medicaid benefits. Unfortunately, in actuality, what the implementation of the requirements will do to our children is as follows:

1. Decrease the number of children in receipt of Medicaid services up to 30%. If you think I am exaggerating, you only have to look at Florida's SCHIP program, KidCare, to see what happens when unreasonably strict rules are implemented. In 2004, state legislators passed legislation creating two open enrollment periods for KidCare, and overly strict verification of income requirements for applicants. Enrollment plummeted.
2. The decrease in the number of children in receipt of Medicaid caused by this legislation will directly affect the number of children who will be using emergency rooms at hospitals. As you know, emergency rooms for indigent care patients are already in deep financial trouble, this will exasperate the problem greatly.
3. The cost of treating children who are brought to the emergency rooms with conditions that could have been treated inexpensively had they had Medicaid coverage will cause everyone's health insurance premiums to rise. Not to mention the hundreds of lives that will be lost, and the thousands of children who will wind up with life-long conditions we will be paying for over years and

years, because they did not get the primary care needed to prevent or treat those conditions timely.

4. Often legislation is passed without regard to the implementation cost, or the ramifications the new rules will have upon those administering the programs. This is a classic example of creating a bureaucratic nightmare for already strained public service employees. See attached PowerPoint presentation from Florida to get an idea of how ridiculously complex the implementation of these new rules will be.

5. Whoever wrote the legislation was not thinking about the ability of poverty-stricken families to comply. Verification of both citizenship and identity is, at best, redundant. If a parent is fortunate enough to have a birth certificate for the child, one would logically think that would be enough to verify that the child is a citizen and deserving of services. Wrong! That family must also prove the identity of the child. That is illogical, and only serves to ensure that our county's children will drop off the Medicaid roles in huge numbers.

6. Did anyone complete a study of how many non-eligible non-citizens were actually breaking the law and getting Medicaid services for their children? I doubt it, because if they had, they would have found that non-citizens are very careful not to bend the laws, because when it comes time to apply for their citizenship, it would stand in their way, and even get them deported. Did anyone complete a study of how many eligible citizen children and adults would be negatively impacted by this legislation? I doubt it, if they had, they would have found that ineligible non-citizens currently in receipt of Medicaid would amount to, at the most, one-half of one percent of Medicaid recipients. Is preventing them from getting benefits illegally worth losing up to a third of the number of citizen children currently legally in receipt of Medicaid?

These new rules will impose hardships on the very people who need Medicaid services the most. Since when does our country balance our budget on the backs of our poorest citizens? This legislation is draconian and should be repealed. The harm of leaving it in place will be felt for the next fifty years.

Sincerely,

Bob Hoelzle



State of Florida
Department of Children and Families

Jeb Bush
Governor

Lucy D. Hadi
Secretary

MEMORANDUM

DATE: July 13, 2006 **TRANSMITTAL NO.:** P-06-07-0008

TO: ACCESS Florida District Operations Managers
ACCESS Florida Zone Program Offices

THROUGH: Greg Keller, Assistant Secretary for Operations (**Signature on File**)

FROM: Jennifer Lange, Director, ACCESS Florida (**Signature on File**)

SUBJECT: Medicaid Verification Requirement for U.S. Citizens

EFFECTIVE: July 1, 2006

This memorandum notifies staff of changes to the verification requirements related to U.S. citizenship **and** identification. This policy applies to all Medicaid coverage groups, including child-in-care, family planning, Simplified Eligibility for Pregnant Women (SEPW), Medicaid under the KidCare program, and waivers.

There are **no changes** to Food Stamp, Temporary Cash Assistance or non citizen policy.

Background:

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171), passed requiring all U.S. citizen applicants and recipients of Medicaid to verify citizenship **and** identity to be eligible.

This policy is effective July 1, 2006.

New Policy:

Every individual who indicates U. S. citizenship on an application must provide *documentation* of U.S. citizenship **and** identity to receive, or continue to receive Medicaid. Self-declaration is no longer sufficient.

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

Exceptions: People who receive, or have received, SSI or Medicare are not required to document citizenship or identity. Additionally, the policy does not apply to those who receive Medicaid as a presumptively eligible pregnant woman (PEPW) or newborn (PEN) and non-Medicaid SCHIP programs, nor does it affect the eligibility of non-citizens.

Acceptable documentation of U.S. citizenship and identity: All documents must be original or copies certified by the issuing agency.

A. Primary documentation (preferred). The following documents may be accepted as proof of **citizenship and identity**:

- A U.S. passport (current or expired);
- Certificate of Naturalization (DHS form N-550 or N-570); or
- Certificate of U.S. Citizenship (DHS form N-560 or N-561).

Note: Applicants or recipients born outside the U.S. who were not citizens at birth must submit one of the above documents. For children adopted by U.S. citizens, apply the policy under the "Child Citizenship Act of 2000", as described in policy manual passage 1430.0102(3).

B. If the above documents are not available, the following may be used to verify **citizenship only** if they show a U.S. place of birth:

- A U.S. birth certificate originally issued prior to age five;
- Vital statistic record (MNOV or DEBP screen);
- A Report of Birth Abroad of a U.S. Citizen (forms FS-240, FS 545 or DS 1350);
- A U.S. citizen ID card (DHS form I-197 or I-179);
- A Northern Mariana ID card (I-873);
- An American Indian Card (I-872), with the classification code "KIC";
- A final adoption decree, or if pending and no birth certificate can be issued, a statement from the state adoption agency (U.S. born only);
- Document showing civil service (employment by the U.S. government before 6/1/76); or
- Official military record of service (DD-214 showing a U.S. place of birth).

C. If the above documents are not available, the following may be used to verify **citizenship only** if they show a U.S. place of birth and are dated at least five years prior to the date of application:

- Extract of a U.S. hospital record, established at birth, on hospital letterhead (not a souvenir "birth certificate"); or
- Life or health insurance record.

D. The following may be used **ONLY** if the above documents do not exist or are unavailable. They must have been created at least five years before the Medicaid

application (unless for a child under age five) and show a U.S. place of birth to verify **citizenship only**:

- Federal census records from 1900-1950 showing the applicants age/U.S. place of birth (To get this information, have the individual submit a form to the Census Bureau #BC-600 with the fee and in the remarks section write " U.S. citizenship data requested for Medicaid");
- Bureau of Indian Affairs tribal census records of Seneca or Navaho Indians;
- An amended U.S. public birth record, issued after age five;
- A signed statement from the physician or midwife in attendance at the birth;
- Nursing home institution records that contain biographical information;
- Medical records with biographical information (excluding immunization); or
- A written and signed attestation (**use rarely**) by two people, (one non-relative), who have personal knowledge of the birth and explain why the documentation does not exist or cannot be obtained, if they know the reasons. The identity and citizenship of the people who sign the affidavits must be verified also. The applicant/recipient/guardian/representative must also sign a statement explaining why the documentation is not available. (Samples are attached)

E. The following documents may be accepted as **proof of identity only** (use in conjunction with documents listed in sections B through D above):

- State Driver's License with a photo or other identifying information;
- State issued ID card with a photo or other identifying information;
- School ID card with photo (For children under 16, includes nursery, daycare records, or school records, including school conference records, *and* no photo is required);
- U.S. military card or draft record;
- A military dependent's ID card;
- Federal, state, or local government ID card with photo;
- A certificate of Indian Blood
- Native American tribal document;
- U.S. Coast Guard merchant mariner card; or
- An attestation signed by parent or guardian stating the date and place of birth of a child under age 16. (Cannot be used if one in section D is used). Samples are attached.

Note: Do **not** accept a voter's registration card or Canadian driver's license, or any other document NOT listed above.

Other important information:

It is only required to verify citizenship and identity once, unless the department questions the verification. **Staff must check a reapplicant's or recipient's case record, as well as electronic sources before pending the individual(s).** The original

documentation may be accepted in person, by mail, fax, or scan, and from community partners, if they are willing to accept it.

For child-in-care cases, Family Safety staff or the CBCs are responsible for providing the required documentation. A separate memorandum with special procedures is being distributed to those staff.

Individuals may request a vital statistics record from any state on the Internet, at: <http://www.cdc.gov/nchs/howto/w2w/w2welcom.htm> . Make sure to advise the applicant/recipient that he/she is responsible for the charge to get the document.

Pend **recipients** for the necessary documentation when doing a review for Medicaid. Give the usual ten days to provide it. If the recipient indicates he/she is trying, but hasn't been able to get the citizenship or identity documentation, authorize all AGs, (including food stamps and TCA). Set an expected change on AWEC for 30 days to check on documentation needed for Medicaid.

Reminder: Medicaid has a review date of every twelve months. Be careful not to terminate benefits due to this new policy before the 12 month period is up.

Example: A food stamp recertification is done in September 2006 (Medicaid was last reviewed in March 2006) and no proof of citizenship is provided for Medicaid. If otherwise eligible, extend Medicaid until the next review date in March 2007.

If the individual indicates difficulty or inability in obtaining the needed documents, the department must assist, especially if the individual is homeless, mentally or physically impaired, or lacks someone to help.

An **applicant** *cannot* be approved for Medicaid until the acceptable documentation is received. Extend the ten day deadline as needed using prudent judgment, to give the applicant time to obtain the documentation. The 45 or 90 day application time standard applies, though delay can be attributed to the applicant.

Each individual that did not comply with the documentation requirements must be denied or terminated from Medicaid giving advance notice. The individual's income and assets will continue to count toward the SFU. Make sure to provide continuous eligibility for children, if eligible. Hearing rights apply.

If the individual or application is denied for Medicaid because of this requirement *and* the documentation is provided with a later application, the Medicaid should be authorized back to the original application date, if eligible on all factors. See policy manual passages 0430.0610 and 0440.0610.

If a recipient now admits that he/she is not a U.S. citizen, determine the eligibility under current noncitizen policy. If there is no eligibility, do a BR referral and advise them of the EMA policy.

Outreach:

We have drafted a letter to all Medicaid recipients, to inform them of this new policy. (See attachment) Please alert your applicants/recipients and community partners about the new documentation requirements as soon as possible.

A fact sheet has been provided (see attachment) for the purpose of notifying agencies and providers of the new requirement. We will also add a statement to the web application page and our Internet website page as soon as possible.

The interim contact form will also be updated soon to add a statement informing the recipient to provide the documentation for the first annual review after July 1, 2006.

Scanning: If FLORIDA records indicate adequate proof of citizenship and identity, but the proof has been boxed and is **awaiting scanning**, assume it meets the criteria.

FLORIDA INSTRUCTIONS:

1. IDENTITY:

- Enter a "?" in the Identity field on AIIA. If the Medicaid AG passes for all other technical criteria, FIAT the PASS to PEND for all individuals in the Medicaid AG. (The FLORIDA system currently will **NOT PEND** Medicaid for Identity on AIIA even with a "?".)
- If the individual receives SSI or Medicare, enter IV (ID verification exempt-individual SSI or Medicare eligible) in the ID verification field on AIIA.
- If identity information is not provided for an individual member of the AG during the pending period, run AABC and change the status of the ineligible member on AGCC to CA/CC for Family Tract Medicaid. For an Adult Tract AG, change the status of the ineligible member to DS in a community AG and to AS for the ineligible member in an Institutional AG.
- To CLOSE or DENY a Medicaid AG because the identity information is not provided by all individuals in the AG, use reason code 360 (You did not provide verification of identity).

NOTE: FIAT instructions can be found on the Intranet Web Page under Economic Services Program Office, ACCESS Technology (Formally: Guide to FLORIDA) Web Page, under the Site Map for FLORIDA Guides, Case Management, Application Processing, page 33.

<http://www.dcf.state.fl.us/~ess/florida/applicationprocessing.pdf> .

2. CITIZENSHIP:

- Enter a “?” in the US CIT field on AIIA to PEND an AG for Citizenship. The PENDING Verification letter will include the need for verification of citizenship.

- If the individual was born in FLORIDA, you may use the Vital Statistics information as citizenship verification. If the individual is found on the Vital Statistics file, on AIIA enter:
 - ✓ Y in the US CIT field,
 - ✓ CV in the VR field,
 - ✓ CLRC – notate the type of documentation used to verify citizenship.

NOTE: You may view birth information by accessing the MNOV screen (Vital Statistics Menu) from any FLORIDA screen by entering MNOV in the NEXT TRAN. No entry is required in the PARMS field. From MNOV you may access the Birth & Paternity screens by selecting a FUNCTION NUMBER or by entering the TRAN CODE and PARAMETER.

Instructions for accessing the MNOV screen and Vital Statistics information can be found on page 33 of the Data Exchange Guide at <http://www.dcf.state.fl.us/~ess/florida/DEGuide.pdf> .

- If the individual is receiving SSI, you may use the DESD screen as verification of citizenship if the Alien Indicator is A or C. On AIIA, enter:
 - ✓ Y in the US CIT field,
 - ✓ CV in the VR field
 - ✓ CLRC – notate the type of documentation used to verify citizenship.

Instructions for accessing the DESD screen can be found on page 42 of the Data Exchange Guide at <http://www.dcf.state.fl.us/~ess/florida/DEGuide.pdf> .

- If the individual's citizenship is documented by a source other than the vital statistics file or the DESD screen, on AIIA enter:
 - ✓ Y in the US CIT field
 - ✓ CV in the VR field
 - ✓ CLRC - notate the source of documentation.

If citizenship information is not provided for an individual member of the AG during the pending period, run AABC and change the status of the ineligible member on AGCC to CA/CC for Family Tract Medicaid. For an Adult Tract AG, change the status of the ineligible member to DS in a community AG and to AS for the ineligible member in an Institutional AG.

To CLOSE or DENY a Medicaid AG because the citizenship information was not provided by all individuals in the AG, use reason code 361 (Citizenship requirement not met).

FLORIDA SYSTEM MODIFICATIONS: The following modifications are expected to be available in August 2006. A broadcast will be sent when the FLORIDA system modifications have been made.

1. **IDENTITY:** The system is currently being modified to:
 - a. PEND Medicaid when a "?" is entered in the VR field.
 - b. Change the status of ineligible members when identity is not verified.
 - 1) The status of an ineligible member will be CC or CA (income and assets, not needs) in a family-related Medicaid AG when a member in a FAMILY-related Medicaid AG does NOT verify identity.
 - 2) The status of an ineligible member will be DS in a community AG and an AS in an Institutional AG when a member in the SSI-related AG does NOT verify identity.
 - c. A new code, NV (not verified), is being added to the table behind the field on AIIA.
 - d. Create a new table, TMVR, to indicate which codes apply to Medicaid and which codes apply to Food Stamps.
2. **CITIZENSHIP:** The FLORIDA system is currently being modified to
 - a. Automatically check the Vital Statistics file and the SDX file when the ASIA, ASRE or ASCC drivers are initiated or when an individual is added on AIID.
 - 1) Vital Statistics file: If there is a match on the Vital Statistics file with the individual's SSN and date of birth, it will automatically update AIIA with a protected:
 - ✓ Y in the US CIT field
 - ✓ OV (Office of Vital Statistics) in the VR field
 - ✓ 89 in the POB field.
 - 2) State Data Exchange (SDX) file: If there is no match or the DOB does not match the Vital Statistics file, the FLORIDA system will automatically check the SSN and DOB on the SDX. If there is a match and there is an A or C in the Alien Indicator field, the

following fields on AIIA will automatically be updated with a protected:

- ✓ Y in the US CIT field and
- ✓ SV (SDX) in the VR field.

NOTE: If the SSN matches but the DOB does not match the Vital Statistics (or SDX) data, an error message will be displayed on the AIID. This will give staff an opportunity to re-verify the DOB for the individual.

- 3) **ONE-TIME PROGRAM:** Additionally, once the modifications have been made to the FLORIDA system, a one-time program will be run to check the Vital Statistics and SDX files to automatically update AIIA for as many of the individuals as possible.
 - b. Automatically check the Enrollment Data Base (EDB) file and enter ED in the citizenship verification field on AIIA to indicate that the individual receives Medicare.
 - c. Change the status of ineligible members when citizenship is not verified.
 - 1) The status of an ineligible member will be CC or CA (income and assets, not needs) in a Family-related Medicaid AG when a member in a FAMILY-related Medicaid AG does NOT verify identity.
 - 2) The status of an ineligible member will be DS in a community AG and an AS in an Institutional AG when a member in the Adult Tract AG does NOT verify identity.
 - d. A new code, NV (not verified), is being added to the table behind the field on AIIA.

KidCare Instructions:

Until changes can be made to the ACCESS KidCare System, the KidCare Central Processing Unit staff must use the manual process to PEND for identity and citizenship.

Implementation Instructions:

- Apply the new policy for Medicaid applications received on or after July 1, 2006. For retroactive requests prior to July 1st, accept self-declaration of citizenship and identification.
- Apply the policy for ongoing cases no later than the first annual review after July 1, 2006.

The policy manual will be updated as soon as possible.

If zone program offices have questions concerning this policy, contact Carol Miller at Suncom 292-3887. For FLORIDA system questions, contact Pat Brennan at Suncom 291-2307.

Attachments

cc: Program Policy (Lewis, Schilling, Grignon)
FLORIDA Operations (Jenkins, Poirier)
Office of Quality Management (Ransdell)
Office of Appeal Hearings (Pritchard)
Office of General Counsel (Minnis)
Quality Control (Pearce)
FLORIDA Help Desk (Shaw-Johnson)
Agency for Health Care Administration (Arnold)
Florida Legal Services (Huddleston)
Office of Substance Abuse/Mental Health (Mann)
Department of Health (Phelps)
Family Safety (Hutcheson, Badland)

Important **New** Information about your Medicaid:

Dear Medicaid recipient:

This letter has some very important information for you and your family. Please read it carefully. On February 8, 2006, the Deficit Reduction Act of 2005 (Public Law 109-171), passed requiring all U.S. citizen applicants and recipients of Medicaid to verify citizenship and identity to become or remain eligible. This law went into effect on July 1, 2006. **Each individual must verify U.S. citizenship and identity at the time of the annual review of eligibility, but no later than June 30, 2007.**

We do not need citizenship verification for:

- individuals for whom we already have appropriate documents in our files
- people born in Florida, when verified through a computer match from the Office of Vital Statistics
- SSI recipients
- Medicare recipients
- newborns automatically eligible for a year of Medicaid at birth. (Verification will be needed before the child turns age one.) and
- legal non citizens

If you are required to provide documents to prove citizenship and identity, we will send you a separate letter telling you when to submit the documents. The lists below will help you decide the best way to do this.

The following documents prove both **citizenship and identity**. Give us one of these documents, if possible:

- U.S. passport
- Certificate of Naturalization
- Certificate of U.S. Citizenship.

If you do not have one of the documents listed above, then we need one document from each of the lists below. This means you will need to provide two documents at your annual review.

<u>To Verify Citizenship:</u>	<u>To Verify Identity:</u>
<ul style="list-style-type: none">• U.S. birth certificate• U.S. Citizen Identification Card• A final adoption decree• A document showing civil service employment before June 1, 1976• Official military record of service showing a US place of birth.	<ul style="list-style-type: none">• Driver's license or state ID• Work or school ID card• Military ID card

To request a birth certificate on the internet from a state other than Florida, go to: <http://www.cdc.gov/nchs/howto/w2w/w2welcom.htm> . A fee is required.

There are other documents we can accept to prove citizenship or identity. Please contact the customer call center at 1-866-762-2237 if you have questions. If you are unable to provide proof of citizenship, ask us for help. You may also be given extra time to get it to us before your Medicaid benefits are denied or closed.

**SAMPLE
ATTESTATION OF U.S. CITIZENSHIP
(Two attestations required, one from a non-relative.)**

1. My name is _____ I am more than eighteen years of age, a U.S. citizen, and I have personal knowledge of the facts stated in this document.

2. I have personal knowledge of the circumstances that establish _____
_____ (applicant/recipient) as a United States Citizen. The facts known to me are as follows (for example, date and place of birth in the United States):

3. Documentary evidence of citizenship was unavailable or does not exist because:

I promise that the information above is true to the best of my knowledge and I understand that I can be prosecuted for fraud if I did not tell the truth. I have attached proof of my own citizenship and identity to this form.

Signature

Date

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SAMPLE
ATTESTATION OF FACTS CONCERNING THE IDENTITY OF A
CHILD UNDER AGE 16
(Cannot be used if an attestation was used to document citizenship.)

1. My name is _____.

I am the parent/guardian/representative of _____
(child's legal name) and am over eighteen years of age.

2. The child named above was born on _____ (date) in

(city, state).

3. I am unable to produce any documentary evidence of the child's identity because:

I promise I have told the truth and understand that I can be prosecuted for fraud if the above is untrue.

Signature

Date

**SAMPLE
ATTESTATION FOR REASON WHY NO DOCUMENTATION OF U.S. CITIZENSHIP
COULD BE PRODUCED:**

I, _____ (applicant/recipient/representative)

of _____ (applicant/recipient)

could not obtain proof of U.S. citizenship or identification for the person(s) listed above
because _____

I promise that I have told the truth and understand that I could be prosecuted for fraud if
the above is untrue.

Signature

Date

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

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Advance Personal and Family Recovery and Resiliency

FACT SHEET
DEFICIT REDUCTION ACT
U.S. CITIZENSHIP AND IDENTITY VERIFICATION FOR MEDICAID

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171), became law. This law requires all applicants and recipients of Medicaid to verify citizenship **and** identity. This portion of the DRA is effective July 1, 2006. On June 9, the HHS Centers for Medicaid and State Operations provided guidance to states on implementation of this requirement.

This change to the verification requirements affect individuals who claim to be U.S. Citizens either U.S. born (here or abroad) or naturalized and does not change the types of non-citizens which may be eligible for Medicaid.

The Department of Children and Families is finalizing instructions for front-line eligibility workers to use in implementing the new requirements. As much as possible, DCF will use information already in our case files or available through electronic linkage to other sources of official information.

For people who are already receiving Medicaid, information needed to meet the new requirements will be obtained at the next regularly scheduled redetermination of eligibility. **NO CURRENTLY ELIGIBLE MEDICAID RECIPIENT WILL LOSE ELIGIBILITY ON JULY 1, 2006 AS A RESULT OF THESE REQUIREMENTS.**

SSI and Medicare recipients are exempt from this policy.

For those who apply after July 1, the new requirements will apply. This means that verification of citizenship **and** identity will be required before new applicants will be approved for Medicaid. For applicants who have received Medicaid in the past, the information may already be available. This will be determined as part of the application process.

The following material summarizes the steps that will be used to meet the requirements of the DRA:

- For individuals currently receiving or re-applying for Medicaid all existing case records will be reviewed for acceptable documentation already held by the department.
- If the department does not have documentation adequate to meet the requirements, we will utilize electronic data sources to comply. This will include information from the Bureau of Vital Statistics (BVS) and the Supplemental Security Income (SSI) Program.

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Advance Personal and Family Recovery and Resiliency

- If the department is unable to obtain documentation using these resources, the household will be provided an opportunity to provide the necessary documents. If the household indicates they are unable to obtain these documents, the department will assist in obtaining them.

Current Medicaid recipients will not lose their Medicaid eligibility at re-determination if they demonstrate they are making a "good faith effort" to present satisfactory documentary evidence of citizenship **and** identity.

This requirement is a one-time activity and once the information is obtained there will be no need for the individual to provide the information in the future unless there is a reason to question the validity of the original documentation.

This requirement applies only to Medicaid. There are no changes to the verification requirements for food stamps, temporary cash assistance, presumptive eligibility for pregnant women, or **non**-Medicaid coverage under the State Children's Health Insurance Program This would include coverage provided under the Florida KidCare Program by Florida Healthy Kids, Children's Medical Services Network and MediKids.

DRA 2005
Citizenship and Identity Requirement
Acceptable documentation

A. The following documents may be accepted as **proof of citizenship and identity**:

- A U.S. passport (does not have to be currently valid);
- Certificate of Naturalization (DHS form N-550 or N-570); or
- Certificate of U.S. Citizenship (DHS form N-560 or N-561).

Note: individuals born outside the U.S. who were not citizens at birth must submit one of the above documents.

B. If none of the documents above are available, the following documents which show a U.S. place of birth may be accepted to verify **citizenship only**:

- A U.S. birth certificate originally issued prior to age 5;
- BVS record;
- A Report of Birth Abroad of a U.S. Citizen (forms FS-240, FS 545 or DS 1350);
- A U.S. citizen ID card (DHS form I-197 or I-179);
- A Northern Mariana ID card (I-873);
- An American Indian Card (I-872), with the classification code "KIC";
- A final adoption decree, or if pending and no birth certificate can be issued, a statement from the state adoption agency (U.S. born only);
- Document showing civil service (employment by the U.S. government before 6/1/76; or
- Official military record of service (DD-214 showing a U.S. place of birth).

C. If the above documents are not available, the following documents will verify **citizenship only** if they were established at least 5 years prior to the date of application and show a U.S. place of birth:

- Extract of hospital record, established at birth, on hospital letterhead (not souvenir "birth certificate"); or
- Life or health insurance record.

D. If the above documents are not available the following documents will verify **Citizenship only** (if created at least 5 years before the Medicaid application and show a U.S. place of birth):

- Federal census records from 1900-1950 showing the applicant's age/U.S. place of birth. The five year rule does not apply to census records. (To get this information, have the individual submit a form BC-600 with fee and in the remarks section write "U.S. citizenship data requested for Medicaid");
- Bureau of Indian Affairs tribal census records of Navaho or Seneca Indians;
- An amended U.S. public birth record, after age of 5;
- Signed statement from the Physician or midwife in attendance at the birth;

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- Nursing home institution records that contain biographical information;
 - Medical records with biographical information (excluding immunization); or
 - A written and signed attestation by at least 2 people (one non-relative) who have personal knowledge of the birth. The identity and citizenship of these two people must be verified also. The applicant/recipient or other knowledgeable individual must sign a separate statement explaining the reason no other documents are available. The five year rule does not apply to attestations. These statements should only be used in **rare** circumstances.
- E. The following documents may be accepted as **proof of identity only** (use with documents listed in sections B through D above):
- U.S. American Indian/Alaska Native tribal documents with photo or other identifying information;
 - State Driver's License with photo or other identifying information;
 - School ID card with photo (For children under 16 no photo is required). This includes nursery, daycare records, or school records, including school conference records.
 - U.S. military card or draft record;
 - Military dependent's ID card;
 - Federal, State, or local government ID card with photo;
 - Native American tribal document;
 - U.S. Coast Guard Merchant Mariner card; or
 - In the event no other identifying documentation exists (for a child under 16) an attestation signed by parent or guardian stating the date and place of birth of a child will be accepted. (This cannot be used in conjunction with an attestation from section D).

CMS-2257-IFC-42

Submitter : Dr. Eileen Ouellette
Organization : American Academy of Pediatrics
Category : Health Care Professional or Association

Date: 08/04/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-42-Attach-1.PDF

American Academy of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN

AAP Headquarters
141 Northwest Point Blvd
Elk Grove Village, IL 60007-1098
Phone: 847/434-4000
Fax: 847/434-8000
E-mail: kidsdocs@aap.org
www.aap.org

Reply to
Department of Federal Affairs
Homer Building, Suite 400 N
601 13th St NW
Washington, DC 20005
Phone: 202/347-8600
Fax: 202/393-6137
E-mail: kids1st@aap.org

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Immediate Past President
Carol D. Berkowitz, MD, FAAP

August 4, 2006

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

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

Dear Sir/Madam:

On behalf of the 60,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists of the American Academy of Pediatrics (AAP), 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. While appreciative of the significant evolution from CMS's past guidance to states for those children who may qualify as disabled, AAP remains deeply concerned that the rule will hurt children who qualify for Medicaid but find it difficult to prove. As set forth below, AAP views these aspects of the rule as problematic.

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 whom 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 pediatricians for a number of reasons. First, pediatricians may not receive Medicaid payment for services rendered until their patients' documentation has

been assembled and presented to the state Medicaid agency. If pediatricians 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. Pediatricians 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 pediatricians 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, AAP 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. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship. 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

AAP 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, AAP 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,

Eileen M. Ouellette, M.D., J.D., FAAP

Eileen M. Ouellette, MD, JD, FAAP
President

Submitter : David Miller

Date: 08/04/2006

Organization : Arizona Council of Human Service Providers

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

Please exempt foster children in the custody of the State from the Citizenship requirements for Medicaid. We have many cases in Arizona where the parents of the children in care are not Citizens but the children are. Their families will have great difficulty in providing this verification due to their own fear of deportation and the children will be denied access to critical health/mental health services.

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

Provisions of the Interim Final Rule with Comment Period

Please exempt foster children in the custody of the State from the Citizenship requirements for Medicaid coverage.

Submitter : Ms. Fatima Goldman
Organization : Federation of Protestant Welfare Agencies
Category : Social Worker

Date: 08/04/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

As Executive Director of the Federation of Protestant Welfare Agencies (FPWA), a membership organization of over 200 human service agencies and 100 churches in New York State, I am deeply concerned about the Administration's guidance, related to the 2006 Deficit Reduction Act (PL 109-362), requiring documentation of citizenship for Medicaid services, and its impact on children and families in the child welfare system.

Requiring documentation of citizenship and identity for Medicaid, will: (1) delay or deny health care for children without easy access to passports, drivers licenses or original birth certificates; (2) drain state child welfare resources as funds are diverted from care, prevention and treatment services to meet urgent health care needs; and, (3) increase the administrative burden on state and voluntary sector agencies providing child welfare services.

Children whose families typically suffer from extreme poverty, homelessness, mental and physical illness, or parental substance abuse often lack the required documents. Children in out-of-home care have greater health and mental health needs than other children, and research suggests that health care access, especially in the first days of placement, is critical. Delaying health services will hurt children who have already suffered abuse and neglect.

We recommend exempting foster and adoptive children from these requirements. This is the simplest, most effective method for ensuring timely health care treatment for children and families in the child welfare system.

As a secondary response, we recommend that children eligible for foster care services under Title IV-E be considered as having met the burden of citizenship, because state child welfare agencies already document citizenship, making these children automatically eligible for Medicaid coverage.

Thank you for your attention to this matter. Please feel free to contact me at (212) 801-1325 or my Senior Policy Analyst for Child Welfare, Caitlyn Brazill, at (212) 801-1393 for further information in this issue.

Sincerely,

fg

Fatima Goldman
Executive Director/CEO

Submitter : Elizabeth Carey

Date: 08/04/2006

Organization : Michigan Federation for Children and Families

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

As a representative of foster care and adoption providers in the State of Michigan, I believe that these new requirements to prove U.S. citizenship or nationality and identity are duplicative in the case of foster children, as according to federal law, foster children already must have documented citizenship to receive Title IV-E assistance.

In addition, I am very, very concerned that these rules add an additional and tremendous burden on foster children, foster families, and an already overburdened child welfare system. There is no way that State's and private providers will be able to find the documentation described in these rules in a timely way, if ever.

CMS must have an exemption for children who have already been abused and neglected and are in Federal/State Foster Care and Adoption so that no further harm is done to them.

Submitter : Mr. Gerard McCaffery

Date: 08/04/2006

Organization : mercyFirst

Category : Social Worker

Issue Areas/Comments

GENERAL

GENERAL

I hope you guys exempt foster and adoptive children from the new citizenship requirements for Medicaid eligibility. Doing this work is difficult enough.

Submitter : Mr. Andrew Wigglesworth
Organization : Delaware Valley Healthcare Council
Category : Health Care Provider/Association

Date: 08/04/2006

Issue Areas/Comments

GENERAL

GENERAL

Please see attached Word document.

CMS-2257-IFC-47-Attach-1.DOC

In addition, CMS should **consider an exemption for Title IV-E children in foster care** whose families already are trying to manage a disruptive living situation. These children should not be at risk of losing their Medicaid coverage with the potential of increasing the financial burden for foster families. Because there is already an exception for presumptively eligible pregnant women and children, **we ask CMS to give consideration to making an exemption for citizen children born to non-eligible immigrant mothers. Also, we recommend that CMS provide an exemption for newborns of Medicaid eligible mothers when Medical Assistance is providing reimbursement for the obstetrical services provided to the mother.** We feel strongly that these children need to have the benefit of being eligible for Medicaid coverage and not have unnecessary barriers to enrollment.

Increased Flexibility with Accepted Documents and Process

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

Likewise, we think that the CMS rule is too restrictive, as it states that original documents be presented to satisfy the requirements. There is no such stipulation in the original statute and we think that it is critical that **States be allowed to use copies of documents to satisfy the requirements.** In Pennsylvania, the Medicaid application process is primarily done electronically so if an individual had to provide original documents proving citizenship and identity to the County Assistance Office, the application process would be prolonged and it would be an unnecessary administrative burden for consumers.

Mark McClellan, M.D., Ph.D.
Comments on Citizenship Documentation Requirements
August 4, 2006
Page 3 of 3

Another area where we would encourage CMS to build in some additional flexibility has to do with the types of documents that are acceptable. According to the CMS rule, states are prohibited from accepting many documents unless they were created more than five years before an individual applied for Medicaid. However, CMS fails to provide any justification for this time restriction. **We recommend that CMS eliminate the restriction that documents need to have been created more than five years before an individual applies for Medicaid in order to be accepted.**

Finally, we ask CMS to play an active role in requiring states to work cooperatively in their efforts to obtain the necessary documents from each other. The states will need CMS' involvement to ensure the collaborative effort among states to enable successful compliance with the regulation.

The DVHC is concerned that this regulation could have a significant negative impact on the purpose of the Medicaid program and therefore we believe the rule should be modified to achieve an appropriate balance between maintaining program integrity while continuing to ensure necessary coverage for eligible citizens. Thank you for the opportunity to express our views on this important regulation as it will greatly impact on hospital services provided to the most vulnerable citizens in the Philadelphia area as well as other parts of the Commonwealth and the nation. If you or your staff needs further clarification of our views, please do not hesitate to contact me at (215) 575-3737 or Pamela Clarke, DVHC's Vice President of Managed Care at (215) 575-3755.

Sincerely,



Andrew Wigglesworth
President

Submitter : Ms. Lauren Cummings
Organization : Ms. Lauren Cummings
Category : Social Worker

Date: 08/04/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

These new provisions are going to make it impossible to secure medical care and other necessities for thousands of children who are the victims of child abuse and neglect. These children are involved in the Child Welfare system through no fault of their own. These children have been victimized enough and certainly do not need to withstand delays in treatment, etc. due to governmental red tape. Please exempt foster and adoptive children from the new citizenship requirements for Medicaid eligibility.

Submitter : Mrs. Roxanna Webb

Date: 08/04/2006

Organization : Mrs. Roxanna Webb

Category : Social Worker

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter : Dr. Charles Bruner
Organization : Child & Family Policy Center
Category : Other

Date: 08/04/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-50-Attach-1.PDF



Child and Family Policy Center

218 Sixth Avenue • 1021 Fleming Building • Des Moines, IA 50309-4006
515.280.9027 telephone • info@cfpciowa.org email • 515.244.8997 fax

August 4, 2006

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

Dear Mr. McClellan,

As a center devoted to "linking research and policy on issues vital to children and families," we urge you to take as broad and simple an interpretation as possible of the Congressional direction to require identification and proof of citizenship for persons enrolled in Medicaid, the majority of whom in Iowa are children.

We have particular concerns about the impact that imposing additional documentation responsibilities for Medicaid eligibility will have on children and their access to and use of health services.

Over the last decade, both the Medicaid and SCHIP programs not only have helped otherwise vulnerable children and their families with financial access to health care, they have also helped establish and maintain regular sources of care for children that provide primary and preventive services. Medicaid and SCHIP now cover 28% of all children in Iowa, and 60% of those most vulnerable to health problems and needs. Medicaid and SCHIP both have come to be regarded – by practitioners, participants, and the public – as an essential part of the child health care system, without the stigma that Medicaid may have had in the past.

Almost without exception, children do not "abuse" the health care system. If anything, from a child health perspective, a greater emphasis and more incentives should be put in place to get children into primary and preventive care services. Early identification and treatment of childhood health conditions benefits both the child and society, by preventing or mitigating future health conditions that can lead to chronic disease and major health costs.

For pediatric practitioners to provide such care (usually through well-child visits) requires that children and their families feel secure in going to their



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practitioners and knowing that care will be covered. In at least some instances the additional documentation and citizenship requirements being proposed can disrupt this relationship and erode this security.

At a minimum, the proposed documentation and citizenship requirements for Medicaid recipients will:

- cause a substantial number of families significant additional costs, stress, and expenses to secure that documentation, families who can least afford such costs;
- increase the administrative burden on the state to collect such information; and
- result in some administrative errors that incorrectly deny children coverage.

Congress and this country are engaged in a debate around immigration and the how the country should respond to undocumented workers in this country. This issue is a complex one, but one which will not be solved or addressed through blanket approaches under Medicaid to certify eligibility. Policing of Medicaid coverage of children does not make public policy sense and does not address the much larger underlying immigration issues. Children's health coverage definitely should be the last, and not the first, battleground on which such issues are addressed.

We urge CMS to further simplify, exempt, and provide waivers to its proposed rules to ensure that children's health services are not disrupted and that other avenues are used to address this country's immigration debate.

Sincerely,



Charles Bruner, Executive Director
Child & Family Policy Center

Submitter :

Date: 08/04/2006

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 : Ms. Juanita Craig

Date: 08/04/2006

Organization : Foster Care

Category : Individual

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

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

Submitter : Mrs. Steven Hansen
Organization : Nevada Health Centers, Inc.
Category : Other Health Care Provider

Date: 08/04/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attached

CMS-2257-IFC-53-Attach-1.PDF

Nevada Health Centers, Inc.

Bringing Quality Health Care to Nevada's Communities

Carson City Administrative Office

1802 No. Carson Street • Suite 100 • Carson City, Nevada 89701 • Phone (775) 887-1590 • Fax. (775) 887-7047

Las Vegas Administrative Office

4415 Spring Mountain Road • Suite 103 • Las Vegas, Nevada 89102 • Phone: (702) 307-5414 • Fax: (702) 307-5421

August 3, 2006

Mark B. McClellan, MD, PhD
Center for Medicare and Medicaid Services
Department of Health and Human Services
CMS-2257-IFC
PO Box 8017
Baltimore, MD 21244-8017

Re: Medicaid Program; Citizenship and Documentation Requirements

Dear Dr. McClellan

Nevada Health Centers, Inc. is a non-profit 501(c) (3) organization that has been operating since 1977. We manage 26 medical and dental centers as well as seven Women, Infants and Children Clinics throughout the state. We work with underserved populations and facilitate access to public and private assistance programs throughout our clinics.

We fully subscribe to the premise of providing documentary evidence to insure that only appropriate and eligible persons receive Medicaid benefits. However we find that the requirement that an employee of the state office view the documents as detailed in the current law places an unnecessary burden on United States citizen-applicants and their advocates. We are listing our comments below:

- Citizen-applicants risk losing their documents and are uncomfortable submitting to clinic staff. If application assistance is provided by our staff the applicant either has to entrust original documents to us or take to the local office of the Division of Welfare and Supportive Services (DWSS). Applicants in urban areas do have the option to present these at the local Welfare office. Many citizen-applicants may not pursue Medicaid if this entails a visit to the DWSS office. Failure to follow through with this step could result in lack of access to many medical services.
- Citizen-Applicants in remote locations in Nevada face major obstacles to access. In many small Nevada communities the nearest DWSS office is over 100 or more miles away. DWSS has depended on advocates such as our Federally Qualified Health Centers (FQHC) to assist in gathering and submitting citizenship documents. The new ruling that requires original documents need to be viewed by DWSS is placing additional costs to the FQHC since the original documents must be secured and tracked for submission.

Health Center Sites Throughout Nevada:

- Rural Centers: Amargosa Valley • Austin • Beatty • Carlin • Crescent Valley • Elko • Eureka • Gerlach • Jackpot • Wendover •
- Carson City: Sierra • State Wide: Mammovan • Miles For Smiles Dental Vans (3) • Las Vegas Area: Cambridge • Child Haven •
- Downtown Outreach Clinic • Las Vegas Outreach Clinic • Martin Luther King • North Las Vegas •
- OB/GYN • School Based Health Centers (3) • WIC •

Web Site: www.nvhealthcenters.org

Nevada Health Centers, Inc.

Bringing Quality Health Care to Nevada's Communities

Carson City Administrative Office

1802 No. Carson Street • Suite 100 • Carson City, Nevada 89701 • Phone (775) 887-1590 • Fax: (775) 887-7047

Las Vegas Administrative Office

4415 Spring Mountain Road • Suite 103 • Las Vegas, Nevada 89102 • Phone: (702) 307-5414 • Fax: (702) 307-5421

- Citizen-Applicants are being required to provide more information than non-citizens. A non-citizen can provide a photo copy of their resident alien registration card and other identification documents. DWSS can use the information on the document to verify via computer that the status of the non-citizen meets criteria for Medicaid eligibility. A point to note is that Birth Certificates presented by citizen applicants cannot be verified via a national registration system. The documents can be falsified and a DWSS employee would not be able to differentiate the false document and seal from an original document and seal.
- Citizen-children born in United States hospitals to mother's whose delivery is paid by Medicaid, should not have to provide further verification that they are United States citizens. Removing this barrier would expedite access to medical care for newborns and preclude the escalated social and medical costs that can result from lack of appropriate care due to lack of Medicaid coverage.

Our proposed solution to these requirements would be to change or delete the paragraph that specifies that only the state can review original documents and allow advocates such as FQHC to be certified to view and attest they have viewed original documents and then submit the copies to DWSS. Additionally we propose that children born in United States hospitals to Medicaid eligible mothers be allowed to proof citizenship strictly on the hospital billing of the birth. This solution would adhere to the intent of the act to insure citizenship is verified while removing barriers that alienate citizen-applicants from the process and preclude people from access to Medicaid.

We respectfully submit our comments for consideration by the Centers for Medicare and Medicaid Services and hope that a favorable resolution can be obtained.

Sincerely,



Steven C. Hansen
Chief Executive Officer

Health Center Sites Throughout Nevada:

- **Rural Centers:** Amargosa Valley • Austin • Beatty • Carlin • Crescent Valley • Elko • Eureka • Gerlach • Jackpot • Wendover •
- **Carson City:** Sierra • **State Wide:** Mammovan • Miles For Smiles Dental Vans (3) • **Las Vegas Area:** Cambridge • Child Haven •
- Downtown Outreach Clinic • Las Vegas Outreach Clinic • Martin Luther King • North Las Vegas •
- OB/GYN • School Based Health Centers (3) • WIC •

Web Site: www.nvhealthcenters.org

Submitter : Robin Bardin

Date: 08/04/2006

Organization : Robin Bardin

Category : Congressional

Issue Areas/Comments

GENERAL

GENERAL

Please exempt Foster children and adoptive children from the new citizenship requirements for MEDicaid eligibility. It will keep these children from getting well needed medical help.

Submitter : Mrs. sheryl carter

Date: 08/05/2006

Organization : foster parent

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter : Mr. William Mania
Organization : Michigan Campaign for Quality Care
Category : Consumer Group

Date: 08/05/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

Please see attachment.

CMS-2257-IFC-56-Attach-1.DOC



MICHIGAN CAMPAIGN FOR QUALITY CARE

William Mania, Chairperson
5886 Highgate Avenue
East Lansing, Michigan 48823
(517) 324-5754
www.campaignforqualitycare.org

August 4, 2005

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 Michigan Campaign for Quality Care is a non-partisan grassroots organization of hundreds of consumers across Michigan who seek better care, better quality of life, and better choices for Michigan's long term care consumers. We advocate on behalf of tens of thousands of Michigan citizens who receive Medicaid funded long term care supports and services in nursing homes and through the MiChoice Home and Community Based Waiver program, Home Help, and the PACE program as well as thousands of consumers who live in assisted living facilities or at home and depend on Medicaid funded services for their basic health care. The vast majority of these vulnerable Medicaid recipients have significant physical and/or cognitive impairments. Many of them have no involved family or legal representative.

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 that the interim final rule will result in the delay, denial, or loss of Medicaid coverage for many U.S. citizens who, because of their physical and cognitive impairments, poverty, and other barriers, will simply be unable to meet the unnecessarily stringent, bureaucratic, and complex requirements to prove their citizenship and identity. This rule imposes burdens and requirements that are not required by the DRA. Our comments below highlight areas CMS should modify in the final rule and we urge you, on behalf of our vulnerable constituency who will be at risk of losing essential and often life-sustaining medical coverage, to make these important changes.

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

Under the DRA, documentation of citizenship and identity is *not* required to establish an individual's Medicaid eligibility. Once an applicant for Medicaid declares that he or she is a citizen and meets all other eligibility criteria, Medicaid coverage for the individual should be granted. 42 U.S.C. 1320(d)(1)(A). However, although nothing in the DRA requires a delay in coverage, the preamble to the interim final rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. In the final rule, CMS should make it clear that states may grant coverage to eligible citizens (i.e. individuals who have declared U.S. citizenship and who meet other eligibility criteria) while they are gathering documents such as birth certificates and photo identification cards.

Under the interim final rule, U.S. citizens who have applied for Medicaid, who meet all of the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage. For thousands of applicants, the unnecessary delay in granting eligibility will delay medical care, exacerbate existing health problems, and create significant financial losses for health care providers who will become even more reluctant to serve this population.

Nursing home residents who are attempting to transition from private pay, Medicare or other third party payment to Medicaid face an additional, serious risk. This population, who will experience special challenges in obtaining necessary documentation, faces involuntary discharge from nursing facilities if the delay in granting coverage results, as it surely will, in an unpaid period of care. Pursuant to 42 U.S.C. ' ' 1395i-3(c)(2)((A), 1396r(c)(2)(A), and 42 C.F.R. ' 483.12(a)(4)(i), nonpayment of stay is one of the permissible justifications for discharge. For these residents, involuntary discharge may occur even after Medicaid benefits have finally been approved because the residents will continue to have an unpaid period of care before eligibility was established. These involuntary discharges may result in residents having to seek admission to other facilities far from their families and friends and mean the loss of familiar caregivers and cherished routines. Many studies have demonstrated that involuntary discharges result in transfer trauma including increased morbidity and mortality.¹

¹ See, e.g., Pamela S. Manion & Marilyn J. Rantz, Relocation Stress Syndrome: A Comprehensive Plan for Long-Term Care Admissions, 16 GERIATRIC NURSING 108 (May/June 1995) which describes transfer trauma as a "wave of disorientation or despair" resulting from the relocation of frail elderly residents from familiar surroundings and caregivers to new environments. Symptoms may include increased disorientation, depression, weight changes, anxiety, agitation, sleep disturbances, and gastrointestinal upset. Id. See also, Christopher M. Callahan, et al., Changes in Functional Status and the Risks of Subsequent Nursing Home Placement and Death, 48 JOURNAL OF GERONTOLOGY 93 (1993); Nancy F. Bernie, et al., Effects of Fast Track Closing on Nursing Home Facility Population, 20 HEALTH AND SOCIAL WORK 116 (1995) (study following 69 residents who were relocated to 18 different facilities when their original home was terminated from the Medicaid program; noting that the 43 residents who were not returned to the facility upon recertification suffered twice the rate of mortality and a significantly higher incidence of morbidity than the comparable group of 26 residents who were permitted to return to the facility); Michael

Although Section 6036(c) of the DRA specifically requires an outreach program to educate U.S. citizens about the new requirement, no such program has been implemented. Therefore, most applicants are likely to be unaware of the requirement, leading to additional delays in obtaining and presenting the necessary documents. Even if applicants are aware of the requirement, many states take several months to provide copies of birth certificates and the increased volume of requests that will be generated by the DRA may result in even slower responses. Moreover, even if long term care consumers are aware of the requirement, their disabilities, frequent loss of or separation from their possessions and documents, and the absence in many cases of an involved family or advocates, will cause further delays in obtaining necessary documentation.

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

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

Because a number of U.S. citizens, including long term care consumers, simply will not be able to provide any of the documents listed in the interim final rule, it will unnecessarily result in the denial or eventual termination of benefits to vulnerable citizens who are in fact eligible for Medicaid. While 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 recognize that many states' already overburdened caseworkers will have only limited opportunities to pursue elusive documentation and it does not address the not unlikely situation in which a state is unable to locate the necessary documents for such an individual. Moreover, it does not address the situation in which individuals, such as homeless people and victims of natural disasters who are not incapacitated cannot, despite their best efforts, obtain requisite documents that have been lost or destroyed.

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 435.497(d)(5). The requirements for these affidavits—which are supposed to serve as a sort of safety net-- are still quite rigorous and in many cases unrealistic. It is likely that in a substantial number of cases the requirements cannot be met because two qualified individuals with personal knowledge

A. Ankron, et al., Increased Fall Rates in Nursing Home Residents After Relocation to a New Facility, 43 J. OF THE AMER. GERIATRICS SOC. 1237 (1995) (noting that the incidence of falls doubled after the relocation of 210 residents to a new facility and noting that falls are the fifth leading cause of death in older persons and often lead to a decline in functional status and social isolation). The concept of transfer trauma has been judicially noted. See, e.g., O'Bannon v. Town Court Nursing Home, 447 U.S. 773, 803, n.10 (Blackmun, J. concurring); Lexington Management Co. v. Missouri Dept. of Social Services, 656 F. Supp. 36, 41 (W.D. Mo. 1986); International Long Term Care v. Shalala, 947 F. Supp. 15, 19 (D.D.C. 1996); Libbie Rehabilitation Center, Inc. v. Shalala, 26 F. Supp. 2d 128, 132 (D.D.C. 1998) and Heartland Manor at Carriage Town v. Shalala, Civ. A. No. 899-71253 (E.D. Mich. 1999) at 18.

of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. This is certainly true for many long term care consumers who are often isolated and may not have close family or friends. Indeed, residents of long term care facilities may not be in contact with anyone who has any knowledge of them prior to their admission to the facility and thus no one who has any personal knowledge of their claim to citizenship as required for the two affidavits. Individuals who were born at home may have no record of their birth and no contact with anyone who has first hand knowledge of the birth. And many individuals lack sufficient information about the date, place or circumstances of their birth to obtain necessary documentation or locate appropriate individuals with personal knowledge of their birth or citizenship.

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

There is excellent precedent for this discretion. The regulations for the SSI program allow people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have (20 CFR 4116.1610). The Secretary should adopt similar approaches for both citizenship and identity. **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 make reasonable accommodations for vulnerable applicants and beneficiaries who cannot meet the unnecessarily stringent requirements of the interim rule.

The same approach should be used for verifying identity. The interim rule fails to allow for alternative proofs, except in the case of a child under age 16 whose parent or guardian is available and able to sign an affidavit attesting to the child's date and place of birth. 42 CFR 435.407(f).

3. CMS should not require applicants or 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 documentation requirement, but CMS has added this requirement in the interim final regulations at 42 CFR 435.407(h)(1). This requirement adds greatly to the burden of collecting information and makes it much less likely applicants or beneficiaries will be able to or willing to comply and puts additional

burdens on states.

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 and they will 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. If documents are mailed in, high caseloads, staffing shortages, and the enormous volume of paper handled by caseworkers in the Michigan Department of Human Services create a likelihood that some of these important documents will be lost as already happens on a fairly frequent basis.

Michigan does not require individuals to appear at DHS offices at application or recertification for Medicaid. Requiring submission of original and certified copies of documents would mean Medicaid applicants and recipients would almost certainly have to appear at DHS offices to show their documentation. This requirement would be impossible for many long term care consumers to meet since they frequently lack transportation and the physical ability to travel and wait long periods for appointments. Family members or others acting on long term care consumers' behalf may have work schedules or transportation problems that also make it impossible for them to appear to share the documentation in person with DHS workers. Moreover, the requirement of an original or certified copy will drive up the cost of compliance with the rule since applicants and recipients—or the state agency on their behalf—will have to pay higher fees for obtaining official certification of documents even if they already have copies of those documents on file.

We urge CMS to revise the regulation by modifying the requirement at 42 CFR 435.407(h)(1) to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by the issuing state agency. States should be able to accept copies when the state has no reason to believe the copies are for any reason unreliable.

Conclusion

On behalf of the thousands of long term care consumers for whom we advocate and who will suffer hardship and likely denial of essential benefits pursuant to the unnecessarily restrictive interim final rules, we thank you for your consideration of these comments and urge you to make the modifications outlined above. Unless such changes are incorporated in the final rules, we foresee significant, entirely avoidable harm to very vulnerable individuals who depend on Medicaid for life sustaining medical coverage.

Sincerely,

William Mania

Statewide Chairperson

Submitter : Mrs. Samantha Franklin
Organization : OK for Open Records and Adoption Honesty
Category : Social Worker

Date: 08/05/2006

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

As an adult adopted person I wanted to comment on the new provisions which would exempt foster and adopted children from having proof of identity for medicaid purposes. Although this sounds like an altruistic policy, it actually strips the right of that child to their own biological and medical histories, which would be a worse situation for them in the long run. Child in foster care and who are adopted need to have the same rights as other children to their nationality and biological heritage. Laws need to be enforced that will protect these rights for the children and as they grow into adulthood. This proposed provision would further strip their rights to know this information. It would be better to enforce the Hague Rights of the Child and do the upfront work to protect their rights, instead of taking away accountability of workers and agencies to protect the child's right to their national and biological identity.

All adopted persons should have the same right as other American citizens to their genetic, biological, and medical identities and histories. Several states have passed legislation which allows adult adoptees access to their own birth and adoption records, and as we make laws and policies regarding children we need to keep this crucial need in mind.

Submitter : kathleen dicenzo

Date: 08/06/2006

Organization : Michigan Patient Accounting Association

Category : Individual

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

It would seem to me that this is one of those things that is better left to states' jurisdictions! People on Medicaid are not the types of individuals who have the wherewithall to go searching for copies of proof of their birth. Aged, senile, physically impaired - let the state workers, who have one to one contact, determine if they are legitimate or not.

Submitter :

Date: 08/07/2006

Organization :

Category : Social Worker

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter :

Date: 08/07/2006

Organization :

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

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

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

Provisions of the Interim Final Rule with Comment Period

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

Regulatory Impact Statement

Regulatory Impact Statement

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

Submitter : Mrs. Christine Kuckel
Organization : Community Residences, Inc.
Category : Social Worker

Date: 08/07/2006

Issue Areas/Comments

GENERAL

GENERAL

I feel that foster/adoptive children should be exempt in having to prove citizenship and proof of identity to be provided medicaid services. This would leave hundreds of thousands of children without any medical coverage until proper documentation could be obtained. This can be a very lengthy process for children in the welfare system. This would overburden an already struggling agency trying to provide needed care to the children and families they serve. Please do not let these children and families go without needed health coverage.

Submitter : Mrs. Amy Howard

Date: 08/07/2006

Organization : Mrs. Amy Howard

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

How does one submit two forms of identity for an infant? Neither of my children have been in daycare or school yet. Does this mean I have to now get passports for my children, just to prove their identity? Why is their birth certificate not good enough when that is all that is required for me to get a passport? This is taking things a little too far!

Submitter : Ms. JoAnn Smith

Date: 08/07/2006

Organization : Family Planning Advocates of New York State

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

"See attachment."

CMS-2257-IFC-63-Attach-1.DOC



Family Planning Advocates of NYS
17 Elk Street
Albany, New York 12207-1002
Phone: (518)436-8408
Fax: (518)436-0004
Website: www.fpaofnys.org

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:

Family Planning Advocates (FPA) is a nonprofit organization that represents family planning providers in New York State, including the state's twelve Planned Parenthood affiliates. We represent the state's largest network of health care providers for women and men of all ages, and we provide health care to the ever-increasing numbers of low-income New Yorkers in desperate need of health care. The 250 family planning clinics we represent are often the only available source of health care for more than 350,000 women and men in New York State. Many of our clinics' 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 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.^[1]

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.

^[1] 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.

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.^[2] 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).

^[2] 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>.

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 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.

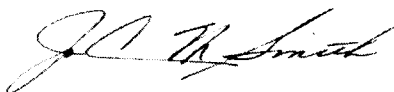
There are U.S. citizens who will not be able to produce the required documentation. States should have the discretion to grant good cause exemptions from the documentation requirements when there is no reason to believe the person is not a citizen.

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.



JoAnn M. Smith
President and CEO, Family Planning Advocates of New York State

Submitter : Mr. Bruce Yarwood
Organization : American Health Care Association/NCAL
Category : Health Care Professional or Association

Date: 08/07/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-64-Attach-1.DOC



American Health Care Association

1201 L Street, NW, Washington, DC 20005-4014
Main Telephone: 202-842-4444
Main Fax: 202-842-3860 2nd Main Fax: 202-289-4253

Writer's Telephone: 202-898-2858
Writer's E-Mail: byarwood@ahca.org
www.ahca.org

Angelo S. Rotella
CHAIR
Friendly Home
Woonsocket, RI

Rick Miller
VICE CHAIR
Avamere Health Services Inc.
Wilsonville, OR

Robert Van Dyk
SECRETARY/TREASURER
Van Dyk Health Care
Ridgewood, NJ

Gail Clarkson
AT-LARGE MEMBER
EXECUTIVE COMMITTEE LIAISON
The Medillage Group Inc.
Bloomfield, MI

Steven Chies
IMMEDIATE PAST CHAIR
Benedictine Health Systems
Cambridge, MN

Edward Kuntz
AT-LARGE MEMBER
Kindred Healthcare Operating,
Inc.
Louisville, KY

Rick Mendien
AT-LARGE MEMBER
Kennon S. Shea & Associates
El Cajon, CA

Richard Pell, Jr.
AT-LARGE MEMBER
Genesis Healthcare Corporation
Kennett Square, PA

Neil Pruitt, Jr.
AT-LARGE MEMBER
UHS-Pruitt Corporation
Hilburn, GA

Kelley Rice-Schild
AT-LARGE MEMBER
Floridean Nursing & Rehab
Center
Miami, FL

Marilyn Weber
DD RESIDENTIAL SERVICES MEMBER
Weber HCC Inc.
Wellington, OH

Wade Peterson
NOT FOR PROFIT MEMBER
MedCenter One Care Center
Mandan, ND

Van Moore
NCAL MEMBER
Westcare Management
Salem, OR

Toni Fatone
ASHCAE MEMBER
Connecticut Assn. of Health
Care Facilities
East Hartford, CT

Christopher Urban
ASSOCIATE BUSINESS MEMBER
Health Care REIT Inc.
Solana Beach, CA

Bruce Yarwood
PRESIDENT & CEO

August 7, 2006

Mark B. McClellan
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
CMS-2257-IFC, Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850
Electronic Submission

Dear Mr. McClellan:

Re: File Code CMS-2275-IFC; Medicaid Citizenship Documentation Interim Final Rule

The American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) welcome the opportunity to comment on the interim final rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). AHCA and NCAL represent more than 10,000 non-profit and for-profit providers dedicated to continuous improvement in the delivery of professional and compassionate care for our nation's frail, elderly and disabled citizens who live in nursing facilities, assisted living residences, subacute centers and homes for persons with developmental disabilities. We are committed to performance excellence and Quality First, a covenant for healthy, affordable, and ethical long term care.

AHCA/NCAL appreciates the effort that the Center for Medicare and Medicaid Services (CMS) put forth in developing this interim final rule. We applaud CMS for determining that it is appropriate to exempt individuals entitled to or enrolled in Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI) from the requirement to present satisfactory documentary evidence of citizenship under the legislation. We commend CMS for making accommodation for citizens in states where the exemption will not provide relief by allowing those states to cross match with the State Data Exchange (SDX) without using the hierarchical process for obtaining documents.

AHCA/NCAL also is pleased that CMS, obviously cognizant that many individuals apply for Medicaid at the time that they enter a nursing facility or other institution, removed the requirement that the institutional admissions papers from a nursing facility, skilled care facility or other institution must pre-date the Medicaid application by five years to be

acceptable proof of citizenship. As CMS clearly understands, the five-year requirement that appeared as guidance in the State Medicaid Directors Letter rendered the allowance of institutional admission papers non-viable as proof of citizenship.

AHCA/NCAL is satisfied, for the most part, that the rule resolves difficulties that many citizens who are elderly or disabled would have experienced in attempting to comply with the legislative provision. However, after careful review of the specifics in the rule, we offer three recommendations to improve the rule as follows:

- When an individual enters a nursing facility, that individual may no longer receive SSI. Some clients in intermediate care facilities for people with mental retardation (ICFs/MR) do not receive SSI and instead receive alternative social security benefits. Many of our members are concerned that those individuals who are entitled to SSI, but for the nursing home placement or alternative benefit, would not be eligible for the exemption from the requirement to present satisfactory documentary evidence of citizenship.

AHCA/NCAL believes that CMS intended to include these individuals under the exemption and we would interpret the regulation to include such individuals. It is our understanding that several states have interpreted the rule to include at least the individuals in nursing facilities who do not receive SSI. We believe that this is a valid interpretation of the rule, particularly when one refers to the background section of the interim final rule (page 39215), which 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." We recommend that CMS clarify, in the final rule, that individuals who are entitled to SSI, but no longer receiving SSI due to nursing facility placement or receipt of alternative social security benefits will still fall under the exemption from the requirement to present satisfactory documentary evidence of citizenship.

- While the hierarchy of documentation is helpful, some accommodation still is needed for non-exempt citizens whose documents were destroyed (in Hurricane Katrina, for example) or cannot be located. We believe that the requirements pertaining to the allowance of affidavits is too rigorous and unlikely to be met (e.g., two qualified individuals with personal knowledge of events establishing the claim to citizenship may not exist). The DRA gives the Secretary discretion to expand the list of documents included in the DRA that are considered to be proof of citizenship and a reliable means of identification. We suggest that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

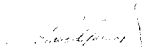
Specifically, 42 CFR 435.407 should be revised by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain

primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

- While the interim final rule at 42 C.F.R. 437.407(e) (6) recognizes Native American tribal documents as proof of identity, the regulation does not permit tribal enrollment cards to be used as evidence of citizenship. The regulations only allow identification cards issued by DHS to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship. We recommend that CMS 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.

On behalf of the AHCA and NCAL membership, thank you for the opportunity to comment on the citizen documentation requirements.

Sincerely,



Bruce Yarwood
President and CEO

Submitter :

Date: 08/07/2006

Organization :

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-65-Attach-1.PDF

**AMERICAN
PEDIATRIC
SOCIETY**

**ASSOCIATION OF
MEDICAL SCHOOL PEDIATRIC
DEPARTMENT CHAIRS**

**SOCIETY FOR
PEDIATRIC
RESEARCH**

Public Policy Council

Chairman

Myron Genel, M.D.
Yale University School of Medicine
Child Health Research Center
Department of Pediatrics
464 Congress Street, PO Box 208081
New Haven, Connecticut 06520-8081
(203) 785-6019
(203) 737-5972 FAX
myron.genel@yale.edu

Washington Coordinator

Karen M. Hendricks, J.D.
The Homer Building
601 Thirteenth Street, N.W.
Suite 400 North
Washington, D.C. 20005
(800) 336-5475
(202) 347-8600
(202) 393-6137 FAX
khendricks@aap.org

American Pediatric Society

Myron Genel, M.D.
Yale University
Jimmy L. Simon, M.D.
Wake Forest University

**Association of Medical School
Pediatric Department Chairs**

Russell W. Chesney, M.D.
University of Tennessee - Memphis
Jon S. Abramson, M.D.
Wake Forest University

Society for Pediatric Research

Elena Fuentes-Afflick, M.D., M.P.H.
University of California, San Francisco
Christine A. Gleason, M.D.
University of Washington - Seattle

August 7, 2006

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

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

Dear Sir/Madam:

The following comments on the *Interim Final Rule regarding Citizenship Documentation Requirements* to implement section 6036 of the Deficit Reduction Act of 2005 (DRA) are submitted on behalf of the Public Policy Council (PPC). The PPC is the public affairs coordinating body for the three major pediatric academic and research societies: the American Pediatric Society, the Association of Medical School Pediatric Department Chairs, and the Society for Pediatric Research. Our organizations represent biomedical, clinical and health sciences pediatric researchers in a variety of settings including medical schools, children's hospitals and other research facilities.

Section 6036 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 PPC appreciates CMS's improved guidance regarding disabled children, however, serious concerns remain for children who qualify for Medicaid, but who are unable, for any variety of reasons, to prove their citizenship and identification.

Newborns

Infants born in U.S. hospitals are subject to DRA citizenship documentation requirements. These infants may not have birth records on file with state Vital Statistics agencies due to application or processing delays. The interim final rule provides that in such circumstances, extracts of a hospital record created near the time of birth could be used as proof of citizenship, 42 CFR 435.407(c)(1), and if this 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 a birth in a U.S. hospital, would not satisfy the interim final rule unless it was created at least *5 years prior* to the individual's Medicaid application date. Thus, any child who is younger than five years old will, by definition, not be able to utilize this identification option. 42 CFR 435.407(c)(2).

Under current law, infants born to U.S. citizens in U.S. hospitals who receive Medicaid at the time of birth are deemed eligible for Medicaid at birth and remain so 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). Hence, the proof of citizenship requirement stands, 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 of the United States. 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 the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, the citizenship requirement stands, despite the state Medicaid agency paying for the child's birth in a U.S. hospital and the child being, by definition, a citizen.

The preamble to the interim final rule states that an applicant is not eligible for Medicaid until the documentation requirements have been satisfied. No exception is made for newborn applicants. Consequently, pediatricians treating newborns will be at risk for delay or denial of payment for services rendered to this highly vulnerable population of patients. This risk is unnecessary if the state Medicaid agency has already made the determination that the child qualifies for Medicaid benefits, as they have done by paying for the birth. The PPC strongly urge CMS to amend 42 CFR 435.407(a) to specify that a state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

Applicants and Reasonable Opportunity

42 CFR 435.407(j) requires that states give a Medicaid applicant "reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." Despite this, the preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. There is no statutory 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. This would include children whose birth certificates were destroyed by Hurricane Katrina and have no other way to prove their citizenship. These children simply will be denied coverage and may never be eligible to receive services they need.

Again, the rule creates an untenable situation for pediatricians for a number of reasons. First, the rule creates a bad policy result by increasing uncompensated care. Pediatricians 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. Second, pediatricians may not receive Medicaid payment for services rendered until their patients' documentation has been assembled and presented to the state Medicaid agency. If pediatricians request payment for services furnished to applicants in these circumstances, those physicians may be deemed to be submitting false claims and subjected to significant legal liability. If pediatricians decide to forego providing services to the Medicaid population, access to needed health care services and treatments will decline.

Consequently, the PPC urges 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 only 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 from 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 will be available for medically necessary covered services. Finally, the PPC urge CMS to add children to the list of vulnerable groups that states must assist in accessing necessary documents.

Children in Foster Care

Among the children subject to 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.

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. 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. 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. For example, when records are destroyed by natural disaster, an individual should not be denied care on this basis alone.

The rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any idea that they need documents proving citizenship. As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or tertiary 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 may be unable to be located or may not even exist).

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 (this requirement appears in the preamble, but not in the regulation) provides yet another hurdle for both 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 PPC commends CMS for a number of provisions in the rule. Specifically, the use of the SDX system may make it easier to prove some Medicaid beneficiaries qualify. Additionally, permitting the use of an affidavit to establish the identity of children under 16 (42 CFR 435.407(f)) is also positive. The PPC further applauds CMS's determination that documents may be submitted via mail or other means. Finally, the PPC 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, 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 from low-income families - documentation requirements that appear reasonable to a middle class population may have unintended, but devastating effects when applied to the Medicaid population. The interim final rule creates unnecessary barriers to care for newborns, applicants, children in foster care, and those for whom documents are unavailable through no fault of their own. Unless serious revisions are made, the very population Medicaid was intended serve—the country's most vulnerable—will be unable to access the care they need.

Sincerely,



Myron Genel, MD, FAAP
Chair

Submitter : Dr. Laura Valenstein
Organization : Abbott House
Category : Other Health Care Professional

Date: 08/07/2006

Issue Areas/Comments

Regulatory Impact Statement

Regulatory Impact Statement

I am writing to strongly urge you to exempt foster care and adoptive children from the new requirements for Medical eligibility.

The documentation that would be required is often very difficult to obtain for the children and would likely result in their loss of Medicaid services. I am a clinical psychologist who works for two foster care agencies and sees the direct impact of service cuts on the children. These vulnerable children have already been victimized by others. Do you really want to participate in taking further advantage of them, and possibly adding to their harm, by denying them much needed medical and mental health services -- services that they need due to no fault of their own. The foster care agencies simply don't have the resources to provide these services, given the cutbacks that they have experienced. They rely on Medicaid-funded services to provide for the physical and mental health needs not covered under Title IV-E Foster Care and Adoption Assistance. Some of these services include those provided in residential facilities, such as case management, rehab services, and therapeutic and psychiatric services. In closing, I again strongly urge you to consider the consequences of this policy, and its impact on society's most vulnerable population...abused and neglected children.

Submitter : Mrs. Patricia Gray

Date: 08/07/2006

Organization : Mrs. Patricia Gray

Category : Individual

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

Proof of Citizenship for Medicaid Assistance--As an adoptive parent and program director of CT Association of Foster and Adoptive Parents, I feel that the proposed requirement for families to provide proof of citizenship to obtain and/or maintain health coverage for their child(ren) is not a practical solution to control cost or insure that the insured is a USA citizen. Families who need coverage the most are not well-informed nor educated. This requirement is time-consuming and taxing on a family who might be struggling with a day-to-day crisis in their lives. Further, foster and adoptive parents might not have access to pertinent documents to maintain coverage. We only have what the state provides.

Regulatory Impact Statement

Regulatory Impact Statement

There are tremendous financial implications to the State to compile and supply necessary documents to foster/adoptive parents for the child(ren) entrusted to their care. Further, there are a significant number of children who are not currently insured. Do we want to risk the health and welfare of vulnerable children?

As an alternative, I would suggest proof of citizenship for future enrollees using documents such as social security card, birth certificate, etc.

Submitter : Dr. Richard Colyer

Date: 08/07/2006

Organization : self

Category : Physician

Issue Areas/Comments

GENERAL

GENERAL

I feel it is absolutely imperative to request proof of citizenship when requesting medicaid benefits. As a physician, I have never heard of someone having care withheld for lack of ID, proof of medicaid, or any other reason. So from that standpoint the argument that this would somehow delay any health benefit carries no weight. Also, most public hospitals run community outreach clinics that provide immunizations, prenatal care, reduced costs prescriptions, clinic services, well child check-ups, etc for little or no charge. And a number of community organizations provide financial assistance to help the sick and needy, take care of children of indigent parents, provide food, clothing, etc. Because of this I think the 'lack/delay of access' argument carries very little weight. Further, I think the potential for abuse would be astronomical were this not a requirement. If they can't show citizenship and proper ID, then how do we even know they need benefits in the first place? If that's the case, maybe I will apply for benefits, give a false name, not show any proof of financial resources or citizenship, get my medicaid card and start getting my medications for free. Perhaps if they could be responsible enough to maintain some proof of citizenship they might also be able to get a job, in which case they might not even need medicaid. And if they had a job and took some responsibility for their life, maybe they wouldn't have all the unplanned pregnancies that they want taxpayers to pay for while they can't even produce a drivers license, state ID card, or a piece of paper that says they are legally residing in this country. To take this a step further, I think the INS should place a representative in every emergency room to assist with checking ID's when people present for care. And if they can't show proof of citizenship, once they are stabilized and ready for release, the INS can assist them with either proving their citizenship to obtain the medicaid benefits they need, or by helping them to arrange travel back to their own country where they can fill their prescriptions and get medical assistance through their own government.

Submitter : Mary Germond
Organization : Delaware County Children and Youth Services
Category : Local Government

Date: 08/07/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-69-Attach-1.DOC



**COUNTY OF DELAWARE
DEPARTMENT OF HUMAN SERVICES
OFFICE OF CHILDREN & YOUTH SERVICES**

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Department of Human Services
MH/MR Administrator**

**Mary Germond, M.S.W., L.S.W.
Children & Youth Services**

August 7, 2006

TO: Center for Medicare and Medicaid Services

**FROM: Mary Germond, MSW, LSW, Director
Children and Youth Services of Delaware County, Pennsylvania**

**RE: Urgent Need to Exempt Foster and Adoptive Children from the New
Citizenship Requirements for Medicaid**

I am the Director of the Public Child Welfare Agency for a large county in southeast Pennsylvania. This letter urges the Department of Health and Human Services to reconsider the application of the New Citizenship Requirements to the eligibility of foster and adoptive children for receipt of Medicaid benefits.

Foster children, generally, enter the Public Child Welfare System as the result of a family crisis which has placed the children at risk of physical violence. Such children are removed from the parents' home, against the wishes of the parents, and often by means of a court order and police assistance. When these children enter foster care, they do so without any documents. The children, then foster children, are in need of an immediate medical evaluation and any treatment needed. They are in immediate need of other services funded by the Medicaid Program.

Foster children, most often, have lived in a highly disorganized, if not chaotic, home situation. Records and document regarding the children are often unavailable even when the court orders parents to release such documents. The agency, generally, must apply for new documents from appropriate sources, e.g. Social Security Administration, for a number and card, the birthplace for a birth certificate, etc. None of these sources provide immediate responses.

**UPPER DARBY OFFICE
20 South 69th Street, 3rd Floor
Upper Darby, PA 19082
(610) 713-2000
FAX (610) 713-2340**

**CHESTER OFFICE
531 Penn Street
Chester, PA 19013
(610) 447-1000
FAX (610) 447-1016**

**LEGAL SERVICES DEPARTMENT
Government Center, Room G-20
201 West Front Street
Media, PA 19063
(610) 891-5104
FAX (610) 891-0489**

**SEXUAL ABUSE CENTER
100 West 6th Street
Ground Floor
Media, PA 19063
(610) 891-5258
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Thus, the urgency of foster children to access services through the Medicaid system, does not permit the time needed to obtain the required documents to prove citizenship. In addition, it places one more burden on the Public Child Welfare System, already burdened with innumerable federal and state requirements.

Please reconsider the application to foster and adoptive children of the requirement to document citizenship. I urge you to include this population to the exemption already in place for a portion of the citizens with disabilities.

If you have questions, or wish to discuss the issue addressed in this letter, you may contact me at 610-713-2017 or germondm@co.delaware.pa.us

Thank you in advance for your consideration of this issue, so critical to the well being of foster and adoptive children.

Sincerely,
Mary Germond

Submitter : Dr. Cristie Pellegrini
Organization : Sonoma County Indian Health Project
Category : Pharmacist

Date: 08/07/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-70-Attach-1.DOC

Cristie Pellegrini, RPh
Sonoma County Indian Health Project, Inc
144 Stony Point Rd
Santa Rosa, CA 95401

August 7, 2006

To whom it may concern:

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

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

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

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

There are 563 Federally-recognized Tribes in the U.S. whose Tribal constitutions include provisions establishing membership in the Tribe. The Tribal constitutions, including

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

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

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

tribal document” but certainly, Tribal enrollment cards or CDIBs fall within the scope of a “Native American tribal document.” Thus, I recommend that section 435.407 (a) of the regulations be amended to include Tribal enrollment cards or CDIBs as Tier 1 documents.

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

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

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

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

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

As the Pharmacy Director for a tribal organization, I worry for the future of our clinic should the CMS decide to not recognize CDIBs or tribal enrollment cards. I would also ask the secretary to allow for other forms of identification, such as a state-issued driver license, or a notary stamped birth certificate, as a Tier 1 document. In addition to Native Americans, our clinic serves non-natives in our community. These are very vulnerable patients. They are often indigent, mentally ill, and/or homeless. I know many of these patients would be unable to submit a passport (as that would require money and planning), or even an original birth certificate and acceptable identification. I understand the CMS regulations are designed to prevent illegals from getting benefits, but we must temper the means to get to that goal, assuring we do not provide barriers to benefits for eligible U.S. citizens. In my opinion, the Secretary's interpretation of the DRA is very narrow compared to the broad leeway given in the DRA itself. This interpretation will prevent eligible U.S. citizens from getting preventive care at clinics like ours, put the clinics themselves in financial jeopardy, and put an additional burden on our already overburdened hospital system when patients with uncontrolled medical conditions present for emergency care. For these reasons, I urge you to accept recommendations like mine, from the medical and AI/AN communities by allowing alternative documents as proof of citizenship and identification.

Thank you for your thoughtful consideration of my comments.

Sincerely,

Cristie Pellegrini, Rph
Pharmacy Director
Sonoma County Indian Health Project

Cc: Senator Dianne Feinstein
Senator Wesley Chesbro
Representative Noreen Evans
NIHB

Submitter :

Date: 08/07/2006

Organization :

Category : Local Government

Issue Areas/Comments

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

Provisions of the Interim Final Rule with Comment Period

I have a concern that a child of a pregnant woman given either full scope Medicaid during her pregnancy, or pregnancy-only benefits, could potentially not have access to care in the first year of their life, based on the lack of ability to "prove citizenship". Is there a provision in the law for a child whose mother proved she was pregnant and eligible for pregnancy Medicaid benefits? How much time would a newborn child's parents be given to fulfill the citizenship requirement?

Submitter : Mr. Jon Sasser
Organization : Clark Co. Legal Services, et. al.
Category : Attorney/Law Firm

Date: 08/07/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-72-Attach-1.DOC

**JON L. SASSER, ESQ.
LEGAL SERVICES
STATEWIDE ADVOCACY COORDINATOR**

**650 Tahoe Street
Reno, NV 89509
(775) 329-2727, Ext. 122
(775) 324-5509 (fax)**

August 7, 2006

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

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

Dear Sir or Madam:

I represent three civil legal services programs in Nevada: Washoe Legal Services, Clark County Legal Services and Nevada Legal Services. Our clients include many low income Medicaid recipients/applicants. I also serve as a member of the Department of Health and Human Services (HHS) Strategic Plan Accountability Committee (SPAC) for People with Disabilities, the Advocacy Chair of the Nevada Covering Kids & Families Coalition and a board member of the Nevada Health Care Reform Project.

I am commenting 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). Effective 7/1, the rule requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. Under the proposed rule, many U.S. citizens will lose or be denied Medicaid coverage. Others will face potentially health-threatening delays in receiving need services. Please change the final rule as suggested below.

Originals or certified copies: The requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship is real problem. It undermines the elimination of a face-to-face interview since applicants will be reluctant to mail in originals. Why cannot a copy suffice? Copies and faxes are admissible

evidence in court. Other agencies which may have previously documented citizenship (like a foster care agency) are likely to have copies not originals in their files. The requirement undermines the policy that it should take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. It greatly increases the burden on applicants and agencies.

Applicants. The preamble to the proposed rule states that applicants “should not be made eligible until they have presented the required evidence.” 71 Fed. Reg. at 39216. The rule itself says 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 an eligibility criterion. Once an applicant declares that he or she is a citizen and meets all requirements of eligibility, he/she should be eligible. The DRA does not require a delay in providing coverage. The net result 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.

It can take months to obtain a duplicate birth certificate. What is the logic behind losing urgently needed pre-natal care, chemotherapy, relief from infection, etc., due to delays beyond the control of applicants?

Please 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: 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

If there is documentation in the foster care file, it is likely to be a copy. Workers will expend considerable time trying to obtain a certified copy and delivering it to the Medicaid agency. Many foster care kids are too young to say who their parents are or what their birth state may be. Older foster children may not know.

Your proposed rule will delay access to care for foster kids. As a result prospective foster parents may be reluctant to accept them without a medical provider at state expense.

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

Newborns. Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. 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 re-determination.” 71 Fed. Reg. 39216. This makes no sense, since the state Medicaid agency paid for the child’s birth in a U.S. hospital and the child is by definition a citizen. In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant subject to the 5-year bar on Medicaid coverage or an undocumented immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, this makes no sense, since the state Medicaid agency paid for the child’s birth in a U.S. hospital and the child is by definition a citizen.

Because the rule would prevent states from providing coverage until documentation of citizenship is provided, hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement for the treatment of newborns who are low-birth weight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements.

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

Citizens who lack documentation. There are U.S. citizens (homeless people, hurricane victims, etc.) who will never be able to provide any of the documents listed. While the states must assist individuals with "incapacity of mind or body", such assistance is no guarantee of success. Nor does the rule address those with capacity whose documents have been lost or destroyed and which, despite the best efforts of all, cannot be obtained. Such applicants can never qualify and current beneficiaries will eventually lose their coverage. Affidavits to establish citizenship are to be used ONLY in rare circumstances. Rarely will two qualified individuals with personal knowledge of person's birth be available.

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

The Secretary should adopt a similar approach to 20 CFR 416.1610. 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 our clients who are U.S. citizens can continue to receive needed health care.

Native Americans: While the interim final rule recognizes Native American tribal documents as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. A tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity.

Nevada has 25 federally recognized tribes/councils. 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.

Conclusion: The proposed rule will deny needed medical care to the needy clients of the legal services programs which I represent. There is authority within the DRA to rectify the problems raised. The proposed rule will do far more to exclude citizens from receiving needed (and in many cases, life and death) services than to prevent non-citizens from fraudulently obtaining care. Ironically it will prevent citizens from obtaining emergency care available to non-citizens. Please make the requested changes.

Sincerely,

Jon L. Sasser
Statewide Advocacy Coordinator.

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

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

Submitter : Mr. James McMullen

Date: 08/07/2006

Organization : Court Appointed Special Advocates (CASA)

Category : Federal Government

Issue Areas/Comments

GENERAL

GENERAL

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

Submitter :

Date: 08/07/2006

Organization :

Category : Social Worker

Issue Areas/Comments

GENERAL

GENERAL

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

CMS-2257-IFC-75

Submitter : Ms. Marguerite Kowaleski
Organization : Oakland County Welfare Rights
Category : Consumer Group

Date: 08/07/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-75-Attach-1.DOC

CMS-2257-IFC-75-Attach-2.DOC



OAKLAND COUNTY WELFARE RIGHTS ORGANIZATION

132 Franklin Blvd. (248)334-8117 Pontiac, MI 48341

W
R
O

FAX: 248-474-4029

August 8, 2006
RE: CMS-2257-IFC

These comments are being submitted on behalf of members of the Oakland County Welfare Rights Organization. We are an advocacy organization that for 30 years has worked with and assisted low income people in Michigan who need and are entitled to medical and other services from the government. We are deeply troubled by some of the requirements in the 2005 Deficit Reduction Act related to the new requirements for documentation of citizenship, and believe many low income people needing Medicaid will be seriously harmed by certain of the requirements which seem unnecessary and impossible to implement in some cases.

I. *Background Implementation Conditions/Considerations*

When the state pays for the birth of a child through Medicaid there is no reason to require a new application and proof of citizenship documents at a later date.

Why is an infant whose birth is paid for by Medicaid later required to file an application with the new required citizenship documents? If the child was born in the U.S. – which is obvious if Medicaid is paying for the birth – there is no question this child meets the citizenship requirements. Requiring states to certify them later as meeting the new citizenship requirements makes additional unnecessary work for the states – when they are already overburdened and unable to cope with what is already being demanded. This provision does not make sense and should be eliminated. If it is necessary for the mother to prove citizenship later, so be it, but the child should not have to do so?

Medicaid applicants, especially when in need of immediate medical care, should not have to gather all the documentation necessary to prove citizenship before they can get coverage.

Medicaid applicants who are ineligible – no matter how sick or needy they are – until they are able to get the necessary documentation to prove citizenship, will mean people can be in great suffering and potential danger while all this search for documents is going on. Many people do not have a birth certificate on hand – perhaps it is lost, a deceased parent may have had it but no one knows anything about it now, or the person is not even certain where the record might be, and in some cases there may never have been a birth certificate.

EXAMPLE: I recall trying to get a birth certificate for a woman who was born in Georgia at home, but was not sure even what town she was born in or if there was a birth certificate – or even sure just what names her parents had used (her father went by initials, such as "B.K."). It took a great deal of investigation on my part to eventually get some information (long distance calls, letters, etc.,) and several months time. This person is illiterate and could never have done this on her own. If she was a new applicant for Medicaid she would be waiting all this time to get Medicaid – when she might well have needed immediate care.

The workers at the Department of Human Services in Michigan do not have time to provide that kind of help. If the person is in need of medical services, presumptive eligibility should be granted if the person signs a statement attesting to the truth of their claim regarding citizenship and identity.

III. Collection of Information Requirements

Original or certified copies of birth certificates should not be demanded when the person has a duplicate copy on hand.

Clients will not understand why the copy they have used for previous needs (marriage, school, public benefits, etc.) is not sufficient to prove who they are and their citizenship. A certified copy must be secured from the county where they were born. While some counties may provide this service on line, all do not. And many low income people do not have access to on line services. Our county charges \$15. This is not an insignificant amount for many low income people (especially if birth certificates may be needed for more than one person) and could delay the process even longer when people may have to wait until the next payday to send for the certificate. If the request is not made by the person or a parent listed on the birth certificate, additional documents are required which can delay the process even longer.

AT the very least documents listed as acceptable under Tier 3 and 4 should be accepted when Tier 1 and 2 documentation is unavailable.

Only deeming Tier 1 and 2 documents as acceptable will result in thousands being denied Medicaid. The Tier 3 and 4 items are essential in the most difficult cases where there is little history of the person's birth or they are unable for various reasons to assist in getting that information.

Citizenship and Alienage (435.406)

It is completely unrealistic to assume it will only "take an individual 10 minutes to acquire and provide....acceptable documentary evidence to verify the declaration" and 5 minutes for the state.

If the person has a passport on hand (which few low income people will have) or a certified birth certificate, this may be the case. However, the majority will not have these readily available. It can take days and weeks as my example above indicates. Whoever made this estimate has not worked with the average person receiving Medicaid or in a state office where all the documents must be assembled and verified. Just for state workers to access other data bases where the required information **may** be available will in itself take far longer than 5 minutes for workers whose case loads demand numerous other actions and decisions.

Submitter : Miss. Alicia Woodsby
Organization : National Alliance on Mental Illness of CT
Category : Other

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-76-Attach-1.DOC

August 4, 2006

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

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

Dear Secretary Leavitt:

The undersigned organizations from the State of Connecticut are sending you our comments on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. (We have also submitted our comments to CMS through the CMS website).

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

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

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

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

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

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

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

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

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

The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, parents, and persons with disabilities. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

In Connecticut, DSS officials and others are working together to develop an expedited family planning waiver program that would permit a simplified enrollment process for patients seeking family planning services at family planning clinics. Connecticut is thoughtfully building on

successful models in other states, but it will now be difficult to implement such a program in light of the application of the citizenship documentation rule to this population of mostly young and vulnerable women. These young women are unlikely to carry with them their citizenship papers, and will be reluctant to make multiple trips to the clinics in order to obtain family planning services.

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

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

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

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

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

The interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children, except those eligible for Medicaid based on their receipt of SSI benefits. There are about 7,000 children in Connecticut's foster care programs, including approximately 3,000 children receiving federal foster care assistance under Title IV-E, who are subject to the citizenship documentation requirement.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this effect in either the rule itself or the preamble.)

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

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

Newborns

Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. While the rule allows extracts of a hospital record created near the time of birth to be used as proof of citizenship, 42 CFR 435.407(c)(1), and a medical (clinic, doctor, or hospital) record created near the time of birth to be used in the “rarest of circumstances,” 42 CFR 435.407(d)(4), there is no reason that states should have to obtain this information. There is also no reason that newborns should experience delays in receiving Medicaid coverage while these documents are obtained. When a state Medicaid agency pays for a child’s birth in a U.S. hospital, the child is by definition a citizen. Further proof should not be required for newborns whose birth is paid for by a state’s Medicaid program. Risking the health of newborns and increasing the potential for uncompensated care is unnecessary in this situation.

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

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

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

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

Sincerely,

Robert A. Correll
President, NAMI-CT

30 Jordan Lane
Wethersfield, CT 06109
860-882-0236

Submitter : Patti O'Callaghan
Organization : Lafayette Urban Ministry
Category : Social Worker

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

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.

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.

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.

Delay in establishing eligibility for Medicaid (?436.1004)

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

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

Application of the rule to children in foster care (?435.1008)

We strongly oppose the provisions in the final rule that would apply the citizenship rule to children entering foster care. These children have already suffered at the hands of adults and to deny them access to medical care until their citizenship can be proved is unconscionable. Few will be found not to be either citizens or legal immigrants, but for some potentially lengthy period of time they will have no Medicaid coverage under this rule.

It will not be easy for states to find the necessary documentation to make these children eligible, given that their birth families may not cooperate. Moreover, states already verify citizenship of

about half of the children in foster care when they determine them eligible for federal foster care payments. Yet the regulations require citizenship to be proven again.

Submitter : Ms. Ellen Kugler

Date: 08/08/2006

Organization : National Association of Urban Hospitals

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-78-Attach-1.DOC

NATIONAL ASSOCIATION OF URBAN HOSPITALS

Private Safety-Net Hospitals Caring for Needy Communities

August 8, 2006

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

Subject: File Code CMS-2257-IFC

To Whom it May Concern:

I am writing on behalf of the National Association of Urban Hospitals (NAUH) regarding the interim final rule published in the *Federal Register* on July 12, 2006 amending Medicaid regulations to implement section 6036 of the Deficit Reduction Act of 2005, which requires states to obtain satisfactory documentary evidence of Medicaid applicants' or recipients' citizenship and identity so they can receive federal Medicaid matching funds.

On the whole, we believe that CMS did a good job of developing appropriate regulations to implement a complex piece of legislation that was highly prescriptive in a number of ways and posed significant challenges. We appreciate your decision to exempt Medicare and SSI recipients from resubmitting appropriate documentation on the grounds that they have already satisfactorily documented their citizenship and identity and your decision to allow states to enter into agreements with their vital statistics agencies to provide documentation for recipients and applicants.

At the same time, however, we would like to bring several issues to your attention.

The Onerous Nature of Documentation Requirements

NAUH is concerned that the documentation requirements are extremely onerous and that complying with them may be beyond the capabilities of some applicants and recipients. Negotiating through government agencies is always complex, and many low-income people may fail in their good faith efforts to do so. Also, some may encounter fees for securing the documentation they seek – a real potential burden for low-income families. Consider, for example, that birth certificates cost \$10 in Pennsylvania and Oklahoma and \$22 in Texas and that until passage of the Deficit Reduction Act last year, the most a state could require Medicaid recipients to pay for a prescription drug was three dollars. Similarly, individuals with mental illnesses often are in no position either to pursue the required documentation or to help others who are pursuing it for them. Surely something can be done to ease this burden on those with very limited abilities to help themselves.

These challenges, in turn, lead us to worry that some people who truly are qualified for Medicaid will give up and stop trying, leaving hospitals to absorb the cost of the care they continue to provide to such individuals because hospitals do not turn away those who truly need their help, regardless of their ability to pay. For this reason, we encourage CMS to review all of the requirements and consider ways of simplifying them. One possibility, for example, might be to require states to waive fees for individuals seeking documents to prove their identity and citizenship.

Exercise of Discretion to Exempt Individuals From Documenting Citizenship
(Issue identifier "Implementation Conditions/Consideration")

Another way to ease the difficulty of providing documentation would be to require it of fewer people. The Deficit Reduction Act offers CMS the discretion to exempt individuals who have already documented their citizenship from needing to do so again. CMS has chosen not to exercise this discretion except in the case of Medicare and SSI recipients. NAUH urges CMS to reconsider this decision. If the point of this new law is to ensure that applicants and recipients have adequately documented their citizenship and identity, we believe that those who have already done so for other purposes should not be required to do so again. We believe this is a good idea in general and especially appropriate at a time when more than 40 million Americans are facing this new requirement. If this approach is considered acceptable for Medicare and SSI recipients, we believe it is appropriate for others – such as newborns and individuals enrolled in other government programs, for whom adequate documentation already is available – who have already provided the requisite documentation and therefore urge CMS to consider fully exercising the discretion offered to it in the Deficit Reduction Act.

NAUH believes that many Medicaid applicants and recipients will become discouraged by the proposed documentation requirements and will stop trying to meet them. As a result, some who otherwise qualify for Medicaid will never be deemed eligible and others who currently are enrolled in the program will be disenrolled – yet many who are disenrolled will undoubtedly continue to seek and receive the care they need, with hospitals forced to absorb the cost of this care as uncompensated care. We believe this, in turn, will result in the federal government finding itself saving money that otherwise would have gone to the states as federal financial participation. We encourage CMS to consider setting aside these unanticipated savings in a fund to help hospitals pay for the increased burden of uncompensated care that we believe they will incur as a result of this new rule.

We also believe that the administrative burden of processing all of this documentation and assisting individuals who cannot obtain documentation on their own will be extremely costly for the states. For this reason, we recommend that CMS increase the Federal Medicaid Assistance Percentage (FMAP) for administrative costs associated with implementing this new, unfunded federal mandate.

Delegation of Authority to Certify Required Documentation

NAUH cannot tell, from the text of the regulation, whether states may delegate the authority to certify that an applicant or recipient has provided the requisite documentation. In particular, a number of states have working agreements with partner agencies to provide intake workers who are stationed in hospitals, public health facilities, clinics, and other locations. These intake workers seek to enroll in Medicaid uninsured individuals who turn to these facilities for care. If, in the course of that application process, uninsured individuals provide documentation that meets the new standard, is that good enough to meet the new requirements? Are these intake workers, even though they are not formally state employees, empowered to certify that they have seen the required documentation? Or will applicants be required to present the documentation again to state employees? We appreciate any clarification you can provide on this issue.

* * *

We appreciate your attention to NAUH's suggestions, questions, and concerns and welcome any questions you may have about them.

Sincerely,

Ellen J. Kugler, Esq.
Executive Director

Submitter : Ms. Jennifer Halper

Date: 08/08/2006

Organization : New Jersey Protection and Advocacy, Inc.

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

CMS-2257-IFC-79-Attach-1.PDF



New Jersey Protection and Advocacy, Inc.

210 South Broad Street • 3rd Floor • Trenton, New Jersey 08608

Advocating and advancing the human, civil and legal rights of persons with disabilities

Sarah W. Mitchell, R.N., M.S.W., J.D.
Executive Director

(800) 922-7233 (VOICE-New Jersey Only)
(609) 292-9742 (VOICE); (609) 777-0187 (FAX)
(609) 633-7106 (TTY); Dial "711" for Relay
www.njpanda.org

August 8, 2006

<http://www.cms.hhs.gov/erulemaking>

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

Re: CMS-2257-IFC, Medicaid Program: Citizenship Documentation Requirement

Dear Sir/Madam:

The following comments on the Center for Medicare & Medicaid Services' proposed regulations regarding Citizenship Documentation Requirements for the Medicaid Program implementing the Deficit Reduction Act, are submitted by New Jersey Protection & Advocacy, Inc., (NJPA) the designated protection and advocacy system for individuals with disabilities in New Jersey, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 5041 to 15045; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. §§ 10801 to 10807; the Client Assistance Program of the Rehabilitation Act, 29 U.S.C. § 732; the Protection and Advocacy for Individual Rights Program of the Rehabilitation Act, 29 U.S.C. § 794e; and the Technology Related Assistance for Individuals with Disabilities, 29 U.S.C. § 3004.

42 CFR § 435.407 (g)

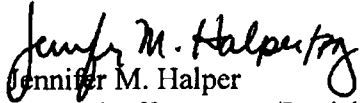
CMS proposes to provide protection to special populations by requiring states to provide individuals with disabilities assistance in obtaining evidence of citizenship. However, the regulation does not put safeguards in place to indicate how a state determines if an individual has a disability or what assistance is required to be provided by the state. Additional protections need to be placed into the regulation to ensure that individuals with disabilities are not removed from the Medicaid rolls because they were unable to produce the required documentation. CMS should specify the type of assistance the states are required to provide and indicate who determines if an individual has a disability requiring assistance and how that determination is made. If CMS determines that placing more specific safeguards in this area is not possible, then consideration should be made to exempting individuals with severe disabilities from the documentation requirement. Without these safeguards in place, individuals with disabilities will be extremely vulnerable to this requirement and will likely be dropped from the Medicaid rolls and left without any medical care coverage.

*New Jersey's designated protection and advocacy system for individuals with disabilities
Member, National Disability Rights Network*

Centers for Medicare & Medicaid Services
Department of Health and Human Services
August 8, 2006
Page Two

NJP&A appreciates the opportunity to provide comments on this provision and would welcome the opportunity to discuss its concerns further.

Sincerely,



Jennifer M. Halper
Senior Staff Attorney/Legislative Coordinator

JMH/ptz

Submitter : Mrs. Amber Visnaw

Date: 08/08/2006

Organization : Foster Parent

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

My husband and I have been foster parents for 2 1/2 years. When we get a child into care I am lucky if I receive copies of any identification. Usually I just receive the numbers, and getting a SSN from the Social Security Administration is like pulling teeth because I am not the bio parent. It is frustrating for both the agency and the foster parent to get such information. Now to require it in order for these children to receive Medicaid will only put unnecessary stress on everyone involved. I love doing foster care, I love each and every child who comes into my home. What I do not like is all the bureaucratic hoops I have to jump through for these kids. I work full time and have to take care of these kids, please do not make it more difficult on me than it already is.

Submitter : Ms. Susan Yolen
Organization : Planned Parenthood of CT
Category : Other Health Care Provider

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-81-Attach-1.DOC

Planned Parenthood of Connecticut, Inc.
345 Whitney Avenue
New Haven, CT 06511
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 Connecticut cared for over 62,000 patients last year, nearly ¼ of whom received services as clients of the federal Medicaid program. Most are between 18 and 25 years of age, and came to us seeking services to allow them to prevent unintended pregnancy, or to receive testing and treatment of sexually transmitted disease. These services are vital in order to help low income women plan both their families and the work experiences they will need in order to leave poverty behind.

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.

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

In 2005, the Connecticut General Assembly charged our State Department of Social Services with preparing an application for a family planning demonstration waiver. This application is still in the process of being written, and, when enacted, will be an important way to improve the health of young women by enabling them to access basic reproductive health care. Studies all show that annual “well woman” gynecological exams help to prevent unplanned pregnancy and to prepare young women so that they are in optimum health when they do decide to bear children.

Since 1993, twenty-four states have expanded access to family planning services through 1115 family planning demonstration programs. Under these programs, states have received CMS approval to extend Medicaid-covered family planning services to individuals who do not meet the requirements for standard Medicaid enrollment in order to prevent unintended pregnancies. Streamlining enrollment and extending coverage are fundamental to the success of these programs, which have assisted millions of low-income people who would otherwise have no source for family planning services. For many states, family planning demonstration programs are at the cornerstone of improvements in quality of health care. We hope that Connecticut will soon be among these states. The citizenship documentation requirements strike at the core of how family planning demonstration programs are designed and could 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 have saved money in all of the states where they have been implemented. 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 upon declaring 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 clients in need of time-sensitive reproductive health care services.

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

Moreover, 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 Connecticut, each town manages the means of accessing birth certificates in a different manner. In most cases, there is a charge to the citizen for purchasing the document, as well as the additional barrier of requiring photo identification or other original documents. CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220) appears unrealistic to anyone who has negotiated a local records-keeping bureaucracy. Delays in care will occur as a result of the document acquisition process—a 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. It is 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. 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. 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.

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

states to use vital health databases to document citizenship and other state and federal databases to document identity (see 71 Fed. Reg. 39216 and 42 CFR 435.407(e)(10)). At the same time, however, like other states, Connecticut is still bound by a proscriptive process that does not adequately allow it to respond to the unique needs of its population. In general, the hierarchy of document reliability that CMS chose creates a much larger burden than is necessary to implement section 6036. Specifically, there are several areas where CMS should amend the interim final rule.

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

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

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

Conclusion

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

Thank you for your attention to these comments.

Susan Lloyd Yolen, Vice President, Public Affairs & Communication
Planned Parenthood of Connecticut

Submitter : Thomas John
Organization : The Chickasaw Nation
Category : Other Government

Date: 08/08/2006

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

Final rule requirements do not recognize citizenship of American Indians as granted by the Indian Citizenship Act of 1924 (8 U.S.C. Sec. 1401(a)(2)), and as documented through membership in a federally-recognized tribe. The final rule also places an undue burden (in both time and cost) on American Indian Medicaid beneficiaries by requiring such persons to obtain other State or Federal documentation (i.e., birth certificate and passport).

CMS-2257-IFC-82-Attach-1.PDF



the
Chickasaw
Nation HEADQUARTERS

Arlington at Mississippi / Box 1548 / Ada, OK 74821-1548 / (580) 436-2603

Bill Anoatubby
Governor

Jefferson Keel
Lieutenant
Governor

June 6, 2006

Dr. Mark McClellan, Administrator
U.S. Centers for Medicare and Medicaid Services
Central Building, Mailstop C5-11-24
7500 Security Boulevard
Baltimore, MD 21244-1850

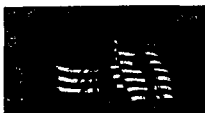
Dear Dr. McClellan:

The Chickasaw Nation is deeply concerned about the impact of the U.S. Office of Management and Budget (OMB) requirements for Medicaid documentation that will go into effect soon. The particular concern is that the proof of citizenship requirement may be met only with a birth certificate or passport. Many American Indians and Alaska Natives (AI/AN) do not have birth certificates in particular.

AI/AN are at particular risk of having their Medicaid coverage delayed, denied or canceled as a result of the requirement, because many elderly AI/AN have no birth certificate, as they were born in remote rural reservations where no healthcare facilities existed. As a result, such births often may not have been officially registered. Even after the establishment of the U.S. Indian Health Service in 1955, access to health care facilities for the AI/AN population has remained lower than the rest of the U.S. population.

Furthermore, the Indian Citizenship Act of 1924 [8 USC § 1401(a)(2)] granted citizenship to all Indians born within the territorial boundaries of the United States. As such, all members of federally recognized Indian tribes may be declared U.S. citizens. Proof of tribal enrollment or citizenship, is used to determine eligibility for health care provided through the federally-funded U.S. Indian Health Service. Therefore, the same proof of federally-recognized tribal enrollment, or citizenship, should be accepted as proof of U.S. citizenship for the purpose of meeting the new OMB documentation requirement.

The eligibility determination for the Oklahoma Medicaid program requires an Oklahoma Department of Human Services employee to complete the certification process. State law and policy prohibits a tribal employee from performing certification of eligibility. As a result, tribes have had to expend a great deal of time and resources to collaborate within the parameters of another agency. Tribes in Oklahoma have no direct management authority or oversight in the certification of eligibility process, and the addition of another unnecessary documentation requirement greatly increases the opportunity for errors or omissions which would negatively impact the AI/AN beneficiary's access to health care coverage to which he or she is rightfully entitled.



God Bless America!

June 6, 2006

The Chickasaw Nation urges the CMS to develop a technical amendment or waiver to the birth certificate documentation requirements in order to accommodate the existing reality of AI/AN citizenship and added burdens of obtaining the required documents among the AI/AN population.

We appreciate the opportunity to comment and to potentially impact the decisions made by the CMS with regard to tribal programs. If you have any questions, please contact Mr. Thomas John, administrator of self-governance, at (580) 436-7214.

Sincerely,


Bill Anoatubby, Governor
The Chickasaw Nation

cc: Michael O. Leavitt, Secretary – U.S. Department of Health and Human Services
Dr. Charles Grim, Director – U.S. Indian Health Service
Mr. Don Perkins, Acting Regional Director – CMS Region 6

Submitter : Mrs. Audra Hennessey
Organization : Children and Youth Services
Category : Social Worker

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

I have worked in the field of child services for the last 12 years where I often remove children from their biological parents for placement in foster care due to neglect and abuse issues. When the children are placed, the parents more often than not, can not locate or do not have the original birth certificate and Social Security cards. This new legislature would cause a disservice for those children who are placed in foster care because without these items, the children can not receive medicare and be eligible for other services while in foster care. In addition, this would make my job harder and would require me to spend more time doing paperwork at my desk than to spend the time assuring that the children in the community are safe and all of their needs are met.

Submitter : Ms. Lynnette J. Rhodes

Date: 08/08/2006

Organization : L & S Associates, Inc.

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-84-Attach-1.RTF.

August 8, 2006

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

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

I am a resident of the State of Michigan and have assisted low-income persons in the process of applying for Medicaid.

I attempt to fill the gaps when low income individuals are uninsured or lack the health care coverage that they need to access necessary medical care. The persons I assist are many times incapacitated due to mind and/or health and are unable to meet the documentary requirements of applying for Medicaid.

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

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

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

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

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

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

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

"Safety net" medical providers in Michigan, such as free clinics, are stretched to their limits attempting to provide health care to individuals who do not meet the eligibility criteria for Medicaid (*e.g.* childless adults who do not meet the stringent disability criteria). They cannot take on the burden of providing care to individuals who are eligible but not receiving Medicaid because they have requested but not yet received documentation of citizenship or identity. In many parts of the state - particularly in rural areas - there are no safety net providers. Medicaid-eligible individuals whose coverage is delayed because of documentation requirements will be forced to go without

necessary treatment or to seek care in hospital emergency rooms – driving up the cost of care in the long run.

If this rule is not changed, then this requirement will effectively become a disguised application fee. Every applicant, even applicants who may ultimately be ineligible, will be forced to pay for documentation in order to meet the “reasonable” time frames stipulated for proving citizenship.

I urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state’s Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a “reasonable opportunity” period of not less than two months to obtain the necessary documentation.

2. There is no provision for assisting applicants/ recipients 1) whose representatives are unable to access needed records or 2) who are indigent and cannot afford to pay for attempting to obtain the documents listed in the required hierarchy.

The proposed language stipulates, under 435.407 (g) that:

States must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner **and** the individual lacks a representative to assist him or her. (Emphasis added.)

Although other persons can serve as an authorized representative to assist many applicants/recipients, authorized representatives are not permitted to order birth certificates from states’ department of vital statistics on their behalf. Under current language, the existence of a representative is therefore actually harmful to the client in that it presumes they can obtain the needed information in stating that states are **not** required to assist those with authorized representatives. As a result, the most incapacitated, who are the most likely to have authorized representatives assisting them, will be the most often denied when they cannot meet this requirement and have no way to request state assistance.

Moreover, there is no provision for applicants/recipients who cannot afford to pay for attempting to obtain the numerous documents included in the hierarchy such birth certificates, census Form BC-600, military records, etc.

I urge CMS to allow clients or their representatives to request state assistance when documents cannot be easily obtained or funding to pay for the documents is unavailable.

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

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

I 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.

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

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

As the preamble recognizes, infants born to U.S. citizens and qualified immigrants receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). 42 U.S.C. 1396a(e)(4). The preamble to the interim final rule states,

however, that in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This creates an unreasonable and unnecessary burden on the state agency and the child's family, because the state Medicaid agency's payment for the child's birth in a U.S. hospital -- which makes the child, by definition, a U.S. citizen -- has been documented.

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

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

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

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

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

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

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. I have encountered, for example, individuals who are born at home in rural areas where there was no hospital or public birth record. These individuals - especially if they are middle-aged - are often unable to locate contemporaries who have first hand knowledge of their birth, and the contemporaries are less likely to be able to prove their own citizenship as required in the rules when the their contemporaries were also born in their homes. I also have encountered individuals who are unable to obtain birth records because they lack sufficient information about the date, place, or circumstances of their birth (such as the identity of birth parents).

In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any knowledge that they need documents proving citizenship.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are considered to be

“proof” of citizenship and a “reliable means” of identification. I urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

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

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

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

- Valid student ID from a Michigan school, college, or university displaying a Michigan address
- Michigan school, college, or university records containing the student’s name and Michigan address such as tuition invoices, receipts, class schedules, report cards, or transcripts
- Paycheck or pay stub with the name and address of the employer (please

- provide the phone number of the employer if it is not listed on the document)
- A gas, water, sewage, electricity, land-line phone, or cable television (NOTE: cell phone bills are not acceptable)
 - Bank statement
 - Life, home, auto, or health insurance policy (no insurance binders or registration certificates. Must provide the phone number of the insurance agent if it is not listed on the document.)
 - Mortgage document or rental lease agreement (please provide the phone number of the leasing agency or landlord for rental lease agreements)
 - Government documents issued by federal, state, or local units of government (such as tax assessments or receipts, professional licenses)

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

In order to ensure that Medicaid is not denied or terminated because an applicant or recipient who is a U.S. citizen is unable to produce the documents listed in 42 C.F.R. 435.407(e) as verification of identity, I urge CMS to include a provision allowing the state Medicaid agency to certify that it has obtained satisfactory documentary evidence of identity for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

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

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

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

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

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

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

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

6. Where proof of citizenship is lacking, U.S. citizens should not receive

Conclusion

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

Submitter : Kevin Lembo
Organization : State Office of the Healthcare Advocate
Category : State Government

Date: 08/08/2006

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. Christine Lubinski
Organization : HIV Medicine Association
Category : Physician

Date: 08/08/2006

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. Christine Lubinski
Organization : HIV Medicine Association
Category : Health Care Professional or Association

Date: 08/08/2006

Issue Areas/Comments

GENERAL

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See attachment.

CMS-2257-IFC-87-Attach-1.PDF

August 8, 2006

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Pediatric Infectious and Immunology

executive director
Christine Lubinski

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 the HIV Medicine Association (HIVMA) to share our serious concerns regarding the new Medicaid citizenship documentation requirement and its potential impact on the ability of people living with HIV disease to access lifesaving HIV medical care and treatment. HIVMA represents more than 3,200 physicians, researchers and other medical providers that practice HIV medicine across the U.S.

We whole heartily supported the CMS decision to exclude SSI and Medicare beneficiaries from the new citizenship documentation requirement, which will help to mitigate the impact of the new policy on people living with HIV/AIDS. However, we remain deeply concerned that the unintended consequence of the policy under the current implementation rules will be to needlessly delay or deny Medicaid coverage to U.S. citizens with HIV disease, including pregnant women, single parents, adolescents and children.

We urge CMS to minimize the likelihood that the new policy will impede U.S. citizens from obtaining Medicaid coverage by modifying the final rule as described below.

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

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

Furthermore, the current rule grants more latitude to a qualified legal alien than to a U.S. citizen or national by requiring states to provide Medicaid coverage to a qualified legal alien during the reasonable opportunity period. We believe that the intent was to apply this protection to U.S. citizens and nationals as well and certainly see no justification for applying a more stringent standard to U.S. citizens and nationals.

We urge CMS to revise the rule to better reflect the intent of the new policy. We recommend modifying the final rule to require states to provide Medicaid coverage to applicants that 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 as is current policy for qualified legal aliens.

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 health care coverage under Medicaid. 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 that have fallen on hard times.

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 with HIV disease 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 that 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 supported 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 that are in the two-year waiting period required for Medicare coverage
- People who have received TANF or SCHIP benefits
- People who have successfully verified citizenship for Medicaid coverage, including those who relocate to a new state

Medicaid plays a critical role in providing access to health care for many low-income U.S. citizens living with HIV/AIDS—many whose lives are complicated by much more than HIV disease. We urge you to revise the final rule for the citizenship documentation requirement to recognize the realities of their daily lives so that the new policy does not come between them and lifesaving HIV care.

Sincerely,



Christine Lubinski
Executive Director, HIVMA

Submitter : Ms. Jamey Bell
Organization : Greater Hartford Legal Aid, Inc.
Category : Attorney/Law Firm

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

CMS-2257-IFC-88-Attach-1.PDF



Greater Hartford Legal Aid, Inc.

August 8, 2006

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

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

Dear Secretary Leavitt:

We are a non-profit legal services organization in Connecticut which routinely represents low-income citizens seeking coverage, or seeking to retain coverage, under the Medicaid program. We are sending you our comments on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

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

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

We urge CMS to make the following revisions to ensure that eligible pregnant women, parents, children and persons with disabilities receive Medicaid benefits without experiencing delays,

999 Asylum Ave., 3rd Floor • Hartford, CT 06105-2465

E-Mail: ghla@ghla.org



Tel: 860.541.5000 • Fax: 860.541.5050 • TTY: 860.541.5069

Web site: www.ghla.org

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disruptions or denials of coverage. We believe these revisions are particularly appropriate because the new law does not address any documented problem of non-United States citizens fraudulently receiving Medicaid coverage. You are no doubt aware of the finding by HHS's Office of Inspector General in its report "*Self-Declaration of US Citizenship for Medicaid*" that there was no substantial evidence that non-citizens are obtaining Medicaid by falsely claiming citizenship. And here in Connecticut an audit by our Department of Social Services over a four-year period did not uncover a single case of an applicant falsely declaring citizenship.

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

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

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

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

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

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

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

The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, parents, and persons with disabilities. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

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

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

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

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

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

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

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

The interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children, except those eligible for Medicaid based on their receipt of SSI benefits. There are about 7,000 children in Connecticut's foster care programs, including approximately 3,000 children receiving federal foster care assistance under Title IV-E, who are subject to the citizenship documentation requirement.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this effect in either the rule itself or the preamble.)

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

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

Newborns

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

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

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

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

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

Thank you for the opportunity to submit these comments. Please let us know if there is any further information we can provide to assist you in understanding the seriousness of the problems with the proposed rule which we have outlined above.

Sincerely,


Jamey Bell
Attorney at Law
(860) 541-5046

Submitter : Mrs. Evelyn Sprank

Date: 08/08/2006

Organization : Mrs. Evelyn Sprank

Category : Individual

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 : Mrs. Lisa Young
Organization : L & S Associates
Category : Individual

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-90-Attach-1.RTF

August 8, 2006

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

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

I am a resident of the State of Michigan and have assisted low-income persons in the process of applying for Medicaid.

I attempt to fill the gaps when low income individuals are uninsured or lack the health care coverage that they need to access necessary medical care. The persons I assist are many times incapacitated due to mind and/or health and are unable to meet the documentary requirements of applying for Medicaid.

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

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

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

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

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

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

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

"Safety net" medical providers in Michigan, such as free clinics, are stretched to their limits attempting to provide health care to individuals who do not meet the eligibility criteria for Medicaid (*e.g.* childless adults who do not meet the stringent disability criteria). They cannot take on the burden of providing care to individuals who are eligible but not receiving Medicaid because they have requested but not yet received documentation of citizenship or identity. In many parts of the state -- particularly in rural areas -- there are no safety net providers. Medicaid-eligible individuals whose coverage is delayed because of documentation requirements will be forced to go without

necessary treatment or to seek care in hospital emergency rooms – driving up the cost of care in the long run.

If this rule is not changed, then this requirement will effectively become a disguised application fee. Every applicant, even applicants who may ultimately be ineligible, will be forced to pay for documentation in order to meet the “reasonable” time frames stipulated for proving citizenship.

I urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state’s Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a “reasonable opportunity” period of not less than two months to obtain the necessary documentation.

2. There is no provision for assisting applicants/ recipients 1) whose representatives are unable to access needed records or 2) who are indigent and cannot afford to pay for attempting to obtain the documents listed in the required hierarchy.

The proposed language stipulates, under 435.407 (g) that:

States must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner **and** the individual lacks a representative to assist him or her. (Emphasis added.)

Although other persons can serve as an authorized representative to assist many applicants/ recipients, authorized representatives are not permitted to order birth certificates from states’ department of vital statistics on their behalf. Under current language, the existence of a representative is therefore actually harmful to the client in that it presumes they can obtain the needed information in stating that states are **not** required to assist those with authorized representatives. As a result, the most incapacitated, who are the most likely to have authorized representatives assisting them, will be the most often denied when they cannot meet this requirement and have no way to request state assistance.

Moreover, there is no provision for applicants/ recipients who cannot afford to pay for attempting to obtain the numerous documents included in the hierarchy such birth certificates, census Form BC-600, military records, etc.

I urge CMS to allow clients **or** their representatives to request state assistance when documents cannot be easily obtained **or** funding to pay for the documents is unavailable.

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

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

I 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.

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

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

As the preamble recognizes, infants born to U.S. citizens and qualified immigrants receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). 42 U.S.C. 1396a(e)(4). The preamble to the interim final rule states,

however, that in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This creates an unreasonable and unnecessary burden on the state agency and the child's family, because the state Medicaid agency's payment for the child's birth in a U.S. hospital -- which makes the child, by definition, a U.S. citizen -- has been documented.

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

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

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

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

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

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

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. I have encountered, for example, individuals who were born at home in rural areas where there was no hospital or public birth record. These individuals - especially if they are middle-aged - are often unable to locate contemporaries who have first hand knowledge of their birth, and the contemporaries are less likely to be able to prove their own citizenship as required in the rules when the their contemporaries were also born in their homes. I also have encountered individuals who are unable to obtain birth records because they lack sufficient information about the date, place, or circumstances of their birth (such as the identity of birth parents).

In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any knowledge that they need documents proving citizenship.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are considered to be

“proof” of citizenship and a “reliable means” of identification. I urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

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

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

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

- Valid student ID from a Michigan school, college, or university displaying a Michigan address
- Michigan school, college, or university records containing the student’s name and Michigan address such as tuition invoices, receipts, class schedules, report cards, or transcripts
- Paycheck or pay stub with the name and address of the employer (please

- provide the phone number of the employer if it is not listed on the document)
- A gas, water, sewage, electricity, land-line phone, or cable television (NOTE: cell phone bills are not acceptable)
 - Bank statement
 - Life, home, auto, or health insurance policy (no insurance binders or registration certificates. Must provide the phone number of the insurance agent if it is not listed on the document.)
 - Mortgage document or rental lease agreement (please provide the phone number of the leasing agency or landlord for rental lease agreements)
 - Government documents issued by federal, state, or local units of government (such as tax assessments or receipts, professional licenses)

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

In order to ensure that Medicaid is not denied or terminated because an applicant or recipient who is a U.S. citizen is unable to produce the documents listed in 42 C.F.R. 435.407(e) as verification of identity, I urge CMS to include a provision allowing the state Medicaid agency to certify that it has obtained satisfactory documentary evidence of identity for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

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

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

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

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

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

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

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

6. Where proof of citizenship is lacking, U.S. citizens should not receive

Conclusion

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

Submitter : Ms. Nora Duncan
Organization : CT Association of Nonprofits
Category : Association

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-91-Attach-1.DOC

Connecticut Association of Nonprofits

August 7, 2006

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

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

Dear Secretary Leavitt:

I am sending you comments on this 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), on behalf of our hundreds of nonprofit organization members in CT that work with Medicaid recipients. This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. (We have also submitted our comments to CMS through the CMS website).

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

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

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

90 Brainard Road, Suite 201, Hartford, CT 06114

Tel: (860) 525-5080 ♦ Fax: (860) 525-5088

Website: <http://www.ctnonprofits.org>

Services over a four-year period did not uncover a single case of an applicant falsely declaring citizenship.

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

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

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

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

The CT Association of Nonprofits urges CMS to eliminate this requirement and allow copies of documents to be submitted by applicants and enrollees. Under current law, state Medicaid agencies have always had the authority to require additional proof of citizenship where the person's declared statement is questionable. This is unchanged by the DRA and the interim final regulations.

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

The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, parents, and persons with disabilities. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

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

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

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

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

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

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

The interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children, except those eligible for Medicaid based on their receipt of SSI benefits. There are about 7,000 children in Connecticut's foster care programs, including approximately 3,000 children receiving federal foster care assistance under Title IV-E, who are subject to the citizenship documentation requirement.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this effect in either the rule itself or the preamble.)

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

The CT Association of Nonprofits urges you to revise 42 CFR 435.1005 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

Newborns

Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. While the rule allows extracts of a hospital record created near the time of birth to be used as proof of citizenship, 42 CFR 435.407(c)(1), and a medical (clinic, doctor, or hospital) record created near the time of birth to be used in the "rarest of circumstances," 42 CFR 435.407(d)(4), there is no reason that states should have to obtain this information. There is also no reason that newborns should experience delays in receiving Medicaid coverage while these documents are obtained. When a state Medicaid agency pays for a child's birth in a U.S. hospital, the child is by definition a citizen. Further proof should not be required for newborns whose birth is paid for by a state's Medicaid program. Risking the health of newborns and increasing the potential for uncompensated care is unnecessary in this situation.

The CT Association of Nonprofits urges you to amend 42 CFR 435.407(a) to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

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

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

Thank you for the opportunity to submit these comments. Please contact me if you need clarification.

Sincerely,

Nora Duncan
Public Policy Specialist

Submitter : Mr. Francis Dolan
Organization : Catholic Charities, Diocese of Trenton
Category : Other Health Care Provider

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-92-Attach-1.DOC



To: Centers for Medicare and Medicaid Services
From: Francis E. Dolan, Executive Director
Re: Comments on CMS Medicaid Documentation Requirements
Date: August 8, 2006

Catholic Charities, Diocese of Trenton, acknowledges the improvements made to documentation requirements for recipients of Medicaid that were outlined in the interim final rule issues on July 6, 2006. However, many concerns remain indicating further improvement is needed.

Many individuals who are eligible for Medicaid, including many people with mental illness, homeless individuals, children in foster care and victims of Hurricane Katrina, will still not be able to produce the kinds of documents required. We know firsthand at Catholic Charities, Diocese of Trenton, the difficulty this will present to the consumers of our comprehensive behavioral health and social service programs. At our agency alone, thousands of persons could potentially lose their life saving Medicaid benefits if these standards remain in effect.

We ask for the following changes:

- Full exemption of foster children from the documentation requirement
- Protect Medicaid benefits for infants and pregnant women
- Expand the types of documentation that can be accepted as proof
- Develop a comprehensive outreach plan to educate those who are impacted by these regulations

On behalf of those we serve at Catholic Charities, Diocese of Trenton, I thank you for the opportunity to provide comment, and ask that you seriously consider changes to the regulations that could, literally, save lives.

Submitter : ROBIN COSTON
Organization : L&S ASSOCIATES, INC.
Category : Health Care Industry

Date: 08/08/2006

Issue Areas/Comments

GENERAL

GENERAL

SEE ATTACHMENT

CMS-2257-IFC-93-Attach-1.RTF

August 8, 2006

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

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

I am a resident of the State of Michigan and have assisted low-income persons in the process of applying for Medicaid.

I attempt to fill the gaps when low income individuals are uninsured or lack the health care coverage that they need to access necessary medical care. The persons I assist are many times incapacitated due to mind and/or health and are unable to meet the documentary requirements of applying for Medicaid.

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

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

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

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

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

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

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

"Safety net" medical providers in Michigan, such as free clinics, are stretched to their limits attempting to provide health care to individuals who do not meet the eligibility criteria for Medicaid (*e.g.* childless adults who do not meet the stringent disability criteria). They cannot take on the burden of providing care to individuals who are eligible but not receiving Medicaid because they have requested but not yet received documentation of citizenship or identity. In many parts of the state -- particularly in rural areas -- there are no safety net providers. Medicaid-eligible individuals whose coverage is delayed because of documentation requirements will be forced to go without

necessary treatment or to seek care in hospital emergency rooms - driving up the cost of care in the long run.

If this rule is not changed, then this requirement will effectively become a disguised application fee. Every applicant, even applicants who may ultimately be ineligible, will be forced to pay for documentation in order to meet the "reasonable" time frames stipulated for proving citizenship.

I urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period of not less than two months to obtain the necessary documentation.

2. There is no provision for assisting applicants/ recipients 1) whose representatives are unable to access needed records or 2) who are indigent and cannot afford to pay for attempting to obtain the documents listed in the required hierarchy.

The proposed language stipulates, under 435.407 (g) that:

States must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner **and** the individual lacks a representative to assist him or her. (Emphasis added.)

Although other persons can serve as an authorized representative to assist many applicants/recipients, authorized representatives are not permitted to order birth certificates from states' department of vital statistics on their behalf. Under current language, the existence of a representative is therefore actually harmful to the client in that it presumes they can obtain the needed information in stating that states are **not** required to assist those with authorized representatives. As a result, the most incapacitated, who are the most likely to have authorized representatives assisting them, will be the most often denied when they cannot meet this requirement and have no way to request state assistance.

Moreover, there is no provision for applicants/recipients who cannot afford to pay for attempting to obtain the numerous documents included in the hierarchy such birth certificates, census Form BC-600, military records, etc.

I urge CMS to allow clients **or** their representatives to request state assistance when documents cannot be easily obtained **or** funding to pay for the documents is unavailable.

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

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

I 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.

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

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

As the preamble recognizes, infants born to U.S. citizens and qualified immigrants receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). 42 U.S.C. 1396a(e)(4). The preamble to the interim final rule states,

however, that in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This creates an unreasonable and unnecessary burden on the state agency and the child's family, because the state Medicaid agency's payment for the child's birth in a U.S. hospital -- which makes the child, by definition, a U.S. citizen -- has been documented.

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

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

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

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

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

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

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. I have encountered, for example, individuals who were born at home in rural areas where there was no hospital or public birth record. These individuals - especially if they are middle-aged - are often unable to locate contemporaries who have first hand knowledge of their birth, and the contemporaries are less likely to be able to prove their own citizenship as required in the rules when the their contemporaries were also born in their homes. I also have encountered individuals who are unable to obtain birth records because they lack sufficient information about the date, place, or circumstances of their birth (such as the identity of birth parents).

In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any knowledge that they need documents proving citizenship.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are considered to be

“proof” of citizenship and a “reliable means” of identification. I urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

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

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

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

- Valid student ID from a Michigan school, college, or university displaying a Michigan address
- Michigan school, college, or university records containing the student’s name and Michigan address such as tuition invoices, receipts, class schedules, report cards, or transcripts
- Paycheck or pay stub with the name and address of the employer (please

- provide the phone number of the employer if it is not listed on the document)
- A gas, water, sewage, electricity, land-line phone, or cable television (NOTE: cell phone bills are not acceptable)
 - Bank statement
 - Life, home, auto, or health insurance policy (no insurance binders or registration certificates. Must provide the phone number of the insurance agent if it is not listed on the document.)
 - Mortgage document or rental lease agreement (please provide the phone number of the leasing agency or landlord for rental lease agreements)
 - Government documents issued by federal, state, or local units of government (such as tax assessments or receipts, professional licenses)

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

In order to ensure that Medicaid is not denied or terminated because an applicant or recipient who is a U.S. citizen is unable to produce the documents listed in 42 C.F.R. 435.407(e) as verification of identity, I urge CMS to include a provision allowing the state Medicaid agency to certify that it has obtained satisfactory documentary evidence of identity for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

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

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

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

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

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

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

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

6. Where proof of citizenship is lacking, U.S. citizens should not receive

Conclusion

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

Submitter : Mr. Sheldon Toubman
Organization : New Haven Legal Assistance Ass'n
Category : Attorney/Law Firm

Date: 08/08/2006

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. William Fringer

Date: 08/08/2006

Organization : Mr. William Fringer

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-95-Attach-1.RTF

August 8, 2006

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

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

I am a resident of the State of Michigan and have assisted low-income persons in the process of applying for Medicaid.

I attempt to fill the gaps when low income individuals are uninsured or lack the health care coverage that they need to access necessary medical care. The persons I assist are many times incapacitated due to mind and/or health and are unable to meet the documentary requirements of applying for Medicaid.

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

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

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

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

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

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

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

"Safety net" medical providers in Michigan, such as free clinics, are stretched to their limits attempting to provide health care to individuals who do not meet the eligibility criteria for Medicaid (*e.g.* childless adults who do not meet the stringent disability criteria). They cannot take on the burden of providing care to individuals who are eligible but not receiving Medicaid because they have requested but not yet received documentation of citizenship or identity. In many parts of the state - particularly in rural areas - there are no safety net providers. Medicaid-eligible individuals whose coverage is delayed because of documentation requirements will be forced to go without

necessary treatment or to seek care in hospital emergency rooms - driving up the cost of care in the long run.

If this rule is not changed, then this requirement will effectively become a disguised application fee. Every applicant, even applicants who may ultimately be ineligible, will be forced to pay for documentation in order to meet the "reasonable" time frames stipulated for proving citizenship.

I urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period of not less than two months to obtain the necessary documentation.

2. There is no provision for assisting applicants/ recipients 1) whose representatives are unable to access needed records or 2) who are indigent and cannot afford to pay for attempting to obtain the documents listed in the required hierarchy.

The proposed language stipulates, under 435.407 (g) that:

States must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner **and** the individual lacks a representative to assist him or her. (Emphasis added.)

Although other persons can serve as an authorized representative to assist many applicants/recipients, authorized representatives are not permitted to order birth certificates from states' department of vital statistics on their behalf. Under current language, the existence of a representative is therefore actually harmful to the client in that it presumes they can obtain the needed information in stating that states are **not** required to assist those with authorized representatives. As a result, the most incapacitated, who are the most likely to have authorized representatives assisting them, will be the most often denied when they cannot meet this requirement and have no way to request state assistance.

Moreover, there is no provision for applicants/recipients who cannot afford to pay for attempting to obtain the numerous documents included in the hierarchy such birth certificates, census Form BC-600, military records, etc.

I urge CMS to allow clients **or** their representatives to request state assistance when documents cannot be easily obtained **or** funding to pay for the documents is unavailable.

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

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

I 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.

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

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

As the preamble recognizes, infants born to U.S. citizens and qualified immigrants receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). 42 U.S.C. 1396a(e)(4). The preamble to the interim final rule states,

however, that in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This creates an unreasonable and unnecessary burden on the state agency and the child's family, because the state Medicaid agency's payment for the child's birth in a U.S. hospital -- which makes the child, by definition, a U.S. citizen -- has been documented.

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

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

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

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

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

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

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY ... in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. I have encountered, for example, individuals who were born at home in rural areas where there was no hospital or public birth record. These individuals - especially if they are middle-aged - are often unable to locate contemporaries who have first hand knowledge of their birth, and the contemporaries are less likely to be able to prove their own citizenship as required in the rules when the their contemporaries were also born in their homes. I also have encountered individuals who are unable to obtain birth records because they lack sufficient information about the date, place, or circumstances of their birth (such as the identity of birth parents).

In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens without documents proving citizenship and without any knowledge that they need documents proving citizenship.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are considered to be

“proof” of citizenship and a “reliable means” of identification. I urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

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

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

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

- Valid student ID from a Michigan school, college, or university displaying a Michigan address
- Michigan school, college, or university records containing the student’s name and Michigan address such as tuition invoices, receipts, class schedules, report cards, or transcripts
- Paycheck or pay stub with the name and address of the employer (please

- provide the phone number of the employer if it is not listed on the document)
- A gas, water, sewage, electricity, land-line phone, or cable television (NOTE: cell phone bills are not acceptable)
 - Bank statement
 - Life, home, auto, or health insurance policy (no insurance binders or registration certificates. Must provide the phone number of the insurance agent if it is not listed on the document.)
 - Mortgage document or rental lease agreement (please provide the phone number of the leasing agency or landlord for rental lease agreements)
 - Government documents issued by federal, state, or local units of government (such as tax assessments or receipts, professional licenses)

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

In order to ensure that Medicaid is not denied or terminated because an applicant or recipient who is a U.S. citizen is unable to produce the documents listed in 42 C.F.R. 435.407(e) as verification of identity, I urge CMS to include a provision allowing the state Medicaid agency to certify that it has obtained satisfactory documentary evidence of identity for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

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

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

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

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

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

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

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

6. Where proof of citizenship is lacking, U.S. citizens should not receive

Conclusion

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