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ORIGINAL

FROM THE DESK OF
WILLIAM B. FERRELL, JR.
TREASURER

JUL 14 2006

To CENTERS FOR MEDICARE Date JULY 9, 06
AND MEDICAID ATTN: CMS-2257-IFC

Dear Sir/Madam....

My comment on your regulation to
prove citizenship FOR MEDICAID IS....

What in the world, is something
so basic, so necessary, just now
being implemented? Shame on
the Federal Govt and States
for having to even start, what is
obvious....

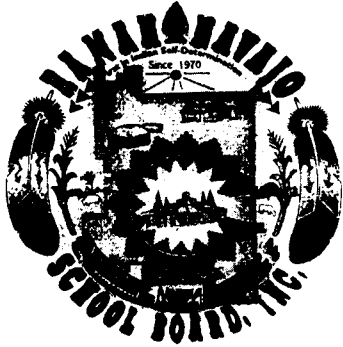
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JUL 31 2006

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EXECUTIVE OFFICE

July 28, 2006

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

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

To whom it may concern:

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

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

As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, tribal governments find it:

“rather ironic that Native Americans, in the true sense of the word, must prove their U.S. citizenship through documentation other than through their Tribal documentation. This

same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution."

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

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

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

document,” but certainly tribal enrollment cards or CDIBs fall within the scope of a “Native American tribal document.”

Therefore, I recommend that section 435.407 (a) of the regulations be amended to include tribal enrollment cards or CDIBs as Tier 1 documents.

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

The Senate Finance Committee, in unanimously reporting out S. 3524, included an amendment to section 1903(x)(3)(B) of the Social Security Act [42 U.S.C. 1396(x)(3)(B)] to allow a “document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe” to serve as satisfactory documentation of U.S. citizenship. In addition, the amendments provide further that:

“[w]ith respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection.”

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

I would urge CMS to amend the interim regulations to address tribal concerns by recognizing tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2 documents.

As explained above, with very few exceptions, tribes issue enrollment cards or CDIBs to their members after a thorough documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent the Secretary has concerns that some tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

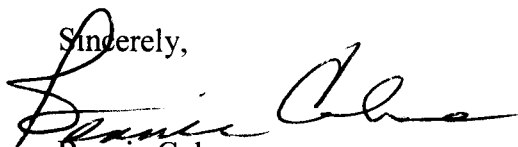
If tribal enrollment cards or CDIBs are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, AI/AN Medicaid beneficiaries might not be able to produce a birth

certificate or other satisfactory documentation of place of birth. Many traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing tribal enrollment cards as satisfactory documentation of U.S. citizenship, CMS is creating a barrier to AI/ANs access to Medicaid benefits.

As you know, the Indian health care programs operated by IHS, tribes, tribal organizations and urban Indian organizations, as well as public and private hospitals that provide services to AI/ANs, are dependent on Medicaid reimbursements to address extreme health care disparities of the AI/AN population compared to the U.S. population. Recognizing tribal enrollment cards or CDIBs as sufficient documentation of U.S. citizenship will benefit not only Indian health care programs, but all of the health care providers located near Indian country that provide services to AI/AN Medicaid beneficiaries.

Thank you for your consideration of my comments.

Sincerely,



Bennie Cohoe
Executive Director

cc: New Mexico Congressional Delegation
NIHB
RNSB Board of Trustees
Carolyn Finster, Pine Hill Health Center Administrator
Sam Alonzo, Sr., Superintendent
Chrono & EO Files

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES AUG - 1 2006



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HUMAN AND COMMUNITY SERVICES DIVISION
PO BOX 202925
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July 18, 2006

To: Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
PO Box 8017
Baltimore, MD 21244-8107

From: John Chappuis *John Chappuis*
Director, Montana Medicaid

Linda Snedigar *Linda Snedigar*
Supervisor, Montana Medicaid Eligibility

Re: Comments on the Interim Final Rule for Citizenship Documentation Requirements

The Montana Department of Public Health and Human Services submits these comments regarding the Citizenship and Identity Documentation Requirements, file code CMS-2257-IFC.

We commend CMS for determining there was a scrivener's error and that SSI and Medicare recipients are exempt from both the citizenship and identity requirements. We would request that Foster Care and Subsidized Adoption Medicaid recipients be treated similarly and also be exempt since they are an equally vulnerable population for whom someone else (the IV-E agency) has already determined eligibility.

We believe that the documentation lists are too restrictive, particularly in regards to Native Americans. Our experience has been that tribal enrollment records are extremely accurate and can be used to document citizenship. This would be helpful particularly for the oldest Native American recipients who may have been born at home and don't have birth certificates, don't have enough work quarters to qualify for Medicare, and have never received SSI.

Montana has always verified citizenship and we believe that we should be allowed to continue our practice of using the "preponderance of evidence" in the rare situations where exhaustive research has been done and everything points to citizenship but there

are none of the listed documents in existence. An affidavit from persons familiar with the participant's circumstances may serve this purpose under the current interim rules but we believe the "preponderance of evidence" option should be included. This has not, in our experience, been proven later to provide a determination in error in regards to citizenship.

Montana has used a duplicate of the information sent from the hospitals to the State's Vital Records Bureau for registering births to prove the citizenship of infants. We believe this should be added to the list of allowable documents.

We believe the "reasonable opportunity" period needs to be at least 90 days in length, due to the delay in receiving birth certificates from other states. We also believe that we should be allowed to request copies of documentation from another state's Medicaid agency and to consider them verified without being placed at-risk. This would relieve some of the burden on both recipients and state agencies.

The requirement for a picture ID is problematic for some populations. While allowing SSI or Medicare receipt to serve as identity verification is helpful to most of the nursing home population, there are still some elderly who are not eligible for either. This group plus the younger adults who may have been chronically ill or brain injured since an early age and who have not received SSI or Medicare are also not likely to ever have had a picture ID. We would recommend that an identity affidavit is an option for this group of adults as it is for children, or that the facility medical records including a picture be acceptable as identity verification.

AUG - 1 2006

To: Office of Legislation

Fr: Meredith Sumpter, Health Advisor to Senator Lisa Murkowski

July 18, 2006

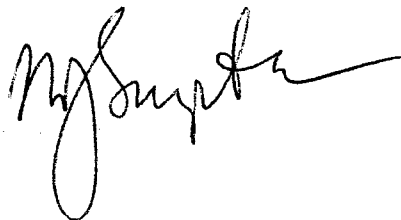
I have enclosed for the HHS and CMS offices of legislations' consideration a suggestion that would address the challenges the proposed Medicaid citizenship documentation guidelines present to Alaska Natives.

Under the 'Documentary Evidence' guidance presented to Congress last week, HHS might include within the fourth bullet point of acceptable fourth level documentation to verify proof of citizenship the roll of persons on the Alaska Native Claims Settlement Act (ANCSA). The ANCSA roll is limited by federal law to persons who are U.S. citizens. As such, ANCSA enrollees are already receiving federal health benefits designated for American Indians and Alaska Natives.

I have included in this fax 43 USC Sec. 1604, which sets in statute the ANCSA enrollment, and 43 USC Sec. 1602, which clearly defines "Natives" on the ANCSA roll as citizens of the U.S.

While this suggested change would not address the citizenship documentation concerns of many American Indian tribes -- concerns that should be addressed -- Senator Murkowski hopes Secretary Leavitt will consider adding the ANCSA roll to the list of acceptable citizenship documentation.

Please call me should you have any questions: 202 228 3099.



LISA MURKOWSKI
ALASKA
MAJORITY DEPUTY WHIP

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ENERGY AND NATURAL RESOURCES
CHAIRMAN, SUBCOMMITTEE ON
WATER AND POWER
FOREIGN RELATIONS
CHAIRMAN, SUBCOMMITTEE ON
EAST ASIAN AND PACIFIC AFFAIRS
ENVIRONMENT AND PUBLIC WORKS

INDIAN AFFAIRS

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June 30, 2006

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Dear Mr. Secretary:

I write to express my concern that the Department's current interpretation of Section 6036(b) of the Deficit Reduction Act of 2005 will not allow the States to consider evidence of eligibility for programs and services that the federal government makes available to our Native people in determining eligibility for Medicaid. This will unjustly require that my State of Alaska and other states declare Native people who have historically received Medicaid benefits ineligible for the program simply because they cannot produce the proper documents. I urge the Department to issue additional guidance that allows tribal enrollment documentation to be used to establish citizenship and identity for persons applying for Medicaid.

Virtually all Alaska Natives with a blood quantum of $\frac{1}{4}$ or more alive on December 17, 1971, who are citizens of the United States, were enrolled by the US Department of the Interior to participate in the Alaska Native Claims Settlement Act and their names appear on an official federal roll. Moreover, many if not all Alaska Natives and their eligible descendants possess Certificates of Indian blood which are required to access the Alaska Native health care delivery system.

I am deeply troubled that the Department's present interpretation of Section 6036(b) will not allow any of this official government information to be utilized in determining eligibility for Medicaid even though Section 6036(b) affords you significant discretion in permitting alternative documentation to be used for purposes of establishing nationality and identity.

I would urge that you consult with our federally recognized Indian tribes and with your own Intradepartmental Council on Native American Affairs (ICNAA) to determine whether the very same documentation used to establish eligibility for federal Indian programs can be relied upon by the States to establish eligibility for Medicaid. I fear that the financial stability of our Indian health care delivery system as well as the health of our Native people will be jeopardized if we continue down the present path.

I thank you for your consideration of this request, and look forward to continuing to work with you to improve our nation's access to health care.

Sincerely,



Lisa Murkowski
United States Senator

See Pg. 3

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Room 352-G
200 Independence Avenue, SW
Washington, DC 20201



Public Affairs Office

MEDICAID FACT SHEET

July 06, 2006

Contact: CMS Public Affairs
(202) 690-6145

HHS ISSUES FINAL REGULATIONS WITH COMMENT ON CITIZENSHIP GUIDELINES FOR MEDICAID ELIGIBILITY

Overview of New Requirements on Citizenship Documentation for Medicaid Benefits

On July 06, 2006 HHS placed on display at the Federal Register interim final regulations to be published July 12, 2006 for states to implement a new requirement. Effective July 1, persons applying for Medicaid must document their citizenship. The new documentation requirement is outlined in Section 6036 of the Deficit Reduction Act of 2005 (DRA) and is intended to ensure that Medicaid beneficiaries are citizens without imposing undue burdens on them or the states.

Recognizing the diversity of beneficiaries served by Medicaid, the regulations provide for a range of ways that citizenship status and personal identity may be documented. Because seniors and people with a disability who receive Medicare or Supplemental Security Income already have met certain documentation requirements, the regulation does not include new documentation requirements for these groups. This exemption reflects the special treatment of these groups in the statute, implying that they should be exempt from additional documentation requirements.

For all other individuals, in addition to the range of documents outlined in the regulation, states can also document citizenship and identity through data matches with government agencies. Additional types of documentation, such as school records, may also be used for identity of children. If other forms of documentation cannot be obtained, documentation may be provided by a written affidavit, signed under penalty of perjury, from two citizens, one of whom cannot be related to the applicant or recipient, who have specific knowledge of a beneficiary's citizenship status. Applicants or recipients must also submit an affidavit stating why the documents are not available. Affidavits are only expected to be used in rare circumstances. Current beneficiaries should not lose benefits during the period in which they are undertaking a good-faith effort to provide documentation to the state.

The interim final regulations match most of the guidance that was provided to State Medicaid Directors on June 9, 2006. Comments from the public will be accepted through August 11, 2006.

American citizenship or legal immigration status has always been a requirement for Medicaid eligibility; however, beneficiaries could assert their status by checking a box on a form. The DRA requires actual documentary evidence before Medicaid eligibility is granted or renewed beginning July 1, 2006. The provision requires that a person provide both evidence of citizenship and identity. In many cases, a single document will be enough to establish both citizenship and identity such as a passport. However, if secondary documentation is used, such as a birth certificate, the individual will also need evidence of their identity. Once citizenship has been proven, it need not be documented again with each eligibility renewal unless later evidence raises a question.

Guidance Details

Documentary Evidence

The law specifies certain forms of acceptable evidence of citizenship and identity, and provides for the use of additional forms of documentation as established by federal regulations, when appropriate. Today's regulations outline acceptable additional forms of documentary evidence.

The regulations adopt a hierarchical approach already in use by other programs in which documentary evidence of citizenship and identity is sought first from a list of primary documents. If an applicant or recipient presents evidence from the listing of primary documentation, no other information would be required. When such evidence cannot be obtained, the state will look to the next tier of acceptable forms of evidence.

In particular, the following forms of documentation may be accepted:

- Acceptable primary documentation for identification and citizenship:
 - A U.S. Passport.
 - A Certificate of Naturalization (DHS Forms N-550 or N-570).
 - A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561).
- Acceptable secondary documentation to verify proof of citizenship (an identity document is also required):
 - A U.S. birth certificate (data matches with a State Vital Statistics Agency may be used in place of a birth certificate, at the State's option).
 - A Certification of birth issued by the Department of State (Form DS-1350).
 - A Report of Birth Abroad of a U.S. Citizen (Form FS-240).
 - A Certification of Birth Abroad (FS-545).
 - A U.S. Citizen I.D. card (DHS Form I-197).
 - An American Indian Card issued by the Department of Homeland Security with the classification code "KIC". (Issued by DHS to identify U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).
 - Final adoption decree

- Evidence of civil service employment by the U.S. government before June 1976,
- An official military record of service showing a U.S. place of birth
- A Northern Mariana Identification Card. (Issued by the INS to a collectively naturalized citizen of the United States who was born in the Northern Mariana Islands before November 4, 1986).
- Acceptable third level documentation to verify proof of citizenship:
 - Extract of U.S. hospital record of birth established at the time of the person's birth and was created at least 5 years before the initial application date and indicates a U.S. place of birth.
 - Life or health or other insurance record showing a U.S. place of birth and was created at least 5 years before the initial application date.
- Acceptable fourth level documentation to verify proof of citizenship:
 - Federal or State census record showing U.S. citizenship or a U.S. place of birth.
 - Institutional admission papers from a nursing home, skilled nursing care facility or other institution and was created at least 5 years before the initial application date and indicates a U.S. place of birth.
 - Medical (clinic, doctor, or hospital) record and was created at least 5 years before the initial application date and indicates a U.S. place of birth unless the application is for a child under 5.
 - Other document that was created at least 5 years before the application for Medicaid. These documents are Seneca Indian tribal census record, Bureau of Indian Affairs tribal census records of the Navaho Indians, U.S. State Vital Statistics official notification of birth registration, an amended U.S. public birth record that is amended more than 5 years after the person's birth or a statement signed by the physician or midwife who was in attendance at the time of birth.
 - Written affidavit. Written affidavits may be used only in rare circumstances when the state is unable to secure evidence of citizenship from another listing. If the documentation requirement needs to be met through affidavits, the following rules apply: There must be at least two affidavits by individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit). At least one of the individuals making the affidavit cannot be related to the applicant or recipient and cannot be the applicant or recipient. In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity. If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well. The State must obtain a separate affidavit from the applicant/recipient or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained. The affidavits must be signed under penalty of perjury.
- Acceptable documentation to verify proof of identity:
 - A current state driver's license bearing the individual's picture or State identity document also with the individual's picture.
 - Certificate of Indian Blood, or other U.S. American Indian/Alaska Native tribal document.

ANCSA
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here



- A school identification card with a photograph of the individual.
- U.S. military card or draft record.
- Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.
- Military dependent's identification card.
- Native American Tribal document.
- U.S. Coast Guard Merchant Mariner card.
- Data matches with other agencies can be used to verify identity such as those with Federal or State governmental, public assistance, law enforcement, or corrections agencies, at the State's option. Such agencies may include food stamps, child support, corrections, including juvenile detention, motor vehicle, or child protective services.
- For Children under 16, an Affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

Driver's License Documentation to Establish Both Citizenship and Identification

Section 6036(a)(3)(B)(iv) of the DRA permits the use of a valid state-issued driver's license or other identity document described in Section 274A(b)(1)(D) of the Immigration and Nationality Act, but only if the state issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a Social Security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen. CMS is not currently aware that any state has these processes in place at this time. Therefore, until such time that a state has this requirement in place, this documentation may not be accepted.

Reasonable Opportunity

At the time of application or redetermination, the state must give an applicant or recipient a "reasonable opportunity" to present documents establishing U.S. citizenship or nationality and identity. The guidance advises:

- An individual who is already enrolled in Medicaid will remain eligible if he/she continuously shows a good faith effort to present satisfactory evidence of citizenship and identity.
- Applicants for Medicaid should not be made eligible until they have presented the required evidence.
- If the applicant or recipient tries in good faith to present satisfactory documentation, but is unable because the documents are not available, the state should assist the individual in securing these documents.
- If the applicant or recipient cannot obtain the necessary documents and needs assistance (i.e., is homeless, mentally impaired, or physically incapacitated), and lacks someone who can act on their behalf, then the state must assist the applicant or recipient to document U.S. citizenship and identity.

Compliance

As with other Medicaid program requirements, states must implement an effective process for assuring compliance with documentation of citizenship in order to obtain federal matching funds, and effective compliance will be part of Medicaid program integrity monitoring. In particular, audit processes will track the extent to which states rely on more indirect (third and fourth level) categories of documentation, and on affidavits, with the expectation that such categories would be used relatively infrequently and less over time, as state processes and beneficiary documentation improves.

States will receive the normal 50 percent match for administrative expenses related to implementation of the new law.

Outreach

The Centers for Medicare & Medicaid Services, the agency that oversees the Medicaid program, has launched an outreach program to educate states and interested groups about the new requirement. These outreach efforts include presentations to interested groups and tools that states may use to help applicants and recipients understand the requirement. The tools include talking points, questions and answers, a sample press release, drop-in article and lists of acceptable documents. The agency will also work closely with states to help them reach out to their current Medicaid enrollees and the general public outlining the new rules. CMS has already begun to hold training sessions with state officials including regular telephone consultations during which the agency provides whatever technical assistance the states request. CMS has also provided speakers at national conferences of interested groups such as tribal organizations and advocacy groups for minority communities.

For more information about the citizenship documentation requirement, go to:

http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp#TopOfPage

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-CITE-

43 USC Sec. 1604

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS

CHAPTER 33 - **ALASKA NATIVE** CLAIMS SETTLEMENT

-HEAD-

Sec. 1604. Enrollment

-STATUTE-

(a) Eligible **Natives**; finality of decision

The Secretary shall prepare within two years from December 18, 1971, a **roll** of all **Natives** who were born on or before, and who are living on, December 18, 1971. Any decision of the Secretary regarding eligibility for enrollment shall be final.

(b) Residence; order of priority in enrollment of **Natives** not permanent residents; regional family or hardship enrollment

The **roll** prepared by the Secretary shall show for each **Native**, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c) of this section, a **Native** eligible for enrollment who is not, when the **roll** is prepared, a permanent resident of one of the twelve regions established pursuant to section 1606(a) of this title shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to -

(1) the region where the **Native** resided on the 1970 census date if he had resided there without substantial interruption for two

or more years;

(2) the region where the **Native** previously resided for an aggregate of ten years or more;

(3) the region where the **Native** was born; and

(4) the region from which an ancestor of the **Native** came: (!1)

The Secretary may enroll a **Native** in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

(c) Election of enrollment in thirteenth region, if established, of **Native** nonresidents; dependent household members as bound

A **Native** eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for **Natives** who are non-residents of **Alaska**, if such region is established pursuant to section 1606(c) of this title. If such region is not established, he shall be enrolled as provided in subsection (b) of this section. His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.

-SOURCE-

(Pub. L. 92-203, Sec. 5, Dec. 18, 1971, 85 Stat. 690.)

-MISC1-

LATE ENROLLMENT OF OTHERWISE QUALIFIED **NATIVES**

Pub. L. 94-204, Sec. 1, Jan. 2, 1976, 89 Stat. 1145, provided:

"That (a) the Secretary of the Interior (hereinafter in this Act [enacting sections 1625 to 1627 of this title, amending sections 1615, 1616, 1620, and 1621 of this title, and enacting provisions set out as notes under sections 1604, 1605, 1611, 1613, 1618, and

1625 of this title] referred to as the 'Secretary') is directed to review those applications submitted within one year from the date of enactment of this Act [Jan. 2, 1976] by applicants who failed to meet the March 30, 1973, deadline for enrollment established by the Secretary pursuant to the **Alaska Native** Claims Settlement Act (hereinafter in this Act referred to as the 'Settlement Act') [this chapter], and to enroll those **Natives** under the provisions of that Act who would have been qualified if the March 30, 1973, deadline had been met: Provided, That **Natives** enrolled under this Act shall be issued stock under the Settlement Act together with a pro rata share of all future distributions under the Settlement Act which shall commence beginning with the next regularly scheduled distribution after the enactment of this Act: Provided further, That land entitlement of any **Native** village, **Native** group, Village Corporation, or Regional Corporation, all as defined in such Act, shall not be affected by any enrollment pursuant to this Act, and that no tribe, band, clan, group, village, community, or association not otherwise eligible for land or other benefits as a '**Native** village', as defined in such Act, shall become eligible for land or other benefits as a **Native** village because of any enrollment pursuant to this Act: Provided further, That no tribe, band, clan, village, community, or village association not otherwise eligible for land or other benefits as a '**Native** group', as defined in such Act, shall become eligible for land or other benefits as a **Native** group because of any enrollment pursuant to this Act: And provided further, That any '**Native** group', as defined in such Act, shall not lose its status as a **Native** group because of any enrollment pursuant to this Act.

"(b) The Secretary is authorized to poll individual **Natives** properly enrolled to **Native** villages or **Native** groups which are not

recognized as Village Corporations under section 11 of the Settlement Act [section 1610 of this title] and which are included within the boundaries of former reserves the Village Corporation or Corporations of which elected to acquire title to the surface and subsurface estate of said reserves pursuant to subsection 19(b) of the Settlement Act [section 1618(b) of this title]. The Secretary may allow these individuals the option to enroll to a Village Corporation which elected the surface and subsurface title under section 19(b) or remain enrolled to the Regional Corporation in which the village or group is located on an at-large basis: Provided, That nothing in this subsection shall affect existing entitlement to land of any Regional Corporation pursuant to section 12(b) or 14(h)(8) of the Settlement Act [section 1611(b) or 1613(h)(8) of this title].

"(c) In those instances where, on the **roll** prepared under section 5 of the Settlement Act [this section], there were enrolled as residents of a place on April 1, 1970, a sufficient number of **Natives** required for a **Native** village or **Native** group, as the case may be, and it is subsequently and finally determined that such place is not eligible for land benefits under the Act on grounds which include a lack of sufficient number of residents, the Secretary shall; in accordance with the criteria for residence applied in the final determination of eligibility, redetermine the place of residence on April 1, 1970, of each **Native** enrolled to such place, and the place of residence as so redetermined shall be such **Native's** place of residence on April 1, 1970, for all purposes under the Settlement Act: Provided, That each **Native** whose place of residence on April 1, 1970, is changed by reason of this subsection shall be issued stock in the **Native** corporation or corporations in which such redetermination entitles him to membership and all stock

issued to such **Native** by any **Native** Corporation in which he is no longer eligible for membership shall be deemed canceled: Provided further, That no redistribution of funds made by any **Native** Corporation on the basis of prior places of residence shall be affected: Provided further, That land entitlements of any **Native** village, **Native** group, Village Corporation, Regional Corporation, or corporations organized by **Natives** residing in Sitka, Kenai, Juneau, or Kodiak, all as defined in said Act, shall not be affected by any determination of residence made pursuant to this subsection, and no tribe, band, clan, group, village community, or association not otherwise eligible for land or other benefits as a '**Native** group' as defined in said Act, shall become eligible for land or other benefits as a **Native** group because of any redetermination of residence pursuant to this subsection: Provided further, That any distribution of funds from the **Alaska Native** Fund pursuant to subsection (c) of section 6 of the Settlement Act [section 1605(c) of this title] made by the Secretary or his delegate prior to any redetermination of residency shall not be affected by the provisions of this subsection. Each **Native** whose place of residence is subject to redetermination as provided in this subsection shall be given notice and an opportunity for hearing in connection with such redetermination as shall any **Native** Corporation which it appears may gain or lose stockholders by reason of such redetermination of residence."

ESTABLISHMENT BY COURT ORDER OF 13TH REGIONAL CORPORATION FOR
BENEFIT OF NONPERMANENT RESIDENTS; LAND SELECTION ENTITLEMENTS;
PREVIOUSLY ISSUED STOCK; ELECTION FOR ENROLLMENT; LAND ENTITLEMENTS
OF CORPORATIONS OR **NATIVE** VILLAGE OR GROUP ELIGIBILITY

Pub. L. 94-204, Sec. 8, Jan. 2, 1976, 89 Stat. 1149, provided
that:

"(a) Notwithstanding the October 6, 1975, order of the United States District Court for the District of Columbia in the case of **Alaska Native** Association of Oregon et al. against Rogers C. B. Morton et al., Civil Action Numbered 2133-73, and **Alaska** Federation of **Natives** International, Inc., et al. against Rogers C. B. Morton, et al., Civil Action Numbered 2141-73 (- F. Supp. -) [417 F. Supp. 459], changes in enrollments of any **Alaska** Regional or Village Corporation nor any **Native** village or group eligibility.

"(b) Stock previously issued by any of the twelve Regional Corporations in **Alaska** or by Village Corporations to any **Native** who is enrolled in the thirteenth region pursuant to said order shall, upon said enrollment, be canceled by the issuing corporation without liability to it or the **Native** whose stock is so canceled: Provided, That, in the event that a **Native** enrolled in the thirteenth region pursuant to said order shall elect to re-enroll in the appropriate Regional Corporation in **Alaska** pursuant to the sixth ordering paragraph of that order, stock of such **Native** may be canceled by the Thirteenth Regional Corporation and stock may be issued to such **Native** by the appropriate Regional Corporation in **Alaska** without liability to either corporation or to the **Native**.

"(c) Whenever additional enrollment under the Settlement Act [this chapter] is permitted pursuant to this Act [enacting sections 1625 to 1627 of this title, amending sections 1615, 1616, 1620, and 1621 of this title, and enacting provisions set out as notes under sections 1604, 1605, 1611, 1613, 1618, and 1625 of this title] or any other provision of law, any **Native** enrolling under such authority who is determined not to be a permanent resident of the State of **Alaska** under criteria established pursuant to the Settlement Act shall, at the time of enrollment, elect whether to be enrolled in the thirteenth region or in the region determined

pursuant to the provisions of section 5(b) of such act [section 1604(b) of this title] and such election shall apply to all dependent members of such **Native's** household who are less than eighteen years of age on the date of such election.

"(d) No change in the final **roll** of **Natives** established by the Secretary pursuant to section 5 of the Settlement Act [section 1604 of this title] resulting from any regulation promulgated by the Secretary of the Interior providing for the disenrollment of **Natives** shall affect land entitlements of any Regional or Village Corporation or any **Native** village or group eligibility."

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1605, 1606 of this title.

-FOOTNOTE-

(!1) So in original. The colon probably should be a period.



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43 USC Sec. 1602

01/19/04

-EXPCITE-

TITLE 43 - PUBLIC LANDS

CHAPTER 33 - ALASKA NATIVE CLAIMS SETTLEMENT

-HEAD-

Sec. 1602. Definitions

-STATUTE-

For the purposes of this chapter, the term -

(a) "Secretary" means the Secretary of the Interior;

(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla (!1) Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census

enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

(d) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

(e) "Public lands" means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

(f) "State" means the State of Alaska;

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this chapter;

(h) "Person" means any individual, group, firm, corporation, association, or partnership;

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this chapter. (!2)

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 1605 of this title;

(l) "Planning Commission" means the Joint Federal-State Land Use Planning Commission established by section 1616 of this title;

(m) "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Group Corporation;

(n) "Group Corporation" means an Alaska Native Group Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of a Native group in accordance with the terms of this chapter;

(o) "Urban Corporation" means an Alaska Native Urban Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this chapter;

(p) "Settlement Common Stock" means stock of a Native Corporation issued pursuant to section 1606(g)(1) of this title that carries with it the rights and restrictions listed in section 1606(h)(1) of this title;

(q) "Replacement Common Stock" means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to section 1606(h)(3) of this title;

(r) "Descendant of a Native" means -

(1) a lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

(2) an adoptee of a Native or of a descendant of a Native,
whose adoption -

(A) occurred prior to his or her majority, and

(B) is recognized at law or in equity;

(s) "Alienability restrictions" means the restrictions imposed on
Settlement Common Stock by section 1606(h)(1)(B) of this title;

(t) "Settlement Trust" means a trust -

(1) established and registered by a Native Corporation under
the laws of the State of Alaska pursuant to a resolution of its
shareholders, and

(2) operated for the benefit of shareholders, Natives, and
descendants of Natives, in accordance with section 1629e of this
title and the laws of the State of Alaska.

-SOURCE-

(Pub. L. 92-203, Sec. 3, Dec. 18, 1971, 85 Stat. 689; Pub. L.
96-487, title XIV, Sec. 1401(d), Dec. 2, 1980, 94 Stat. 2492; Pub.
L. 100-241, Sec. 3, Feb. 3, 1988, 101 Stat. 1789; Pub. L. 106-194,
Sec. 3, May 2, 2000, 114 Stat. 243.)

-REFTEXT-

REFERENCES IN TEXT

Section 6(g) of the Alaska Statehood Act, as amended, referred to
in subsec. (e), is section 6(g) of Pub. L. 85-508, July 7, 1958, 72
Stat. 339, which is set out as a note preceding section 21 of Title
48, Territories and Insular Possessions.

-MISC1-

AMENDMENTS

2000 - Subsec. (t)(2). Pub. L. 106-194 substituted "benefit of
shareholders, Natives, and descendants of Natives," for "sole
benefit of the holders of the corporation's Settlement Common
Stock".

1988 - Subsec. (h). Pub. L. 100-241, Sec. 3(1), inserted "group," after "individual,".

Subsec. (k). Pub. L. 100-241, Sec. 3(2), struck out "and" at end.

Subsec. (l). Pub. L. 100-241, Sec. 3(3), substituted semicolon for period.

Subsec. (m). Pub. L. 100-241, Sec. 3(4), substituted "Group Corporation;" for "Native Group."

Subsecs. (n) to (t). Pub. L. 100-241, Sec. 3(5), added subsecs. (n) to (t).

1980 - Subsec. (m). Pub. L. 96-487 added subsec. (m).

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1615, 1626, 1641 of this title; title 15 section 632; title 16 sections 470w, 620e, 1722, 3102; title 20 sections 2326, 7546; title 25 sections 13f, 472a, 1903, 2012, 3103; title 26 section 646; title 29 section 2911; title 38 section 3764; title 42 sections 300f, 6949a, 9832, 10101, 12511, 12584; title 45 section 1202.

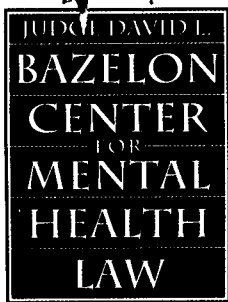
-FOOTNOTE-

(!1) So in original. Probably should be "Metlakatla".

(!2) So in original. The period probably should be a semicolon.



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July 19, 2006

AUG - 1 2006

Mark B. McClellan

Administrator

Centers for Medicare & Medicaid Services

Department of Health and Human Services

Attention: CMS-2257-IRC

PO Box 8017

Baltimore, MD 21244-8017

Dear Mr. McClellan:

Re: CMS-2257-IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of the Bazelon Center for Mental Health Law. The Bazelon Center is a legal advocacy organization, based in Washington D.C., concerned with the rights of persons with mental illness.

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.

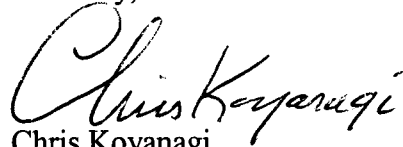
10. Rules apply across states (§435.407(h) and §436.407(h))

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,

A handwritten signature in cursive script that reads "Chris Koyanagi".

Chris Koyanagi
Policy Director



Mitchell H. Katz, MD
Director of Health

AUG - 1 2006

July 21, 2006

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

Re: File Code CMS-2257-IFC

To Whom it May Concern:

The San Francisco Department of Public Health (SFDPH) submits this comment letter in response to the CMS interim final rule issued on July 6 regarding Section 6036 of the Deficit Reduction Act (DRA). According to Section 6036 of the DRA, all U.S. citizens applying for Medicaid (known as Medi-Cal in California) or renewing eligibility, must prove their citizenship using appropriate documentation. SFDPH appreciates the opportunity to comment on the interim final rule on this topic, and hopes that these comments and recommendations will be taken into account before the final rule is produced.

SFDPH provides health care in San Francisco to a significant number of Medi-Cal beneficiaries. San Francisco General Hospital (SFGH), the publicly-owned long-term care facility Laguna Honda Hospital (LHH), and the primary care clinics in SFDPH's Community Health Network comprise San Francisco's safety net, and Medicaid is their primary source of income. As of October 2005, there were 122,873 Medi-Cal enrollees in San Francisco. SFGH served 39,942 Medi-Cal enrolled patients in 2005, representing 41 percent of all patients served. The vast majority of patients residing at LHH at any given time are enrolled in Medi-Cal (over 90%), currently representing approximately 963 patients. Any changes to Medicaid that limit or delay enrollment for eligible U.S. citizens and legal immigrants threatens the financial viability of these institutions, negatively impacting access to care for the vulnerable populations accessing care through the public safety net.

Proof-of-Citizenship Documentation

The interim final rule lists acceptable documents that Medi-Cal beneficiaries and recipients are required to produce as proof of citizenship. The list is a hierarchy of documentation, including 4 tiers of proof of citizenship and 1 tier of proof of identity. States are instructed to ask for documents at the highest level of reliability before accepting a document of lesser reliability. Individuals are given a "reasonable opportunity period" to secure the documents. This means that applicants unable to obtain documents in the higher tiers could take months until being allowed to produce acceptable and available documentation in one of the lower tiers. This hierarchy of documents is rigid and complex and will be burdensome for states to implement and difficult for applicants and beneficiaries to understand.

SFDPH recommends that the final rule grant states more flexibility and discretion in implementing the DRA requirements by eliminating or simplifying the "tiered" approach to citizenship documentation.

Proof of Citizenship Documentation as a Requirement for Eligibility

The interim final rule requires that applicants remain ineligible for Medicaid while beneficiaries retain eligibility throughout this documentation process. According to Section 6036 of the DRA, the proof of citizenship requirement was not a condition of eligibility. As described in the preceding section, this process could take a significant amount of time especially for those that have to rely on the lower tiers of documentation. As individuals are increasingly encouraged for the good of their own health and because it makes sense financially, to seek preventive care and because health coverage makes this possible, it does not make sense to delay health coverage while people obtain adequate paperwork to prove citizenship and identity.

SFDPH recommends that the proof of citizenship requirement be separated from eligibility, allowing both current beneficiaries and new enrollees who are eligible for Medicaid be enrolled while these documents are pending during the "reasonable opportunity period."

Electronic Data Matches

SFDPH was pleased to see that counties may verify citizenship by using SDX or state vital statistics agencies in place of a birth certificate for Medicaid applicants or recipients. However, SFDPH is concerned that this does not cover the range of important data that is now, or will be in the future, available. SFDPH believes that county agencies should do everything in their power to access information on behalf of applicants and recipients instead of requiring paper documents, especially in this age of increasing technology. For example, since driver's licenses are acceptable forms of documentation in both tier one (for proof of citizenship when the state requires proof of citizenship before the driver's license is issued) and tier five (for proof of identity), Medicaid agencies should be able to develop a way to work with Departments of Motor Vehicles to share information. Technological solutions are more accurate and less costly than relying on a paper-based system.

SFDPH recommends that states and localities be allowed, and even encouraged, to electronically document citizenship as a first step in the process, not a last case scenario. In addition, SFDPH recommends that states are encouraged to develop additional data matches with state and county agencies to verify citizenship.

Requiring Documentation for Children Receiving Title IV-E Benefits

The interim final rule requires Title IV-E children receiving Medicaid to have proof of citizenship documents in their Medicaid file. As noted by the Center on Budget and Policy Priorities, this requirement ignores the "longstanding linkage between Medicaid and foster care and forces state Medicaid agencies to duplicate the work of state child welfare agencies by documenting the citizenship of children whose citizenship (or legal status) has already been verified." SFDPH recommends that these children be exempted from the proof of citizenship requirements.

SFDPH recommends that CMS allow states discretion to broaden the list of public benefit programs whose beneficiaries are exempt from the DRA's citizenship verification requirements, including at least Title IV-E beneficiaries (foster children).

Original Documents or Copies Certified by the Issuing Agency

Providing original or certified documents is not practical, and would force states to spend more time and resources obtaining documents from government agencies and encourage families to part with personal records best kept in their own possession.

SFDPH recommends that CMS permit states to accept copies of citizenship documents.

Providing Assistance in Securing Documentation

The interim final rule indicates that states “should assist” applicants and beneficiaries in obtaining citizenship documents. In the case of special populations (including homeless, mentally impaired and other individuals), states “must assist.” In the case of special populations, states are required to assist when these individuals have no one to act for them and are not able to locate the documentation.

SFDPH recommends that CMS encourage agencies to assist all individuals in obtaining documentation and also require them to assist vulnerable populations at the beginning of the application process (not after the individuals have themselves tried and failed).

Outreach and Other Funding/Billing Issues

This extra burden of this new requirement will be felt among enrollees, current beneficiaries and Medicaid enrollment agencies. Because of this, educational efforts will be important as will reimbursement for these efforts and the work done by eligibility workers to obtain proper documentation. While the State Medicaid Directors Letter (SMDL), distributed by CMS on June 9, encourages states to educate beneficiaries and potential applicants about the changes, there are many issues still unresolved, making accurate educational efforts difficult at this time. The SMDL only mentions an outreach plan and the availability of federal financial participation for state administrative costs, with no detail about either issue.

SFDPH recommends that CMS allocate funds to states for outreach, education and application assistance related to DRA implementation.

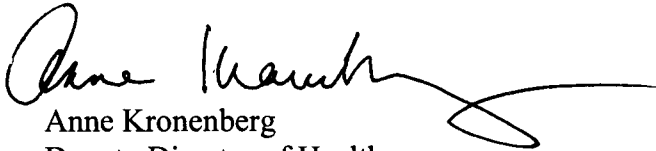
Length of Time to Produce Documents

The interim final rule estimates that it will take individuals ten minutes to acquire and provide to the state acceptable documentation and that it will take the states five minutes to obtain acceptable documentation, verify citizenship and maintain current records on each individual. This appears to assume that applicants and beneficiaries will have both proof of citizenship from the first tier and proof of citizenship on hand when asked. The Center on Budget and Policy Priorities reported that approximately 8 percent of low-income adults and 10 percent of families with children do not have a birth certificate or passport at home. A significant portion of applicants and beneficiaries will take much longer than 10 minutes to secure proper documentation. For example, obtaining a birth certificate by mail from SFDPH’s vital records office can take up to 60 days.

SFDPH recommends that CMS review the timeline offered in the interim final rule, taking into account that quite a few families and adults will have to search for acceptable documents.

Thank you for the opportunity to comment on the interim final rule. Should you have any questions regarding our comments, please contact Frances Culp, Senior Health Program Planner, at (415) 554-2795 or frances.culp@sfdph.org.

Sincerely,



Anne Kronenberg
Deputy Director of Health
Director of Policy and Planning

CC: Trent Rhorer, Director, San Francisco Department of Human Services
Julian Potter, Dir., Public Policy, City and County of San Francisco
Amiee Albertson, Dir. of Intergovernmental Affairs, City and County of San Francisco
Leland Yee, California State Assembly
Mark Leno, California State Assembly
Carole Migden, California State Senate
Jackie Speier, California State Senate
Dianne Feinstein, United States Senate
Tom Lantos, United States House of Representatives
Nancy Pelosi, United States House of Representatives



AUG - 1 2006

801 Roeder Road, Suite 650
Silver Spring, MD 20910
(301) 563.6001 Fax: (301) 563.6012

8

NATIONAL ASSOCIATION FOR PUBLIC HEALTH STATISTICS AND INFORMATION SYSTEMS

July 26, 2006

President
BARRY NANGLE, Ph. D.
Utah

President Elect
ISABELLE HORON, Dr. P.H.
Maryland

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Past President
STEVEN SCHWARTZ, Ph. D.
New York City

Executive Director
GARLAND LAND
NAPHSIS

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

To Whom It May Concern:

The National Association for Public Health Statistics and Information Systems (NAPHSIS) represents the 57 vital records jurisdictions that record and issue birth records. We wish to comment on the Medicaid Program; Citizenship Documentation Requirements, specifically the choice of wording in two instances.

In Section 435.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... and Section 436.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... the regulation states the birth record "must have been issued before the person was five years of age". As stated, no person could present a birth record unless the vital records office issued the certified copy before the person was five years old. We believe the intent of the regulation was that the birth record was recorded by the vital records office before the person was five years old, and therefore the word "issued" should be replaced with the word "recorded". This same sentence appears in the earlier section II. *Provisions of the Interim Final Rule with Comment Period*, Secondary Evidence of Citizenship, and the word "recorded" appears in place of "issued", as we believe it should.

In Section 435.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... and Section 436.407 *Types of acceptable documentary evidence of citizenship*. (b) Secondary evidence of citizenship, (1) A U.S. public birth certificate showing... the regulation states, "An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship." Similarly, in Section 435.407 *Types of acceptable documentary evidence of citizenship*. (d) Fourth level evidence of citizenship, (2) One of the following..., (iv) and Section 436.407 *Types of acceptable documentary evidence of citizenship*. (d) Fourth level evidence of citizenship, (2) One of the following..., (iv) the regulation states, "An amended U.S. public birth record that is amended more than 5 years after the person's birth". An "amended" record is one in which a change was made to the record by court order or some other documentary evidence based upon the items and nature of the change. We assume the intent of the regulation was to prevent acceptance of "delayed" records that were filed more than five years after birth. In each of these cases we recommend that the word "amended" be changed to "delayed".

If you have any questions about the filing or issuance of birth records feel free to call upon me.

Sincerely,

Garland Land
Executive Director

AUG - 1 2006

116 Lexington Ave.
Elmira, N.Y. 14905-1907
July 20, 2006

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

Dear Sirs: Re: CMS-2257-IFC

Thank you for the opportunity to comment on the above much discussed item.

I. Background

At the present time the issue of illegal aliens in this country is a huge one. There must be a fair way of finding who is and is not in this country legally.

Implementation Conditions/Considerations

It would be a good idea to exempt "aliens" who have previously provided satisfactory documentation.

Compliance

Yes, information on fraud should be shared among all states and agencies.

II. Provisions of the Interim Final Rule with Comment Period

There must be a provision for certain poor, elderly, persons with disabilities, minority or other persons who through no fault of their own can't provide the needed documentation.

Perhaps a state Medicaid agency determination of citizenship should be binding on other state and federal agencies to prevent duplication of effort.

Fourth Level of Evidence of Citizenship

You note that copies or notarized copies are not acceptable~what if they are all that is available?

Thank you for the opportunity to comment.

Sincerely,



David Eichenauer

DE/se

AUG - 1 2006

July 24, 2006

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

Dear Mr. McClellan:
Re: CMS-2257_IFC

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted as a concerned citizen and person who has worked in the mental health field for twenty-two years. I have seen first hand the misguided efforts of legislators, public administrators and the medical community erode the treatment for this extremely vulnerable segment of our population. I would like to add my voice to comment on the following specific areas of the Interim Final Rule.

1. The application of the rule to children in foster care (436.1004)
Children in foster care have already suffered at the hands of uncaring adults and inadequate state systems which were theoretically designed to protect and care for them. To require these abused, neglected and often abandoned children entering the foster care system to be required to provide passports in order to access necessary medical care is unconscionable. The secondary levels of "proof" required by the rule are impossible requirements where the parent is absent or uncooperative. The effect of this rule would delay the access to care for these children for an indeterminate length of time and potentially delay desperately needed physical and mental health care.
2. The application of the rule to persons needing special assistance (435.407(g) and 436.407(g))
States should be required to assist homeless persons to secure the required documentation. The struggles of homeless individuals to access medical and mental health care are enormous. These individuals have no fixed address, little or no income and little or no access to transportation. Outreach programs are limited. We find the vast majority of mentally ill have extreme difficulty finding and maintaining housing and as a result these individuals are often homeless. It is unreasonable to expect these people to travel to the state agency and pay upwards of \$45.00 for a certified copy of a birth certificate. For most, these are hurdles cannot be overcome. They have no place to store or maintain these documents

even if they obtain them. This information is readily available at the state level. While the Preamble suggests that this assistance is mandatory, the homeless populations are not specifically named in the regulation.

Also, state assistance should be mandated where people have been displaced by natural or man-made disaster.

3. The lack of exemption for SSDI, OASDI, TANF and S-CHIP applicants (435.1008)

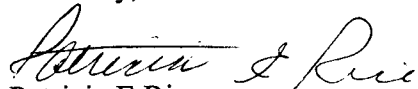
I heartily endorse and am grateful for the exemption which states that SSI and Medicare applicants will not be subject to these requirements. The premise that these individuals have already provided the necessary documentation should also apply to those who are in the waiting periods for Medicare or disability payments. All children and adults who participate in federal programs where citizenship has already been proven should not be required to fulfill these requirements again.

4. Evidence of identity (435.407(e) and 436.407(e))

The ruling has clearly intended that state systems coordinate and cross match systems to make compliance with this portion of the DRA as easy as possible. However, the omission of state mental health authorities in the cross-match process is yet another example of the woeful neglect of this vulnerable population by the public health system. These individuals have considerable functional barriers to adhering to the requirements of this ruling. State mental health agencies and community providers have medical records and other data bases that enable confirmation of identity for the people they serve.

Thank you for the opportunity to comment on the Interim Final Ruling. I am appreciative of the work that has been done to implement this portion of the DRA. I particularly endorse CMS clarifying that this process only need to gone through once. Also, that CMS has clarified that people need not come in person to prove their citizenship. This is often a hurdle the seriously mentally ill cannot overcome.

Sincerely,



Patricia E Rice
107 South Division
Spokane, WA 99202

AUG - 1 2006



Office of the Governor
Pueblo of Tesuque
Route 42 Box 360-T
Santa Fe, New Mexico 87506

July 26, 2006

Via: U.S. Mail

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

To whom it may concern:

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

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

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

As Sally Smith, Chairman of the NIHB, wrote in a letter to Congressional leaders on this issue, Tribal governments find it "rather ironic that Native Americans, in the true sense of

the word, must prove their U.S. citizenship through documentation other than through their Tribal documentation. This same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native (AI/AN) Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution.”

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

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

The interim regulations, at 42 C.F.R. 437.407(e)(6) and (e)(8)(vi), recognize Native American tribal documents as proof of identity. Section 437.407(e)(9) recognizes CDIBs

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

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

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

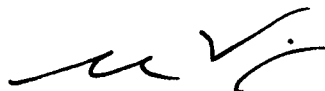
I would urge CMS to amend the interim regulations to address tribal concerns by recognizing Tribal enrollment cards as Tier 1 documents, or in the alternative, Tier 2 documents. As explained above, with very few exceptions, Tribes issue enrollment cards

or CDIBs to their members after a thorough documentation process that verifies the individual is a U.S. citizen or a descendant from a U.S. citizen. To the extent, the Secretary has concerns that some Tribes might issue enrollment cards or CDIBs to non-U.S. citizens, the exceptions under the PRWORA should address these concerns.

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

Thank you for your thoughtful consideration of my comments.

Sincerely,



Gil Vigil
Governor

Cc: U.S. Senator Pete Domenici
U.S. Senator Jeff Bingaman
U.S. Representative Tom Udall
U.S. Representative Heather Wilson
U.S. Representative Steve Pearce
NIHB



California Medical Association
Established 1856

July 28, 2006

AUG - 1 2006

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

RE: Medicaid Program; Citizenship Documentation Requirements

Dear Mark McClellan, MD:

On behalf of the California Medical Association (CMA) and its member physicians, I am writing to submit comments on your interim final rules for the new Medicaid Program's Citizenship Documentation Requirements. Specifically, the Deficit Reduction Act amends Medicaid to now require that all applicants and recipients document their citizenship in order to receive Medicaid. We are very concerned that the implementation of this requirement will result in many otherwise eligible American citizens failing to obtain Medicaid benefits.

Although we appreciate the Centers for Medicare and Medicaid Services (CMS) attempt to be as flexible as possible with regards to the documentation necessary to fulfill this requirement (i.e., offering the multiple tiers of documentation) we continue to have ongoing concerns with the proposed regulations that we urge you to address.

We applaud your recent decision to exempt persons enrolled in Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI). However, **we are very concerned that this decision does not go far enough to protect the most vulnerable Americans such as those in nursing homes, those with dementia, the homeless, the mentally ill, the frail elderly not eligible for Medicare, and others without the wherewithal to obtain the necessary documentation.** We urge you to consider expanding upon the populations to be exempted from the requirement to ensure that the most needy and Americans are able to obtain the care they need.

As written, these regulations create two classes of citizens: new applicants for Medicaid and those already on Medicaid. Even if a new applicant is eligible for Medicaid except for obtaining the necessary citizenship documentation, s/he is unable to access Medicaid services. On the other hand, a similarly situated person already on Medicaid will be able to continue receiving health care benefits so long as s/he makes a "good faith effort" to

obtain the documentation. **We urge you to treat all American citizens similarly – extending the “good faith effort” criteria to all applicants.**

We are also concerned that these new regulations are untenable in the modern era of Medicaid eligibility processing in which beneficiaries in most states mail in their applications for redetermination. This procedure has not only reduced the administrative burden on states (by needing fewer onsite eligibility workers and facilities) but has also streamlined the process. Because you require original documentation, mail-in eligibility processing may no longer be viable as beneficiaries will certainly have concerns with sending in documents such as their driver's license or passport. **We urge you to accept other than original or certified copies of the necessary documentation.**

For those births paid for by Medicaid, it is absurd that States are not allowed to cross-reference their paid-claims data for proof of citizenship. If a State has paid for a person's birth, by definition, that person was born in the U.S. and is therefore a citizen. Since paid-claims data is more readily accessible by a State Medicaid agency, **we ask the CMS to include Medicaid paid claims data as proof of citizenship.**

We commend you on your efforts to implement the DRA and thank you for taking the time to consider our comments and concerns. We look forward to working with you on the implementation of this requirement. If you have any questions, please do not hesitate to contact Robin Flagg of the CMA. Robin can be reached at (415) 882-5110 or rflagg@cmanet.org.

Sincerely,

Michael Sexton, MD
President

Cc: Executive Committee
Jack Lewin, MD
Stan Rosenstein, DHS
Robin Flagg
Elizabeth McNeil

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State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Robert M. Kerr
Director

August 4, 2006

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

The State of South Carolina appreciates the opportunity to comment on the Interim Final Rule on Citizenship and Identity.

File Code CMS-2257-IFC.

The second paragraph of the Fact Sheet indicates that the regulations do “not include new documentation requirements for” Medicare and SSI beneficiaries for either citizenship or personal identity. In the “Implementation Conditions/Considerations” only the citizenship requirement is addressed. Please clarify that both citizenship and identity are satisfied.

On page 5 of the Fact Sheet, it is indicated that CMS has launched an outreach program to educate interested groups in the new requirement. Please indicate the extent of the CMS outreach program so States can avoid any duplication of effort.

In the “Implementation Conditions/Considerations” it is indicated that a Title IV-E child could declare citizenship and that the declaration must be in the file. It then goes on to indicate that “documentary evidence” of the declaration must also be in the file. A state could not verify citizenship and identity for an abandoned child placed in protective custody and a birth certificate is not created until adoption, which could be several months later. Our conclusion is that the “documentary evidence” is documentation that the client has made a declaration. Please verify that this is correct.

Also in the “Implementation Conditions/Considerations” there is discussion on deeming babies of categorically needy women. In the paragraph, it is indicated that the baby is deemed eligible and remains categorically eligible for a year “so long as the woman remains eligible as categorically needy and the child is a member of the woman’s household.” This is similar to the current regulations, yet

the existing State Plan preprint indicates "as long as the mother remains eligible **or would remain eligible if still pregnant** and the child remains in the same household as the mother." Previous Regional Office guidance also requires the one year eligibility regardless of the Mother meeting other categorically needy requirements. Please confirm that the "Implementation Conditions/Considerations" guidance is a CMS policy change that is to be implemented.

In the "Implementation Conditions/Considerations" it is indicated that there is no requirement for an applicant to appear in person yet the state is responsible to ensure the accuracy of the identity document. Please elaborate on this procedure.

Comments were solicited for additional documents to demonstrate citizenship or identity. If a Medicaid program has in its records the claim for birth which it paid, that should prove citizenship, leaving identity to be verified. The Medicaid claim documents the birthplace, date, and name.

Please also clarify "State" here. Often other state agencies as well as providers operate intake services on behalf of the State to provide better access. Their purpose is defeated when they have to send the applicant to the local DHHS to verify original documents. Please confirm that agencies acting on behalf of the State to collect eligibility applications are permitted to collect and verify through notation on the document copy, the observation of original citizenship and identity documents.

"Implementation Conditions/Considerations" indicates documentation is required again after a three year gap yet all public releases of information indicate that this is a one-time verification unless the original documentation comes into question. See also second paragraph below. Please clarify the intent.

Regulatory Impact Statement

The Regulatory Impact Statement indicates "with respect to those States that elect to review documents through the routine eligibility and redetermination process, we recognize there will be some increased burden on eligibility workers." Please outline the other alternatives to this "election" that also satisfy the requirement for verification of original documents prior to awarding or maintaining eligibility.

Provisions of the Interim Final Rule with Comment Period

Section 435.407(d)(5) and (f) indicate use of affidavits as acceptable proof of citizenship and identity. Verbally, CMS has indicated that these documents do not require notary signatures, which has led to many states using existing applications with minor revision to capture the statement under penalty of perjury, to satisfy the identity requirement. In some states, including South Carolina, the legal definition of Affidavit includes a signature of a court officer (notary). CMS' use of "Affidavit" potentially places the agency in the position of violating state law. Please consider replacing the word "Affidavit" with "Signed Statement."

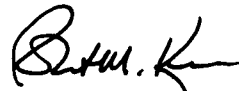
The June 9, 2006 State Medicaid Directory letter and fact sheet indicates institutional admission papers used to verify citizenship must have been created five years prior to the application. Interim rules omit this five-year requirement. Is this an oversight or a change?

Discussion of new paragraph (i) indicates (as did prior guidance) that a person will normally only prove citizenship and identity once – prior guidance and the actual regulation at 435.407(h)(5) indicating that it would only be required again should the original verification come into question and that subsequent changes in eligibility would only require a check of the database. It appears in this preamble that CMS is suggesting that the verification is good for a period equivalent to document retention. The State would like CMS to confirm that an electronic indicator from a prior period regardless of time elapsed is adequate documentation that original documents were reviewed, even though they a copy may not be available due to record retention guidelines.

Section 435.407(e) does not include the clinic, doctor or hospital record showing date of birth as source of identity proof for children that was included in Medicaid Fact Sheet June 9, 2006. Please clarify whether their omission in the interim rules was an oversight. Secondly, please clarify use of school records. Must they show date and place of birth and parent's name as indicated earlier? If not, does a report card suffice?

Should you have any questions regarding these comments, please contact Gary Ries at 803-898-2851.

Sincerely,



Robert M. Kerr
Director

RMK/gr

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August 1, 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)

To Whom It May Concern:

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.

As a practicing pediatrician in a mainly Hispanic area, I am 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. Highlight below are four areas that CMS should modify in the final rule.

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

Under the DRA, documentation of citizenship 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 is 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.

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

2. 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. The rule does not include roughly one million children in foster care, including those receiving federal foster care assistance under Title IV-E. This program already requires state child welfare agencies to follow the Department of Justice interim guidelines on verification of citizenship thus requiring unnecessary duplication of state agency efforts and placing foster care children at risk of delayed Medicaid. When Medicaid eligibility for children in foster care is delayed, foster

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NEW YORK STATE CITIZENS' COALITION FOR CHILDREN, INC.

August 1, 2006

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

To Whom It May Concern:

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

The NYS Citizens' Coalition for Children is an organization comprised of over 140 adoptive and foster parent groups in every region of New York State. We are united in our belief in the right of *every* child to a permanent, loving family.

We strongly urge you to exempt foster children receiving Title IV-E assistance from the Medicaid citizenship documentation requirement. These foster children have *already* documented citizenship or they would not have qualified for Title IV-E in the first place. They should not have to do it all over again in order to receive Medicaid coverage.

Many of our nation's foster children have urgent health needs that require speedy access to Medicaid coverage. A requirement to duplicate citizenship documentation will result in delays that can have serious negative consequences.

In the interests of efficiency, common sense, and, especially, to support some of our most vulnerable children, please exempt from the Medicaid citizenship documentation requirement foster children who receive Title IV-E assistance.

Sincerely,

Judith Ashton
Executive Director



16 [redacted] [redacted]
Medical Services
(701) 328-2321
Toll Free 1-800-755-2604
Fax (701) 328-1544
TTY (701) 328-3480
Provider Relations (701) 328-4030

John Hoeven, Governor
Carol K. Olson, Executive Director

August 4, 2006

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

Attention: CMS-2257-IFC

Dear Melissa:

Enclosed please find North Dakota Medicaid's comments on the Interim Final Rule regarding the new citizenship and identity verification requirements as authorized in the Deficit Reduction Act of 2005.

Sincerely,

Curtis Volesky,
Medicaid Eligibility Policy Administrator

Enclosure (1)

"Provisions of the Interim Final Rule
with Comment Period"

COMMENTS ON
Federal Register Vol. 71, No. 133
Wednesday, July 12, 2006
Rules and Regulations

File code CMS-2257-IFC

Implementation Conditions/Considerations

Page 39216:

1. In the second paragraph of this section, it states: "Not all States provide Medicaid to individuals who are SSI recipients. In those States, the exemption will not provide relief to SSI recipients. However, the Social Security Administration (SSA) maintains a database, known as the State Data Exchange (SDX) which contains the needed information to identify whether an individual has already been found to be a citizen by the SSA and the States have the option to cross match with this database to meet these requirements without using the hierarchical process for obtaining documents discussed in the regulation."

We are a 209-B state. We feel this puts an unfair burden on our SSI recipients, particularly those who move here from a 1634 state. Sometimes it takes several months for the SDX to catch up with the move. All SSI recipients should be treated the same, regardless which state they live in. SSA already has established citizenship or alienage, and identity, for recipients approved for SSI, and it should not matter in which type of state they live.

2. In the 3rd to the last paragraph it states, "We will also permit States to accept documentary evidence without requiring the applicant or recipient to appear in person. However, States may accept original documents in person, by mail, or by a guardian or authorized representative."

"Although States may continue to use application procedures that do not include an interview with the applicant, the State must assure that the information it receives about the identity or citizenship of the applicant or recipient is accurate."

This puts an unfair burden on the Medicaid agency and is illogical. How can we determine if the document submitted by an individual is truly that individual without seeing him or her face to face?

Citizenship and Alienage (435.406) and

We feel the time estimates are very unrealistic. An estimate of 10 minutes for an individual to acquire and provide the information to the State at this point is inadequate--particularly in a large state with a large rural population. Travel time alone to fulfill these requirements will far exceed these estimates, let alone searching, requesting new certified documents, waiting for said documents. We feel a minimum of 30 minutes per individual would be more realistic.

The estimate of 5 minutes for each state to request, obtain, verify, and record these verifications is also inadequate. Many individuals will need assistance and follow up. Since we haven't required this level of documentation previously, many recipients have not kept this level of documentation and do not understand the request. Then workers will need to review the documents, duplicate them and enter them in their case files. We feel a minimum of 20 minutes per individual would be more realistic, especially at the outset as many workers have had to spend a lot of time themselves understanding what may and may not be accepted.

435.407. Types of acceptable documentary evidence of citizenship.

Our understanding is that the citizenship verification requirements were taken from SSA POMS. In reviewing POMS: RM 00203.310, SSA treats many of what is classified in the DRA as secondary verification (such as US public birth record, forms DS-1350, FS-240, FS-545, I-179, I-197, I-872, I-873, as primary verifications. Thus, we are treating certain populations (SSI recipients) differently from other recipients as the DRA requirements are more restrictive than POMS.

Also, in POMS, under Secondary Evidence of U. S. Citizenship:

- A religious record recorded in the U. S. within 3 months of birth, showing a U. S. place of birth and either a date of birth or the individual's age when the record was made is an allowable verification, but it is not even mentioned in the DRA; and
- An early school record showing a U. S. place of birth, the date of admission to school, the date of birth, or the age of the individual at the

time the record was made, U. S. places of birth and the the names of the parents.

Again, we are treating the SSI population differently from the other Medicaid population.

(d) Fourth level evidence of citizenship

(3) Institutional admission papers from a nursing facility, skilled care facility or other institution. "Admission papers generally show biographical information for the person including place of birth: the record can be used to establish U. S. citizenship when it shows a U. S. place of birth."

Even though the above regulation does not include it, per phone call with CMS, this section is also supposed to include the phrase 'created at least 5 years before the initial application date'. We are asking that this continue to be excluded, since a lot of these requirements are verbatim from the SSA policy Site Section RM 00203.310; and this phrase is not included in that Section for this requirement. Again, we would be treating different Medicaid recipients differently, if it were included for Medicaid but not for SSI recipients. Also, SSA considers this item as a level 3 verification but we have to treat it as level 4. Again, we are treating individuals differently.

(4) Medical (clinic, doctor, or hospital) record created at least 5 years before the initial application date that indicates a U. S. place of birth. SSA POMS classifies this item as a level 3 verification but we have to treat it as level 4. Again, we are treating individuals differently.

(e) Evidence of identity

(6) Native American Tribal Document - There is no explanation as to what type of document will satisfy the requirement, or what kind of information that the document must include to be acceptable.

(8) Identity documents described in 8 CFR 274a.2(b)(1)(v)(B)(1) - This item just reiterates the previous 7 items. It is a duplication and somewhat confusing.

(f) Special identity rules for children

School records may include nursery or daycare records. School records, other than student ID cards are not listed anywhere as

acceptable verifications for identity. I believe this to be based on 8 CFR 274a.2(b)(1)(v)(B)(2) "For individuals under age 18 who are unable to produce a document listed in paragraph (b)(1)(v)(B)(1) of this section, the following documents are acceptable to establish identity only:

- i. School record or report card
- ii. Clinic doctor or hospital record
- iii. Daycare or nursery school record"

Earlier information suggested that these would be allowed, now only item iii. is allowed, and with no qualifying explanation, such as what info should be on these records, do they need a photograph, etc, where if item i. were also included, the phrase "School records may include nursery or daycare records" would make sense.

Public law 109-171 Sec. 6036 Improved Enforcement of Documentation Requirements (a)(3)(D)(i) 'Any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act'. The law does not specify inclusion of some items and exclusion of others. We feel that allowing the health and school records of individuals 16 and under would be beneficial.

(h) Documentary evidence.

(3.) States may permit applicants and recipients to submit such documentary evidence without appearing in person at a Medicaid office. States may accept original documents in person, by mail, or by a guardian or authorized representative. While this helps to lessen the stress and burden on the client, doesn't this defeat the whole purpose of requiring an identity document? If you don't see the applicant, how do you know it is his/her image that the document bears? This is illogical.



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THE EPISCOPAL DIOCESE OF WESTERN MASSACHUSETTS

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THE RIGHT REVEREND GORDON P. SCRUTON
BISHOP

August 1, 2006

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

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

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

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

As Bishop of The Episcopal Diocese of Western Massachusetts, we seek to care for the poor in the second and third largest cities of New England. 80% of the school children in Springfield, MA, where our Cathedral is located, live below the poverty level. 50% of the school children who live in Worcester, MA also live below the poverty level. We are very concerned that poor children, adults and elders in our cities are likely to be adversely impacted by the new Citizenship Documentation ruling.

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

Positive Aspects of the Rule

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

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

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).

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. If you have any questions, please contact Rachel Klein at Families USA at (202) 628-3030.



Gordon P. Scruton
Bishop of the Episcopal Diocese of Western Mass.

^[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.

Mr. & Mrs. J. B. Arbaugh
Rt. 3, Box 108 Lower Falls
St. Albans, West Virginia 25177-9525

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

Dear Ones:

Medicaid: We are pleased that something is trying to be done about the illegal aliens breaking our laws and sponging off the American taxpayers and forcing cutbacks in Medicaid for our very own people. A good definition for sponging means one who lives upon others as a parasite or takes in anything free!

But, we are disappointed that it only is for Medicaid. It should extend to Medicare and SSI also because with their forged documents illegals can also collect money from Medicare and SSI. It is no wonder these programs have ballooned out of shape. What will we do when Baby Boomers and the millions of illegals are all on the taxpayers' backs if something is not done to stop this invasion of illegals?

As you know, there are "forged document manufacturers." Not only the manufacturers of forged documents but the advocacy groups that support these illegals and see that they get all these freebies.

What else can we say it's such a mess. Thanks to you, and we appreciate.

Colo. governor signs illegal immigration bill

THE ASSOCIATED PRESS

DENVER — Colorado Gov. Bill Owens signed a tough package of immigration laws that could force 1 million people receiving state and federal benefits to prove they are legal U.S. residents.

To handle an expected avalanche of people seeking waivers so they can keep getting government benefits while they line up the documents they need, Owens designated 17 driver's license bureaus as places to apply and opened an office at the Capitol to process their requests.

A waiver would extend the deadline for producing the required identification until March 1. The law requires government agencies to verify that adults older than 18 are entitled to the benefits.

Other bills included measures passed during a special session this month requiring employers to verify that they do not employ illegal immigrants before they can receive grants from the state Economic Development Commission.

Wanna bet these illegals will have their forged documents lined up by March 1 ??

Sincerely,

Mr. & Mrs. J. B. Arbaugh

19

PRAIRIE STATE LEGAL SERVICES, INC.

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Marge Branson
DeKalb County Pro Bono Coordinator

Marcy Heston
Kane County Pro Bono Coordinator

Se habla español

August 4, 2006

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

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

Dear CMS Medicaid Administrators:

Prairie State Legal Services, Inc. provides legal services to low-income persons throughout northern and central Illinois. On behalf of our clients who are Medicaid recipients and applicants, I am writing to comment on CMS' Interim Final Rule implementing the Deficit Reduction Act's requirements for citizenship documentation, P.L. 109-171, Section 6036.

The concern underpinning these comments is that our clients who are U.S. citizens will be denied Medicaid benefits at great health risk to them individually and at significant cost to the community as a whole because they cannot meet the documentation requirements and surmount unnecessary bureaucratic hurdles. With that concern foremost in mind, we submit the following comments.

Comments on Basic Features of the New Provisions

(1) We support CMS' determination to exempt Medicare recipients and most SSI recipients from the documentation requirements. Under the Interim Final Rule at 42 CFR §435.407(a)(5), Illinois, as a 209(b) state, will also be able to use the SDX to confirm citizenship. This option preserves needed Medicaid benefits for many of our elderly, ill and frail clients who otherwise would have tremendous difficulty meeting the documentation requirements. We encourage CMS to apply this same rationale to other groups who have proved their U.S. citizenship by documentation in establishing eligibility for other programs or benefits.



CMS

August 4, 2006

Page 2

(2) The range of acceptable documents listed in §435.407 of the Interim Final Rule is too narrow and insufficiently flexible if the goal is truly just to ensure that Medicaid benefits go to U.S. citizens rather than to cut off citizens who cannot meet the documentation requirements. We propose that CMS add to its list all of the document types accepted by the States which already require documentation of citizenship, as well as any of the documents accepted by the Social Security Administration (SSA) for purposes of issuing Social Security numbers. See SSA's Program Operations Manual System (POMS) RM 00203.310. We would particularly urge that CMS accept copies of religious records of birth or baptism showing birthplace, as accepted by all of these States and by SSA to document citizenship.

(3) The "hierarchy of reliability" approach in §436.407 with the four levels of documentation is unnecessarily bureaucratic and cumbersome for state agencies to apply. All the documents in levels 2 through 4 (expanded, we hope, with further options as described in these comments and others) should be sufficient to document citizenship, with an explanation that the affidavit option may be used if no other source is available.

(4) Based on our experience in helping clients prove their identity or citizenship, we anticipate that U.S. citizens will not have the listed documentation available and will need to use the affidavit option in §435.407(d)(5). The limitation that CMS has imposed on this option, that such affidavits must be made by persons who can prove their own citizenship, really makes the option beyond reach. The limitation is wholly unrelated to the facts that the affiants would be attesting to, specifically, that they have personal information about the person's birth in this country. CMS should delete this limitation that affiants be U.S. citizens from this option.

(5) In §§435.407(c) and (d), certain types of documents in the third and fourth levels are acceptable only if created at least 5 years before the initial Medicaid application. This 5 year requirement is unnecessarily restrictive. SSA, in obtaining documentation of citizenship for Social Security numbers, accepts these types of documents, and with narrow exceptions, does not limit them to documents that are 5 years old. See POMS RM 00203.310. CMS should adopt documentation policies that are at least as expansive as SSA's. Importantly, SSA does not foreclose alternative documentation if none of the listed types of documentation is available. *Id.* This flexibility should also be adopted in the final rule.

(6) The cost of obtaining documentation should not be born by applicants and recipients, who have very limited income. Many of our clients have **no** income when they apply for Medicaid.

(7) Copies should be accepted. CMS should not encourage states to accept original documents by mail or drop-off. It is a very ill-advised practice that could seriously harm program participants. If originals or certified copies are required, in-person delivery to state

CMS

August 4, 2006

Page 3

agencies is necessary. In Illinois, it is clear from our ongoing experience with the local offices that they do not have sufficient staff to meet with every Medicaid applicant and recipient to accept and review an original or certified copies and copy them for the agency's records. The burden on program recipients is also significant—requiring them to take off time from work to go to the local office, wait to meet with their caseworker and present the requisite documentation. Imposing an originals/certified copies only requirement wastes resources of both of states and applicants/recipients. To reduce the administrative burden on state agencies, to avoid interfering with work schedules or other self-support efforts of recipients and to reduce burden on elderly or disabled recipients, states have moved to mail-in and electronic applications and eligibility re-determinations. Consistent with this policy, recipients should be able to mail-in copies of documents in order to meet the citizenship documentation requirements.

(8) States should attempt to verify citizenship through available electronic data matches before recipients are terminated or applications denied for failure to document citizenship. Once SSA has documented citizenship through its similar and elaborate verification process for purposes of issuing a social security number (See, POMS RM 00203.310, described above), states should be able to confirm citizenship through electronic data inquiry to SSA. It makes little sense to expend scarce resources on requiring recipients/applicants and state agencies to go through the very same procedures SSA has already followed.

Comments with Respect to the “Collection of Information Requirements” Section of Supplementary Information Accompanying the Interim Final Rule.

CMS estimates it will take recipients 10 minutes to acquire and provide to the State acceptable documentary evidence and to verify their declarations of citizenship. 71 Fed. Register 39220. It estimates it will take state agencies 5 minutes to obtain acceptable documentation, verify citizenship, and maintain current records on each individual. This is a gross underestimate of the amount of time and effort it will take Medicaid recipients and state agencies to meet these documentation requirements.

Even under the ideal circumstances, where applicants and recipients understand what is asked of them and have what CMS deems the most reliable documentation readily on hand, they must travel to state agency offices, wait to meet with agency staff, meet with staff, have staff review the documentation presented, wait for copies to be made, and travel home. In Illinois, in urban and rural areas alike, this will involve expense in both money and time for travel by public transportation or by car to the state agency's offices.

Most applicants and recipients however, will have questions about the complicated requirements and will need to contact state agency staff for information or clarification. They won't have the documents readily available. The hierarchy approach compounds this problem, by seemingly directing state agencies and recipients to try to obtain documentation from the

CMS

August 4, 2006

Page 4

levels of documentation CMS deems more reliable before documentation from a lower level may be accepted. Recipients must make arrangements to find or obtain the documentation, in multiple efforts over periods of time, and then submit it as described above, absorbing many hours over many days.

To the maximum extent possible, the procedures implementing this new documentation requirement should minimize burden both on state agencies and on Medicaid recipients and applicants. Most importantly, they should not present a roadblock to the receipt of necessary medical care for persons who are U.S. citizens. Toward these ends, the "hierarchy" approach should be eliminated, the list of acceptable documents expanded, all available electronic methods of verification of citizenship should be pursued, and, as urged above, state agencies should be permitted to accept regular copies by mail.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Megan" followed by the initials "MB" in a smaller font.

Sarah Megan



RIVERSIDE - SAN BERNARDINO COUNTY
INDIAN HEALTH, INC.

11555 ½ Potrero Road, Banning CA 92220 • (951) 849-4761

August 1, 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 Recognition of Tribal Enrollment Cards as Proof of U.S. Citizenship for Medicaid purposes

Dear Centers for Medicare & Medicaid Services Official:

In response to the interim final rule published in the Federal Register on July 12, 2006, at Vol. 71, No. 133, and amending Medicaid regulations to implement the new documentation requirements of the Deficit Reduction Act requiring persons currently eligible for or applying for Medicaid to provide proof of U.S. citizenship and identity, these regulations must be adjusted to clearly recognize Tribal enrollment cards or Certificate of Degree of Indian Blood (CDIB) cards as legitimate documents of proof of U.S. citizenship. This same Tribal documentation is currently recognized by Federal agencies to confer Federal benefits by virtue of American Indian and Alaska Native Tribal governments' unique and special relationship with the U.S. dating back to, and in some circumstances prior to, the U.S. Constitution. I echo the sentiments of the Centers for Medicare and Medicaid Services (CMS) Tribal Technical Advisory Group, the National Indian Health Board and the National Congress of American Indians on this issue when I say that CMS must clearly recognize tribal enrollment cards as proof of U.S. Citizenship for Medicaid purposes.

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

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The Tribal constitutions, including membership provisions, are approved by the Federal government. Pursuant to the Snyder Act, 25 U.S.C. 13, the Federal government's scope of authority to provide Federal benefits extends to "Indians throughout the United States." Thus, with very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards to members and descendants of Federally Recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States, consistent with the definition of U.S. citizenship, see 8 U.S.C. 1401.

Since the CMS already recognizes Native American tribal documents as satisfactory documentation of identity, there is sufficient basis for CMS to clearly recognize Tribal enrollment cards as satisfactory documentation of primary evidence of both U.S. citizenship AND identity. Thus, I recommend that section 435.407 (a) be amended to include Tribal enrollment cards as Tier 1 documents.

If tribal enrollment cards are not recognized as proof of U.S. citizenship, either as a Tier 1 or Tier 2 document, AI/AN Medicaid beneficiaries might not be able to produce a birth certificate or other satisfactory documentation of place of birth. Many traditional AI/ANs were not born in a hospital and there is no record of their birth except through tribal genealogy records. By not recognizing Tribal enrollment cards as satisfactory documentation of U.S. citizenship, the CMS is creating a barrier to AI/AN participation in the Medicaid program.

Sincerely,

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

Linwood J. Killam, MHA
Chief Executive Officer

Cc: Senators Feinstein and Boxer, U.S. House of Representatives – California Delegates and Native American Caucus, National Indian Health Board National Congress of American Indians and CMS TTAG.