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

Organization : Children's Defense Fund California

Category : Other

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-448-Attach-1.DOC

CMS-2257-IFC-448-Attach-2.DOC

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

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

100% Campaign Headquarters
1212 Broadway, 5th Floor
Oakland, CA 94612
(510) 763-2444
(510) 763-1974 fax
100percentcampaign.org

Children Now
1212 Broadway
Fifth Floor
Oakland, CA 94612
(510) 763-2444
(510) 763-1974 fax

Children's Defense Fund
2201 Broadway, Suite 705
Oakland, CA 94612
(510) 663-3224
(510) 663-1783 fax

3655 S. Grand Avenue
Suite 270
Los Angeles, CA 90007
(213) 749-8787
(213) 749-4119 fax

The Children's Partnership
1351 3rd St. Promenade
Suite 206
Santa Monica, CA 90401
(310) 260-1220
(310) 260-1921 fax

Funded by The California Endowment

Dear Secretary Leavitt,

The 100% Campaign is a collaborative of three children's advocacy organizations — Children Now, Children's Defense Fund California and The Children's Partnership — working to ensure that every child in California has access to comprehensive, affordable health insurance coverage. We appreciate the opportunity 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).

With regard to implementing the DRA citizenship documentation requirements, we ask that you be guided by the overarching principle that these requirements be implemented in a manner that minimizes risk to eligible children and families in receiving timely health benefits and that reduces the burden on states and families in meeting these requirements.

To that end, we are pleased to see that the Interim Rule allows states to do a vital records match in lieu of requiring the presentation of 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. We feel these policies are important improvements over the earlier CMS guidance in this area. We also appreciate that the Interim Rule correctly clarifies 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. Finally, we are pleased that the Interim Rule clarifies that states can use the SDX system to verify citizenship for those SSI beneficiaries not subject to the

exemption (although verification of identity for many in this population will remain an issue).

Below are additional recommended changes to the Interim Final Rule, focusing on those aspects of the interim final rule that are likely to delay coverage to eligible children and are not mandated by § 6036 of the DRA.

Linking Eligibility to Documentation Requirements Will Lead to Needless Delays and Denials in Coverage

The Interim Final Rule should not link Medicaid eligibility to compliance with the DRA documentation requirements. The DRA does not make an individual's eligibility contingent upon compliance with documentation requirements; instead the Act makes federal financial participation (FFP) to states contingent upon such compliance.

While this distinction may seem semantic, it has significant consequences. Conditioning children's and families' eligibility and enrollment on the sufficient submission of documentations will lead to potentially damaging delays in and possible denials of coverage for those that are eligible. The most profound potential impact with regard to delays in coverage may be felt by pregnant women and their children, as almost half (45%) of all births in California are reimbursed by Medicaid. These mothers cannot wait several months before seeking vital prenatal care. Even if pregnant women receive presumptive eligibility, that coverage is temporary; applying for the necessary documentation (such as a passport) could take much longer, during which pregnant women may not have access to coverage.

It is vital for the health of eligible pregnant women and children for them to be able access the health benefits to which they are entitled while they obtain the required documentation. The regulations should be modified to explicitly clarify that states may enroll eligible individuals into coverage while they seek necessary documentation.

Data-matching for Citizenship

We are pleased to see that the Interim Final Rule clarified states' ability to check vital statistics for citizenship and check other programs' database for documentation for identification. However, we recommend that the regulations should be further modified to include data matches with other programs' documentation or record of citizenship as sufficient verification of citizenship for meeting the DRA documentation requirements. If other programs – often staffed with the same personnel that conduct Medicaid eligibility determinations – have been provided proof of citizenship (and have copies of such or have noted satisfactory compliance), Medicaid should be able to use that programs' verification of citizenship to meet the DRA citizenship requirements as well as identification.

Infants Born on Medicaid

The federal regulations should clarify that infants may meet the citizenship requirement if they are born to any mother receiving full or limited scope Medicaid coverage for the delivery. If states have the Medicaid claim for the child's delivery, those reports should be sufficient to document the child's citizenship, and the family should not be required to provide any further documentation of citizenship.

Exemption for Foster Care Children

The DRA citizenship documentation requirements do not apply to children receiving foster care benefits under Title IV-E of the Social Security Act, and thus, the Interim Final Rule should clarify their exemption. The DRA was explicit in directing to whom the new documentation requirements apply: namely that the requirements apply only to those who are required to declare their citizenship for establishing Medicaid eligibility.

Eligibility for foster care benefits does not require the declaration of citizenship. Medicaid eligibility is granted as a result of these children's qualification for foster care benefits. California's almost 100,000 foster care children are at risk of not receiving or losing their Medicaid health benefits if federal regulations incorrectly apply the DRA citizenship documentation requirements to them. It is likely that a high percentage of foster children will not have access to sufficient documentation and that foster parents will have limited ability to obtain the necessary documentation. Foster care children are an already a vulnerable population for whom the state has responsibility.

For these reasons, the regulations should be modified to clarify that foster care children are exempt from the DRA documentation requirements.

Thank you for this opportunity to provide comments and for your consideration of the above.

Sincerely,

Kristen Golden Testa
The Children's Partnership
CA

Andrea Margolis
Children Now

Deena Lahn
Children's Defense Fund

Submitter : **Ms. Elizabeth Lascoutx** **Date: 08/11/2006**

Organization : **Ms. Elizabeth Lascoutx**

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. Lorraine Sheehan** **Date: 08/11/2006**

Organization : **Medicaid Matters! Maryland**

Category : **Consumer Group**

Issue Areas/Comments

GENERAL

GENERAL

See attached.

CMS-2257-IFC-450-Attach-1.DOC

Medicaid Matters! Maryland

Medicaid Matters! Maryland
c/o Public Justice Center
500 E. Lexington Street, Suite 100
Baltimore, Maryland 21202
301-473-4816
1-775-667-4655 (fax)

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:

Medicaid Matters! Maryland is a statewide consumer-directed coalition which brings together a diverse set of more than 70 organizations representing persons with disabilities, children's advocates, seniors and the low income community. Our purpose is to advocate with a unified voice on behalf of Maryland's Medicaid program and the people it serves. 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.

Medicaid Matters! Maryland 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,

Lorraine Sheehan
Co-Chair
Maryland Disability Law Center
410-727-6352

Tom Liberatore
Co-Chair
National Multiple Sclerosis Society
443-641-1202

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

Organization : **Roxanne Warren**

Category : **Individual**

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

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. Cathy Roberts **Date:** 08/11/2006

Organization : Nutrition Consortium of NYS

Category : Health Plan or Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

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

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

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

Submitter : H. Sally Smith **Date:** 08/11/2006

Organization : National Indian Health Board

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

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

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

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

Submitter : Mr. Grant McKeown **Date:** 08/11/2006

Organization : Mr. Grant McKeown

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Dear Dr. McClellan, The new rules requiring Medicaid applicants and enrollees to produce additional documentation has the deadly potential to delay or stop elligible Americans from receiving vital health care coverage. Amendments must be considered to help these Americans continue coverage that is due to them. Any action done to interrupt or deny them their rightful coverage is just plain wrong. We as a country must always think of those individuals who are in need of help. Sincerely, Grant McKeown

Submitter : Mr. Monty Martin **Date:** 08/11/2006

Organization : Ramsey County Community Human Services

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-455-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)

Dear Secretary Leavitt:

This letter is comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1, 2006 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. Ramsey County is the second largest county in Minnesota, home to 500,000 residents. We administer the eligibility determination for Medical Assistance for our residents.

We are concerned about instances in which the rules create expensive and time-consuming administrative processes – particularly since we do not believe that those particular features of the rules further the goal of verifying citizenship.

We appreciate and applaud the announcement by CMS to recognize that individuals enrolled in SSI and Medicare have already established their citizenship.

In the spirit of that interpretation, we recommend the following changes or clarifications to the rules.

1. **We urge reconsideration of the requirement that applicants and enrollees submit original identification documents.** Under the 2006 edition of the Federal Civil Judicial Procedure and Rules, duplicates are admissible to the same extent as an original unless there is a genuine question raised as to the authenticity of the original. Requiring originals will be expensive and time-consuming and could create significant changes to the application process. We receive approximately 34,000 requests for public assistance a year. 12,000 of those are mail-in applications for Medical Assistance. Our intake process for public assistance cases is already 30 days out. Requiring originals for Medical Assistance application or renewal either risks the loss of those documents if people mail them into state and county offices or risks the increased cost involved in applicants foregoing mail-in applications and requiring face-to-face appointments. If mail-in applications became unpractical under these new rules, we would have to schedule an additional 1200 face-to-face appointments a month

– backing out our applications for all forms of assistance even longer. Ramsey County has sustained significant state and federal budget cuts in recent years and has held local property tax increases to limits we believe our residents can support. We have no additional funds to hire more financial workers to manage the increased workload additional face-to-face interviews would require.

2. **There are a number of instances in which we have already been required to establish someone's citizenship in administering their eligibility for other public assistance programs. We would urge that CMS recognize those instances – as it has in the SSI and Medicare programs. To do so meets Congress's intent without creating unnecessary administrative burden.**
   - Treat RSDI recipients in the same manner as SSI and Medicare recipients -- acknowledge that proof of citizenship was made in determining eligibility for those programs and accept their participation in RSDI as de facto proof of citizenship.
   - Clarify that once someone has verified their citizenship for Medical Assistance in one state that his or her status as verified should transfer if she or he moves and must reapply in another state.
   - Use Medicaid records of payments to U.S. hospitals for the birth of children on the program as proof of the child's citizenship – without requiring the family to obtain additional documentation.

3. **Eliminate the requirements for tiered levels of preferred documentation**. Presumably all of the allowed forms of verification are acceptable or they would not be permitted; there is no reason to require the person applying or the administrative agency to expend unnecessary time in trying to secure forms of verification that may be difficult and time-consuming to obtain if one of the accepted forms of verification readily exists.

4. **Adopt the model of the SSI program in creating a true safety net for those citizens unable to produce other forms of verification of their status.** 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 can meet the Congressional intent without drawing out the bureaucratic process.

Not only do the new rules risk unnecessary administrative costs and delays to Ramsey County, but they pose other risks to our jurisdiction as well. Under these new rules, people will not get care for which they are eligible. This burden will fall particularly heavily on some of our most vulnerable populations, e.g., the mentally ill, the homeless, and older people of color. We urge you to make the recommended changes or clarifications to the rule.

Sincerely,

Monty Martin
Director
Ramsey County Community Human Services
St. Paul, Minnesota

Submitter : Ms. Terrie Roca **Date:** 08/11/2006

Organization : Ms. Terrie Roca

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 : Kathleen Gardiner **Date:** 08/11/2006

Organization : Catholic Charities of Baltimore

Category : Other

Issue Areas/Comments

GENERAL

GENERAL

Catholic Charities of the Archdiocese of Baltimore is Maryland's leading private provider of human services, serving people of all faiths and races who are in need. We serve more than 160,000 people annually in four service areas: children and families, the poor, seniors, and people with developmental disabilities.

1. We strongly urge that Title IV-E foster children be exempted, similar to SSI recipients and Medicare/Medicaid dually-eligible individuals. These children must have their citizenship documented to receive Title IV-E funding, so the documentation requirement for Medicaid is unnecessarily duplicative. Similarly, we urge that all children and adults participating in a federal program where citizenship has already been determined should be exempted from the requirements.

2. We urge that any child known to be born in the United States remain eligible. A State agency s record of payment for the birth of an individual in the United States should be acceptable as primary evidence of citizenship.

3. We believe that prompt and uninterrupted coverage for eligible individuals must be ensured. It is helpful that current recipients will have a reasonable opportunity to obtain documents. New applicants, however, are expected to obtain and provide documents in a very short amount of time, before eligibility is granted. This provision will delay necessary care for applicants who persevere and discourage many applicants from ever getting coverage. Delaying and foregoing care inevitably leads to more serious subsequent health conditions and more expensive, uncompensated care. We urge adjustment of the rule so that U.S. citizens who apply and meet eligibility criteria may receive coverage immediately and have a reasonable opportunity to obtain documents to prove citizenship.

4. The documents that may be used as evidence of citizenship should be as extensive as possible, not limited. The primary and secondary level documents will not be available to many low-income individuals. It is common for people who are homeless to struggle to protect their personal belongings as basic as shoes - from destruction or theft, so documents such as birth certificates and driver s licenses would be impossible to retain. Moreover, elderly individuals often do not have birth certificates, or if they do, identifying information on them is incomplete or inaccurate. A full range of documents must be acceptable to ensure that eligible citizens are not denied timely coverage.

5. The rule requires original documents or certified copies from the issuing agency. This requirement foils simplified and streamlined application processes that do not require in-person interviews. Mailing original documents is not practical, because the applicant/recipient is unlikely to be willing to part with an original document and because returning original documents is both administratively burdensome and costly to state agencies. Copies of documents should be allowed.

6. Data matches within a state will ease the documentation burden on some Medicaid recipients and applicants. No state should require documentation a second time, once an individual s citizenship is determined in any state. Initial documentation should be sufficient for future eligibility determinations in all states.

7. While the proof of citizenship requirement itself is onerous, the timeframe in which it must be implemented adds to the burden. CMS should develop a comprehensive outreach plan to help State Medicaid agencies educate consumers, providers, advocates, and community-based organizations on what documentation is required and how to obtain it. As with other federal policies, states should be given ample time to prepare and submit a plan for implementing the requirements.

Thank you.

Kathleen Gardiner
Assistant Director for Social Concerns
Catholic Charities
2305 North Charles Street
Baltimore Maryland 21218

Submitter : **Ms. Therese Bangert** **Date: 08/11/2006**

Organization : **Social Justice Office, Sisters of Charity of Leave**

Category : **Other**

Issue Areas/Comments

GENERAL

GENERAL

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.

In a conversation with those who have charge of the Medicaid Program in Kansas, they do not believe that there is a problem with people who are not citizens receiving Medicaid.

One is left to wonder if this rule has come because of a certain group in our nation who believe (contray to any proven fact) that persons who are undocumented are using a great number of Medicaid dollars.

As Sisters of Charity we stand with the Catholic Bishops of the United States in calling for comprehensive immigration reform. We do not believe calling all vulnerable, poor citizens to provide documentation is in the spirit of the Medicaid program.

We join the more detailed comments of the Catholic Hospital Association.

PEACE be with YOU!

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Submitter :

Date: 08/11/2006

Organization : **American Civil Liberties Union**

Category : **Other Association**

Issue Areas/Comments

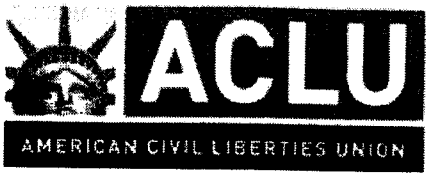
Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See Attachment.

CMS-2257-IFC-459-Attach-1.PDF

WASHINGTON
LEGISLATIVE OFFICE



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

August 11, 2006

[Submitted Electronically]

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

Dear Secretary Leavitt:

The American Civil Liberties Union (ACLU) writes to comment on the Medicaid Citizenship Documentation Interim Final Rule, which was published in the Federal Register on July 12, 2006 to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1, 2006 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity in limited and burdensome ways.

The ACLU is a nationwide, nonpartisan, nonprofit organization with hundreds of thousands of members and activists, and 53 affiliates nationwide. The ACLU strives to safeguard constitutional guarantees of equal protection and due process under law. The ACLU is particularly dedicated to safeguarding the rights of those segments of our population that have traditionally been denied their rights, including the poor, who are disproportionately people of color, women and children, and people with disabilities.

We are gratified that the published rule, first issued on July 6, 2006, incorporated a number of changes that will protect individuals in receipt of Medicare and SSI. We are also pleased to see that the Interim Final Rule maintains presumptive eligibility for Medicaid applicants who are children, pregnant women, and women with breast and cervical cancer during the presumptive eligibility period whether or not they have documented their citizenship.

The remainder of the ACLU's comments below outline crucial issues that we believe CMS should address in drafting the final rule. We fear that the Medicaid Citizenship Documentation Interim Final Rule as promulgated will jeopardize the health care of millions of people. Specifically, the Interim

AMERICAN CIVIL LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15TH STREET, NW, 6TH FL
WASHINGTON, DC 20005-2313
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

Caroline Fredrickson
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

Rule sets an unreasonably high barrier to Medicaid coverage for U.S. citizen applicants and recipients. Because certain requirements of the Interim Rule are so inflexible—and, at times, infeasible—applicants and recipients are at risk of wrongful delays and denials of Medicaid coverage to which they are fully entitled.

I. THE INTERIM RULE SHOULD BE MODIFIED TO BETTER FULFILL CONGRESSIONAL INTENT AND THE GOALS OF THE SOCIAL SECURITY ACT.

At the outset, we note that the Rule's documentation scheme must strike a balance between promoting state Medicaid agencies' accurate assessment of eligibility and safeguarding the ability of eligible applicants and recipients to receive coverage. Congress clearly intended to prevent CMS from erecting—either intentionally or inadvertently—obstacles to Medicaid coverage for U.S. citizen applicants and recipients. The section on individual eligibility in the Social Security Act, 42 U.S.C. § 1396a(b), clearly reflects this Congressional intent, stating that the Secretary cannot approve any plan that imposes "any citizenship requirement" that "excludes any citizen of the United States." As discussed below, the Interim Rule's documentation scheme contravenes this clear statutory command. And the Interim Rule's practical effect is to exclude citizens who cannot satisfy the burdensome documentation procedure set forth in the Interim Rule even though they are actually eligible for coverage.

CMS faces a difficult task in balancing the dual concerns of accuracy in eligibility determination and facilitation of U.S. citizen coverage, but we believe that by modifying the documentation scheme in the manner described below, CMS can execute its task consistent with Congress' intentions and the goals of the Social Security Act.

II. THE INTERIM RULE SHOULD BE MODIFIED TO ENSURE THAT THE DOCUMENTATION SCHEME DOES NOT PREVENT ELIGIBLE APPLICANTS AND RECIPIENTS FROM ACQUIRING MEDICAID COVERAGE

A. Applicants and recipients should receive benefits for a reasonable period once they declare they are citizens and meet all eligibility requirements

Once an applicant or recipient declares citizenship and meets other eligibility requirements, the individual is statutorily eligible for Medicaid. Documentation of citizenship is not an eligibility requirement. 42 U.S.C. § 1396a(a)(10). Section 1137(d)(1)(A) of the Social Security Act, specifically referenced by the documentary evidence provision in § 6036 of the DRA, makes the condition of Medicaid eligibility a "declaration in writing" that the individual is a U.S. citizen or national.

Under § 1137(d)(4), qualified alien applicants and recipients are afforded a reasonable opportunity to obtain documentation after declaring their status, during which they receive Medicaid benefits. There is no rational basis to deny U.S. citizen applicants and recipients a similar opportunity to obtain documentation. Otherwise, U.S. citizens who are initially unaware of the new citizenship documentation requirements or who encounter a serious delay in obtaining the required documents because of the cost or inaccessibility of the documents, will fail to receive coverage to which they are statutorily entitled. This irrational rule contravenes the plain language of the statute and is unreasonably severe. Delay in Medicaid coverage imperils millions of eligible, low-income pregnant women, children and other vulnerable Americans – especially those for whom an interruption in eligibility for benefits would cause irreparable harm (e.g., those on certain courses of

HIV medications for whom an interruption in such course of medications would result in future drug-resistance) – and jeopardizes the continuing viability of the safety net health care providers who serve them.

We urge CMS to revise 42 C.F.R. § 435.407(j) so that it provides Medicaid coverage during a reasonable documentation acquisition period to applicants and recipients who declare they are U.S. citizens or nationals (and who meet the state's other Medicaid eligibility requirements). This revision would benefit the entire Medicaid program because it would: (1) uniformly and fairly apply the Medicaid rules equally to citizens and qualified aliens alike; (2) address the disastrous implications of denying coverage to eligible U.S. citizens while preserving the government's goal of accurate determination of eligibility.

B. Applicants and recipients who can demonstrate citizenship through means not envisioned by the documentation scheme should be permitted to do so

1. CMS should make the Rule's priority structure more flexible

The intricate priority structure established by the Interim Rule unreasonably limits the ability of eligible applicants and recipients to document citizenship. Neither § 6036 of the DRA nor administrative convenience mandates a hierarchy of acceptable documents. Indeed, the priority structure envisioned by the Interim Rule unnecessarily burdens beneficiaries and administrators. For instance, the Interim Rule requires that a state Medicaid agency seek documents listed as primary-level evidence even if cumulatively, several documents listed in the second and third priority-level groups definitively establish citizenship and identity.

It is unreasonable to delay a beneficiary's receipt of Medicaid when she has already established her eligibility—particularly because the priority structure actually serves to *increase* administrative burdens. Moreover, it is unreasonable to require the financially vulnerable to procure expensive primary-level documents when less costly documents establish citizenship just as definitively. Accordingly, we urge CMS to give states and beneficiaries the flexibility necessary to comply with the documentation requirements. State Medicaid agencies should be permitted to accept documentation from the second- and third-level evidence groups without first ensuring that primary-level evidence is unavailable. This flexible approach would safeguard the goal of accurate determinations of eligibility without shackling beneficiaries and state Medicaid agencies to the priority structure regardless of practical and financial realities.

2. CMS should provide a safety net to individuals who are unable to procure the listed documents

The Interim Rule fails to provide a meaningful safety net for applicants and recipients who are unable to procure the documents listed in the Rule. Terrorist and natural disaster relief victims whose records have been destroyed, homeless individuals whose records have been lost, foster children, and other vulnerable individuals without access to the documents listed are at serious risk of being denied Medicaid coverage for which they are eligible. The Interim Rule makes an effort to accommodate such individuals in its affidavit provision, 42 C.F.R. § 435.407(d)(5), but the restrictiveness of the provisions renders that effort dangerously inadequate. First, the Interim Rule allows use of written affidavits to establish citizenship only when primary-, second-, and third-level

evidence is unavailable and "ONLY . . . in rare circumstances," 42 C.F.R. 435.407(d)(5). This bureaucratic exhaustion requirement means state Medicaid agencies must unnecessarily spend time searching for documents that may ultimately prove unavailable, even when in the judgment of those agencies the beneficiaries could credibly demonstrate citizenship through an affidavit. Second, the Interim Rule prohibits noncitizens from providing affidavits, dooming the value of this provision for the many applicants and recipients whose birth was attended only by noncitizens. Third, the Interim Rule creates a disincentive even for citizens to provide affidavits on behalf of applicants and recipients because it imposes the same burdens of citizenship documentation on these individuals, who may be unwilling or unable to spend time or money to procure the listed documents.

These restrictions on this vital health care program for millions of Americans are not merely counterproductive; they also prevent eligible applicants and recipients from obtaining Medicaid coverage when these individuals can credibly demonstrate citizenship in another way. The consequence is severe: U.S. born applicants and recipients who are unable to obtain the specified documents or produce two citizens willing or able to provide affidavits are barred from receiving Medicaid coverage. We respectfully urge CMS to revise 42 C.F.R. § 435.407 by adding a new subsection that enables a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of federal financial participation under 42 C.F.R. § 435.1008 where: (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-, 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.

III. Exemption From the Documentation Requirements Should Be Extended to Additional Groups

We respectfully urge CMS to extend the exemption of document requirements to three additional groups: (1) foster children; (2) American children born to immigrant women in the United States; (3) former recipients or Medicare and Supplemental Security Income.

CMS should exempt children receiving foster care benefits under Title IV-E of the Social Security Act from the documentation requirements. CMS has statutory authority to do so under 42 U.S.C. § 1396b(x)(2)(C), which allows it to exclude groups other than those listed by Congress. Children in foster care under Title VI-E of the Social Security Act do not have an independent obligation to declare (or have declared for them) their citizenship. 42 U.S.C. §1320b-7(b). In addition, pursuant to the Social Security Act, children in foster care are automatically eligible for Medicaid once they are determined eligible for foster care. 42 U.S.C. §1396(a)(10)(A)(i)(I). Foster care children thus are not required to file an independent application for Medicaid. Finally, § 6036 does not logically even apply to these children because it only requires documentary evidence of individuals who make a declaration under § 1137(d)(1)(A).

Second, we respectfully urge CMS to clarify that Medicaid benefits must be provided to citizen infants born to unqualified immigrant women on the same basis as they are provided to other citizen infants. The Rule correctly recognizes that a child born to a woman who is in receipt of full Medicaid benefits is automatically eligible for Medicaid through her first year of life without providing citizenship documents. But the Rule impermissibly fails to extend this policy to citizen children born to non-qualified immigrant women who receive Medicaid for pre-natal care only. This distinction unfairly and unnecessarily burdens a U.S. citizen infant, who is unquestionably

eligible (in terms of citizenship) for Medicaid benefits. Such a burden, based on the alienage of the applicant's mother, is unlawful. *See Lewis v. Thompson*, 252 F.3d 567, 587-92 (2d Cir. 2001).

Finally, we urge CMS to clarify that proof of prior receipt of Medicare or Supplemental Security Income (SSI) exempts a beneficiary from citizenship documentation requirements. Former beneficiaries should be exempted from the documentation requirements because they have already been required to establish citizenship for the purpose of obtaining benefits under these programs. Just as the Interim Rule exempts Medicare and most SSI beneficiaries from documentation requirements for this reason, the final Rule should also exempt former beneficiaries. There is simply no meaningful difference between individuals who are currently receiving these benefits and those who no longer do so that would justify burdening one group but not the other.

Accordingly, the imposition of the proof of citizenship requirements on these vulnerable groups should be eliminated.

IV. THE INTERIM RULE SHOULD BE MODIFIED TO ENSURE THAT ELIGIBLE APPLICANTS AND RECIPIENTS ARE ACCORDED REASONABLE MEANS TO DOCUMENT CITIZENSHIP

We urge the Secretary to use the DRA's grant of discretion to expand the list of documents included in the DRA that are considered to be "proof" of citizenship and "reliable means" of identification so that beneficiaries are not unreasonably deprived of Medicaid coverage. Expansion of the list would not sacrifice the goal of accuracy in eligibility determination since certain documentary evidence omitted from the list can definitively establish citizenship and identity. For instance, a state Medicaid agency's record of payment for birth of an infant in a U.S. hospital should be satisfactory documentary evidence of citizenship and identity since the U.S.-born infant is a citizen by definition and the state Medicaid agency's record verifies the U.S. birth. Similarly, primary-level evidence of citizenship should include a Native American tribal enrollment card issued by a federally recognized tribe since tribes issue cards only to U.S. citizens, with limited exceptions that could be accounted for by a requirement that citizens of tribes located near the borders with Canada or Mexico submit additional evidence of citizenship.

We also we urge the Secretary to modify the Interim Rule to defer to a state Medicaid agency's expertise in determining citizenship in diverse circumstances because constructing an exclusive list of documentary evidence always risks unreasonably excluding citizen applicants and recipients who are statutorily entitled to Medicaid coverage upon their declaration of citizenship. The optional certification scheme discussed earlier would alleviate the administrative strain on state Medicaid agencies but preserve the goal of accurate eligibility determination since state Medicaid agencies would make an individualized determination of the need to avail themselves of the certification scheme.

In addition, it would enable state Medicaid agencies to better fulfill their independent legal obligations under other federal statutory schemes. For example, Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et. seq*, and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, both require state Medicaid agencies to provide assistance to people with disabilities sufficient to afford them the same opportunity to benefit from Medicaid as is available to people without disabilities. But a stringent documentation requirement could indefinitely stall an application by an individual with disabilities where the individual's disabilities made it difficult or impossible for him or her to obtain the required documentation. Similarly, deference to the States could ease the administrative burden in those states with high populations of individuals who are

limited English proficient. Flexibility in these circumstances will enable States to comply with their obligations under Title VI of the Civil Rights Act. 42 U.S.C. § 2000d *et. seq.* States need the flexibility to tailor documentation requirements to the circumstances of the applicant or recipient in order to provide diverse beneficiaries the same opportunity to receive Medicaid. An optional certification scheme would provide such needed flexibility.

Such flexibility would also enable state Medicaid agencies to fulfill their constitutional obligations. Especially for those beneficiaries for whom an interruption in eligibility for benefits would cause irreparable harm, such additional procedural due process is constitutionally required, given the significance of the private interests at stake – life and health. In addition, for certain such beneficiaries (e.g., those on dialysis), the Rule's inflexibility raises grave substantive due process concerns for state Medicaid agencies, given the state-created danger that would be occasioned by an interruption in eligibility for benefits.

Moreover, CMS should modify 42 C.F.R. § 435.407(h)(1) to allow state Medicaid agencies to accept copies of documentary evidence when the agency determines copies are so credible that the time and financial cost of obtaining original or certified copies is unreasonably and unnecessarily burdensome to the beneficiary and the agency. Especially when applicants and recipients are unable to produce certified copies or originals of documentary evidence because of financial strain or practical inaccessibility, or when applicants and recipients are unable to take time off from work to visit state offices to present original documents that are too valuable to risk losing in the mail, the original or certified copy requirement unreasonably renders compliance with the Interim Rule infeasible for these individuals.

Thank you for the time you have taken to consider these comments. We hope you will find them helpful as you consider the best ways to improve the proposed Rule.

Sincerely,

Caroline Fredrickson
ACLU Washington Legislative Office

Elisabeth Ryden Benjamin
New York Civil Liberties Union

Omar Jadwat
ACLU Immigrants' Rights Project

Charu A. Chandrasekhar
ACLU Reproductive Freedom Project

Ken Choe
ACLU Lesbian Gay Bisexual Transgender & AIDS Project

Lenora Lapidus
ACLU Women's Rights Project

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

Organization : Tribal Technical Advisory Group (TTAG)

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-460-Attach-1.DOC

Tribal Technical Advisory Group

to the Centers for Medicare and Medicaid Services

National Indian Health Board 101 Constitution Ave NW, #8B02 Washington, DC 20001 (202) 742-4262 (202) 742-4285 fax www.nihb.org

August 9, 2006

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

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

To Whom It May Concern:

On behalf of the Tribal Technical Advisory Group (TTAG), I would like to 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.

At the TTAG meeting held in June 2006, Dr. McClellan indicated that CMS would consider thoughtfully tribal concerns submitted through the TTAG process. On the TTAG conference call held on August 9, 2006, Tribal leaders, again, requested CMS to recognize Tribal enrollment cards or CDIBs as legitimate documentation of proof of U.S. citizenship. Tribal leaders from several Tribes reviewed their tribal enrollment process and explained how the vigorous tribal

enrollment process ensures proof of citizenship. Tribal leaders expressed concerns and dismay as to why the CMS will not recognize tribal enrollment cards or CDIBs as legitimate documentation of proof of citizenship. The CMS staff person on the conference call did not explain why the CMS will not recognize tribal documents for proof of citizenship purposes. It was pointed out on the call that under current law 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. The documentation required under this law is a tribal 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. The CMS staff on the conference call indicated lack of familiarity with this law. In reviewing tribal comments, I would encourage you to become familiar with this law and recognize tribal enrollment cards or CDIBs as legitimate documentation for Medicaid eligibility purposes under the DRA because these same documents are recognized as legitimate documents for Medicaid eligibility purposes now.

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. I have attached a copy of the Federal Register notice, please see Attachment 6 at pages 61410 and 61411 for explanation of exception for members of Indian tribes. 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.

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.

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

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

The Senate Finance Committee in unanimously reporting out S. 3524 included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a "document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe" to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that " [w}ith respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of

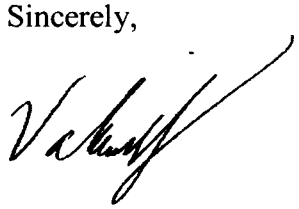
this subsection." S. 3524 also provides for a transition period that "until regulations are issued by the Secretary, tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not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

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

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

Thank you for your thoughtful consideration of my comments.

Sincerely,



Valerie Davidson
Chair, CMS TTAG

Cc: Michael O. Leavitt, Secretary of HHS
Mark B. McClellan, M.D., Ph.D., Administrator, CMS
Charles W. Grim, D.D.S., M.H.S.A., Director, IHS
CMS TTAG

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

Organization : **Advisory Council on Aging and Disability Services**

Category : **Other Government**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-461-Attach-1.DOC

August 8, 2007

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

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of the Advisory Council on Aging and Disability Services. Aging and Disability Services is the Area Agency on Aging for King County, Washington. We would like to register the following concerns about your interim rule and hope that you will modify these requirements based on citizen commentary. As written, we believe the proposed rules will cause delays, denials, extreme hardship, and even loss of Medicaid coverage to many eligible people.

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

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

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

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

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

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

3. Gaps in the exemptions (§435.1008)

We applaud CMS for issuing the rule that individuals on SSI or Medicare will not be subjected to these requirements. However, there are gaps in these protections. In particular, individuals on

Social Security Disability Insurance who are in the waiting period for Medicare or disability payments should also be included within the exempt group.

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

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

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

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

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

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

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

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

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

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

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

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

7. Time frame for collecting documents (§435.407(j) and §346.407(j))
States should be given broad flexibility to allow individuals the time necessary to collect their proof of status. Unlike other information required on the Medicaid application (or for recertification), it may take some individuals considerable time to collect these documents. If the individual is working to provide the documents, this should be sufficient. If a time period must be stated, 90 days is more reasonable than 30, especially since passports and other official documents can take a minimum of six weeks to arrive.

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

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

10. Rules must apply across states (§435.407(h) and §436.407(h))
We applaud CMS for clarifying that this process need only be gone through once. However, it is also not completely clear that once these documents have been procured and citizenship status has been proved that this is sufficient not only for future eligibility determinations in that state, but across all states.

11. Information collection requirements should be eased.
The requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds unnecessarily to the burden of the new requirement on applicants, beneficiaries, and state Medicaid agencies.

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Nonetheless, CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1).

Insisting on originals and certified copies adds greatly to the information collection burden of the regulations. It 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. In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state offices to submit them because even though the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants or beneficiaries will be willing to mail in originals or certified copies of their birth certificates, or proof of identity such as driver's licenses or school

identification cards.

In addition, state agencies will have to meet with individuals, make copies of their documents, and maintain records. This approach means scarce resources will be spent on bureaucratic processes rather than on needed health care services.

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

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

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

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

Sincerely,

Don Moreland, Chair

Submitter : Ms. Malinda Ellwood **Date:** 08/11/2006

Organization : Youth Law Center

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

see attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See attachment

CMS-2257-IFC-462-Attach-1.PDF

YOUTH LAW CENTER

www.ylc.org

One of America's Best 100 Charities — Worth Magazine

San Francisco

Executive Director
CAROLE B. SHAUFFER

Staff Attorneys
SUSAN L. BURRELL
ALICE BUSSIERE
DEBORAH ESCOBEDO
CORENE KENDRICK
MARIA F. RAMIU

Paralegal
MAMIE B. YEE

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: CMS-2257-IFC
Comments on the Medicaid Documentation Interim Final Rule, 71 Fed. Reg. 2914 (July 12, 2006)

The Youth Law Center (YLC) is a public interest law firm that works to protect children in the nation's foster care and justice systems from abuse and neglect, and to ensure that they receive the necessary support and services to become healthy and productive adults.

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). The DRA does not change eligibility criteria for Medicaid but only specifies the manner in which states must verify citizenship or nationality. The Secretary must exercise his discretion under the law to create an effective verification system without denying Medicaid coverage to individuals who meet the eligibility criteria or hindering the ability of states to make medical assistance available with reasonable promptness as required by 42 U.S.C. § 1396a(a)(8).

The Secretary has appropriately exercised this discretion by allowing states to cross match data on recipients with state data systems and recognizing that individuals who are presumptively eligible (under sections 1920, 1920A or 1920B of the Act) should receive full Medicaid during the "presumptive" period. (*Implementation Conditions/Considerations*) However, the proposed regulations will hinder the ability of many eligible children to access Medicaid and will have particularly harsh consequences for the vulnerable youth in the foster care population.

The citizenship verification requirements should not apply to foster children. The Secretary should exercise his authority under 42 U.S.C. §1396b(x)(2)(C) and add to §435.1008 a provision to exempt children in foster care from the citizenship verification requirement. Children in foster care have greater health needs than other children, and are very unlikely to have original or certified copies of the documents required by §436.407. However, the child welfare system will have relevant information, such as the child's birthplace, that is sufficient to establish citizenship or nationality. Requiring the child's social worker or eligibility worker to spend time obtaining original documents or certified copies for the Medicaid file will create additional unnecessary work for individuals whose time would be better spent addressing the child's needs. This

417 Montgomery Street, Suite 900 San Francisco, CA 94104-1121 telephone: (415) 543-3379 fax: (415) 956-9022

additional responsibility and paperwork could also interrupt or delay necessary health care for the child.

1. **Foster children have greater health care needs than other populations.**

Children are likely to come into foster care with significant health problems and already suffering from inadequate health care. Even compared to their socioeconomic counterparts, children in foster care have far greater physical and psychological health problems: "prevalence of medical conditions range from 30% to 80%, developmental problems from 20% to 61%, and emotional and behavioral problems from 35% to 85%."[1]

These health care problems often stem from four circumstances common to children in state care: 1) the abrupt nature of the youths' entry into the foster or juvenile justice system; 2) the lack of a consistent person responsible for monitoring their health care; 3) multiple placements during a short period without the corresponding coordination or continuation of health services, and 4) high incidences of complex medical issues combined with a history of inadequate treatment.[2]

These unique circumstances and comparatively greater health needs make it crucial that these children have access to timely health services and maintain continuity of care. Through no fault of their own, foster children are dependent on government-funded health services to respond to their often complicated health needs.[3] To facilitate timely access, children in the foster care system are automatically Medicaid eligible.[4] However, even under current requirements, foster children who are categorically eligible for Medicaid can experience delays in obtaining Medicaid coverage.[5] Problems in health care coverage impede access to services. Some researchers found that "individual youths are simply falling though the gaps left by inaccessible resources and that not just the quality but the quantity of services increase when agencies do a better job of accessing these funding programs."[6]

2. ***Regulatory Impact Statement;* 42 CFR 435.407 (h)(1): Requiring original documents or copies certified by the issuing agency imposes an additional requirement beyond the mandate of the DRA and will hinder the ability of states to provide timely medical care to foster youth.**

Requiring original or certified copies of specific documents to be included in the Medicaid file will create additional unnecessary work for state and local child welfare workers. These workers already collect information about a child that is sufficient to meet constitutional standards for removing the child from home, placing him or her in state care, and providing basic care and supervision. This information requires the child welfare agency to verify the identity of the child and to establish his or her nationality and citizenship.

The additional requirements imposed by the federal regulations do not make sense for foster children. Most children will not have any of the documents listed as primary evidence of citizenship. Obtaining an original or certified copy of the documents

required for the other levels of evidence will be burdensome, if not impossible for many children.

The requirement imposed by 42 CFR 435.407 (h)(1) that eligibility workers obtain original or certified documents, even though the child's status has been confirmed by other government agencies with the most reliable information available, creates an unnecessary and time consuming hardship for all involved. Further, nothing in section 6036 of the DRA requires that states accept only original or certified copies." At the very least, Medicaid eligibility workers should be able to accept the certification of social workers and staff at child welfare offices that a child's citizenship has been documented in their child welfare records.

3. ***Collection of Information Requirements*: CMS' calculation of additional time required of state workers to comply with the statute significantly under-calculates the time that would be spent for foster youth.**

CMS has stated in the interim regulations that "it would take an individual 10 minutes to acquire and provide to the state acceptable documentary evidence and to verify the declaration. We estimate it will take each state 5 minutes to obtain acceptable documentation, verify citizenship and maintain current records on each individual." § 436.406

This time estimate would credibly relate solely to those circumstances where such documentation is readily available. As noted above, for foster youth, the amount of time and effort required to obtain the necessary documents will be infinitely greater. It is inaccurate to assume that most of the additional burden on states from this rule will fall on Medicaid eligibility workers. "These youths interact with a combination of several large and complicated systems: medical, mental health, social welfare, juvenile justice, education, and others."[7] Because foster youth do not actually "apply" for Medicaid via their parents, it is these already over-burdened staff who will be forced to obtain the necessary documentation.

For example, the Health Care Program for Children in Foster Care (HCPCFC) is a California public health nursing program located in county child welfare service agencies and probation departments to provide public health nurse expertise in meeting the medical, dental, mental and developmental needs of children and youth in foster care. These public health nurses help oversee the physical and mental health care needs of foster children, compile medical records, and facilitate health insurance coverage. This rule will require these nurses to devote a portion of their limited time to finding original citizenship documents, when they could be focusing instead on the actual health care of these needy children.

4. Subjecting foster children to the requirements of this rule goes beyond the purpose of the DRA.

The purpose of this statute is to protect the system from those persons who may be fraudulently obtaining Medicaid services. Children in foster care become categorically eligible by virtue of being wards of the state, (42 USC 1396a (a) (10) (A)(i)(I)). They are not involved in the system voluntarily. Through no fault of their own, they have been subjected to abuse, removed from their families and placed in state care. It makes no sense to treat them as individuals who might be attempting to obtain Medicaid through fraud. Imposing unnecessary requirements, such as requiring these children to obtain original documentation of citizenship simply makes it more difficult for states to provide the health services these children need. As a group, these children clearly fall outside the population to which the DRA regulations are meant to apply.

Conclusion

The Secretary should exercise his authority under section 42 U.S.C. §1396b(x)(2)(C) and add to §435.1008 a provision to exempt children in foster care from the citizenship verification requirement.

Sincerely,

Malinda Ellwood
Law Student Intern
Youth Law Center
417 Montgomery St.
San Francisco, CA 94104-1121

---

[1] Christopher Hartney, Madeline Wordes, Ph D, Barry Krisberg, Ph D ,National Council on Crime and Delinquency (2002) *Health Care for Our Troubled Youth: Provision of Services in the Foster Care and Juvenile Justice Systems of California* Woodland Hills, CA: The California Endowment.

[2] Id.

[3] Institute for Research on Women and Families. (1998). *Code Blue Health Services for Children in Foster Care.* Sacramento, CA: California State University, Sacramento.

[4] Rob Green, Anna S. Sommers, Mindy Cohen. (2005). *Medicaid Spending on Foster Children* Washington, D.C.: The Urban Institute.

[5] Institute for Research on Women and Families, 1998

[6] Hartney, 2002

[7] Hartney, 2002.

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

Organization : Honigman Miller Schwartz and Cohn LLP

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-463-Attach-1.PDF

HONIGMAN
Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

Ann L. Andrews

(517) 377-0703
Fax: (517) 364-9503
aandrews@honigman.com

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

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

We represent a number of healthcare providers who provide services to persons enrolled in the State of Michigan's Medicaid program. We have reviewed the Interim Final Rules (the Rules) implementing the provisions of the Deficit Reduction Act (DRA) enacted to improve documentation of identity and citizenship for Medicaid recipients. We believe that many of the requirements included in the Rules are inconsistent with the DRA and will negatively affect health care within our state. We outline our concerns below.

1. ***The Rules Should Not Permit States To Delay Granting Medicaid Benefits To Qualified Applicants Who Are Making Reasonable Efforts To Gather And Submit Satisfactory Documentation of Identity and Citizenship.***

Section 435.407(j) currently provides that "States must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid. The time States give for submitting documentation of citizenship should be consistent with the time allowed to submit documentation to establish other facets of eligibility for which documentation is requested. (See § 435.930 and § 435.911)."[1]

Two primary problems arise from this provision: (1) It appears to permit States to delay taking action on a Medicaid application while the applicant is provided with a "reasonable

[1] The citation to § 435.911 (the regulation which requires States to establish time standards for determining eligibility not to exceed 90 days for disability cases and 45 days for all other applicants) is an indication that CMS erroneously views DRA's documentation requirements for purposes of obtaining federal participation as barriers to eligibility for Medicaid. As explained herein, they are not.

opportunity" to gather documentation to demonstrate identity and citizenship; and (2) It equates the time period for gathering and submitting documentation of citizenship and identity with the time period States typically provide for gathering and submitting documentation of other facets of eligibility.

The Rules should require States to accept a declaration in writing under penalty of perjury that the individual is a citizen or national of the United States" as provisional proof of identity and citizenship while the applicant is gathering other appropriate documentation. As CMS has previously noted, §6036 of the DRA does not change eligibility for Medicaid. It merely imposes new requirements on the States for receiving FFP. In fact, 42 U.S.C. § 1137(d), which conditions eligibility for Medicaid on "a declaration in writing under penalty of perjury" that the individual "is a citizen or national of the United States," remains intact. 42 U.S.C. § 1396a continues to preclude the Secretary from approving any plan "which imposes, as a condition of eligibility for medical assistance . . . any citizenship requirement which excludes any citizen of the United States." Further, the only portion of the Medicaid Act amended by the § 6036 of the DRA deals with financial reimbursement to the States – not eligibility for benefits.

If §6036 of the DRA were interpreted as establishing new eligibility requirements for Medicaid, citizens of the United States applying for Medicaid would be treated far worse than similarly situated qualified aliens applying for Medicaid. Under 42 U.S.C. § 1137(d)(4), States may not "delay, deny, reduce or terminate" a qualified alien's eligibility for Medicaid while the individual is gathering and supplying evidence of his or her immigration status. Yet, unless the Rules are amended and clarified, it appears that States could "delay, deny, reduce or terminate" a citizen's eligibility for Medicaid while the individual is gathering and supplying evidence of his or her citizenship. Such an interpretation of the DRA would render § 6036 unconstitutional under the equal protection provisions of the Fifth Amendment.

The problem is exacerbated by the section of the Rules which equates gathering and submitting documentation of citizenship and identity with gathering and submitting documentation of other facets of eligibility. For example, in Michigan, applicants are generally allowed 10 calendar days from the date the State mails a request for verification of asset and income eligibility to collect and submit the required verifications. If the applicant is making reasonable efforts, but cannot produce the verifications within the 10 day period, the state extends the period for an additional 10 days. Generally, the documents necessary (e.g. bank statements, tax returns, pay check stubs) are either in the applicant's possession or readily obtainable by the applicant from third parties.

The same is not true for the documents the Rules require for demonstrating identity and citizenship. Based upon a recent survey of over 1,000 Michigan-based applicants, we understand that nearly 1 in 3 did not have a passport or a birth certificate and government issued pictured identification in their possession. Approximately a quarter of those individuals (7% of the total surveyed population) were born outside the State of Michigan. If the state treated its request for

verification of citizenship and identity as it does other facets of eligibility, applicants born outside the State of Michigan would be expected to identify the appropriate governmental agency in the state in which he or she was born, determine the procedure and costs associated with obtaining a certified copy of the applicant's birth certificate, order the certificate, make arrangements to cover the cost, and deliver the original certificate to the State of Michigan, all within 20 days.

The problem is compounded for citizens born during periods and in areas of our country where babies were often born at home and births were not regularly recorded by any governmental agency. Under the priority scheme envisioned by the Rules, it appears that such applicants will have to obtain documentation from the out-of-state agency that no certificate is exists and then, during the same 20 day period, obtain some alternative form of documentation. Realistically, such a feat is not possible.

While it may be possible to obtain affidavits from friends and relatives who have known the applicant for an extended period of time and could testify that to their knowledge and belief, the individual was born in a particular State and describe, in detail, the basis for that knowledge, the Rules only permit third-party affidavits in "rare" cases and then only if the affiant has personal knowledge of the applicant's citizenship. For citizens by birth, the only persons qualified to make such a statement would be persons present at the applicant's birth. Yet, the Rules require the applicant to furnish two such affidavits, at least one of which is signed by someone who is not related to the applicant. Common sense dictates that finding a midwife, physician, nurse or other individual not related to the applicant who was present at the birth will be virtually impossible if the applicant is more than 10 years old.

Obviously, if the person is reduced to obtaining census records, medical records of their birth, or other difficult to obtain documents, the standard time period for verification (10 to 20 days in Michigan) is obviously insufficient.

In the final analysis, it could take "reasonably" take months for many citizens to be able to supply the necessary documents to the state. During that period of time, if the applicant has provided the necessary declaration of identity and citizenship, and meets the eligibility requirements for Medicaid, the States should not be permitted to delay approval of the application. To permit delay or outright rejection of the application jeopardizes the health care to which citizens of the United States are entitled.

2. ***No Child Whose Birth Was Paid For By Medicaid Should Be Required To Document His or Her Citizenship.***

A child born in this county to a woman who is eligible to receive the full scope of Medicaid benefits is indisputably a citizen of this country. A child born in this country to a

woman whose Medicaid benefits are restricted to labor and delivery because of her immigration status is, likewise, indisputably, a citizen of this country. 42 C.F.R. §435.407(a) or (b) should be amended to include a record of Medicaid payment for that child's birth as proof of citizenship, regardless of the immigration status of the child's mother.

3. ***All Former Beneficiaries of Medicare or SSI Should be Exempt From Documentation Requirements.***

The Rules recognize that current Medicare and most SSI beneficiaries are exempt from the documentation requirements, but do not mention former beneficiaries of Medicare or SSI. Those individuals have, likewise, already established citizenship for such programs. The fact that the person is now, for example, over the asset limit for SSI and, therefore, no longer eligible for that program, does not affect the individual's citizenship.

4. ***The Priority Structure For Documentation Should Be Eliminated.***

The Rules establish an elaborate priority structure for the documents that will be deemed acceptable for verification of citizenship status which §6036 of the DRA does not require. Requiring each applicant to prove that a purported higher level of documentation does not exist wastes substantial resources, time and effort on the part of a group of individuals who by definition are unlikely to have the resources necessary to pursue alternative various forms of documentation. It also requires that each State dedicate scarce resources and staff to reviewing, recording, copying and filing multiple levels of documentation and determining whether some higher level of documentation might exist. If any benefit is gained by prioritizing documents, it is certainly outweighed by the burdens associated with determining that other levels of documentation do not exist.

5. ***The Rules Associated With Demonstrating Citizenship By Affidavit Should Be Revised.***

As previously noted, the documentation by affidavit is simply unworkable for persons who are citizens by birth and cannot provide other levels of documentation. 42 C.F.R. §435.407 should be amended to permit States to consider the reasons why documentation is not available and accept affidavits from other reasonably reliable sources attesting to their knowledge of the identity of the person and his or her citizenship. For example, an affidavit from a child of an applicant who is aware of family history should be sufficient for establishing citizenship. As stated, the Rule will preclude benefits for United States citizens – not because the applicant failed to cooperate but merely because the applicant was simply unable to succeed in obtaining documents the Rule requires.

6. ***The States Should Be Required To Assist Individuals To Secure Satisfactory Documentary Evidence of Citizenship And Identity Regardless of Whether The Person is Incapacitated or Has A Representative To Assist.***

Under § 435.407(g), the Rules require the States to assist certain applicants in obtaining the necessary documents, but only if the individual is incapacitated and does not have a representative to assist. Yet, the Rules require applicants to submit documentation that the States are uniquely qualified to obtain. For example, for all residents born within the State's borders, the State would be in the best position to find birth certificates and government issued identification cards. Yet, while the Rules encourage States to use data matches with their vital statistics, the Rules do not require data matches.

Moreover, the States are far more capable of making reciprocal arrangements with other States to exchange birth information for residents born outside their borders than are individual Medicaid applicants and their representatives. In fact, in a number of States (including Michigan), authorized representatives who are not licensed attorneys cannot obtain birth certificates on behalf of a Medicaid applicant.[2]

Placing the burden on Medicaid applicants – persons who are within the segment of our society who are least likely to be able to comply – defeats the purpose of Medicaid in the first instance.

7. ***Originals Or Certified Copies of Documents Should Not Be Required.***

Section 435.407(h)(i) specifies that only originals or certified copies of qualifying documents may be accepted to verify citizenship or identity. The result is that each individual will either be required to submit original or certified documents through the mail or present the documents in person to a state worker. If they are mailed, the States will be forced to return them to the applicant and a flood of documents subject to identity theft will be floating around our country. If they are presented in person, the State will be required to hire substantial additional staff to meet individually with each applicant, likely on more than one occasion, while the individual presents the evidence of citizenship and identity (or lack thereof) in priority order. Any benefit gained by requiring original or certified documents is far outweighed by the cost and burden of presenting such documents to the State and by keeping a record that such documents were submitted sufficient for audit purposes.

We trust our comments are helpful to you in your deliberations and that you share our concerns that, in an effort to eliminate fraudulent use of Medicaid, the current Rules establish a

[2] At the very least, States should be required to permit authorized representatives to obtain birth certificates on behalf of Medicaid applicants, regardless of whether the representative is a licensed attorney.

bureaucratic maze so dense that the benefits for one of the most vulnerable segments of United States citizenry may be lost. The loss of those health care benefits is likely to increase the need emergency care and admissions to our facilities. Providing health care to this vulnerable group of fellow citizens through emergency procedures will, necessarily, increase the cost of health care for all U.S. citizens, while simultaneously decreasing the quality of care to those who would otherwise receive Medicaid benefits.

We look forward to revised rules that address the concerns outlined above.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

Ann L. Andrews

ALA

LANSING.283023.1

Submitter : Ms. Juliet Choi **Date:** 08/11/2006

Organization : Asian American Justice Center

Category : Attorney/Law Firm

Issue Areas/Comments

GENERAL

GENERAL

Please see PDF attachment.

CMS-2257-IFC-464-Attach-1.PDF

ASIAN AMERICAN JUSTICE CENTER

ADVANCING EQUALITY

August 11, 2006 (comments submitted electronically at www.cms.hhs.gov/eRulemaking)

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

RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Fed.Reg. 39214 (July 12, 2006)
Web Docket: CMS-2257-IFC - Medicaid Program; Citizenship Documentation Requirements

About AAJC and its Language Access Program

The Asian American Justice Center (formerly National Asian Pacific American Legal Consortium), a 501(c)(3) nonprofit, nonpartisan organization, was incorporated in 1991 and opened its Washington, D.C. office in 1993. AAJC works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. In accomplishing its mission, AAJC focuses its work to Promote Civic Engagement, to Forge Strong and Safe Communities, and to Create an Inclusive Society in communities on a local, regional, and national level. A nationally recognized voice on behalf of Asian Americans, AAJC focuses its expertise on affirmative action, anti-Asian violence prevention/race relations, census, immigrant rights, language access, and voting rights.

Serving the nation from its capital, AAJC is affiliated with the Asian American Institute of Chicago, Asian Pacific American Legal Center of Southern California in Los Angeles and the Asian Law Caucus in San Francisco. Working closely with its Affiliates, AAJC is committed to increasing community education and participation on public policy and civil rights issues affecting all Asian Pacific Americans.

The mission of AAJC's Language Access program is to prevent discrimination against language minorities, and to ***ensure their access to critical rights and services***. The goal is to build support for providing language assistance where appropriate to Americans with limited English proficiency, and to prevent the imposition of discriminatory and restrictive policies. Additionally, since September 2005, AAJC, through its Language Access Program, has brought together and facilitated an informal forum called the ***APA Wellness Collaborative*** to convene national Asian American organizations around wellness, health, mental health and substance abuse. The APA Wellness Collaborative is comprised of the Asian Pacific Islander American Health Forum (APIAHF); Association of Asian Pacific Community Health Organizations (AAPCHO); Asian American Justice Center (AAJC); National Asian American Pacific Islander Mental Health Association (NAAPIMHA); and National Asian Pacific American Families Against Substance Abuse (NAPAFASA).

Because the Asian American community is largely foreign-born, language policies have a disproportionate impact on Asian American immigrants. Moreover, lack of translated information and oral assistance as well as linguistically and culturally appropriate outreach means that Asian Americans who are limited English proficient (LEP) are less likely to understand and exercise their rights and obligations, less able to access government services such as healthcare, and less able to achieve economic stability.

AAJC is a leading national expert on language access issues and focuses its efforts on the federal level, working to ensure that federal agencies and recipients of federal funds comply with Title VI of the Civil Rights Act and Executive Order 13166.

AAJC's Comments and Concerns

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

Respectfully, 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. Below are (7) seven areas that CMS should modify in the final rule.

1. Proof of citizenship places disparate administrative and financial burden upon foreign-born *children* who are nonetheless citizens through derivative citizenship.

A number of foreign-born children gain citizenship through "derivative citizenship" but never receive a Certificate of Naturalization or similar document (e.g., a passport) that proves they are a citizen. Nonetheless, U.S. law clearly establishes that they are eligible for citizenship. However, since these children lack the proper documents, they may be rejected from Medicaid. Getting the proper paperwork (a passport or a Certificate of Citizenship) is a time-consuming and expensive problem, in the interim, barring children from receiving Medicaid and critical diagnostic and intervention services that are vital to a child's well being and childhood development. The fee for a passport is $82 for a child and the fee for a Certificate of Citizenship is $215 to $255.

Derivative citizenship applies both to biological children as well as to adopted children, who are lawfullly present in the U.S. Since 1978, when both parents (or the only parent) are citizens, their foreign-born children get derivative citizenship. Since 2001, derivative citizenship applies even when just one parent is a citizen. For background, a link to the current and historical rules on derivative citizenship is available at http://www.uscis.gov/graphics/services/CCANationality3.pdf.

We recommend that CMS permit proof of citizenship by parents of children (naturalized citizens or native citizens) to serve as prima facie evidence of the citizenship of their foreign-born minor children (under the age of 18).

2. Proof of citizenship places disparate administrative and undue financial burden upon naturalized citizens.

Sometimes naturalized citizens cannot locate their original Certificate of Naturalization and/or a U.S. passport. These are the only acceptable forms to document naturalized citizenship under the new regulations. However, getting a replacement Certificate of Naturalization costs $220 and can take up to a year to process and a passport costs $97. Because this group of naturalized citizens are either

applicants or beneficiaries of Medicaid which by definition (per Medicaid financial eligibility criteria) suggests that they are living in extreme poverty, having to expend anywhere from $97 to $220, in addition to processing and wait times for getting such documentation, creates an undue and absurd administrative and financial burden upon this pool of individuals.

CMS should give states the option in utilizing the SAVE (Systematic Alien Verification for Entitlements) system administered by the Department of Homeland Security to document naturalized citizenship. Currently, states already participate in SAVE and the cost of confirming an individual's citizenship is practically no cost (less than $1). (As is often times the case with database systems, SAVE is not a perfect system, and there can be problems with verification in instances where a person's alien registration number or certificate of naturalization number is not known, but the administrative savings, both in cost and time, can certainly help when there are no other alternatives.)

3. Requirement for originals or certified copies as satisfactory evidence of citizenship unduly burdens applicants and beneficiaries and creates unnecessary administrative burden upon state Medicaid agencies.

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 further unduly burdens applicants and beneficiaries, in addition to creating an unnecessary administrative burden upon state Medicaid agencies. The requirement for originals and certified copies also calls into question the erroneous estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring that individuals obtain and submit originals and certified copies adds to the time compliance will take. In addition to locating or obtaining their documents, applicants and beneficiaries, particularly those with linguistic and/or cultural barriers, will likely have to visit state offices to submit them creating yet another layer of agency bureaucracy for individuals to navigate.

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

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

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

This year, about 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 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.

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

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

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

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

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

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

There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. Among these are victims of hurricanes and other natural disasters whose records have been destroyed, and homeless individuals whose records have been lost. The rule directs states to assist

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

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

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

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

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

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

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

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

copies of their birth certificates. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's licenses or school identification cards.

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 light of established medical research, policy analysis and community town hall discussions with regard to the growing disparity in health and healthcare, along with the growing number of children and individuals who are either underinsured or uninsured, particularly as it impacts the Asian American community, respectfully, we urge CMS to take note and consider the foregoing Comments and Concerns.

In closing, the Asian American Justice Center would be pleased to offer additional input and assistance with regard to this very important matter. Please do not hesitate to contact either Vincent A. Eng, Deputy Director, via email at VEng@AdvancingEquality.org, Juliet K. Choi, staff attorney and NAPABA Partners Community Law Fellow on Language Access, via email at JChoi@AdvancingEquality.org. Thank you.

Submitter : **Ms. Wendy Schrag** **Date: 08/11/2006**

Organization : **Fresenius Medical Care North America**

Category : **End-Stage Renal Disease Facility**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

CMS-2257-IFC-465-Attach-1.DOC

Fresenius Medical Care

July 28, 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: Public Comments for Medicaid Program Citizenship Documentation Requirements

Thank you for providing a public comment period on the new documentation requirements for proof of citizenship and identity when applying or being redetermined for Medicaid programs. These comments are being submitted on behalf of Fresenius Medical Care North America (FMCNA), the largest supplier of dialysis supplies and services in the United States. We care for over 115,000 patients in some 1,500 facilities across the country.

Implementation Conditions/Considerations
Nearly seventy-five percent of dialysis patients have Medicare as their primary insurance. Approximately forty percent of those are dually eligible for Medicare and Medicaid. Thank you for excluding Medicare and SSI recipients from the requirement to produce proof of citizenship and identity. Because such a large percentage of dialysis patients have Medicare, this will be a help to dialysis patients who apply for Medicaid.

We are glad that you are including cross matches as much as possible to help with timely processing of Medicaid applications and redeterminations, including the SDX records and vital statistics for birth certificates. You asked for additional suggestions for cross matching, and we would like to suggest the census records be used as an additional cross match resource.

You state, "All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted." We would like to suggest that copies be accepted as temporary approval while the agencies certify any copies. This would help to avoid a delay of initial applications.

Provisions of the Interim Final Rule with Comment Period
In this section, we support adding a special rule for individuals under the age of 16 that permits parents or guardians to sign an affidavit as to the identity of a child. We also support requiring states to assist special populations, (such as homeless, mentally impaired, etc) in accessing their needed documents to prove citizenship and identity.

One area that is still vague to us is the time frame that will be allowed for people to submit their required documentation. The only time frame given is referred to as "reasonable opportunity," and the paragraph seems to imply that States determine their own time frame. Is there a guideline that could be

Fresenius Medical Care

given to States, or that could be made public if it has already been given? It may help people who are applying for Medicaid if they know whether they have 30 days, 60 days, 90 days, etc. to turn in their documentation.

You asked for additional documents that could be used as a reliable form of evidence of citizenship or identity in addition to the ones listed in the various levels. We can not think of anything additional at this time; however, we urge you to keep all of the levels of documentation options and not narrow down the documentation options to only the primary or secondary levels as you are considering. Although it may be the rare occasion that an affidavit or other third or fourth level of documentation is necessary, these should remain as options. Until the rule has been in place for a significant enough time that the documentation levels can be evaluated, all options should be offered.

III. Collection of Information Requirements

The estimated time of 10 minutes for individuals and 5 minutes for State staff seems underestimated. Individuals may not even know who to contact to get their documents, and just the time it will take to research this may take much longer for some than others. A more realistic time frame is probably going to be 30 minutes for individuals and 15 minutes for State staff.

Once again, thank you for reviewing our comments on the Medicaid Program Citizenship Documentation Requirements. If there is any more information that would be helpful for you to know specifically about our dialysis patient population, please feel free to contact me by phone at 316-841-5245 or by email at Wendy.Schrag@fmc-na.com.

Sincerely,

Wendy Funk Schrag

Wendy Funk Schrag, LMSW, ACSW
Director of Advocacy and State Government Affairs

Submitter : **Ms. Beth Baltimore** **Date: 08/11/2006**

Organization : **Ms. Beth Baltimore**

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. Jerry Phillips **Date:** 08/11/2006

Organization : Department of Health and Hospitals

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-467-Attach-1.PDF

Kathleen Babineaux Blanco
GOVERNOR

STATE OF LOUISIANA
DEPARTMENT OF HEALTH AND HOSPITALS

LOUISIANA
Department of HEALTH and HOSPITALS

Frederick P. Cerise, M.D., M.P.H.
SECRETARY

August 11, 2006

File Code CMS-2257-IFC

Mark B. McClellan, M.D., Ph.D.
Centers for Medicare and Medicaid Services
Office of the Administrator
200 Independence Avenue, SW
Room 314G
Washington, DC 20201

Dear Dr. McClellan:

RE: Provisions o the Interim Final Rule with Comment Period, 42 CFR chapter IV; §435.406 *et seq.*

The Louisiana Department of Health & Hospitals (DHH) Bureau of Health Services Financing (BHSF), the Medicaid agency for the State of Louisiana, respectfully submits this comment letter on the interim final rule, Medicaid Program; Citizenship Documentation Requirements, which was published in the July 12, 2006, *Federal Register* (71 *FR* 39214) for the Centers for Medicare and Medicaid Services (CMS).

As discussed in our comments below, we believe that the interim final rule is more restrictive and prohibitive in both the types of documentation allowed and the weight afforded thereto than what is provided for in the enacting legislation. As such, the interim final rule poses grave concerns for States in implementing the requirements as well as for applicants and recipients of Medicaid, particularly the elderly poor.

I. Summary Statement

CMS indicates that the purpose of the interim final rule is to provide the States with guidance on the types of acceptable documentation evidence as well as the conditions under which those types of documentation may be used. In addition, the interim final rule is provided as a means "... to help minimize the administrative burden on both States and applicants and recipients."

If the summary does in fact correctly state the intent of the interim final rule, then Louisiana strongly recommends that CMS dispense with its imposition of a "hierarchy" of acceptable documentation along with the stringent restrictions on use of many of the enumerated documents. Otherwise, the interim final rule will serve to maximize the

administrative and financial burden not only to States but to applicants and recipients as well. With all due respect, the interim final rule is far more oppressive than the enacting legislation.

II. Background and Provisions of the Interim Final Rule

In response to CMS's reiteration that States must implement "an effective process" for assuring compliance with this law, Louisiana respectfully suggests that States be given the opportunity to provide CMS with their own individual processes for compliance, based upon the practices and procedures that have been adopted formally or informally by each state in order to accommodate the unique practices and history reflective of each State's population. Indeed, what may be a long practiced method of citizenship verification in one state may be unknown elsewhere. The enacting legislation is indeed broad enough to accommodate a state-tailored methodology approved by CMS. With the equivalent of "full faith and credit" being afforded among the States and provided for in the regulations, such method would prove to be the least burdensome on the States and their respective populations, and would carry out the stated intent that presentation of citizenship evidence be a one-time activity. Absent the flexibility for States to design their own individual processes and recognized validity to approved processes, transient applicants/recipients may well be faced with having to undergo the verification process more than one time.

In addition to the proposal submitted above, we submit the following areas of concern regarding the interim final rule.

1. The interim final rule is more restrictive than the law

The implementing legislation, found at section 6036 of the Deficit Reduction Act of 2005 (DRA), is quite brief and sets forth documentation which it describes as "satisfactory documentary evidence." While the legislation does allow "[S]uch *other* documentation as the Secretary may specify [§§ 6036(a)(3)(b)(v) and 6036 (a)(C)(v), respectively, emphasis added], and permits the Secretary to allow "... any *other* documentation of ... identity ... as the Secretary finds..." to be reliable [§6036(a)(D)(ii), emphasis added] it does not authorize the Secretary to restrict that which Congress finds "satisfactory." As such, the interim final rule severely restricts the State's ability to implement the legislation by imposing conditions and requirements on the types of recognized documentation that is not authorized in the legislation. Among those restrictions imposed but not authorized, are the following:

- The interim final rule creates a hierarchy for the use of documentary evidence and divides evidence of citizenship into groups based upon perceived "reliability" of the evidence. The legislation specifically lists documents considered

"satisfactory" without any further restrictions or conditions. Thus, the interim final rule is more restrictive that the legislation thereby causing a greater hardship on obtaining sufficient documentation on the States, applicants, and recipients alike.

- The legislation does not require that one form of documentation be "unavailable" before the next "level" or "group" is reverted to for documentation of citizenship.

- For documentary evidence categorized as "secondary" or lower, the interim final rule imposes additional requirements, such as the "age" of a document, which is not required by the enacting legislation.

- By monitoring States' use of "primary" evidence, CMS is imposing a standard or burden which is not required by the enacting legislation. Through CMS's requirement that States "re-verify" 3rd or 4th level documentation when automated capabilities become available, CMS is disregarding evidence of citizenship/documentation recognized by law as legitimate, and is requiring States to verify citizenship more than once, contrary to the assertions that citizenship verification is a one-time activity (*Background*, 2nd paragraph).

2. The interim final rule is unclear

Secondly, the language of the interim final rule is unclear as to what constitutes sufficient documentation for children under age 16. According to the interim final rule, those documents found in 8 CFR 274a2(b)(1)(v)(B)(1) may be used to establish identity. The second type of documentation found therein is "School identification card with a photograph of the individual." §435.407(e)(8)(ii). Section 8(f) provides that "*...school records may include nursery or daycare records.*" It is unclear whether sufficient school documentation is limited to identification cards with photos or can be any written school documentation other than a school identification card. For nursery or daycare records, we are confused as to whether only an identification card with ID would suffice. Logically, the intent appears to allow any school record (including nursery or daycare) to suffice, but the rule is unclear.

3. The interim final rule ignores reliable documentation readily available to States and may violate provisions of the U.S. Constitution

Children born in the United States are, with few exceptions (e.g., children born to diplomatic officers or foreign sovereigns) citizens. Therefore, any record of a birth in a United States hospital logically should be sufficient, reliable information to establish citizenship by birth. To prohibit states from using their own paid Medicaid claims to

verify the citizenship of these children is administratively obtuse and ignores a reliable, efficient and expedient method available for verification of citizenship.

Furthermore, children who are born to illegal aliens or to qualified aliens subject to the 5 year bar, if born in a United States hospital, are no less citizens than those born to U.S. citizens. Thus, these children are not afforded the same equal protection as all other children who are citizens via birth. Such a practice is discriminatory and possibly unconstitutional.

Absent information that the child is born to a diplomatic officer or foreign sovereign, the record of the child's birth should in and of itself, provide adequate proof of citizenship sufficient to comply with statutory law.

4. Under the interim final rule, applicants and recipients are treated differently

By allowing the reasonable opportunity period to continue indefinitely so long as a recipient is attempting to secure proof, while terminating the reasonable opportunity period for an applicant at either 45 or 90 days, causes States to treat applicants and recipients differently, which of course, is prohibited by the federal Medicaid statute

5. The interim final rule imposes additional costs on states without providing for reimbursement

The federal law has mandated that States obtain documentary evidence of citizenship for applicants/recipients. States will incur expenses directly associated with obtaining this documentation. As such, federal funding for such costs as obtaining adequate documentation should be reimbursed by the state at 100%.

6. The interim final rule imposes stringent and burdensome restrictions on the use of declarations

The process required to execute valid declarations is burdensome and over broad. If the Secretary recognizes this method as being an additional valid method for documenting citizenship, then the use of the method should be an actual viable alternative form of verification, which under the rule, it is not. Due to the inordinate difficulty associated with obtaining a valid declaration, it is anticipated that such method will be used, rarely if ever, even though such method may be the only viable means for a person to establish citizenship. Many elderly persons do not have birth certificates. For them, a legitimate alternative would be a sworn statement provided by a friend or relative. However, requiring that the "declarant" also prove his/her citizenship and identity reduces the availability of the method to that of being virtually non-existent. This requirement extends the proof of citizenship requirement beyond the confines of the Medicaid

program. Expectations are that relatives and friends of such a person more than likely face the same obstacles of providing proof of citizenship and/or identity.

In other cases, a person awaiting naturalization may be perfectly capable of attesting to the applicant/recipient's citizenship status. The rule effectively eliminates a potential reliable source of verification.

7. Additional reliable sources for citizenship

Louisiana proposes 4 additional forms of documentation available to verify citizenship:

- SAVE database. This Department of Homeland Security database can provide information on who has become a naturalized citizenship.
- Baptismal records. In Louisiana, many persons were not born in a hospital but rather at home, and birthing assistance consisted of someone acting in the capacity of mid-wife. Due to the strong religious ties, baptismal records have been widely, if not universally kept, and have provided for some perhaps the only documentation, other than a family Bible, of recordation of birth. Louisiana has a long legacy of using these for social hand health need based assistance programs to determine date and place of birth.
- Family Bibles. Family Bibles have long been an institution of record keeping in particular for the rural elderly population. As with Baptismal records, these may be the only documents available to show birth and lineage. These Bibles are handed down from generation to generation and serve as the official recordation for many persons.
- Souvenir birth certificates. Many residents of Louisiana live near the border of a neighboring State with the closest hospital being in the neighboring State, thus prohibiting the use of the home State's vital records to establish citizenship. We propose that CMS ease the restrictions on the use of souvenir birth certificates given the financial and time delay barriers presented in obtaining a birth certificate from another State.

8. Additional reliable sources for identity

- The Louisiana Office of Public Health uses photographs contained in school yearbooks for identification purposes. These publications serve as a recordation of who a person is, and are used as methods to locate people. We urge their use as another acceptable means of documenting identity.

If CMS does not allow States to propose individual procedures for verification documentation as suggested above, then Louisiana urges CMS to consider allowing States to enhance the list of acceptable forms of documentation for **both** citizenship and

identity based upon the unique situations and practices of what the individual States have used in the past for the State's own internal documentation and verification requirements. As such, these provisions of acceptable documentation should be left open and not closed, thus allowing States to submit to CMS different methods of verification that may be particular to the State's unique set of circumstances.

9. Title IV-E children

Since these children are in the custody of the State, as are their birth and other records, they should be exempt from the requirements.

10. National database

In order to assist States verify citizenship and identity for persons who exercise traveling liberties, we suggest that CMS maintain a national database for all persons for whom citizenship and/identity verification has been attempted. This database should contain each person's identifying information, the date that same was verified or unable to be verified, and information regarding cases of suspected fraud. Such system would be maintained by CMS with information provided by each State, and with retrieval capabilities provided to each State as well. CMS should provide guidelines that will ensure the privacy protections afforded by law to citizens and permanent resident aliens.

III. Collection of Information Requirements

11. CMS has underestimated the burden on both states and applicants.

We strongly disagree with the estimate that only 10 minutes will be required by an applicant/recipient to obtain and present satisfactory evidence to the State. This time frame is only reasonable for persons who have a passport (most do not), or have a certified copy or their original birth record on hand, plus a driver's license. This time frame is especially unrealistic for the elderly poor for whom obtaining the required documentation will prove difficult at best. We estimate that it may take months in many instances to obtain satisfactory evidence, if it can be obtained at all.

We strongly disagree with the estimate that a State will use only 5 minutes to obtain the documentation, verify, and maintain a record of documentary evidence. This time frame assumes that most applicants/recipients will have the documentation readily available, or the data will be electronically accessible. Such a time frame is a gross underestimation of the real time that it will take to research, review, obtain, verify and document evidence.

Thank you for the opportunity to voice our concerns regarding the interim final rule. We look forward to working with you to make these and other regulations workable for the federal government, the State of Louisiana, and the population we serve.

Sincerely,

Jerry Phillips
Medicaid Director

JP/JRK/LAO

Submitter : H. Sally Smith **Date:** 08/11/2006

Organization : National Indian Health Board

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-468-Attach-1.DOC

NATIONAL INDIAN HEALTH BOARD

101 Constitution Ave. N.W., Suite 8-B02 • Washington, DC 20001
Phone: (202) 742-4262 • Fax: (202) 742-4285
Website: www.nihb.org

August 8, 2006

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

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

To Whom It May Concern::

As Chairman and on behalf of the National Indian Health Board (NIHB), I am providing 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.

Established in 1972, the NIHB serves all Federally Recognized American Indian and Alaska Native (AI/AN) Tribal governments by advocating for the improvement of health care delivery to AI/ANs, as well as upholding the Federal government's trust responsibility to AI/AN Tribal governments.

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 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.

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

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

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

membership cards issued to members of Federally-recognized tribes, including non-U.S. citizen tribal members, are satisfactory proof of documentation for Medicaid eligibility purposes under the PRWORA. The documentation requirements under the DRA should be the same.

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

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

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

regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

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

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

Thank you for your thoughtful consideration of my comments.

Sincerely yours,

H. Sally Smith, Chair
National Indian Health Board

Cc: Michael O. Leavitt, Secretary of HHS
Mark B. McClellan, M.D., Ph.D., Administrator, CMS
Charles W. Grim, D.D.S., M.H.S.A., Director, IHS
NIHB Board

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

Organization : Texas Association of Planned Parenthood Affiliates

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2257-IFC-469-Attach-1.PDF

Texas Association of
Planned Parenthood® Affiliates, 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: 42 CFR Parts 435, 436, 440, 441, 457, and 483
Medicaid Program; Citizenship Documentation Requirements

Dear Administrator McClellan:

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

TAPPA is the statewide advocacy office for Planned Parenthood in Texas. We represent 12 Planned Parenthood affiliates that operate 83 health care centers in this state. These health centers provide services to approximately 300,000 men and women each year. Ninety-eight percent of our services statewide are for preventive family planning and well-woman care, such as annual exams and cancer screenings. TAPPA's mission is to promote and secure public policies that protect and expand access to medical care and information people need to plan their families and their futures. In 2005, Planned Parenthood provided health care services to 28,512 Medicaid clients.

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

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

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

Texas is in the process of applying for an 1115(a) Research and Demonstration Waiver for family planning. Approximately 2 million women will be eligible for services under the program. It will provide care to women living in families earning up to 185% of the federal poverty level.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attaining the required documents presents its own challenges. 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.

Texas 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)). Texas has the ability to use vital health databases to check for birth certificates. The fact that some citizens in Texas will not be required to track down certain documentation as a result is a significant improvement.

At the same time, however, Texas 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 Texas' Medicaid program operates. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

Thank you for your attention to these comments.

Heather Paffe
Director

Submitter : Mr. Gem Daus **Date:** 08/11/2006

Organization : Asian & Pacific Islander American Health Forum

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-470-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)

Dear Dr. McClellan:

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

The Asian & Pacific Islander American Health Forum (APIAHF) is a national organization whose mission is to enable Asian Americans and Pacific Islanders to attain the highest level of health and well-being. We are deeply concerned that the Interim Final Rule will result in unfair delay, denial, or loss of Medicaid coverage for U.S. citizens. APIAHF is especially concerned about naturalized U.S. citizens and U.S. born children of immigrants already enrolled 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 use of the State Data Exchange (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.
- 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. APIAHF makes the five recommendations listed below. Additional explanation for each recommendation follows.

1. 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.

2. We strenuously urge CMS not to limit in any way the types of documents that can be used to document citizenship status.
3. 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.
4. 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 immediately, and have a "reasonable opportunity period" to obtain the documentation necessary to prove their U.S. citizenship and identity.
5. We urge CMS to add a new provision at 42 CFR 435.407(k) which would adopt the SSI approach for U.S. citizens who lack documentation of their citizenship.

Explanation

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

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). 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. **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.

Because the rule would prevent states from granting coverage until documentation of citizenship is provided, hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement for the treatment of newborns who are low-birthweight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements. And/or Some families may be unable to get care for their newborn children, care that is essential to their children's health and development.

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 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.

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

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. 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).

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

The new rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. However, the DRA does not make this requirement. CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1).

For those applicants who do not have original documents, obtaining official replacement documents is both timely and costly, particularly for people who qualify for Medicaid precisely because of their limited financial means. For example, getting a replacement Certificate of Naturalization costs $220 and can take up to a year to process. A passport costs $97 and can take several months to get. Medicaid applicants and recipients should not have to experience delays or denial of Medicaid coverage because of they do not have originals or cannot obtain replacements right away.

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. 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.

However, under the interim final rule, 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. Moreover, mailing original documents back to people would be quite costly for states.

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.

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

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. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence."

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.

5. The final rule should include a safety net for those who cannot prove citizenship. CMS should adopt the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship. 435.407(k)

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

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

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

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

We urge CMS to add a new provision at 42 CFR 435.407(k) which would adopt the SSI approach for U.S. citizens who lack documentation of their citizenship.

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

Thank you for your attention to these comments. If you have any questions, please contact Gem P. Daus at APIAHF at (202) 466-7772 or gdaus@apiahf.org.

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

Organization : baltimore healthcare access

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

see attached

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

see attached

Regulatory Impact Statement

Regulatory Impact Statement

see attached

CMS-2257-IFC-471-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 : Ms. Sonal Ambegaokar **Date:** 08/11/2006

Organization : National Immigration Law Center

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-472-Attach-1.DOC

NATIONAL
IMMIGRATION
LAW CENTER
www.nilc.org

LOS ANGELES
HEADQUARTERS
3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
fax 213 639-3911

WASHINGTON, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
fax 202 216-0266

OAKLAND
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
fax 510 663-2028

August 11, 2006

U.S. Department of Health and Human Services
Centers for Medicare & Medicaid Services
P.O. Box 8017
Baltimore, MD 21244-8017

ATTN: CMS-2257-IFC

RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Federal Register 39214 (July 12, 2006)

Dear Secretary Leavitt:

The National Immigration Law Center (NILC) is a nonpartisan national legal advocacy organization that works to protect and promote the rights of low-income immigrants and their family members. Since its inception in 1979, NILC has earned a national reputation as a leading expert on immigration law and the employment and public benefit rights of low-income immigrants. We conduct policy analysis, advocacy, and impact litigation, provide training, publications, and offer technical assistance to a broad range of groups throughout the United States. NILC's extensive knowledge of the complex interplay between immigrants' legal status and their rights under federal public benefit laws is an important resource for immigrant rights coalitions and community groups, as well as national advocacy groups, policymakers, attorneys and legal aid organizations, government agencies, and the media.

We are providing comments on the Centers for Medicare and Medicaid Services' (CMS) Interim Final Rule on Citizenship Documentation, published in the Federal Register on July 12, which implements Section 6036 of the Deficit Reduction Act of 2005 (DRA). These comments are intended to ensure that critical health services for Medicaid eligible immigrants and their U.S. citizen family members are not jeopardized by the confusion or unnecessary burdens created by the Interim Final Rule ("Interim Rule"). Although Section 6036 of the DRA addresses only U.S. citizens who seek or receive Medicaid, the publicity and initial implementation efforts for the new documentation rule has generated confusion which has prevented or deterred Medicaid eligible non-citizens from enrolling in Medicaid or seeking medical care.

NILC supports efforts to minimize the harm to eligible citizens and immigrants who may be affected inadvertently or otherwise harmed by the Interim Rule. In particular, we endorse the recommendations made by the National Health Law Program, Families USA, and the Center on Budget Policies and Priorities. In addition, we would like to raise additional concerns with the Interim Rule, which are discussed below.

COMMENTS ON PROVISIONS OF THE INTERIM FINAL RULE AND PREAMBLE WITH COMMENT PERIOD

Changes to regulations governing immigrant eligibility and verification of an immigrant's status (42 CFR 435.406 and 435.408)

The Interim Rule, which is intended to implement the DRA's citizenship verification provision, extends beyond this statutory authority to make changes in the rules governing immigrant eligibility and verification of immigrants' eligibility for Medicaid. 71 Federal Register (FR) at 39217-39218. Even if authorized, however, the proposed regulations fail to include certain categories of immigrants who are eligible for federal Medicaid. The revised 42 CFR. 435.406 and 436.406 list only "qualified" immigrants, and omit several groups of immigrants who are eligible for coverage under laws passed after August 22, 1996. For example, victims of trafficking and their derivative beneficiaries are eligible for federal benefits, including Medicaid, to the same extent as refugees, without regard to their immigration status. 22 U.S.C. 7105(b)(1); Supplemental Security Income (SSI) recipients, including lawfully residing immigrants who were grandfathered into SSI as "permanently residing under color of law" remain eligible for Medicaid, in the states that link Medicaid to SSI receipt. 8 U.S.C. 1612(b)(2)(F); certain Native Americans also are eligible for Medicaid, without regard to their immigration status. See 8 U.S.C. 1612(a)(2)(G), as referenced in 8 U.S.C. 1612 (b)(2)(E).

These eligible immigrants and Native Americans already face barriers when they apply for services, based in part on confusion among state agency staff. To help address this confusion, we offer several recommendations.

First, the proposed regulations should list all categories of eligible immigrants, as discussed above. Second, because federal law, at 42 U.S.C. 1320b-7(d), expressly requires states to provide benefits to applicants who have declared a "satisfactory immigration status" pending verification, the immigrant eligibility list should be included in a provision separate from those governing verification of immigration status.

Third, the proposed regulations should clarify that the eligibility of some immigrants cannot be verified through the Department of Homeland Security (DHS), but must instead be verified with other agencies. The status of trafficking victims, for example, is verified through the U.S Department of Health and Human Service's Office of Refugee Resettlement (ORR). See ORR State Letter #02-25, at http://www.acf.hhs.gov/programs/orr/policy/sl02-25.htm. Native Americans may have their documents verified by the Office of Tribal Justice or by certain tribal governments. See 62 Fed. Reg. 61411 (Nov. 17, 1997). Even some "qualified" immigrants, such as battered immigrants or certain Cuban/Haitian entrants may need to have their eligibility verified through alternative means. Any verification rule for immigrants therefore must address situations where agencies other than DHS are the appropriate resource.

Fourth, the proposed regulations should clarify that an immigrant's eligibility is not conditioned on *prior* verification with DHS or other agency. The proposed regulations

must be consistent with 42 U.S.C. 1320b-7, which mandates that benefits be provided once a declaration of satisfactory immigration status has been made, and if documents are submitted within a reasonable period, pending verification of an immigrant's status. The Interim Rule's revised 42 CFR 435.406 and 436.406 could be misconstrued to require verification of an eligible immigrant's status prior to the issuance of benefits. To comply with federal statutes, prior verification of an immigrant's status cannot be made a condition of coverage.

It is important to maintain the concept of "satisfactory immigration status" used for declarations of status under 42 USC 1320b-7. A rule requiring a declaration of "satisfactory immigration status" would conform with federal law on verification of status under 42 USC 1320b-7, would allow states to maintain their verification procedures (regardless of whether federal financial participation is available),[1] and would help ensure that eligible immigrants who do not fall within the "qualified" immigrant categories are able to secure coverage without undue bureaucratic delays.

Medicaid benefits must be provided equally to all citizen infants born on Medicaid regardless of the scope of the mother's Medicaid coverage.

We appreciate CMS' clarification in the Preamble that U.S. born infants who have met the criteria for automatic and continuous eligibility do not need to provide citizenship documentation during the first year of life. 71 FR 39216.

However, we are deeply concerned about the statement in the Preamble which attempts to deny automatic and continuous eligibility to infants born in the United States whose mothers were receiving Medicaid only for labor and delivery or other emergency services. 71 FR 39216. Nothing in Section 6036 of the DRA, which pertains only to citizenship documentation for the purpose of a State's receipt of federal financial participation, permits this restriction. These infants, regardless of the mother's immigration status or scope of Medicaid coverage, are by definition U.S. citizens, a fact known to the Medicaid agency because it will have paid for the child's birth in a U.S. hospital. This statement in the Preamble will likely cause unnecessary delays in access to medical care for citizen infants during the most vulnerable and critical time in their life and development. Finally, this position reflects a radical departure from the previous federal agency's position, contradicts the plain meaning of the federal statute establishing the criteria for automatic and continuous, or "deemed" eligibility, and violates the Equal Protection clause of the U.S. Constitution.

We strongly urge CMS to withdraw the statement in the Preamble and instruct the states that an infant born in the U.S. whose mother was receiving Medicaid, including emergency Medicaid, is automatically and continuously eligible for Medicaid coverage

[1] Since some lawfully present SSI recipients who obtained coverage as "permanently residing in the U.S. under color of law" (PRUCOL) maintained eligibility for Medicaid, and since several states continue to cover PRUCOLs or other persons lawfully residing in the US, the regulations in 42 CFR 435.408 and 436.408 continue to serve as a helpful reference. Even if the U.S. Health and Human Services Agency opts to delete the PRUCOL concept from the federal regulations, the variation in coverage of immigrants from state to state argues for maintaining a more flexible approach, such as "satisfactory immigration status."

throughout the first year of life, if the infant otherwise meets the criteria for this eligibility category.

With regard to infants whose mothers did not have Medicaid at the time of the birth and older children, we urge CMS to adopt citizenship documentation rules that will minimize delays and denials of coverage. Many citizen newborns will be unable to document their citizenship status through state vital record matches because time delays and processing lags often prevent vital records from being created immediately at time of birth. Other documentation can take even longer to obtain. Recognizing the important need for all children to have access to medical care for their health and development, CMS should amend 42 CFR 435.407(a) or (b) to include a record of payment for a child's birth within the United States as acceptable evidence of that child's citizenship and identity.

The interim rule should not limit the types of evidence that may be used to document citizenship and should recognize that any list of documents cannot be exhaustive.

CMS has asked for comments regarding whether the documentation that can be used to prove citizenship should be limited to primary or secondary levels of evidence. 71 FR 39219-39220. We strongly urge CMS not to limit in any way the types of documents that can be used to document citizenship status. In fact, we strongly recommend CMS allow for additional documentary evidence to be considered acceptable under Section 6036 because no list of citizenship documentation can be an exhaustive list.

First, Section 6036 of the DRA does not require that documentary evidence be limited or that a hierarchy of documentary evidence be established. As CMS acknowledges in the Interim Rule, Section 1903(x)(3)(C)(v) of the DRA specifically authorizes "the Secretary to identify additional documentary evidence of citizenship beyond that contained in section 1903(x)." We appreciate CMS broadening the list of documentary evidence beyond those specified in the statute. However, the statute does not require any limitation on the evidence. Indeed, limiting the documents defeats the statutory purpose of granting authority to the Secretary -- to account for the range of documents that may serve as proof of U.S. citizenship or identity.

Second, the hierarchy or additional limits to documentary evidence will likely prevent citizens or nationals who are otherwise eligible from obtaining Medicaid simply because they do not have one of the listed documents. Because of the complexity of U.S. immigration and naturalization laws and ongoing development of new documents, we urge CMS to recognize that it is impossible to create a comprehensive or exhaustive list of evidence to prove citizenship. Although CMS is charged with administering the new Medicaid documentation requirement, neither CMS nor the U.S. Department of Health and Human Services (the Agency) are responsible for making determinations of citizenship. That responsibility rests with the U.S. Department of Homeland Security (DHS) and its agency the United States Citizenship and Immigration Services (USCIS). The federal immigration agency has acknowledged the impossibility of creating an

exhaustive list of documentary evidence as it attempted to define categories of citizens for federal public benefit purposes:

> The law regarding U.S. citizenship and nationality is complex. These broad definitions are provided for general guidance only, and do not address all of the complexities involved in attaining or losing status as a U.S. citizen or non-citizen national. See 8 U.S.C. 1401 et. seq.

"Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 Fed. Reg. 61344, 61347 (Nov. 17, 1997).

The complex immigration and naturalization laws give rise to numerous alternative methods and documents that may demonstrate citizenship or national status, including for example court orders. A U.S. citizen or national granted status by USCIS cannot be deemed by CMS to be a "non-citizen" simply because his or her documentary evidence is not on the CMS list.

We urge CMS not to limit the evidence any further. We also urge the Agency to remove the hierarchical structure of the documentary evidence requirement, and to clarify that any documentary evidence presented will be sufficient for states to meet their obligation to secure federal financial participation.

Finally, we strongly recommend that CMS include a "catch-all" category in its guidance to ensure that other appropriate documents of which the Agency may not be aware, or which may be developed in the future, will serve as acceptable evidence of citizenship or national status. The lack of a particular document does not make a citizen or national any less of a citizen or national. As the Secretary was granted authority to expand the list of documents under Section 1903(x)(3)(C)(v), we urge the Agency to use this authority to acknowledge that other appropriate documents not specified on a particular list may be acceptable by state Medicaid agencies as proof of U.S. citizenship for purposes of securing federal financial participation.

For example, CMS may adopt an approach similar to the one used by the Social Security Administration (SSA) for documentary evidence of citizenship. SSA includes a safety-net provision for applicants who do not have one of the enumerated documents. SSA's regulations allow citizens who cannot present one of the specified documents that indicate citizenship status to explain why they cannot provide the documents and to provide any information that they may have. 20 CFR 416.1610. This approach would allow states to obtain documentary evidence for purposes of federal financial participation for citizens and nationals who have a document to prove their status that is not listed on the current list or who for numerous reasons may not have or be able to obtain one of the specified documents. We recommend that CMS add a new provision at 42 CFR 435.407(k) adopting SSA's safety net provision found at 20 CFR 416.1610.

The limitation of documents to prove citizenship for citizens who are born outside the United States should be eliminated.

Under the Interim Rule, the acceptable citizenship documents for citizens born outside the United States appears to be limited to a U.S. passport, certificate of naturalization, or certificate of citizenship. 71 FR 39218. This restriction is not required by Section 6036 of the DRA and ignores the realities of the citizenship and naturalization process. Most significantly, the restriction will effectively deny Medicaid to eligible citizens based solely on their place of birth even though they are U.S. citizens.

Citizens born outside of the United States include not only naturalized citizens, but also individuals who became citizens through birth abroad to a citizen parent, and individuals who became U.S. citizens through automatic operation of law. The latter include individuals who automatically became citizens as the children of a naturalized citizen (derivative citizens), as well as children adopted by a citizen parent. As discussed below, many of these citizens, particularly children, will not have one of the specified three documents but may have other supporting documentation to prove their citizenship status. CMS should accept as satisfactory evidence alternative documentation as proof of citizenship for citizens born outside the United States.

The Interim Rule fails to take into account the naturalization process for many citizens and incorrectly assumes that all naturalized citizens will have one of the three specified documents in their possession. In particular, children under age 18, who derive their citizenship automatically through the naturalization and/or citizenship status of one or both parents, do not file a separate naturalization application to become U.S. citizens and do not receive any of the three specified documents when they become citizens. Unlike the parent who receives a certificate of naturalization, a child, who automatically obtains derivative citizenship through the naturalization of a parent, does not automatically receive a certificate of citizenship as documentary evidence of citizenship and instead must affirmatively apply for the certificate to USCIS. Most children who receive derivative citizenship do not immediately apply for a certificate of citizenship, and many never have done so.

Although the Preamble to the Interim Rule indicates "children born outside the United States and adopted by U.S. citizens may establish citizenship using the process established by the Child Citizenship Act of 2000," there is no reference to this provision in the proposed regulation at 435.407 in the Interim Rule. Moreover, the above quotation describes only a narrow subset of the different categories of individuals who automatically obtain U.S. citizenship through operation of law under Title 8 U.S.C. Section 1431. As amended by the Child Citizenship Act, this statute provides for the automatic acquisition of citizenship by any individual born abroad who meets all of the following conditions at any time prior to reaching the age of eighteen years: (1) has at least one parent who is a U.S. citizen, whether by birth or naturalization, and (2) is residing in the U.S. in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence. The statute also provides that a child adopted by a U.S. citizen parent who meets these conditions also obtains automatic citizenship if

the child meets the requirements for an adopted child contained in Title 8 U.S.C. Section 1101(b)(1). Yet the Interim Rule completely fails to acknowledge the process of obtaining citizenship through automatic process of law, whether due to the naturalization of a parent, the acquisition of lawful permanent resident status by a child, or a child's adoption by a U.S. citizen parent. In all of the above circumstances, the acquisition of U.S. citizenship occurs automatically, and the Interim Rule and proposed regulations should recognize the citizenship status of anyone who presents evidence that these requirements have been met.

Moreover, limiting acceptable citizenship documentation for any citizen born outside the United States to a U.S. passport, certificate of naturalization, or certificate of citizenship will be a major barrier to obtaining Medicaid because many low-income Medicaid eligible citizens who do not have these specific documents or have to obtain replacement documents will find it difficult, inordinately time-consuming and costly to obtain. First, as most Medicaid eligible citizens are low-income, it is unlikely they have the monetary means to travel abroad and are less likely to already have a U.S. passport. Second, as explained below, the significant costs involved in obtaining these documents will make it cost-prohibitive for Medicaid eligible citizens who do not have disposable income to obtain the documents. Third, they will face significant delays, sometimes more than a year, in obtaining the documents which will prevent them from obtaining Medicaid coverage and critical access to care if they are denied or terminated for failure to provide one of the three specified documents. Because of the inherent cost and time barriers involved in obtaining these documents, eligible Medicaid citizens who are born outside the United States will in effect be prohibited from seeking or obtaining Medicaid under the current restriction in the Interim Rule.

Below is a detailed explanation of the difficulty and cost of obtaining a certificate of citizenship, certificate of naturalization, and U.S. passport.

Certificate of Citizenship: The current application fee for a certificate of citizenship is $255 ($215 for a 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 USCIS office for a required in-person interview by a USCIS officer. An applicant may have to travel hundreds of miles to the nearest USCIS office because there only are 79 USCIS offices, excluding those located in Puerto Rico and U.S. territories. The vast majority of states have a single USCIS office, and there are not any USCIS offices 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.

Once the request is submitted, it currently can take nearly two years to obtain a certificate of citizenship depending upon the particular USCIS 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.

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, USCIS' A Guide to Naturalization recommends that naturalized citizens apply for a U.S. passport to more quickly obtain documentation of citizenship.

U.S. Passport: 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. Furthermore, a certificate of naturalization or certificate of citizenship must be submitted with the passport application. For those citizens who have lost or never obtained these documents, there may be another means of obtaining a passport but it requires additional paperwork and costs so that the time and barriers involved in obtaining a passport increases. Thus, while obtaining a passport may appear to be the easiest and cheapest option for a document, it is likely as or more difficult and time-consuming to obtain as obtaining the certificate of naturalization or certificate of citizenship.

For all these reasons, limiting acceptable citizenship documents for naturalized citizens to a U.S. passport, certificate of naturalization, or certificate of citizenship will undoubtedly delay and prevent the receipt of Medicaid benefits to a number of citizens born outside the United States. We urge CMS to consider the following changes:

- Eliminate the restriction for citizens born outside the U.S. to provide only U.S. passport, certificate of naturalization, or certificate of citizenship as proof of citizenship under Section 6036.
- Eliminate the hierarchy structure of the documents so that any document listed can be accepted as satisfactory evidence.
- Accept any evidence presented by citizens that demonstrates that they met the requirements for automatically obtaining citizenship.
- Include a catch-all provision to allow states to accept other documents that can serve as reliable documentation as SSA's regulations allow, as previously discussed above.
- Allow electronic verification of citizenship status for naturalized citizens against the Department of Homeland Security's (DHS) SAVE system, 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. SSA's procedures include verification of citizenship through the SAVE system 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 is a U.S. citizen, not whether someone has a specific citizenship

document. See SSA's Program Operations Manual (POMS) Section RM 00203.310 for further information.

Low-income citizens born outside the United States who lack a passport, certificate of naturalization, or certificate of citizenship should not be required to undergo the major cost and time of obtaining such documents when their citizenship can be verified by other documents or other means of verification. They are citizens even without one of the three specifically listed documents, and if otherwise eligible, they should be able to receive Medicaid.

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

The Interim Rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. 71 FR 39225 Nothing in Section 6036 of the DRA requires Medicaid applicants or recipients to submit original or certified copies to the Medicaid agency in order to fulfill this new documentation requirement.

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.

Moreover, due to the significant costs and time involved in obtaining particular citizenship documents as described above, it is highly unlikely that individuals will want to mail their original documents and rely on the Medicaid agency to return them. This provision of the Interim rule will only delay coverage for new applicants who will be forced to schedule appointments with the Medicaid agency to fulfill this requirement. Some applicants may even be discouraged from completing the application process.

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

Collection of Information Requirements

Based on detailed explanations above regarding the length of time it will take citizens born outside the United States to obtain one of the three specified documents, it clearly will take far more time than the estimated ten minutes to acquire and provide acceptable documentation to a state. 71 FR 39220. Even assuming a citizen or national has one of the prescribed documents in his/her possession, it will take substantially longer than the estimated 10 minutes to mail or, more likely, to present the original documents in person

to the local Medicaid office. Yet some of the information collection burden for individuals and states can somewhat be reduced by implementing at least the recommended changes described above.

Persons making an affidavit of citizenship on behalf of a citizen applicant or beneficiary should not be required to provide proof of their own citizenship.

Although CMS has allowed written affidavits as "fourth level of evidence" of citizenship, the restriction requiring the persons making the affidavits to prove their own citizenship and identity should be eliminated because it serves no meaningful purpose and is discriminatory. 71 FR 39224 and 435.407(d)(5)(iii)

This restriction, along with the other requirements for written affidavits, will prevent many Medicaid eligible citizens from using this last resort procedure to document their citizenship. In particular, the vast majority of households headed by non-citizens include at least one U.S. citizen, typically a child.[2] Limiting the ability of these citizen children to document their citizenship status by preventing non-citizen witnesses, including family members, from making affidavits in effect will deny much needed health coverage to these citizen children.

Without any statutory authority for this restriction, it is unclear why this limitation was posed. It is discriminatory to prevent non-citizens from making the affidavit if they can meet all the other requirements, especially when they too would be required to make the declaration under penalty of perjury. In effect, this restriction in the Interim Rule conclusively presumes that only U.S. citizens are credible, reviving an offensive concept that hearkens back to the roundly-condemned "White witness" rule of the Chinese Exclusion laws of the late 1800's.

Finally, the restriction requiring persons who are not applying for Medicaid to provide proof of citizenship in order to sign an affidavit in support of an applicant or beneficiary is inconsistent with the principles outlined in the Tri-Agency Guidance. The Tri-Agency Guidance prohibits inquiry into, or denial of benefits to a benefits applicant based on the immigration or citizenship status of persons who are not applying for the benefit. See http://www.hhs.gov/ocr/immigration/triagency.html. The current restriction requiring the person making the affidavit prove their citizenship and identity in effect requires non-applicants to establish citizenship. Their inability to do so could cause the denial of benefits to an eligible U.S. citizen applicant whose only means of establishing citizenship is by written affidavit. By preventing citizens from obtaining affidavits from non-citizens under the Interim Rule, citizens in effect will be denied benefits due to a non-applicant's lack of citizenship status.

The requirement that written affidavits can be made only by persons who can prove their own citizenship should be eliminated.

---

[2] According to the Urban Institute, 85% of immigrant households include at least one U.S. citizen, typically a child. (Michael Fix, Wendy Zimmermann and Jeffrey S. Passel, *Integration of Immigrant Families in the United States*, Urban Institute (July 2001)).

Medicaid coverage should not be delayed because of lack of citizenship documentation.

We are concerned that the Interim Rule is more stringent than required by Section 6036 of the DRA by denying enrollment in Medicaid to eligible applicants who have declared they are a U.S. citizen or national until they have submitted satisfactory evidence of their citizenship or national status. 71 FR 39216 and 39225.

There is no statutory requirement to prohibit applicants who are otherwise eligible for Medicaid from enrolling in the program immediately. Section 6036's citizenship documentation requirement is a condition for states to receive federal matching funds, not an eligibility requirement for individuals. Once an applicant has declared under penalty of perjury that s/he is an U.S. citizen or national and meets all eligibility requirements for Medicaid, s/he should be enrolled in Medicaid pending submission of the appropriate documentation of citizenship.

As previously discussed, a significant number of citizens may not have the prescribed documents and it will be difficult and time-consuming to obtain the documents required under the Interim Rule's hierarchy. While we commend CMS for allowing electronic data matches and encourage the appropriate use of additional databases to ease the burden of the Interim Rule on applicants and recipients, currently there is no single national database that can provide electronic verification for all U.S. citizens. For these reasons, it is critical that a citizen applicant's Medicaid coverage not be delayed, reduced, or denied while they wait for electronic verification or for the specified document.

This interpretation of the statute which denies coverage to citizens until they provide the specifically listed documents is short-sighted: it will exacerbate individual and public health problems and likely increase costs for both the Medicaid program and safety-net providers in the long-term. As CMS acknowledges in the Interim Rule, Medicaid applicants and beneficiaries are among the most "frail and vulnerable" individuals in the nation and their delay or loss of access to Medicaid would be "contrary to public interest." 71 FR 39221. Delaying enrollment for eligible citizens due to a lack of a specific document will not alleviate their need for medical care and will force these citizens to either delay or forego critical health care. They will wait to seek care until their conditions deteriorate or become acute, which not only jeopardizes their health but is often more costly to treat.

We urge CMS to revise 42 CFR 435.407(j) so that applicants who declare that they are U.S. citizens and meet the Medicaid eligibility criteria can be enrolled in Medicaid with full federal financial participation during a "reasonable opportunity period" to obtain the documentation necessary to prove their U.S. citizenship and identity. Without this change, many vulnerable citizens with immediate health care needs will delay seeking care and may ultimately require more expensive care if their condition worsens.

Privacy and confidentiality protections must be strictly followed in any automated, electronic data matching.

We appreciate the Interim Rule's recognition that privacy protections must be in place for electronic data matching of citizenship or identity documentation under Section 6036. 71 FR 39217. To the extent that electronic data matches are conducted to meet the requirements under Section 6036, CMS should ensure that states limit the use of the data matches to this purpose alone and that neither CMS nor the states undermine existing federal or state privacy protections in implementing the Interim Rule. We urge CMS to ensure states' compliance with the Tri-Agency's Guidance and other privacy laws and guidance in implementing electronic data matches, to ensure that information requested by non-applicants is limited and does not form the basis of denial or termination of benefits for eligible applicants. See http://www.hhs.gov/ocr/immigration/triagency.html

Concerns regarding electronic verification of Social Security Numbers

The Interim Rule requires states to "conduct a match of the applicant's name against the corresponding Social Security Number that was provided as part of the SSN verification specified in §435.910." 71 FR 39217. Although subsequent verification of a recipient's Social Security number may be an appropriate measure to ensure the integrity of the program, CMS and the state Medicaid agencies should be aware of the numerous errors and problems with the Social Security Number database experienced in the process used for employment verification.[3] For example, the Social Security Administration's database cannot verify the Social Security numbers of hundreds of thousands of workers each year for reasons which include errors or obsolete data, missing first or last names, and use of non-alphabetic characters, which has resulted in unnecessary and illegal employment terminations.[4] As errors may occur in the electronic verification, it is essential that an applicant or recipient who has provided a Social Security Number not be denied coverage or otherwise harmed by such errors, and that coverage be maintained during a period in which the recipient is resolving or appealing any discrepancies or errors found in his or her records.

We are concerned that CMS' implementation of this requirement to electronically match Social Security numbers without more detailed guidance to states will cause Medicaid applicants and recipients who are citizens to be denied or terminated from coverage if there is any problem with the Social Security Number data match.

As CMS is not currently issuing further guidance to states regarding actions to take in the case of a negative match (71 FR 39217), we recommend that CMS clearly instruct states in its guidance or regulations that no action be taken as a result of a negative match until further guidance is provided by CMS to prevent unnecessary denial or terminations of

---

[3] Government Accountability Office, *Immigration Enforcement: Benefits and Limitations to Using Earnings Data to Identify Unauthorized Work*, GAO-06-814R, July 11, 2006. See also, Government Accountability Office, *Social Security, Better Coordination Among Federal Agencies Could Reduce Unidentified Earnings Reports*, GAO-05-154, February 2005.

[4] Center for Urban Economic Development, *Social Security Administration's No-Match Letter Program: Implications for Immigration Enforcement and Workers' Rights*, November 2003 available at: http://www.nilc.org/immsemplymnt/SSA_no-match_survey_final_report_11-20-03.pdf

benefits. CMS should instruct states that applicants must be afforded due process protections for any action taken with regard to electronic data matches of their Social Security numbers.

Finally, CMS should ensure states comply with 42 CFR 435.910 and the Tri-Agency Guidance when they conduct electronic verification of Social Security numbers. States are prohibited from delaying, denying, or discontinuing aid to applicants who do not have a Social Security number or whose non-applicant family members do not provide one. 42 CFR 435.910(f); Tri-Agency Guidance at http://www.hhs.gov/ocr/immigration/triagency.html. States are also required to assist applicants who do not have Social Security numbers in applying for a Social Security number. 42 CFR 435.910(e)(1).

CMS should amend the Interim Rule to create a meaningful outreach program as required by Section 6036(c) of the DRA.

The Interim Rule does not describe or otherwise address any "outreach program" designed to inform and assist persons affected by the new documentation requirements. The failure to have developed such a program ignores the mandate of Section 6036(c) of the DRA, but more importantly has left beneficiaries and states in the dark regarding what is mandated, permissible or prohibited in helping beneficiaries comply with these new provisions.

CMS should develop an outreach program that is truly designed to address the confusion that already has occurred because of the new documentation requirement. First, all notices and any outreach conducted by CMS and the states should meet federal and state guidelines for linguistic and cultural competence. Second, all outreach should be targeted only to applicants and beneficiaries who have declared that they are citizens or nationals to ensure that any notices, outreach materials, or instructions are not provided unnecessarily to families or individuals to whom the new rules do not apply.

Finally, we urge CMS to develop outreach material that will not cause further confusion by implying for example that only citizens or nationals are eligible for Medicaid. CMS' outreach materials should confirm that Section 6036 did not change the eligibility rules for citizens or non-citizens. While the Interim Rule recognizes that Section 6036 does not affect Medicaid applicants and recipients who declare that they are in "satisfactory immigration status," CMS' outreach materials produced to date can be misinterpreted to indicate that citizenship is required for all Medicaid applicants. We have received reports from communities across the nation of non-citizens being denied or delayed access to Medicaid and medical care, or who believe that they cannot seek Medicaid because of the new documentation requirement. The media and outreach material developed by some states have added to the misinformation. We urge CMS to develop outreach material that is targeted to eligible non-citizens to reassure them that they remain eligible for Medicaid. We also urge CMS to ensure that state and federal outreach materials

developed for citizens are worded carefully to avoid the appearance that there has been a change in Medicaid eligibility.

Regulatory Impact Statement

NILC strongly objects to the conclusory statement in the Interim Rule that all of the projected cost savings from these regulations will be attributed to "those who are truly in the country illegally." 71 FR 39221. There has been no evidence of fraud by undocumented immigrants in the states that have permitted self-declaration of citizenship for Medicaid. Department of Health and Human Services, "Self Declaration of U.S. Citizenship for Medicaid," Office of the Inspector General (July 2005). In our experience, most immigrants are unaware of Medicaid; regardless of their status, many immigrants hesitate to seek government benefits including Medicaid for themselves or their eligible family members, even when told that they may be eligible, based on concerns about immigration consequences.[5] Due to the severe immigration consequences, and consistent with the lack of evidence, it is highly unlikely that an undocumented immigrant would falsely allege citizenship when applying for Medicaid.[6] In fact, the projected cost "savings" from this ill conceived provision undoubtedly will arise from the fact that eligible U.S. citizens will be denied or terminated from Medicaid based on their lack of and inability to obtain a particular document to prove their citizenship.

Many of the provisions in the Interim Rule, including the conclusory statements cited above, single out and penalize foreign-born citizens or non-citizens without any statutory requirement or other valid purpose. We urge CMS to recognize that such policies and penalties do not advance the goal of providing critical health coverage to millions of vulnerable Americans, and will cause unnecessary delays or denial of coverage for eligible U.S. citizens with potentially harmful health consequences.

---

[5] See e.g., *How Race/Ethnicity, Immigration Status and Language Affect Health Insurance Coverage, Access to Care and Quality of Care among the Low-income Population,* The Kaiser Commission on Medicaid and the Uninsured, Leighton Ku and Timothy Waidmann (August 2003), pages 8-9, available at: http://www.kff.org/uninsured/upload/How-Race-Ethnicity-Immigration-Status-and-Language-Affect-Health-Insurance-Coverage-Access-to-and-Quality-of-Care-Among-the-Low-Income-Population.pdf

[6] Under the Immigration and Nationality Act (INA), "any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act [the INA]...or any other Federal or State law is inadmissible." INA 212(a)(6)(C)(ii); 8 U.S.C. 1182(a)(6)(C)(ii). This ground of inadmissibility "applies to any representation made on or after September 30, 1996." IIRIRA §344(c); Kurzban's Immigration Law Sourcebook, 8th Ed. (2002-03), pg. 73). There is no waiver available for this ground of inadmissibility. INA 212(i) (waiving other kinds of misrepresentation at the discretion of the Attorney General, but not waiving false claims of citizenship); Kurzban's Immigration Law Sourcebook, 8th Ed. (2002-03), pg. 73).

We appreciate CMS's efforts to reduce the harm of the new Medicaid citizenship documentation requirement. However, unless the steps described above are taken, the citizenship documentation requirement will force Medicaid recipients and new applicants to lose or be denied coverage for critical health services. If you have any questions about these comments, please contact Sonal Ambegaokar at National Immigration Law Center at (213) 639-3900.

Sincerely,
/S/
Sonal Ambegaokar
National Immigration Law Center

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

Organization : **TX HHSC**

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-473-Attach-1.DOC

CMS-2257-IFC-473-Attach-2.DOC

CMS-2257-IFC-473-Attach-3.DOC

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.

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 following 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 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 : S. Alecia Sanchez **Date:** 08/11/2006

Organization : Children's Advocates' Roundtable

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-474-Attach-1.DOC

Children's Advocates' Roundtable

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)

We, the undersigned members of the Children's Advocate Roundtable are writing to comment on the interim final rule, published in the Federal Register on July 12, 2006, to implement Section 6036 of the Deficit Reduction Act (DRA, P.L. 109-171). The provision, which went into effect July 1, requires applicants for and recipients of Medicaid to provide proof of U.S. citizenship and identity. We are especially concerned about the impact these regulations will have on some of the most vulnerable members of our community -- children in foster care and children with special needs adopted from foster care -- and on the functioning of the state and county child welfare agencies that have the responsibility to care for and protect these children.

The Children's Advocates' Roundtable, established in 1990, consists of statewide and regional organizations representing more than 21 children's issue disciplines, including child care, child support, CalWORKs, juvenile justice, foster care, health and education. Dedicated to fostering children's well-being, we meet monthly to assess and analyze state and federal policies and legislation affecting children and youth.

1. Subjecting foster children to the Medicaid citizenship documentation requirement is beyond the scope and intent of the statute.

First, we are concerned that the interim final rules, in applying the citizenship verification requirement to children in foster care, go beyond the scope of the DRA and the intent of Congress. The DRA citizenship verification requirement applies to Medicaid applicants and recipients who have "declared under section 1137(d)(1)(A) [42 U.S.C. § 1320b-7(d)] to be a citizen or national of the United States for purposes of establishing eligibility for [Medicaid] benefits." 42 U.S.C. § 1396b(i)(22)." Foster children are not covered by this language. They receive Medicaid because they are in foster care, not because they have applied for Medicaid and declared that they are U.S. citizens.

The basic legislative purpose behind the DRA citizenship verification requirements – to ensure that people who are not U.S. citizens do not fraudulently obtain Medicaid benefits – does not apply to children in foster care. These children have been removed from their families for their own protection and placed in a public system of care, which is jointly funded by the federal and state governments and which collectively commits to responsibly parent these children.

The Roundtable is convened monthly by the Children's Advocacy Institute.
Children's Advocacy Institute University of San Diego School of Law
5998 Alcalá Park San Diego, CA 92110 (619) 260-4806 (619) 260-4753 (Fax)
926 J Street, Suite 709 Sacramento, CA 95814 (916) 444-3875 (916) 444-6611 (Fax)
Email: aleciasanchez@SanDiego.edu Website: www.caichildlaw.org/RT

Reply to: 9 San Diego :Sacramento

The public child welfare system is responsible for attending to the health, mental heath, safety and education needs of these children, including providing health care. Thus, in subjecting foster children to the DRA citizenship verification requirements, the interim final rule erroneously goes beyond the scope and intent of the statute.

2. Foster children should be exempted from the citizenship documentation requirement because it is redundant and wastes the scarce resources of public child welfare systems.

Even if the language of the statute could be interpreted to apply to foster children, CMS should exempt foster children from the citizenship verification requirement. It is duplicative and a waste of scarce administrative resources. Over half of all children in foster care nationwide have been determined to be eligible for federal Title IV-E foster care benefits, and their citizenship and identity have already been documented as part of that eligibility determination. So, like SSI recipients, it is unnecessary and wasteful to require state child welfare agencies to document their citizenship and identity anew. In addition, even those children who are ineligible for federal Title IV-E benefits still qualify for Medicaid, under all 50 states' Medicaid programs, because of their status as foster children, and it is therefore similarly wasteful and unnecessary to require state child welfare agencies to provide documentation of their citizenship and identity.

Moreover, state child welfare agencies remain responsible for providing health care and mental health care for foster children whose documentation cannot be obtained. Paying for these children's health care entirely from state and local funds will deplete scarce resources from already overburdened child welfare systems.

Thus, the interim final rule is in conflict with the legislative goals and policies underlying the federal child welfare programs, Title IV-B and Title IV-E of the Social Security Act, which seek to improve states' ability to protect and care for abused and neglected children by providing federal funding and oversight to state child welfare systems.

3. The citizenship documentation requirements would create unique and severe hardships for foster children.

Applying the documentation requirements to foster children, and special-needs children who have been adopted from foster care, would cause unique and severe hardships because of the special circumstances of foster children.

First, foster children as a population have more serious health and mental health problems than other Medicaid-eligible children, so any delays or gaps in Medicaid coverage will have especially serious consequences for this vulnerable population.

Second, the persons in possession of the documents needed to verify a child's citizenship and identity, such as birth certificates, passports, Social Security cards, etc. are usually the child's parents. But foster children have been removed from their parents for abuse or neglect, and their parents may not be inclined to cooperate with the state child welfare agency's efforts to obtain documentation so as to qualify them for Medicaid benefits. Moreover, some children have been abandoned and their parents' whereabouts are unknown. Because of these unique circumstances, it will often be time-consuming and difficult, if not impossible, for the state child welfare agency to obtain the required documentation. Indeed, that is why in other areas foster children are specifically exempted from document requirements otherwise imposed by law. For example, in California, foster youth are exempt from proof of immunization before enrolling in school due to the logistical barriers impeding the prompt confirmation of the child's record. Without this exemption, foster youth are unable to go to school and often fall far behind their peers. The experience is analogous to what would happen if proof of citizenship were required for medical coverage. In both cases, unnecessary administrative hurdles would keep youth from services that are critical to their well-being.

Third, the federal Adoption Assistance Program (AAP) provides ongoing monetary assistance and Medicaid coverage as an incentive for adoption of special-needs children from foster care. Prospective adoptive parents – who usually would have no way to obtain documents from the child's birth parents – may be hesitant to adopt foster children, especially children with complex medical needs, due to the risk that the children could lose Medicaid coverage if their citizenship and identity cannot be documented as required by the interim rules. This result would conflict with the policy goals of the federal AAP program.

4. Overall Comments on the Interim Final Rule

For all of the reasons stated above, we urge 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 identify requirements.

If CMS decides not to exempt this group of children, we propose at a minimum that CMS explicitly state in the final regulations that foster children will be considered as recipients of Medicaid, rather than applicants. This will mean that CMS would only require documentation at the point of their redetermination of eligibility, and the state child welfare agencies would have a reasonable opportunity to obtain the necessary documentation, without any delay or disruption in the child's health care coverage; and

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

As advocates for children who, through no fault of their own, are dependent on public child welfare agencies for their care and protection, we urge you to reconsider the inclusion of foster children in the citizenship verification requirements mandated by Section 6036 of the Deficit Reduction Act. The already inadequate resources of child welfare agencies must be directed at reducing the numbers of children entering and languishing in foster care; imposing additional administrative and fiscal burdens on child welfare systems could seriously undermine their ability to do so.

Thank you for considering our views. We look forward to working with you as this process continues to ensure that we put in place adequate protections for the many abused and neglected children who come into our foster care system.

Alameda County Foster Youth Alliance	**G.L.A.S.S.**
American Academy of Pediatrics, California District	**Health Access**
California Church IMPACT	**HEY -- Honoring Emancipated Youth**

California Commission on the Status of Women

California State Parent Teacher Association

California WIC Association

Children's Advocacy Institute and Center for Public Interest Law

Children's Law Center of Los Angeles

FamilyPaths, Inc.

Mental Health Association in California

National Center for Youth Law

Northern California Association of Counsel for Children

On The Capitol Doorstep

SEIU Local 535

Western Center on Law and Poverty

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

Organization : baltimore healthcare access

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

see attached

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

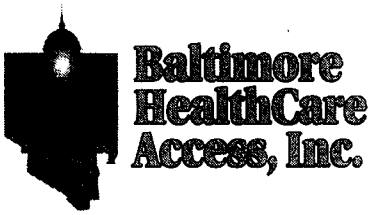
see attached

Regulatory Impact Statement

Regulatory Impact Statement

see attached

CMS-2257-IFC-475-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 : Ms. Helene Nelson **Date:** 08/11/2006

Organization : Wisconsin Department of Health and Family Services

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment. Signed original coming by mail.

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 : Michael Rust **Date:** 08/11/2006

Organization : Polk County HealthWatch Coalition

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

Overall, these verification requirements are not necessary. Wisconsin's Legislative Audit Bureau conducted an audit of Medicaid Eligibility Determinations (September 2004). This audit did not identify even one non-citizen receiving Medicaid illegally.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

The Polk County HealthWatch Coalition has authorized me to make the following recommendations/comment:
Teen-age women - especially "confidential teens" - who participate in Wisconsin's Family Planning Waiver Program should be exempted from the requirement to provide verification of citizenship and identity. Some of these clients use the Public Health Agency's mailing address, so it is often difficult to even contact them confidentially. Even if they are successfully notified, securing verifications while maintaining confidentiality may not be possible. Already, the Public Health Agency reports that between 5 and 10 young women have given up their eligibility rather than attempt to secure the income verifications that have recently been requested.

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

Organization : **Washoe County Senior Services**

Category : **Other Health Care Provider**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment.

CMS-2257-IFC-478-Attach-1.DOC

CMS-2257-IFC-478-Attach-2.DOC

CMS-2257-IFC-478-Attach-3.TXT

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)

Washoe County Senior Services provides access to and services to seniors and caregivers in Northern Nevada. There are approximately 60,000 seniors in our services area. We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

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

The comment period is specific to section 6036 of the DRA of 2005 so we will limit our comments to this specific area. We are also concerned about Sections 6011 and 6016 concerning Medicaid Transfer of Asset Rules and are hopeful that an opportunity will be provided for input into those sections also.

As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries and state Medicaid agencies. The requirement for originals and certified copies also calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring that individuals obtain and submit originals and certified copies adds to the time compliance will take. In addition to locating or obtaining their documents, applicants and beneficiaries will likely have to visit state offices to submit them. State agencies will have to meet with individuals, make copies of their documents, and maintain records. Nevada is a frontier state with many of its citizens originally from another state. The burden increases as citizens and state Medicaid agencies strive to obtain information in a timely manner across the country, particularly for seniors attempting to obtain services for the first time.

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

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

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

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

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

We are concerned that seniors, the children they may be raising and their families will forego preventive care and children and seniors will end up in an emergency room when a crisis arises. This will add to cost not only for emergency response but for the longer need for recuperative care for the presenting problem.

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

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

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

Grandparents raising grandchildren will face an additional burden as they seek to support their grandchildren through the foster care system if they cannot access non-emergency care and access to prescriptions and other services needed for the child.

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

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

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

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

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

The potential for services to be delayed to a newborn as a result of risk of delay or denial of payment for services and treatments creates an undue burden on the medical community to respond to emergent issues and well baby care due to delays in coverage. The impact for increased medical costs over the course of the infant's growth and life is one of increasing costs not decreasing costs.

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.

The increase in uncompensated care to individuals will weaken the response to medical issues for low-income citizens and dramatically increase the cost to meet future needs due to lack of access to treatment. Many communities struggle to provide uncompensated care and creating another barrier to compensation will only impact a citizen's health in a negative way.

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

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

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

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

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

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

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

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

While the interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. We urge CMS to revise the regulation at 42 CFR 435.407(a) to specify that a tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity.

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

Conclusion

- **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.**
- **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.**

- Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement.
- CMS should not require applicants and beneficiaries to submit originals or certified copies.
- Native Americans should be able to use a tribal enrollment card issued by a federally-recognized tribe to meet the documentation requirement.
- Sections 6011 and 6016 of the Deficit Reduction Act of 2005 should be opened to comment for revisions

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) Washoe County Senior Services provides access to and services to seniors and caregivers in

Northern Nevada. There are approximately 60,000 seniors in our services area. We are writing to comment on the interim final rule,

which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA).

This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving

Medicaid document their citizenship and identity. We are deeply concerned and disappointed that CMS has not acted to minimize

the likelihood that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial or loss of Medicaid coverage.

Our comments below highlight the areas that CMS should modify in the final rule concerning the information collection

requirements of the regulations. The comment period is specific to section 6036 of the DRA of 2005 so we will limit our comments

to this specific area. We are also concerned about Sections 6011 and 6016 concerning Medicaid Transfer of Asset Rules and are

hopeful that an opportunity will be provided for input into those sections also As explained below, we are concerned that the

requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the

burden of the new requirement on applicants, beneficiaries and state Medicaid agencies. The requirement for originals and certified

copies also calls into question the estimate that compliance with the requirement will only take an applicant or beneficiary ten

minutes and state Medicaid agencies five minutes to satisfy the requirements of the regulations. Requiring that individuals obtain

and submit originals and certified copies adds to the time compliance will take. In addition to locating or obtaining their

documents, applicants and beneficiaries will likely have to visit state offices to submit them. State agencies will have to meet with

individuals, make copies of their documents, and maintain records. Nevada is a frontier state with many of its citizens originally

from another state. The burden increases as citizens and state Medicaid agencies strive to obtain information in a timely manner

across the country, particularly for seniors attempting to obtain services for the first time. U.S. citizens applying for benefits

should receive benefits once they declare they are citizens and meet all eligibility requirements. Under the DRA, the new

citizenship documentation requirement applies to all individuals (other than Medicare beneficiaries and, in most states, SSI

beneficiaries) who apply for Medicaid. The preamble to the rule states that applicants "should not be made eligible until they have

presented the required evidence." 71 Fed. Reg. at 39216. The rule itself states that states "must give an applicant or recipient a

reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's

eligibility for Medicaid." 42 CFR 435.407(j). Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility.

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

granted. There is nothing in the DRA that requires a delay in providing coverage. Yet CMS has prohibited states from granting

coverage to eligible citizens until they can obtain documents such as birth certificates. This year, about 10 million U.S. citizens

are expected to apply for Medicaid who are subject to this requirement. Most of these citizens are children, pregnant women and

parents who will be subject to the new citizenship documentation requirement. The net effect of the prohibition on granting these

individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of

eligible, low-income pregnant women, children and other vulnerable Americans. This is likely to delay their medical care, worsen

their health problems and create financial losses for health care providers. While the statutory logic of this policy is elusive, the

real-world consequence is crystal clear. U.S. citizens who have applied for Medicaid, who meet all of the state's eligibility criteria,

and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage. Some U.S.

citizens who get discouraged or cannot get the documents they need within the time allowed by the state will never

get coverage.

Because there has been no outreach program to educate U.S. citizens about the new requirement, most applicants are likely to be

unaware of it, and there are likely to be significant delays in assembling the necessary documents. We are concerned that

seniors, the children they may be raising and their families will forego preventive care and children and seniors will end up in an

emergency room when a crisis arises. This will add to cost not only for emergency response but for the longer need for

recuperative care for the presenting problem. We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they

are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must

provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation.

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

interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for

Medicaid based on their receipt of SSI benefits. Among the children subject to the documentation requirements are roughly one

million children in foster care, including those receiving federal foster care assistance under Title IV-E. State child welfare

agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments. It

is our understanding that the Administration for Children and Families (ACF) requires state child welfare agencies to follow the

Department of Justice interim guidelines on verification of citizenship. Nonetheless, the preamble to the rule states that these

Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of

the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster

care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this

effect in either the rule itself or the preamble.) Grandparents raising grandchildren will face an additional burden as they seek to

support their grandchildren through the foster care system if they cannot access non-emergency care and access to prescriptions

and other services needed for the child. The DRA does not compel this result, which requires unnecessary duplication of state

agency efforts and puts these children at risk of delayed Medicaid coverage. To the contrary, the DRA allows the Secretary to

exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-E program is precisely

such a program, yet CMS, without explanation, elected not to exempt foster care children receiving such payments from the new

documentation requirement, 71 Fed. Reg. at 39216. We urge CMS to revise 42 CFR 435.1008 to add children eligible for Medicaid

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

agency's record of payment for the birth of an infant in a U.S. hospital should be considered satisfactory documentary evidence of

citizenship and identity Among the children subject to the documentation requirements are infants born in U.S. hospitals.

Newborns will not have birth records on file with state Vital Statistics agencies. The rule provides that in such circumstances,

extracts of a hospital record created near the time of birth could be used as proof of citizenship, 42 CFR 435.407(c)(1), and if this

"third level" of evidence was not available, a medical (clinic, doctor, or hospital) record created near the time of birth could be used,

but only in the "rarest of circumstances," 42 CFR 435.407(d)(4). Under current law, infants born to U.S. citizens receiving

Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the

child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if

pregnant). The preamble to the interim final rule states that, in such circumstances, "citizenship and identity documentation for

the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. This makes no sense, since the state Medicaid

agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen. In the case of a child born in a U.S.

hospital to a mother who is either a legal immigrant subject to the 5-year bar on Medicaid coverage or an undocumented

immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application must be filed and the

citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, this makes no sense, since the state Medicaid

agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen. The potential for services to be delayed

to a newborn as a result of risk of delay or denial of payment for services and treatments creates an undue burden on the medical

community to respond to emergent issues and well baby care due to delays in coverage. The impact for increased medical costs

over the course of the infant's growth and life is one of increasing costs not decreasing costs. 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. The increase in uncompensated care to individuals will weaken the response to medical issues for low-income

citizens and dramatically increase the cost to meet future needs due to lack of access to treatment. Many communities struggle

to provide uncompensated care and creating another barrier to compensation will only impact a citizen's health in a negative way.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents

included in the DRA that are considered to be "proof" of citizenship and a "reliable means" of identification. We urge that the

Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen

without documents is in fact a U.S. citizen for purposes of Medicaid eligibility. The regulations for the SSI program allow people

who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents

and to provide any information they do have. (20 CFR 416.1610) The Secretary should adopt a similar approach. Specifically, 42

CFR 435.407 should be revised by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it

has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1)

an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary,

secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to

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

would ensure that the seniors, their caregivers and their grandchildren who are U.S. citizens can continue to receive the health

care services they need CMS should not require applicants and beneficiaries to submit originals or certified copies. The DRA

does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation

requirement. Yet CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1). This requirement

adds greatly to the information collection burden of the regulations and calls into question the estimate that it will only take

applicants and beneficiaries ten minutes and state agencies five minutes to comply. Requiring original or certified copies adds to

the burden of the new requirement for applicants, beneficiaries, and states and makes it more likely that health care providers will

experience delays in reimbursement and increased uncompensated care. Applicants and beneficiaries will have to make

unnecessary visits to state offices with original and certified copies. While the regulations state that applicants and beneficiaries

can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified

copies of their birth certificates. Moreover, they will definitely not be willing or able to mail in proof of identity such as driver's

licenses or school identification cards We urge CMS to revise the regulation by modifying the requirement at 42 CFR

435.407(h)(1) to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original

documents or copies certified by the issuing state agency. States should be able to accept copies when the state has no reason

to believe that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or

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

documentation requirement. While the interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents

as proof of identity, the regulations does not permit tribal enrollment cards to be used as evidence of citizenship. We urge CMS to

revise the regulation at 42 CFR 435.407(a) to specify that a tribal enrollment card issued by a federally-recognized tribe should be

treated like a passport and deemed primary evidence of citizenship and identity. Each federally recognized tribe is responsible for

issuing tribal enrollment cards to its members for purposes of receiving services from the federal government as well as tribal

resources and voting in tribal matters. With very few exceptions, tribes issue enrollment cards only to individuals who are born in

the U.S. (and have a U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens.

Tribal genealogy charts date back to original and historic tribal membership rolls. In short, tribal enrollment cards are highly

reliable evidence of U.S. citizenship. In the event a federally recognized tribe located in a state that borders Canada or Mexico

issues tribal enrollment cards to non-U.S. citizens, the Secretary could require additional documentation of U.S. citizenship and

tribal enrollment cards would qualify as evidence of identity but not citizenship. Conclusion 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. 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 Children who are eligible for federal foster care payments should be exempt from the citizenship

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

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

requirement.
Sections 6011 and 6016 of the Deficit Reduction Act of 2005 should be opened to comment for revisions PAGE

PAGE 6

Submitter : Ms. Jakki Hillis **Date:** 08/11/2006

Organization : Arizona Department of Economic Security, DCYF

Category : State Government

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

The Arizona Department of Economic Security, Division of Children, Youth and Families appreciates the opportunity to comment on the interim final rules regarding the new citizenship and identity requirements for the Medicaid program as included in the Deficit Reduction Act of 2005. These comments provided are specific to concerns regarding the impact on the child welfare population.

Most notably, the requirements to gather specific hard copy documents to verify not only citizenship, but identity as well create significant delays in determining a child s Medicaid eligibility upon the child s entry into out of home care. Such delays are considered unconscionable as in nearly all instances, children who have been abused or neglected need prompt medical attention and access to behavioral health services. Delays in access to Medicaid benefits can negatively impact the agency s success in reuniting families or making appropriate placement decisions. The provision of timely and effective services, many of which fall under the Medicaid program, is key to enabling the child welfare agency to reunifying families or facilitating other plans for permanency.

The challenges that lead to delays include: a) obtaining hard copy birth certificates to verify citizenship can take months for children who were born in a different state, b) few documents that are readily available for children on the approved list to verify identity, c) unwillingness of parents in many instances to cooperate and provide existing documentation or to sign affidavits, d) additional burden placed on the child welfare agency to gather required documents and e) unique situations experienced in the child welfare system where a child s identity is truly not known or a false identity is given.

Furthermore, the preamble published with the regulations states that Title IV-E eligible children must have in their Medicaid file a declaration of citizenship or satisfactory immigration status, in addition to the documents approved to verify citizenship and identity. We find no basis for adding this additional requirement for the child welfare population. In fact, we believe that the verification requirements for the Title IV-E population should arguably be more lenient, not more burdensome. The eligibility determination for the child s Title IV-E status already requires that the citizenship status be established; therefore, the DRA verification process is duplicative and the added declaration creates a third process for the Title IV-E eligible population.

Just as the SSI population is exempt from proving Citizenship and Identity under the new requirements the foster care population should also be excluded. Like the SSI population the Foster Care population (at least those that are IV-E eligible) are considered categorically eligible for Medicaid and are considered to be recipients, not applicants under section 1902(a)(10)(A)(i)(I). At the very least, we would suggest that Title IV-E eligible children in foster care should be considered Medicaid recipients up front while the additional documentation is gathered within a reasonable timeframe. This approach would mitigate the potentially harmful effect of delaying Medicaid benefits to one of our most vulnerable populations.

Thank you for the opportunity to provide these comments. It is our sincere hope that the needs and best interest of our nation s children in foster care will be at the forefront of final decision-making regarding implementation of the citizenship and identity documentation requirements in the DRA.

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

Organization : National Congress of American Indians

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

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

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

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

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

Organization : **National Congress of American Indians**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2257-IFC-481-Attach-1.DOC

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Joe A. Garcia
Ohkay Owingeh
(Pueblo of San Juan)

FIRST VICE-PRESIDENT
Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY
Juana Majel
Pauma Yuima Band of Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Mike Williams
Yupiaq

EASTERN OKLAHOMA
Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS
Mark Allen
Hannahville Indian Comm.

MIDWEST
Robert Chicks
Stockbridge Munsee Band of Mohican Indians

NORTHEAST
Randy Noka
Narragansett Tribe

NORTHWEST
Ernie Stensgar
Coeur D' Alene Tribe

PACIFIC
Cheryl Seidner
Wiyot

ROCKY MOUNTAIN
Raymond Parker
Chippewa Cree Business Committee

SOUTHEAST
Leon Jacobs
Lumbee Tribe

SOUTHERN PLAINS
Steve Johnson
Absentee Shawnee

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Kathleen Kitcheyan
San Carlos Apache

EXECUTIVE DIRECTOR
Jacqueline Johnson
Hopi

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

August 10, 2006

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

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

To Whom It May Concern:

On behalf of the more than 270 member tribes of the National Congress of American Indians (NCAI), I would like to 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.

As the largest and oldest national organization representing American Indians and Alaska Natives, NCAI is an active collaborator with the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG). As such, NCAI is 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 leadership of CMS consulted with the 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 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.

At the TTAG meeting held in June 2006, Dr. McClellan indicated that CMS would consider thoughtfully tribal concerns submitted through the TTAG process. On the TTAG conference call held on August 9, 2006, Tribal leaders, again, requested CMS to recognize tribal enrollment cards or CDIBs as legitimate documentation of proof of U.S. citizenship. Tribal leaders from across Indian Country reviewed their tribal enrollment process and explained how the vigorous tribal enrollment process ensures

proof of citizenship. Tribal leaders expressed concerns and dismay as to why the CMS will not recognize tribal enrollment cards or CDIBs as legitimate documentation of proof of citizenship. The CMS staff person on the conference call did not explain why the CMS will not recognize tribal documents for proof of citizenship purposes. It was pointed out on the call that under current law 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. The documentation required under this law is a tribal 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. The CMS staff on the conference call indicated lack of familiarity with this law. In reviewing tribal comments, NCAI encourages the leadership of CMS to become familiar with this law and recognize tribal enrollment cards or CDIBs as legitimate documentation for Medicaid eligibility purposes under the DRA because these same documents are recognized as legitimate documents for Medicaid eligibility purposes now.

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. 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.

Tribal documentation is currently recognized by many 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. All federally-recognized tribal constitutions, which includes 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. Therefore, tribal enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

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. Certainly, tribal enrollment cards or CDIBs fall within the scope of a "Native American tribal document." NCAI recommends that section 435.407 (a) of the regulations be amended to include tribal enrollment cards or CDIBs as Tier 1 documents.

In the alternative, if CMS will not amend the regulations at 435.407(a) to include Tribal enrollment cards or CDIBs as primary evidence of citizenship and identity, NCAI recommends 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

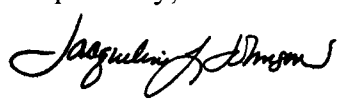
nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not been enacted, amending the interim regulations to include tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

NCAI urges 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. To the extent that the Secretary has concerns about whether some Tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, tribal Medicaid beneficiaries might not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many traditional Indians 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 the access of Medicaid benefits. As you know, the Indian health care programs that are operated by Indian Health Services, tribes/tribal organizations, and urban Indian organizations, as well as public and private hospitals, are the primary service provider to most Indians. These service providers are dependent on Medicaid reimbursements to address the extreme health care disparities of the AI/AN population as 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.

Respectfully,



Jacqueline Johnson
Executive Director
National Congress of American Indians

CH

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

Organization : Planned Parenthood of Alabama

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-482-Attach-1.RTF

August 11, 2006

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

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

Dear Administrator McClellan:

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

Alabama Planned Parenthood sees on average about 75 Medicaid clients per month. The services provided include contraception, testing for sexually transmitted diseases, basic reproductive health and counseling for family planning. Medicaid clients make up about 12.54% of the total client base for the Alabama Affiliate. Medicaid Plan First Program is an important part of reducing the number of unintended pregnancies in the state.

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

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

Family Planning is an important part of reducing the rates of unintended pregnancies in the state. In 2000 to 2001, Alabama was able to avert 3,162 pregnancies. This was cost effective to Alabama saving the state $6,981,721.00. Currently, Alabama has spent $15,258,00.00 on Family Planning. The public spending expenditures attributed to Medicaid, in Alabama is 57%.

Alabama women, of reproductive age between 15 to 44, make up 133% of the people on Medicaid. These women are all below the poverty level.

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

Alabama currently has 63,767 enrolled in Medicaid, not all of these women recieve the following services. Alabama has a Medicaid program that is based on income. Currently, Alabama has a program called Plan First that helps women to maintain reproductive health. Under this plan, the client can recieve a first visit, periodic visits, counseling, education, testing for cervical cancer, testing for sexually transmitted diseases, pregnancy testing, HIV counseling, contraceptive services and supplies and sterlization. ** According to the state, Plan First is augmented with psychosocial assesment for all enrollees and case coordination for high or at risk women.

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

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

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

In addition to expanding access to such vital health care services, family planning

demonstration programs save money. Alabama has saved a total of $19,028,783.00, this saving the federal goverment $12,047,062.00 and the state $6,981,721.00, all by preventing unintended pregnancies. A 2003 study commissioned by CMS showed that in each of the states studied, the program actually saved money by averting unintended pregnancies. For instance, South Carolina realized a savings of $56 million over a three-year period while Oregon's program saved almost $20 million in a single year.

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

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

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

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

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

implemented, many citizens are likely unaware of the documentation requirements and are not prepared to comply.

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

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

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

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

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

Attaining the required documents presents its own challenges. 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.

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

At the same time, however, Alabama 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 Alabamas Medicaid program operates. Because of this, we emphatically encourage CMS to use its full authority to lessen the severity of the section 6036.

Thank you for your attention to these comments.

Planned Parenthood of Alabama, INC
Laura Huffstetler
Asst. Grassroots Coordinator
1211 27th Place South
Birmingham, AL 35205
(205)322-2121
ppan@bham.rr.com

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

Organization : **Devereux**

Category : **Other Health Care Provider**

Issue Areas/Comments

GENERAL

GENERAL

August 10, 2006

Medicaid Program: Citizenship Documentation Requirements
Interim Final Rule

The Devereux Foundation works with children in multiple sites around the country, many of whom depend upon Medicaid for critically needed treatment. These children have already had difficult and oftentimes tragic lives and desperately need treatment and special services in order to become productive citizens. Without treatment, many of these children will end up in the juvenile justice system. These new more restrictive citizenship eligibility requirements will create major challenges for these children and the child welfare system. We urge you to consider the consequences of this requirment on children who are already paying the price for others' neglect or maltreatment. We ask that you please exempt children with special needs in foster care and other treatment centers from these additional requirements. Thank you for your consideration

Elizabeth M. Chadwick
Sr. Vice President of External Affairs
Devereux Foundation

Submitter : **Ms. Heidi Siegfried** **Date: 08/11/2006**

Organization : **Ms. Heidi Siegfried**

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 : **Marc Beschler** **Date: 08/11/2006**

Organization : **Marc Beschler**

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 : Mrs. Jessica Farrar **Date:** 08/11/2006

Organization : State Representative District 148

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

JESSICA FARRAR
STATE REPRESENTATIVE
DISTRICT 148

Rep. Farrar Commentary on new Medicaid Citizenship Rules

Medicaid was signed into law by President Lyndon B. Johnson in order to provide quality healthcare to all Americans. Throughout the history of the program it has been credited for quality healthcare to millions of Americans without discrimination of origin, race, or sex.

It is shameful that in the 21st century, supporters of a divisive culture have succeeded in requiring U.S. citizens who apply or receive Medicaid to prove their citizenship and identity. This new rule only succeeds at blocking or delaying healthcare for millions of Americans that require quick healthcare and immediate medical attention.

Many qualified Medicaid users are discouraged when their application process is unnecessarily delayed and sometimes denied due to citizenship identification requirements. When an applicant fills out an application for Medicaid the first two items he/she is required to provide are his/her name and social security number. The social security number in itself proves citizenship and legal-status, however, further identification proof only extends the waiting period on the processing of Medicaid applications.

A long waiting period without healthcare can cause dangerous situations to persons that require vital immediate medical attention and healthcare. Children with a serious disease such as diabetes will now have to wait longer to receive their insulin. This causes any parent to live with an unimaginable amount of stress and under constant fear for their child's well being. An expectant mother might have to wait months before she can go to the doctor for her first examination. It is during the early stages of a pregnancy when medical attention is most vital and when pregnancy complications can begin to be addressed. Parents of children that are soon to start school are now uncertain if they're children will be eligible for vaccinations before the beginning of the school year.

Foster children become only more vulnerable of losing or ever gaining healthcare services, particularly since many of them have incomplete personal records. The majority of foster children were given up for adoption with concealed records or found abandoned at infancy. Providing accurate identification records on foster children is a daunting task for even the most experience social worker investigating a foster child's family background. However, this new rule will deny foster children Medicaid until proof of citizenship and identification can be provided. Why not instead make a rule that makes good on our nation's promise to leave no child behind?

Medical need does not recognize borders. As Americans, it is our duty to take care of those who cannot take care of themselves, regardless of citizenship status. All people living in the United States pay taxes in one form or another, regardless of citizenship status. Doctors, nurses, and medical staff that provide healthcare and benefit from Medicaid services are obligated to cure anyone that is ill. Their commitment to save lives everyday is admirable. It is shameful that political groups whose goal is to divide our country are attempting to make Medicaid staff into another arm of Immigration & Customs Enforcement (ICE).

Submitter : **Ms. Lynda Naclerio** **Date: 08/11/2006**

Organization : **Ms. Lynda Naclerio**

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. Lisa Smith** **Date: 08/11/2006**

Organization : **The Catholic Health Association**

Category : **Health Care Provider/Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

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

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

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

Submitter :

Date: 08/11/2006

Organization :

Category : **Academic**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-490-Attach-1.PDF

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

OFFICE OF THE PRESIDENT --
CLINICAL SERVICES DEVELOPMENT

OFFICE OF THE PRESIDENT
1111 Franklin Street
Oakland, CA 94607-5200
Phone: (510) 987-9071
Fax: (510) 763-4253
http://www.ucop.edu

August 11, 2006

Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building, Room 443-G
200 Independence Ave, SW
Washington, DC 20201

SUBJECT: Comments for CMS-2257-IFC
Medicaid Citizenship Verification Interim Final Rule
71 Fed. Reg. 29214 (July 12, 2006)

Dear Dr. McClellan:

Thank you for the opportunity to comment on the interim rule implementing the citizenship verification requirements contained in section 6036 of the Deficit Reduction Act of 2005 ("DRA," Pub. L. No. 109-171). These comments are submitted on behalf of the University of California (UC) Health System and its academic medical centers (AMCs) located in Davis, Los Angeles, Irvine, San Diego, and San Francisco.

The UC Health System is California's fifth largest hospital system. It is comprised of five AMCs which share a mission of educating health professionals, conducting research, and providing high quality patient care. Annually, the medical centers provide patient care services valued at over $4 billion. Eight acute care hospitals in the UC Health System house 3,217 licensed acute care beds and provide a broad array of specialized services that are often not available elsewhere.

UC medical centers treat many of this country's most vulnerable populations and are extremely concerned about the impact that the new Medicaid citizenship verification requirements will have on low-income patients and, more importantly on the ability of their patients, who are U.S. citizens, to obtain the Medicaid coverage to which they are entitled. The UC medical centers are concerned that a significant portion of otherwise eligible Medicaid Californians will likely be unable to meet these new verification requirements.

While the UC medical centers strongly support thorough and complete verification of all Medicaid eligibility requirements, we are concerned that the verification standards in the Rule will result in significant burden and result in the denial of Medicaid benefits to eligible U.S. citizens. Consequently, the UC medical centers urge you to consider the following recommendations:

- CMS should remove arbitrary restrictions placed on the use of certain documents, including: the requirement that affiants have "personal knowledge of the events establishing an applicant's or recipient's claim of citizenship, the prohibition on the use of affidavits by naturalized U.S. citizens, and the five year restriction on the use of certain documents;

- CMS should make it easier for U.S. citizens to obtain necessary documentation by clarifying the ability of states to claim federal financial participation ("FFP") for costs associated with obtaining documents on behalf for recipients and applicants;

- CMS should broaden its definition of "special populations needing assistance";

- The final rules should ensure that new applicants who are otherwise Medicaid eligible should not be forced to wait for coverage until their citizenship verification has been finalized;

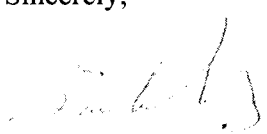
- CMS should require California to utilize electronic data matches as a way to speed compliance with citizenship verification and to lessen the burden on Medicaid recipients and applicants; and

- CMS should ensure that Title IV-E foster children and newborn infants are not denied Medicaid coverage.

The UC medical centers share CMS' goal of ensuring that all eligible Medicaid applicants be enrolled and that all qualified Medi-Cal beneficiaries remain enrolled. Our comments are offered within the spirit of that goal.

Thank you for the opportunity to comment on this interim rule. If there are questions or if I can provide any additional information or input, please contact me at 510-987-9062 or santiago.munoz@ucop.edu.

Sincerely,



Santiago Muñoz, Executive Director
Clinical Services Development

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

Organization : Jennifer Barrett

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. Susan Robers **Date:** 08/11/2006

Organization : DaVita, Inc.

Category : End-Stage Renal Disease Facility

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

DaVita, Inc. Comments on Medicaid Program: Citizenship Documentation Requirements; 71 Federal Register 39214 (July 12, 2006); File code CMS-2257-IFC
Our comments include these major points:
--ESRD patients should be exempt from the proof of citizenship (POC) provisions because they need regular dialysis to stay alive.
--If ESRD patients are not exempt from POC requirements, Medicaid applicants should be presumptively eligible just as current recipients are presumed to be eligible while they have an opportunity to collect POC documentation.
--If individuals with ESRD make a good faith effort to collect POC documents, they should remain in Medicaid, regardless of the reasonable opportunity time period allowed by the states to find the documents.
--CMS should exercise oversight of state definitions of reasonable opportunity and good faith efforts --Medicaid should pay the cost of obtaining original and certified copies of POC documents and not leave those expenses to recipients least likely to afford them. DaVita, Inc. operates 1255 outpatient dialysis facilities in 42 states and the District of Columbia, dialyzing almost 100,000 patients with End Stage Renal Disease (ESRD) who would die without dialysis. Approximately 5% of our patients depend solely on Medicaid, an undetermined number of whom will need alternate sites of care when the states drop them from Medicaid because they are unable to document their US citizenship or identity, as the Deficit Reduction Act requires after July 1st. Medicaid recipients on dialysis are a vulnerable population with a chronic condition that is fatal without dialysis or kidney transplantation and usually involves several co-morbidities in addition to permanent kidney failure. After only one month of implementation, the POC provision have caused one state to inform two of our dialysis patients that their Medicaid services terminated on July 31st. Benefits will cease for another two patients on August 31st and for a fifth on Sept. 30th. Even though the interim final rule is silent on the responsibilities of providers to assist patients with POC requirements, our social workers are diligently working to identify alternate sites of care for these patients but no alternatives have been found. One such patient has two children, ages six and eight. Our social workers face the prospect of telling these patients that there are no local facilities where they can receive life-sustaining dialysis treatment. One of our experienced lead social workers has said that this is the most difficult thing she may have ever have to do in her social work career. We have asked CMS to mobilize the resources of ESRD Networks to help facilities find alternatives for displaced patients. We will not know the precise number of our current patients at-risk nationwide until each Medicaid recipient comes due for their (usually annual) recertification of eligibility and must produce POC documents to stay on Medicaid. While displacement of people needing dialysis to stay alive may be an intended consequence of the DRA provision, it is, nonetheless, the reality. We know of a dialysis patient in another state who was put on a plane back to Mexico by state officials. Current Medicaid patients must continue to receive thrice weekly dialysis in order to stay alive. Dialysis patients generally succumb within two weeks with no treatment. That characteristic of dialysis patients sets them apart from others receiving services funded by Medicaid and makes their plight as or more compelling than CMS's concern for the elderly and mentally ill. Therefore, ESRD patients should be exempt from the POC provision, just as dual eligibles and SSI recipients are exempt.

Regulatory Impact Statement

Regulatory Impact Statement

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

Organization : Ms. Jennifer Ryan

Category : Other Health Care Professional

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. Kanwaldeep K. Sekhon** **Date: 08/11/2006**

Organization : **Ms. Kanwaldeep K. Sekhon**

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 R. Lewis **Date:** 08/11/2006

Organization : Inter Tribal Council of Arizona, Inc.

Category : Consumer Group

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-495-Attach-1.PDF

20 TRIBES

INTER TRIBAL COUNCIL of ARIZONA, INC.

MEMBER TRIBES
AK-CHIN INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI NATION
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PASCUA YAQUI TRIBE
PUEBLO OF ZUNI
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TOHONO O'ODHAM NATION
TONTO APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI APACHE NATION
YAVAPAI PRESCOTT INDIAN TRIBE

August 11, 2006

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

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

To Whom It May Concern:

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. The Inter Tribal Council of Arizona, Inc. (ITCA) established in 1952, provides a united voice for Tribal governments located in the State of Arizona to address common issues of concern to the American Indian people. On July 9, 1975, the Council established a private, non-profit corporation, Inter Tribal Council of Arizona, Inc. (ITCA), under the laws of the State of Arizona to promote Indian self-reliance through public policy development. ITCA membership consists of the highest elected Tribal officials: Tribal chairpersons, presidents and governors of 20 American Indian federally recognized Tribal nations. These representatives are in the best position to have a comprehensive view of the conditions and needs of the Indian communities they represent and therefore were compelled to provide comment on this very important issue.

The Inter Tribal Council of Arizona, Inc. is disappointed that the interim regulations on Medicaid Citizenship Documentation Requirements 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. ITCA is aware that 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. This is especially important to clarify, as Tribal members of the Tohono O'Odham Nation located along the United States-Mexico border region would meet PRWORA requirements.

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, ITCA recommends that section 435.407 (a) of the regulations be amended to include Tribal enrollment cards or CDIBs as Tier 1 documents.

In the alternative, if CMS will not amend the regulations at 435.407(a) to include Tribal enrollment cards or CDIBs as primary evidence of citizenship and identity, ITCA recommends 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} with respect to those federally-recognized Indian Tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such Tribes, issue regulations authorizing the presentation of such other forms of documentation (including Tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection." S. 3524 also provides for a transition period that " until regulations are issued by the Secretary, Tribal documentation shall be deemed satisfactory evidence of citizenship or nationality for purposes of satisfying the requirements of section 1903 of the Act." Although S. 3524 has not been enacted, amending the interim regulations to include

Tribal enrollment cards or CDIBs as satisfactory documentation of proof of citizenship would be consistent with this recent Congressional action to clarify the DRA.

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

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

Thank you for your thoughtful consideration of these comments.

Sincerely,

John Lewis
Executive Director

Submitter : **Ms. kathy najimy** **Date: 08/11/2006**

Organization : **Ms. kathy najimy**

Category : **Congressional**

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.

kathy Najimy
Los ANgeles

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

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.

kathy najimy
los angeles

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

Organization : LA Health Collaborative

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment

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

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

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

Submitter : **Ms. Candice Karpinen** **Date: 08/11/2006**

Organization : **San Bernardino County**

Category : **Federal Government**

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-498-Attach-1.DOC

HUMAN SERVICES ADMINISTRATION

COUNTY OF SAN BERNARDINO
HUMAN SERVICES

August 11, 2006

Program Development Division
825 E. Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0079

Centers for Medicare & Medicaid Services
Attn: CMS 2257-IFC
7500 Security Boulevard
Baltimore, Maryland 21244-1850

RE: Medicaid citizenship – Comments on Interim Final Rule

Thank you for the opportunity to provide comments on the Interim Final Rule published on July 12, 2006.

Section I – Background

Issue:
PL 109-171 requires documentary evidence of citizenship/immigration status at the time of application. This law allows immigrants to receive full-scope benefits while verification is pending. Citizens are granted only restricted benefits.
Recommendation:
Citizens should be afforded the same benefits as immigrants pending evidence.

Issue:
Verification of citizenship is not required for persons eligible to SSI or Medicare due to Social Security Administration's prior verification.
Recommendation:
Allow a data match for all persons who have applied or received benefits from the Social Security Administration, or who have applied for a social security number.

Issue:
Children in Foster Care are required to provide verification of citizenship/identity at redetermination. These will be difficult to obtain.
Recommendation:
Exempt children in Foster Care from this requirement.

Issue:
Undocumented mothers must provide verification of identity/citizenship for their newborn, U.S. citizen children.
Recommendation:
Allow newborn U.S. citizen children born to undocumented mother to receive "deemed eligibility" for their first year.

Issue:
Requiring counties to view original documents represents a hardship to customers and staff, as applications and redeterminations are completed mostly by mail.
Recommendation:
Allow notarized copies of original documents to be provided.

Section III – Collection of Information Requirements

Issue:
Time estimates for customers to locate citizenship documentation (ten minutes) and for the state or county to obtain and verify documents and update their records (five minutes) is greatly under estimated.
Recommendation:
Revise figures to allow for time spent updating instructions to customer and staff, purchasing equipment and updating systems, and assisting customers in obtaining documents.

Thank you for allowing us to submit our comments.

Candice S. Karpinen
Medi-Cal Program Specialist

Submitter : **Ms. Jill Greenberg** **Date: 08/11/2006**

Organization : **Ms. Jill Greenberg**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

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 : Miss. Aisha Rivera **Date:** 08/11/2006

Organization : medical student

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

The Medicaid program plays a vital role in providing access to healthcare for the poor. Also, Medicaid pays for more than one-third of all births in the United States. The citizenship documentation requirements present unnecessary barriers by requiring Medicaid-eligible citizens to produce citizenship documentation. I think this new requirement is affecting US citizens who are entitled to Medicaid more than it is affecting the immigrants that it was trying to affect. CMS should ensure that new Medicaid applicants receive care if they don't have citizenship documentation but are trying to acquire the required documentation. CMS should get rid of or modify the current requirement that Medicaid recipients and applicants submit such specific citizenship documentation.

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

Organization : Cayo Alba

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. Karen Vaughan **Date:** 08/11/2006

Organization : N/A

Category : Other Practitioner

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.