Submitter : Mrs. Stacey Lewis **Date:** 08/08/2006

Organization : Mrs. Stacey Lewis

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-96-Attach-1.RTF

August 8, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide the phone number of the employer if it is not listed on the document)

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Submitter : **Patricia Nemore** **Date: 08/08/2006**

Organization : **Center for Medicare Advocacy, Inc.**

Category : **Consumer Group**

Issue Areas/Comments

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See Attachment

CMS-2257-IFC-97-Attach-1.DOC

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August 8, 2006

Centers for Medicare & Medicaid Services
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P.O. Box 8017
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Re: Medicaid Citizenship Documentation Interim Final Rule,
71 Fed. Reg. 29214 (July 12, 2006)

The Center for Medicare Advocacy, Inc. is a non-profit, non-partisan organization that provides education, legal assistance, and analysis to help elders and people with disabilities obtain Medicare and necessary healthcare. The Center is a leading national voice promoting the viability of traditional Medicare and opposing privatization based on the real life experiences of the thousands of individuals who contact the organization for help. Much of the Center's work focuses on issues pertaining to those who are dually eligible for Medicare and Medicaid.

As an organization concerned about healthcare for all Americans, we comment on these proposed regulations.

We are, of course, pleased that the Centers for Medicare and Medicaid Services has acknowledged in these rules that Medicare beneficiaries and SSI beneficiaries were not intended to be subject to citizenship documentation requirements. We are, nonetheless, concerned that at least 42 million individuals *who are already on Medicaid* **will** be affected. These individuals, 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.

Additional Positive Aspects of the Rule

Allowing the use of the SDX and state vital records databases to cross-match citizenship records and allowing states to use state and federal databases to conduct identity cross-matches will reduce the burden of these requirements on recipients and applicants, as well as on state Medicaid agencies.

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 will also reduce burdens.

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

Concerns about the Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

First, the preamble to the Interim Final Rule allows an individual to prove citizenship through the use of two written affidavits only "in rare circumstances." 71 Fed. Reg. at 39224. Second, the rules for using the affidavit exception are strict: individuals must obtain written affidavits by *two* individuals who have knowledge of that person's citizenship, and at least one of these individuals cannot be related to the applicant or enrollee. Additionally, the individuals making the affidavits

must be able to provide proof of *their own* citizenship and identity, and the applicant or enrollee must also make an affidavit explaining why documentary evidence does not exist or cannot be obtained. 71 Fed. Reg. at 39224. An individual who cannot meet the documentation requirement will be unlikely to produce two individuals who have personal knowledge of the circumstances of their birth or naturalization, especially if one must not be a family member. Moreover, if the individual resides in a mixed status family, those family members who can offer an affidavit may not be citizens themselves. Undoubtedly, there will be individuals who cannot obtain documents from any of the tiers, not for lack of trying, and cannot meet the affidavit requirements. As a result, U.S. citizens who are otherwise eligible for Medicaid will be denied or lose coverage.

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

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

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

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

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

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

Conclusion

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

Thank you for your attention to these comments.

Submitter : Ms. Starlisa Gaskim **Date:** 08/08/2006

Organization : L&S Associates, Inc.

Category : Individual

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. Gerard Veneman **Date:** 08/08/2006

Organization : The Children's Home, Inc.

Category : Other Health Care Professional

Issue Areas/Comments

GENERAL

GENERAL

Please exempt abused,neglected and abandoned children from the 'proof of citizenship' requirement. This is already being done to qualify for federal IV-E funds and would add an unneccesary burden. We already subsidize with philantropic dollars (over $3,000,000 annually) what is ultimately the State's concern. The State of Florida creates mandatory laws regarding what to do with findings of abuse and neglect that include providing proper medical care. To put us in the private sector at risk even more than we already are is an injustice to kids who have already suffered too much. Agian, please exempt foster and adoptive children from this rule.

Sincerely,

Gerard H. Veneman
President/CEO, The Children's Home,Inc. www.childrenshome.org

Submitter : **Ms. Evelyn Barnum** **Date: 08/08/2006**

Organization : **CT Primary Care Association**

Category : **Health Care Professional or Association**

Issue Areas/Comments

GENERAL

GENERAL

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

Connecticut Primary Care Association is sending you our comments on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We are concerned that the interim final rule goes beyond what Congress intended and will deny or delay access to health care for many United States citizens, including pregnant women and children, especially children in state foster care programs.

We urge CMS to make the following revisions to ensure that eligible pregnant women, parents, children and persons with disabilities receive Medicaid benefits without experiencing delays, disruptions or denials of coverage. We believe these revisions are particularly appropriate because the new law does not address any documented problem of non-United States citizens fraudulently receiving Medicaid coverage.

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

Connecticut has simplified the eligibility process. Pregnant women and families no longer undergo a face-to-face interview to apply for or renew Medicaid coverage. The Governor agreed to reinstate self-declaration last month (July 2006). We fear that the increased efficiency to be gained by the reinstatement of self-declaration will now be lost due to this new citizenship documentation burden. Moreover, the Department of Social Services has seen a dramatic decrease in its staffing over the last several years, as well as a reduction in the number of its offices.

We urge CMS to allow copies of documents to be submitted by applicants and enrollees. Under current law, state Medicaid agencies have always had the authority to require additional proof of citizenship where the person s declared statement is questionable.

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

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

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

Homeless individuals, victims of natural disasters and others whose records have been destroyed or can t be found should be permitted alternative methods for proving citizenship.

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

Submitter : **Mr. Edward Arnold** **Date: 08/08/2006**

Organization : **Mr. Edward Arnold**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

What amazes me about this regulation is that it was imposed on a group of people who have far less money, and free time, than most to meet the regulation. Does anyone at CMS have any idea as to how much time and money is required to obtain a birth certificate and then transport the disabled person to the DMV to get a drivers-style ID card? Obviously, a single ID (passport) is out of the question.

Next time you do something like this, pay the disabled people on whom you are imposing the regulation, to meet the cost of the regulation. My disabled daughter lives below the poverty line; I don't know why I should have to spend her money on this sort of thing.

Submitter : Ms. W. Ron Allen **Date:** 08/08/2006

Organization : Jamestown S'Klallam Tribe

Category : Other Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-102-Attach-1.PDF

JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382 360/683-1109 FAX 360/681-4643

August 7, 2006

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

To whom it may concern:

The purpose of these comments is to request that tribal documents and Certificate of Degree of Indian Blood (CDIB) cards be included as first tier documentation for proof of citizenship and identity. Numerous tribes and organizations have asked the Centers for Medicare and Medicaid Services (CMS) to include this provision in their guidance to States as well as in the final rules. Clear rationale has already been provided to CMS for explicitly including these documents. As a member of CMS Tribal Technical Advisory Group (CMS TTAG), I am disappointed that we were cited as having provided "input" in the development of the rules, yet our advice and recommendations to CMS have been ignored.

The process used by the Jamestown S'Klallam Tribe for tribal enrollment is clearly specified in our Constitution and tribal code and is as thorough as any in the country. Tribal enrollment requires documentation establishing a specific blood relationship to a Jamestown S'Klallam Tribal member and all of our tribal members who reside in the United States are U.S citizens.

The interim final rule pertaining to American Indian/Alaska Native (AI/AN) citizenship documentation is irrational. We understand that CMS essentially copied the wording from a Social Security Administration manual used to verify citizenship for the purposes of issuing a Social Security Number. Unfortunately, this policy, which mistakenly includes only 3 of the over 560 federally recognized tribes, is unintelligible in terms of any coherent rationale. For CMS to copy this same mistake, particularly in light of the face-to-face and written advice that the TTAG gave directly to Dr. McClellan and Dennis Smith shows an ignorance of the complexity of tribal enrollment processes.

The proposed interim final rule will unfairly penalize AI/AN who are eligible for Medicaid. Few AI/AN have passports and many do not have original copies of a birth certificate. AI/AN do not have the same incentive as other Medicaid enrollees to produce required documentation for Medicaid because they can receive free health care through their tribe – with or without Medicaid coverage.

The result is that every additional requirement for Medicaid coverage results in fewer eligible AI/AN being enrolled. The very unfortunate result is that tribal health programs unnecessarily loose critical revenue to serve our Tribal members who are US citizens.

The administrative burden for outreach, education and collection of citizenship documentation will also fall on already under funded tribal health programs. The cost associated with these new tasks will further deplete very limited Indian health funding resources at the expense of more important priority areas such as improving basic information technology.

I strongly urge you to consider the advice of numerous tribes as well as the National Association of State Medicaid Directors and include tribal documents and Certificate of Degree of Indian Blood (CDIB) cards as first tier Medicaid documentation for proof of citizenship and identity.

If you have any questions or clarifications, please feel free to call me at (360) 681-4621 or e-mail me at rallen@jamestowntribe.org.

Sincerely,

W. Ron Allen, Chairman/Executive Director
Jamestown S'Klallam Tribe

Enclosure

Cc: Senator Maria Cantwell
Senator Patty Murray
Representative Norm Dix
National Indian Health Board

Submitter : Ms. Deirdre McKiernan Hetzler **Date:** 08/08/2006

Organization : Ms. Deirdre McKiernan Hetzler

Category : Academic

Issue Areas/Comments

Regulatory Impact Statement

Regulatory Impact Statement

This regulation will cause undue hardship and delay for anyone who has suffered other hardships (e.g. fire) during which documents were lost or destroyed. It may particularly affect those children who are at the mercy of impaired or less than responsible adults. This represents overkill. Let's find another way to deal with the perceived problem.

Submitter : Mr. Mark Tajima **Date:** 08/08/2006

Organization : Los Angeles County Chief Administrative Office

Category : Local Government

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Comments relating to how the Medicaid citizenship documentation requirements under Section 6036 of the Deficit Reduction Act should be applied to individuals aho are entitled to Medicaid by virtue of their receipt of Title IV-E assistance.

Submitter : **Date: 08/09/2006**

Organization :

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

Now just how exactly is presenting a couple of documents that are easily fraudulently produced going to verify the citizenship and thus eligibility of millions of Medicaid recipients? All I really see happening is where the Medicaid recipients are honest, it'll bring a bit of an influx of cash into the records departments of their state of birth - but that money comes out of the budgets of people that honestly can't afford it.

Honestly, this new system isn't any more effective than the old "sign here on penalty of perjury" system for verifying citizenship and eligibility.

Submitter : Ms. Deirdre McKiernan Hetzler **Date:** 08/08/2006

Organization : Ms. Deirdre McKiernan Hetzler

Category : Academic

Issue Areas/Comments

Regulatory Impact Statement

Regulatory Impact Statement

This regulation will cause undue hardship and delay for anyone who has suffered other hardships (e.g. fire) during which documents were lost or destroyed. It may particularly affect those children who are at the mercy of impaired or less than responsible adults. This represents overkill. Let's find another way to deal with the perceived problem.

Submitter : Mr. Mark Tajima **Date:** 08/08/2006

Organization : Los Angeles County Chief Administrative Office

Category : Local Government

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

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Comments relating to how the Medicaid citizenship documentation requirements under Section 6036 of the Deficit Reduction Act should be applied to individuals aho are entitled to Medicaid by virtue of their receipt of Title IV-E assistance.

Submitter : **Date: 08/09/2006**

Organization :

Category : **Individual**

Issue Areas/Comments

GENERAL

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Honestly, this new system isn't any more effective than the old "sign here on penalty of perjury" system for verifying citizenship and eligibility.

Submitter : Ms. Amy Donnelly **Date:** 08/09/2006

Organization : L & S Associates, Inc.

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-106-Attach-1.RTF

August 8, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide the phone number of the employer if it is not listed on the document)

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

CMS-2257-IFC-107

Submitter : Mrs. Kellie Gilbert **Date:** 08/09/2006

Organization : L & S Associates, Inc.

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-107-Attach-1.RTF

August 8, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide the phone number of the employer if it is not listed on the document)

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Submitter : Mr. Michael Fitzpatrick **Date:** 08/09/2006

Organization : National Alliance on Mental Illness

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See attached.

CMS-2257-IFC-108-Attach-1.DOC

The Nation's Voice on Mental Illness

August 8, 2006

Mark B. McClellan, MD
Administrator, Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W., 314G
Washington, DC 20201

Re: Interim Final Regulations on Citizenship Documentation Requirements [CMS-2257-IFC].

Dear Dr. McClellan:

On behalf of the 210,000 members and 1,200 affiliates of the National Alliance on Mental Illness (NAMI), we submit the following comments to the Centers for Medicare and Medicaid Services (CMS) on the interim final regulation implementing the citizenship documentation requirements in Section 6036 of the Deficit Reduction Act of 2005.

We want to begin by thanking the agency for the many positive changes in the interim final regulations that benefit individuals with mental illness and other disabilities. As the nation's largest organization representing people with serious mental illnesses and their families, NAMI is particularly grateful for the exemption of individuals who are eligible for Medicaid by virtue of their receipt of Supplemental Security Income (SSI) benefits and individuals who are dually eligible for Medicare and Medicaid. We also want to express our appreciation for the clear guidance to states on using the State Data Exchange for those states that do not directly link SSI and Medicaid.

While these are very important and helpful provisions, NAMI would like to offer the following comments and suggestions to augment these protections and ensure that the documentation requirements do not become a barrier to the receipt of critical and timely mental health services.

Section 435.407(j). Coverage Should Not Be Delayed While An Applicant Is Seeking Citizenship Documents.

While NAMI commends CMS for allowing current Medicaid beneficiaries to have a reasonable opportunity to gather their documents, we are concerned that the same rule does not apply to applicants. The preamble to the rule unequivocally states that

applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216.

Medicaid applicants with serious mental illnesses who are not on SSI at the time of application will be particularly harmed by this rule. Those in an acute phase of their illness will find it difficult to comply with the documentation requirements. Under the rule, they will be denied access to the treatment they need to alleviate their symptoms and allow them to assist with finding their documents. Moreover, timely access to mental health treatment is critical to avoid tragic consequences such as arrests, incarceration, homelessness and suicide.

CMS has the authority to change this rule because the statute specifies that the citizenship documentation requirement is a condition for the states to receive federal funds, not a condition of individual eligibility. Individuals should be enrolled immediately in Medicaid and given a reasonable opportunity to produce their documents.

Section 435.407(h)(1). Copies of Documents Should Be Sufficient Proof of Citizenship.

The interim final regulation specifies that individuals must submit original documents or copies certified by the issuing agency to satisfy the citizenship and identity requirements. This provision creates a significant financial and logistical burden for individuals with mental illness, who often have very low incomes and little access to transportation.

Individuals will be very hesitant to send original documents by mail. Medicaid recipients and applicants with mental illness often have transient living arrangements and may not have a reliable address for the return mail. They also may be worried that the mail might not reach its destination.

This provision will require them to schedule an in person appointment with the Medicaid agency. Given the difficulties of transportation, particularly in rural areas, such a rule is likely to significantly delay compliance with the documentation requirements, putting services at risk or denying access to services for applicants. Some applicants may be discouraged from applying for Medicaid.

The statute gives CMS the authority to determine additional documents that are reliable evidence of citizenship and identity. Moreover, the statute does not specify that the documents must be originals. Accordingly, CMS should allow copies to be used, sparing expense and burden for both individuals and state agencies.

Section 435.1008. Exempt Individuals Who Have Already Documented Citizenship for Another Federal Program, Including Foster Care Children in the IV-E program and Individuals on Social Security Disability Income (SSDI).

As previously noted, NAMI is very grateful to CMS for exempting individuals who qualify for Medicaid by virtue of receipt of SSI and individuals who are dually eligible

for Medicaid and Medicare. This provision will ensure that millions of Americans, including many with serious mental illnesses, will continue to access the mental and physical health care services that they need. By carefully interpreting the statute, CMS has preserved Congressional intent and spared millions from needless burden, expense and potential loss of benefits.

NAMI requests that CMS also use its authority under the statute to exempt all adults and children who have already proven citizenship to qualify for another federal program. This is particularly important for individuals with disabilities on Social Security Disability Insurance who are in the waiting period for Medicare and for foster care children who are eligible for Title IV-E funds.

A significant number of children in foster care have a mental illness. A recent study indicated that nearly half of the children in the child welfare system had clinically significant mental illnesses and only about one-quarter received mental health treatment.[1] It is essential that children in the foster care program have timely access to mental health treatment to allow them to function at school, to develop positive relationships with their biological and foster families, and to avoid losing critical developmental time to untreated mental illness.

Those on Title IV-E should be exempt from the federal rules because they have already proven citizenship. At a minimum, the rules should clarify that all foster care children will be treated as if they are current beneficiaries, not applicants. The state agency should have a reasonable opportunity to produce their documents while they are enrolled in Medicaid and receiving critical services and supports.

NAMI also suggests that every effort be made to simplify the requirements by allowing the child welfare agency to confirm citizenship. The Medicaid agency should not be required to maintain a separate record. Given the lack of resources to treat these children, states should not be required to divert scarce funding to duplicative efforts.

Section 435.407(g) Clarify Populations That Must Receive Special Assistance And Include Homeless Individuals and Those Who Have Been The Victim of A Disaster.

NAMI very much appreciates the provisions in the interim rule specifying that states must assist individuals "when because of incapacity of mind or body the individual would be unable to comply with the requirement..." We would suggest clarifying that provision by using language similar to the CMS June guidance on the documentation requirements. The June guidance included those who were "homeless" and "mentally impaired" in the list of those receiving assistance. NAMI suggests adding homeless individuals to the interim final rule and using the more common terms, "individuals with mental or physical impairments" rather than those with "incapacity of mind or body." Assistance should also be extended to those who have lost their documents in a disaster.

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[1] Barbara Burn, Susan Phillips et al. "Mental health Needs and Access to Mental Health Services by Youth Involved With Child Welfare: A National Survey" , *Journal of the American Academy of Child and Adolescent Psychiatry* (2004).

The preamble to the regulations states that homeless individuals are part of the group requiring special assistance. The regulations should include the same language. If a person does not have a permanent address, they will need additional assistance to comply with the requirements.

In addition, those who have lost all or many of their belongings in a disaster situation should be given additional assistance in meeting these requirements. Disaster victims need timely and continued access to mental health and health services to address preexisting illnesses as well as those created by the disaster and its aftermath.

Section 435.407(e) Information from Mental Health Providers and Data Matches to Mental Health Authorities Should Provide Evidence of Identity for Those Who Have Already Documented Citizenship.

Proving identity can be difficult for some individuals with mental illness because they do not drive and lack some of the needed documents to get a state-issued identity card. Allowing information from mental health providers and data matches to mental health authorities to establish identity would significantly reduce the burden of the documentation requirements for those with mental illness and other disabilities.

Section 435.407(h)(5) Clarify that Once Individuals Establish Citizenship In One State, They Will Not Be Required to Document Citizenship Again If They Move To Another State.

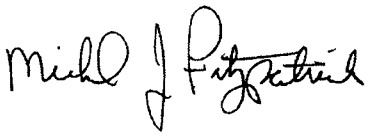
NAMI appreciates the provisions in the rule specifying that proving citizenship is a "one time activity" so subsequent changes in eligibility generally should not require repeating documentation of citizenship.

It would be helpful for CMS to also clarify that this protection applies across states. Many individuals on Medicaid, including those with serious mental illnesses, move frequently and will cross state lines. Individuals also move across states after a disaster occurs. Thus, changes in eligibility or in residency should not require an individual to repeat the process for providing documentary evidence of citizenship.

Conclusion:

Thank you for considering these comments. NAMI appreciates the agency's responsiveness to the previous comments of the disability and mental health community as reflected in the interim final rules and provides these suggestions to further ensure that individuals with significant needs have access to critical services and supports.

Sincerely,



Michael J. Fitzpatrick, M.S.W.
National Executive Director

Submitter : **Meg Booth** **Date: 08/09/2006**

Organization : **Children's Dental Health Project**

Category : **Other**

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-109-Attach-1.DOC

August 9, 2006

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

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

The Children's Dental Health Project (CDHP) is a national non-profit organization with a mission to advance of policies that improving children's access to oral health. We accomplish our mission by forging research-driven policies and innovative solutions by engaging a broad base of partners committed to children and oral health. CDHP's work is vital to the health of children because dental disease remains the most common chronic disease of childhood – five times more common than asthma. In fact, more than half of all second graders have experienced cavities. Unfortunately significant inequities persist in access to dental care. In the U.S., one-quarter of all children experience 80 percent of tooth decay – primarily low-income and minority children. Because less than one percent of Medicaid spending goes to children's dental care, falling significantly behind the private sector, less than one-third of poor children receive any dental care at all. The disparities in dental care for low-income children make Medicaid access imperative to the health and development of children.

The Children's Dental Health Project is 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 become 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 three areas that CMS should modify in the final rule.

Benefits should be available to eligible U.S. citizens upon declaration of citizenship.

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 432.407(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 and dental care, worsen their current health problems, and creating greater financial burden in the long-term.

Eighty percent of all tooth decay is found in 20 percent of America's children – primarily in children from low-income and minority families. Access to dental care is critical to the overall health of child. Magnifying the current inequities in children's oral health care will only prove painful for children and harmful to society. Poor oral health not only impedes a child's ability to eat, but also their ability to learn. Nearly half of all U.S. children are affected by tooth decay by the time they reach the 2nd grade. This lack of attention to children's oral health manifests into 850,000 missed school days annually.

We urge CMS to revise 42 CFR 435.407(i) 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 the states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation.

Alternatives to originals or certified copies should be permitted.

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Yet CMS had added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1). Requiring original or certified copies adds to the burden of the new requirement for applicants, beneficiaries, and states and makes it more likely that medical and dental care will be delayed or families will skip necessary care altogether.

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

Creating unnecessary requirements for originals and certified copies to document citizenship goes beyond those Congress imposed in DRA. These burdensome requirements will make it more difficult for working families to enroll their children in Medicaid and cause delays in coverage while applications seek these documents.

We urge CMS to revise the regulations 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 supported by the applicant or beneficiary.

Tribal enrollment cards for federally-recognized Native American tribes should meet requirements.

While Native American tribal documents can be used as proof of identity, the regulations do not permit tribal enrollment cards to be used as evidence of citizenship. (The regulations only allow identification cards issued by DHS to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship). The federal government recognizes over 560 tribes in 34 states, each of which issues enrollments cards to its members for purposes of receiving the services from tribal resources and voting in tribal matters. With very few exceptions, tribes issue enrollment cards only to individuals who are born in the U.S. (and have U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship. We urge CMS to revise the regulations at 42 CFR 435.407(a) to specify that a tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity. An exception should be made in the case of a federally-recognized tribe located in a state that borders on Canada or Mexico that the Secretary finds issues tribal enrollment cards to non-citizens; in such cases, tribal enrollment cards should qualify as evidence of identity but not citizenship.

Native American children have disproportionate dental concerns compared to U.S. children in general. The odds of a Native American preschooler having tooth decay is five times greater than other preschoolers and three times more decayed teeth than their peers. According to parent reports, one-third of Native American school children miss school because of dental pain each year. Parents also report that one-in-four children avoid laughing or smiling because of the way their teeth look. Expanding the documents that can be used by Native Americans to prove citizenship and identity will provide greater opportunities for Native American children to gain access to needed dental care through Medicaid.

Conclusion

The Children's Dental Health Project is greatly concerned about the impact of the new citizenship and identity requirements will have on children's health, including their oral health. The unnecessary requirements including the denial of coverage until full documentation is received; strict requirements on originals and certified copies; and a narrow interpretation of documentation for Native Americans may prove extremely harmful to children's health by delaying needed care. Delaying care will cause more children to seek uncompensated and emergency care that will negatively impact children's access to medical and dental care across the country. We ask for your careful consideration of the implications of creating additional barriers to medical and dental care for vulnerable children.

Thank you for your attention to these comments. If you have any questions, please contact Meg Booth at the Children's Dental Health Project at (202) 833-8288 or mbooth@cdhp.org.

Submitter : **Jolene Brakke** **Date: 08/09/2006**

Organization : **South Dakota Department of Social Services**

Category : **State Government**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-110-Attach-1.DOC

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
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 State of South Dakota

1. Type of acceptable documentary evidence of citizenship (§435.407)

   In the secondary evidence of citizenship, a final adoption decree showing the child's name and U.S. place of birth is listed. We do not feel that this should be limited to a U.S. place of birth.

   We would also support the use of tribal documents as proof of citizenship as well as identity.

2. 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.

3. Evidence of identity ((§435.407(e))

   This requirement is proving to be problematic for some populations, particularly those who are age 17 on our reservations. Many of these individuals do not have drivers licenses, schools do not issue photo ID's and they are not issued tribal documents until age 18. This population often lives in remote areas that make it burdensome, both logistically and financially, to obtain an ID issued by the state government.

   Although the exclusion of Medicare and SSI recipients from this requirement does help immensely, we will still face problems with some of our recipients in nursing facilities. We support an extension of this exemption to individuals receiving Social Security Disability Income. We would like to see an affidavit option for adults as well as children.

4. Documentary evidence ((§435.407(h)(1)&(3))

   By requiring that all documents be either originals or certified documents, we are placing a financial burden on those who are in most need of our assistance. South Dakota has some very remote areas where those applying for medical assistance have to travel over 100 miles to get to the nearest local office. While mailing in originals is acceptable, we do not consider it reasonable to have applicants send in the original copy of their driver's license to prove identity.

5. Record retention ((§435.407(i))

In the background of the comments, it is stated that repeating documentation of citizenship should not ordinarily be required unless there is a gap of more than 3 years between the individual's last period of eligibility and a subsequent application for Medicaid. We believe that once verification has been documented and it is not questioned, it should not need to be repeated even if a gap of three years or more exists. Most computer systems will have the ability to store a verification field for countless number of years. As long as they computer system has not purged this information, we do not feel this should be need to be produced again.

6. Reasonable opportunity to present satisfactory documentary evidence of citizenship. (§435.407(j))

   Individuals who apply for Medicaid and have met all of the other eligibility requirements are cooperating and working to prove citizenship, and there is nothing indicating the person is not a U.S. citizen should be covered while they are working to produce documentation. Given that the most common proof of citizenship will be birth records and given that a certain percentage of those applying in state will have been born out of the state in which they are applying, the 45 day requirement is inappropriate. There is currently no means to electronically match records from different states and even before this implementation, significant waits for birth records existed. New applicants should be given a reasonable period of time to complete these requirements.

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

Sincerely,
Jolene Brakke
Medicaid Eligibility Program Administrator
State of South Dakota

Centers for Medicare & Medicaid Services
Office of Strategic Operations and Regulatory Affairs
Regulations Development Group
Attention: Melissa Musotto CMS-2257-IFC
Room C4-26-05, 7500 Security Boulevard
Baltimore, MD 21244-10850

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Katherine T. Astrich, CMS Desk Officer, CMS-2257-IFC
Room 10235, New Executive Office Building
Washington DC 20503

Re: CMS-2257-IFC

The estimate of 5 minutes for each state to obtain acceptable documentation to verify citizenship and maintain current records of each individual is underestimated by 10 to 15 minutes.

Our staff has found that it takes considerably more time to obtain this information. Even if the applicant/recipient has the documentation on hand, the workers still need to view for authenticity, document that the original copies were viewed, copy/scan the documents, and update the computer system with the information.

Most times, the recipient/applicant does not have the documentation on hand, and the worker must spend time educating on acceptable documents, and assisting in ways to obtain the documents.

Also, in South Dakota this new provision will not yield any cost savings to the state. We are instead incurring costs that will far outweigh any saving. This cost include staff time spent on assisting the public, systems development to accommodate for the storage of the data, systems development to facilitate data matching, and administrative costs.

Sincerely,
Jolene Brakke
Medicaid Eligibility Program Administrator
State of South Dakota

Submitter : Mr. Brian Wing **Date:** 08/09/2006

Organization : NYS Department of Health

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

SEE ATTACHMENT

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

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

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

Submitter : Alicia Groh **Date:** 08/09/2006

Organization : Voice for Adoption

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

Please see attachment.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Please see attachment.

CMS-2257-IFC-112-Attach-1.DOC

VOICE FOR ADOPTION

Speaking Out for Our Nation's Waiting Children

August 9, 2006

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

Attention: CMS-2257-IFC

Provisions of the Interim Final Rule with Comment Period: Medicaid Program; Citizenship Documentation Requirements

Dear Mr. Tomlinson:

I am submitting comments on behalf of Voice for Adoption on the interim final rule on the Medicaid program and citizenship documentation requirements, published on July 12, 2006. This new rule creates significant problems for children in foster care and children who are adopted from foster care who receive Medicaid. The documentation requirements laid out in the rule will jeopardize the medical and mental health care for thousands of vulnerable youth for whom the government bears a responsibility for ensuring their well-being. Children entering foster care face extraordinary challenges as they deal with multiple traumatic events, including being removed from their birth parent's home. Most of these children have experienced abuse or neglect, and often have intensive medical and mental health needs. They should not face new barriers to getting the Medicaid coverage they need, especially when they have already gone through the Title IV-E foster care eligibility determination process that verifies their citizenship. I encourage you to use your authority to ease the process for ensuring that children in foster care do not face delays in receiving Medicaid coverage.

Voice for Adoption is a membership advocacy organization. We speak out for the 118,000 children in foster care who are waiting to be adopted. VFA members recruit families to adopt special needs children and youth. Our members also provide vital support services both before and after adoption finalization to help adoptive families through the challenges they often face. We are dedicated to finding permanent, loving families for every waiting child in foster care. We are also dedicated to ensuring that those children continue to have their needs met after they find their permanent families. Below, I describe our specific concerns about how this interim final rule will affect children in foster care.

The Title IV-E program provides federal funding for eligible children in foster care and children adopted from foster care who receive adoption subsidies. In order to receive benefits through the Title IV-E program, children must meet multiple eligibility criteria. One part of each state's Title IV-E eligibility determination process involves verifying a child's citizenship. The Title IV-E

program has a statutory link to Medicaid, making Title IV-E eligible children automatically eligible for Medicaid. These children are not required to go through an additional application or eligibility certification process in order to receive Medicaid coverage. This automatic link between Title IV-E and Medicaid helps ensure that foster children for whom the federal government is responsible are able to get medical coverage. By applying the same documentation requirements to Title IV-E eligible children as apply to the general population, this interim final rule ignores the long-standing statutory connection between Medicaid and the Title IV-E program and creates a redundant requirement for verifying a child's citizenship. Children whose Title IV-E eligibility, and therefore citizenship, has been determined should continue to be automatically eligible for Medicaid, without having to re-establish their citizenship through the documentation requirements in the interim final rule.

In the preamble to the interim final rule, you solicit comments and suggestions for the use of additional electronic data matches that can provide reliable information about the citizenship and identity of Medicaid applicants and recipients. I strongly encourage you to allow states to use Title IV-E eligibility documentation as evidence that a child meets the citizenship requirements for the Medicaid program. Such a provision would be consistent with the acceptability of using records from other state agencies, including state vital statistics agencies, in place of a birth certificate to establish citizenship.

This interim final rule also creates problems for non-Title IV-E eligible foster children. Children in foster care who are not eligible under Title IV-E are generally eligible for Medicaid based on eligibility categories for low-income children or children with disabilities. Many of these children have their citizenship verified even if they do not meet other Title IV-E eligibility requirements. Even though these children do not have their citizenship documented under the Title IV-E program, they still need prompt access to Medicaid coverage in order to receive crucial services. The interim final rule jeopardizes their Medicaid access by imposing obstacles on children in foster care that are not required by the Deficit Reduction Act. If these children must meet the documentation requirements in this rule, they will likely face delays in receiving Medicaid coverage when they enter foster care.

In explaining the reason for waiving the requirement for notice and comment and a 30-day delay in implementation, this interim final rule specifically expresses a desire to avoid interrupting Medicaid coverage for "the most frail and vulnerable citizens." Certainly children who have been abused or neglected and placed into foster care are some of our most vulnerable citizens; these children should not face any new barriers to receiving the medical and mental health services that they need.

The Department of Health and Human Services emphasizes its commitment to promoting safety, permanence and well-being for children; the Administration for Children and Families evaluates states specifically on their ability to provide for the safety, permanency, and well-being of children involved in the child welfare system. This commitment must be carried out throughout all of the Department's offices and programs that affect children in the child welfare system. By sending conflicting messages and creating additional burdens on states attempting to provide for the well-being of vulnerable children, HHS will hurt efforts to ensure that children in foster care are given the care that they need. Voice for Adoption strongly encourages the Department to

modify these regulations in order to eliminate the negative effects it will have on children in foster care and children adopted from foster care.

Thank you for your consideration,

Alicia Groh
Executive Director
Voice for Adoption

Submitter : Ms. Anne Dunkelberg **Date: 08/09/2006**

Organization : Center for Public Policy Priorities (Texas)

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

Because the comment field size in this electronic form is of inadequate capacity, The bulk of our detailed comments are attached as a Word file. Thank you.

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

August 7, 2006
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Re: Interim Final Rules, Medicaid Program; Citizenship Documentation Requirements published for comment on July 12, 2006 at 71 Federal Register 39214
The Center for Public Policy Priorities, located in Austin, Texas, submits the following comments on the Interim Final Rules implementing ?6036 of the Deficit Reduction Act of 2005 (DRA), related to Medicaid Program Citizenship Documentation Requirements.

General Comments:
The Center for Public Policy Priorities commends CMS for several provisions of this rule which represent major improvements in practicality and state flexibility over the procedures outlined earlier in SMDL #06-012. Exclusion of Medicare and SSI beneficiaries from what would have been duplicative documentation requirements was sensible, clearly supported by DRA, and will reduce the burden on state Medicaid agencies and clients.
Likewise, the clear directive that states may rely on electronic vital records matches, as opposed to requiring costly, duplicative, and archaic production of paper certificates, will reduce the administrative cost to the state agency and taxpayers, as well as the burden on individuals and families. Texas has for a number of years relied on electronic vital records data for Medicaid applicants, particularly for many of the 1.8 million children among the 2.7 million Texans served by Medicaid today. Had CMS failed to allow this, Texas would have had to revert to outmoded paper-driven systems.
While Texas does not currently utilize presumptive eligibility options, the center commends the clarification that presumptive eligibility remains an option for children, maternity patients, and breast and cervical cancer coverage enrollees, as these are important options which may be useful to our state in the future.
However, CPPP was surprised and disappointed by other aspects of the rule, which fail to provide common sense flexibility to states, would aggressively undermine a variety of state-of-the-art best practices of states, and in doing so inexplicably appear to go well beyond what the DRA either requires or authorizes. Unless revised, these rules will inevitably result in unnecessary delays and denials of health care to eligible U.S. citizens. These concerns are detailed in the attached Word document.

CMS-2257-IFC-113-Attach-1.PDF

CMS-2257-IFC-113-Attach-2.PDF

Center *for* Public Policy Priorities

August 7, 2006

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

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However, CPPP was surprised and disappointed by other aspects of the rule, which fail to provide common sense flexibility to states, would aggressively undermine a variety of state-of-the-art best practices of states, and in doing so inexplicably appear to go well beyond what the DRA either requires or authorizes. Unless revised, these rules will inevitably result in unnecessary delays and denials of health care to eligible U.S. citizens. These concerns are detailed below.

42 C.F.R. § 435.407(j) Reasonable Opportunity for Applicants to Obtain Required Documentation

The Rule should permit states to begin providing coverage to newly-applying eligible citizens based on their sworn declaration of citizenship, and to then provide them with the same reasonable opportunity to collect the necessary documentation that the rule allows for current enrollees who are renewing benefits, and which is similarly allowed for non-U.S. citizens to collect their immigration documents. There is no legal

or logical rationale for denying the same period for compliance to new applicants as is used for renewing enrollees. And, as a practical matter, it is simpler for the state Medicaid agency to offer the same policy to applicants as it does to those renewing coverage.

This irrational provision threatens to delay critical entry into prenatal care, and access to needed medical care for children and acutely ill adults. And, by delaying or denying coverage to adult women seeking family planning services under Texas pending waiver, it will increase unintended pregnancies, and thus costs for taxpayers.

There appears to be no requirement whatsoever in the DRA that CMS adopt this more burdensome policy for new applicants. As such, we recommend the rule be revised to allow the same reasonable opportunity allowed for renewing clients.

42 C.F.R. § 435.1008 Exemption for Foster Care Children

The Rules do not exempt children in foster care who are receiving federal foster care payments under Title IV-E. This would require Texas' Medicaid agency (Texas Health and Human Services Commission) to duplicate the work of the state child welfare agency (Department of Family and Protective Services), which already must verify the citizenship status of foster care children in order to determine their eligibility for Title IV-E.

Children often enter foster care with medical and behavioral health issues which demand immediate attention. It is unacceptable to create barriers that would delay access to that care, particularly when those barriers are wholly duplicative and in no way add to the integrity of the program. The duplicate documentation requirement will, however, add unnecessary cost to the Medicaid program and Texas taxpayers.

In addition, providers of care to children in Texas foster care are required to "ensure" that the children in their care access medical care promptly. If these redundant documentation requirements are allowed to stand, compliance with these quality standards will be undermined as providers will have no source of payment for the children's medical care.

The center recommends the rule be revised to exempt these foster children from the documentation requirement, on the same reasonable grounds that Medicare and SSI beneficiaries are granted exclusion. DRA clearly grants the Secretary authority to adopt that policy.

42 C.F.R. § 435.407(a) or (b): Medical Records of Birth as Allowable Documentation for Newborns

The Rule should be changed to permit states to accept (1) a record of Medicaid payment (or other insurance payment) for the birth of a child born in the U.S. as proof of citizenship; or (2) a medical record of birth in a U.S. hospital or other setting as proof of citizenship.

The discussion in the preamble to the Rule defies logic. As written, it would seem to allow documentation to be deferred until the first birthday for <u>some</u> children (those whose mothers were enrolled in full Medicaid coverage), but not for others (those whose mothers are not enrolled in full Medicaid coverage). This has the effect of discriminating against children whose mothers are immigrants (legal and undocumented alike). There would appear to be no legal basis in the DRA calling for such a distinction, and it would seem to represent unequal treatment of U.S. citizen children..

As a matter of common sense, states should be allowed to deem a newborn's citizenship to be established on the basis of having paid a Medicaid claim for delivery, regardless of the type of Medicaid coverage the mother had. The state Medicaid agency itself will possess a record of the U.S. birth, and it is irrational and wasteful to require the agency to take additional steps at all, even at the child's first birthday. It is also potentially dangerous for newborns if their coverage is delayed, and onerous for parents.

42 C.F.R. § 435.407(f) Identity Rules for Children

The sections of the Rule related to the documentation of identity for children fly in the face of common sense. The drafters of the Rule appear to believe that newborns, toddlers, pre-schoolers, and elementary students in the U.S. routinely possess identity documents. This is not the case, and clearly CMS did not base this requirement on research of this matter. In reality, is it not only rare for children of elementary school age or younger to have identity documents such as school IDs, but also remains rare even for middle schools to issue IDs. In fact, many smaller schools and schools with tight budgets may find such IDs an unneeded or unaffordable luxury.

The rule should be amended to reflect the real word circumstances of children in the U.S.. In the interest of expediting coverage, eliminating major costs to state Medicaid agencies, and unburdening parents attempting to responsibly provide care for their children, the rule should clarify that an official birth record (electronically verified vital record, Medicaid delivery record, or other hospital or insurance record of U.S. birth) combined with a sworn affidavit of identity should be acceptable for all recipients under the age of 19. While states could be allowed or encouraged to request photo student IDs from students of senior high school age (i.e., age 16-19), the Rule should also clearly allow for identity of teens to be established via affidavit where school ID is not available.

42 C.F.R. § 435.1008 Exceptions Needed for Other U.S. Citizens Lacking Documentation, or Who have Already Proven Citizenship

The rule needs to allow states the flexibility to use alternative methods to verify citizenship or identity in "special circumstances," when the state finds that compliance with the regulations would be a hardship (and the state has reasonable grounds to conclude that the individual is a citizen).

Key examples include victims of hurricanes and natural disasters, whose records have been destroyed; homeless individuals; and naturalized citizens who have lost their certificate of naturalization and others may not be able to meet the new requirement. In Texas, community organizations providing assistance to displaced families after Hurricanes Katrina and Rita have discovered first-hand that many Louisiana parishes were often unable to provide their displaced residents with birth certificates, even as long as 9 months after the event.

CMS should also revise the rule to exempt former Medicare, TANF and SSI beneficiaries, as well as persons receiving SSDI benefits but not yet receiving Medicare (due to the 24 month delay in coverage), because all of these persons will have already satisfied citizenship requirements previously.

Additionally, states need flexibility to exempt or streamline requirements for women who receive only family planning services under Medicaid through a family planning "waiver" (Texas hopes to begin such a program in 2007). The time it may take to acquire such documents may mean the difference between providing a finite set of low-cost services, and the costly treatment of an unplanned pregnancy.

42 CFR §435.407(a) Native American Tribal Documents as Proof of Citizenship and Identity

A tribal enrollment card issued by a federally-recognized tribe should be treated like a passport as primary evidence of citizenship and identity. The federal government recognizes over 560 tribes in 34 states, and their tribal enrollment cards are highly reliable evidence of U.S. citizenship. Rather than requiring new documentation for 559 tribes, the Secretary could require additional documentation of U.S. citizenship only for federally recognized tribes located in a state that borders Canada or Mexico which are known to issue tribal enrollment cards to non-U.S. citizens.

42 CFR§ 435.407(h)(1), Original Documents or Certified Copies Should Not Be Required

The regulation should give states flexibility to accept copies of documents instead of original documents or copies certified by the issuing state agency. States do not want to take on the responsibility and cost of receiving and safeguarding birth certificates and passports, nor do clients wish to entrust them to either the U.S. mail or the state Medicaid agency. To deny states the ability to accept photocopies of these documents will hamstring states' attempts to modernize their eligibility systems by reducing in-person requirements and shifting to electronic and mail transactions, and undermine the investments states have made in transitioning to contemporary technology. Texas is planning to close 100 eligibility offices and convert to a largely paperless system that relies heavily on mail, FAX, internet, and telephone, so this flexibility is critical. Texas and other states have historically accepted legible photocopies of valuable documents. Our continued progress in streamlining eligibility systems will be hampered by a requirement that only original documents and certified copies be allowed for eligibility certification.

42 C.F.R. § 435.407(h)(5) Beneficiaries who have verified citizenship in one state should not have to duplicate verification 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, no mechanism for eliminating duplication of burden on clients who move to a new state (or of eliminating duplicative administrative cost for state Medicaid agencies) is indicated in the Rule. The rule should be amended to clarify that CMS will create an infrastructure for such verifications across state lines, and such a database or system should be created.

42 C.F.R. § 435.407 General Complexity of the Hierarchical Documentation Structure Proposed

The inflexible and complex structure of first, second, third, and fourth-level evidence, as proposed, will be burdensome and costly for state agencies and clients alike, and is sure to delay access to critically needed health care for new applicants. States have good track records at exercising flexibility in allowable documentation in the eligibility process, and are the experts in understanding the highly diverse circumstances in which Medicaid clients live. The rule should be amended to reflect the 4 levels of documentation as preferences, but states should be empowered to accept best available information, and freed from the obligation to spend client and taxpayer money seeking redundant documents when other acceptable documentation establishing citizenship and/or identity is present. Clearly the language in § 6036 of the DRA does not call for this complex structure.

Whether or not this recommended change is made, the CMS rule should retain the level three and level four documentation options. Again, state Medicaid agencies can (and will) confirm that a broad and flexible array of documentation options is an absolute necessity if eligible persons are not to be denied Medicaid. This is especially important because some of the very neediest clients will also be the ones least able to access documents: the abused, those with cognitive disabilities, disaster survivors, critically ill or injured persons. Giving states the flexibility to easily accept a wide range of documentation options will bee needed to avert potential humanitarian crises, and to avoid denying eligible individuals health care coverage to which they are entitled.

CMS should amend 42 C.F.R. § 435.407 to allow a person who cannot acquire any of the listed documents to explain why the documents cannot be acquired, and to allow a state to provide Medicaid to that person if it finds the explanation to be credible. If the person is incapacitated to such a degree that (s)he cannot provide an explanation, the person's guardian or representative should be able to provide it instead. We note that the SSI program relies on this sort of "fail-safe" mechanism to ensure eligible persons are not denied benefits, and that model can and should logically be adopted here.

42 C.F.R. § 435.407(d)(5)(iii) Only U.S. Citizens May Attest to Citizenship of an Applicant

We are concerned that this requirement may have the effect of denying equal access to Medicaid to U.S. citizen children whose parents are either lawful permanent residents of the U.S., or undocumented aliens. This should be unacceptable to CMS. No eligible individual entitled to Medicaid should face barriers to coverage because of the characteristics of his or her family members. The rule should be clarified to allow non-U.S. citizens to be affiants.

Thank you for considering our comments to The Interim Final Rule. The DRA clearly grants the Secretary discretion to grants states greater flexibility in both the list of documents that are accepted as proof of citizenship or identity, and in determining when acceptable documentation has been provided. We urge that the Secretary use this discretion, and amend the Rule to grant state Medicaid agencies the flexibility they need to determine procedures for establishing U.S. citizenship which are practical, cost-effective, and do not delay access to health care for eligible U.S. citizens.

Sincerely,

Anne Dunkelberg
Assistant Director, Senior Health Policy Analyst

Submitter : **Date: 08/09/2006**

Organization : **Prevent Child Abuse America**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-114-Attach-1.DOC

CMS-2257-IFC-114-Attach-2.DOC

Prevent Child Abuse America

[illegible]

August 10, 2006

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

Interim Final Rule, Medicaid Program, Citizenship Documentation Requirements

Prevent Child Abuse America appreciates this opportunity to comment on the interim final rule to implement Section 6036 of the Deficit Reduction Act (DRA), which was published in the Federal Register on July 12, 2006. These comments are intended to be of assistance as CMS finalizes guidance for states seeking compliance with new requirements for documentary evidence of citizenship and identity.

Because health is one of the most important predictors of a child's success in life, we support access to comprehensive and affordable health care for all children as a significant primary prevention strategy. The Medicaid program plays a major role in children's health care coverage, particularly for children who are low income, homeless, have special needs, have been abused or neglected or are at risk of abuse and neglect. Our primary concern with the interim final rule relates to the duplicative efforts that would be required by the new documentation. These actions could delay or deny timely and appropriate health and mental health care to these Medicaid eligible children.

At a minimum, it is recommended that CMS exempt abused and neglected children living in foster care, and special needs children adopted from foster care, from the new documentation requirements. Eligibility for Medicaid has long been linked to eligibility for Title IV-E foster care assistance; children who receive IV-E payments already have had their citizenship status verified and are categorically eligible for Medicaid. Moreover, children in foster care who are not IV-E eligible are considered Medicaid eligible in every state by virtue of the fact that they are in state-supported care. Many states verify citizenship and, certainly, identity of these children when they take them into custody. The same can be said for children with special needs who are adopted from foster care, and whose families receive either Title IV-E or state-funded adoption assistance; they are considered Medicaid eligible by virtue of their receipt of such assistance. The requirements outlined in the interim final rule are therefore duplicative of what state child welfare agencies already are documenting. This diverts important staff time to a duplicative administrative activity rather than working directly with children who need significant time and

attention to meet their service needs. It is assumed that this was a simple unintended consequence in the drafting of these rules.

Like the earlier guidance, the interim final rule takes a hierarchical approach to outlining acceptable primary, secondary, third and fourth level documentation required to verify citizenship and identity. Only primary documentation (a passport) can be used to verify both citizenship and identity. As can be imagined, most foster children do not have passports. Secondary and remaining documentation requires submission of multiple documents that, for a variety of reasons, may not be readily available to foster families (unavailable or uncooperative biological parents). Foster parents without access to documents like passports and birth certificates may be unable to access comprehensive health care foster children need in a timely manner.

It is well documented that children in foster care have higher rates of chronic health and mental health problems that can necessitate immediate and ongoing care. If Medicaid is not available as an option for these children, the costs will likely be shifted to the responsible child welfare agency, thereby negating any real cost savings and certainly adversely impacting the health and welfare of the child. It also is possible that, in order to absorb these costs, some child welfare agencies may be forced to divert funds from existing prevention and family support activities; an action that none of us would like to see.

For these reasons, ***Prevent Child Abuse America recommends that CMS amend the interim final rule by exempting children who are eligible for Medicaid on the basis of their eligibility for foster care or adoption assistance payments.*** If CMS decides not to exempt these children, we propose that they be considered recipients, rather than applicants, of Medicaid, so that child welfare agencies have until redetermination to furnish satisfactory documentation.

Thank you for considering our recommendations to ensure health care coverage for foster children. If Prevent Child Abuse America can be of assistance as you further refine the rule, please do not hesitate contacting me.

Sincerely,

James M. Hmurovich, Interim
President and CEO

Submitter : **Dr. Kathleen McGinley** **Date: 08/09/2006**

Organization : **National Disability Rights Network**

Category : **Consumer Group**

Issue Areas/Comments

GENERAL

GENERAL

Our comments will be an attachment

Provisions of the Interim Final Rule with Comment Period

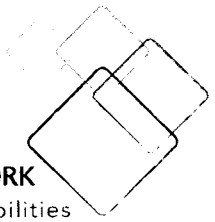
Provisions of the Interim Final Rule with Comment Period

Our comments will be an attachment

CMS-2257-IFC-115-Attach-1.DOC

CMS-2257-IFC-115-Attach-2.DOC

NATIONAL
DISABILITY RIGHTS
NETWORK
Protection & Advocacy for Individuals with Disabilities



August 9, 2006

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

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

The National Disability Rights Network is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) systems and the Client Assistance Programs (CAP). The P&A/CAP network operates in every state and territory and there also is a Native American P&A system.

NDRN strongly supports Medicaid because we believe it is a program that should make a compassionate, prosperous nation proud. This essential program has been recognized -- on a bipartisan basis -- as the driving force behind the availability of individualized, community-based supports and services that enable people with disabilities of all ages to lead fuller, healthier, and more productive lives. Individuals with disabilities, their families, and advocates fully recognize that Medicaid has its shortcomings. The most critical shortcoming in the view of NDRN and the disability community is the ongoing institutional bias that forces children and adults with disabilities to be isolated in institutions in order to obtain the long-term supports and services they need. Even with that problem, Medicaid's structure is critical to future progress toward community integration. The Medicaid entitlement; the strong federal commitment demonstrated by open-ended financing; and the extensive flexibility that states currently enjoy all help Medicaid to be innovative in addressing the needs of children and adults with disabilities.

In addition to its critical role in the lives of people with disabilities, Medicaid's impact is far broader. Medicaid is crucial to the viability of the nation's health care system. Medicaid keeps private insurance premiums lower than they otherwise would because it covers the people with the greatest needs and the highest costs; Medicaid provides critical supports to dually-eligible Medicare beneficiaries; and Medicaid financing provides essential support to the nation's public health infrastructure, including public hospitals and community health centers. According to Census Bureau figures released in August 2005, 45.8 million people — 15.7 percent of the total U.S. population — were uninsured in 2004, up slightly from 15.6 percent in the previous year. As the

number of people with private insurance falls, Medicaid provides an important counter balance. Medicaid's role in picking up the slack by enrolling low-income children as their parents lose private insurance as a result of economic changes is particularly notable.

Yet over the past several years the Administration and Congressional actions have weakened both the reach and effectiveness of the program. For example, cuts to the targeted case management and rehabilitation services option may save states dollars in the short run, but ultimately will lead to poor health, exacerbated disability, and unwarranted and costly institutional care. These policies not only fly in the face of the goals of the disability community but also are in direct opposition to the Administration's own New Freedom Initiative.

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

Disability Exemptions

First, NDRN is pleased that the interim rule includes the clarification that many individuals with disabilities are not covered by this rule. We commend the Centers for Medicare and Medicaid Services (CMS) for ameliorating the impact of the new documentation requirement by recognizing that indeed the intent of the statute was to exempt individuals who are dually-eligible for Medicaid and Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI). We strongly agree with the CMS statement that:

> *To adopt the literal (and in error) 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, being denied the availability of an exemption which we believe the Congress intended to afford them. Accordingly, States will not be subject to denial of FFP in their Medicaid expenditures for SSI recipients who receive Medicaid by virtue of receipt of SSI and Medicare eligibles based upon failure to document citizenship.*

NDRN also is pleased that CMS acknowledges that there must be a different accommodation made for SSI recipients in certain states that do not automatically provide Medicaid to individuals who are SSI eligible. NDRN supports the CMS decision to allow the use of the Social Security Administration's State Data Exchange database (SDX), which contains the information needed to identify whether an individual already has been found to be a citizen, to be cross-matched with state vital-records and establish citizenship and Medicaid eligibility.

NDRN urges CMS to provide specific information on these exemptions to the states and to all the disability-related entities in state government to ensure the proper implementation of the law. In addition, NDRN recommends that this same information be provided directly to disability consumer, advocacy, and provider organizations. In recent years, CMS has made clear efforts to reach out to NDRN and the P&As, as well as other disability groups so that we can educate our members and

clients - as well as hold the states accountable for the proper implementation of the law. We urge CMS to continue this partnership strategy.

Children and Adults with Disabilities Who Would not be Exempted

As stated above, NDRN is pleased that CMS recognized the need for an exemption for individuals on Medicare and SSI, However, NDRN is concerned that there are some children and adults with disabilities who will not be covered by this exemption and, therefore, will not have access to the critical health services and supports they need.

For example, there are some individuals who have met the SSDI definition of disability; are in their two-year waiting period for Medicare; are in the SSA database; but not on SSI. Some of these individuals are eligible -- based on their state's requirements for Medicaid -- through a medically-needy program or for a Medicaid buy-in program. In addition, there are many minor children (under the age of 18) who receive Medicaid because they are eligible for Social Security benefits as a "survivor"

NDRN recommends that any individuals already found eligible for either SSDI or Social Security survivor benefits by the SSA (and who already have presented evidence of their citizenship or qualified immigration status to the SSA) should be exempted from these documentation requirements. Keeping these individuals from accessing the services or supports they need or taking away current service and supports is short-sighted and poor policy.

U.S. Citizen Applicants Should not Face a Delay in Benefits

NDRN is very concerned that CMS has prohibited states from granting coverage to eligible citizens until they can obtain documents such as birth certificates. 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). We urge CMS to make the DRA consistent with the Medicaid Act and accept that once an applicant for Medicaid declares he/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.

Special Populations Needing Assistance

The NDRN supports the inclusion of the section of the rule entitled "special populations needing assistance". NDRN agrees that states have the responsibility to assist their citizens who because of a cognitive, mental, physical, or sensory disability would be unable to present documentary evidence in a timely manner. NDRN believes that the term "incapacity of mind or body" is confusing and should be replaced with a more specific definition of who is being targeted here.

Children in Foster Care Must Be Exempted

The NDRN strongly recommends that children who are eligible for federal foster care payments be exempt from the citizenship documentation requirements. At least one-third of the half million children in foster care have some type of disability. According to *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care*,[1] whether they experience maltreatment that results in disabilities, or are victims of maltreatment *because* of their disabilities, children who enter foster care with special needs, on average, already have experienced more than 14 different environmental, social, biological and psychological risk factors before coming into care:

- 40% are born at a low birth weight or premature;
- 80% are prenatally exposed to substances;
- 30-80% have at least one chronic medical condition [e.g., asthma, HIV, TB];
- 30-50% have dental decay;
- 25% have three or more chronic health problems;
- 30-60% have developmental delays;
- 50-80% have mental and behavioral health problems;
- 20% are classified as fully handicapped; *(term used in report)*
- 30-40% receive special education services.

Many of these children may not meet the SSI definition of disability so the above-mentioned exemption will not protect them. However, children with and without disabilities in the foster care system could be harmed by the implementation of this rule – and for no good reason.

State child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments. In addition, we understand 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.

The potential for harm for these children, who have been through so much already, is immense if their access to health care is delayed. They could lose needed prescription drugs and other medical equipment, dental care, mental health services, and all the other services afforded to them through the Early and Periodic, Screening, Diagnosis, and Treatment Program (EPSDT). In addition, loss of access to preventive services is simply bad public health policy and not cost effective.

NDRN believes that the DRA does not compel these documentation requirements for children in foster care. These requirements only lead to the unnecessary duplication of state efforts and put these children at risk of delayed Medicaid coverage. The DRA allows the Secretary to exempt individuals who are eligible for other programs that required documentation of citizenship. The IV-

[1] United Cerebral Palsy and Children's Rights, *Forgotten Children: A Case for Action for Children and Youth with Disabilities in Foster Care (2006)*

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.

NDRN urges 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. In addition, NDRN urges CMS to add to the list of exempted groups all populations already receiving supports and services through federal programs that have existing citizenship determination processes.

Pregnant Women and Children

NDRN applauds CMS for clarifying that the new citizenship documentation requirements do 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. However, we are concerned about the eligibility of children born in U.S. hospitals. Therefore, we recommend that 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.

NDRN believes it is somewhat incongruous that 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. Under current law, infants born to U.S. citizens receiving Medicaid at the time of birth are deemed eligible for Medicaid upon birth and remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant).

The preamble to the interim final rule states that, in such circumstances, "citizenship and identity documentation for the child must be obtained at the next re-determination" 71 Fed. Reg. 39216. NDRN believes this is a nonsensical requirement <u>if</u> a state Medicaid agency paid for the child's birth in a U.S. hospital and the child is then, 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 prevention of future disability is one of the goals of numerous federal agencies - ACF, HRSA, CDC, etc. Any rule that would delay the access of a newborn to needed health care - places that child at a higher risk for health problems or disabilities. The risk to the health and well being of newborns from delays in coverage and the potential for increased uncompensated care for providers are unnecessary.

Again, NDRN strongly urges 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.

U.S. Citizens who Lack Citizenship Documentation

There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. 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. NDRN is concerned that under this rule some individuals who apply for Medicaid will never qualify and some individuals who are current beneficiaries will eventually lose their coverage. Again, this is poor health policy.

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

It is important to note that SSI regulations 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) NDRN recommends that the Secretary 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 children and adults who are U.S. citizens and new applicants for Medicaid can get access to the services and supports they need and those who are current Medicaid recipients will maintain their coverage.

Native Americans

The interim final rule at 42 C.F.R. 437.407(e)(6) recognizes Native American tribal documents as proof of identity, however, the regulations do not permit tribal enrollment cards to be used as evidence of citizenship. NDRN urges CMS to recognize the extremely high health care needs of many Native American children and adults. NDRN urges 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.

In Conclusion

The Administration's New Freedom Initiative recognizes the vital role of adequate health care and long term supports and services in the community. In the majority of cases, the only source of this health care is the Medicaid program. NDRN believes that the Documentation Requirements included in the DRA not only are an example of a needless barrier to community integration but also

an example of lawmaking by anecdote. NDRN notes that these documentation requirements have been deemed unacceptable not only by beneficiaries and health care advocates, but also providers and states. We urge CMS to seriously consider the needs of children and adults who rely on Medicaid as final regulations are drafted. We also urge CMS to consider the damage that could be done to our nation as a whole if people are denied access to the health and long term services and supports they need. If you have questions about these comments, please contact Dr. Kathleen McGinley)202-408-9514 or Kathy.McGinley@ndrn.org).

Sincerely,

Curtis Decker
Executive Director

Kathleen McGinley
Deputy Executive Director for Public Policy

Submitter : Mr. Mark Tajima **Date: 08/09/2006**

Organization : Los Angeles County - CAO

Category : Local Government

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Comments on application of Medicaid citizenship documentation requirements to children who qualify for Medicaid by virtue of their receipt of Title IV-E assistance.

CMS-2257-IFC-116-Attach-1.DOC

COMMENTS ON THE APPLICATION OF THE MEDICAID CITIZENSHIP DOCUMENTATION REQUIREMENTS IN THE INTERIM FINAL RULE TO TITLE IV-E FOSTER CARE RECIPIENTS
71 Federal Register 39214; File Code CMS-2257-IFC

The interim final rule applies the new citizenship documentation requirements under Section 6036 of the Deficit Reduction Act (DRA) to children who qualify for Medicaid by virtue of their receipt of Title IV-E assistance. In addition, the rule amended 42 CFR Part 435.406 to require all Medicaid applicants and recipients to declare under penalty of perjury whether they are U.S. citizens and to require self-declared citizens to provide documentary evidence of citizenship. For the first time since section 1137(d) of the Act was added in 1986, Title IV-E children receiving Medicaid must have a declaration of citizenship or satisfactory immigration status and documentary evidence of citizenship or satisfactory immigration status in their Medicaid file (see 71 Federal Register 39216).

Recommendations

The interim final rule should be revised to exempt Title IV-E recipients from the DRA's citizenship documentation requirements and to not require that a declaration of U.S. citizenship or satisfactory immigration status be in the Medicaid file of each Title IV-E child. The declaration of citizenship and satisfactory immigration status requirements in Section 1137(d) of the Social Security Act ("Act") do not apply to the Title IV-E program. Moreover, under section 1903(a)(10)(A)(i)(1) of the Act, all children receiving Title IV-E assistance are entitled to Medicaid benefits, and do not separately apply for Medicaid.

Title IV-E agencies currently establish whether the citizenship and/or immigration status of a foster child qualifies them for title IV-E benefits, and, once Title IV-E eligibility has been established, the children automatically qualify for Medicaid. The acceptable citizenship documents in the interim final rule are far more restrictive and inflexible than the citizenship verification methods allowed in most states, which recognize that parents who have abused or abandoned their children often are uncooperative.

For example, in California, if a foster child's derivative citizenship through the naturalization of his/her parents can be established with the assistance of U.S Citizenship and Immigration Services (CIS) of the Department of Homeland Security (DHS), an otherwise eligible child appropriately will be determined to be eligible as a citizen for purposes of Title IV-E (and indirectly Medicaid) even if the child lacks a U.S. passport or certificate of citizenship. In contrast, under the interim rule, a passport or certificate of citizenship must be obtained for such a child, and it would be costly, complicated, and take time to obtain such documents, especially without the cooperation of the child's parents. Verification of a Medicaid recipient's citizenship status by DHS should be acceptable, just as DHS verification of satisfactory immigration status currently is acceptable for purposes of Medicaid eligibility and federal financial participation. The lack of a particular citizenship document should not preclude an individual whose citizenship has been verified from receiving Medicaid benefits.

Under section 1903(x)(2)(C) of the Act, added by the DRA, the Secretary of Health and Human Services ("Secretary") has the discretion to exempt individuals from the documentation requirements if he finds other satisfactory documentary evidence of citizenship has previously been presented. Thus, even if Title IV-E children were

otherwise covered by section 6036, the Secretary should exercise this discretion and revise the interim rule to permit State Medicaid agencies to accept the IV-E agency's verification of citizenship. This revision also would be consistent with how the interim final rule in 42 CFR Part 403.407(e)(10) provides States with the option to use a cross match with the data system of State public assistance agencies, including child protective services agencies (Title IV-E agencies), to establish an individual's identity if the agencies established and certified the identity of individuals.

Section 6036 of the DRA clearly applies the new citizenship documentation requirements as a condition for receipt of federal financial participation (FFP) under Medicaid and no other program. Title IV-E agencies, therefore, should not be required to apply two sets of standards for verifying citizenship – one for Title IV-E and another for Medicaid. To do so will impose unnecessary increased administrative costs and burdens on Title IV-E agencies.

The interim final rule also should be revised to provide Title IV-E children are not required to make a declaration of citizenship or satisfactory immigration status under penalty of perjury in order to qualify for Medicaid. Under section 1137(d) of the Act, such a declaration is not required for purposes of Title IV-E eligibility or FFP, and it does not make any sense to require children who qualify for Medicaid by virtue of their receipt of Title IV-E to make such a declaration. Foster children, especially very young children, cannot be expected to know their citizenship or immigration status.

It is noteworthy that, because Medicaid eligibility for Title IV-E children is not determined on a household or family basis, an adult member of the child's family or household is not allowed to sign a declaration of citizenship or satisfactory immigration status, pursuant to section 1137(d)(1)(A). Even if it were allowed, Medicaid eligibility and FFP for foster children should not be contingent on the cooperation of their abusive parents to make such a declaration. Parents who abused or abandoned their children cannot be expected to make declarations of citizenship and to provide satisfactory documentary evidence of citizenship on behalf of their children.

It also should be recognized that neither foster children nor their abusive parents file applications for Title IV-E or Medicaid. Instead, child protective agencies, which are responsible for the well-being of abused or neglected children who have been taken from their parents' custody, determine Title IV-E (and Medicaid) eligibility. The purpose of the DRA's Medicaid citizenship documentation requirements is to prevent potential fraud by individuals seeking to qualify for Medicaid benefits. There is no evidence that any parent has abused or neglected their children for the purpose of securing Medicaid benefits for their children through the foster care system.

Submitter : Mr. Mark Tajima **Date:** 08/09/2006

Organization : Los Angeles County - CAO

Category : Local Government

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Comments relating to acceptable citizenship documents for naturalized U.S. citizens.

CMS-2257-IFC-117-Attach-1.DOC

COMMENTS ON THE IMPACT OF THE MEDICAID CITIZENSHIP DOCUMENTATION REQUIREMENTS IN THE INTERIM FINAL RULE PUBLISHED ON JULY 12, 2006 ON NATURALIZED UNITED STATES CITIZENS
71 Federal Register 39214; File Code CMS-2257-IFC

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

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

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

As explained in greater detail below, a U.S. passport, certificate of naturalization, or certificate of citizenship all will be difficult, time-consuming, and costly for Medicaid eligible individuals to obtain, all of which means that limiting acceptable citizenship documentation to these three documents will be a major barrier to the receipt of Medicaid benefits to numerous naturalized citizens. The relatively high cost of obtaining such documents most likely will prevent many of them for receiving needed Medicaid benefits. For Medicaid applicants who ultimately obtain and present such documents, the interim rule will significantly delay their receipt of Medicaid benefits. This is because, under the interim rule, applicants who declare U.S. citizenship, will

not receive Medicaid benefits until after they had submitted satisfactory documentary evidence of citizenship.

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

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

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

Besides the high cost of obtaining a certificate of citizenship, Medicaid applicants will be penalized by the long time that it takes to obtain one. It currently can take nearly two years to obtain a certificate of citizenship, depending upon the CIS office. As of July 17, 2006, the Phoenix office was interviewing persons who submitted applications on September 30, 2004. In California, the backlog extends back to March 1, 2005 for the Fresno office and January 5, 2006 for the Los Angeles office. As noted earlier, under the interim final rule, an otherwise eligible Medicaid applicant will not be provided Medicaid benefits until they have submitted satisfactory documents.

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

U.S. Passport: In lieu of obtaining a certificate of citizenship/naturalization, naturalized citizens, including those who received derivative citizenship, may obtain a U.S. passport as proof of U.S.

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

The application fee for a passport, which has a normal processing time of six weeks, is $97 ($82 if under age 16). The cost of an expedited passport, which is processed within two weeks, is an additional $60 plus overnight delivery fees. There is an additional cost of passport photos that must be submitted with an application. In addition for children under age 18, parents will incur additional costs associated with travel to a passport-issuing office because children must appear in p erson. F or c hild p rotective ag encies, o btaining a p assport w ill be ev en m ore complicated as they will have to show legal guardianship and make arrangements for foster children to appear in person.

In practice, it will be difficult and also take a time for Medicaid applicants and recipients to prepare and submit passport applications. In fact, it may not be possible for most naturalized citizens who lost their certificates of naturalization (or citizenship) to obtain a U.S. passport. According to passport application instructions, a certificate of naturalization or certificate of citizenship must be submitted with a passport application. Although it is not explained in the application instructions, the U.S. Passport Agency will provide a passport with an expiration date of approximately one year to a naturalized citizen who submits a "letter of verification" issued by DHS or a U.S. District Court indicating that he/she is a naturalized citizen. Many naturalized citizens, however, will not be able to obtain such letters. This is because DHS no longer issues letters of verification except on a very limited emergency case-by-case basis due to concerns that such letters are vulnerable to document fraud, and because the U.S. District Court only issues letters for persons who naturalized before October 1994. Moreover, a receipt for a replacement certificate of naturalization application is required to obtain a letter of verification as well as a U.S. passport, adding $220 to the cost of obtaining a passport. In practice, it is highly unlikely that Medicaid applicants and recipients will know how to obtain a passport without a certificate of naturalization. This is because the U.S. Passport Agency does not publicize how to do so, and DHS and U.S. District Courts do not publicize how to obtain a letter of verification that is needed to obtain a passport without a certificate of naturalization.

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

Recommended Changes

The interim final rule should be revised to provide Medicaid applicants and recipients, as well as state and local Medicaid agencies, with more options for documenting satisfactory citizenship status. First and f oremost, the r ule should be revised to allow any method f or verifying citizenship that is acceptable for proving citizenship for purposes of obtaining a Social Security number (SSN) card under the Social Security Administration's (SSA) Program Operations

Manual System (POMS) guidelines. States then would be allowed to verify citizenship status against DHS' SAVE data base – the same verification system currently used by states to verify satisfactory immigration status, as required under Section 1137(d) of the Social Security Act, and the same data base used by many employers to verify work authorization for new job hires.

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

The interim final rule should provide citizens with the same protections afforded to legal immigrants. Low-income naturalized citizens who lack a passport, certificate of naturalization, or certificate of citizenship, therefore, should not be required to undergo the major cost and time of obtaining such documents when their citizenship can be verified by DHS. Enabling states to use any method for documenting citizenship that is acceptable for SSN purposes also would greatly s implify im plementation o f t he new c itizenship r equirements for s tates. Instead o f developing new internal instructions, states would be able to take advantage of the detailed POMS instructions already developed by SSA. This is especially justified because, under the interim final rule, SSA guidelines already, in effect, are being used to verify citizenship in states in which Supplemental Security Income (SSI) recipients receive Medicaid by virtue of receipt of SSI.

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

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

Third, s tates s hould be al lowed t o v erify c itizenship s tatus u sing S AVE, inc luding through secondary verifications with DHS, as explained in the previous recommendation on allowing any documentation that is accepted by SSA.

Fourth, the interim final rule should be revised to allow states to accept copies of a U.S. passport, certificate of naturalization, or certificate of citizenship. The validity of copies can be

verified with the U.S. Passport Agency or DHS, if necessary. It would ease the burdens on low-income Medicaid applicants and recipients of having to obtain replacement documents as well the administrative burdens on state and local Medicaid agencies. It is highly unlikely that applicants and recipients will mail important original documents, which means that they, instead, would present documents in person, greatly increasing traffic at offices. There would be an especially huge workload increase in states, such as California, where mail-in applications currently are used for Medicaid redeterminations of eligibility.

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

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

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

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

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

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

Submitter : Mrs. Leticia Vasquez **Date:** 08/09/2006

Organization : Sharp Healthcare

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-118-Attach-1.DOC

August 9, 2006

From: Leticia Vasquez

To: Centers for Medicare & Medicaid Services

I would like to address my concern as a citizen of this country. I worked 14 ½ years with the county of San Diego processing applications for Medi-cal, County Medical Services, Food Stamps, and Cash Aid. I understand the importance of verifying all pertinent information to make the appropriate eligibility decision for the correct amount of benefits that the clients are eligible but I was forced to deny many clients due to lack of appropriate information. I also understand that there are a lot of fraudulent cases and that these clients need to be prosecuted as they are misusing our tax money. I did notice that many of the clients did not have proof of citizenship and they had a hard time obtaining this type of verification. I had a contact at Social Security Administration office where I was able to verify citizenship for many of this clients and therefore being able to provide the correct amount of benefits.

I now work for Sharp Healthcare and my duties are to assist all of the uninsured or underinsured patients that are admitted to our 6 facilities. These patients already have a hard time obtaining regular verifications (e.g. income, property, residency, etc...) as it is due to their medical conditions. We currently try to obtain this information from Social Security Administration office but very often we are not successful at obtaining the appropriate information and therefore the patients Medi-cal or County Medical Services application gets denied. Patients are not able to continue their medical attention due to not having the benefits necessary to go and see their Doctor and they end up back in the Emergency Department therefore costing all the taxpayers more money for every time the same patient comes in to the Emergency Department. I would believe that if there was a process where the Federal, State, and County Government can verify this information via internet then it will make it much productive for everyone and the patients can continue their medical treatments and not inundate all the Emergency Rooms. I hope that you already have a plan for all States that will facilitate this process. We currently obtain releases from patients so we can assist them with their process of application for government assistance and I would like to know how I can assist these patients in obtaining this crucial information.

Thank you,

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Contract Reimbursement Specialist
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Submitter : Ms. Susan Berkowitz **Date:** 08/09/2006

Organization : South Carolina Appleseed Legal Justice Center

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2257-IFC-119-Attach-1.DOC

August 9, 2006

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

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

The South Carolina Appleseed Legal Justice Center is dedicated to advocacy for low income people in South Carolina to effect systemic change by acting in and through the courts, legislature, administrative agencies, community and the media, and helping others do the same through education, training and co-counseling. Access to affordable healthcare and eliminating barriers for qualified applicants and beneficiaries of the Medicaid program is a high priority for our office. South Carolina is a state with high unemployment, low per capita income and minimum infrastructure such as mass transportation. All of this leads to barriers for those in need of health care. While we work to ensure only qualified and eligible individuals participate in the program, we also work to help make the process easy and accessible.

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 five areas that CMS should modify in the final rule.

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Our comments address the information collection requirements of the regulations. As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement on applicants, beneficiaries, and state 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. With limited transportation available to citizens in our state, many will find themselves unable to get to the Medicaid office or faced with paying a friend or neighbor for transportation. This will prove to be burdensome and costly to those who cannot afford to do so. In addition, our offices are pushed to maintain keeping up with new applications and renewals. The fact that this is currently accomplished without time consumer office visits helps alleviate some of the time stress. This extra burden will make it difficult if not impossible to comply with timeliness requirements.

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, as in South Carolina, 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 very

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limited outreach in our state 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.

South Carolina already had very low health scores. We have experienced problems in the past with providers who refuse to see patients who are uninsured or perceived uninsured, including pregnant women and children. We cannot let pregnant women go weeks possibly months waiting for their prenatal care because they will not be seen until proven to be a Medicaid beneficiary. Access issues are still a problem due to the unwillingness of providers to see Medicaid patients due to not just low reimbursement, but delays in finding beneficiaries eligible. This will result in more patients using the most costly least effective care in our state, the emergency room. South Carolina is working very hard to develop a medical home for all Medicaid beneficiaries; this proposed rule will thwart these efforts.

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.)

This will ultimately result in harm to a category of vulnerable children who are looking to the state of South Carolina to protect their interests. Foster parents should not be forced to utilize emergency rooms and forgo the start of a Medical Home for these children due to the delay in determining Medicaid eligibility. These children may be refused essential non emergency care such as prescription drugs, psychological counseling, dental or vision care. Why would we want to jeopardize the health and wellbeing of this category of children, who are taken in by the state of South Carolina with the promise of making their lives better?

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

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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.

South Carolina has worked very hard to address the issue of infant mortality and ensuring that we provide all needed services to newborns. This rule would prevent states from providing needed coverage until documentation is provided. Hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement for the treatment of newborns who are low-birth weight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements

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

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

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

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

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

While providers will continue to provide care to these individuals, they will not be reimbursed for the services provided to these applicants and beneficiaries who cannot document their citizenship increasing the amount of uncompensated care already provide to people who are uninsured. This will just add to the stress of an already overburdened system. Cost shifting, increased costs will result and hurt the quality of care for all our state's citizens.

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 all of South Carolina's health care consumers who are U.S. citizens can continue to receive the health care services they need.

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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.

South Carolina does not require face to face interviews for children and parents applying for our renewing their Medicaid coverage. We adopted this policy to simplify the eligibility process and make it easier for our families to enroll in the program. While making the process easier for the parents, this system is also more efficient for our state Medicaid agency. The requirement that originals or certified copies to document citizenship will make it harder for working families to enroll in the program and dramatically increase the work of our state agency's staff. This unnecessary requirement that goes beyond the requirements Congress imposed in the DRA will also delay coverage while applicants wait for appointments at state Medicaid agencies. In some cases, having to visit a state office will discourage applicants from completing the application process. Children and families will go without coverage and remain uninsured and providers will not get reimbursed.

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

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.

P.O. Box 7187 • Columbia, SC 29202 • 803.779.1113 (voice) • 803.779.5951 (fax) • www.scjustice.org

Conclusion

Access to affordable healthcare and eliminating barriers for qualified applicants and beneficiaries of the Medicaid program is critical to the health and well being of all our citizens. Medicaid is an important tool to the overall system of providing health care in our state. When the Medicaid program implements barriers it has a ripple effect on all providers and health consumers. The new barriers that are set forth in the proposed regulations will have an adverse impact and are not needed. Thank you for the opportunity to provide comment.

Sincerely yours,

Susan B. Berkowitz
Director

P.O. Box 7187 • Columbia, SC 29202 • 803.779.1113 (voice) • 803.779.5951 (fax) • www.scjustice.org

Submitter : Ms. Patti Caldwell **Date:** 08/09/2006

Organization : Planned Parenthood of Southern Arizona, Inc.

Category : Other Health Care Provider

Issue Areas/Comments

GENERAL

GENERAL

Dear CMS:
Implementing section 6036 of the Deficit Reduction Act of 2005 (DRA) will require burdensome documentation requirements that will negatively impact millions low-income women and their families. The interim final rule that was issued will also create a larger burden for states, providers, and patients. The regulations will result in gaps in coverage and outright denials for Medicaid eligible citizens, erecting a significant obstacle for millions of women in need of reproductive health care services. Planned Parenthood of Southern Arizona and the over 12,000 women we serve in southern Arizona each and every year urge you to amend the regulations so that they are less burdensome.
Sincerely,
Patti Caldwell, President/CEO

Submitter : Robin Coston **Date:** 08/09/2006

Organization : L & S Associates, Inc.

Category : Health Care Industry

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-121-Attach-1.RTF

August 8, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide the phone number of the employer if it is not listed on the document)

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Submitter : Michelle Bass **Date:** 08/09/2006

Organization : L&S Associates

Category : Health Care Industry

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-122-Attach-1.RTF

August 8, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide the phone number of the employer if it is not listed on the document)

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Submitter : Ms. Grace Adams **Date:** 08/09/2006

Organization : Ms. Grace Adams

Category : Individual

Issue Areas/Comments

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

Maybe it takes only 10 minutes for someone who has a valid driver's license issued after states started requiring proof of citizenship and identity to find it. However you would be much better off treating many sick aliens than having them remain sick and a reservoir of disease, or causing an accident due to either their sudden collapse or their neglected mental health problems. Sick aliens present public health problems that need to be dealt with. You have a better chance of finding the sick aliens and solving whatever public health problem they present, if you treat their sickness and are kind to them than if you are hostile and determined just to throw them out of the country. Maybe many of the states will have enough sense to recognize the public health problems presented by sick aliens and dealing with them effectively with their own state funds. Maybe the states will act just as paranoid and stupid as you act. Good luck. We don't need another epidemic like AIDS or hanta virus that might lurk in a sick alien.

Submitter : Mr. Thomas Joseph **Date:** 08/09/2006

Organization : California County Associations

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2257-IFC-124-Attach-1.PDF

CALIFORNIA STATE ASSOCIATION OF COUNTIES

CALIFORNIA MENTAL HEALTH DIRECTORS ASSOCIATION

COUNTY HEALTH EXECUTIVES ASSOCIATION OF CALIFORNIA

CWDA

COUNTY WELFARE DIRECTORS ASSOCIATION

August 9, 2006

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

Dear Sir/Madame:

The California State Association of Counties, County Welfare Directors Association of California, California Mental Health Directors Association and the County Health Executives Association of California are writing to comment on the interim final rule published in the Federal Register on July 12 to implement the Medicaid citizenship documentation requirements under Section 6036 of the Deficit Reduction Act of 2005 (DRA). While there are improvements in the interim final rule's provisions compared to the June 9, 2006 guidance, there continue to be a number of proposed requirements that are unnecessarily burdensome for Medicaid applicants, recipients and public agencies.

The Centers for Medicare and Medicaid Services (CMS) has failed to avail itself of administrative flexibility given to it in some portions of the statute, while being overly proscriptive in other areas. As currently drafted, the interim final rule will delay or deny Medicaid coverage to many U.S. citizens, leaving the entire fiscal responsibility of serving these patients to county hospitals and other providers of health care to low-income families. Many who are sick will delay seeking treatment until their health care needs become emergencies. Our suggested changes will minimize the likelihood that Medicaid-eligible citizens are determined ineligible due to administrative provisions created by CMS in the rule.

In California, counties act on behalf of the state to determine initial and ongoing eligibility for Medicaid benefits. Counties also provide health, mental health, substance abuse and in-home support services paid for in part by the federal government as Medicaid-reimbursable services. For these reasons, California counties have a substantial stake in the content of the final rule.

We have organized our comments by category in the attachment. Please do not hesitate to contact any of us if you have questions.

Sincerely,

Kelly Brooks

Kelly Brooks, Legislative Representative
California State Association of Counties

Frank J. Mecca

Frank J. Mecca, Executive Director
County Welfare Directors Association of California

Patricia Ryan, Executive Director
California Mental Health Directors Association

Judith Reigel, Executive Director
County Health Executives Association of California

California County Comments on Interim Final Rule
Deficit Reduction Act Citizenship Provisions

August 2006

Requiring Documentation Prior to Eligibility

Comment: In California, more than 8 million individuals were made eligible for Medicaid in 2003. Under the Interim Final Rule, all but those who receive SSI and/or Medicare will face the citizenship/identity documentation requirements, placing a huge administrative burden on state and county agencies and the recipients themselves.

The Interim Final Rule proposes that Medicaid applicants should not be made eligible for Medicaid until they have produced citizenship documentation and identification. Nothing in the DRA could be or should be construed as requiring this denial of benefits. CMS is interpreting Section 6036 of the Deficit Reduction Act as affecting eligibility for Medicaid, when the section states that the impact of failing to document citizenship is on the receipt of federal financial participation for that individual.

Section 6036 of the Deficit Reduction Act amended neither Section 1902 of the Social Security Act ("the Act"), which sets forth Medicaid eligibility requirements, nor Section 1137 of the Act, which sets forth requirements for the income and eligibility verification system used to determine Medicaid eligibility, including its citizenship and satisfactory immigration status requirements. In particular, Section 1902(b)(3) of the Act, which prohibits states from imposing any condition of eligibility for Medicaid benefits "which excludes any citizen of the United States," was not impacted by the new law.

Recommendation: Revise the interim final rule to allow applicants who meet all other Medicaid eligibility requirements and sign a sworn declaration under penalty of perjury that they are U.S. citizens to receive the Medicaid benefits for which they are otherwise eligible while they are making good faith efforts to meet the citizenship documentation requirements during the reasonable opportunity period. Providing coverage while applicants are given a reasonable period of time to provide the necessary documentation is consistent with Federal law and regulations that currently provide coverage for non-citizens who declare that they have a satisfactory immigration status.

This interpretation would be consistent with provisions elsewhere in the interim final rule stating that Medicaid benefits to recipients should not be terminated until after these individuals have been given a reasonable opportunity to present documentary evidence. Allowing Medicaid applicants who are otherwise eligible to receive benefits during the period of time that they are obtaining the required documentation is especially important because of the time it can take to obtain documents – for example, the normal processing time for U.S. passports is six weeks. It would be especially unfair to delay benefits to children who can clearly establish U.S. citizenship using birth certificates, but who lack the required identification documents, and for persons with physical and cognitive disabilities.

Additionally, there is no justification for treating citizens more restrictively than non-citizens in this situation. It is especially inappropriate to treat citizens worse than non-citizens when it is far simpler for non-citizens to demonstrate their satisfactory immigration status than for citizens to demonstrate their citizenship under the interim

final rule. The unnecessary delays in coverage will be exacerbated in the short term due to the lack of a federal outreach program to educate citizens about the requirements.

Information Collection Requirements: Original and Certified Copies

Comment: The interim final rule requires that only originals and certified copies of documents be accepted as satisfactory proof of citizenship. Additionally, it is estimated that it will only take an applicant or recipient ten minutes and county or state agencies five minutes to satisfy this requirement.

Nothing in the DRA requires original or certified copies of documents. While the interim final rule allows applicants and recipients to mail the originals or certified copies of passports or birth certificates, it is highly questionable that most will be willing to do so.

The process will also delay receipt of Medicaid benefits, and reverses the progress made to simplify the eligibility process throughout the country. As in many states, applicants in California are not required to go to their local human services department for a face-to-face interview; the application process can be completed via mail and over the phone. Imposing a requirement that originals or certified copies must be viewed by the county will create substantial new administrative demands on the eligibility system, as well as on the federal, state and local agencies that produce original documents. We are also concerned that some Medicaid-eligible individuals will chose not to apply for benefits due to the time that they will need to take from work to go to an appointment and/or their coverage will be delayed while waiting for their appointment. We also find that the estimated time of five or ten minutes to find or otherwise acquire the necessary documents is completely unrealistic. The estimate serves to artificially minimize what we foresee as a large administrative burden.

Recommendation: Revise this requirement to allow state and county agencies to accept copies or notarized copies of documents. Our caseworkers should be given the flexibility to accept copies when the agency has no reason to believe that the documents provided were altered, counterfeit or otherwise questionable.

Additionally, we recommend revising the requirement to allow for a confirmation from a source agency that a document exists to suffice for the purposes of documenting citizenship and identity. For example, if a California county receives confirmation from another county's vital records agency or a vital records agency in another state that a birth certificate is available for a particular individual, that should meet the requirement for an original document without requiring the California county or the individual to order a certified copy.

Requiring Documentation for Children Receiving Title IV-E Benefits

Comment: While CMS officials have spoken publicly that they intend to define children in foster care as "recipients," enabling them to qualify for Medicaid, there is no language in the regulation to that effect. More than 80,000 children in California alone would have to comply with this provision. Abused and neglected children (especially young children) who are removed from their parents' custody cannot be expected to sign declarations of U.S. citizenship under penalty of perjury. Moreover, the parents who have abused, neglected or abandoned these children are unlikely to sign such a declaration or otherwise cooperate by obtaining and submitting documents for children who are removed from their custody. Unlike parents of other children who receive Medicaid

benefits, these parents do not apply on their children's behalf to receive Title IV-E or Medicaid assistance; rather, the state makes this application when it becomes involved with the family via the child welfare system. The purpose of the Deficit Reduction Act's (DRA) Medicaid citizenship documentation requirements is to prevent potential fraud by individuals seeking to qualify for Medicaid benefits. There is no evidence that any parent has abused or neglected their children for the purpose of securing Medicaid benefits for their children through the foster care system.

While we welcome the possible change in the final rule to consider foster care children who receive Medicaid due to their Title IV-E link as recipients, these children would still be required to provide the necessary citizenship documentation and identification during a reasonable opportunity period. The declaration of citizenship and satisfactory immigration status requirements in Section 1137(d) of the Social Security Act ("Act") do not apply to the Title IV-E program. Moreover, under section 1903(a)(10)(A)(i)(1) of the Act, all children receiving Title IV-E assistance are entitled to Medicaid benefits, and do not separately apply for Medicaid.

It is noteworthy that, because Medicaid eligibility for Title IV-E children is not determined on a household or family basis, an adult member of the child's family or household is not allowed to sign a declaration of citizenship or satisfactory immigration status, pursuant to section 1137(d)(1)(A). Even if it were allowed, Medicaid eligibility and federal financial participation (FFP) for foster children should not be contingent on the cooperation of their absent parents to make such a declaration.

State and local agencies that administer Title IV-E already establish whether the citizenship or immigration status of children make them eligible for FFP. They should not be required to apply two sets of standards – one for Title IV-E and another for Medicaid. Nothing in the DRA's legislative history suggests that Congress intended that be done. Doing so would impose unnecessary increased administrative costs and burdens on Title IV-E agencies in California because the interim rule's citizenship documentation procedures vary from those currently used.

In California, if a foster child's derivative citizenship through the naturalization of his/her parents can be established with the assistance of U.S Citizenship and Immigration Services (CIS) of the Department of Homeland Security (DHS), an otherwise eligible child appropriately will be determined to be eligible as a citizen for purposes of Title IV-E (and indirectly Medicaid) even if the child lacks a U.S. passport or certificate of citizenship. In contrast, under the interim rule a passport or certificate of citizenship must be obtained for such a child, and it would be costly, complicated, and take time to obtain such documents, especially without the cooperation of the child's parents. Verification of a Medicaid recipient's citizenship status by DHS should be acceptable, just as DHS verification of satisfactory immigration status currently is acceptable for purposes of Medicaid eligibility and federal financial participation. The lack of a particular citizenship document should not preclude an individual whose citizenship has been verified from receiving Medicaid benefits.

Recommendation: CMS should avail itself of the administrative flexibility granted to it under the Deficit Reduction Act (DRA) and exempt Title IV-E recipients from the DRA's citizenship documentation requirements. CMS should not require that a declaration of U.S. citizenship or satisfactory immigration status be in the Medicaid file of each Title IV-E child. Title IV-E and other foster care children who are eligible for other programs requiring citizenship documentation should be exempt from this duplicative requirement.

Under section 1137(d) of the Act, such a declaration is not required for purposes of Title IV-E eligibility or FFP, and it does not make any sense to require children who qualify for Medicaid by virtue of their receipt of Title IV-E to make such a declaration. Foster children, especially very young children, cannot be expected to know their citizenship or immigration status.

Alternatively, the rule should allow a juvenile court finding regarding the identity of the child to be used to establish identity and citizenship. All Title IV-E children go through court proceedings through which their identity is established, so there is not any reason to, in effect, require child welfare agencies to obtain an identification card for each child receiving Title IV-E. This revision also would be consistent with how the interim final rule in 42 CFR Part 403.407(e)(10) provides States with the option to use a cross match with the data system of State public assistance agencies, including child protective services agencies (Title IV-E agencies), to establish an individual's identity if the agencies established and certified the identity of individuals.

To the extent that CMS requires the original document or copies certified by the issuing agency, we urge that a copy of the computer match be considered sufficient evidence for purposes of the case record and potential compliance audits.

Children Born in U.S. Hospitals

Comment: The interim final rule allows a hospital record of birth as a 'third level' form of evidence documenting citizenship. Obviously, newborns will not have a birth certificate on file with the state or county nor a passport, but it is not logical to question an infant's citizenship when the baby was born in a U.S. hospital and Medicaid has paid for the birth. Current law also deems infants born to U.S. citizens as eligible for Medicaid. The child's citizenship status will not change after the initial period of eligibility expires.

Recommendation: CMS should accept documentation of a state's Medicaid agency payment for the birth of a child as satisfactory evidence of citizenship.

Procedures for U.S. Citizens Unable to Document Citizenship

Comment: County agencies interact with some of the most vulnerable individuals in their communities, including the homeless, persons with severe mental illness and those who have lost all of their possessions in a disaster. Even with the assistance of state or county agencies, some individuals will never be able to provide documents proving citizenship. Rules for the Supplemental Security Income (SSI) provides flexibility in allowing individuals who cannot provide documents to explain why that is the case and to provide information that they do have in their possession.

Recommendation: CMS should give a state the option to certify that it has determined that an individual meets the requirements of the statute if it can demonstrate that it has exhausted its search of allowable documents and finds it is reasonable to conclude that the individual is a U.S. citizen or is otherwise in the U.S. legally.

Allowable Documentation

Comment: We welcome CMS's decision to take advantage of the flexibility given to it under the DRA to adopt additional means of verifying citizenship and identity beyond the limited options listed in statute.

Recommendations: As we recommended in our comments on the June 9, 2006 guidance, we urge that the rule allow states to accept copies of otherwise acceptable documents if a state accepts copies of that document for any other federal means-tested public benefit program. This will promote consistency across existing programs. Additionally, we recommend that acceptable documentation of citizenship for other federal means-tested public benefit programs be considered acceptable documentation for purposes of Medicaid.

Additionally, we recommend that any citizenship document or verification method that is acceptable to the Social Security Administration be accepted by CMS for purposes of Medicaid verification. The interim final rule already allows SSA verifications to be used for SSI recipients; it is a logical next step to allow for the documents and methods used by SSA to also be allowed for states and counties verifying eligibility for Medicaid applicants and recipients who are not receiving SSI.

Finally, we recommend that the CMS clarify that costs incurred by a county or state agency in assisting applicants and recipients, including, but not limited to, costs incurred to purchase copies of birth certificates or other documents identified by CMS as among those that may be used to establish U.S. citizenship, are allowable administrative costs for federal financial participation.

Below, we suggest a few additional, specific documents that should be included in the list of acceptable documentation for citizenship or identity.

Recommended Additional Citizenship Documents:

a. Marriage certificate showing place of birth of the individual.

b. Tribal enrollment card, Bureau of Indian Affairs identification card, and certificate of degree of Indian blood. These cards are allowed in the interim final rule purposes of identification but not for citizenship. We recommend they be allowed for documentation of both.

c. Religious record recorded in the U.S. within three months of birth, which is acceptable secondary evidence of citizenship for purposes of obtaining a Social Security number.

d. Entries in a family bible documenting birth in the United States.

e. For a parent, a U.S. birth certificate of a child showing the parent's place of birth.

f. Acceptable evidence of derivative U.S. citizenship, which is accepted by the Department of Homeland Security for purposes of issuing a Certificate of Citizenship or by the Department of State for purposes of issuing a passport. This will avoid the high cost and delay of obtaining the necessary evidence of citizenship that immigrant and adopted children derive through their parents. The application fee for a passport is $97 ($82 if under age 16) and $255 ($215 if an adopted child) for a Certificate of Citizenship. The normal processing time is six weeks for a passport and much longer for a Certificate of Citizenship.

Recommended Additional Identity Documents:

a. ID card with photo issued by a current employer. Employers are required to document that the prospective employee is legally in the U.S. before hiring the individual.

b. ID card with photo issued by a private agency, such as the Salvation Army, providing social services.

c. Government-issued papers not related to public assistance, such as a tax return, property tax statement, Social Security Award letter.

d. A combination of two of the following documents:
   - Rent receipt with landlord/manager signature and telephone number.
   - Bill for medical/dental treatment.
   - Bill for utilities.
   - Bank statement.
   - Bills/statements for credit cards.
   - Envelope addressed to the individual with a postmark date prior to the date of application.

Naturalized Citizens

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

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

A significant number of naturalized citizens are likely to lack a U.S. passport or certificate of citizenship/naturalization, because children under age 18 who derive their citizenship

[1] See Social Security Administration's (SSA) Program Operations Manual (POMS) Section RM 00203.310 Evidence of U.S. Citizenship for an SSN Card.
[2] The only other possible citizenship documents are a U.S. Citizen Identification Card issued from 1960 to April 1983 to naturalized citizens living near the Canadian or Mexican borders or evidence of U.S. Civil Service employment before June 1, 1976, both of which will not be possessed by the vast majority of naturalized citizens.
[3] Source: U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2004"

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

As explained in greater detail below, a U.S. passport, certificate of naturalization or certificate of citizenship will be difficult, time-consuming and costly for Medicaid eligible individuals who are naturalized citizens to obtain, which means that limiting acceptable citizenship documentation to these three documents will be a major barrier to the receipt of Medicaid benefits for numerous naturalized citizens. The relatively high cost of obtaining such documents is likely to prevent many of them for receiving needed Medicaid benefits. For applicants who ultimately obtain and present such documents, the interim rule will significantly delay their receipt of benefits.

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

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

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

Medicaid as qualified aliens, provided that they met the five-year residency requirement.

Besides the high cost of obtaining a certificate of citizenship, Medicaid applicants also will be penalized by the long time that it takes to obtain such documentation. It can take nearly two years to obtain a certificate of citizenship, depending upon the CIS office. As of July 17, 2006, the Phoenix office was interviewing persons who submitted applications on September 30, 2004. In California, the backlog extends back to March 1, 2005 for the Fresno office and January 5, 2006 for the Los Angeles office. Under the interim final rule, an otherwise eligible Medicaid applicant will not be provided Medicaid benefits until they have submitted satisfactory documents.

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

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

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

In practice, it will be difficult and also take time for Medicaid applicants and recipients to prepare and submit passport applications. In fact, it may not be possible for most naturalized citizens who lost their certificates of naturalization (or citizenship) to obtain a U.S. passport. According to passport application instructions, a certificate of naturalization or certificate of citizenship must be submitted with a passport application. Although it is not explained in the application instructions, the U.S. Passport Agency will provide a passport with an expiration date of approximately one year to a naturalized citizen who submits a

"letter of verification" issued by DHS or a U.S. District Court indicating that he/she is a naturalized citizen. Many naturalized citizens, however, will not be able to obtain such letters. This is because DHS no longer issues letters of verification except on a very limited emergency case-by-case basis due to concerns that such letters are vulnerable to document fraud, and because the U.S. District Court only issues letters for persons who naturalized before October 1994. Moreover, a receipt for a replacement certificate of naturalization application is required to obtain a letter of verification as well as a U.S. passport, adding $220 to the cost of obtaining a passport. In practice, it is highly unlikely that Medicaid applicants and recipients will know how to obtain a passport without a certificate of naturalization. This is because the U.S. Passport Agency does not publicize how to do so, and DHS and U.S. District Courts do not publicize how to obtain a letter of verification that is needed to obtain a passport without a certificate of naturalization.

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

Recommendations: Revise the interim final rule to provide Medicaid applicants and recipients, as well as state and local Medicaid agencies, with more options for documenting satisfactory citizenship status. Specifically, the interim final rule should be revised to allow states to use and accept the following methods of verification:

1. Any method for verifying citizenship that is acceptable for proving citizenship for purposes of obtaining a Social Security number (SSN) card under the Social Security Administration's (SSA) Program Operations Manual System (POMS) guidelines. States then would be allowed to verify citizenship status against DHS' SAVE data base – the same verification system currently used by states to verify satisfactory immigration status, as required under Section 1137(d) of the Social Security Act, and the same data base used by many employers to verify work authorization for new job hires.

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

   The interim final rule should provide citizens with the same protections afforded to legal immigrants. Low-income naturalized citizens who lack a passport, certificate of naturalization, or certificate of citizenship, therefore, should not be required to undergo the major cost and time of obtaining such documents when their citizenship can be verified by DHS. Enabling states to use any method for documenting citizenship that is acceptable for SSN purposes also would greatly simplify implementation of the new citizenship requirements for states. Instead of

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

2. The SAVE database, including through secondary verifications with DHS, as explained in the previous recommendation on allowing any documentation that is accepted by SSA.

3. Copies of a U.S. passport, certificate of naturalization or certificate of citizenship. The validity of copies can be verified with the U.S. Passport Agency or DHS, if necessary. This would ease the burdens on low-income Medicaid applicants and recipients of having to obtain replacement documents as well the administrative burdens on state and local Medicaid agencies. It is highly unlikely that applicants and recipients will mail important original documents, which means that they, instead, will be required to present documents in person, greatly increasing traffic at offices. There will be an especially huge workload increase in states such as California that use a mail-in process for Medicaid eligibility and redeterminations.

4. Signed affidavits submitted by naturalized citizens accompanied by copies of any supportive documents and/or information, such as the date of naturalization, alien registration number, and, in the case of persons who received derivative citizenship, information on their parent's naturalization. Unlike affidavits submitted by persons born in the U.S. who lack birth records, all naturalization cases can be verified by DHS. Yet, the interim final rule inappropriately precludes the use of affidavits by persons born outside the U.S.

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

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Submitter : Ms. Lucy Nolan **Date:** 08/09/2006

Organization : End Hunger Connecticut!, Inc.

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

see attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

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.

Regulatory Impact Statement

Regulatory Impact Statement

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

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

CMS-2257-IFC-125-Attach-1.DOC

CMS-2257-IFC-125-Attach-2.DOC

CMS-2257-IFC-125-Attach-3.DOC

CMS-2257-IFC-125-Attach-4.RTF

CMS-2257-IFC-125-Attach-5.TXT

CMS-2257-IFC-125-Attach-6.TXT

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

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

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

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

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

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

The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship

will delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children, parents, and persons with disabilities. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

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

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

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

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

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

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

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

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

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

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

Newborns

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

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

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

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

Thank you for the opportunity to submit these comments.

Submitter : Ms. Pamela Sutherland **Date:** 08/09/2006

Organization : Illinois Planned Parenthood Council

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: 08/09/2006**

Organization : **Alaska Department of Health and Social Services**

Category : **State Government**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-127-Attach-1.DOC

August 9, 2006

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Re: State of Alaska, Department of Health and Social Services, comments on the Medicaid Program Citizenship Documentation Requirement, Interim Final rule with comment period, File Code: CMS 2257-IFC

Dear Dr. McClellan:

The Alaska Department of Health and Social Services submits the following comments on the Citizenship Documentation Requirements Interim Final rule with comment period published in the July 12, 2006, Federal Register, File Code CMS 2257-IFC.

Comments on Background

We concur that states should only have to obtain documentary evidence of citizenship one time for each beneficiary unless later evidence raises a question about a person's citizenship.

We concur with the CMS interpretation of Section 1903(x) of the Act to provide an exemption from the citizenship documentation requirements for Medicare and SSI recipients. However, CMS should also allow individuals who received SSI or Medicare in the past but are not currently recipients to be exempt from the requirement. Although their eligibility for those programs may have changed, their citizenship status would have remained the same.

We concur that newborns automatically eligible for one year by virtue of their mother's Medicaid eligibility status at birth should be exempt from the documentation requirement during the automatic eligibility period (as long as other necessary eligibility factors are met). However, we believe that the circumstance of Medicaid coverage at birth in the

U.S. to a woman of proven citizen or qualified alien status should constitute sufficient documentation of citizenship status for the child. Obtaining a passport or a birth certificate for such a child only adds redundant confirmation to evidence the state Medicaid program has already obtained through its eligibility and claims processing systems. This adds additional burden to beneficiaries and state Medicaid programs without significantly reducing the possibility of a noncitizen receiving Medicaid.

In addition, CMS should exempt foster care and subsidized adoption Medicaid recipients from the citizenship requirement. States are currently required to verify citizenship for all foster care recipients, and this should be sufficient for Medicaid eligibility. CMS has stated that these children are categorically eligible for Medicaid and may be treated as recipients for purposes of verifying citizenship. If CMS does not exempt this group from the requirement, their recipient status should be explicitly recognized in the regulations.

The provision that allows eligibility for Medicaid recipients while they are making efforts to obtain citizenship verification, but does not allow eligibility for applicants in the same situation is unfair and inequitable. It may result in applicants not receiving medical care that they desperately need when they cannot obtain the verification for reasons beyond their control. Efforts to help these individuals obtain the verification so that they can obtain urgent care will have significant impacts on eligibility staff that will already be overburdened by the new citizenship verification requirement.

States should be allowed to match with any governmental database that verifies citizenship with a birth certificate or can provide verified birth certificate data. These matches should not be limited by whether that agency has retained a copy of an original birth certificate or can provide a copy of the birth certificate.

States should not be required to place a copy of documentation in the case file when verification of citizenship is obtained through a data match. Agency documentation of the source and process by which verification was obtained should be sufficient for establishing citizenship. Data matches by their nature are intended to provide information electronically without additional paper documentation. It is unreasonable for states to be expected to maintain paper copies from these matches in case files.

In addition, States should be allowed to accept documents the Medicaid agency has received in the past as proof of citizenship or identity, although the case file does not state how these documents were obtained. There was no incentive to provide incorrect or fraudulent information regarding citizenship in the past, since verification was not required for this purpose, and thus no need for the agency to document how the information was obtained.

The preamble states that as a check against fraud, states are required to conduct a match of the applicant's name against the corresponding SSN provided under section 435.910. According to Social Security Administration website, verification of citizenship or satisfactory immigration status is required before issuance of an SSN. If states can verify SSN and determine that no immigration record exists for the individual, we believe that

this should suffice to document citizenship, unless it is the position of CMS that the SSA is failing to meet its citizenship verification processes. If CMS believes that SSA has failed to enforce this requirement during some earlier period, then it should accept the verification of SSN and the determination of no existing immigration record for individuals born after that period. To do otherwise is to hold states to a different citizenship documentation standard than the federal government.

Comments on Provisions of the Interim Final Rule with Comment Period

435.407(a) Primary Evidence of Citizenship and Identity. CMS has limited the group of documents it accepts as primary evidence of citizenship and identity to those documents actually listed in the law. However, Section 1903(x)(2)(B)(v) includes "[s]uch other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity." We believe the Secretary should exercise his authority to designate other documents. We believe that documentary evidence of receipt of SSDI payments should be accepted. Individuals receiving SSDI must meet the same standards of proving citizenship or legal immigration status as Medicare beneficiaries, and although not exempted from the documentation requirements, the same logic applies for accepting SSDI receipt as adequate documentation.

The Alaska Native Claims Settlement Act of 1971, section 1604(a) required the Secretary of the Interior to prepare a roll of all Natives who were born on or before December 18, 1971. Under section 1602 of this act "Native means a citizen of the United States who is a person of one-forth degree or more Alaska Indian, Eskimo, or Aleut blood, or combination thereof." By definition under federal law this enrollment is an enrollment of citizens of the United States and should be adequate proof to meet the citizenship requirements of the Deficit Reduction Act (DRA). Alaska requests the final regulation reflect that this Alaska Native enrollment is acceptable documentation under the DRA.

There are over 200 federally recognized tribes in Alaska, each with their tribal enrollment processes. We have not had time to poll all of them to determine which ones or how many include proof of citizenship as a requirement. We ask that the final regulation recognize that some of the tribes' enrollment processes include proof of citizenship and for those tribes the enrollment is adequate to meet the DRA requirements. This would be similar to the recognition in the regulation that some states require proof of citizenship to obtain a drivers license and in those cases a driver's license is recognized as proof of citizenship. To not recognize tribal enrollment when proof of citizenship is required for enrollment would be discriminatory.

435.407(b) Secondary Evidence of Citizenship. Under this regulation, secondary evidence is used when primary evidence is unavailable. The preamble further defines available evidence as "evidence that exists and can be obtained within a State's reasonable opportunity period." We believe that there are some situations in which the evidence exists, but is not in possession of the individual applying for or renewing Medicaid. There may be significant cost to obtain the evidence or it may be unclear

whether the evidence can be obtained within the State's reasonable opportunity period. We believe that CMS should make it clear that states have the ability to establish policies that allow for the acceptance of secondary evidence when primary evidence is not available without cost, or if there is some uncertainty about when the primary evidence can be obtained. We believe these principles should apply to state acceptance of all levels of evidence.

As to the cost of evidence, we fail to see why either the individual or the state should bear the expense of paying to obtain a higher level of evidence that **may** be available with reasonable opportunity period in cases where lower levels are certainly available within that period. Certainly the principle of efficient, cost-effective program administration should provide states some discretion as to when the added cost of obtaining higher level evidence does not justify the additional benefit gained.

Alaska has been able to obtain great efficiency in eligibility determination through streamlining its processes. Key components of these processes are making determination as soon after applications or renewals are received when all of the information in the application is most current, and minimizing the number of times the worker has to start and stop processing a particular case. The language in the preamble could be interpreted to require states to wait until individuals had proven they could not obtain higher level evidence for accepting lower level evidence that is available. This would lead to frequent delays and interruptions in case processing.

435.407(c) Third Level of Evidence of Citizenship. The preamble specifies that the place of birth on the nongovernment document must agree with the place of birth on the application. While we do not disagree with this requirement, we believe that CMS should clearly state that place of birth refers to the state or territory of birth, and not the community level. Place names change over times; small suburbs may become absorbed by larger towns. Place of birth and residence at birth may not be the same, and recollections of the specific town may not be accurate. For this reason, it is not uncommon for documents to reflect a community of birth that may not agree exactly with the community name provided by the applicant. Since in some cases, individuals will submit applications before obtaining third level evidence of citizenship, it seems unreasonable to penalize them for a minor inconsistency and inefficient for state eligibility workers to have to investigate these discrepancies to determine if the different communities listed reflect the same birthplace.

435.407(d) Fourth Level Evidence of Citizenship. Under 435.407(d)(5), the option of last resort for establishing citizenship is an affidavit. Oral clarification from CMS indicates that what the agency is really seeking is a declaration signed under the penalty of perjury. We believe that the regulation should not use the term affidavit, which may have a particular meaning under state law that is different from what CMS intends. For example, in many states, an affidavit must be notarized. This can pose a problem for people in more remote areas, and an expense or inconvenience to many others.

Also, the regulations require that individuals submitting affidavits on behalf of a beneficiary must verify their own citizenship. We disagree with this requirement. It is not necessary to be a citizen to know the circumstances of someone's citizenship. It makes the process more burdensome, and does not add to the authenticity, since all statements must be subject to the penalty of perjury.

If CMS retains the requirement that people submitting affidavits as fourth level evidence verify their citizenship, we believe that it should be sufficient for Medicare and SSI recipients merely to verify their receipt of those benefits. If these individuals are exempt from verifying citizenship for purposes of receiving Medicaid, they should be exempt for purposes of submitting an affidavit on someone else's behalf.

435.407(f) Special Identity Rules for Children. We believe that CMS underestimates the difficulty in verifying identity of children. Few young children have picture ID. Not all children applying for or receiving Medicaid reside with their parents or legal guardians. It is not unusual for children to be in the physical custody of caretaker relatives while parents deal with medical, personal, or family crises. At such times, children may be away from the usual sources of identity records.

We believe the regulations are too restrictive as to who can submit an affidavit of identity for children. Caretaker relatives who can vouch for the child's identity should also be allowed to submit affidavits. Since even children 16 years and older may not necessarily have a photo ID, the use of an affidavit should be allowed for any child under 18. The decision that affidavits may only be used for children under 16 sets an arbitrary limit.

These regulations are ambiguous as to how much effort states must make to determine photo ID is not available before accepting an affidavit. CMS should clarify that states can implement reasonable policies that permit eligibility workers to assume photo ID is not available for children in certain communities or below a certain age.

This regulation contains a reference to daycare and nursery school that is ambiguous. The regulations state that these may be considered school records for the purposes of identification; however, 435.407(e) contains no reference to school records, only school picture ID(435.407(e)(2)). CMS should clarify that school records are acceptable as identification for children under the age of 16, not just photo ID, as many schools do not issue photo ID.

Also, we repeat our comment regarding use of the term, affidavit. The regulations should use a more generic phrase, such as declaration under the penalty of perjury, as affidavit may have varying meaning depending on the state. The federal government should not impose different criteria on the state based on different definitions under state law.

435.407(h) Documentary evidence. The requirement that all documents must be either originals or copies certified by the issuing agency, and neither copies nor notarized copies may be accepted is not practical given the structure of modern eligibility processing, especially in states with remote communities lacking road access to eligibility offices.

We disagree with the requirement that all documents must be either originals or copies certified by the issuing agency. This is not required by Section 1903(x) of the Act. Many of the documents acceptable to verify citizenship or identity are both expensive and time consuming to obtain, like passports. Other acceptable documents include those that individuals need to function in society, like driver's licenses. Even if Medicaid programs, at substantial costs to state and federal governments, address the former concern by assisting financially with obtaining documents, the latter concern presents grave problems for states like Alaska, which have significant rural and remote populations.

In our state, many individuals live in remote communities, inaccessible to eligibility offices. We have always needed to operate our programs with exceptions from normal interview or verification requirements for individuals in isolated, hard-to-reach places. It is not reasonable to expect people to mail in original copies of their naturalization or citizenship papers or their driver's license to a distant government office, and sending such documents through the mail only creates more opportunities for identity theft.

It is more reasonable to accept copies of the required verification, and only require an original or certified copy if the agency finds the documentation questionable. Using prudent judgment and other available information to determine when more verification is necessary are normal operating procedures for eligibility workers. Over time, as agencies increase their ability to obtain data matches, they will be able to confirm the information initially provided and pursue any instances in which invalid verification was used. In any case, obtaining original identification documents from individuals by mail does not serve the purpose of verifying their identity, any better than a copy of the document would. It is not logical that any document can verify identity of an individual who workers do not see.

States have, with the encouragement of CMS, developed expedited eligibility process, which often rely on mail-in applications. With mail-in or web-based/mail-in application processes, there is no practical means to obtain original documentation. In fact, there is no provision in these regulations for distance determination of eligibility. We could conceivably be placed in the situation of having to transport individuals to public assistance offices at great expense in order to copy original documents.

<u>Comments on Collection of Information Requirements</u>

The CMS estimate that it will take individuals 10 minutes to acquire and provide the state acceptable documentary evidence and to verify the declaration is too low. For many individuals, it may take 10 minutes simply to understand the requirements. Then they must collect the documentation (which may involve contacting multiple agencies to determine which documents are available and how they may be obtained), and then deliver these documents to an eligibility worker. Many people do not live near a public assistance office, so will have to travel more than 10 minutes simply to take the documents in. Most people will be reluctant to mail documents like passports and

driver's licenses, or if they do, may use registered mail necessitating a trip to a post office.

We also believe that the estimate that the State will be able to obtain acceptable documentation, verify citizenship and maintain current records on each individual in less than 5 minutes is too low. Five minutes is about the time required if everything is in order. If individuals ask questions of state employees about the requirements, need assistance in obtaining documentation, submit inadequate documentation initially, or mail in documentation that needs to be returned to the individual, the time required will be far in excess of 5 minutes. Because states must implement citizenship verification immediately, most of the documentation activity will take place before they have had the opportunity to develop more sophisticated data matching with other automated records systems.

Comments on Regulatory Impact Statement

We believe that several assumptions made to determine whether a regulatory impact statement is necessary are incorrect. First, we do not believe that all Medicaid enrollees who are citizens will eventually provide proof of citizenship. Some individuals in extremely frail health will die before they are able to comply. Some individuals with extreme physical or mental illness and without adequate community supports may find the process overwhelming, and simply drop out before the state has an opportunity to provide them assistance. Some individuals will choose to avail themselves of charity care or use emergency rooms to obtain care. IHS beneficiaries may choose not to pursue Medicaid eligibility, as they have access to IHS or tribal health care. These impacts will not only reduce Medicaid expenditures, but they will have the effect of straining other sources of medical assistance available in communities.

We think the impact on tribal providers should also be taken into account when determining the impact on small entities and on small rural hospitals. Rather than comply with citizenship verification requirements, IHS beneficiaries may choose not to pursue Medicaid eligibility, as they have access to free IHS or tribal health care.

And we believe the discussion of the costs to state government is incorrect, in that it uses the availability of data matching as a justification for why this regulation will have little to no impact on states when it knows that, given the July 1, 2006, implementation date, the vast majority of states will not be able to implement data-matching for both citizenship and identify for enough individuals in time to avoid having to do manual verification for a significant number of individuals.

Sincerely,

Jerry Fuller
Alaska State Medicaid Director

Submitter : **Ms. Carmen Delgado Votaw** **Date: 08/09/2006**

Organization : **Alliance for Children and Families**

Category : **Other Association**

Issue Areas/Comments

GENERAL

GENERAL

See attached file for comments.

CMS-2257-IFC-128-Attach-1.DOC

1701 K Street NW, Suite 200
Washington, DC 20006
policy@alliance1.org

August 9, 2006

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

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

The Alliance for Children and Families and the United Neighborhood Centers of America (UNCA) 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). 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 mission of the Alliance is to strengthen the capacities of North America's nonprofit child and family serving organizations to serve and to advocate for children, families and communities, so that together we may pursue our vision of a healthy society and strong communities for all children and families. UNCA is a voluntary, nonprofit, national organization with neighborhood-based member agencies that works in partnership with neighborhood centers to find solutions to social problems that hinder individual self-development and prevent productive community life.

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 areas that CMS should modify in the final rule.

Our comments specifically address the information collection requirements of the regulations. As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new documentation requirements 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 an additional ten minutes and state Medicaid agencies five minutes. Requiring that individuals obtain and submit originals and certified copies adds to the time needed for compliance and imposes a heavy burden on foster children and people involved in natural disasters who may have lost their documentation. 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 of the documents submitted.

U.S. citizens applying for benefits should receive benefits once they declare that 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 reads: "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 who are subject to this requirement are expected to apply for Medicaid. Most of these citizens are children, pregnant women and parents. The net effect of the prohibition on granting these individuals coverage unless 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, allow their health problems to worsen, 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 become discouraged or cannot get the documents they need within the time allowed by the state will never obtain 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 also concerned that families will forego preventive care and children will end up in the emergency room when a crisis arises.

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

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 as part of the process of determining their eligibility for Title IV-E payments. It is our understanding that the Administration for Children and Families (ACF) requires state child welfare agencies to follow the Department of Justice interim

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

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

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 require documentation of citizenship. The IV-E program does precisely this, 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 does not make logical 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 does not make sense, since the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen.

Because the rule as it is proposed would prevent states from granting coverage until documentation of citizenship is provided, hospitals and physicians will be at risk for delay or denial

of reimbursement for the treatment of newborns who are low-birthweight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements.

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

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

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

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

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

This result is both foreseeable and preventable. 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 children and families who are U.S. citizens, including those we serve, 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. The requirement also 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 send originals or certified copies of their birth certificates and other important documents by mail. They will definitely not be willing or able to mail their proof of identity such as driver's licenses or school identification cards.

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

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

Conclusion

In our view, CMS needs to revise the proposed Medicaid Interim Final Rule thoroughly in order to exempt foster children from onerous documentation requirements and facilitate the establishment of eligibility for all beneficiaries, to prevent delays in receiving benefits that could accrue to children and families who are in need of key health services and are already facing precarious living conditions.

Thank you for inviting our comments.

Carmen Delgado Votaw
Senior Vice President, Public Policy

Submitter : Mr. Lon Newman **Date:** 08/09/2006

Organization : WI Family Planning Reproductive Health Assn

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-129-Attach-1.DOC

WFPRHA

August 3, 2006

Centers for Medicare and Medicaid Services
Department of Health and Human Services,
Attn: CMS—2257—IFC
Post Office Box 8017
Baltimore, MD 21244-8017

Provisions of the Interim Final Rule with Comment Period
CMS—2257—IFC

Our association of family planning providers appreciates the opportunity to comment on the interim final rules requiring proof of identity and citizenship for Medicaid participation.

We believe the interim final rules appropriately exempt Medicare recipients and SSI participants because these populations are most vulnerable to inappropriate denial of access to care to which they are entitled based on difficulties in obtaining the required documentation under the act. We also believe the following populations should be exempted for the same reasons:

- Disaster victims may no longer have access to documents
- People not born in hospitals may not have original birth certificates available
- Foster children may not have access to documentation of birth location
- Wards of the state for whom the state is acting as the custodial parent without documents proving identity or birth location
- Minors seeking confidential reproductive health care to which they are entitled but for whom confidentiality will be jeopardized by seeking documents

Clearly, if CMS appropriately wrote the exemptions to protect the frail and elderly from losing benefits to which they are entitled, children meet the same criteria. CMS recognizes the difficulty minors have with required documents in the published rules under *Fourth Level of Evidence of Citizenship:*

> We are adding a paragraph (f) that describes special rules for individuals under the age of 16. Because children often do not have identification documents with photographs and a child's appearance changes significantly until adulthood, we permit parents or guardians to sign an affidavit as to the identity of the child. This affidavit does not establish citizenship and should not be confused with the affidavit permitted in rare situations to establish citizenship.

We believe CMS must recognize and protect the constitutional right to confidential reproductive health care.

Collection of Information Requirements

Based on our experience with client enrollment, the estimate that compliance with these requirements will take ten minutes of the individual's time and 5 minutes of State time seems unrealistic and should be substantiated.

Wisconsin Family Planning and Reproductive Health Association
719 North Third Ave., Wausau, WI 54401
(715)675-9858 - fax (715)675-5475 - email NewmanL@FPHS.org

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

We believe the department's position that delaying the implementation of the regulation as written would cause an undue hardship to the most frail and vulnerable is a circular argument in that it assumes the regulation being implemented is the one which most protects the frail and vulnerable. Clearly there are other regulations that could be considered that would protect the frail and vulnerable more effectively.

We believe the department's position that a 30-day delay in the effective date should be waived because it is in the public interest similarly, by use of circular logic, assumes that regulations could not be written which protect the public interest more effectively.

CMS incorrectly assumes that delay of implementation would jeopardize access to care in its claim that states must have authority to accept additional documents as proof of identity and citizenship. The statute is impossible to implement within the time frame required, but it does not follow that these regulations must be rushed through without comment. The very purpose of the comment period is to examine alternatives.

In earlier comments under *Implementation Conditions/Considerations* the department literally changes the wording of the statute, explaining that the wording must be changed in order for the law to be rational. However, in the case of an unreasonable statutory implementation period, the department decides to violate the existing statutory process for public comment and agency deliberation. Perhaps changing the implementation date of the statute would provide the time to create rational rules. Impetuous promulgation of rules to implement an irrational law doesn't necessarily result in reasonable rules or a sound interpretation of law. A delay in the implementation of the documentation requirements would not jeopardize access to Medicaid and would certainly not be contrary to the public interest.

VI. Regulatory Impact Statement

CMS' assertion that the savings are less than $100 million and that a Regulatory Impact Statement should not be required must be supported and independently verified. We do not believe the statement takes current research on Medicaid participants and costs into account. We do not believe a 'savings estimate' accurately reflects the administrative costs of implementing the requirements for CMS, for States, for local governments, or for providers.

We believe CMS' determination that the rule will not have a significant economic impact on a substantial number of small entities should be substantiated. The department has not provided any support for its decision to waive the Regulatory Flexibility Act requirement for an analysis of options to protect small entities.

CMS' conclusion that the rule will have no consequential effect on State, local, or tribal governments or on the private sector, seems also to be unsupportable and incorrect. As an association of local governmental and private non-profit health care providers, we can already attest to the administrative burdens associated with the implementation of the documentation requirements after just a few days. Finally, CMS' assertion that the added requirements will not overburden the eligibility process is similarly unsupported and unreasonable.

We believe it is imperative that the required impact statements and cost-benefit analyses be done before these regulations are adopted.

Conclusions

As an association of non-profit community reproductive health care providers, we believe the statute itself is unworkable and irrational. We believe that CMS' regulations unconstitutionally discriminate on the basis of age and sex and that the impact of these regulations will result in minors being improperly denied access to constitutionally protected confidential reproductive health care. Finally, we believe that CMS has improperly waived the proper waiting and comment period, waived the appropriate implementation delay, and it has improperly waived the economic impact analyses required by law.

Lon Newman, Public Affairs Chair
Wisconsin Family Planning and Reproductive Health Association

Submitter : Ms. Ellen Ward **Date:** 08/09/2006

Organization : Mental Health Association in the Greater Kanawha V

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-130-Attach-1.DOC

August 9, 2006

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

Dear Dr. McClellan:

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of the Mental Health Association in the Greater Kanawha Valley, representing nearly 200 members throughout West Virginia.

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.

8. Outreach

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

9. Presumptive eligibility groups

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

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

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

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

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

Sincerely,

Ellen Ward

Ellen Ward
Executive Director

Submitter : Ms. Susan Zimmerman **Date:** 08/09/2006

Organization : FAVOR, Inc.

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

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

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

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

Submitter : Celia Valdez **Date:** 08/09/2006

Organization : Maternal and Child Health Access

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

Provisions of the Interim Final Rule with Comment Period

Provisions of the Interim Final Rule with Comment Period

See attachment

CMS-2257-IFC-132-Attach-1.DOC

Maternal and Child Health Access

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August 7, 2006

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

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

Dear CMS:

For nearly 20 years, Maternal and Child Health Access has worked to promote the health and well being of low-income families throughout Los Angeles County, California as well as to improve the policies and procedures that govern enrollment into and utilization of publicly funded health care programs for the poor and working poor. Health insurance and access to health care are fundamental to independence and self-sufficiency in our society. Many of the families we work with have fallen into poverty as the result of a medical catastrophe; many others have avoided a similar fate by getting coverage and being able to use health services when needed.

In recent years, we have focused on the policies and practices in California for enrolling newborn babies into the state's Medicaid program (known as Medi-Cal). Among our goals has been to educate county eligibility workers, providers and consumer advocates about the long-standing special federal rules for automatically enrolling newborns continuously for the first year of life when the mother had Medicaid for the delivery, the newborn remains a member of her household, and the mother remains eligible for Medicaid, or would if pregnant remain eligible. Such broad-based education has proved very effective in promoting early and continuous Medi-Cal enrollments for newborns during the critical first year of life.

Babies are at their most vulnerable during the first year of life and consequently need a minimum of six medical visits before reaching age one year, accessed according to a time schedule specified by the American Academy of Pediatrics (see enclosed Periodicity Schedule) for immunizations and screening, testing and diagnosis of potentially disabling or even life-threatening diseases and conditions. Of course, when babies are sick, they also need timely access to treatment as well. Whether healthy or sick, babies need, from the very first day of life, medical coverage to promote access to vital preventative care and treatment.

It is therefore with grave concern that we read the statement in the Preamble to the Interim Final Rule on Citizenship Documentation purporting to deny automatic and continuous eligibility to babies born here in the United States whose mothers had Medicaid only for labor and delivery or other emergency services (71 Fed. Reg., No. 133, 39214, 39216 (July 12, 2006). This position reflects a radical departure from the previous federal administrative position, is contradictory to the plain meaning of the federal law establishing the criteria for automatic and continuous, or "deemed", eligibility, and violates equal protection. **We urge CMS to withdraw the statement in the Preamble and clarify to the states that an infant born in the U.S. whose mother had Medicaid, including emergency Medicaid, is automatically and continuously eligible for Medicaid throughout the first year of life if the infant otherwise meets the criteria for this eligibility category.**

We applaud the 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 (*Id.*) This is the only possible logical conclusion, since this group of infants, by definition, was born in the U.S. and the Medicaid agency paid for these deliveries in U.S. hospitals. However, concern arises from the CMS statement that infants "deemed eligible" for Medicaid at birth will later have to provide documentation of citizenship in order to successfully renew Medicaid eligibility after age one year (*id.*). CMS' position is internally inconsistent: the very rationale underlying the CMS position that these infants satisfy the citizenship documentation requirement during the first year of life is that this group is comprised of U.S. born babies whose deliveries occurred in U.S. hospitals, as reflected in payments by the state's Medicaid agency. Those facts are immutable and do not change when the infant turns age one year. Moreover, as the Interim Final Rules themselves confirm, once citizenship has been proved, it need never be proved for Medicaid purposes again (42 C.F.R. § 435.407(h)(5), 71 Fed. Reg. at 39228). **We therefore urge CMS to clarify that states with systems in place for tracking a newborn's initial enrollment into Medicaid under the provisions for automatic and continuous enrollment when the mother had Medicaid for the delivery need not provide further proof of citizenship at any age.**

Finally, for infants who do not meet the criteria for "deemed eligibility" at birth (for example, because the mother did not have Medicaid for the delivery, or the mother did have Medicaid but the newborn did not reside with her in the birth month), **we urge CMS to adopt the rule that the state's record of Medicaid payment or any other proof of payment for the birth in a U.S. hospital or for neonatal services in the U.S. for the newborn constitute satisfactory documentary evidence of both citizenship and identity when the child applies for Medicaid at any age.**

Sincerely,

Celia Valdez
Acting Executive Director

Enc.

Submitter : Adam Gurvitch **Date:** 08/09/2006

Organization : The New York Immigration Coalition

Category : Other

Issue Areas/Comments

GENERAL

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Please See Attachment

CMS-2257-IFC-133-Attach-1.DOC

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August 9, 2006

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

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

I am writing on behalf of The New York Immigration Coalition (NYIC) 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 1) minimize the likelihood that U.S. citizens, as well as eligible immigrants, applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage; and 2) minimize the confusion that has resulted about the unchanged eligibility requirements for Medicaid.

The New York Immigration Coalition is a nonprofit umbrella policy and advocacy organization for about 160 groups in New York State that work with immigrants and refugees. The NYIC's membership includes grassroots community organizations, health and human services nonprofits, legal, social and economic justice organizations, religious and academic institutions, and labor unions. The NYIC has witnessed widespread confusion about the new rule among the immigrant community and throughout its membership. Our comments below highlight seven areas that CMS should modify in the final rule, foremost among them a call for CMS to issue clear, unambiguous clarification that the requirements for Medicaid eligibility remain unchanged.

1) CMS should take action to distinguish new documentation requirements from unchanged eligibility requirements.

The new regulations require Medicaid applicants who claim to be U.S. citizens to prove their citizenship by providing acceptable documentation. Non-citizens, however, who have acceptable immigration status and have met the income criteria for Medicaid face NO new documentation

requirements OR changes to Medicaid eligibility with regard to immigration status. Nonetheless, the rule-making process has caused deep and widespread confusion about Medicaid eligibility throughout the ethnic media and across immigrant communities. CMS must issue clear guidance to State Medicaid directors and potential Medicaid applicants that one does not have to be a U.S. citizen to be eligible for Medicaid, and non-citizens are encouraged to seek Medicaid benefits if they are eligible.

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

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

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

Because the rule would prevent states from granting coverage until documentation of citizenship is provided, hospitals and physicians treating newborns will be at risk for delay or denial of reimbursement for the treatment of newborns who are low-birthweight, have post-partum complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements. 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 strongly urge that 42 CFR 435.407(a) be amended to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

3) **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.

4) 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.

CMS further prohibits non-citizens from writing such affidavits on behalf of Medicaid applicants, and requires them to document their own status as if they themselves were applying for Medicaid. This requirement is inconsistent with the Tri-Agency Guidance issued by HHS, which prohibits inquiry into, or denial of benefits to someone because of the citizenship status of persons not applying for benefits. This requirement will likely prevent some citizens, especially children, from receiving benefits to which they are entitled.

Additionally, a number of foreign-born children gain citizenship through "derivative citizenship" but never get a Certificate of Citizenship or similar document that proves they are a citizen. Nonetheless, U.S. law clearly establishes that they are eligible for citizenship and are, in fact, citizens. Derivative citizenship applies both to biological as well as adopted children, who are lawfully present in the U.S., and who have at least one parent who is a citizen. Obtaining the proper paperwork can be a time-consuming and expensive problem. CMS should 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.

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 vulnerable people who are U.S. citizens can continue to receive the health care services they need.

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

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

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

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

Most states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Eliminating the face-to-face interview requirement was one of a number of steps states took to simplify their eligibility processes and make it easier for eligible children and parents to enroll in Medicaid. Mail-in applications are also more efficient for state Medicaid agencies. Requiring originals and certified copies to document citizenship will make it harder for working families to enroll in Medicaid and increase the workload of Medicaid agencies. This unnecessary requirement that goes beyond the requirements Congress imposed in the DRA will also delay coverage while applicants wait for appointments at state Medicaid agencies. In some cases, having to visit a state office will discourage applicants from completing the application process. Children and families will go without coverage and remain uninsured and providers will not get reimbursed.

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

6) 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.)

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.

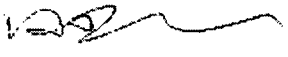
We urge CMS to revise 42 CFR 435.1005 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

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

While Native American tribal documents can be used as proof of identity, the regulations do not permit tribal enrollment cards to be used as evidence of citizenship. (The regulations only allow identification cards issued by DHS to the Texas Band of Kickapoos as secondary evidence of citizenship and census records for the Seneca and Navajo Tribes as fourth-level evidence of citizenship). The federal government recognizes over 560 tribes in 34 states, each of which issues enrollment cards to its members for purposes of receiving services from tribal resources and voting in tribal matters. With very few exceptions, tribes issue enrollment cards only to individuals who are born in the U.S. (and have a U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship. We urge CMS to revise the regulation at 42 CFR 435.407(a) to specify that a tribal enrollment card issued by a federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity. An exception should be made in the case of a federally-recognized tribe located in a state that borders on Canada or Mexico that the Secretary finds issues tribal enrollment cards to non-citizens; in such cases, tribal enrollment cards should qualify as evidence of identity but not citizenship.

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

Sincerely,



Adam Gurvitch
Director of Health Advocacy

Submitter : Mrs. Kimberly Warden **Date:** 08/09/2006

Organization : Places for People

Category : Social Worker

Issue Areas/Comments

GENERAL

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The Deficit Reduction Act, as I understand it, will be an overwhelming force in the mental health field and will put an undue and time consuming burden on providers of mental health services. My husband works for an agency that runs 5 residential care facilities in Missouri, three of which are in the St. Louis metro area. He will be charged with the task of procuring the required documents for more than 200 residents, many of whom have been living in their current facility for years receiving Medicaid.
When we first became aware of the burden that would be placed on the mental health community in connection with this act, I began to search the internet looking for a loophole or ways to make my husband s task an easier one. I found that since the requirement on identification for voting is occurring in November of this year, the Missouri Department of Revenue issued a statement that they would come to RCFs and provide documentation services to individuals. There is only one catch; the documentation has to be used for voting. DOR states that they will not come out and provide identification to these individuals if it is for Medicaid. Additionally, it still would require that residents of his who are senior citizens who have been disabled for years by mental illness and are now suffering changes due to the aging process would be required to get birth certificates.
The documents required to satisfy proof of citizenship are those needed to satisfy proof of identity. Thus, even if my husband lied to DOR and told them that the identification provided would be used for voting purposes, he would still need to track down innumerable birth certificates for people born all over the country in a matter of a few short months.
The fact that this bill slipped under the radar of mental health professionals is unfortunate and its passage is irresponsible on the part of legislators. Without the appropriate resources in place, it will be profoundly difficult if not impossible for a professional to complete the task of ensuring that Medicaid continues to provide assistance to those individuals most in need.

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Regulatory Impact Statement

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Submitter : **Ms. Nan Roman** **Date: 08/09/2006**

Organization : **National Alliance to End Homelessness**

Category : **Other Association**

Issue Areas/Comments

GENERAL

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Provisions of the Interim Final Rule with Comment Period

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see attachment

Regulatory Impact Statement

Regulatory Impact Statement

see Attachment

CMS-2257-IFC-135-Attach-1.DOC

National Alliance to
END HOMELESSNESS

www.endhomelessness.org
IMPROVING POLICY | BUILDING CAPACITY | EDUCATING OPINION LEADERS

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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)

I am writing on behalf of the National Alliance to End Homelessness (the Alliance) 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 requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

The Alliance represents a united effort that calls for communities to consciously plan to end, not merely manage, homelessness; government institutions and programs to prevent homelessness; the homeless service system to more quickly move homeless families and individuals back into housing; and the country as a whole to make progress on increasing available affordable housing and strengthening social services for low-income Americans.

We are concerned about the implementation of Section 6036 of the DRA and how it affects homeless individuals, families, and unaccompanied youth. Homeless people are typically less healthy than the general population and frequently seek care through hospital emergency rooms. Living on the streets exacerbates ailments that would be easy to treat and when illnesses go untreated they cause severe problems that could have been prevented. Scabies, lice infestations, frostbite, and heat stroke are all common ailments. People experiencing homelessness also have high rates of hypertension, tuberculosis, and vascular diseases. These conditions can lead to hospitalization and

without Medicaid hospitals will increasingly decide not to serve homeless people. This could result in worsening health, lack of access to shelter and in some cases death. Every attempt should be made by CMS, states, and providers to assure access to care for this vulnerable population.

Maintaining Medicaid coverage for homeless populations is in keeping with the Administration's goal to end chronic homelessness by 2012. Medicaid financing is critical for sustaining the cost effective treatment and health care services used in permanent supportive housing projects. Permanent supportive housing couples affordable housing with the supportive services needed by people who are disabled by mental illness, substance abuse problems, HIV/AIDS, and other health conditions. Research on supportive housing has demonstrated that it is a cost effective solution to chronic homelessness, producing dramatic savings by reducing the utilization of hospital inpatient and emergency room care and other health and treatment services. If homeless populations otherwise eligible for Medicaid do not receive coverage because they do not have proper documents, permanent supportive housing programs will be unable to use Medicaid to finance needed health care services, and we will be unable to make progress toward the Administration's goal. The requirement to document citizenship will be a significant barrier to homeless people gaining Medicaid coverage and accessing health care services.

Our comments address the information collection requirements of the regulations. As explained below, we are concerned that the requirement that only originals and certified copies be accepted as satisfactory documentary evidence of citizenship adds to the burden of the new requirement for applicants, beneficiaries, and state Medicaid agencies.

The Alliance appreciates the recognition that those eligible for Supplemental Security Income (SSI) should be exempt from the citizenship documentation requirement. In addition, states that do not automatically provide Medicaid coverage to SSI recipients will be helped by being able to access the State Data Exchange (SDX) that the Social Security Administration uses to track individuals already deemed to be citizens. It will be important for states to be able to link to this and other data systems quickly so providers can enroll patients in Medicaid as quickly as possible and be assured of receiving reimbursement. The Centers for Medicare and Medicaid Services (CMS) should provide training and resources for states that need assistance with linking data systems.

Recommendations

There are improvements we would like included as CMS implements this rule and hope that these recommendations will be taken into account as CMS develops paragraph (h) under the fourth level evidence of citizenship.

There are U.S. citizens who will not be able to provide any of the documents listed in the interim final rule. This includes people experiencing homelessness. People experiencing homelessness rarely have original copies of their birth certificate, social security card, or

even driver's license. The regulations at 42 CFR 435.407(h)(1) require Medicaid applicants and beneficiaries submit original or certified copies of identification documents to satisfy the new citizenship documentation requirements. People living on the streets often have their possessions stolen or depending on the circumstances that caused the person to become homeless, they never had their original documents. 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 has their full capacities 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. It is not unreasonable to see that the simple lack of a fixed address could prohibit homeless people from obtaining necessary citizenship and identification documents. There is a long history of homeless people being denied assistance simply because they lack proper paperwork. Providers have repeatedly worked to overcome this problem and this regulation adds another hurdle to be overcome. It should not be a result of this rule that most homeless individuals applying for Medicaid lose current coverage and never have the ability to re-qualify because they do not have proper identification.

To correct this foreseeable and unnecessary result, the Alliance recommends the following.

First, all homeless people, adults and unaccompanied youth, should be presumed to be a citizen with respect to eligibility for Medicaid until it is proven they are not citizens. Hospitals, community health centers, health care for the homeless clinics and other homeless service providers should be in the business of providing health care to all who need it. Homeless people who are sick should not be denied service and sent back out on the street without care. Due to the complications of having and acquiring proper documentation, Medicaid should reimburse providers for those experiencing homelessness until it is proven they are not citizens.

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

Finally, states and providers should not be penalized in the auditing process for accepting third or fourth level evidence of citizenship for people experiencing homelessness. CMS should take into account the extenuating circumstances that make it almost impossible for people experiencing homelessness, especially chronically homeless people, to quickly acquire the documents required under this rule. Providers and states should be assured that they will receive the federal reimbursement and not be later penalized so that they do not refuse services to homeless men, women, children and unaccompanied youth.

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

Research has shown a significant number of homeless adults have a foster care history. It is important to help foster children be safe and healthy to ensure that homelessness is not an outcome of involvement in the child welfare system. Children, under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services, are eligible for mental health care in addition to primary care services. Pediatric psychiatrists are in short supply and without some access to health insurance foster children are less likely to receive adequate care. Proper mental health treatment to deal with the separation from family, multiple foster family placements and other stresses can make the difference between a child transitioning successfully to adulthood or not. Gaining Medicaid coverage should be as easy as possible for the child and case worker, therefore, we ask that CMS add an exemption at 42 CFR 435.1008 for foster children receiving Title IV-E assistance.

The Alliance appreciates the opportunity to provide comments and looks forward to working with CMS to increase Medicaid coverage for homeless people.

Sincerely,

Nan Roman
President

Submitter : **Beverly Schmidt** **Date: 08/09/2006**

Organization : **L & S Associates, Inc**

Category : **Individual**

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2257-IFC-136-Attach-1.RTF

CMS-2257-IFC-136-Attach-2.RTF

August 8, 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

provide the phone number of the employer if it is not listed on the document)

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Submitter : W. Ducker **Date:** 08/09/2006

Organization : Consumer Link

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

I fully agree with the following comments taken from NAMI:

Section 435.407(j). Coverage Should Not Be Delayed While An Applicant Is Seeking Citizenship Documents.
While NAMI commends CMS for allowing current Medicaid beneficiaries to have a reasonable opportunity to gather their documents, we are concerned that the same rule does not apply to applicants. The preamble to the rule unequivocally states that
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applicants should not be made eligible until they have presented the required evidence. 71 Fed. Reg. at 39216.
Medicaid applicants with serious mental illnesses who are not on SSI at the time of application will be particularly harmed by this rule. Those in an acute phase of their illness will find it difficult to comply with the documentation requirements. Under the rule, they will be denied access to the treatment they need to alleviate their symptoms and allow them to assist with finding their documents. Moreover, timely access to mental health treatment is critical to avoid tragic consequences such as arrests, incarceration, homelessness and suicide.
CMS has the authority to change this rule because the statute specifies that the citizenship documentation requirement is a condition for the states to receive federal funds, not a condition of individual eligibility. Individuals should be enrolled immediately in Medicaid and given a reasonable opportunity to produce their documents.
Section 435.407(h)(1). Copies of Documents Should Be Sufficient Proof of Citizenship.
The interim final regulation specifies that individuals must submit original documents or copies certified by the issuing agency to satisfy the citizenship and identity requirements. This provision creates a significant financial and logistical burden for individuals with mental illness, who often have very low incomes and little access to transportation. Individuals will be very hesitant to send original documents by mail. Medicaid recipients and applicants with mental illness often have transient living arrangements and may not have a reliable address for the return mail. They also may be worried that the mail might not reach its destination.
This provision will require them to schedule an in person appointment with the Medicaid agency. Given the difficulties of transportation, particularly in rural areas, such a rule is likely to significantly delay compliance with the documentation requirements, putting services at risk or denying access to services for applicants. Some applicants may be discouraged from applying for Medicaid.
The statute gives CMS the authority to determine additional documents that are reliable evidence of citizenship and identity. Moreover, the statute does not specify that the documents must be originals. Accordingly, CMS should allow copies to be used, sparing expense and burden for both individuals and state agencies.
Section 435.1008. Exempt Individuals Who Have Already Documented Citizenship for Another Federal Program, Including Foster Care Children in the IV-E program and Individuals on Social Security Disability Income (SSDI).
As previously noted, NAMI is very grateful to CMS for exempting individuals who qualify for Medicaid by virtue of receipt of SSI and individuals who are dually eligible
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for Medicaid and Medicare. This provision will ensure that millions of Americans, including many with serious mental illnesses, will continue to access the mental and physical health care services that they need. By carefully interpreting the statute, CMS has preserved Congressional intent and spared millions from needless burden, expense and potential loss of benefits.
NAMI requests that CMS also use its authority under the statute to exempt all adults and children who have already proven citizenship to qualify for another federal program. This is particularly important for individuals with disabilities on Social Security Disability Insurance who are in the waiting period for Medica