Submitter : **Dr. terry mason** **Date: 08/11/2006**

Organization : **chicago department of public health**

Category : **Local Government**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment

CMS-2257-IFC-401-Attach-1.PDF

CMS-2257-IFC-401-Attach-2.DOC

City of Chicago
Richard M. Daley, Mayor

Department of Public Health

Terry Mason, M.D., F.A.C.S.
Commissioner

333 South State Street
Chicago, Illinois 60604
(312) 747-9884
(312) 747-9888 (24 hours)

http://www.cityofchicago.org/health

Date: August 10, 2006

To: **Centers for Medicare & Medicaid Services**
Department of Health and Human Services
Attention: CMS-2257-IFC
Mail Stop C-4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

From: **Terry Mason, M.D., F.A.C.S.**
Commissioner
Chicago Department of Public Health
333 South State Street, Suite 200
Chicago, Illinois 60604

Transmitted electronically to http://www.cms.hhs.gov/eRulemaking

Re: **Interim Final Rule for Medicaid Program:**
Citizenship Documentation
Provisions of the Interim Final Rule with Comment Period

The Chicago Department of Public Health (CDPH) thanks the Centers for Medicare & Medicaid Services for the opportunity to comment on the Interim Final Rule for the Medicaid Program: Citizenship Requirements (42 CFR Parts 435, 436, 440, 441, 457 and 483).

The Chicago Department of Public Health assures conditions in which Chicago residents can be physically and mentally healthy through promoting health and preventing illness by providing effective, accessible health services and ensuring efficient utilization of public resources. We have seven neighborhood health centers, six specialty clinics and 12 mental health centers that provide comprehensive health services. More than 15,000 of our patients and clients are Medicaid enrollees.

Given our commitment to helping assure quality care for Chicago residents, we have historically taken a great interest in the Medicaid program. Approximately 800,000 Chicagoans receive Medicaid. Nearly half of them are children.

The citizenship documentation requirement places a huge burden on these Chicagoans along with Medicaid applicants throughout the country. It also will strain the overall safety net by creating an increasing amount of uncompensated care to that already being provided. This is because states would not be able to obtain the federal financial match for individuals, children, and families eligible for Medicaid. As it is, the safety net already has modest and scarce resources.

NEIGHBORHOODS Alive!
BUILDING CHICAGO TOGETHER

CHICAGO WORKS

CDPH applauds CMS for modifying its earlier guidance. We especially appreciate the following sections of the Interim Final Rule:

Section 435.407 (a)(5) that allows states to use the State Data Exchange for SSI recipients as acceptable documentation;

Section 435.407 (b)(1) that allows a state to use a cross match with a state vital statistics agency to document a birth record; and

Section 435.1008 that exempts 8 million Medicare and most SSI recipients from the documentation requirement.

Despite your modification of the guidance to provide increased flexibility, CDPH is concerned about the following provisions of the Interim Final Rule.

- **Section 42 CFR 435.407 and Section 42 CFR 436.407.** CMS has established a hierarchy of reliability when securing documentary evidence of citizenship and identity. CMS is considering eliminating the third and fourth tiers of evidence of citizenship.
    - The Deficit Reduction Act does not require a hierarchy of documentation. CMS should consider documents from all tiers to be of equal reliability and acceptability.
    - If CMS retains the hierarchical approach in the final rule, then it should retain the level three and four documentation options.
    - Further, CMS should apply the hierarchy equally to citizens born in the U. S., to citizens born outside the U.S. to citizen parents, and to naturalized citizens born outside the U.S.
- **Section 42 CFR 435.407 (a)(b).** Many Medicaid enrollees will not be able to present the first or second tier of documentation. Most Medicaid enrollees do not have a passport. Many do not have birth certificates. The cost of obtaining these documents is prohibitive. It costs $82 for a passport for a child under 16 and $97 for a passport for people ages 16 and older. Costs for birth certificates vary but, to our knowledge, no issuing agency provides free certified birth certificates. Most families have multiple Medicaid enrollees, making the cost of procuring documentation even higher.

  Victims of natural disasters such as Hurricane Katrina, homeless children and families, foster parents, and people with mental health disorders are some of the people who face additional barriers obtaining birth certificates. Although the state "must assist the applicant or recipient to document U.S. citizenship and identity," it will be difficult, time consuming and expensive to do it.
    - The Secretary should use his 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 as is the approach of the SSI regulation.

- **Section 42 CFR 435.407 (c).** CMS should not require that records be dated within five years of the original Medicaid application date.

    - CMS should 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 for citizenship because this is unnecessarily restrictive.

- **Section 42 CFR 435.407 (d)(4).** CMS allows medical records to be satisfactory documentation of citizenship. Many medical providers will be unable to provide Medicaid applicants or enrollees such records because of cost and/or recordkeeping.

    - Do not sanction Medicaid applicants or enrollees for the inability of medical providers to provide requested documentation.

- **Section 42 CFR 435.407 (d)(5).** Affidavits to prove citizenship require at least one of two of the individuals making the affidavit to be unrelated to the applicant. It requires that both individuals prove citizenship and identity and to do so with original documentation and in person. This requirement places a hardship on the Medicaid enrollee, the family, and the person providing the affidavit. For most adults, it will be difficult to find someone outside of a family member that knew them when they were born in order to satisfy the documentation of citizenship requirement.

    - The Secretary should use his discretion to accept an affidavit from one individual.

- **Section 42 CFR 435.407 (h).** All documents must be either originals or copies certified by the issuing agency. The regulation estimates that it will take ten minutes for an applicant or beneficiary and five minutes for a state Medicaid agency to satisfy the documentation requirement. Those estimates significantly underestimate the time required to comply. It is neither safe nor practicable to mail in these documents. As a result, Medicaid enrollees and applicants will document their citizenship and identity in person at the eligibility office. This will result in them having to take time off work, pay caretakers, and pay for transportation. This places an enormous burden on the person and the state. It also increases the time needed to prove or recertify eligibility.

    - We suggest that copies or notarized copies be accepted.

- **Section 42 CFR 435.1008.** CMS exempts 8 million Medicare and most SSI recipients from the document requirements but not those found eligible for Social Security Disability payments in the two-year waiting period for the receipt of Medicare.

    - CMS should also exempt these Medicaid recipients and applicants because they have already established their citizenship for other government benefit programs in the same manner as have the 8 million exempted.

- **Section 42 CFR 435.1008.** 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. Approximately 17,000 children in Illinois and more than 8,000 foster children in Chicago will be affected by this requirement.

    - State child welfare agencies must verify the citizenship status of these children in

the process of determining their eligibility for Title IV-E payments. The DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is such a program and we urge CMS to modify 42 CFR 435.1008 to exempt foster care children receiving such payments from the new documentation requirements.

- **Section 42 CFR 436.1004.** CMS has prohibited states from granting coverage to eligible citizens until they can document citizenship and/or identity. This is despite the fact that the DRA does not make documentation of citizenship a criterion of Medicaid eligibility. This year, about 12 million U.S. citizens are expected to apply for Medicaid. Most of these citizens are children, pregnant women, and parents who will be subject to the new citizenship documentation requirement.

    - 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 during the "reasonable opportunity" period DRA prescribes for obtaining necessary documents.

As a public agency, CDPH is very mindful of the responsibility to ensure that taxpayers' dollars are spent wisely and well. We believe the amount of administrative resources expended on documenting the citizenship of Medicaid enrollees and applicants would be better spent providing health care services.

Providing quality health care is a goal that we all share. The Chicago Department of Public Health believes that educated health care consumers, choosing among quality health care options, will make the good health care decisions that are critical to containing Medicaid costs while improving quality of care. To that goal, we offer our testimony in support of the Medicaid program and trust you will consider our concerns as you deliberate this important issue.

Thank you again for providing this opportunity to share these comments on the citizenship documentation requirement of the Deficit Reduction Act of 2005.

Date: August 15, 2006

To: **Centers for Medicare & Medicaid Services**
Department of Health and Human Services
Attention: CMS-2257-IFC
Mail Stop C-4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

From: **Terry Mason, M.D., F.A.C.S.**
Commissioner
Chicago Department of Public Health
333 South State Street, Suite 200
Chicago, Illinois 60604

Transmitted electronically to http://www.cms.hhs.gov/eRulemaking

Re: **Docket CMS-2257-IFC Interim Final Rule for Medicaid Program: Citizenship Documentation**
Provisions of the Interim Final Rule with Comment Period

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Thank you again for providing this opportunity to share these comments on the citizenship documentation requirement of the Deficit Reduction Act of 2005.

Submitter : Ann Clemency Kohler **Date:** 08/11/2006

Organization : Dept. of Human Svcs - Div of Medical Assistance

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

CMS-2257-IFC-402-Attach-1.DOC

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712
Telephone 1-800-356-1561

JON S. CORZINE
Governor

JAMES W. SMITH, JR.
Acting *Commissioner*

ANN CLEMENCY KOHLER
Director

August 11, 2006

Mark B. McClellan, M.D., Ph.D
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attn: **CMS 2257-IFC**
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

RE: Medicaid Citizenship Documentation Provisions of the Interim Final Rule with Comment Period, Regulatory Impact Statement 71 Federal Register 39214 (July 12, 2006); File Code CMS-2257-IFC

Dear Dr. McClellan:

The New Jersey Department of Human Services, Division of Medical Assistance and Health Services submits the following comments on the interim final rule entitled: Medicaid; Citizenship Documentation Requirements, which was published on July 12, 2006, in the Federal Register (71 FR 39214).

Expand citizenship and identity documentation exemptions:

1. ***Foster Children***:

   With regard to citizenship and identity, most children in foster care do not have access to the documents listed in the interim final rule because most of these children are removed under extreme circumstances in which it is unlikely that the parent(s) are willing or able to provide those documents to the case worker. For this reason, foster care children should be exempt from the above requirement.

2. ***Newborn Children***

   In accordance with the Social Security Act §1902, §1903(v), and 42 U.S.C. §1396(e), an infant born to a non-citizen pregnant mother whose labor and delivery are covered by Medicaid is born to a woman eligible for and receiving medical assistance (emergency services) under a State

plan. Therefore, these infants should be deemed eligible for Medicaid for a period of one year and thus treated as recipients.

Documentation

There are additional forms and methods of documentation that should be accepted as proof of both citizenship and identity thereby enhancing the states' ability to accurately document proof of citizenship and identity.

A. Citizenship

States should be able to accept the following documents as proof of citizenship:

1. Primary evidence:
    a. Copies of birth records, or souvenir birth certificates, submitted by hospitals to the State's vital records bureau for registering births.

    b. Medicaid paid claim forms for births.

    c. Birth records from child support agencies.

    d. SSI check stubs for newly qualified SSI recipients whose names have not yet been entered on the SSI database.

2. Secondary evidence:

    a. States should be permitted to rely on copies of documentation from another state's Medicaid agency if that Medicaid agency has verified the citizenship of the individual in question.

    b. The following records are recognized as acceptable forms of secondary evidence for citizenship verification from the SSA Programs Operation Manual System (POMS). Therefore, we recommend that CMS allow these records to be used to satisfy the citizenship documentation requirement.

    a. A religious record established in the U.S. within 3 months of birth, showing a U.S. place of birth and either a date of birth or the individual's age when the record was made.

    b. An early school record for the applicant showing a U.S. place of birth, the date of admission to school, the date of birth, or the age of the individual at the time the record was made, and the names and places of birth for the applicant's parents.

B. Identity

We recommend that the following items be accepted as proof of identity:

1. Birth certificates because these certificates specifically identify all necessary information which other identity documents contain.

2. Government-issued voter registration cards.

3. Court orders (such as removal orders, adoption orders or custody orders) and court-issued documents for individuals of any age.

4. Verification of identity by child welfare agencies for children under their care.

5. Birth records from child support agencies.

6. Immunization records.

7. School records for children under the age of 18.

8. Identity affidavits or facility medical records for any institutionalized individuals who are not receiving SSI or Medicare.

Federal Financial Participation for Administrative Expenditures

We request an expansion of the definition of administrative expenditures for which states can receive FFP. To that end, CMS should revise the definition for administrative expenditures to include personnel, costs to obtain records for those clients who are impoverished and costs for the development of database interfaces.

We appreciate the opportunity to comment on these interim final rules. If you have any questions, please do not hesitate to contact me at 609-588-2600.

Sincerely,

Ann Clemency Kohler
Director

Submitter : Mrs. Lisa Hamler-Fugitt **Date:** 08/11/2006

Organization : Ohio Association of Second Harvest Foodbanks

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

More than 1.2 million Ohioans, including more than one-third who are children, receive emergency food assistance through our foodbank network. In any given week, over 207,000 Ohioans are being provided with emergency food. Over 35 percent are under the age of 18, and one out of 10 is under the age of five. Nine percent of those being served are seniors. This population faces unique challenges, as many are living on low or fixed incomes and can t accommodate fluctuations in the costs of basic needs like utilities or prescription drugs.

A recent study, Hunger in America 2006, also provides evidence that Ohioans are forced to make choices between food and other basic needs. Almost half indicate they choose between paying for food and paying for utility bills or home heating fuel. More than one-third must choose between food or rent or a mortgage payment. And just under one-third make the difficult choice between food and medicine.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

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

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

Regulatory Impact Statement

Regulatory Impact Statement

Our specific suggestions for revisions to the rule are as follows:
The regulations should better accommodate people for whom documents are not available or do not exist. U.S. citizens who may lack the documents listed in the interim final rule include, among others, victims of hurricanes and other natural disasters, homeless individuals.

The Secretary should use his discretion under the DRA to expand on the list of acceptable documents. Specifically, we urge the Secretary to borrow a practice from the Supplemental Security Income (SSI) Program, by which state Medicaid agencies can recognize when a person without documents is in fact a U.S. citizen.

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. Revising the final rule to allow a broader range of options, that include, but are not limited to, original or certified copies would make it more likely that clients could easily comport with the new law and would streamline states application processes significantly. This change would likely result in the need for fewer office visits for beneficiaries, require less staff time to meet these additional demands, and will likely lead to savings in both human productivity and actual administrative costs.

Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, Medicaid eligibility should be granted. Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Yet the proposed rule would prohibit states from granting coverage to eligible citizens until they can get certain documents that prove their citizenship and identity. We urge the final rule be modified to require states to provide coverage upon the submittal of an otherwise complete application and allow applicants, beneficiaries and the states to make good faith efforts to acquire the new documents required under the DRA.

Children in foster care should not have to verify citizenship again. State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E foster care payments. Those outside of the IV- E program are already under the care of the state. Requiring foster children to document citizenship again constitutes an unnecessary duplication of state agency efforts and puts these children at risk of delayed Medicaid coverage. The DRA does not compel this result.

Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirement. Many Native Americans were not born in a hospital and have no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as proof of citizenship and identity, the regulations create a barrier to participation in the Medicaid program. We urge that the revised rule recognize tribal enrollment cards as satisfying the documentation requirement.

In addition to revising the rule, 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.

Submitter : Ms. Johnson **Date:** 08/11/2006

Organization : Ms. Johnson

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : **Ms. Whitney Doherty** **Date: 08/11/2006**

Organization : **Ms. Whitney Doherty**

Category : **Individual**

Issue Areas/Comments

GENERAL

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Dear Dr. McClellan,

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

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

Organization : **Texas Health and Human Services Commission**

Category : **State Government**

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

"See Attachment"

Regulatory Impact Statement

Regulatory Impact Statement

"See Attachment"

CMS-2257-IFC-406-Attach-1.PDF

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

August 7, 2006

ACTION

MEMORANDUM FOR THE EXECUTIVE COMMISSIONER

THROUGH: Anne Heiligenstein
Deputy Executive Commissioner for Social Services

Linda Franco
Associate Commissioner for Family Services

FROM: Jennifer Mathys
Director for Policy and Training

SUBJECT: Interim Final Rule Comments, Medicaid Citizenship Documentation Requirements

Purpose

To request your approval to submit the attached comments on the Centers for Medicare and Medicaid Services (CMS) interim final rule on the Medicaid citizenship documentation requirement. Approval is needed by close of business August 10, 2006 to meet the CMS August 11, 2006, deadline.

Background/Summary

CMS published the interim final rule for the citizenship and identity documentation requirements for Medicaid eligibility in the *Federal Register* on July 12, 2006. The final due date for comments is August 11, 2006.

Discussion

The Office of Family Services met with the Health and Human Services Commission (HHSC) Office of General Counsel and the Department of Family and Protective Services (DFPS) to prepare comments on the interim final rule. The comments include the sections of the rule that

the Texas HHSC supports and sections of the rule that are administratively cumbersome and adversely impact citizens' ability to access Medicaid benefits.

Recommendation

The Office of Family Services recommends that the comments be approved and the attached letter to Mark B. McClellan, M.D., Ph.D be signed and returned to Office of Family Services for submission to CMS.

Executive Commissioner's Decision

Approve	_____	Disapprove	_____
Modify	AH 8/10/06	Needs More Discussion	_____
Pend for Future Consideration	_____		

cc: Chris Traylor, Chief of Staff See Modifications to the letter. AH

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

August 11, 2006

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

Dear Dr. McClellan:

The Texas Health and Human Services Commission (HHSC) submits the attached comments in response to the Centers for Medicare and Medicaid Services' (CMS) interim final rule regarding the Medicaid Program: Citizenship Documentation Requirements (CMS-2257-IFC).

HHSC recognizes the importance of Section 6036 of the Deficit Reduction Act of 2005 and the effort made by CMS to craft interim final rules. Because of the significant impact on the state's Medicaid population, HHSC offers comments and recommendations to help ensure a successful implementation process.

Thank you for the opportunity to provide comments. HHSC is committed to working with CMS for a successful implementation and looks forward to the final regulations.

Please let me know if you have any questions or need additional information. Anne Heiligenstein, Deputy Executive Commissioner for Social Services, serves as the lead staff on this matter and can be reached at (512) 424-6620 or by email at Anne.Heiligenstein@hhsc.state.tx.us.

Sincerely,

Albert Hawkins

Attachment

Texas Health and Human Services Commission
Comments on Deficit Reduction Act of 2005 (DRA), Section 6036
Improved Enforcement of Documentation Requirements

Department of Health and Human Services (DHHS), Centers for Medicare and Medicaid Services (CMS), Medicaid Program; Citizenship Documentation Requirements, Interim Final Rule, Comments: File Code CMS-2257-IFC

I. Background

Implementation Conditions/Considerations

Texas agrees with the conclusion that Supplemental Security Income (SSI) recipients and Medicare beneficiaries are not required to provide proof of citizenship and identity, since citizenship and identity were established when individuals obtained SSI or Medicare entitlement or enrollment. The State Data Exchange (SDX) and Wired Third Party Query/State On-Line Query data exchanges with the Social Security Administration are sufficient evidence of citizenship and identity. Consideration is needed for allowing receipt of Social Security Disability Insurance (SSDI) as meeting the requirement.

Foster children should be categorically excluded from the citizenship verification requirements in HHS guidance to the DRA.

- The foster care population is one of the most vulnerable and fragile in the entire system: the children often come into care because they are removed in an emergency, which means they will not be in possession of necessary documents; the children have additional health care needs, many of which are immediate by virtue of their very reason for coming into care, abuse or neglect; foster children are often young and unable to provide documents; parents of children who have been removed are often uncooperative. The Secretary should extend recognition of special, vulnerable populations to foster children: in construing Subsection (i)(22), the Secretary reads "aliens" to refer to "individuals" because of a scrivener's error. In doing so, the Preamble to the regulations states: "To adopt the literal reading of the statute could result in Medicare and SSI eligibles, a population which are by definition either aged, blind, or disabled, and thereby most likely to have difficulty obtaining documentation of citizenship, being denied the availability of an exemption which we believe the Congress intended to afford them." Congress left open the question of whether foster children should be exempted and for all the reasons enumerated above, they should.

- The foster care population is not in a position to defraud the Medicaid system. The children who receive Medicaid benefits by virtue of their placement in foster care have essentially no control over whether they are removed from home, when they are removed from their homes, or where they are ultimately placed. They do not actually "apply" for benefits, as that term is commonly understood. They should not, therefore be made to undergo the same process as individuals who apply for benefits or have applied for benefits in the past using what is commonly understood to be an "application" rather than inclusion by virtue of foster care placement.

- The citizenship verification requirements apply by their terms to "an individual who declares under Section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits...." Foster children do not and should not make such a declaration.

- Regulations promulgated pursuant to the DRA should also reflect longstanding recognition of the special circumstances of the foster care population. Federal law has heretofore given effect to the fragile nature of the foster care population by not requiring a separate Medicaid application. To do so now jeopardizes the children's already fragile health and is inconsistent with other federal law. *See*42 U.S.C. § 1396a(a)(10)(i)(I).

- The Secretary should exercise the discretion to exempt certain populations under Section 3145 of the Act and craft an exemption for foster children. The Act gives the Secretary the authority to exempt individuals "on such ... basis as the Secretary may specify under which satisfactory evidence of citizenship or nationality had been previously presented." Foster children fit within such an exemption because their citizenship status must ultimately be verified for FFP.

A Medicaid agency must provide Medicaid benefits to a child who is considered categorically needy based on the child's mother eligibility and receipt of Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible for one year so long as the woman remains eligible as categorically needy and the child is a member of the woman's household. CMS states that citizenship and identity documentation for the child must be obtained at the next redetermination of eligibility. In order for a pregnant woman to be determined and remain eligible for Medicaid in Texas, they must be a Texas resident. In order for a provider to receive a Texas Medicaid payment for the birth of a child, they must enroll in the Texas Medicaid Program. Texas only enrolls in the Texas Medicaid Program providers who are licensed to practice in the United States (US). Therefore, Texas Medicaid payment for a birth is verification that the child is a U.S. citizen. The child's status as a citizen does not change after the one-year period of categorically needy Medicaid coverage ends. Therefore to require this documentation again is burdensome and adds to the administrative costs.

CMS asked for comments and suggestions on electronic data matches with governmental systems of records that contain reliable information about citizenship and identity. Texas supports option at 435.407(e)(10) and appreciates allowing discretion for states to determine the accuracy of cross matches with Federal or State governmental agencies.

Historically, CMS has not been prescriptive on state documentation requirements. The Deficit Reduction Act (DRA) does not specify documents must be originals or certified copies. It is an undue burden on applicants, recipients, and Medicaid agencies to require documents to be the original or certified copies. There may be a cost to individuals to obtain certified copies, if an original is not available. Also, the interim final rule does not require an interview; however, imposing the requirement that only original and certified copies of documents are acceptable will result in increasing interviews. Many individuals are reluctant to mail original or certified copies of documents. The anticipated increase in face-to-face contacts from individuals who will only provide original documents or certified copies in person is a significant workload impact on

staffing. Even though Federal Financial Participation (FFP) is available for administrative costs at the program administration match rate, states incur costs for the administrative expenses. The interim final rule needs to merely direct that states obtain accurate information on citizenship and identity rather than being overly prescriptive on how accuracy is determined.

Compliance

Please explain the methodology CMS will use to review implementation of Section 6036 of the DRA. How will CMS monitor the extent that states are obtaining primary evidence?

The requirement on eventually requiring states to match files for individuals who only have third or fourth levels of evidence, and possibly the first and second levels, is contrary to the requirement that this is a one-time activity. This also adds significant administrative costs for states and CMS to build new interfaces that is not required by the DRA provision. Texas recommends that CMS build a national database, states submit eligibility files, and CMS returns the documentation on citizenship and identity.

II. Provisions of the Interim Final Rule With Comment Period

Texas recommends allowing permission to use the "preponderance of evidence" in situations where extensive investigation has been done, all efforts indicate citizenship, but the specified documents are non-existent.

Texas also recommends allowing tribal enrollment records that are extremely accurate to document citizenship. This would allow older Native American recipients who may have been born at home and do not have birth certificates, do not have enough work quarters to qualify for Medicare, and have never received SSI to adequately document their citizenship. The Native American Tribal documents listed, as documentation of identity should also be accepted for citizenship. These are reliable forms of identification and contain the necessary information to document citizenship as well. Enrollment in any federally recognized tribe should be allowed to verify citizenship. A foreign born member of a federally recognized tribe need only verify that they are an enrolled member of a tribe to be eligible for SSI. This means that although a foreign born member of a recognized tribe is excluded from alien verification requirements, a U.S. born Native American is not.

Different levels of reliability are indicated for birth records established within five years of birth and those acquired after 5 years. If one must prove whom they are to get a certified copy of a birth certificate from governmental vital statistic departments, the 5-year difference is irrelevant.

Section 6036(a)(3)(A) of the DRA allows that any document listed in (3)(B) or a document listed in (3)(C) and (3)(D) are satisfactory evidence for citizenship and identity. The provision does not lay out a required hierarchy. The levels of evidence in the interim final rule are in excess of the requirement in the DRA. The interim final rule indicates that the third level of evidence may only be used when primary or secondary evidence of citizenship cannot be obtained. Does this mean that an individual must attempt to acquire documents under the primary and secondary levels and present proof that attempts failed? Requiring individuals to attempt to acquire primary or secondary level of documents, when a third or fourth level document is available, increases the burden on clients and the state.

Also, the requirement outlined under I. Background on eventually requiring states to match files for individuals who only have third or fourth levels of evidence, and possibly the first and second levels, will add to the administrative burden for states and CMS that is not required by the DRA provision.

Fourth Level of Evidence of Citizenship

The interim final rule requires individuals providing affidavits to prove their citizenship status and identity. The affidavits must include information explaining why documentary evidence is not available and the affidavits are signed under penalty of perjury. Requiring documentation of the citizenship status and identity of the individuals providing the affidavits is imposing a burden on individuals who are not applying for benefits and who may not be related to an applicant or recipient. The citizenship status of a person providing an affidavit does not increase the reliability of the document. In fact, a qualified alien may actually have information about a person that establishes U.S. citizenship and identity. This may especially be true for individuals who lost documentation through a disaster, but has qualified alien neighbors, friends and relatives that can attest to citizenship and identity. Texas' experience with evacuees from Hurricanes Katrina and Rita resulted in the need to expedite the eligibility process for a significant number of people who had minimal to no documentation. The rules need to include exceptions for managing disasters such as Katrina and Rita.

Requiring a third affidavit from the applicant or recipient to attest to the reason why documentary evidence is not available does not need to be a requirement. The affidavits from the other two individuals already established the information on the absence of other documentary evidence. Also, affidavits are anticipated to be a significant source for special needs individuals to meet this documentation requirement. Special needs individuals may not have the cognitive capability to provide the third affidavit, resulting in denial even though two other individuals attest to an applicant's or recipient's citizenship status and identity.

If there is a gap of more than three years between an individual's last period of eligibility and a subsequent application, the interim final rule requires that documentation again be obtained. The justification is to not impose a longer record retention period on states. Some states may already retain records for more than three years. The regulation needs to defer to the state retention requirements and not specify a specific period of time. CMS can review this when they review and monitor states for compliance.

Comments are solicited on the number of documents required and the impact of only allowing primary and secondary level evidence.

- Section 6036(a)(3)(A) of the DRA allows that any document listed in (3)(B) or a document listed in (3)(C) and (3)(D) are satisfactory evidence for citizenship and identity. The provision does not lay out a required hierarchy. The levels of evidence in the interim final rule are in excess of the requirement in the DRA. Also, the requirement outlined under I. Background, p. 39217 on eventually requiring states to match files for individuals who only have third or fourth levels of evidence, and possibly the first and second levels, will add to

the administrative burden and cost for states and CMS that is not required by the DRA provision.

- It is anticipated that significant numbers of applicants and recipients will only have the third or fourth level documents. Eliminating these as acceptable sources of documentation will create an undue burden on individuals and result in denial of individuals who can only prove citizenship by a third or fourth level document.

III. Collection of Information Requirements

Citizenship and Alienage (435.406)

The estimate of 10 minutes for individuals to acquire and provide the state acceptable documentary evidence and to verify the declaration is significantly underestimated. Individuals may have to travel to government offices or safe deposit box locations to obtain originals and certified copies of documents and again travel to the Medicaid office, if they are reluctant to mail documents. Scheduling and wait times need to be considered. The estimate of 5 minutes for state staff to inform individuals, assist applicants and recipients, accept the documents, and maintain records also is significantly underestimated. Anticipating an increase in face-to-face contacts requires additional time for scheduling and interviews. Additional workload is created, as applications are pended waiting for the documentation. Applicants who cannot provide the documentation within the required processing requirements will reapply, again increasing the workload.

IV. Waiver of Notice of Proposed Rulemaking and the 30-Day Delay in the Effective Date

Texas appreciates the Secretary's timely publication of guidance to permit documents in addition to those listed in Section 1903(x) of the Act as added by Section 6036 of the DRA as it is in the best interest to prevent unnecessary denials of Medicaid eligible citizens.

RULE

435.407(c)(1) – *Third Level Evidence of Citizenship* – Whether a hospital record is documented on hospital letterhead in less than 5 years of the initial application date is irrelevant. Because of HIPAA and other privacy restrictions on protecting personal health information, in practice, an individual would need to establish who they are so they have a right to access the personal health record before a medical facility can release the information.

435.407(c)(2) – *Third Level Evidence of Citizenship* – Insurance records requiring biographical information, including place of birth, whether established in less than 5 years of the initial application date is irrelevant. That information is required to obtain the insurance coverage.

435.407(d)(4) – *Fourth Level Evidence of Citizenship* – Medical records requiring biographical information, including place of birth, whether established in less than 5 years of the initial application date is irrelevant. Because of Health Insurance Portability and Accountability (HIPAA) and other privacy restrictions on protecting personal health information, in practice, an

individual would need to establish who they are so they have a right to access the personal health record before a medical facility can release the information.

435.407(d)(5) – *Fourth Level Evidence of Citizenship* – Texas recommends allowing affidavits to document both citizenship and identity. If an affiant knows of a person's citizenship status, the affiant would also know the identity of the person. Affidavits also need to be allowed for citizenship and identity for any age applicant or recipient.

435.407(f) – *Special Identity Rules for Children* – Documents for children need to be allowed through age 18. There is not a substantial difference in the documents available for children up to age 18 to impose the burden of trying to obtain additional documents.

435.407(j)

The April 18, 2006 draft State Medicaid Director letter defined the reasonable opportunity for applicants to provide evidence of citizenship and identity as consistent with the time available to Qualified Aliens who have signed a declaration under Section 1137(d) to submit evidence of immigration status. This letter also indicated that:

- Federal Financial Participation (FFP) will be available with respect to citizen applicants during the reasonable opportunity period and eligibility determination process, to the extent as described in Section 1137(e)(2) and (e)(4) with respect to Qualified Alien applicants.
- These provisions assure FFP during a reasonable opportunity to present documents while not delaying eligibility and during a fair hearing process respecting the sufficiency of the documents presented or compliance by the applicant with the requirement to present.

The guidance in the April 18, 2006, State Medicaid Director letter needs to replace the reasonable opportunity requirement in the interim final rule to assure consistent treatment of Citizen and Qualified Alien applicants. In fact, on page 39219 under II. Provisions of the Interim Final Rule With Comment Period, Fourth Level of Evidence of Citizenship, it allows that states may use the reasonable period they provide to all applicants and recipients claiming satisfactory immigration on the Declaration required by Section 1137(d) of the Act.

Also, the interim final rule emphasizes that states must comply with requirements for pursuing fraud and abuse. Federal regulations at 42 CFR 435.907(b) require an applicant to sign an application form under penalty of perjury. The application forms include statements attesting to citizenship or alien status. If eligibility is allowed for an applicant who attests to be a citizen on the signed application form and the individual is later determined not to be a citizen, fraud procedures will be pursued.

Submitter : Mr. Stan Rosenstein **Date:** 08/11/2006

Organization : California Department of Health Services

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

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

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

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

Submitter : Mr. Kevin Ryan **Date:** 08/11/2006

Organization : Department of Children and Families

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-408-Attach-1.DOC

State of New Jersey
DEPARTMENT OF CHILDREN AND FAMILIES
PO BOX 729
TRENTON, NJ 08625-0729

JON S. CORZINE
Governor

KEVIN M. RYAN
Commissioner

August 10, 2006

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

I am writing to provide comments regarding the Interim Final Rule that was published in the July 12, 2006, edition of the Federal Register, which amended Medicaid citizenship verification regulations in order to implement the provisions of the Deficit Reduction Act of 2005.

The rulemaking, in part, specifies that Title IV-E children receiving Medicaid shall now submit a declaration of citizenship or other satisfactory immigration status, along with supportive documentation of such citizenship or satisfactory immigration status.

New Jersey's child welfare policy has always required verification of citizenship and lawful alien status for children receiving Medicaid while in out-of-home placement. However, it is the experience of my Department that there are frequent difficulties in obtaining this documentation because the natural birth parents are either unable or unavailable to provide these documents, or we are unable to obtain information to assist us in identifying the child's place of birth. In lieu of such documentation, we had previously accepted either documentation of an eligibility determination made by another agency, such as a county welfare or Social Security record or, failing that, a parent's verbal statement as proof of eligibility. The interim rule now prohibits this practice.

According to the rule, we are no longer entitled to confer Medicaid eligibility to children in our care or custody until we have secured the documentation of citizenship described in the July 12 regulation. Because in some cases we may never be able to secure the required citizenship documentation, these children may have their continued Medicaid coverage jeopardized. I believe that this is inconsistent with the Federal government's goal of ensuring the safety and well-being of this population of vulnerable children, many of whom are medically fragile. Although some of our children will be eligible for state-funded medical coverage, the fiscal

impact of the loss of federally-funded medical assistance will undoubtedly affect our ability to provide other vital supportive services to these children and their families.

On behalf of the children in our care or custody, I strongly urge you to exempt children who are in foster care, an independent living arrangement, or subsidized adoption from the burdensome Medicaid citizenship verification requirements that were defined in the interim rulemaking.

Thank you for the opportunity to provide comments on this important issue.

Sincerely,

Kevin M. Ryan
Commissioner

KMR/2D

bcc: Mary Helen Cervantes
Eileen Crummy
John Ducoff
John Malaska
Erin O'Leary
Suzanne Silvers
Jackie Zavaglia

Submitter : **Ms. Carly Burton** **Date: 08/11/2006**

Organization : **MA Immigrant and Refugee Advocacy Coalition**

Category : **Social Worker**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See attachment

CMS-2257-IFC-409-Attach-1.DOC

MIRA
MASSACHUSETTS IMMIGRANT & REFUGEE ADVOCACY COALITION
105 Chauncy Street, 9th Floor, Boston, MA 02111 · Voice & TTY (617) 350-5480 · Fax (617) 350-5499 · http://www.miracoalition.org

August 10th, 2006

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

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

On behalf of the Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA), thank you for giving us the opportunity to submit comments about the implementation of Citizenship provisions of the Deficit Reduction Act. We appreciate your efforts in trying to create an implementation plan to comply with this provision, though we do feel that it is ill-conceived and couched in unwarranted anti-immigrant sentiment.

MIRA is a multi-ethnic, multiracial coalition that actively involves hundreds of grassroots immigrant organizations, legal service providers, labor unions, religious organizations, human service agencies, and human rights groups in cooperative efforts. We represent over 100 organizations across the state of Massachusetts, and have strong partnerships with agencies, business and leaders across New England.

MIRA's mission is to protect and promote the rights and opportunities of immigrants and refugees in Massachusetts. In partnership with its members, MIRA advances this mission through education, training, leadership development, organizing, policy analysis and advocacy. Our membership serves low-income refugees and immigrants from around the world.

A portion of our work focuses on helping immigrants and refugees gain improved access to the services and benefits that allow them to achieve the American Dream. This part of the work emphasizes training service providers, as well as immigrants and refugees, about the eligibility requirements for certain public benefits and the rights and responsibilities immigrants have when accessing those benefits. Our work includes advocating at both the state and federal levels for all low-income, taxpaying immigrants to be covered by safety net programs.

As such, we respectfully submit the following comments concerning the Medicaid Program: Citizenship Documentation Requirements.

Fact Sheet in Multiple Languages from CMS Emphasizing that Immigrant Eligibility Has Not Changed

While this new verification rule for citizens does not directly affect non-citizen applicants to Medicaid, the rules have created much confusion for the immigrant communities of Massachusetts. Because this change in policy was characterized as a way of reducing the occurrence of Medicaid fraud by aliens who are claiming to be citizens, many immigrants believe that the final rule in the Deficit Reduction Act resulted in a change in Medicaid eligibility for non-citizens.

As a result, many qualified aliens are fearful of submitting a Medicaid application for themselves and for their citizen children because they believe that they are now required to be citizens to be eligible. As this fear and misinformation spreads within immigrant communities, fewer non-citizens will apply for Medicaid even though they (and their citizen children) may be eligible. This, unfortunately, will result in less people getting the primary and preventive services they need through our state's Medicaid program.

There has been little or no outreach done by CMS to reassure immigrant communities that this new requirement does not reflect a change in non-citizen eligibility for Medicaid. This is also problematic for families that include citizen children since often parents become reluctant to apply for benefits for their children if they themselves may not be eligible.

We recommend that CMS promptly create a simple fact sheet in multiple languages to inform non-citizens that the eligibility rules and the requirements for proof of qualified immigration status remain. Distributing a fact sheet created by CMS would provide much needed reassurance to immigrant communities about this new rule, who it actually affects, and the fact that qualified non-citizens continue to be eligible for Medicaid.

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

In addition to a fact sheet educating immigrant communities of their continued eligibility for Medicaid, we would also recommend that medical benefits are not delayed during the time that a citizen applicant is gathering verification documentation of identity and citizenship. Our state's application for Medicaid is the same as the application for the Uncompensated Care Pool that reimburses hospitals and health centers for serving uninsured patients. Applicants who are unable to produce verification documentation right away are denied access to both Medicaid and our state's Uncompensated Care Pool during the "reasonable opportunity period" for having submitted an incomplete application. Unfortunately, this does not diminish usage in the emergency room but instead results in less reimbursement for the safety net hospitals and health centers serving these patients. This places an increased stress on our already overburdened safety net hospitals which affects many low-income residents of the Commonwealth.

We urge CMS to adopt regulations that allow applicants to be eligible for Medicaid during the "reasonable opportunity period" if they have declared themselves to be a citizen and have met the other eligibility requirements.

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

Infants born in U.S. hospitals to mothers on Medicaid should not be required to provide proof of their citizenship and identity. Children born to mothers on Medicaid currently are deemed eligible for Medicaid themselves at birth for at least one year if that child remains in the mother's household and the mother remains eligible for Medicaid. Even if the mother is a legal permanent resident subject to the five-year bar or an undocumented immigrant, the state Medicaid agency paid for that child's birth and that child is a citizen. Requiring these children to prove their citizenship status and identity is redundant and would be a burden to new mothers, especially immigrant mothers with limited English proficiency who may be unaware of how to gather this documentation.

Conclusion

Thank you for the opportunity to submit these comments. We hope CMS will consider and adopt the recommendations put forth in this document to mitigate the hardship this provision has created for many of the citizens of Massachusetts.

Submitter :

Date: 08/11/2006

Organization : **Families USA**

Category : **Consumer Group**

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-410-Attach-1.DOC

August 11, 2006

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

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

The 20 undersigned organizations are pleased to submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirement.

The American College of Nurse-Midwives represents some 7,000 certified nurse-midwives and certified midwives across the nation who care for women and their newborns.

The American Nurses Association (ANA) is the only full-service professional association representing the nation's registered nurses through its 54 constituent member organizations. ANA supports the availability and accessibility of affordable, quality health care for Medicaid beneficiaries.

The American Public Health Association (APHA) is the oldest, largest and most diverse organization of public health professionals in the world, dedicated to protecting all Americans, their families and communities from preventable, serious health threats and assuring community-based health promotion and disease prevention activities and preventive health services are universally accessible in the United States.

The Asian and Pacific Islander American Health Forum's mission is to enable Asian Americans and Pacific Islanders to attain the highest level of health and well being.

The Association of University Centers on Disabilities is a network of interdisciplinary Centers advancing policy and practice for and with individuals with developmental and other disabilities, their families, and communities.

The Epilepsy Foundation is the national voluntary health association solely dedicated to the welfare of the nearly 3 million people with epilepsy in the U.S. and their families. The Foundation works to ensure that people with seizures are able to participate in all life experiences and will prevent, control and cure epilepsy through research, education, advocacy and services.

Families USA is the national, non-profit, non-partisan organization for health care consumers. Our mission is to ensure that all Americans have access to high-quality, affordable health care. Families USA strongly supports comprehensive, affordable health insurance for all residents of this nation.

The National Alliance of State and Territorial AIDS Directors is a nonprofit national association of state health department HIV/AIDS program directors responsible for administering HIV/AIDS and viral hepatitis health care, prevention, education, and supportive services programs funded by state and federal governments. NASTAD is dedicated to reducing the incidence of HIV and viral hepatitis infection in the U.S. and its territories, providing comprehensive, compassionate, and quality care to all persons living with HIV/AIDS, and the development of responsible and compassionate public policies. NASTAD is a co-chair of the HIV Medicare and Medicaid Workgroup, a coalition of 73 national, state, and local AIDS advocacy organizations, community groups, healthcare providers, Medicaid and Medicare consumers, and other individual advocates. The Workgroup is committed to ensuring that people living with HIV/AIDS have access to appropriate, cost-effective health care and drug treatment.

NASOP is the Association of State Long-Term Care Ombudsmen. The programs its members administer provide ombudsman advocacy services to residents of long-term care facilities.

National Center for Law and Economic Justice is a national non-profit legal and policy advocacy organization that uses litigation, policy organizing, and support for grassroots organizing to ensure that all low-income people have access to critical public benefits and services, including Medicaid, for which they are eligible.

Established in 1994 in Washington, DC, The National Hispanic Medical Association is a non-profit representing licensed Hispanic physicians in the U.S. The mission of NHMA is to improve the health of Hispanics and other underserved.

The National Immigration Law Center (NILC) is dedicated to protecting and promoting the rights of low income immigrants and their family members.

The National Latino Council on Alcohol and Tobacco Prevention (LCAT) is a national, nonpartisan organization with a network of over 2,500 Latino community health advocates and experts concerned about access to health for members of our communities.

The National WIC Association, NWA, represents the 50 geographic state agencies, 37 Indian and Native American territory, trust and commonwealth state agencies and 2,200 local agencies that together provide WIC services to 8 million women, infants and children monthly through 10,000 WIC clinics nationwide. NWA is dedicated to providing leadership to the WIC Community in promoting quality nutrition services; advocating for services for all eligible women, infants and children; and assuring the sound and responsive management of the WIC Program.

The National Migrant and Seasonal Head Start Association (NMSHSA), a non profit 501(c) (3) organization, was incorporated in 2001 to be the voice for the children of migrant and seasonal farmworkers within the Head Start community and serves as the premier advocate for resources, the disseminator of information to the general public and to create partnerships to help member agencies provide quality comprehensive services to all farmworker children and their families.

Out of Many, One is a national multicultural advocacy network of organizations representing the five major racial/ethnic groups experiencing health disparities. OMO is committed to help attain health parity for communities of color. A primary focus is advocacy for racial/ethnic and language preference data as an essential requirement for achieving these goals.

Project Inform is a national HIV/AIDS healthcare and treatment advocacy organization based in San Francisco. It advocates for programs that provide quality care for people with HIV/AIDS, including Medicaid, Medicare, and the Ryan White CARE Act. Project Inform also organizes "PI Action", a national grassroots network of people affected by HIV/AIDS who communicate with their elected officials on key legislative and funding issues.

RESULTS is a nonprofit grassroots advocacy organization, committed to creating the political will to end hunger and the worst aspects of poverty. RESULTS is committed to individuals exercising their personal and political power by lobbying elected officials for effective solutions and key policies that affect hunger and poverty.

SHIRE is a national policy advocacy organization with deep community roots that focuses on the elimination of health disparities among communities of color. We work for attaining optimal health for all through advocacy, policy research and analysis, coalition-building, technical assistance and community demonstrations with policy implications.

USAction is dedicated to winning liberty and justice for all. They represent three million members in 34 affiliates, with statewide organizations in 24 states.

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

Positive Aspects of the Rule

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

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

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

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

Concerns about the Rule

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

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

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

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

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

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

The Interim Final Rule and June 9, 2006 State Medicaid Director letter establish a hierarchical structure for documents that individuals can use to prove citizenship. The documents are tiered according to their "reliability." 71 Fed. Reg. at 39218. Documents such as a U.S. passport or

Certificate of Naturalization are in the first tier and thus deemed more "reliable" than documents in Tiers 2, 3 and 4. The rule also requires states to obtain higher-level documentation where it is available, before moving on to documentation from a lower tier. 71 Fed. Reg. at 39222-39224.

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

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

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

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

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

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

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

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

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

Most of the third and fourth level evidentiary documents listed in the Interim Final Rule are acceptable documentation only if they are dated at least five year's prior to the applicant's or recipient's original application for Medicaid. 71 Fed. Reg. at 39223-39224. This requirement will undoubtedly result in hardship for many individuals, especially those who are applying for, or are long time recipients of, nursing home care and may not possess documents that meet this time restriction. Furthermore, there is no apparent explanation in the Interim Final Rule for this stringent requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

The new 42 CFR 435.407(j) requires states to give an applicant a "reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." Although no time period is directly specified, the rule

states that the "reasonable opportunity" should be consistent with the timeframes allowed to submit documentation to establish other eligibility requirements for which documentation is needed. 71 Fed. Reg. at 39225. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216.

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

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

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

First, the preamble to the Interim Final Rule allows an individual to prove citizenship through the use of two written affidavits only "in rare circumstances." 71 Fed. Reg. at 39224. Second, the rules for using the affidavit exception are strict: individuals must obtain written affidavits by *two* individuals who have knowledge of that person's citizenship, and at least one of these individuals cannot be related to the applicant or enrollee. Additionally, the individuals making the affidavits must be able to provide proof of *their own* citizenship and identity, and the applicant or enrollee must also make an affidavit explaining why documentary evidence does not exist or cannot be obtained. 71 Fed. Reg. at 39224. An individual who cannot meet the documentation requirement will be unlikely to produce two individuals who have personal

knowledge of the circumstances of their birth or naturalization, especially if one must not be a family member. Moreover, if the individual resides in a mixed status family, those family members who can offer an affidavit may not be citizens themselves. Undoubtedly, there will be individuals who cannot obtain documents from any of the tiers, not for lack of trying, and cannot meet the affidavit requirements. As a result, U.S. citizens who are otherwise eligible for Medicaid will be denied or lose coverage.

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

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

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

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

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

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

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

The Interim Final Rule exempts Medicare and SSI recipients from the documentation requirement. 71 Fed. Reg. at 39225. Section 6036 of the DRA authorizes the Secretary of HHS to exempt other groups who have submitted proof of U.S. citizenship or nationality from the requirement.There are a number of other categories of Medicaid applicants and recipients who should be exempt from the documentation requirement because they already establish proof of their U.S. citizenship through the application process for other government benefit programs. These groups include:

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

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

Conclusion

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

Thank you for considering these comments. We would be happy to discuss them with you at any time. If you have any questions, please contact Rachel Klein, Deputy Director of Health Policy at Families USA at (202) 628-3030.

Sincerely,

American College of Nurse-Midwives
American Nurses Association
American Public Health Association
Asian and Pacific Islander American Health Forum
Association of University Centers on Disabilities
The Epilepsy Foundation
Families USA
National Alliance of State and Territorial AIDS Directors
National Association of State Long-Term Care Ombudsman Programs
National Center for Law and Economic Justice
National Hispanic Medical Association
National Immigration Law Center
National Latino Council on Alcohol and Tobacco Prevention (LCAT)

National Migrant and Seasonal Head Start Association
The National WIC Association
Out of Many, One
Project Inform
RESULTS
Summit Health Institute for Research and Education, Inc.
US Action

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

Office of Information and Regulatory Affairs,
Office of Management and Budget, Room 10235, New Executive Office Building
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Katherine_T._astrich@omb.eop.gov
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Submitter : **Ms. Yukari Rymar** **Date: 08/11/2006**

Organization : **Ms. Yukari Rymar**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

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

Thank you for your consideration.

Submitter : Mr. John Stephen **Date:** 08/11/2006

Organization : NH Department of Health and Human Services

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

New Hampshire is one of four States in the nation that required verification of citizenship for Medicaid applicants prior to passage of the Deficit Reduction Act of 2005 (P.L. 109-171). We have well over thirty years of experience in requiring applicants for Medicaid to verify their citizenship status as an eligibility requirement and have not experienced any significant issues with our requirement. However, although the interim guidance issued by CMS on June 9, 2006 notes that New Hampshire has required documentation for many years without undue hardship to either applicants or the state, and indicates that New Hampshire has published guidelines for documenting citizenship that generally mirror the list of acceptable documentation contained in this letter, we found that there were significant differences between New Hampshire s requirement and those outlined in the guidance letter. NH DHHS quickly realized that the extremely complex and rigid nature of the DRA documentation requirements posed a number of conflicts with New Hampshire s citizenship documentation requirements.

New Hampshire participated in a series of conference calls hosted by the American Public Human Services Association (APHSA) to encourage CMS to soften their approach to the citizenship documentation requirements. It was our hope that CMS would give weight to the recommendations made by states that already had effective documentation procedures in place. When CMS issued the interim final rule on July 12, 2006, we were very appreciative that CMS did, in fact, softened the rule on several fronts. We most specifically commend CMS for recognizing the obvious scrivener s error in the law and that Supplemental Security Income (SSI) and Medicare recipients are now exempt from both the citizenship and identity requirements. We also appreciate that CMS will allow infants whose mothers were Medicaid recipients at the time of the birth to be given one year to verify citizenship/identity.

NH DHHS believes that there is still room for improvement within the regulations to lessen the burden on both Medicaid applicant/recipients and the states. In addition to exempting SSI and Medicare recipients from the documentation requirement, we strongly urge CMS to extent the exemption status to individuals receiving Social Security Disability Income (SSDI), foster care children, subsidized adoption Medicaid recipients and independent living youth.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

The New Hampshire Department of Health and Human Services (NHDHHS) respectfully submits this comment letter on Medicaid; Citizenship Documentation Requirements. NHDHHS is commenting on the interim final rule that was published on July 12, 2006, in the Federal Register (71 FR 39214) for the Centers for Medicare and Medicaid Services (CMS).

Regulatory Impact Statement

Regulatory Impact Statement

NH DHHS asks for clarification on the cost to states, and the way in which it has been determined that this provision will yield savings to the States. The regulation specifically states, state savings under $50 million per year over the next 5 years. Given the significant new requirements for states discussed above in the section on burden estimates, we do not anticipate that the State of New Hampshire will recognize any savings. Instead, we are certain that we will likely incur significant new costs.

In the Regulatory Impact Statement, a Certificate of Naturalization is listed as an acceptable form of documentation. It has come to our attention that the copying of a Certificate of Naturalization is a felony. Thus, we would request further clarification as to how an agency can appropriately document that such agency has seen the document.

Also included within the regulatory requirements section of the interim final rule are a number of indications that a five-year rule applies. We ask that this requirement be removed.

CMS-2257-IFC-412-Attach-1.PDF

STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

129 PLEASANT STREET, CONCORD, NH 03301-3857
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John A. Stephen
Commissioner

August 11, 2006

Mark B. McClellan, M.D., Ph.D.
Centers for Medicare and Medicaid Services
Attn: CMS 2257-IFC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

RE: Medicaid Citizenship Documentation Provisions of the Interim Final Rule with Comment Period, Regulatory Impact Statement 71 Federal Register 39214 (July 12, 2006); File Code CMS-2257-IFC

Dear Dr. McClellan:

The New Hampshire Department of Health and Human Services (NHDHHS) respectfully submits this comment letter on Medicaid; Citizenship Documentation Requirements. NHDHHS is commenting on the interim final rule that was published on July 12, 2006, in the *Federal Register* (71 FR 39214) for the Centers for Medicare and Medicaid Services (CMS).

New Hampshire is one of four States in the nation that required verification of citizenship for Medicaid applicants prior to passage of the Deficit Reduction Act of 2005 (P.L. 109-171). We have well over thirty years of experience in requiring applicants for Medicaid to verify their citizenship status as an eligibility requirement and have not experienced any significant issues with our requirement. However, although the interim guidance issued by CMS on June 9, 2006 notes that New Hampshire has required documentation for many years without "undue hardship to either applicants or the state," and indicates that New Hampshire has published guidelines for documenting citizenship that "generally mirror the list of acceptable documentation contained in this letter," we found that there were significant differences between New Hampshire's requirement and those outlined in the guidance letter. NH DHHS quickly realized that the extremely complex and rigid nature of the DRA documentation requirements posed a number of conflicts with New Hampshire's citizenship documentation requirements.

New Hampshire participated in a series of conference calls hosted by the American Public Human Services Association (APHSA) to encourage CMS to soften their approach to the citizenship documentation requirements. It was our hope that CMS would give weight to the recommendations made by states that already had effective documentation procedures in place. When CMS issued the interim final rule on July 12, 2006, we were very appreciative that CMS did, in fact, softened the rule on several fronts. We most specifically commend CMS for recognizing the obvious scrivener's error in the law and that Supplemental Security Income (SSI) and Medicare recipients are now exempt from both the citizenship and identity requirements. We

also appreciate that CMS will allow infants whose mothers were Medicaid recipients at the time of the birth to be given one year to verify citizenship/identity.

NH DHHS believes that there is still room for improvement within the regulations to lessen the burden on both Medicaid applicant/recipients and the states. In addition to exempting SSI and Medicare recipients from the documentation requirement, we strongly urge CMS to extent the exemption status to individuals receiving Social Security Disability Income (SSDI), foster care children, subsidized adoption Medicaid recipients and independent living youth.

Foster Care Children

Through their child welfare agencies, States routinely determine citizenship for all children in foster care, regardless of Title IV-E eligibility. After the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193), the Administration for Children and Families (ACF) issued a Policy Interpretation Question (PIQ) on January 14, 1999 which, explicitly indicates that states are required to verify the citizenship of all children receiving federal foster care maintenance payments, adoption assistance payments or independent living services. Because a state does not know if a child is eligible for Title IV-E at the time the child enters the system, the child welfare agency must verify citizenship of all children entering the foster care system.

With regard to identity, most children in foster care simply do not have access to the documents outlined in the interim final rule. Given the contentious nature of the removal of a child, it is unlikely that the parent(s) will be willing or able to provide the necessary identification documents to the state. Therefore, NH DHHS strongly recommends that this population be exempt from these requirements.

Applicant and Recipient Status

In addition, in previous forums CMS has verbally communicated that children in foster care, children receiving adoption assistance, and independent living youth who are categorically eligible for Medicaid, are to be treated as recipients, not applicants, for purposes of citizenship documentation. However, NH DHHS believes we currently lack the legal standing to apply this distinction. As such, NH DHHS requests that CMS provide official written guidance explicitly indicating that these categorically eligible children are to be treated as recipients within the rule.

Newborn Children

In accordance with the Social Security Act §1902, §1903(v), and 42 U.S.C. §1396(e), an infant born to a non-citizen pregnant mother whose labor and delivery are covered by Medicaid is born to a woman eligible for and receiving medical assistance (emergency services) under a State plan. We request that these infants be deemed eligible for Medicaid for a period of one year.

Supplemental Security Income and Social Security Disability Income Beneficiaries

We also ask that individuals who are receiving Supplemental Security Income (SSI), but have not yet been entered into the database system, be permitted to provide SSI check stubs to document that they are in fact SSI recipients. SSI recipients in all States should be treated the same regardless of whether they live in a 209-B state or a 1634 state because Social Security Administration (SSA) has established citizenship and identity for all recipients of SSI. In addition, we request that CMS clarify that former Medicare and SSI recipients are exempt from this requirement.

We further contend that the application process and documentation requirements for SSI are identical to that for Social Security Disability Income (SSDI). As such, SSDI recipients should be treated similarly and therefore be exempt from the requirement to document citizenship and identity.

Expanding Acceptable Documentation

NH DHHS appreciates CMS's efforts to approve a range of documents as acceptable for meeting the citizenship and identity requirements. We have reviewed the types of information collection, records, and current systems and, based on our extensive experience, believe there are additional forms and methods for documentation that should be accepted as proof of both citizenship and identity. The documents listed below would strengthen States' ability to accurately document proof of citizenship and identity

Citizenship

Specifically, on citizenship documentation we request that CMS allow states to accept the following documents:

- Copies of birth records, or souvenir birth certificates, submitted by hospitals to States' Vital Records Bureau for registering births.
- States' Medicaid paid claim forms for births.
- Birth records from child support agencies.
- Tribal enrollment cards. Enrollment in a federally recognized tribe should also be acceptable to document citizenship. The Native American Tribal documents listed as documentation of identity should also be accepted for citizenship.
- State identification cards.
- The "preponderance of evidence." This should be allowable in rare situations where exhaustive research has been done and everything points to citizenship, but none of the listed documents exist. New Hampshire has historically allowed this in the past, and it has not later been proven to result in erroneous citizenship documentation.

In addition, the following records are currently permissible forms of secondary evidence for citizenship verification from the SSA Programs Operation Manual System (POMS). As such we request that CMS also allow these records for purposes of meeting the Medicaid citizenship documentation requirement.

- A religious record established in the U.S. within 3 months of birth, showing a U.S. place of birth and either a date of birth or the individual's age when the record was made. (NH DHHS also allows this documentation.)
- An early school record for the applicant showing a U.S. place of birth, the date of admission to school, the date of birth, or the age of the individual at the time the record was made, and the names and places of birth for the applicant's parents.

Identity

For purposes of identity, we request that the following additional items be allowed:

- Birth certificates. These certificates specifically identify all necessary information that other identity documents contain.
- Voter registration cards. These are government issued cards that meet the necessary requirements to reliably prove identity.
- A child's removal court order and court documents for individuals of any age.
- Verification of identity by Child Welfare agencies for children under their care.
- Birth records from child support agencies.
- Immunization records. These records contain identifying information, specifically for children.
- Private agency identification cards for children. Most of these, such as I-Dent-A-Kid and Life Touch, work with school systems.
- Photos in school yearbooks should be permitted as they identify children under 18 who are enrolled in school.
- School records for children under 18.
- Identity affidavits or facility medical records for any institutionalized individuals who are not receiving SSI or Medicare.
- Social Security (NUMIDENT) System.
- Checks issued by the U.S. Department of Veteran Affairs.
- Affidavits. These should be permitted to prove identity for individuals of all ages.

Data Matches

NH DHHS appreciates the opportunity to recommend additional data match sources that should be permissible for citizenship and identity. We request that CMS make the following data match sources acceptable:

- Matches with the Public Assistance Recipient Information System (PARIS).
- Matches with NUMIDENT.
- Matches with the U.S. Department of Veterans Affairs.
- Medicaid paid claim forms that show that Medicaid paid for the birth.

- Matches with the Social Security Administration's SS5 database.
- Matches with the U.S. Citizenship and Immigration Services (CIS) database, Systematic Alien Verification for Entitlements (SAVE).
- Matches with Indian Health Services.
- Matches with State Attorney General offices.

Interstate Transfer of Information

NH DHHS requests that CMS clarify that an inter-agency data match is sufficient and no additional documentation is necessary. Specifically, we ask that CMS permit as sufficient proof an intra-State data match with the department of motor vehicles or vital statistics offices. Also, in light of the fact that many States are moving to paperless case files, we ask that you accept an indicator on an electronic case file rather than require States to keep "paper" case files.

In addition, NH DHHS is concerned with the treatment of inter-state transfers in the interim final rule since such transfers will be critical components of the processes States establish to meet the documentation requirements. To meet this requirement, NH DHHS recommends that States be allowed to request copies of documentation from another State's Medicaid agency. Additionally, NH DHHS requests that if one State has verified the citizenship or legal status of a Medicaid client, then that documentation should be acceptable in all States without holding any States liable for federal penalty for failure to document citizenship a second time. That is, if the client moves from State A and applies for Medicaid in State B, the documentation from State A should suffice and State B should be held harmless for disallowances made by CMS for any subsequently identified eligibility errors based on information from State A.

Reducing the States' Burden of Administering Large Federal Mandates

NH DHHS is concerned that CMS has vastly underestimated the burden to States. States have received limited outreach guidance from CMS, yet they have had to provide training for eligibility workers and other staff, and even other State agencies, whose responsibilities require them to be knowledgeable of this new requirement. They also have had to develop new materials and systems. To this end, we recommend that the CMS consult with States to develop an accurate estimate of the additional costs and requirements of this new mandate to States. NH DHHS also request that they receive a higher FMAP to accommodate this significant new responsibility.

In addition, states believe CMS has failed to provide an accurate estimate of the time and resources that States are and will continue to invest in obtaining, documenting, and, in some cases paying for, the required documents. It is taking our eligibility workers significantly longer than five-minute estimate in the regulation to comply with the federal requirements. The time it takes an individual to acquire and provide the state with acceptable documentary evidence and to review the declaration is considerably longer then the ten minutes allocated in the interim final rule.

Implementation Considerations

NH DHHS requests that CMS alter the language to treat applicants and recipients equally. We request during the reasonable period, CMS allow the applicants who have declared they are citizens to qualify for Medicaid services.

Further, NH DHHS requests that citizens be given the same rights as applicants who declare they are immigrants. States are mandated to provide a person who declares that they are a legal immigrant (who has been in the U.S. over 5 years) eligibility for Medicaid without their documentation. According to 42 U.S.C. §1320b-7(d)(4)(A), states also are mandated to make immigrants eligible for Medicaid and to provide them with a reasonable opportunity period to submit satisfactory immigration information. We ask that States be permitted to provide individuals who declare they are citizens with eligibility during the reasonable opportunity period while they obtain the documentation. Further, we request that States be eligible to receive Federal Financial Participation (FFP) for providing services to such individuals during this time period.

Most States define a minor as an individual under the age of 18 or 21. We request that states be afforded the option to apply the criteria for youths age 17 that they would apply for those aged 16 and under.

Federal Financial Participation for Administrative Expenditures

NH DHHS respectfully requests an expansion of the definition of administrative expenditures for which States can receive FFP. We recommend that CMS revise the definition for administrative expenditures to include personnel, costs to obtain records for those clients who are impoverished, and costs for the development of database interfaces.

Further, we ask for clarification for individuals found to be presumptively eligible who subsequently are unable to meet the documentation requirements. We ask that states be permitted to collect FFP for the period of presumptive eligibility. States also are working with CMS to comply with the new Payment Error Rate Measurement (PERM) requirements. NH DHHS strongly recommends that States be held harmless from PERM as long as they can outline the steps taken to obtain proof of citizenship and identity.

We ask that States be reimbursed for Medicaid claims, retroactive to the date of application, for administrative and health services provided to Medicaid applicants whose eligibility determination was delayed due to barriers in obtaining citizenship and/or identification documents.

Provisions of the Interim Final Rule with Comment Period

NH DHHS respectfully requests that CMS remove the requirement for a hierarchy of reliability of citizenship documents since this was not included in the statute of the Deficit Reduction Act of 2005.

Secondary Evidence of Citizenship

We ask for further clarification for children born overseas who are adopted by U.S. citizens. These children and their adoptive parents may not have immediate access to a certificate of

naturalization or a certificate of citizenship. We therefore request that these children be made eligible immediately upon adoption.

Fourth Level Evidence of Citizenship

NH DHHS appreciates CMS' allowance of affidavits, however we request clarification as to whether the affidavits attesting to the person's citizenship can also be used to document identity. The affiants are attesting to the person's citizenship, therefore it should be reasonable to assume that the individual attesting to the person's citizenship can also attest to the person's identity.

We are asking that the language regarding affidavits be modified to provide the State flexibility to accept a declaration attesting to the facts and given under penalty of perjury. This will allow States that have different requirements for what should be included in an affidavit to obtain the necessary information without changing their statute.

Additionally, we ask for an exception for those individuals that are not incapacitated and have made their best efforts to locate such documents but such documents have been lost or destroyed due to a natural disaster.

We also believe there are alternatives for programs that currently operate on a mail-in basis. Many of New Hampshire's programs have mail-in application processes which do not require a face-to-face interview. We request that if the State can assure that the information received about the identity and citizenship is accurate, copies will be sufficient.

Regulatory Impact Statement

NH DHHS asks for clarification on the cost to states, and the way in which it has been determined that this provision will yield savings to the States. The regulation specifically states, "state savings under $50 million per year over the next 5 years." Given the significant new requirements for states discussed above in the section on burden estimates, we do not anticipate that the State of New Hampshire will recognize any savings. Instead, we are certain that we will likely incur significant new costs.

In the Regulatory Impact Statement, a Certificate of Naturalization is listed as an acceptable form of documentation. It has come to our attention that the copying of a Certificate of Naturalization is a felony. Thus, we would request further clarification as to how an agency can appropriately document that such agency has seen the document.

Also included within the regulatory requirements section of the interim final rule are a number of indications that a five-year rule applies. We ask that this requirement be removed.

NH DHHS would be pleased to meet with you at any time on these matters. Thank you for considering our comments. If you have any questions, please do not hesitate to contact Joyce Gleason at (603) 271 - 4226.

Sincerely,

John A. Stephen
Commissioner

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

Organization :

Category : **Consumer Group**

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-413-Attach-1.DOC

August 11, 2006

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

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

The 80 undersigned organizations are pleased to submit these comments on CMS's Interim Final Rule on the new Medicaid citizenship documentation requirement of the Deficit Reduction Act of 2005 (DRA).

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

Positive Aspects of the Rule

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

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

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

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

Concerns about the Rule

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

According to the preamble to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal (newborns are categorically-eligible for one year if their mothers were categorically-eligible at the child's birth and would have

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

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

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

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

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

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

While we are pleased that CMS has used the authority granted in the DRA expanded the list of documents that can be used to prove citizenship beyond those included in the statute, we are concerned that the hierarchy employed in the Interim Final Rule goes beyond the statutory requirements of Section 6036 of the DRA. The hierarchy will cause significant time delays for applicants and headaches for agency staff and beneficiaries and applicants as individuals attempt to demonstrate that they cannot get a higher tier document before moving to the subsequent tier.

The hierarchy also makes little sense: If a fourth tier document eventually becomes sufficient proof for an individual, then why cannot it be sufficient documentation at the outset?

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

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

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

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

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

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

Most of the third and fourth level evidentiary documents listed in the Interim Final Rule are acceptable documentation only if they are dated at least five year's prior to the applicant's or recipient's original application for Medicaid. 71 Fed. Reg. at 39223-39224. This requirement will undoubtedly result in hardship for many individuals, especially those who are applying for, or are long time recipients of, nursing home care and may not possess documents that meet this time restriction. Furthermore, there is no apparent explanation in the Interim Final Rule for this stringent requirement.

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

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

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

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

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

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

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

The new rule also estimates that it will take recipients and applicants 10 minutes to collect and present evidence of citizenship and identity to the state, and take states 5 minutes to obtain this documentation from each individual, verify citizenship and maintain records. 71 Fed. Reg. at

39220. We believe these time estimates are extremely erroneous since the rule requires applicants and recipients to submit original documents to the state.

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

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

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

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

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

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

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

There is no statutory requirement to prohibit people who are otherwise eligible for Medicaid from enrolling in the program immediately. As written in Section 6036 of the DRA, the citizenship documentation requirement is a requirement for states to receive federal matching funds, not an eligibility requirement for individuals. Once someone has declared under penalty of perjury that s/he is an American citizen and met all eligibility requirements for Medicaid, s/he should be enrolled in Medicaid pending submission of the appropriate documentation of

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

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

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

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

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

information they do have that might indicate they are a U.S. citizen. 20 CFR 416.1610. Adopting this procedure by adding a new provision to 42 CFR 435.407 would go a long way towards ensuring that citizens who cannot produce "acceptable" documentation under the new rule still be allowed to get or keep their Medicaid coverage.

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

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

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

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

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

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

The Interim Final Rule exempts Medicare and SSI recipients from the documentation requirement. 71 Fed. Reg. at 39225. Section 6036 of the DRA authorizes the Secretary of HHS to exempt other groups who have submitted proof of U.S. citizenship or nationality from the requirement.There are a number of other categories of Medicaid applicants and recipients who should be exempt from the documentation requirement because they already establish proof of their U.S. citizenship through the application process for other government benefit programs. These groups include:

- SSDI recipients in the two year waiting period for Medicare, who have met all the eligibility criteria for Medicare—including providing proof of citizenship—and are just waiting to fulfill the two year time period.

- Former SSI and Medicare beneficiaries, who for whatever reason are no longer eligible for those programs, but have established proof of citizenship in the past, and are now eligible for Medicaid.
- Former and current TANF recipients who receive Medicaid on the basis of receipt of TANF. These individuals have proven their citizenship through the TANF program.

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

Conclusion

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

Sincerely,

Aging Concerns Geriatric Care Consultants (St. Louis, MO)
AIDS Foundation of Chicago
Alameda County Health Care for the Homeless Program (Oakland, CA)
Alliance for the Betterment of Citizens with Disabilities (Lowell, NJ)
Anchorage Neighborhood Health Center (Anchorage, AK)
Bet Tzedek Legal Services (Los Angeles, CA)
California Advocates for Nursing Home Reform (San Francisco, CA)
Campaign for Better Health Care (Chicago, IL)
Capital Area Food Bank (Washington, DC)
Center for Independent Living of South Florida, Inc. (Miami, FL)
Coalition for Universal Healthcare Rights (San Antonio, TX)
Community Behavioral Health Association of Maryland (Catonsville, MD)
Community Health Law Project (Trenton, NJ)
Congregational Leadership, Sisters of Charity of Nazareth (Nazareth, KY)
Darin M. Camarena Health Centers, Inc. (Madera, CA)
Disabled Action Committee (Dale City, VA)
Disabilities Rights Center, Inc. (Concord, NH)
ElderServe (Louisville, KY)
Empire Justice Center (New York)
Eyes Wide Open International (Nampa, ID)
Family Voices of New Jersey (Newark, NJ)
Fifth Avenue Committee (Brooklyn, NY)
Florida Legal Services (Miami, FL)
Gray Panthers California (Sacramento, CA)
Gray Panthers of Marin (San Rafael, CA)
Helping Hands (Marietta, GA)
Honoring Emancipated Youth (HEY) (San Francisco, CA)

Hunger and Poverty Network of Northern New Mexico (Santa Fe, NM)
Hyacinth AIDS Foundation (New Brunswick, NJ)
The IHM Justice, Peace and Sustainability Office (Monroe, MI)
Independent Living Center of the North Shore and Cape Ann, Inc. (Salem, MA)
Legal Aid Society of the District of Columbia (Washington, DC)
Legal Aid Society of Greater Cincinnati (Cincinnati, OH)
Long Island Health Access Monitoring Project (Huntington, NY)
Los Angeles Caregiver Resource Center (Los Angeles, CA)
Lynn Health Task Force (Lynn, MA)
Maryknoll Sisters (Bronx, NY)
Mary's Center for Maternal and Child Care, Inc. (Washington, DC)
Massachusetts Coalition of School-Based Health Centers (Boston, MA)
Maurice Weiner Consultants, Inc. (Beverly Hills, CA)
Medical College of Georgia (Augusta, GA)
Medical Service Bureau (Wichita, KS)
Miami Bridge Youth and Family Services, Inc. (Miami, FL)
Missouri MC+ Statewide Coalition (Jefferson City, MO)
Montgomery Health Care Action (Bethesda, MD)
National MS Society, WV Chapter (Charleston, WV)
New Mexico Public Health Association (Albuquerque, NM)
Office of Kentucky Legal Services Programs (Lexington, KY)
Older Women's League, Portland Chapter (Portland, OR)
Oregon Law Center (Portland, OR)
Otero County Health Department (La Junta, CO)
Parent Voices Organizer (Hayward, CA)
Progress Center for Independent Living (Forest Park, IL)
Public Policy Committee of the Episcopal Diocese of Rochester, NY
RESULTS-Santa Fe (Santa Fe, NM)
Roane Cancer Coalition (Spencer, WV)
Sacred Alliances for Grassroots Equality (Albuquerque, NM)
San Francisco AIDS Foundation (San Francisco, CA)
Senior Legislative Action Committee of Sullivan County, New York (Ferndale, NY)
Settlement & Trust Consulting Services (Seattle, WA)
Shenandoah Valley Child Development Clinic (Harrisonburg, VA)
Sisters of the Presentation of Dubuque, Iowa
South Carolina Campaign to End AIDS (Columbia, SC)
Southeast Kansas Independent Living (Chanute, KS)
Southwest Virginia Care Connection for Children (Bristol, VA)
Statewide Parent Advocacy Network (Newark, NJ)
SWCAP Reproductive Health Care Center (Plateville, WI)
Tennessee Justice Center (Nashville, TN)
Time-Exchange Network (Denver, CO)
United Way-Thomas Jefferson Area (Charlottesville, VA)
Vermont Coalition for Disability Rights (Plainfield, VT)
Vermont Legal Aid (Burlington, VT)
Voices for Virginia's Children (Richmond, VA)

Welfare Rights Organizing Coalition (Seattle, WA)
Westchester Independent Living Center (White Plains, NY)
Western Massachusetts Legal Services, Inc. (Springfield, MA)
Wisconsin Council of Churches (Sun Prairie, WI)
Women's American Organization for Rehabilitation through Training (El Cerrito, CA)
Working for Equality and Economic Liberation (Helena, MT)
Yancey County Senior Center (Burnsville, NC)

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

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 : **Ms. Yolanda Vera** **Date: 08/11/2006**

Organization : **LA Health Action**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-414-Attach-1.DOC

******* DRAFT *******

August ___, 2006

VIA E-MAIL & U.S. MAIL
The Honorable Michael O. Leavitt
Secretary of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: File Code CMS-2257-IFC

Dear Secretary Leavitt:

Thank you for the opportunity to provide comments in response to the CMS interim final rule published in the Federal Register on July 12, 2006 regarding the responsibility of states in implementing the Medicaid citizenship documentation requirements under the Deficit Reduction Act (DRA) of 2005. We hope that these comments will be constructive and informative as you continue to work on the development of a final rule.

The LA Health Collaborative is a partnership of nearly 70 private and public organizations dedicated to preserving and improving Los Angeles County's health care safety net. The Collaborative includes health care providers, local government agencies, health insurers, business groups and patient advocacy groups.

Given the scope of the DRA legislation, and the large and diverse Medicaid population served by the members of the Collaborative, the new citizenship verification rule will have a significant impact on patients and providers. In fact, an estimated 8 million Californians could be affected by the new proposal in the first year after its implementation.

Unfortunately, many Medicaid recipients who are legitimate U.S. citizens do not have the proper documentation to comply with the new CMS rule. One study found that 8 percent of U.S. born low-income adults report that they do not have a U.S. passport or birth certificate in their possession. If this figure is applied to California, approximately 650,000 citizens across the state may lack proper documentation. In addition, the high cost of obtaining these documents, which

We applaud the agency's recent decision to exclude Supplemental Security Income (SSI) recipients from the rule, as this will protect 8 million of the most vulnerable Americans whose livelihood hinges on Medicaid services. In addition, the increased flexibility that CMS offered in

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the area of data matching will significantly ease the efforts of state agencies in complying with this policy. While these changes represent significant progress, we continue to have serious concerns that the directives included in the July 12th rule could create major barriers to providing quality patient care, while saddling local governments with tremendous financial and administrative burdens that threaten to erode our critical health care safety net in Los Angeles County.

Please find attached comments and recommendations that we are confident will significantly ease the implementation of the Medicaid citizenship verification requirement while still upholding the original intent of the law. In addition to the seven recommendations outlined in this letter, we have also attached more detailed comments on the impact of this rule on naturalized citizens. While these comments do not reflect the opinion of the entire LA Health Collaborative membership, we have listed the steering committee members and other organizations that have endorsed these recommendations below. If you have any questions or seek additional clarification regarding these comments, please feel free to contact LA Health Action Director Yolanda Vera at (213) 928-8600.

AltaMed Health Services Corporation

Community Clinic Association of Los Angeles County

Community Health Councils, Inc.

COPE Health Solutions

Hospital Association of Southern California

L.A. Care Health Plan

LA Health Action

Los Angeles Area Chamber of Commerce

Los Angeles County Medical Association

Maternal and Child Health Access

National Health Foundation

Neighborhood Legal Service of L.A. County Health Consumer Center

Service Employees International Union, Local 660

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By: *Yolanda Vera*
Yolanda Vera

1. Medicaid applicants should not be denied enrollment during the eligibility determination period.

The Deficit Reduction Act (DRA) legislation itself did not direct states to deny eligibility for applicants until they produced the required documentation. However, the July 12, 2006 interim final rule, like the June 9th guidance letter, states that applicants "should not be made eligible until they have presented the required evidence." As a result, applicants who do not immediately have access to the necessary documentation to prove their citizenship could be excluded from critical health services during the waiting period.

CMS should allow States to provide immediate coverage to applicants who act in good faith to provide necessary documentation during the "reasonable opportunity period." This coverage should also be extended in cases where documents cannot be found, and as a result, the applicant requires State assistance. For those already enrolled in Medicaid who are renewing their application, the statute does allow continued coverage. Applicants should receive this same benefit.

This year, some 10 million U.S. citizens are expected to apply for Medicaid coverage and will be impacted by this requirement. Given that most of these applicants will be children, pregnant women and parents, delaying health coverage would certainly have a negative impact on these vulnerable populations.

2. An exemption should be made for Title IV-E foster care children.

The interim final rule requires Title IV-E foster care children to provide documents verifying citizenship when renewing or applying for Medicaid coverage. However, this requirement is unnecessary, as Section 6036 of the DRA only applies to individuals who have declared that they are U.S. citizens. Specifically, the requirement applies to an individual "who declares under section 1137(d)(1)(a) [of the Social Security Act] to be a citizen or national of the United States for purposes of establishing eligibility for [Medicaid] benefits." Children receiving Title IV-E benefits who are eligible for Medicaid make no such declaration, and thus should be exempted from the requirement.

This rationale can be applied to SSI recipients, who also face no requirement of citizenship declaration in the SSI application process, and therefore should not be subject to the provisions of section 6036. Fortunately, the interim rule did make such an exemption for SSI recipients.

The interim rule also creates duplication in the process of citizenship verification. Federal law already requires state child welfare agencies to verify citizenship of children in determining Title IV-E eligibility. The new documentation requirement will now delay the enrollment

process, as government workers will have to assist foster children in locating and obtaining documents. Unfortunately, abused and neglected children often face substantial barriers in obtaining documentation, as parents are often unable or unwilling to sign legally binding citizenship declarations. Furthermore, the reluctance of CMS to accept written affidavits, which could help speed the eligibility determination for foster children, acts as an additional challenge for this population. Thus, at the least, Title IV-E recipients should be considered Medicaid-eligible immediately and therefore receive health coverage during the reasonable opportunity period that is allowed for presentation of documentation.

Los Angeles County currently has over 20,000 children living out of home in the foster care system that could be impacted by this requirement. These children are often in much poorer health when compared to their peers, and would be placed at great risk if faced with delays in necessary medical coverage.

3. Allowance should be included for acceptance of fax and photocopies of citizenship and identity documents.

The rule specifies that only original documentation or certified copies can be accepted. However, this requirement was not included in the original DRA statute. Allowing fax and standard photocopies can provide time and monetary savings for applicants and will remove the burden of handling original documents for the state. Most applicants and recipients will understandably be hesitant to send vital documents such as passports, driver's licenses or Certificates of Citizenship through the mail, as these items could be lost or expose applicants to the threat of identity theft. Instead, many applicants will have to request certified copies of these documents through state agencies, creating a costly and time-consuming burden on citizens who can least afford them. Since many individuals will choose to submit documentation in person, the rule hampers the efforts of states to encourage applications through the Internet or by mail, which would cut down on costly face-to-face interviews with eligibility workers.

Furthermore, the hierarchy of documentation imposes additional burdens on low-income individuals who are less likely to have passports, and thus must produce birth certificates in most cases. Unfortunately, thousands of older Americans will face difficulty in obtaining birth certificates, especially if they were born outside the state. In addition, many elderly African Americans and persons born in rural areas may have never been issued a birth certificate, further complicating the process. In California, this could be especially burdensome, as a large number of Medicaid recipients have moved to the state from other parts of the country.

4. The estimate for the time needed for recipients to comply with the rule is unrealistic.

The July 12, 2006 rule estimates that "it would take an individual 10 minutes to acquire and provide to the State acceptable documentary evidence and to verify the declaration." For most enrollees and applicants, the time needed to comply with this requirement would be much greater. Even in a situation where an applicant has all the necessary documentation readily available, it is unlikely that he or she would be willing to send the original documents through the mail. In Los Angeles County, estimates suggest that up to 1.5 million more people each year will chose to conduct their application and renewal process in person as a result of the original documentation requirement. For many low-income families, who have limited transportation options and rigid work schedules, appearing in person to obtain documentation would present a major time and monetary burden.

Furthermore, applicants and enrollees who do not have original documents readily available will likely have to make written and telephone requests to obtain certified copies or present the material in person. These tasks will likely require hours, not minutes. For example, in California, it can take an average of four weeks to get a certified copy of a birth certificate. To obtain a passport, an individual would have to appear in person to apply, and then wait six weeks for processing.

Naturalized citizens, especially children who receive derivative citizenship through their parents, also face significant hurdles in complying with these requirements in a timely manner. Such children do not receive any of the primary (or secondary) evidence of citizenship. Therefore, their parents must apply for a Certificate of Citizenship or U.S. passport as proof of citizenship, both of which are costly and take time to obtain. One solution would be to accept an affidavit signed by the parent, accompanied by documents proving that the parent's citizenship qualifies the child for derivative citizenship.

5. Exemptions should be allowed for those applying for Medicaid or receiving coverage under Section 1115 waivers, including Family Planning Waivers.

In California, family planning services are offered to low-income residents under the Family Planning, Access, Care and Treatment (PACT) program under a Section 1115 waiver. The program provides critical services such as contraception, cervical cancer screening, and testing and treatment of sexually transmitted diseases. Like children under the Title IV-E foster care program, recipients of care under a Section 1115 waiver make no declaration of citizenship. Thus, patients enrolled in the Family PACT program should not be affected by the DRA requirements since, as previously mentioned, section 6036 of the Act only applies to individuals who have declared that they are U.S. citizens.

6. Exemptions should be allowed for cervical cancer patients who receive pregnant women, infants, and breast and presumptive eligibility.

The rule does provide some relief for documentation requirements for infants born to Medicaid recipients, as a child is automatically deemed eligible "on the date of birth and remains eligible as categorically needy for one year so long as the woman remains eligible as categorically needy and the child is member of the woman's household." However, children born to non-qualified aliens are not eligible for this coverage. Since children born in the U.S. are automatically granted citizenship, they should be deemed to have satisfied the citizenship verification requirement immediately. Furthermore, for those infants whose birth was covered by Medicaid, the state agency's record of payment should suffice as satisfactory documentary evidence of citizenship and identity.

As you know, certain low-income pregnant women in California qualify for presumptive eligibility (PE), making them immediately eligible for Medicaid benefits. By creating the PE provision, CMS acknowledged that certain medically vulnerable populations should not go through the normal time-consuming, burdensome application process. Under PE requirements in California, a pregnant woman would have up to two months to complete the full Medicaid application. Given the challenges imposed by the new citizenship verification rules, that time frame should be extended. At a minimum, CMS should consider pregnant women who qualify and receive PE as Medicaid "recipients," whose identity and citizenship should only be documented at the time of eligibility re-determination.

Breast and cervical cancer patients should also benefit from this distinction. The entire purpose of applying PE to breast and cervical cancer patients is to expedite critical cancer treatment. If a delay is caused by an inability to establish citizenship, the very essence of the benefit is lost.

7. Federal grant assistance should be provided to states to offset the cost of outreach.

The DRA fails to provide additional grants for state outreach efforts beyond the standard federal matching formula. Given the potential costs incurred as a result of these new requirements, many states will face additional financial hardships at a time when most are struggling to balance their budgets. According to 42 USC 1320b-7(d), the federal government should pay for the costs that states incur in obtaining documentation of status, including citizenship status.

The concern over lack of funding is elevated by the uncertainty surrounding the level of assistance that is expected of state agencies in helping beneficiaries comply with the documentation requirements. While Sec. 436.407 (g) of the July 12th rule requires States to assist citizens who may not be able to comply with the rule due to "incapacity of mind or body," the rule provides no clarification as to what type of assistance is appropriate.

For example, if an individual is unable to communicate with an outreach worker, they will certainly need substantial assistance beyond just locating necessary documents.

However, the provision fails to provide a definition or examples of types of assistance that are appropriate.

In addition, the regulation is unclear as to what qualifies an applicant as incapacitated. For example, if an applicant is homeless but mentally capable, this individual may not be considered incapacitated, yet likely faces tremendous challenges in complying with the documentation requirement. The rule remains vague on the definition of incapacitation and should be broadened to include homeless and mentally ill patients that need assistance, yet are not technically incapacitated.

DETAILED COMMENTS ON THE IMPACT

Under the interim final rule, the acceptable citizenship documents for virtually all naturalized United States citizens are limited to a U.S. passport, certificate of naturalization, or certificate of citizenship.[1] Unlike U.S. born citizens, naturalized citizens are not allowed to use affidavits. Moreover, state Medicaid agencies are not allowed to verify citizenship with U.S. Citizenship and Immigration Services (CIS) in the Department of Homeland Security (DHS), which has the capacity to verify naturalized citizenship status, just as it currently verifies the immigration status of all Medicaid applicants and recipients who declare that they have satisfactory immigration status pursuant to Section 1137(d) of the Social Security Act ("Act"). For naturalized citizens, the acceptable documentation is far more limited than allowed by the Social Security Administration for purposes of obtaining a Social Security number (SSN) card.[2]

This limitation on acceptable citizenship documents will be extremely problematic for the numerous naturalized citizens who are likely to lack these documents. The number of naturalized citizens has been growing far more rapidly than the number of native-born U.S. citizens. Between 1990 and 2004, the number of naturalized citizens increased from 8 million in 1990 to more than 13.1 million according to U.S. Census Bureau estimates. Moreover, in 2004, 1.328 million naturalized citizens had incomes below the poverty level and 17.2% lacked health insurance.[3]

A significant number of naturalized citizens are likely to lack a U.S. passport or certificate of citizenship/naturalization because children under age 18 who derive their citizenship through the naturalization and/or citizenship status of their parent(s) do not receive any of these documents when they become citizens. The interim final rule fails to take into account that lawful permanent resident children under age 18 and foreign-born adopted children typically do not file a separate naturalization application to become U.S. citizens. Instead, they derive their citizenship through the naturalization/citizenship of their parents. Unlike their parents who receive a certificate of naturalization, a child who receives derivative citizenship must apply to CIS (formerly INS) for a certificate of citizenship as documentary evidence of citizenship. Most children who receive derivative citizenship do not immediately apply for a certificate of citizenship, and many, if not most, never have done so. In all likelihood, Medicaid-eligible individuals are less likely to have obtained a certificate of citizenship given the relatively high cost of obtaining one. Any naturalized citizen who lost a certificate of naturalization/citizenship also will face major difficulties in obtaining a replacement certificate.

As explained in greater detail below, a U.S. passport, certificate of naturalization, or certificate of citizenship all will be difficult, time-consuming, and costly for Medicaid eligible individuals to obtain, all of which means that limiting acceptable citizenship documentation to these three documents will be a major barrier to the receipt of Medicaid benefits to numerous naturalized citizens. The relatively high cost of obtaining such documents most likely will prevent many

of them for receiving needed Medicaid benefits. For Medicaid applicants who ultimately obtain and present such documents, the interim rule will significantly delay their receipt of Medicaid benefits. This is because, under the interim rule, applicants who declare U.S. citizenship, will not receive Medicaid benefits until after they had submitted satisfactory documentary evidence of citizenship.

Below is a detailed explanation of the difficulty and cost of obtaining a certificate of citizenship, certificate of naturalization, and U.S. passport. It is noteworthy that it will take naturalized citizens who must obtain them far more time than the five minutes to acquire and provide acceptable documentation to a state, as estimated by the Centers for Medicaid and Medicare Services (see 71 Federal Register 39220). Moreover, it will be even more complicated for child protective agencies to obtain such acceptable documents for Title IV-E foster children because their natural parents often times are not cooperative or even impossible to locate in cases where parents abandon their children and then move out-of-state.

Certificate of Citizenship: The current application fee for a certificate of citizenship, which is the only permanent record of citizenship for persons who derived/acquired U.S. citizenship through parent(s) is $255 ($215 for an adopted child). There are additional costs associated with obtaining such a certificate, including the cost of passport photos, a certified foreign birth certificate, if necessary, and travel to and from the CIS office for a required in-person interview by CIS officer. An applicant literally may have to travel hundreds of miles to the nearest CIS office because there only are 79 CIS (formerly INS) offices, excluding those located in Puerto Rico and U.S. territories. The vast majority of states have a single CIS office, and there are not any CIS states located in Alabama, Mississippi, North Dakota, or South Dakota. Including travel costs, the total cost of obtaining a certificate of citizenship easily can exceed $500.

The high cost of obtaining a certificate of citizenship can prevent very low income individuals from obtaining one, thereby, also preventing them from receiving Medicaid benefits. It will be especially costly for low-income families with children. While there is no cost for a legal immigrant family, headed by two parents, with three children to document their satisfactory immigration status for Medicaid eligibility purposes, it would cost them $765 alone in application fees to obtain a certificate of citizenship for each child after having paid a combined total of $800 in naturalization application fees for the parents. It is noteworthy that, if the children had become naturalized citizens, they still would have qualified for Medicaid as qualified aliens, provided that they met the five-year residency requirement.

Besides the high cost of obtaining a certificate of citizenship, Medicaid applicants will be penalized by the long time that it takes to obtain one. It currently can take nearly two years to obtain a certificate of citizenship, depending upon the CIS office. As of July 17, 2006, the Phoenix office was interviewing persons who submitted applications on September 30, 2004. In

California, the backlog extends back to March 1, 2005 for the Fresno office and January 5, 2006 for the Los Angeles office. As noted earlier, under the interim final rule, an otherwise eligible Medicaid applicant will not be provided Medicaid benefits until they have submitted satisfactory documents.

Certificate of Naturalization: The current application fee for a replacement certificate of naturalization (or citizenship) is $220, and there is an additional cost of passport photos that must be submitted with an application. It can take over one year to obtain a replacement certificate of naturalization. In fact, given the long delay, CIS' A Guide to Naturalization recommends that naturalized citizens apply for a U.S. passport to more quickly obtain documentation of citizenship.

U.S. Passport: In lieu of obtaining a certificate of citizenship/naturalization, naturalized citizens, including those who received derivative citizenship, may obtain a U.S. passport as proof of U.S. citizenship. However, the U.S. Passport Agency in the Department of State verifies citizenship independent of DHS, and its passport records are not linked to automated DHS data bases, including not the System for Alien Verification for Entitlements (SAVE) database used to verify eligibility for public assistance entitlements and employment. Moreover, U.S. passports expire. Therefore, many naturalized citizens do not apply for passports unless needed for foreign travel, and low-income Medicaid eligible individuals, especially those with major health problems, are far less likely to travel outside of the country, and, therefore, also are far less likely to have U.S. passports.

The application fee for a passport, which has a normal processing time of six weeks, is $97 ($82 if under age 16). The cost of an expedited passport, which is processed within two weeks, is an additional $60 plus overnight delivery fees. There is an additional cost of passport photos that must be submitted with an application. In addition for children under age 18, parents will incur additional costs associated with travel to a passport-issuing office because children must appear in person. For child protective agencies, obtaining a passport will be even more complicated as they will have to show legal guardianship and make arrangements for foster children to appear in person.

In practice, it will be difficult and also take time for Medicaid applicants and recipients to prepare and submit passport applications. In fact, it may not be possible for most naturalized citizens who lost their certificates of naturalization (or citizenship) to obtain a U.S. passport. According to passport application instructions, a certificate of naturalization or certificate of citizenship must be submitted with a passport application. Although it is not explained in the application instructions, the U.S. Passport Agency will provide a passport with an expiration date of approximately one year to a naturalized citizen who submits a "letter of verification" issued by DHS or a U.S. District Court indicating that he/she is a naturalized citizen. Many naturalized citizens, however, will not be able to obtain such letters. This is because DHS no longer

issues letters of verification except on a very limited emergency case-by-case basis due to concerns that such letters are vulnerable to document fraud, and because the U.S. District Court only issues letters for persons who naturalized before October 1994. Moreover, a receipt for a replacement certificate of naturalization application is required to obtain a letter of verification as well as a U.S. passport, adding $220 to the cost of obtaining a passport. In practice, it is highly unlikely that Medicaid applicants and recipients will know how to obtain a passport without a certificate of naturalization. This is because the U.S. Passport Agency does not publicize how to do so, and DHS and U.S. District Courts do not publicize how to obtain a letter of verification that is needed to obtain a passport without a certificate of naturalization.

In sum, limiting acceptable citizenship documents for naturalized citizens to a U.S. passport, certificate of naturalization, or certificate of citizenship inappropriately will greatly delay or prevent the receipt of Medicaid benefits to a large number of naturalized citizens. In turn, this would result in higher uncompensated health costs for health providers, especially for public hospitals and other safety net providers. Obtaining such documents will be especially burdensome for child protective agencies responsible for IV-E foster children.

Recommended Changes

The interim final rule should be revised to provide Medicaid applicants and recipients, as well as state and local Medicaid agencies, with more options for documenting satisfactory citizenship status. First and foremost, the rule should be revised to allow any method for verifying citizenship that is acceptable for proving citizenship for purposes of obtaining a Social Security number (SSN) card under the Social Security Administration's (SSA) Program Operations Manual System (POMS) guidelines. States then would be allowed to verify citizenship status against DHS' SAVE data base – the same verification system currently used by states to verify satisfactory immigration status, as required under Section 1137(d) of the Social Security Act, and the same data base used by many employers to verify work authorization for new job hires.

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

The interim final rule should provide citizens with the same protections afforded to legal immigrants. Low-income naturalized citizens who lack a passport, certificate of naturalization, or certificate of citizenship, therefore, should not be required to undergo the major cost and time

of obtaining such documents when their citizenship can be verified by DHS. Enabling states to use any method for documenting citizenship that is acceptable for SSN purposes

also would greatly simplify implementation of the new citizenship requirements for states. Instead of developing new internal instructions, states would be able to take advantage of the detailed POMS instructions already developed by SSA. This is especially justified because, under the interim final rule, SSA guidelines already, in effect, are being used to verify citizenship in states in which Supplemental Security Income (SSI) recipients receive Medicaid by virtue of receipt of SSI.

Second, the rule should be revised to exempt Title IV-E recipients from the DRA's citizenship documentation requirements. The declaration of citizenship and satisfactory immigration status requirements in Section 1137(d) of the Social Security Act ("Act") do not apply to Title IV-E. Under section 1903(a)(10)(A)(i)(1) of the Act, all children receiving Title IV-E assistance are entitled to Medicaid benefits, and do not separately apply for Medicaid. Moreover, since Section 1137(d) was added to the Act in 1986, foster children never have been required to declare whether their citizenship or satisfactory immigration status for Medicaid purposes for practical as well as statutory reasons – foster children, especially very young children cannot be expected to know their citizenship or immigration status.

State and local agencies which administer Title IV-E already establish whether the citizenship or immigration status of children make them eligible for Federal financial participation. They should not be required to apply two sets of standards – one for Title IV-E and another for Medicaid. Nothing in the DRA's legislative history suggests that Congress intended that be done. Doing so would impose unnecessary increased administrative costs and burdens on Title IV-E agencies in California because the interim rule's citizenship documentation procedures vary from those currently used. In Los Angeles County, both citizenship and immigration status may be verified using SAVE and secondary verifications with DHS because abusive parents may not cooperate in presenting citizenship or immigration documents.

Third, states should be allowed to verify citizenship status using SAVE, including through secondary verifications with DHS, as explained in the previous recommendation on allowing any documentation that is accepted by SSA.

Fourth, the interim final rule should be revised to allow states to accept copies of a U.S. passport, certificate of naturalization, or certificate of citizenship. The validity of copies can be verified with the U.S. Passport Agency or DHS, if necessary. It would ease the burdens on low-income Medicaid applicants and recipients of having to obtain replacement documents as well the administrative burdens on state and local Medicaid agencies. It is highly unlikely that applicants and recipients will mail important original documents, which means that they, instead, would present documents in person, greatly increasing traffic at offices. There would be an especially huge workload increase in states, such as California, where mail-in applications currently are

used for Medicaid re-determinations of eligibility.

Fifth, the interim final rule should be revised to allow states to accept signed affidavits submitted by naturalized citizens accompanied by copies of any supportive documents and/or information, such as the date of naturalization, alien registration number, and, in the case of persons who received derivative citizenship, information on their parent's naturalization. It is noteworthy that, unlike affidavits submitted by persons born in the U.S. who lack birth records, all naturalization cases can be verified by DHS. Yet, the interim final rule inappropriately precludes the use of affidavits by persons born outside the U.S.

Sixth, the interim final rule should be revised to allow states to accept a letter of verification or any other official document from the Department of Homeland Security (DHS) or a U.S. District Court indicating that a person is a naturalized citizen. The rule should allow an individual to use any official government document indicating citizenship status. Such documents should be considered secondary evidence of citizenship.

Finally, the interim final rule should be revised to permit states to begin providing coverage to applicants based on their sworn declaration of U.S. citizenship, and to afford them a reasonable opportunity to provide the necessary documentation, just as Federal law and regulations now provides for non-citizens who declare that they have a satisfactory immigration status. There is no justification for treating citizens more restrictively than non-citizens in this situation. It is especially unfair to treat citizens worse when it is far simpler for non-citizens to demonstrate their satisfactory immigration status than for citizens to demonstrate their citizenship under the interim final rule.

[1] The only other possible citizenship documents are a U.S. Citizen Identification Card issued from 1960 to April 1983 to naturalized citizens living near the Canadian or Mexican borders or evidence of U.S. Civil Service employment before June 1, 1976, both of which will not be possessed by the vast majority of naturalized citizens.

[2] See Social Security Administration's (SSA) Program Operations Manual (POMS) Section RM 00203.310 Evidence of U.S. Citizenship for an SSN Card

[3] Source: U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2004"

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Submitter : **Mr. John Monahan** **Date: 08/11/2006**

Organization : **WellPoint**

Category : **Health Plan or Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-415-Attach-1.PDF

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August 11, 2006

Submitted electronically: www.cms.hhs.gov/eRulemaking

Secretary Michael O. Leavitt
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

RE: Interim Final Rules
Implementation of the Federal Deficit Reduction Act of 2005 Requirement to Provide Evidence of Citizenship/ US National Status as a Condition of Medicaid Eligibility

Dear Secretary Leavitt:

On behalf of WellPoint, Inc, we thank you for the opportunity to provide feedback on the interim final rules implementing the new requirement to provide documentation of citizenship as a condition of Medicaid eligibility. As you know, the new citizenship and identity documentation requirements are a drastic shift in policy that will impact our nations most vulnerable populations. We encourage CMS to provide states with flexibility in implementation to ease burdens placed upon Medicaid beneficiaries, applicants, and states. Below are our comments.

Exemption of Elderly and Disabled Dual Eligible Members

We commend CMS for issuing clarification exempting elderly and disabled Medicaid members who are also receiving Medicare from being required to provide documentary evidence of citizenship and identity. This is an important action which will prevent many of the most vulnerable Medicaid beneficiaries from losing essential medical assistance for which they are otherwise eligible.

Grant States Additional Flexibility Through Revision of the Four-Tier Approach

We urge CMS to grant states discretion and flexibility in implementing the documentation requirements through revision of the four-tier approach. The hierarchy of documents detailed in the interim final rules is rigid and complex. Granting states additional flexibility will allow them to tailor workable policies and procedures to their unique communities while still meeting the Congressional intent of securing documentary evidence of citizenship.

The DRA specifically provides the Secretary with the authority to specify other documents that are sufficient in proving citizenship and identity. We encourage the Secretary to grant greater flexibility by eliminating the four-tier approach established by the CMS interim guidance and instead promulgate one list of acceptable primary documentation, whereby citizens can prove both identity and citizenship through presentment of one document. This would not reduce the integrity of the documentation process, but would create a less complex and burdensome process.

States should be granted the flexibility and discretion to deem certain populations exempt. Medicaid serves many particularly vulnerable and marginalized populations, such as the homeless, mentally ill, and elderly. Although health care is essential to these populations, they may be the least likely to possess or have the ability to obtain the required documentation.

Permanently Exempt Newborns and Children Born to Medicaid Mothers

We request CMS to exempt newborns and children born to mothers receiving Medicaid benefits from complying with the documentation requirements. The interim rules would exempt newborns, but would require that documentation be provided at the time of their redetermination. States should already have citizenship and identity documentation for a child who was born to a Medicaid mother and whose birth was paid for by Medicaid. Evidence of the child's birth in the United States should serve as adequate evidence of citizenship and these children should not have to submit documentation at redetermination.

Clarify that States are Obligated to Utilize Upfront Electronic Data Matches

We urge CMS to require states to utilize up-front electronic data matches to obtain proof of both identity and citizenship, before a state requests paper documentation from a Medicaid eligible. The final interim rules grant states the option of conducting data matches to secure electronically available information. However, many states may not take advantage of this provision due to its voluntary nature. Conducting initial data matches not only eases the documentation burdens placed upon Medicaid beneficiaries, but would also ease the additional staffing and paperwork burdens placed upon both state and federal agencies.

Data matches with state vital statistics agencies, corrections and juvenile detention agencies, and department of motor vehicles are reliable sources of citizenship and identity evidence. We also urge CMS to require states to utilize information that is readily available in public programs beneficiary files.

As the Social Security Administration (SSA) has data for all individuals who have applied for Social Security numbers, including birthplace information, we urge CMS to require states to conduct data searches with this entity. A data search with the SSA would allow a state to determine citizenship for Medicaid eligibles born in anywhere in the United States. Due to the transitory nature of the U.S. population, many individuals may not reside in the state of their birth. Requiring all states to complete a data match against the SSA database would further reduce administrative costs and beneficiary burdens by capturing those not born within the state they are receiving or applying for Medicaid.

Provide Federal Financial Participation to States for Beneficiaries Exhibiting a Good Faith Effort in Securing Documentary Evidence

We urge CMS to make Federal Financial Participation (FFP) available to states with respect to expenditures for medical assistance when a Medicaid beneficiary has not furnished documentation of citizenship and/or identity, but are exhibiting a good faith effort in obtaining such documentation. Section 435.1008 of the final interim rules would specifically prohibit FFP be made available to states that have not obtained satisfactory documentary evidence of citizenship. The rules, however, do allow states to provide a Medicaid beneficiary full Medicaid benefits if such beneficiary is making a good faith effort in obtaining the evidence. This places states in the difficult position of relying upon state-financed Medicaid or placing additional stress upon states' uncompensated care systems. We believe these two provisions, taken together, provide states with direct financial disincentives in providing citizen beneficiaries with necessary flexibility as they attempt to comply in good faith.

Extend Good Faith Effort to New Medicaid Applicants

We encourage CMS to extend the good faith effort provisions to new Medicaid applicants. Although current Medicaid beneficiaries who can demonstrate they are making a good faith effort to secure citizenship and identity documentation cannot be denied Medicaid benefits, the final interim rules would prohibit states from obtaining Federal Financial Participation for medical assistance provided to new applicants until the applicant supplies the appropriate documentation. We believe this places an increased financial burden upon states to provide medical care to new citizen applicants, who cannot supply documentation immediately, but who are making a good faith effort to do so.

Alternatively, we urge CMS to allow states to obtain Federal Financial Participation funding for an interim period when new applicants are waiting for a government agency to supply the acceptable documentary evidence.

Eliminate the Requirement That States Only Accept Original or Certified Copies

We urge CMS to permit the acceptance of copies of original documents as sufficient proof in proving citizenship and/or identity of Medicaid applicants and current beneficiaries. The final interim rules mandate the use of original documents or certified copies. We believe this is particularly burdensome to this extremely vulnerable population. The cost of obtaining or replacing standard forms of documentation articulated in the final interim rules ranges from $10 to $220, depending upon the document. This creates a direct financial barrier that will potentially deter citizens from applying to a program for which they are otherwise eligible.

Additionally because many states have designed and utilize an efficient mail-in application for annual Medicaid redetermination, Medicaid beneficiaries in these states often do not meet face-to-face with State Medicaid application assistors. Beneficiaries may be extremely hesitant in mailing original documents. This is heightened by the fact that states are not mandated to institute a process to return these valuable documents to their original owner. This would in effect require beneficiaries to submit documentation via a face-to-face meeting which would place unnecessary stress upon states who have implemented cost-effective and efficient mail-in redetermination programs.

Require States to Pay for Citizenship Documents and to Provide Eligibles with Assistance in Obtaining the Documents

We urge CMS to require states to pay the beneficiary costs associated with obtaining and to provide assistance in securing documentation. According a recent survey, one in every twelve U.S. born adults with incomes below $25,000 does not possess a U.S. passport or a U.S. birth certificate. Further, more than ten percent of U.S. born adults with children who have incomes below $25,000 do not have a birth certificate for at least one of their children. Thus, many U.S. citizens who are eligible for Medicaid may not have the necessary documentation. And because these individuals are low-income, in many cases, they will be unable to afford the documentation necessary to obtain the health care for which they are eligible.

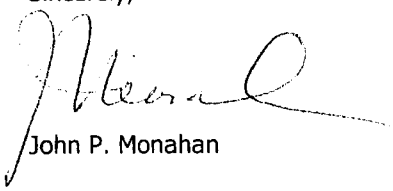
Further Clarify That Documentation Is Not a Condition of Eligibility

We urge CMS to clarify that states cannot deny or terminate eligibility for individuals who attempt, in good faith, to comply with the documentation requirements, but who are unable to do so. Pursuant to the DRA, the documentation requirements are not a condition of eligibility, but a condition for states to receive Federal Financial Participation. The DRA implements the citizenship documentation requirements through Federal law addressing Medicaid funding provisions as opposed to the Federal Medicaid eligibility

provisions. Thus, the denial or termination of Medicaid coverage for those who declare they are U.S. citizens but who are unable in good faith to provide supporting evidence would violate Federal law.

Again, thank you for the opportunity to provide feedback on the CMS final interim rules implementing the 2005 Deficit Reduction Act's citizenship documentation requirements. I would be happy to discuss our comments in further detail. WellPoint looks forward to providing any assistance necessary to ensure that the documentation requirements provide states with enough flexibility so that they are implemented in a way that provides the least harm to this vulnerable population. If you have any questions, please contact me at (805) 384-3511.

Sincerely,



John P. Monahan

Submitter : Marta Garcia-Carr **Date:** 08/11/2006

Organization : Detroit Medical Center

Category : Hospital

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-416-Attach-1.PDF

MEDICAIDAlert

In February 2006, the President signed into law budget reconciliation legislation—the so-called Deficit Reduction Act (DRA)—that fundamentally alters many aspects of the Medicaid program. Some of these changes are mandatory provisions that states must enact and that will make it more difficult for people to either qualify for or enroll in Medicaid. Other changes are optional provisions that allow states to make unprecedented changes to the Medicaid program through state plan amendments. This series of issue briefs is designed to inform advocates about the specifics of these changes and to highlight key implementation issues and strategies to mitigate the harm these provisions could cause to people on Medicaid.

Citizenship:
Millions Now Must Prove Citizenship to Keep Medicaid Coverage

Several of the provisions passed as part of the budget reconciliation agreement directly target beneficiaries by introducing measures that could make it more difficult to enroll in Medicaid or to acquire the services traditionally provided by the program. One of the more damaging provisions, Section 6036, will require that states obtain proof of citizenship from all new Medicaid applicants and from current enrollees who renew their eligibility. Although this provision does not change the law about who qualifies for Medicaid—that is, the eligibility criteria will remain the same for both citizens and immigrants—it does change the paperwork burden for people who need Medicaid. The provision requires for the first time that anyone applying for Medicaid as a U.S. citizen submit either a birth certificate or passport (or one of a number of similar but relatively uncommon official documents) to prove their citizenship status.[1] While ostensibly designed to root out cases of immigrants falsely declaring citizenship when applying for Medicaid, the new provision invariably will create a substantial barrier for the more than 50 million U.S. citizens enrolled in Medicaid.

Currently, most states allow applicants to self-attest under penalty of perjury that they are citizens. In addition, states can demand documentation when they suspect that any applicant was not truthful in declaring citizenship. This system has proven itself to be both efficient and effective. In fact, the new documentation requirement directly contradicts the findings of a report released six months earlier by the Inspector General of the Department of Health and Human Services (HHS). According to the director of the Centers for Medicare and Medicaid Services (CMS), the report found that "states have little evidence that many non-eligible, non-citizens are receiving Medicaid as a result" of the self-declaration policy. Moreover, CMS administrators agreed that there was no reason at that time to enforce a documentation requirement.[2]

Under the new legislation, however, the present system will be replaced by one that is more administratively burdensome by requiring citizenship documents from *all* applicants, a move that could prevent many otherwise eligible children and adults from obtaining necessary health care services. This issue brief explains the implications of the provision and outlines steps advocates can take to mitigate the negative consequences of this new requirement.

How will the requirement be implemented? How much flexibility do states have in implementing these changes?

Beginning on July 1, 2006, all new Medicaid applicants and all current Medicaid enrollees who have not previously proved their citizenship status must produce a birth certificate, passport, or other similar document. The legislation however, does not specifically dictate how states must implement the requirement, which gives advocates an opportunity to ameliorate the harm this provision will cause (see the section on what advocates can do for specific steps your state can take).

Acceptable Documentation

Any one of these:
- U.S. Passport
- Certificate of Naturalization
- Certificate of U.S. Citizenship

OR

Any one of these:
- Birth Certificate in the U.S.
- Certification of Birth Abroad
- U.S. Citizen ID Card
- Report of Birth Abroad

plus

- Additional Personal ID (e.g., Driver's License)

While the legislation requires the establishment of an outreach program to educate individuals who will likely be affected by the new requirement, it is unclear how this outreach will take place and what mechanisms, if any, will be in place to ensure that it is effective. For example, the legislation does not discuss the timeframe for implementation and whether outreach activities will coincide with implementation of this new requirement.

States can expect the bulk of the administrative burden to fall between July 1 and December 31, 2006. Since most Medicaid enrollees must have their eligiblity renewed every six months, these individuals will have to produce citizenship documentation during the first six months after the new requirement takes effect. People who are required to renew every 12 months will have to go through this process some time between July 1, 2006 and July 1, 2007. After this time, states will continue to have to verify the citizenship status of new applicants.

How will the documentation requirement affect people with Medicaid?

While originally designed to crack down on the number of immigrants illegally enrolling in the Medicaid program, the provision will create additional barriers for all Medicaid beneficiaries, particularly minorities, the elderly, and individuals living in rural communities.

- **Eligible citizens will lose Medicaid coverage.**

  Under the provision, all U.S. citizens applying for or receiving Medicaid must submit documents proving their citizenship, which in most cases means having access to either a birth certificate or passport. According to the Center on Budget and Policy Priorities, roughly 1.7 million U.S.-born adult Medicaid beneficiaries do not have access to the documents now required for enrollment. In addition, an estimated 1.4 to 2.9 million children lack both a birth certificate and passport.[3] Without this necessary documentation, millions of eligible citizens could be denied coverage, leaving them entirely uninsured.

Requiring applicants to submit proof of citizenship will needlessly force otherwise eligible beneficiaries off of Medicaid. Much of the savings that will result from the new requirement will stem from keeping eligible low-income citizens away from the program because they are unable to produce the necessary documents.

- **The requirement will hurt the wrong people.**

  Although the requirement ostensibly will prevent non-U.S. citizens from enrolling in Medicaid, the provision will disproportionately hurt low-income citizens and their families by making it more difficult for them to obtain health care services through Medicaid. This is because individuals enrolled in Medicaid are less likely than the general population to have access to a passport or birth certificate. According to a recent survey commissioned by the Center on Budget and Policy Priorities, U.S.-born adults with incomes below $25,000 are almost twice as likely as adults with incomes above $25,000 to report not having a passport or birth certificate available.[4]

  Moreover, the provision will disproportionately affect those who are elderly, African American, live in rural areas, or have less than a high school education. These individuals are least likely to have ever been issued a birth certificate, and they are even less likely to have a passport. In addition, applicants who have been homeless or who have lost their citizenship documents because of a fire, hurricane, or other natural disaster will have to go through the difficult process of obtaining a birth certificate from their home state before enrolling in Medicaid.

- **The most vulnerable beneficiaries will be most affected.**

  The new provision will not affect all enrollees equally. Many Medicaid enrollees—for example, those who live in rural areas and were born outside of a hospital, or those who were forced to leave their homes as a result of emergencies or natural disasters—are much less likely to have access to a birth certificate. As a result, the documentation requirement will particularly hurt those who have been underserved in the past and who are in the greatest need of care. The law makes absolutely no exceptions, even for those who need immediate care or who have an incapacitating illness such as Alzheimer's disease that makes gathering citizenship documents almost impossible.[5]

  In particular, low-income African Americans will be disproportionately affected by the documentation requirement. Compared to other racial and ethnic groups, African Americans (especially older individuals) are less likely to have been born in a hospital, and therefore issued a birth certificate, due to a historical legacy of racism and segregation in the United States.

- **The provision will effectively create an application fee for Medicaid.**

  With millions of U.S. citizens reporting that they do not have access to a birth certificate, passport, or other proof of citizenship, the provision could force many low-income families to pay for certified copies of birth from their home state. Most states require a processing fee of between $10 and $20 before issuing a copy of a birth certificate.[6] What's more, the time required to process requests could seriously delay the delivery of needed care for individuals waiting to receive a copy of their birth certificate.

  Applying for a passport is not a practical option for most Medicaid applicants. Besides the prohibitively high application fee—$97 for adults and $82 for children under the age of 16—applicants must also prove citizenship by submitting a birth certificate or similar documentation. Ironically, these are the same documents now required to apply for Medicaid.

- **The requirement will create new administrative costs and burdens.**

  According to the Inspector General of the Department of Health and Human Services (HHS), approximately 50 percent of state officials have reported that they would have to hire additional personnel to handle the increased workload if birth certificates or passports are required for Medicaid enrollment.[7] In addition, the requirement could result in a surge of requests for birth certificates from state agencies. The National Association for Public Health Statistics and Information Systems predicts a 25 to 50 percent increase in the volume of birth certificate requests as a result of the documentation requirement, which could cause significant delays in processing birth certificate applications.[8]

  The Centers for Medicare and Medicaid Services (CMS) already has a significant administrative burden to deal with—the implementation of Medicare Part D. This new, unnecessary Medicaid provision will take staff time away from working out the problems with Part D and other important tasks. Verifying the citizenship status of the more than 50 million U.S. people enrolled in Medicaid is not only unnecessary, but it will also serve to create new administrative costs for the program.

What was the rationale behind the legislation?

The documentation requirement was introduced as a way to prevent immigrants from falsely claiming U.S. citizenship to enroll in Medicaid. The provision is based on the *erroneous assumption* that non-U.S. citizens are illegally enrolling in Medicaid in large numbers and costing the program a significant amount of money. Below we discuss a few of the most common arguments that supporters of the legislation have made to defend the requirement.

- **The U.S. should not be paying for health care for illegal immigrants.**

  Defenders have argued that the legislation roots out fraud by ensuring that Medicaid enrolls only U.S. citizens and not ineligible immigrants. However, it is important to note that most states already have the authority to investigate any applications that they suspect are potentially fraudulent and to demand documentation. Moreover, requiring U.S. citizens to submit papers proving their citizenship is entirely unnecessary. A recent report by the Inspector General of HHS *found no substantial problem with fraudulent enrollments and did not recommend the implementation of a documentation requirement.*[9]

- **Those who need care will still have access.**

  Defenders have argued that Medicaid officials could decide to accept documentation of citizenship later if applicants are in immediate need of care. However, the statute makes no specific mention of a grace period and does not guarantee that this will be the case. In other words, under the new legislation, eligible citizens can be denied access to care if they are unable to provide documentation, regardless of how sick they are.

- **Medicaid spending is growing out of control.**

  Defenders cite estimates from the Congressional Budget Office suggesting that the provision will reduce Medicaid spending by $220 million between 2006 and 2010.[10] However, much of the savings will be achieved by denying Medicaid to otherwise eligible citizens rather than by ridding the system of immigrants who are illegally obtaining coverage.

What can advocates do to minimize the harm done by this change?

The documentation requirement allows states very little flexibility. Beginning on July 1, 2006, every person applying for Medicaid as a U.S. citizen must provide proof of citizenship. There are a few things advocates can do, however, to help mitigate the potentially disastrous effects of the new provision.

- ✓ **Encourage your state to waive the processing fee for birth certificate copies** for Medicaid applicants.
- ✓ **Encourage Medicaid administrators to institute a grace period or "presumptive eligibility" period** for applicants who lack citizenship documents. This will allow applicants to obtain needed services while waiting for official documentation.
- ✓ **Encourage state Medicaid administrators to seek citizenship verification from other Medicaid-related programs** (such as the Social Security Administration, TANF, or foster care) that may already require such documentation, or from the state's vital records office.

- ✓ **Encourage state Medicaid offices to maintain a permanent record of every applicant who submits proof of his or her citizenship status.** This will allow states to adopt a "once is enough" policy so that individuals who reapply for Medicaid are not forced to prove their status again.
- ✓ **Encourage officials at HHS to include the above measures in guidance and regulations** issued for this provision.
- ✓ **Engage in outreach efforts to inform people in Medicaid about the new requirement** and help them gather the appropriate paperwork.
- ✓ **Keep track of the harm caused by the requirement.** Document cases of eligible beneficiaries who face delays or are denied Medicaid coverage because of the provision and track the hardships they experience as a result. Share these stories with appropriate advocates, policymakers, and media sources to show how the documentation requirement hurts eligible citizens. Also encourage affected applicants to share their experience with Families USA's story bank, so that we can bring attention to the harm caused by the legislation.
- ✓ **Stay abreast of legislation to repeal the provision.** For example, Senator Daniel Akaka (D-HI) recently introduced a bill (S. 2305) to repeal the documentation requirement.[11]

Conclusion

Requiring all Medicaid applicants and enrollees to submit proof of their citizenship status will force many otherwise eligible beneficiaries to lose access to health care. It is a needless provision that will pose an additional barrier to care for millions of low-income citizens.

The documentation provision is part of a series of budget measures designed to reduce spending by discouraging enrollment in Medicaid and increasing out-of-pocket costs for those who do enroll. These changes are part of a larger Administration plan to radically restructure and dismantle Medicaid as it was originally designed.

We will continue to fight against these changes and to protect Medicaid so that it works for those who need it most. Families USA stands ready to assist state advocates fighting these battles and looks forward to helping you work through the challenges you face during the year ahead.

Endnotes

[1] The provision exempts "aliens" from the requirement who are also enrolled in Medicare or qualify for Supplemental Security Income (SSI) benefits. We suspect this is a drafting error in the legislation since the requirement only affects citizens and does not change the requirements for immigrants applying for Medicaid. Since the statute does not affect immigrants, Congress most likely intended to exempt eligible *citizens* in this category. However, it is unclear whether this error will be fixed before the requirement is implemented.

[2] Daniel Levinson, *Self-Declaration of U.S. Citizenship for Medicaid* (Washington: Department of Health and Human Services, Office of Inspector General, July 2005).

[3] Leighton Ku, Donna Cohen, and Matt Broaddus, *Survey Indicates Budget Reconciliation Bill Jeopardizes Medicaid Coverage for 3 to 5 Million U.S. Citizens* (Washington: Center on Budget and Policy Priorities, January 26, 2006).

[4] Ibid.

[5] See note 1, above.

[6] According to the National Center for Health Statistics, 38 states charge between $10 and $20 for a certified copy of an individual's birth certificate, five states charge between $5 and $10 (Florida, Nebraska, North Dakota, Vermont, and West Virginia), and four states charge between $20 and $30 (Michigan, New Jersey, New York, and Texas). The remaining three states (Massachusetts, Mississippi, and Tennessee) and the District of Columbia charge different amounts depending on the method used to obtain the copy.

[7] Daniel Levinson, op. cit.

[8] Leighton Ku et al., op. cit.

[9] Daniel Levinson, op. cit.

[10] Congressional Budget Office, *Additional Information on CBO's Estimate for the Medicaid Provisions in the Conference Agreement for S. 1932, the Deficit Reduction Act of 2005* (Washington: U.S. Congress, January 27, 2006).

[11] The text of the proposed legislation is available online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s2305is.txt.pdf.

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Submitter : Ms. Anne Joseph **Date:** 08/11/2006

Organization : Kentucky Task Force on Hunger

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-417-Attach-1.DOC

CMS-2257-IFC-417-Attach-2.DOC

Kentucky Task Force on Hunger
P.O. Box 22199
Lexington, Kentucky 40522-2199
Phone: 859.266.2521

August 10, 2006

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

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

Dear Secretary Leavitt:

The Kentucky Task Force on Hunger works with organizations and individuals across the Commonwealth of Kentucky to insure access to health care and nutrition programs for low-income, at-risk Kentuckians including children, families, the elderly, the disabled and individuals.

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 requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. We are concerned about the rule's potential impact on access to health care for vulnerable Americans, including families that are food insecure. We are offering our recommendations for revisions to the rule that we believe will better address these families' circumstances and not increase their difficulties in meeting their health needs.

Provisions of the Interim Final Rule with Comment Period

1. **The regulations should better accommodate people for whom documents are not available or do not exist.**

U.S. citizens who may lack the documents listed in the interim final rule include, among others, victims of hurricanes and other natural disaster and homeless individuals. The Secretary should use his discretion under the DRA to expand on the list of acceptable documents. Specifically, we urge the Secretary to borrow a practice from the Supplemental Security Income Program (SSI), by which state Medicaid agencies can recognize when a person without documents is in fact a U.S. citizen.

2. **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. Revising the final rule to allow a broader range of options, that include, but are not limited to, original or certified copies would make it more likely that clients could easily comport with the new law and would streamline states' application processes significantly. This change would likely result in the need for fewer office visits for beneficiaries, require less staff time to meet these additional demands, and will likely lead to savings in both human productivity and actual administrative actual costs.

3. **Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, Medicaid eligibility should be granted.**

Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Yet the proposed rule would prohibit states from granting coverage to eligible citizens until they can get certain documents that prove their citizenship and identity. We urge the final rule be modified to require states to provide coverage upon the submittal of an otherwise complete application and allow applicants, beneficiaries and the states to make good faith efforts to acquire the new documents required under the DRA.

4. **Children in foster care should not have to verify citizenship again.**

State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E foster care payments. Those outside of the IV-E program are already under the care of the state. Requiring foster children to document citizenship again constitutes an unnecessary duplication of state agency efforts and puts those children at risk of delayed Medicaid coverage. The DRA does not require this result.

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

States have first hand knowledge of the citizenship of children born in hospitals when their Medicaid program paid for the birth. Because citizenship is established by birth in the U.S., there is no reason to distinguish, as the current rule does, the length of initial eligibility allowed children born to citizen parents, legal immigrants within the five-year bar or undocumented parents receiving emergency Medicaid. Moreover, the rule presents practical problems. Vital records of birth may not be recorded quickly enough to be accessed online for newborns. Parents and state workers may have to turn to "lower tier" documents, with the associated burdens for doctors and hospitals to produce records. None of this work is necessary and, for infants with immediate health care needs, the delay it causes can be costly to the infant's health and to the providers, as well.

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

Many Native Americans were not born in a hospital and have no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as proof of citizenship and identity, the regulations create a barrier to participation in the Medicaid program. We urge that the revised rule recognize tribal enrollment cards as satisfying the documentation requirement.

7. **Clarifying the help functions for people with disabilities.**

CMS should expand the list of reasons why a person may require assistance, making specific reference to both the ADA and Section 504 of the Rehabilitation Act and including people who are limited English proficient (LEP), homeless or displaced by a natural disaster. CMS also should clarify that states can extend the reasonable opportunity period and should assist individuals with limitations at the outset.

8. **In addition to revising the rule, we would encourage CMS to undertake a program of public education to insure 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 the Food Stamp Program and other public benefits programs, and the programs are often administered by the same workers. It is vital that CMS work with states and USDA to educate eligibility workers 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 state and nation, we cannot 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.

We want to thank you for the opportunity to share our concerns about the interim final regulations. We hope you will take into account how revising the rule would implement the DRA without undermining crucial benefits for vulnerable children, families, the elderly, the disabled and individuals.

Sincerely,

Anne Joseph
Director

Submitter : **Ms. Laura Korin** **Date: 08/11/2006**

Organization : **Ms. Laura Korin**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan,

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

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

Thank you for your consideration.

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

Organization : **Dina Marenstein**

Category : **Individual**

Issue Areas/Comments

GENERAL

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

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

Organization : Daria Klotz

Category : Individual

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

Submitter : Dr. Douglas Laube **Date:** 08/11/2006

Organization : American College of Obstetricians & Gynecologists

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-421-Attach-1.DOC

Office of the President
Douglas W. Laube, MD, MEd, FACOG
Department of Ob-Gyn
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Madison, WI 53715-9350

August 11, 2006

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

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

Dear Sir/Madam:

On behalf of the American College of Obstetricians and Gynecologists (ACOG), representing 51,000 physicians and partners in women's health care, I write today to comment on the Interim Final Rule addressing Citizenship Documentation Requirements published on July 12, 2006 (the "Rule") to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This section of the DRA requires Medicaid enrollees to document their citizenship and identity, effective July 1, 2006. At least 19 million women will be affected by this new requirement.

We are appreciative of several aspects of the Rule. First, presumptive eligibility, a critical benefit available to pregnant women in 30 states, is maintained. CMS also allows States to continue to use an application process that does not require an interview. We are also appreciative of the guidance to states that a cross-match with the Social Security Administration database will be available to states to determine eligibility for Medicaid recipients who are aged, blind, or disabled. However, we remain concerned that the Rule will hurt women who qualify for Medicaid but find it difficult to prove in a timely manner.

Medicaid Applicants Should Receive Benefits upon Declaration of Citizenship
The preamble to the Rule states that applicants "should not be made eligible until they have presented the required evidence [of citizenship]." 71 Fed Reg at 39216 The Rule itself reads 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 interest of assuring that eligible U.S. citizens receive timely medical care, we urge CMS to allow coverage to begin immediately after the applicant declares citizenship and meets eligibility criteria. Many beneficiaries, including more than 1.6 million low-income pregnant women and tens of thousands of women in the Breast and Cervical Cancer Treatment Program, are entering Medicaid because of a condition which needs immediate medical attention. Treatment should not be delayed while citizen documentation materials are obtained.

Women who receive early and regular prenatal care are more likely to have healthier infants. Early prenatal care provides a means of identifying mothers at risk of delivering preterm and the opportunity to provide any necessary medical, nutritional and educational interventions in a timely manner to improve the outcome of the pregnancy. This Rule may have the unintended effect of delaying needed medical care for eligible pregnant women.

There is concern that ob-gyns may not receive Medicaid payment for services rendered until their patients' documentation has been assembled and presented to the state Medicaid agency. If ob-gyns 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 raises questions about physicians' liability under state or federal patient abandonment law to continue a course of treatment, once started, if an appropriate referral cannot be made. Furthermore, the Rule creates a bad policy result by increasing uncompensated care. Ob-gyns 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 ob-gyns decide instead to forgo 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 ob-gyns will have no assurance that federal Medicaid matching funds are available for medically necessary covered services. In the event that a pregnant woman has difficulty obtaining documentation of her citizenship, ACOG recommends that States be directed to assist pregnant women to obtain necessary documents.

Additional Burdens on Beneficiaries and States

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. While the regulations state the applicants and beneficiaries can submit documents by mail, it is not likely that many will be willing to mail originals or certified copies of their birth certificate, or proof of identity, such as a current driver's license.

The requirement for originals and certified copies also call into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agency five minutes to satisfy the requirements of the Rule. Requiring that individuals obtain and submit originals and certified copies adds to the time compliance will take. In addition to potentially needing to visit state office to obtaining 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. In addition, the requirement for certified copies or originals is costly for Medicaid beneficiaries.

Finally, the Rule directs states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g). This definition is extremely narrow and fails to address situations in which an individual does not have "incapacity of mind or body" but her documents have been lost or destroyed, such as a victim of a natural disaster or one of the one million women who are homeless. In addition, the Rule does not offer a remedy in the event the State is unable to locate the necessary documents for an individual. As a result, if such individuals apply for Medicaid, they may never qualify.

Special Considerations for Section 1115 Family Planning Waivers

Section 1115 Family Planning Waivers expand eligibility for a narrow set of benefits, approved by CMS, to a population that would otherwise not be covered. These programs have a significant impact. A national evaluation of several of these efforts conducted under a contract with CMS found evidence that the programs expanded access to care and improved the geographical availability of services. All six states studied surpassed the federal requirement for budget neutrality, producing millions of dollars of savings to both the federal and state governments.

The Rule could have an enormous impact on the effectiveness of these programs. The additional administrative burden will create delays in time-sensitive care for eligible beneficiaries. In the face of such delays, women may seek similar services from publicly funded family planning clinics. With funding for these clinics stagnant or declining over the last decade, clinics cannot afford to bear the additional cost of low-income women who are eligible for Medicaid.

In addition, this rule will compromise the confidentiality of young women seeking family planning services, since many would have to ask their parents for their birth certificate or other original documentation. In some states, such as New York, state law bars people under the age of 18 from obtaining a certified copy of their birth certificate from the State Vital records Registry.

Moreover, the cost of enforcing the citizenship documentation requirement for individuals applying for coverage under the Section 1115 Family Planning Demonstrations are likely to be especially significant when compared to the extremely low cost of the limited set of benefits covered.

We therefore urge CMS to modify 42 CFR 435.406 and 42 CFR 436.406 to allow individuals receiving benefits under Section 1115 Family Planning Demonstrations to attest to citizenship in order to comply with the statute.

Conclusion

The purpose of the DRA citizenship documentation requirements is to ensure that Medicaid benefits are being provided only to those eligible. However, documentation requirements which may seem reasonable to many Americans may be extremely difficult to fulfill for a population which is, by definition, vulnerable. We urge CMS to revisit aspects of this Rule to ensure that health care for Medicaid-eligible women is not inadvertently harmed.

Douglas W. Laube, MD, MEd
President

Submitter : Mr. Terry Cross **Date:** 08/11/2006

Organization : National Indian Child Welfare Association

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-422-Attach-1.DOC

NICWA
National Indian Child Welfare Association
Protecting our children • Preserving our culture

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August 11, 2006

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

Re: Medicaid Citizenship Documentation Interim Final Rule, 71 Fed. Reg. 39217 (July 12, 2006)

The National Indian Child Welfare Association (NICWA) submits these comments on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement Section 6036 of the Deficit Reduction Act (PL 109-71). That provision denies federal matching funds to states for the Medicaid program if Medicaid applicants and recipients do not provide proof of U.S. citizenship and identity. Our comments are specific to the impact this would have on children who are in foster or other out-of-home placements. While our recommendation would apply to children nationally, we point out the hardship of the documentation requirement on Indian children.

The National Indian Child Welfare Association (NICWA) is a national, private, non-profit organization dedicated to the well-being of American Indian children and their families. We are governed by an Indian Board of Directors. NICWA's services include:1) professional training for tribal and urban Indian child welfare and mental health professionals, 2) consultation on child welfare and mental health program development, 3) facilitation of child abuse prevention efforts in tribal communities, 4) analysis and dissemination of public policy information that impacts Indian children and families, 5) development and dissemination of contemporary research specific to Native populations, and 6) assisting state, federal and private agencies to improve the effectiveness of their services to Indian children and families

We request that the interim final rule be revised to exempt children in foster care and other out-of-home placements from documentation requirements, just as the rule provides for persons who are eligible for Supplemental Security Income (42 CFR 435.1008). Furthermore, the exemption should not be limited to those children in foster care who are receiving services through the Title IV-E Foster Care and Adoption Assistance program as that program is not generally available to tribal governments and the Indian children under their jurisdiction.

While some reservation-based Indian children receive Title IV-E services if there is a tribal-state IV-E agreement in place, this is the exception, not the rule. Most Indian children who have been placed in foster or other out-of-home placements by tribal agencies do not receive Title IV-E services. Their foster home may receive maintenance payments from the Bureau of Indian Affairs, but that funding is limited, and tribes sometimes have no choice but to place children in unsubsidized foster homes.

NICWA
National Indian Child Welfare Association
Protecting our children • Preserving our culture

NICWA 5100 SW Macadam Avenue, Suite 300 Portland, OR 97239 T 503.222.4044 F 503.222.4007 E info@nicwa.org www.nicwa.org

Indian children are over-represented in state foster care systems – DHHS statistics show that they are in foster care at a rate 2-3 times their population. And these numbers do not take into account the many Indian children who are under the jurisdiction of tribal governments who are in tribally-placed homes.

Many children in foster care will be unable to provide the documentation envisioned in the rule. It is likely that in many instances the parents from whom the children were taken will be unable or unwilling to do so, as well. Many of these parents will have serious alcohol or substance abuse problems (including an increasing number who are addicted to methamphetamine), will be living in extreme poverty and/or are incarcerated. Many of these parents will live in rural areas and won't have a driver's license or access to transportation.

For Indian children, proof of tribal membership may meet identity requirements, but will not meet citizenship requirements. Just establishing tribal membership often requires parent initiative and many tribes only allow membership application periodically. The fact that a child has gone through a formal governmental proceeding to be removed from their immediate family and placed in another home should be enough proof of citizenship and identity.

Children who have been removed from their home are likely to have health problems – both mental and physical. The Medicaid program is a crucial source of mental health services for Indian children, as many tribal health programs are unable to provide these types of services. If foster children are unable to access Medicaid or if there are delays in accessing it, the child suffers and the foster parents suffer. If the foster parents cannot afford the health care needed by the child (or children) they may return the child to the child welfare agency, thus further disrupting the child's life. We know for a fact that this happens, and the proposed rule would likely exacerbate this problem.

Thank you for your consideration of our comments.

Sincerely,

Terry L. Cross
Executive Director

Submitter : Ms. Pat Elzy **Date:** 08/11/2006

Organization : Planned Parenthood Mar Monte

Category : Other Health Care Provider

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-423-Attach-1.DOC

August 11, 2006

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

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

Dear Administrator McClellan:

Planned Parenthood Mar Monte (PPMM) is a nonprofit organization providing family planning services in Nevada and California. PPMM serves 40 counties in two states providing medical services, education, and advocacy efforts to more than 500,000 people annually in Nevada and California. My comments will be specific to Nevada. There are two Planned Parenthood affiliates in the state, PPMM and Planned Parenthood of Southern Nevada (PPSN). Each year Planned Parenthood Mar Monte and Southern Nevada health centers assist more than 25,000 Nevadans in five health centers. Many of our patients rely on Medicaid to pay for their health care services. One-third of Nevadans have no health insurance; more than 122,000, Nevada women cannot afford to pay for basic reproductive health care such as contraceptive services, cancer screening, and the testing and treatment of sexually transmitted diseases.

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. 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.

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

Medicaid plays a critical role in financing family planning services in Nevada. Family planning clinics in Nevada serve 39% of all women in need of publicly supported contraceptive services and 33% of teenagers in need. 52% of total public family planning expenditures in Nevada are attributable to Medicaid.

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

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

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

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

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

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

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

The interim final rule requires that individuals submit original or certified copies of documentation (see 42 CFR 435.407(h)(1)). This requirement creates an even larger burden for beneficiaries who will be faced with either the additional cost of purchasing a certified copy, making a face-to-face

visit with state offices, or with entrusting important documentation, such as an original birth certificate or passport, to the postal system and state Medicaid agencies.

Attaining the required documents presents its own challenges. A birth certificate costs $13.00 and a picture ID is required in Nevada. Many residents in Nevada were not born in Nevada. We have been the fastest growing state for the last 10 years with many people moving to Nevada. Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220). Of course, delays in care will occur as a result of the document acquisition process —an especially harmful issue for those who will have to forgo reproductive health care services while they are attempting to attain the required documentation.

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

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

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

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

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

Nevada 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)). Nevada plans has the ability to use vital health databases to check for birth certificates and that is a major improvement since some citizens in Nevada will not be required to track down certain documentation because of this change.

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

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

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

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

Conclusion

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

Planned Parenthood Mar Monte of Nevada appreciates this opportunity to comment on the proposal of DRA and hope you will consider the recommended changes that we have made.

Thank you for your attention to these comments.

Pat Elzy
Legislative Affairs Director
Planned Parenthood Mar Monte
455 W. Fifth Street
Reno, NV 89503
775-688-5560 x 277

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

Organization :

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : **Ms. Julia Oppenheimer** **Date: 08/11/2006**

Organization : **Ms. Julia Oppenheimer**

Category : **Individual**

Issue Areas/Comments

GENERAL

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

Submitter : **Mrs. Pamela Haller** **Date: 08/11/2006**

Organization : **Mrs. Pamela Haller**

Category : **Individual**

Issue Areas/Comments

GENERAL

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Thank you for your consideration.

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

Organization : **Planned Parenthood of Nassau County, Inc.**

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-427-Attach-1.DOC

Planned Parenthood
of Nassau County, Inc. ®

August 11, 2006

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

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

Dear Administrator McClellan:

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of Planned Parenthood of Nassau County, Inc. (PPNC). PPNC is a non-profit, non-partisan organization that serves the community by providing access to health services, sexuality education and information so that adolescents, women, and men can make informed and responsible choices about their lives.

At PPNC, we provide access to family planning care to those who are most needy through Medicaid programs, such as the Family Planning Benefit Program (FPBP). We are deeply concerned that our patients will find it difficult to prove their citizenship and/or identity under the new rules. Current recipients and future enrollees may thus be unable to keep or obtain coverage under the Medicaid programs. In the first six months of this year, our three clinics have accommodated nearly 11,000 visits. Of these visits, 730 were with patients on Medicaid, and 874 visits were specifically for our prenatal patients who receive coverage through the Prenatal Care Assistance Program. In addition, we saw over 1,100 visits for patients enrolled in FPBP. These numbers represent over 25% of PPNC's patient visits for the first half of 2006.

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.

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[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).

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[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.

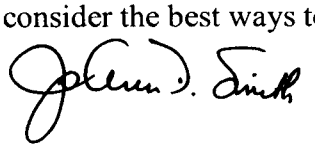
There are U.S. citizens who will not be able to produce the required documentation. States should have the discretion to grant good cause exemptions from the documentation requirements when there is no reason to believe the person is not a citizen.

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 D. Smith
President & CEO
Planned Parenthood of Nassau County, Inc.

Submitter : Ms. Valerie Davidson **Date:** 08/11/2006

Organization : Alaska Native Tribal Health Consortium

Category : Other Government

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-428-Attach-1.PDF

ALASKA NATIVE TRIBAL HEALTH CONSORTIUM
Administrative Offices 4000 Ambassador Drive
Anchorage, Alaska 99508
Telephone: 907-729-1900
Facsimile: 907-729-1901

August 11, 2006

Via electronic submission

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 descendency from these Tribal members. With very few exceptions,

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

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

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

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

The Senate Finance Committee in unanimously reporting out S. 3524 included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a "document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe" to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that " [w}ith respect to those federally-recognized Indian tribes located within States having an international border

whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection." S. 3524 also provides for a transition period that " until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

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

In addition, the United States Department of Interior enrolled Alaska Natives who were citizens of the United States, as eligible to participate in the Alaska Native Claims Settlement Act. I would urge CMS to recognize this information from a federal agency in which proof of U.S. Citizenship was required for enrollment, as satisfaction of a Tier 1 document, or in the alternative, a Tier 2 document. We would encourage a data exchange between the U.S. Department of Interior and CMS to satisfy this requirement.

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

Thank you for your thoughtful consideration of my comments.

Sincerely,

Valerie Davidson
Senior Director, Legal & Intergovernmental Affairs

cc: Senator Ted Stevens
Senator Lisa Murkowski
Congressman Don Young
NIHB

Submitter : **Dr. Bill Rosenthal** **Date: 08/11/2006**

Organization : **Dr. Bill Rosenthal**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan:

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

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

Submitter : **Ms. Anna Franks** **Date: 08/11/2006**

Organization : **Planned Parenthood of Central Washington**

Category : **Health Care Professional or Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment

Regulatory Impact Statement

Regulatory Impact Statement

See Attachment

CMS-2257-IFC-430-Attach-1.DOC

August 11, 2006

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

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

As a Planned Parenthood affiliate whose clinics provide family planning services to many low-income people, we are writing to comment on the interim rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA), which requires U.S. citizens applying for or receiving Medicaid to provide proof of citizenship and identity. Planned Parenthood of Central Washington (PPCW) is deeply troubled by the negative impact this provision will have on states granted Medicaid family planning waivers by CMS. Consequently, we urge CMS to modify sections 435.406 and 436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. If implemented, this rule would impede access to critical, time-sensitive and cost-effective care and severely limit the ability of these innovative state-initiated programs to enable low-income people to avoid unplanned pregnancy and reduce health-related costs to states.

PPCW is particularly concerned about this rule because our service region includes twelve central and eastern counties of Washington, which has just renewed its state Medicaid family planning waiver under the title "Take Charge." Take Charge provides free family planning services to persons at or below 200% of the federal poverty level.

Publicly funded family planning services are critical to helping low-income people avoid unplanned pregnancies. These services prevent an estimated 1.3 million unplanned pregnancies each year, and without these services, our nation's abortion rate would be 40 percent higher than it is. Medicaid is playing an increasingly important role in funding these services, providing six in 10 of all public dollars spent on family planning nationally.

Over the past decade, 24 states, including Washington, have obtained federal approval under section 1115 to expand Medicaid eligibility for family planning services and supplies to individuals who otherwise would not be covered. The impetus for these waivers is to creatively implement programs that can provide a narrow set of services to an expanded population while saving money at both the state and federal levels.

In 2004, CMS contracted with the CNA Corporation to conduct a national evaluation of six states (Alabama, Arkansas, California, New Mexico, Oregon, and South Carolina) with family planning waivers. The evaluation concluded that the waivers exceeded the

CMS budget-neutrality requirement, with all six states showing significant savings. For example, between 1997 and 1999, the state of Arkansas saved over $14 million and averted more than 7,000 births, while the federal government saved $30 million. Oregon saved $11 million and averted over 5,000 births in 2000 alone, while California saved over $64 million and averted more than 21,000 births between 1999 and 2000.

In Washington, Take Charge has been equally successful. Nearly 170,000 women and men enrolled in the program in the first two years. More than 94% of women who enrolled wanted to prevent pregnancy. Over two-thirds (67.5% or 113,446) of clients enrolled in the first two years were women between eighteen and twenty-nine years of age, the same age group that accounted for 73.0% of all Medicaid-paid births in 2002.

By throwing what could be a sizable impediment in the path of individuals seeking to enroll in these programs, the interim final rule could turn the clock back on this progress, threatening access to care, reductions in unplanned pregnancy and cost-savings that have been a hallmark of these programs. The problem posed by the documentation requirements is particularly acute when it comes to accessing such a time-sensitive service as family planning. Any delay in receiving services could result in an unintended pregnancy. Such a result would be particularly tragic at this moment in time, when a million more women have joined the ranks of those in need of publicly funded family planning services since 2000, bringing the total number of women in need of these services to 17.4 million in 2004.

Planned Parenthood of Central Washington is deeply troubled that U.S. citizens who are unable to meet the documentation requirements will be forced into the Title X system, thereby crippling an already over-burdened system. For more than three decades, Title X has been an integral component of our public health care system, providing high-quality family planning services and other preventive health care to low-income or uninsured individuals who may otherwise lack access to health care. However, the systematic under-funding of the Title X program poses significant challenges to its survival. Health care inflation has far outstripped funding for Title X clinic services, which are further strapped as a result of new and expensive contraceptive technologies, improved and expensive screening and treatment for STDs and the expense of training and retaining qualified health care personnel in an era of nursing shortages. Had Title X funding kept up with inflation since 1980, funding would be $699 million, yet the program has been level-funded at $283 million in the coming fiscal year. While Title X clinics currently serve over 5 million women, they are struggling to meet the needs of these women. With its current funding level, the Title X program will be unable to absorb additional clients, and women in need of family planning services will be turned away.

Further, we are also concerned about the increase in administrative costs associated with implementing the documentation requirements. In Washington the administrative costs could outstrip the savings incurred from Take Charge, thereby obviating the ultimate purpose of the waivers. Washington State estimates it will need to hire between 68 to 250 new employees at a cost of $6 to $17 million over the next year to comply with the citizenship requirement.

PPCW therefore urges CMS to modify sections 435.406 and 436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. An exemption for family planning waiver programs similar to the interim final rule released by CMS on July 6 that exempts Medicare and SSI recipients from the documentation requirements and allows states some flexibility in terms of utilizing statewide data systems and vital health records would alleviate much of the anticipate cost associate with the current rule.

Requiring individuals eligible for Take Charge and other family planning demonstrations to document citizenship according to the specifications set forth in the July 12 notice would delay or even preclude the receipt of this time-sensitive care, resulting in an increase in unplanned pregnancies, unplanned births and abortions among low-income Americans. Denying people access to this cost-effective care would result in significant costs to both the federal and state governments.

Sincerely,

Anna Franks, President/CEO
Planned Parenthood of Central Washington
1117 Tieton Drive
Yakima, WA 98902
franksa@ppcentwa.org

Submitter : Ms. Lisa Carr **Date:** 08/11/2006

Organization : Lutheran Services in America

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See Attached Letter

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

August 11, 2006

Centers for Medicare and Medicaid Services
Department of Helath 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)

Lutheran Services in America is an alliance of national Lutheran church bodies and their health and human service organizations. LSA has 300 members providing services throughout all 50 states and the Caribbean. Its members deliver over $8 billion in services to over one out of every 50 people in the United States. In the LSA 2002 Annual Survey, with 52 percent responding, LSA members reported that they receive $1.4 billion from the Medicaid program. The network of organizations serves the elderly, children and families, people with mental and physical disabilities, refugees, victims of natural disasters, and others in great need. Through these efforts it is on the front lines of building self-sufficiency and promise in millions of lives.

On behalf of Lutheran Services in America and our 300 member health and human service organizations, we submit the following comments to the Centers for Medicare and Medicaid Services on the interim final rule implementing section 6036 of the Deficit Reduction Act of 2005 (DRA, P.L. 109-171) regarding new citizenship verification requirements. The provision, which went into effect on July 1, requires applicants for and recipients of Medicaid to provide proof of U.S. citizenship or nationality and identity.

While we are pleased with some of the guidance in the Interim Final Rule, we are very concerned with the implications the Final Rule could have on Medicaid beneficiaries and those who apply for the program. We are concerned that many individuals enrolled in Medicaid, as well as the thousands of people who apply each year, will find it difficult to prove their citizenship and/or identity and thus will be unable to keep or obtain Medicaid coverage.

We are pleased that the CMS ameliorates the impact of the new documentation requirement by:

1. Recognizing the scrivener s error in the statute and exempting individuals on SSI or Medicare from the new rule.
2. Allowing the use of the SDX and state vital records databases to cross-match citizenship records as well as allowing states to use state and federal databases to conduct identity and 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.

We are pleased that these three important steps will alleviate the burden of the documentation requirement for millions of vulnerable citizens.

We are concerned that the new requirements could deny eligible United States citizens and nationals Medicaid coverage and we urge you to ensure that this does not occur. Specifically, we encourage CMS to consider expanding the exemptions further to include the non-elderly disabled who have severe physical and mental disabilities but do not receive SSI.

Regulatory Impact Statement

Regulatory Impact Statement

We also encourage CMS to amend the Interim Final Rule at 42 CFR 435.1008 to add children eligible for Medicaid on the basis of their receipt of foster care payments, and adoption assistance payments, to the list of groups exempted from the citizenship and identity requirements. We are concerned about the impact the regulations will have on the ability of children in foster care and those children with special needs adopted from foster care to get the health and mental health care that they often urgently need. Many children in foster care have very special health and mental health needs and are in need of immediate attention. Any delay in receiving medical attention could threaten their lives. Many have chronic conditions that require ongoing care and the prospect of discontinuing care while documentation is being sought is very threatening.

We also know that many children have difficulty securing documentation because many children enter foster care from situations where parents have been charged with abuse or neglect. Parents are often hesitant or unwilling to cooperate with the agency in providing necessary documentation to fulfill the requirement. There are

also many cases where the whereabouts of the parent are unknown, further complicating and delaying the documentation process.

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

CMS-2257-IFC-431-Attach-1.DOC

CMS-2257-IFC-431-Attach-2.TXT

LSA
Lutheran Services in America
122 C Street NW #125
Washington, DC 20001
202.626.7945
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August 11, 2006

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

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

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While we are pleased with some of the guidance in the Interim Final Rule, we are very concerned with the implications the Final Rule could have on Medicaid beneficiaries and those who apply for the program. We are concerned that many individuals enrolled in Medicaid, as well as the thousands of people who apply each year, will find it difficult to prove their citizenship and/or identity and thus will be unable to keep or obtain Medicaid coverage.

We are pleased that the CMS ameliorates the impact of the new documentation requirement by:

1. Recognizing the "scrivener's error" in the statute and exempting individuals on SSI or Medicare from the new rule.
2. Allowing the use of the SDX and state vital records databases to cross-match citizenship records as well as allowing states to use state and federal databases to conduct identity and 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.

We are pleased that these three important steps will alleviate the burden of the documentation requirement for millions of vulnerable citizens.

We are concerned that the new requirements could deny eligible United States citizens and nationals Medicaid coverage and we urge you to ensure that this does not occur. **Specifically, we encourage CMS to consider expanding the exemptions further to include the non-elderly disabled who have severe physical and mental disabilities but do not receive SSI.**

We also encourage CMS to amend the Interim Final Rule at 42 CFR 435.1008 to add children eligible for Medicaid on the basis of their receipt of foster care payments, and adoption assistance payments, to the list of groups exempted from the citizenship and identity requirements. We are concerned about the impact the regulations will have on the ability of children in foster care and those children with special needs adopted from foster care to get the health and mental health care that they often urgently need. Many children in foster care have very special health and mental health needs and are in need of immediate attention. Any delay in receiving medical attention could threaten their lives. Many have chronic conditions that require ongoing care and the prospect of discontinuing care while documentation is being sought is very threatening.

We also know that many children have difficulty securing documentation because many children enter foster care from situations where parents have been charged with abuse or neglect. Parents are often hesitant or unwilling to cooperate with the agency in providing necessary documentation to fulfill the requirement. There are also many cases where the whereabouts of the parent are unknown, further complicating and delaying the documentation process.

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

We encourage CMS to consider Medicaid payment records for births in U.S. hospitals to suffice as proof of citizenship and identity for newborn children. Under Federal law, infants born to pregnant women on Medicaid are automatically eligible for Medicaid for one year, provided that the baby continues to live with the mother. (This commonly is referred to as "deemed newborn eligibility.") Undocumented immigrants, as well as certain legal immigrants who have been in the United States less than five years, are not eligible for the full scope of benefits covered under a state's Medicaid program. However, such immigrants are eligible for services necessary to treat an emergency medical condition, provided that they otherwise meet the state's Medicaid eligibility criteria. For pregnant immigrants, this so-called "emergency Medicaid" also includes coverage of labor and delivery.

Until recently, CMS required states to provide a full year of deemed newborn eligibility to infants born to pregnant women eligible only for emergency Medicaid, to the same extent as infants born to mothers eligible for full Medicaid coverage. (To our knowledge, CMS never issued any formal written guidance on this issue.)

In the preamble to the recently issued interim final rule on Medicaid citizenship documentation requirements, CMS reversed this policy. In that preamble, CMS said that babies born to mothers eligible only for emergency Medicaid should not be deemed eligible for Medicaid for a year. Under the new policy, the mothers of these babies will now have to file a application for Medicaid on behalf of their babies, who will have to meet the new citizenship documentation requirements, even though the baby was born in a U.S. hospital, their birth was paid for by the state Medicaid program, and their U.S. citizenship is not in question. Undocumented mothers, in particular, may be reluctant to do so.

Several states, including Georgia and Virginia, already have indicated their intent to comply with the new policy. These states will be denying deemed newborn eligibility to infants born to women receiving emergency Medicaid. Other states may follow suit. While the legality of CMS' policy reversal is dubious, the impact on these infants and the hospitals, physicians and other providers who care for them is clear: Many newborn U.S. citizens will be left uninsured, and without coverage for care needed after they are born and when they leave the hospital; others may experience a delay in coverage, pending completion of the Medicaid application process. Hospitals and other providers that continue to provide care for the affected infants will experience a delay in, if not a loss of, Medicaid reimbursements.

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.

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 12 million U.S. citizens are expected to apply for Medicaid. 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 urge CMS to declare that U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all eligibility requirements

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.

While we will continue to provide care to these individuals, we will not be reimbursed for the services we provide to these applicants and beneficiaries who cannot document their citizenship, increasing the amount of uncompensated care we already provide to people who are uninsured.

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

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

We encourage CMS to 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.

Thank you for considering amending the Interim Final Rules so that many people in need of health care services, including many citizens, are not denied vital care.

Sincerely,

Jill Schumann

Jill Schumann
President

Lisa Carr

Lisa Carr
Director of Public Policy

122 C Street NW #125 Washington, DC 20001 202.626.7945 www.lutheranservices.org August 11, 2006 Centers for Medicare

and Medicaid Services Department of Helath 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)Lutheran Services in

America is an alliance of national Lutheran church bodies and their health and human service organizations. LSA has 300

members providing services throughout all 50 states and the Caribbean. Its members deliver over $8 billion in services to over one

out of every 50 people in the United States. In the LSA 2002 Annual Survey, with 52 percent responding, LSA members reported

that they receive $1.4 billion from the Medicaid program. The network of organizations serves the elderly, children and families,

people with mental and physical disabilities, refugees, victims of natural disasters, and others in great need. Through these efforts

it is on the front lines of building self-sufficiency and promise in millions of lives. On behalf of Lutheran Services in America and our

300 member health and human service organizations, we submit the following comments to the Centers for Medicare and Medicaid

Services on the interim final rule implementing section 6036 of the Deficit Reduction Act of 2005 (DRA, P.L. 109-171) regarding

new citizenship verification requirements. The provision, which went into effect on July 1, requires applicants for and recipients of

Medicaid to provide proof of U.S. citizenship or nationality and identity. While we are pleased with some of the guidance in the

Interim Final Rule, we are very concerned with the implications the Final Rule could have on Medicaid beneficiaries and those who

apply for the program. We are concerned that many individuals enrolled in Medicaid, as well as the thousands of people who apply

each year, will find it difficult to prove their citizenship and/or identity and thus will be unable to keep or obtain Medicaid coverage.

We are pleased that the CMS ameliorates the impact of the new documentation requirement by: Recognizing the "scrivener's

error" in the statute and exempting individuals on SSI or Medicare from the new rule. Allowing the use of the SDX and state vital

records databases to cross-match citizenship records as well as allowing states to use state and federal databases to conduct

identity and cross-matches. 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. We are pleased that these three important steps will alleviate the burden of the documentation requirement for

millions of vulnerable citizens. We are concerned that the new requirements could deny eligible United States citizens and

nationals Medicaid coverage and we urge you to ensure that this does not occur. Specifically, we encourage CMS to consider

expanding the exemptions further to include the non-elderly disabled who have severe physical and mental disabilities but do not

receive SSI. We also encourage CMS to amend the Interim Final Rule at 42 CFR 435.1008 to add children eligible for Medicaid

on the basis of their receipt of foster care payments, and adoption assistance payments, to the list of groups exempted from the

citizenship and identity requirements. We are concerned about the impact the regulations will have on the ability of children in

foster care and those children with special needs adopted from foster care to get the health and mental health care that they often

urgently need. Many children in foster care have very special health and mental health needs and are in need of immediate

attention. Any delay in receiving medical attention could threaten their lives. Many have chronic conditions that require ongoing

care and the prospect of discontinuing care while documentation is being sought is very threatening. We also know that many

children have difficulty securing documentation because many children enter foster care from situations where parents have been

charged with abuse or neglect. Parents are often hesitant or unwilling to cooperate with the agency in providing necessary

documentation to fulfill the requirement. There are also many cases where the whereabouts of the parent are unknown, further

complicating and delaying the documentation process. Children who received federal Title IV-E foster care payments are

categorically eligible for Medicaid, and children in state-supported foster care are eligible for Medicaid in every state by virtue of the

fact that they are in state-supported foster care. Children who are categorically eligible do not technically apply for

Medicaid. This

makes them similar to the children and adults who are eligible for SSI and are automatically eligible for Medicaid, a group for whom

CMS has clarified that the new documentation requirements do not apply. We urge you to exempt children in foster care from the

documentation requirements as well, as the DRA enables you to do. We encourage CMS to consider Medicaid payment records

for births in U.S. hospitals to suffice as proof of citizenship and identity for newborn children. Under Federal law, infants born to

pregnant women on Medicaid are automatically eligible for Medicaid for one year, provided that the baby continues to live with the

mother. (This commonly is referred to as "deemed newborn eligibility.") Undocumented immigrants, as well as certain legal

immigrants who have been in the United States less than five years, are not eligible for the full scope of benefits covered under a

state's Medicaid program. However, such immigrants are eligible for services necessary to treat an emergency medical condition,

provided that they otherwise meet the state's Medicaid eligibility criteria. For pregnant immigrants, this so-called "emergency

Medicaid" also includes coverage of labor and delivery. Until recently, CMS required states to provide a full year of deemed

newborn eligibility to infants born to pregnant women eligible only for emergency Medicaid, to the same extent as infants born to

mothers eligible for full Medicaid coverage. (To our knowledge, CMS never issued any formal written guidance on this issue.) In

the preamble to the recently issued interim final rule on Medicaid citizenship documentation requirements, CMS reversed this

policy. In that preamble, CMS said that babies born to mothers eligible only for emergency Medicaid should not be deemed

eligible for Medicaid for a year. Under the new policy, the mothers of these babies will now have to file a application for Medicaid

on behalf of their babies, who will have to meet the new citizenship documentation requirements, even though the baby was born in

a U.S. hospital, their birth was paid for by the state Medicaid program, and their U.S. citizenship is not in question.

Undocumented mothers, in particular, may be reluctant to do so. Several states, including Georgia and Virginia, already have

indicated their intent to comply with the new policy. These states will be denying deemed newborn eligibility to infants born to

women receiving emergency Medicaid. Other states may follow suit. While the legality of CMS' policy reversal is dubious, the

impact on these infants and the hospitals, physicians and other providers who care for them is clear: Many newborn U.S. citizens

will be left uninsured, and without coverage for care needed after they are born and when they leave the hospital; others may

experience a delay in coverage, pending completion of the Medicaid application process. Hospitals and other providers

that continue to provide care for the affected infants will experience a delay in, if not a loss of, Medicaid reimbursements. 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. 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 12 million U.S. citizens are expected to apply for Medicaid.

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 urge CMS to declare that U.S. citizens applying for benefits should receive

benefits once they declare they are citizens and meet all eligibility requirements 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. While we will

continue to provide care to these individuals, we will not be reimbursed for the services we provide to these applicants and

beneficiaries who cannot document their citizenship, increasing the amount of uncompensated care we already provide to people

who are uninsured. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are

considered to be "proof" of citizenship and a "reliable means" of identification. We urge that the Secretary use this discretion to

acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S.

citizen for purposes of Medicaid eligibility. The regulations for the SSI program allow people who cannot present any of the

documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information

they do have. (20 CFR 416.1610) The Secretary should adopt a similar approach. Specifically, 42 CFR 435.407 should be revised

by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory

documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1) an applicant or current

beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or

fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual

is in fact a U.S. citizen or national based on the information that has been presented. This approach would ensure that the

patients we serve and families we work with who are U.S. citizens can continue to receive the health care services they need. We

encourage CMS to 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. Thank you for considering amending the Interim Final Rules so

that many people in need of health care services, including many citizens, are not denied vital care. Sincerely, Jill Schumann

Lisa Carr Jill Schumann

Lisa Carr

President

Director of Public Policy

Submitter : Mr. James Stewart **Date:** 08/11/2006

Organization : Planned Parenthood of Wisconsin

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-432-Attach-1.DOC

August 11, 2006

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

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

Dear Mr. McClellan:

I am writing on behalf of Planned Parenthood of Wisconsin (PPWI), a state wide Planned Parenthood affiliate that serves approximately 71,000 patients annually. PPWI submits the following comments 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 changes the requirements for all U.S. citizens applying for or receiving Medicaid benefits by mandating that recipients or new enrollees produce documentation proving citizenship and identity. PPWI is deeply concerned about the impact this provision will have on the millions of Medicaid eligible citizens nationwide and especially on the 850,000 Wisconsinites served by Medicaid.

Planned Parenthood of Wisconsin is the state's largest reproductive health care provider and we have been serving patients for 71 years. Currently we see over 71,000 patients at 30 health centers in all regions of the state. PPWI is the Title X grantee in Wisconsin, and our delegate agencies serve another 10,000 patients annually. Each year, Planned Parenthood of Wisconsin is challenged to continue to deliver affordable health care in the face of rapidly increasing health care costs which cannot be absorbed by our patient base. We currently provide Medicaid health care services including health exams, birth control services, cervical and breast cancer screenings, and sexually transmitted infection testing and treatment. For many of our patients, Planned Parenthood is the only health care provider that they see during the year.

Of the over 70,000 patients we treated in 2004, almost 40,000 of them were at or below the federal poverty level, making less than $9,000 a year. In 2004, we had 170,672 clinic encounters with our patients. Literally, access to family planning services saves women's lives every day, as early detection of cervical cancer is critical to successful treatment. Many of these patients were eligible for preventive health care services at our health centers under the Medicaid program. Therefore, a great majority of our patient population—either under traditional Medicaid or the Medicaid Family Planning Waiver Demonstration—are subject to the new citizenship and identity requirements.

Unfortunately, many qualified individuals who desperately need access to health care risk being denied these services because of the DRA section 6036 requirements. This is the case because many Medicaid recipients or enrollees simply do not have access to the required documentation. For example, according to a 2006 report from the Center on Budget and Policy Priorities, U.S. born adults with incomes below $25,000 are almost twice as likely as adults with incomes above $25,000

to report not having a passport or birth certificate. By requiring applicants to provide documentation, the DRA section 6036 places severe barriers on these eligible recipients. Thus many eligible Medicaid recipients will be forced to go without health care.

We note that states are allowed 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)). In this regard, we are pleased that Wisconsin has decided to use its vital health and other available databases to check for birth certificates for Wisconsin born citizens. Nevertheless, if for whatever reason these databases do not find a match for the Wisconsin-born citizen, he or she will have to locate that documentation.

In those instances, PPWI is deeply concerned that obtaining the required documentation will prove difficult for many individuals. In Wisconsin, to obtain a copy of a birth certificate in person, an individual must produce one of the following sources of identification: Wisconsin driver's license, Wisconsin photo ID or a government issued employee ID card or badge with a photograph. Many eligible residents will not have any of these required forms of identification. In addition, the cost of obtaining birth certificates for families may be entirely prohibitive. An individual must pay $12 up front for the Office of Vital Records to perform the search—this charge is required even if the search does not produce a birth certificate. If requesting a birth certificate by mail, an individual must send a personal check or money order. Medicaid recipients born out of Wisconsin may have special difficulties in obtaining their birth certificates, as discussed below.

For non-English speaking citizens, obtaining a birth certificate from Vital Records office could prove to be very difficult since they may not be able to navigate the administrative process necessary to obtain the documents. The same scenario would ring true for other marginalized populations like the homeless or those patients without checking accounts or credit cards to pay Vital Records in advance for the documentation. Thus many eligible citizens will simply be unable to obtain the necessary documentation.

Therefore, PPWI is very disappointed that the Centers for Medicare and Medicaid Services (CMS) did not capitalize on the opportunity to mitigate the overwhelmingly negative impact of section 6036 on eligible Medicaid recipients and enrollees. In fact, the interim final rule sets forth requirements that are often more burdensome than what section 6036 requires. Planned Parenthood of Wisconsin would like to use these comments to encourage CMS to modify the interim final rule to ensure that the greatest number of eligible patients have timely access to the critical health care services they need.

Family Planning Medicaid Recipients and Enrollees Are Particularly Vulnerable Under §6036

PPWI is especially concerned about the impact the interim final rule will have on individuals seeking family planning services. About 60% of our patient base relies on Medicaid for access to these crucial preventive health care services. Since meeting the burdensome requirements in section 6036 will prove too difficult for many patients, fewer eligible Medicaid recipients will be obtaining these preventive services.

From the perspective as the state's largest reproductive health provider, this lack of access to preventive health care will not only endanger the public health but it will also increase taxpayer

costs. For example, Wisconsin is experiencing an epidemic of sexually transmitted infections, particularly Chlamydia. Wisconsin has the 10th highest Chlamydia rate in the country, the highest in the Midwest. Women infected with Chlamydia often do not have any symptoms. If left untreated, Chlamydia can lead to infertility, pelvic inflammatory disease, endometriosis and cervical cancer. In addition, men and women with certain STIs like Chlamydia are 3 to 5 times more likely to contract HIV (Wasserheit, 1992). Infants can become infected with Chlamydia during birth, causing conjunctivitis, bronchiolitis, and pneumonia (PPFA, 1997). Chlamydia is the leading cause of neonatal conjunctivitis (CDC, 1993).

When patients cannot obtain preventive health care, they often wait until their health conditions become serious, complicated and expensive before seeking treatment. Then, the only option patients have for treatment is the most expensive option—emergency room treatment. The bottom line is that when patients cannot obtain preventive reproductive health care, the result is a greater population with more dangerous and costly reproductive health conditions.

We have outlined two areas where CMS should take into consideration the special health care needs of family planning Medicaid recipients and enrollees:

1. CMS has exempted certain vulnerable populations from the burdensome citizenship and identity requirements. CMS should also exempt individuals receiving Medicaid services under the Family Planning Waiver Demonstration, section 1115, from the citizenship and identity requirements.

In Wisconsin we are fortunate to have the Family Planning Waiver Demonstration project. Wisconsin, along with 23 other states, has 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. For Wisconsin, the family planning demonstration program is at the cornerstone of improvements in quality of health care over the past fours years. Unfortunately, the citizenship and identity documentation requirements strike at the core of how family planning demonstration programs are designed and could ultimately render them meaningless.

In Wisconsin, we refer to the family planning waiver program as the Healthy Women Program. The Health Women Program is so important to our state because the family planning needs among Wisconsin citizens are so great that they can not be met without the program. According to the Guttmacher Institute, 640,420 women in Wisconsin are of child bearing ages (between 13 and 44) and in need of birth control services and supplies. Of this, 300,510 women are in need of publicly-supported birth control services. Prior to this program, the network of family planning providers in Wisconsin served approximately 110,000 women, leaving almost 200,000 women without access to family planning services. A significant percentage of Wisconsin low-income women and teens are in need of birth control and are at a high risk of unintended pregnancy and disease.

The Healthy Women Program is filling some of this need. To date, over 64,000 women are receiving services under the Healthy Women Program. In 2005 alone, Planned Parenthood served 47,566 women ages 15-44 under this program. Twenty-six percent of these patients were new patients that we had not seen before this Medicaid benefit existed. Also that year, we provided 94,238 contraceptives, 12,573 cervical cancer tests, 577 colposcopy (cancer) diagnostic screens,

5,205 pregnancy tests, 13,533 sexually transmitted infections tests, including HIV, and 4,266 sexually transmitted infection treatments under the Healthy Women Program.

The interim final rule completely threatens the viability and impact of Wisconsin's Health Women Program by requiring individuals who receive these services to produce citizenship and identity 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 like Wisconsin's 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 Healthy Women Program are limited in scope, but their impact is tremendous. Each year, thousands of Wisconsin women rely on this program to prevent unintended pregnancies and to access other crucial health care services.

In addition to expanding access to such vital health care services, the Healthy Women Program offers huge cost-savings for the state and federal governments. The Wisconsin Department of Health and Family Services, the state department administering the Healthy Women Program, has indicated that the cost savings of the program during only one quarter of 2003 resulted in a net savings to the state of $3.3 million. The gross savings to the state was $9.1 million, less $5.8 million dollars in the cost of the program. This savings resulted because this program averted 1,200 pregnancies. If you spread this over an entire year, the conservative estimate for **Wisconsin is a cost-savings of over $12 million a year because of this program.** The total cost of providing family planning services under the Healthy Women Program is approximately $172 per enrollee, as opposed to the $7,132 cost of birth and delivery per Medicaid enrollee.

Requiring these family planning 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. In addition to the cost increase due to public health problems, Section 6036 also creates new administrative costs and burdens for the state. It requires administrative staff to spend time and resources ensuring that the proper documentation is provided. For those eligible residents who do not have birth certificates or passports, state workers will spend more time and resources leading residents through the administrative system to obtain these documents.

Planned Parenthood of Wisconsin strongly urges CMS to exempt this population from the documentation requirements in the final rule. Doing so will ensure that the Healthy Women Program recipients in Wisconsin will continue to make important strides in enhancing access to critical preventive services and reducing the rate of unintended pregnancies. Without such an exemption, Wisconsin will be faced with the very real possibility that costs associated with requiring citizenship and identity documentation will outweigh the savings the programs currently produce.

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

Wisconsin 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)). In this regard, we are pleased that Wisconsin has decided to use its vital health and other available databases to check for birth certificates for Wisconsin born citizens. About 40% of Medicaid participants in Wisconsin were born out of state, however, and they will have to try to track down their birth certificates. This process could prove especially cumbersome and cost-prohibitive for them, and the process for obtaining an out-of-state birth certificate could take several weeks.

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). As discussed above, many beneficiaries and applicants will face significant hurdles in documenting citizenship according to the provisions of the interim final rule. Therefore, 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.

In general, the hierarchy of document reliability that CMS set up creates a much larger burden than is necessary to implement section 6036. We strongly urge CMS not to limit the accepted documentation to the primary and secondary level of documents.

Conclusion

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

Thank you for your consideration.

Planned Parenthood of Wisconsin
James Stewart, CEO

Submitter : **Ms. Caryn Woodard** **Date: 08/11/2006**

Organization : **Ms. Caryn Woodard**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : Ms. Michele Weismiller **Date:** 08/11/2006

Organization : L & S Associates, Inc.

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment-Thank you

CMS-2257-IFC-434-Attach-1.RTF

CMS-2257-IFC-434-Attach-2.DOC

August 8, 2006

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

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

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 alloId 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 I 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). Holver, 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 Ilfare 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 Ill 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 lolring 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 Ire 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 <u>not</u> acceptable)
- Bank statement
- Life, home, auto, or health insurance <u>policy</u> (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 : Angela Perdos **Date:** 08/11/2006

Organization : Angela Perdos

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : Ms. Laurie Norris **Date:** 08/11/2006

Organization : Public Justice Center

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-436-Attach-1.DOC

Public Justice Center

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August 11, 2006

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

SUBMITTED ELECTRONICALLY

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

Dear Secretary Leavitt:

The Public Justice Center is a Maryland-based private, non-profit public-interest law firm working to create systemic change to build a more just society. One of our priorities is to improve access to quality health care for limited income people. To this end, we engage in legal analysis and representation, public education, coalition building and policy advocacy. We are writing to comment on the Interim Final Rule on Citizenship Documentation, which was published in the Federal Register on July 12, and implements § 6036 of the Deficit Reduction Act of 2005 (DRA).

At least 42 million individuals nationwide and about 700,000 in Maryland will be impacted by the new citizenship and identity law. We are deeply concerned that these individuals enrolled in Medicaid, as well as the thousands of people who apply each year, will find it difficult to prove their citizenship and/or identity, and thus keep or obtain coverage in Medicaid.

We believe that the Rule as published is an improvement over the earlier SMDL #01-012. The proposed Rule contains some significant steps forward that may reduce the harm to beneficiaries and the burden on state Medicaid agencies.

- Chief among the improvements is the exclusion from the documentation requirements of all Medicare beneficiaries and most of those receiving SSI. As CMS recognized, this was clearly the intent of Congress, and now many millions will be spared the hardship of attempting to clear the hurdles to Medicaid coverage created by the Rule.
- Welcome also is the clarification that states can use the SDX system to verify citizenship for those SSI recipients not subject to the exemption, although verification of identity for many in this population will remain an issue.
- Allowing states to do a vital records match in lieu of requiring a birth certificate to establish citizenship, and to consult federal or state governmental, public assistance, law enforcement or correction agency's data systems to establish identity are also both important improvements over the earlier CMS guidance in this area.
- Finally, we are pleased with the clarification that presumptive eligibility remains for children, pregnant women and women with breast and

> cervical cancer during the presumptive eligibility period regardless of whether they have documented their citizenship.

Unfortunately, although better than previous guidance from CMS, the Rule does not do enough to insure that people who are indeed citizens, and with regard to whom there is no credible doubt as to their citizenship, will nonetheless not receive Medicaid because they are unable to complete the scavenger hunt required by the Rule. Many of the more onerous requirements of the Rule are ill-advised and not mandated by § 6036 of the DRA, while others simply violate the Medicaid Act as amended by that section.

We discuss ten of these provisions below. The first four comments concern when and to whom the documentation requirements may or should properly apply. The remaining six address the types of acceptable documentation and the nature of the process surrounding its acquisition.

1. **CHILDREN RECEIVING FOSTER CARE BENEFITS UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT CANNOT BE REQUIRED TO DOCUMENT THEIR CITIZENSHIP UNDER § 6036 OF THE DRA.**

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)]. 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. Consequently, because foster children never declare to be citizens under 1137(d)(1)(A), they do not fall within the ambit 42 U.S.C. § 1396b(i)(22) and may not legally be subjected to its documentation requirements.

CMS should amend 42 C.F.R. § 435.1008 to include children receiving benefits under Title IV-E of the SSA as a population that is exempt from the requirement that states have documentation of their U.S. citizenship or nationality on file in order to receive federal financial participation (FFP) for medical assistance provided to them.

2. **MEDICAID BENEFITS MUST BE PROVIDED TO APPLICANTS WHO HAVE DECLARED THEIR CITIZENSHIP UNDER § 1137(d)(1)(A) WHILE THEY ATTEMPT TO ACQUIRE ANY REQUESTED DOCUMENTATION.**

As CMS has repeatedly recognized in the course of considering the guidance and now the regulations appropriate to implement the DRA, § 6036 of that Act did not impose a new eligibility requirement on applicants for or beneficiaries of Medicaid. Rather, it imposed a new condition on the states for receipt of FFP. The eligibility requirement for Medicaid remains the declaration of citizenship or qualified alien status called for by § 1137(d) of the SSA, a section that is specifically referenced by § 6036.

The Rule as written would convert the provision of documentary evidence of citizenship into an eligibility requirement for citizen Medicaid applicants, as it prohibits states from providing medical assistance to a person before (s)he has presented that evidence. This approach is not legally permissible.

First, it 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.

In addition, the Rule unconstitutionally deprives citizen applicants for Medicaid of the equal protection of the law. If the Rule were to stand as currently written, an applicant for Medicaid who claims qualified alien status will get Medicaid benefits during the reasonable opportunity period available to acquire verification of qualified alien status as required by § 1137(d)(4). 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 certainly is not required by § 6036 of the DRA. 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.

3. **MEDICAID BENEFITS MUST BE PROVIDED TO CITIZEN INFANTS BORN TO UNQUALIFIED IMMIGRANT PARENTS ON THE SAME BASIS AS THEY ARE PROVIDED TO OTHER CITIZEN INFANTS.**

The Rule contains another distinction that is every bit as arbitrary, and therefore illegal, as the one discussed in Comment 2 above. The Rule correctly recognizes that children born in this country to women who receive full scope Medicaid should themselves receive Medicaid without the need to document their citizenship, at least until their first birthdays. However, the same treatment is not afforded to children born in this country to women who are also Medicaid

recipients, but whose benefits, because of their immigration status, are limited in scope to labor and delivery. 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. There are thousands of babies born annually in Maryland to undocumented immigrants. Navigating this complex set of rules will be particularly challenging to parents who have cultural and linguistic barriers. 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. It should also clarify that no child whose birth was paid for by Medicaid needs to document his or her citizenship for at least the first year.

4. **EXEMPTION FROM THE DOCUMENTATION REQUIREMENTS SHOULD BE EXTENDED TO ADDITIONAL GROUPS.**

As mentioned previously, it is a very positive development that the Rule now exempts Medicare and most SSI beneficiaries from the documentation requirements. Using its authority under 42 U.S.C. §1396b(x)(2)(C), CMS should also exempt certain 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 is comprised of *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 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.

- In addition, CMS should exempt Medicaid applicants and beneficiaries who also receive or have in the past received TANF or SCHIP benefits, as such people have already established their citizenship in the context of those programs. Indeed, in Maryland, TANF recipients do not fill out a separate Medicaid application, but get medical assistance due to their receipt of TANF. These TANF recipients are therefore in much the same position as the foster children discussed in Comment 1 above. They do declare their citizenship, as they are required to do by § 1137(b) (which distinguishes them from foster children), but they do so for the purpose of getting TANF, not Medicaid.

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

5. **CMS SHOULD AMEND THE RULE TO CREATE A MEANINGFUL OUTREACH PROGRAM AS REQUIRED BY § 6036(C) OF THE DRA.**

The Rule does not describe or otherwise address any "outreach program" designed to inform and assist those affected by the new documentation requirements. The failure to have developed such a program ignores the mandate of § 6036(c) of the DRA, but more importantly it has left beneficiaries and states alike in the dark as to what is mandated, permissible or prohibited with regard to helping beneficiaries comply with these new provisions. CMS should develop an outreach program that is truly designed to reach out, *i.e.*, to assist those whose eligibility might otherwise be frustrated by the new rules. As part of that effort, it should amend the proposed Rule to eliminate or modify the following policies that are likely to have exactly the opposite impact.

- Eliminate the requirement that beneficiaries are responsible for the cost of qualifying documents, and that the federal government will not reimburse the states if they pay for the required evidence. Forcing applicants and beneficiaries to pay for evidence of their immigration status essentially imposes an application fee for Medicaid.

- Require the states themselves, not "a representative," to provide sufficient assistance to people with disabilities to afford them the same opportunity to benefit from Medicaid as is available to people without disabilities.

- Expand the list of reasons why a person may require special assistance to include, for example, people who are limited English proficient (LEP), and everyone who is homeless or who has been displaced by a natural disaster, such as a hurricane or a fire.

- Clarify that states can extend the reasonable opportunity period for the period that they and the applicant deem necessary to allow any applicant, but especially those deemed to be in a "special population", time to comply with the documentation provisions.

6. **THE DOCUMENTATION STRUCTURE ESTABLISHED BY THE RULE IS UNNECESSARY AND WILL RESULT IN IMPROPER DELAYS AND DENIALS OF NEEDED MEDICAID BENEFITS.**

The Rule establishes an elaborate priority structure for the documents that will be deemed acceptable verification of citizenship status. Neither § 6036 of the DRA nor any administrative imperative requires such a structure. Indeed, the existence of the proposed hierarchy will at a minimum cause both state Medicaid agencies and would-be Medicaid beneficiaries to waste time unnecessarily seeking evidence of higher priority when perfectly adequate evidence is readily available. Evidence either does or does not suffice to verify citizenship, and the Rule sets forth a long, if incomplete, list of evidence that CMS has deemed ultimately to be acceptable. If evidence anywhere on that list is available to an applicant or beneficiary, that evidence should be accepted in the first instance. Where, as here, evidence listed at a "higher level" is likely to cost money that most Medicaid beneficiaries do not have, the Rule should not require that it be provided or even pursued when acceptable evidence is more readily available.

The documentation regime created by the Rule is also faulty in its failure to provide a true method of last resort for people who, for reasons ranging from mental illness to natural disasters to past discrimination, simply cannot provide any of the listed documents. The closest thing to such a procedure in the Rule is the supposed ability to establish one's citizenship through the affidavit of others. But that procedure has been made so cumbersome that it is unlikely that very many people will voluntarily subject themselves to its indignities thus reducing its value to practically nothing. Nonetheless, there will be innumerable situations in which a person is unable to produce any of the documents listed in the Rule, not because (s)he has failed to cooperate but merely because (s)he has failed to succeed. In such circumstances, the Rule should allow the person to explain why (s)he cannot comply and allow the state to decide if the offered reason is credible. This is a procedure available to applicants for the SSI program, and it is no less warranted, or necessary, here.

7. **REQUIRING ORIGINALS OR CERTIFIED COPIES OF DOCUMENTS WILL INCREASE THE COSTS AND NEGATIVE ERROR RATE ASSOCIATED WITH THE DOCUMENTATION PROCESS.**

The Rule, at § 435.407(h)(1), specifies that only originals or certified copies of qualifying documents may be accepted to verify citizenship or identity. Section 6036 of the DRA imposes no such requirement. Requiring originals or certified copies will certainly increase the cost of acquiring any necessary evidence, and will almost as certainly require people who already have documents such as birth certificates to acquire new copies that comply with this gratuitously burdensome provision. In addition, if § 435.407(h)(1) is not amended, it will effectively reinstate the requirement that people apply for Medicaid in person, for no one of even average intelligence would be willing to send a valuable original document through the mail to a large and often impersonal bureaucracy. Requiring people to appear in person to protect their documents will have an especially burdensome impact on the working poor, many of whom cannot take time off from work without jeopardizing their jobs.

In addition, this requirement will pose a huge, and possibly impossible, burden on eligibility offices. For example, in Baltimore, the primary Medicaid and SCHIP eligibility office is Baltimore HealthCare Access, Inc. BHCA has an active caseload of 32,000 clients and receives approximately 90% of its applications via the US postal service. The BHCA offices were

designed to accept applications through the mail as no face-to-face interview is required. BHCA does not have the infrastructure or physical space to accept original documentation for clients with only one office assistant to receive the public and two chairs in the waiting room.

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

8. **CMS SHOULD NOT REQUIRE THAT DOCUMENTS BE DATED AT LEAST FIVE YEARS BEFORE THE ORIGINAL MEDICAID APPLICATION DATE.**

A number of documents listed in 42 C.F.R. § 435.407(c) and (d) can only be accepted as proof of citizenship if they are dated at least five years before the applicant's or beneficiary's *original* application for Medicaid. Once again, 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. Additionally, birth records may be amended for many legitimate reasons that have no bearing on a person's citizenship at birth. Especially in the absence of any attempted explanation by CMS of what it believes it is accomplishing with such onerous requirement, the five year requirement 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.

9. **CMS SHOULD CLARIFY THAT ONCE A PERSON HAS SUCCESSFULLY VERIFIED CITIZENSHIP IN ONE STATE (S)HE NEED NOT DO SO AGAIN IN ANOTHER STATE.**

The Rule, at 42 C.F.R. § 435.407(h)(5), clearly states that documentation of citizenship and identity should be a one time event. However, what is less clear is whether a person who has already established eligibility for Medicaid in New Jersey, for example, can later get Medicaid in Pennsylvania without again providing documentation. This appears to be the intent of the Rule, but clarification is important, especially if the Rule is not amended to lessen the financial cost to applicants of compliance.

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

10. CMS SHOULD SIMPLIFY THE VERIFICATION PROCESS SET FORTH IN THE RULE SO THAT THE TIME ESTIMATES FOR COMPLIANCE MIGHT ACTUALLY BE MET

CMS estimates that it will ordinarily take an applicant for or beneficiary of Medicaid ten minutes "to acquire and provide" the documentation required by this Rule. CMS further opines that it will ordinarily take a state five minutes "to obtain acceptable documentation, verify citizenship and maintain current records." These estimates are so wildly inaccurate that one is tempted to believe that they were calculated for some other proposed rule and accidentally published with this one. Even if one incorrectly assumes that the average Medicaid recipient already has an original or certified copy of a high level qualifying document, and therefore does not have to engage in the paper chase created by the Rule, the time estimate for applicant compliance is unreasonably low. In addition, the Rule fails to take into consideration the length of time an applicant will wait in the agency waiting room to see a worker to whom they are required to present this documentation. In Baltimore City, applicants can typically be required to wait several hours to see a worker.

The estimate for state compliance is simply unrelated to reality. Especially given the absence of a meaningful outreach program on the part of CMS, it will almost always take a state more than five minutes just to explain to a Medicaid applicant what it is (s)he is supposed to do and what the available options are. Further, given the Rule's imposition of a hierarchy of preference on the states, a worker, even if presented with qualifying documentation, will have to ascertain that the applicant cannot acquire some higher level document, and if not, why not. There is simply no way that this will ever be accomplished in five minutes. Then, of course, one must take into account those thousands, perhaps millions, of people who fall within the category of "special populations" and will predictably need special assistance from the state. If such people on average require just an hour of the state's time, then the overall CMS time estimate for state compliance must assume that other Medicaid applicants can on average be served in about a minute each.

In short, the time estimates given in the Rule do not represent a serious effort at compliance with the Paperwork Reduction Act. CMS should either greatly simplify the documentation process so that compliance is at least possible within the preposterously short time frames suggested by the Rule, or it should provide the public with a responsible, accurate estimate. We suggest that a conservative, good faith estimate is likely to be an average of no less than two hours for applicant compliance, and an average of at least 30 minutes per person for state compliance.

Estimated a bit more accurately, the manner in which CMS has proposed to implement § 6036 of the DRA looks to be a colossal expenditure of time – perhaps thousands of person-years – much of which is totally unnecessary. Rather than impose such a monumental, and perhaps

unprecedented burden on the states and beneficiaries alike, CMS should do away with the hierarchy contained in the Rule and otherwise simplify the documentation requirements so that the burdens imposed more nearly equate with the benefit to be gained.

The Public Justice Center would like to thank you for the time you have taken to consider these comments and hope that you will find them helpful as you consider the best ways to improve the proposed Rule.

Very truly yours,

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410-625-9409, ext. 223

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Submitter : Ms. Nancy Jewell **Date:** 08/11/2006

Organization : Indiana Minority Health Coalition

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment

Regulatory Impact Statement

Regulatory Impact Statement

See Attachment

CMS-2257-IFC-437-Attach-1.DOC

August 11, 2006

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

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

We, the Indiana Minority Health Coalition, Inc. are a statewide, non-profit, consumer advocacy group that seeks to reduce and eliminate health disparities in Indiana. Our mission is to enhance the quality of life through education, advocacy, and quality health care services for racial/ethnic minorities; as well as conduct research and training, develop policy, and create and maintain a broad-based network of affiliate agencies.

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 component of the DRA policy became effective on July 1, and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

As consumer advocates that seek to improve healthcare access for racial and ethnic minorities in Indiana, we are deeply concerned and disappointed that CMS has not acted to minimize the likelihood that U.S. Citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage. Our comments below highlight four areas that CMS should modify in the final rule.

Our comments address the information collection requirements of the regulations. 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. More specifically, we believe that the estimated time of five to ten minutes for processing is impractical in light of the new requirement. Requiring that individuals obtain and submit originals and certified copies adds to the time compliance. Furthermore, our constituents will probably have to visit state offices to submit them, which impose additional hardships since many of our constituents already have challenges with obtaining needed transportation services. Moreover, state agencies will have to meet with individuals, make copies of their documents, and maintain records depleting even more resources that many states just do not currently have.

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).

It is our understanding that under the DRA, documentation of citizenship is not a requirement of Medicaid eligibility. Therefore, an applicant that establishes that he or she is a citizen and meets all eligibility criteria should receive Medicaid services. 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. Unfortunately, the consequence of this prohibition to grant citizens coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, racial/ethnic minorities, 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 is disheartening to know that 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. This is further exacerbated when considering that most applicants are likely to be unaware of the new requirement, and there are likely to be significant delays in assembling the necessary documents.

As consumer advocates for thousands of racial/ethnic minority, low-income pregnant women and their children, we are concerned that families will not use preventive care and our constituents will use the emergency room for primary care services. This will lead to further economic burdens on both the consumers and providers of healthcare, as well as increase barriers to attaining healthcare services, especially our minority constituents that already face other access barriers such as transportation, institutional racism, etc.

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.

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

Infants born in U.S. hospitals are among the children subject to the documentation requirements. 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).

It is our understanding that current law states that infants born to U.S. citizens receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon 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. 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. In light of the fact that the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is a by definition a citizen, this rule does not make sense. 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.

Due to the inflexibility of the rule, states would have to prohibit granting coverage until documentation of citizenship is provided. This means that hospitals and physicians may be less likely to provide the best quality care due to the risk of delay or denial of reimbursement for treatment. In turn, this further contributes to the widening health disparities gap as disproportionate number of individuals that would be affected are our minority constituents.

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.

While we will continue to work with healthcare providers to meet the needs of these individuals, we are concerned that our partnering providers will not be reimbursed for the services rendered to these applicants and beneficiaries who cannot document their citizenship increasing the likelihood that our referrals will be turned away. Thus, greatly impairing our efforts to increase access and reduce and eliminate health disparities.

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

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

It is our understanding that the DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. However, CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1). This requirement adds greatly to the information collection burden of the regulations and calls

into question the estimate that it will only take applicants and beneficiaries ten minutes and state agencies five minutes to comply.

We believe that 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.

Furthermore, we believe that 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.

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

Conclusion

In short, we urge CMS to revise the new requirements so it is more user-friendly for applicants, beneficiaries, and states. We urge CMS to implement the following revisions:

- Grant coverage to U.S. citizens once they declare they are citizens and meet all eligibility requirements.
- Accept state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital as satisfactory documentary evidence of citizenship and identity.
- Adopt the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship.
- Nullify the submission requirements of original or certified copies by applicants and beneficiaries

We believe that making these changes would lessen burdens and create better efficiencies within the system.

Submitter : Ms. Janet Murguia **Date:** 08/11/2006

Organization : National Council of La Raza (NCLR)

Category : Other

Issue Areas/Comments

GENERAL

GENERAL

NCLR's comment is an attachment.

CMS-2257-IFC-438-Attach-1.PDF

NCLR
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August 11, 2006

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

Re: Medicaid Program; Citizenship Documentation Requirements (CMS-2257-IFC)

Dear Administrator McClellan:

On behalf of the National Council of La Raza (NCLR), the largest Hispanic civil rights and advocacy organization in the United States, I submit these comments to you regarding the Interim Final Rule on new citizenship documentation requirements contained in Section 6036 of the Deficit Reduction Act (P.L. 109-171). The Medicaid program is vitally important to the Latino community. More than ten million Latinos, the majority of whom are citizens, use Medicaid as their primary source of health coverage. This new law, which dramatically shifts the process for enrollment and retention of Medicaid, will have a great impact on the ability of Latinos to gain meaningful access to health coverage.

NCLR is deeply concerned that the requirement to provide documented evidence of citizenship creates undue burden for Medicaid recipients and applicants by increasing the time and resources that must be dedicated to the Medicaid enrollment process, when there is ample evidence that points to the previous "self declaration process" as a reliable methodology to prevent fraud.[1] Many eligible persons will go without needed health care while they are completing the documentation process. In fact, we already have encountered such circumstances where eligible citizens have had their Medicaid enrollment delayed, because they could not secure documentation. In many cases, Medicaid applicants already face a complicated enrollment or redetermination process because they are financially strained, have limited free time, and may be ill at the time of application.

On the contrary, we applaud the Centers for Medicare and Medicaid Services (CMS) for departing from the guidance issued to State Medicaid Directors on June 9, 2006, and moving towards a policy that will give states more flexibility to procure proof of citizenship and minimize the economic and administrative strain on resources. However, NCLR believes that

[1] Department of Health and Human Services , "Self Declaration of U.S. Citizenship for Medicaid," Office of the Inspector General July 2005.

the final Rule should reflect further efforts to reduce excess hardship to states, applicants, and recipients.

NCLR is also encouraged that CMS has started basic outreach and developed materials to notify potential applicants and enrollees of this new change in the enrollment process. As CMS employs subsequent outreach efforts, we hope that you will consider some issues that may be particularly relevant to Latinos and other ethnic minority communities. For instance, there may be language barriers that prevent persons seeking Medicaid from understanding the new proof of citizenship requirements, limiting their ability to secure documentation in advance of enrollment or redetermination. It is already commonplace that many individuals with limited-English-proficiency (LEP) forgo public assistance because there are not sufficient materials and information available in their primary language. Unless these laws are effectively communicated to LEP persons, even more eligible persons will be denied access to Medicaid, because they are unaware of the change in law. In addition, there may be confusion among eligible "qualified" noncitizens, which may cause them to perceive that they must show proof of citizenship in order to receive Medicaid. While the law does not affect noncitizens, NCLR requests that CMS continues to clarify and announce that noncitizens do not have to prove citizenship status in order to receive Medicaid, but rather are subject to their own verification rules.

The comments offered below focus on provisions in the Rule which will make a disparate impact on the Latino community. However, we also share the concerns of many other communities and citizens that will be affected by these new requirements. As you finalize the Rule, NCLR urges you to consider the following:

Requiring Original Documents or Certified Copies to Prove Citizenship (§ 435.407 (h))
NCLR believes that CMS should reconsider the Rule requirement that the only documentation allowed to prove citizenship are copies certified by the issuing agency or original documentation. This provision undermines the ability of agencies to reduce administrative burden and streamline enrollment through mail-in applications or other processes. If Medicaid participants are required to submit original documentation, many of them will have no choice but to present their documentation in person as loss of a document could result in serious financial loss and obstruct their ability to obtain other services. For instance, naturalization certificates cost $220 to replace, passports are approximately $90 to acquire, and replacement or original birth certificates can cost anywhere from $5-$23, depending on the state. Further, state agencies may already have copies of identifying or citizenship documents on file, due to other paperwork requirements. It is wasteful to make those agencies again require documentation from individuals, when it has already been secured at a previous date. NCLR recommends that the final Rule allow persons to present copies of original documents to prove citizenship and permit states to use previously established internal records to satisfy the proof of citizenship requirement.

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. State agencies will have to meet with individuals, make copies of their documents, and develop systems to

maintain records, a process that is likely to go beyond the suggested time frames provided in the Rule.

One-Time Citizenship Documentation Requirement (§ 435.407 (i))
NCLR agrees that the Rule should maintain that citizenship documentation requirements must only be satisfied once in the application or redetermination process. However, CMS should also clarify that this Rule apply across state lines. Subjecting individuals who satisfy the new documentation requirements to multiple proofs of citizenship tests will simply bog down state agencies with duplicative administrative tasks.

Medicaid Coverage During the Application Process (§435.930)
NCLR agrees that the Rule should permit those already on the program to remain eligible while documentation is gathered. However, individuals who apply for Medicaid and have met all of the other eligibility requirements and are working to prove their citizenship should be covered under the program while they obtain their documentation. In the case of someone who needs a document that must be acquired through U.S. Citizenship and Naturalization Services, such as a Certificate of Citizenship, it can take upwards of one year to receive that documentation. Further, like many victims of Hurricane Katrina, those in a natural disaster may not have any documents readily available which prove their citizenship. The Rule should properly reflect, as in §435.930, that a new applicant who is making an effort to obtain proof of citizenship, should receive presumptive eligibility for the Medicaid program.

Treatment of Children of "Not-Qualified" Noncitizen Adults (§435.407 (a) and (b))
NCLR believes that the treatment of children born to "not-qualified" citizen adults under the Rule violates equal protection rights. Children born in the U.S. are considered citizens of the U.S., regardless of their parents' immigration or citizenship status. As in current U.S. law, Medicaid eligibility for any U.S.-born child should not be based on a parent's qualification for Medicaid. CMS should instruct health care providers to accept a record of payment for a birth in the U.S. as sufficient proof of citizenship for a U.S.-born child. Further, CMS should amend 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. Finally, proof of payment at birth for a U.S.-born child should be construed as and be sufficient evidence of the child's eligibility for the entire period of Medicaid receipt, rather than just one year.

Thank you for your consideration of these comments. NCLR hopes to continue to work with CMS to minimize denial of benefits to eligible persons that could result from implementation complications.

Sincerely,

Janet Murguía

Janet Murguía
President and CEO

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

Organization : Christina Perdos

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : Ms. Thea Lee **Date:** 08/11/2006

Organization : AFL-CIO

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-441-Attach-1.PDF

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
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August 1, 2006

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

Dear Sirs/Madams:

In response to the notice by the Centers for Medicare and Medicaid Services (CMS) of the Medicaid Citizenship Documentation Interim Final Rule (71 Fed. Reg. 39214), the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) is submitting the following comments regarding implementation of 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 AFL-CIO represents 9 million working men and women, including health care workers and state and local government employees who will have a role in the implementation of these new citizenship documentation requirements. We are deeply concerned about the undue hardship this new requirement will present for low-income families either already enrolled in Medicaid or seeking enrollment. As a result of this new documentation requirement, low-income families may experience a delay or an interruption in getting critical health care services, health care providers may incur non-reimbursable expenses, and state and local governments will face new challenges and cost burdens in trying to implement a requirement that goes well beyond the intended purpose of denying benefits to ineligible individuals. Instead, the rule may have the effect of denying benefits to eligible individuals who will either forgo needed care or seek uncompensated care.

Regarding the interim final rule, we commend CMS for mitigating the impact of the new documentation requirement by:

1) Recognizing the "scrivener's error" in the statute and exempting individuals on Social Security Income (SSI) or Medicare from the new rule.

2) Allowing the use of the SDX and state vital records databases to cross-match citizenship records, as well as allowing states to use state and federal databases to conduct identity cross-matches.
3) Clarifying that the new citizenship documentation requirement does not apply to "presumptive eligibility" for pregnant women and children in Medicaid, and that states may continue to use this effective and important strategy for enrollment.

These important steps will alleviate the burden of the documentation requirement for millions of vulnerable citizens. However, many aspects of the rule are problematic and overly burdensome.

Concerns about the Rule

We are deeply concerned 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 key areas of concern where we believe CMS should modify the final rule.

435.407(a) A state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital should be considered proof of citizenship and identity.

According to the preamble to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal. 71 Fed. Reg. at 39216. The preamble also states that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their birth before they can get any coverage at all. 71 Fed. Reg. at 39216. However, in both situations, there is no question that these children are American citizens by virtue of their birth in U.S. hospitals. Moreover, the states have first-hand knowledge of the citizenship of these children because Medicaid paid for their births.

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

The easiest way to solve this problem is to allow states to use Medicaid billing records of births it has paid for as proof of U.S. citizenship and identity. Children born in the U.S., whose births

were paid for by Medicaid, should be able to get and keep Medicaid if they are otherwise eligible without the need for their families to provide any additional proof that they are citizens.

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

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

While Native American tribal documents can be used as proof of identity, the regulations do not permit tribal enrollment cards to be used as evidence of citizenship. (The 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). The federal government recognizes over 560 tribes in 34 states, each of which issues enrollment cards to its members for purposes of receiving services from tribal resources and voting in tribal matters. With very few exceptions, tribes issue enrollment cards only to individuals who are born in the U.S. (and have a U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship.

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. An exception should be made in the case of a federally-recognized tribe located in a state that borders on Canada or Mexico that the Secretary finds issues tribal enrollment cards to non-citizens. In such cases, tribal enrollment cards should qualify as evidence of identity but not citizenship.

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

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

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

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

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

Nothing in the DRA itself requires Medicaid applicants or recipients to submit original or certified copies to the Medicaid agency in order to fulfill this new documentation requirement. Therefore, we urge CMS to reconsider and to eliminate the requirement in 42 CFR 435.407(h)(1) that original documents or certified copies be submitted.

435.407(j) U.S. Citizens applying for Medicaid 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 requires states to "give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." 42 CFR 435.407(j).

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

U.S. citizens who have applied for Medicaid, who meet all of the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage. Some 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 urge CMS to revise 42 CFR 435.407(j) so that applicants who declare they are U.S. citizens and meet all the Medicaid eligibility criteria are enrolled in Medicaid, while they have a "reasonable opportunity period" to obtain the documentation necessary to prove their U.S. citizenship and identity.

435.407(k) The final rule should include a safety net for those who cannot prove citizenship by adopting the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship.

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

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

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

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

Conclusion

While we appreciate the steps CMS has already taken to mitigate the harm of the new Medicaid citizenship documentation requirement for certain populations, we believe strongly that the concerns listed above demonstrate how the interim final rule, unless substantially changed, will result in eligible Medicaid recipients and applicants losing or being denied coverage for critical health care services.

Sincerely,

Thea Lee
Policy Director

Submitter : Ms. Lucy Joyce **Date:** 08/11/2006

Organization : Ms. Lucy Joyce

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

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

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Submitter : Ms. Kathleen Westcoat **Date:** 08/11/2006

Organization : Baltimore HealthCare Access, Inc.

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-443-Attach-1.DOC

August 11, 2006

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

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

Baltimore HealthCare Access, Inc. is a quasi-public agency of the Baltimore City Health Department. Our mission is to promote access to health care and related services. Baltimore HealthCare Access, Inc. has the lead eligibility and determination role for the Maryland Children's Health Insurance Program in Baltimore City.

At least 42 million individuals nationwide and 200,000 Baltimore City residents enrolled in Medicaid will be impacted by the new citizenship and identity law. We are deeply concerned that these individuals enrolled in Medicaid, as well as the thousands of people who apply each year, will find it difficult to prove their citizenship and/or identity, and thus keep or obtain coverage in Medicaid.

We commend CMS for ameliorating the impact of the new documentation requirement by: exempting individuals on SSI or Medicare from the new rule; allowing the utilization of state databases such as vital records for citizenship/identity matches; and clarifying 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 strategy for enrollment.

Concerns about the Rule

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

According to the preamble to the rule, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal (newborns are categorically-eligible for one year if their mothers were categorically-eligible at the child's birth and would have continued to be eligible if they were still pregnant during this time). 71 Fed. Reg. at 39216. The preamble also states that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their

birth before they can get any coverage at all. 71 Fed. Reg. at 39216. In both of the situations above, there is no question that these children are American citizens by virtue of their birth in U.S. hospitals. Moreover, the states have first-hand knowledge of the citizenship of these children because Medicaid paid for their births. Furthermore, there are thousands of American born children born annually in Baltimore city to undocumented immigrants; navigating this complex set of rules will be particularly challenging to parents who have cultural and linguistic barriers.

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

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

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

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

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

Baltimore HealthCare Access, Inc. recently came across a case of a nineteen year old undocumented immigrant who gave birth in her home. The pregnant woman was afraid to

disclose her pregnancy to her family. Instead of utilizing a health care facility to deliver the baby, she gave birth to the baby at home with the assistance of the next door neighbor. Under the new law, this US citizen born child will have much difficulty in declaring citizenship and identity as the only two individuals that know this child was born in Baltimore was the mother and neighbor. In addition to the above example, Baltimore HealthCare Access, Inc. has worked with hundreds of teenagers over the years who have delivered their babies at home due to not wanting to disclose the pregnancy to their families. Obviously, first and second tier documentation would not be available in a timely manner for the scenarios described above.

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

The new rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. 71 Fed. Reg. at 39225. This provision of the rule poses a significant burden for both individuals and state agencies. Over the years many states have simplified and streamlined application procedures for Medicaid, including adopting a mail-in application process and eliminating face-to-face interviews.

Baltimore HealthCare Access, Inc. has an active caseload of 32,000 clients. We receive approximately 90% of our applications via the US postal service. The requirement that each head-of-household produce original documents for their families will put undue burden on the clients as well as BHCA's Eligibility staff. Our offices were designed to accept applications through the mail as no face-to-face interview is required. BHCA does not have the infrastructure/physical space to accept original documentation for our clients with only one office assistant to receive the public and two chairs in our waiting room.

The mail-in application process was designed to reduce Medicaid administrative costs by eliminating the interview process and reducing staff time required for each application and renewal. They have been shown to make Medicaid more effective by increasing participation in Medicaid among people who are eligible for it. While CMS clarifies in the preamble of the rule that the documentation requirement does not prohibit utilization of mail-in application and renewal processes, the requirement that individuals submit original documents undermines those efforts. It is highly unlikely that individuals will want to mail in their original documents and rely on the Medicaid agency to return them. Moreover, mailing original documents back to people would be quite costly for states. Furthermore, it is impractical for someone to mail in a driver's license to document their identity for Medicaid purposes because they may need to drive before they get it back. This provision of the rule will only delay coverage for new applicants forced to schedule appointments with the Medicaid agency to fulfill this requirement. Some applicants may even be discouraged from completing the application process.

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

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

Baltimore HealthCare Access, Inc. urges CMS to reconsider and to eliminate the requirement in 42 CFR 435.407(h)(1) that original documents or certified copies be submitted.

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

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

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

Baltimore HealthCare Access, Inc. is concerned that new applicants applying for MCHP will not have the same "reasonable opportunity". All new applicants must produce citizenship and identity documents to our office within the mandated time frame or risk being denied Medicaid eligibility. This short eligibility determination time frame will not give many the chance to collect their required documents.

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

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

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

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

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

Baltimore HealthCare Access, Inc.urges CMS to add a new provision at 42 CFR 435.407(k) which would adopt the SSI rules safety net.

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

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

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

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

Conclusion

Baltimore HealthCare Access, Inc. thanks CMS for reviewing our comments. We strongly believe the steps outlined above should be taken so thousands of Baltimore City residents will not lose their essential health care benefits. If you have any questions, please contact Kathleen Westcoat, MPH at Baltimore HealthCare Access, Inc. (410) 649-0521.

Sincerely,

_____

Kathleen L. Westcoat
President
Baltimore HealthCare Access, Inc.

Submitter : Mr. James Stewart **Date:** 08/11/2006

Organization : Planned Parenthood of Wisconsin

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-444-Attach-1.DOC

August 11, 2006

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

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

Dear Mr. McClellan:

I am writing on behalf of Planned Parenthood of Wisconsin (PPWI), a state wide Planned Parenthood affiliate that serves approximately 71,000 patients annually. PPWI submits the following comments 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 changes the requirements for all U.S. citizens applying for or receiving Medicaid benefits by mandating that recipients or new enrollees produce documentation proving citizenship and identity. PPWI is deeply concerned about the impact this provision will have on the millions of Medicaid eligible citizens nationwide and especially on the 850,000 Wisconsinites served by Medicaid.

Planned Parenthood of Wisconsin is the state's largest reproductive health care provider and we have been serving patients for 71 years. Currently we see over 71,000 patients at 30 health centers in all regions of the state. PPWI is the Title X grantee in Wisconsin, and our delegate agencies serve another 10,000 patients annually. Each year, Planned Parenthood of Wisconsin is challenged to continue to deliver affordable health care in the face of rapidly increasing health care costs which cannot be absorbed by our patient base. We currently provide Medicaid health care services including health exams, birth control services, cervical and breast cancer screenings, and sexually transmitted infection testing and treatment. For many of our patients, Planned Parenthood is the only health care provider that they see during the year.

Of the over 70,000 patients we treated in 2004, almost 40,000 of them were at or below the federal poverty level, making less than $9,000 a year. In 2004, we had 170,672 clinic encounters with our patients. Literally, access to family planning services saves women's lives every day, as early detection of cervical cancer is critical to successful treatment. Many of these patients were eligible for preventive health care services at our health centers under the Medicaid program. Therefore, a great majority of our patient population—either under traditional Medicaid or the Medicaid Family Planning Waiver Demonstration—are subject to the new citizenship and identity requirements.

Unfortunately, many qualified individuals who desperately need access to health care risk being denied these services because of the DRA section 6036 requirements. This is the case because many Medicaid recipients or enrollees simply do not have access to the required documentation. For example, according to a 2006 report from the Center on Budget and Policy Priorities, U.S. born adults with incomes below $25,000 are almost twice as likely as adults with incomes above $25,000

to report not having a passport or birth certificate. By requiring applicants to provide documentation, the DRA section 6036 places severe barriers on these eligible recipients. Thus many eligible Medicaid recipients will be forced to go without health care.

We note that states are allowed 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)). In this regard, we are pleased that Wisconsin has decided to use its vital health and other available databases to check for birth certificates for Wisconsin born citizens. Nevertheless, if for whatever reason these databases do not find a match for the Wisconsin-born citizen, he or she will have to locate that documentation.

In those instances, PPWI is deeply concerned that obtaining the required documentation will prove difficult for many individuals. In Wisconsin, to obtain a copy of a birth certificate in person, an individual must produce one of the following sources of identification: Wisconsin driver's license, Wisconsin photo ID or a government issued employee ID card or badge with a photograph. Many eligible residents will not have any of these required forms of identification. In addition, the cost of obtaining birth certificates for families may be entirely prohibitive. An individual must pay $12 up front for the Office of Vital Records to perform the search—this charge is required even if the search does not produce a birth certificate. If requesting a birth certificate by mail, an individual must send a personal check or money order. Medicaid recipients born out of Wisconsin may have special difficulties in obtaining their birth certificates, as discussed below.

For non-English speaking citizens, obtaining a birth certificate from Vital Records office could prove to be very difficult since they may not be able to navigate the administrative process necessary to obtain the documents. The same scenario would ring true for other marginalized populations like the homeless or those patients without checking accounts or credit cards to pay Vital Records in advance for the documentation. Thus many eligible citizens will simply be unable to obtain the necessary documentation.

Therefore, PPWI is very disappointed that the Centers for Medicare and Medicaid Services (CMS) did not capitalize on the opportunity to mitigate the overwhelmingly negative impact of section 6036 on eligible Medicaid recipients and enrollees. In fact, the interim final rule sets forth requirements that are often more burdensome than what section 6036 requires. Planned Parenthood of Wisconsin would like to use these comments to encourage CMS to modify the interim final rule to ensure that the greatest number of eligible patients have timely access to the critical health care services they need.

Family Planning Medicaid Recipients and Enrollees Are Particularly Vulnerable Under §6036

PPWI is especially concerned about the impact the interim final rule will have on individuals seeking family planning services. About 60% of our patient base relies on Medicaid for access to these crucial preventive health care services. Since meeting the burdensome requirements in section 6036 will prove too difficult for many patients, fewer eligible Medicaid recipients will be obtaining these preventive services.

From the perspective as the state's largest reproductive health provider, this lack of access to preventive health care will not only endanger the public health but it will also increase taxpayer

costs. For example, Wisconsin is experiencing an epidemic of sexually transmitted infections, particularly Chlamydia. Wisconsin has the 10th highest Chlamydia rate in the country, the highest in the Midwest. Women infected with Chlamydia often do not have any symptoms. If left untreated, Chlamydia can lead to infertility, pelvic inflammatory disease, endometriosis and cervical cancer. In addition, men and women with certain STIs like Chlamydia are 3 to 5 times more likely to contract HIV (Wasserheit, 1992). Infants can become infected with Chlamydia during birth, causing conjunctivitis, bronchiolitis, and pneumonia (PPFA, 1997). Chlamydia is the leading cause of neonatal conjunctivitis (CDC, 1993).

When patients cannot obtain preventive health care, they often wait until their health conditions become serious, complicated and expensive before seeking treatment. Then, the only option patients have for treatment is the most expensive option—emergency room treatment. The bottom line is that when patients cannot obtain preventive reproductive health care, the result is a greater population with more dangerous and costly reproductive health conditions.

We have outlined two areas where CMS should take into consideration the special health care needs of family planning Medicaid recipients and enrollees:

1. CMS has exempted certain vulnerable populations from the burdensome citizenship and identity requirements. CMS should also exempt individuals receiving Medicaid services under the Family Planning Waiver Demonstration, section 1115, from the citizenship and identity requirements.

In Wisconsin we are fortunate to have the Family Planning Waiver Demonstration project. Wisconsin, along with 23 other states, has 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. For Wisconsin, the family planning demonstration program is at the cornerstone of improvements in quality of health care over the past fours years. Unfortunately, the citizenship and identity documentation requirements strike at the core of how family planning demonstration programs are designed and could ultimately render them meaningless.

In Wisconsin, we refer to the family planning waiver program as the Healthy Women Program. The Health Women Program is so important to our state because the family planning needs among Wisconsin citizens are so great that they can not be met without the program. According to the Guttmacher Institute, 640,420 women in Wisconsin are of child bearing ages (between 13 and 44) and in need of birth control services and supplies. Of this, 300,510 women are in need of publicly-supported birth control services. Prior to this program, the network of family planning providers in Wisconsin served approximately 110,000 women, leaving almost 200,000 women without access to family planning services. A significant percentage of Wisconsin low-income women and teens are in need of birth control and are at a high risk of unintended pregnancy and disease.

The Healthy Women Program is filling some of this need. To date, over 64,000 women are receiving services under the Healthy Women Program. In 2005 alone, Planned Parenthood served 47,566 women ages 15-44 under this program. Twenty-six percent of these patients were new patients that we had not seen before this Medicaid benefit existed. Also that year, we provided 94,238 contraceptives, 12,573 cervical cancer tests, 577 colposcopy (cancer) diagnostic screens,

5,205 pregnancy tests, 13,533 sexually transmitted infections tests, including HIV, and 4,266 sexually transmitted infection treatments under the Healthy Women Program.

The interim final rule completely threatens the viability and impact of Wisconsin's Health Women Program by requiring individuals who receive these services to produce citizenship and identity 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 like Wisconsin's 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 Healthy Women Program are limited in scope, but their impact is tremendous. Each year, thousands of Wisconsin women rely on this program to prevent unintended pregnancies and to access other crucial health care services.

In addition to expanding access to such vital health care services, the Healthy Women Program offers huge cost-savings for the state and federal governments. The Wisconsin Department of Health and Family Services, the state department administering the Healthy Women Program, has indicated that the cost savings of the program during only one quarter of 2003 resulted in a net savings to the state of $3.3 million. The gross savings to the state was $9.1 million, less $5.8 million dollars in the cost of the program. This savings resulted because this program averted 1,200 pregnancies. If you spread this over an entire year, the conservative estimate for **Wisconsin is a cost-savings of over $12 million a year because of this program.** The total cost of providing family planning services under the Healthy Women Program is approximately $172 per enrollee, as opposed to the $7,132 cost of birth and delivery per Medicaid enrollee.

Requiring these family planning 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. In addition to the cost increase due to public health problems, Section 6036 also creates new administrative costs and burdens for the state. It requires administrative staff to spend time and resources ensuring that the proper documentation is provided. For those eligible residents who do not have birth certificates or passports, state workers will spend more time and resources leading residents through the administrative system to obtain these documents.

Planned Parenthood of Wisconsin strongly urges CMS to exempt this population from the documentation requirements in the final rule. Doing so will ensure that the Healthy Women Program recipients in Wisconsin will continue to make important strides in enhancing access to critical preventive services and reducing the rate of unintended pregnancies. Without such an exemption, Wisconsin will be faced with the very real possibility that costs associated with requiring citizenship and identity documentation will outweigh the savings the programs currently produce.

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

Wisconsin 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)). In this regard, we are pleased that Wisconsin has decided to use its vital health and other available databases to check for birth certificates for Wisconsin born citizens. About 40% of Medicaid participants in Wisconsin were born out of state, however, and they will have to try to track down their birth certificates. This process could prove especially cumbersome and cost-prohibitive for them, and the process for obtaining an out-of-state birth certificate could take several weeks.

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). As discussed above, many beneficiaries and applicants will face significant hurdles in documenting citizenship according to the provisions of the interim final rule. Therefore, 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.

In general, the hierarchy of document reliability that CMS set up creates a much larger burden than is necessary to implement section 6036. We strongly urge CMS not to limit the accepted documentation to the primary and secondary level of documents.

Conclusion

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

Thank you for your consideration.

Planned Parenthood of Wisconsin
James Stewart, CEO

Submitter : **Ms. Bekka Payack** **Date: 08/11/2006**

Organization : **Ms. Bekka Payack**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

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

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

Submitter : **Ms. Teena Keiser** **Date: 08/11/2006**

Organization : **UnitedHealth Group**

Category : **Health Plan or Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-446-Attach-1.DOC

OVATIONS
A UnitedHealth Group Company

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Minneapolis MN 55440-9472

To: Submitted via email to: www.cms.hhs.gov/eRulemaking

From: Teena Ballard Keiser, Director of Regulatory Affairs

Date: August 11, 2006

Re: Medicaid Program Citizenship Documentation Requirements Interim Regulation (File Code: CMS-2257-IFC)

We have reviewed the Medicaid Program Citizenship Documentation Requirements Interim Regulation and provide the following attached comments. These comments are provided on behalf of Ovations, and other UnitedHealth Group affiliates that manage Medicaid business (collectively "United"). Please note that, for the purposes of this letter, "United" includes the Ovations and AmeriChoice business units that manage the Medicaid business.

We greatly appreciate the opportunity to comment, and we look forward to continuing to work with CMS to develop successful products and services for Medicaid beneficiaries. If you have any questions or concerns on our comments, please contact me at 507/663-1844 or via email teena_keiser@uhc.com.

Citizenship Documentation Requirements Interim Regulation
42 CFR Parts 435, 436, 440, 441, 457, and 483

Comments Submitted by
UnitedHealth Group/Ovations and AmeriChoice
August 11, 2006

1. **Subject: Implementation Conditions/Considerations**

Citation: Implementation Conditions/Considerations, no regulatory citation; Preamble 71 F.R. 39215-6.

Issue: CMS interpretation of Provision 6036 of the Deficit Reduction Act (DRA) of 2005.

Recommendation: We agree and support CMS in its interpretation of the DRA exempting those entitled to or enrolled in Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI) from the documentation requirements.

Rationale: We believe that it was the intent of Congress to create an exemption for citizens and nationals and that it is appropriate to treat the reference to "alien" as an obvious clerical error. "Aliens" are not citizens, and thus cannot provide documentary evidence of citizenship suggesting that the intent of the Congress was to provide an exemption for citizens and nationals. Medicare and SSI beneficiaries by definition are the aged, frail, and disabled population, making them the population most likely to have difficulty in obtaining documentation of citizenship. We believe Congress intended that the exemption be made available to these beneficiaries and support CMS in its interpretation.

2. **Subject: Implementation Conditions/Considerations**

Citation: Implementation Conditions/Considerations, no regulatory citation; Preamble, 71 F.R. 39216.

Issue: Requirement of application for citizen children born to illegal alien mother who is eligible on the date of birth.

Recommendation: We urge CMS to exempt citizen children born to illegal alien mother from requirement of application and consider them "deemed" to have applied.

Rationale: We believe that the requirement for application by citizen children born to an illegal alien mother who is eligible at the time of birth is extremely burdensome. The child is by virtue of birth in the United States a citizen, and the delay in eligiblity could endanger the health and welfare of the child. Breaks in coverage add to administrative cost, jeopardize continuity and therefore quality of care, and could make the newborn member more costly to care for in the long term.

3. **Subject: Citizenship and Alienage**

Citation: Citzenship and Alienage, §436.406; ,Collection of Information Requirements; 71 F.R. 39220

Issue: CMS' estimate that it will take an individual 10 minutes to acquire and provide to the state acceptable documentary evidence and to verify the declaration may be understated.

Recommendation: We urge CMS to determine a more realistic estimate of the additional burden in obtaining acceptable documentary evidence.

Rationale: We believe that the 10 minute estimate for an individual to acquire documentary evidence may be understated and could be much higher to obtain first or second level documents if not already in their possession.

Submitter : **Ms. Cathy Roberts** **Date: 08/11/2006**

Organization : **Nutrition Consortium of NYS**

Category : **Consumer Group**

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Fed.Reg. 39214 (July 12, 2006) -- comments due by August 11, 2006

This provision of the Deficit Reduction Act of 2005 (DRA) requires U.S. citizens and nationals applying for or receiving Medicaid to document their citizenship and identity.