Hayes, Yolanda K. (CMS/OSORA)

From: Braxton, Shawn L. (CMS/OSORA)
Sent: Monday, August 07, 2006 9:54 AM
To: Johnson, Sharon B. (CMS/OSORA); Hayes, Yolanda K. (CMS/OSORA)
Subject: FW: Public Submission

61

>-----Original Message-----
>From: Whitcraft, Rosie [mailto:rosie.whitcraft@fda.hhs.gov]
>Sent: Monday, August 07, 2006 9:06 AM
>To: Jones, Martique S. (CMS/OSORA); Braxton, Shawn L. (CMS/OSORA)
>Subject: FW: Public Submission
>
>
>
>-----Original Message-----
>From: no-reply@erulemaking.net [mailto:no-reply@erulemaking.net]
>Sent: Friday, August 04, 2006 6:23 PM
>To: OC AIMS Support
>Subject: Public Submission
>
>Please Do Not Reply This Email.
>
>Public Comments on Medicare Program; Identification of
>Backward Compatible
>Version of Adopted Standard for E-Prescribing and the Medicare
>Prescription
>Drug Program (Version 8.1):========
>
>Title: Medicare Program; Identification of Backward Compatible
>Version of
>Adopted Standard for E-Prescribing and the Medicare Prescription Drug
>Program (Version 8.1)
>FR Document Number: E6-09521
>Legacy Document ID:
>RIN: 0938-A042
>Publish Date: 06/23/2006 00:00:00
>Submitter Info:
>
>
>First Name: Peter
>Last Name: Kimaru
>Category: Other Health Care Professional - HC075
>Mailing Address:
>City: Bowling Green
>Country: United States
>State or Province: KY
>Postal Code: 42101
>Organization Name: Western Kentucky University
>
>Comment Info: ================
>
>General Comment:E-prescribing will help costs - paper supplies,
>administration and storage. It will
>help reduce time in executing prescriptions and keep a better
>electronic
>trail of all
>prescription details. The rule does not set a time frame as to when
>physicians,
>pharmacies, and others in the health care industry that are
>not required to
>use the

>standards at the time they are adopted should be compliant.
>The rule needs
>to be
>uniform to all after some time, that way, you eliminate
>chances of erros.
>How will
>e-prescription training be carried out? Are all prescribing
>professionals
>expected to
>learn how to use the system? How will the rule monitor access
>to patient
>medical
>history and records? Is there an audit log to show who
>accessed what record,
>
>what they did with it and why and also provides dates and time
>stamps. What
>are
>the security controls govern who gets access to patient
>information. How are
>
>these controls monitored?
>
>
>

Selfhelp

Selfhelp Community Services, Inc.
520 Eighth Avenue
New York, NY 10018
212.971.7600

Evelyn Frank Legal Resources Program
Valerie J. Bogart, Director
Direct Dial 212.971.7693
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August 11, 2006

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

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

Dear Secretary Leavitt:

Selfhelp Community Services, Inc. was established by German émigrés in 1936 to help men, women and children fleeing Nazi persecution adapt to life in the United States. At the end of World War II, the organization began serving Holocaust survivors. With the aging of New York's large Nazi victim population, Selfhelp became increasingly expert in providing services to the elderly, and expanded its services to provide a variety of services for the aging -- home care, housing, case management -- for ethnically diverse communities throughout New York City. Selfhelp was the first organization in New York State to be certified for the express purpose of providing coordinated home health, nursing and social work services to adults and children with AIDS. Selfhelp remains the largest provider of case management services for Holocaust survivors in the country, serving 4000 each year.

Out of concern for the aging, disabled and low income population that we service, we are writing to comment on the Interim Final Rule on Citizenship Documentation, which was published in the Federal Register on July 12, and implements § 6036 of the Deficit Reduction Act of 2005 (DRA).

First, we commend CMS for its steps to reduce the harm to and burden on Medicaid applicants and recipients and state Medicaid agencies caused by the new documentation requirement. The exclusion of Medicare and most SSI recipients from the documentation requirement, the permission for states to use existing electronic databases to cross-match citizenship and identity records, and the stipulation that states must help those with special needs to obtain documentary evidence alleviates some burden. However, many

aspects of the Rule remain problematic and overly burdensome for Medicaid applicants and recipients.

Our comments below address several areas that CMS should correct in its final publication of the rule.

1. **Applicants for Medicaid benefits should receive benefits once they declare they are citizens and meet all eligibility requirements.**

The new citizenship documentation requirements set forth by the DRA are not additional criteria for Medicaid eligibility. The eligibility requirement for Medicaid remains the declaration of citizenship or qualified alien status. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted.

The language of the CMS rule prohibits states from granting coverage to eligible citizens until they obtain documents to prove citizenship. The preamble to the CMS rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. However, under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. There is nothing in the DRA that requires a delay in providing coverage. Instead the DRA specifically references § 1137(d)(1)(A) of the Social Security Act which makes the "condition of eligibility" for Medicaid "a declaration in writing under penalty of perjury" that the individual "is a citizen or national of the United States . . .." Nothing in § 6036 purports to change this eligibility requirement, as all the amendments to the Medicaid Act in that section are made to 42 U.S.C. § 1396b, which deals with financial reimbursement to the states, not individual eligibility for benefits. Indeed, 42 U.S.C. § 1396a, which does deal with individual eligibility, continues to provide that in § 1396a(b) that:

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

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

As a provider of Medicaid home care services, we are concerned that the delays caused by the new requirements will delay access to vital home care for our clients, who have AIDS and HIV diagnoses, and that ultimately we will not be reimbursed for our services. We ask that CMS conform the final rule to the DRA and clarify that establishing documentation of citizenship is a condition of federal financial participation, not eligibility.

2. **Populations in receipt of federal benefits for which their citizenship was previously demonstrated should be exempt from this rule - including People Receiving Social Security Disability Benefits.**

CMS has statutory authority under 42 U.S.C. § 1396b(x)(2)(C) to exclude groups other than those listed by Congress from the documentation requirements. We commend CMS for utilizing this authority to exempt Medicare and SSI beneficiaries from the documentation requirements. And we request that CMS also exempt certain other categories of Medicaid recipients and applicants who have already established their citizenship for other government benefit programs.

One group of particular concern to our organization, which should be added to the groups already exempted by the CMS rule, are individuals receiving Social Security Disability benefits, but who are still in their two-year waiting period for the receipt of Medicare. These individuals are factually indistinguishable from SSI and Medicare recipients, and extending the exemption to them is logical. We request that CMS include SSD recipients in the group of applicants and recipients who are exempt from providing documentation.

3. **CMS should establish a simpler and more flexible documentation and verification process**

CMS estimates that it will ordinarily take an applicant or beneficiary ten minutes "to acquire and provide" the documentation required by this rule and that it will take state Medicaid agencies five minutes "to obtain acceptable documentation, verify citizenship and maintain current records." Considering the strict guidelines the rule gives for what documents are allowed and how they may be submitted, the time estimates quoted in the Rule are grossly unrealistic.

Below we have outlined a few ways in which CMS may simplify the documentation process to achieve more timely results in documentation compliance.

a. **The Rule should require states to use electronic data matching as a first step to documenting citizenship and identity**

The Rule allows states to cross-match with the Social Security Administration's State Data Exchange (SDX) to meet documentation requirements without using the hierarchal process outlined in the rule. We ask that CMS change the rule to *require* states to use electronic data matching as a first step to documenting citizenship and identity – particularly for those who are likely to need assistance.

We also request that CMS clarify that once applicants or recipients have met the documentation requirement in one state, they will not be required to demonstrate citizenship again for Medicaid enrollment if they move to another state.

b. The Rule should allow copies of documents to be sufficient proof of citizenship

The rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. Nothing in the language of the DRA imposes this requirement on Medicaid applicants or recipients. This provision unnecessarily poses a significant burden on both individuals and state agencies.

Most Medicaid recipients have household incomes that are at or below the federal poverty level. Often the cost of obtaining certified copies of records is between $15 and $20. Eligibility for regular Medicaid for a family of three in New York allows a maximum monthly household income of $1,017. Requiring this family to expend $60 from its monthly budget to obtain a certified copy to document citizenship or identity when a plain copy would document the same facts is unjust and poor public policy.

As a practical matter, people cannot be asked to turn in their precious original passports, birth certificates, and other documents for processing by the Medicaid agency. In large bureaucracies like the New York City Medicaid program, there is no mechanism for people to bring their original documents to the Medicaid office for immediate processing -- packets must be left at the door.

We ask that CMS eliminate the requirement that only original or certified copies may satisfy documentation and that states be allowed to accept copies of documents, when there is no reason to believe the copies are counterfeit, altered or inconsistent with information previously supplied by the applicant or recipient.

c. The Rule's hierarchy imposes excessive limits on the types of evidence that may be used to document citizenship -- and no further limits should be imposed

The system of four Tiers of evidence that CMS has established, requiring use of Tiers I and II as preferred, will cause both state Medicaid agencies and Medicaid applicants to waste time unnecessarily seeking evidence of higher priority when adequate evidence is readily available. If evidence anywhere on that list - in any of the four Tiers -- is available to an applicant or beneficiary, that evidence should be accepted in the first instance.

We understand that CMS is also considering eliminating Tiers III and IV altogether, and requiring the documentation used to prove citizenship to be limited to only Tiers I and II. We strongly oppose this further limitation. Restricting documentary evidence to Tiers I and II would overly burden applicants and recipients and the state Medicaid agencies. The time for applicants and recipients to procure and submit documents from such a limited list would not only be tremendously burdensome, but the "priority" evidence will simply not be available. Without those options, the documentation rules will force even more eligible citizens out of the Medicaid program and thereby greatly increase the

personal risk to them and the financial burden on states and municipalities that will have to provide them with uncompensated care.

d. CMS should not require that medical and other documents be dated at least five years before the original Medicaid application date.

A number of documents listed in 42 C.F.R. § 435.407(c) and (d) can only be accepted as proof of citizenship if they are dated at least five years before the applicant's or beneficiary's *original* application for Medicaid. CMS has offered no explanation for this extraordinarily restrictive requirement, but its existence will inevitably result in denial of Medicaid to eligible individuals.
For example, birth records may be amended for many legitimate reasons that have no bearing on a person's citizenship at birth. To exclude all those amended less than five years before the application date will exclude valid, probative evidence. The Social Security policy as set forth in the Program Operations Manual Service (POMS) is more reasonable. While the POMS gives more weight to birth certificates amended many years ago than to those recently amended, it permits the reviewer to weigh the specific evidence, and does not require them to exclude older evidence *per se*. POMS GN 00302.510.

While § 435.407(d) does not currently require that nursing home admission papers be dated five years before application, we understand that CMS considers that omission a mistake that it plans to correct. We urge CMS not to exclude more recent admission documents. People often enter nursing homes following a stroke or other severe medical event, and are usually not on Medicaid when they are first admitted. If they then remain in the facility permanently, after the passage of years their nursing home admission papers may be the only document available that indicates their citizenship. But that document will rarely have been created five years before their original application for Medicaid. Thus, numerous people who have been in nursing homes or other institutions for many years will have no way to retain their Medicaid coverage, despite the fact that they are clearly citizens and have a nursing home record that establishes that fact.

The five year requirement imposes a limitation not authorized by the DRA, and appears therefore to violate the Administrative Procedures Act and the due process requirement of the Fifth Amendment. CMS should amend 42 C.F.R. § 435.407(c) and (d) to remove any requirement that a document must have been created at least five years before a person's initial application for Medicaid in order to qualify as verification of citizenship.

e. The Rule should include a safety net for those who cannot prove citizenship -- with more flexibility in accepting affidavits modeled after the Social Security Administration procedures

The Rule's rigidity will deny Medicaid to individuals who are simply unable to provide any of the listed documents (in Tiers I through IV), since there is no adequate safety net procedure for them. CMS should model this procedure after the more flexible Social Security Administration system for evaluating proof of citizenship and proof of age.

The only alternative provided by the rule allows states to accept an affidavit by two individuals. This alternative is so restricted that few will be able to utilize it. At least one of the two affiants must be unrelated to the applicant or recipient. Both affiants must have personal knowledge of the event establishing the applicant or recipient's claim of citizenship. Moreover, both of the affiants must themselves be citizens -- a requirement that will exclude an affidavit from an undocumented mother that her child was born at home in the U.S. The mother and other non-citizens in attendance at the birth would be the only people in a position to truthfully attest to the child's birth in the United States. There is no valid purpose in excluding this evidence. Further, even if the people doing such an affidavit are citizens, the Rule requires them to document their status as if they themselves were applying for Medicaid. Many individuals will not be able to meet these requirements.

As an organization that represents Holocaust survivors, we are distressed that the same latitude that has long been given to Holocaust survivors who often lack documentation of their date of birth, is now being denied to Medicaid applicants who, for myriad reasons ranging from homelessness to displacement after a hurricane to long-ago birth in the deep South, lack "preferred" evidence of their birth in the United States. The Social Security program policy has long been expansive in allowing affidavits to prove age where a birth certificate is not available. See, e.g. POMS § GN 00302.585 *Statements of Other Persons* ("Current statements or affidavits of age by other persons can be weak or strong evidence depending on the circumstances of the case"). The POMS gives an example of how a weak statement may become "meaningful and convincing" with questioning by an interviewer:

> By itself a statement such as, "I have always known that (the claimant) was two months younger than myself," is weak. However, through a [Field Office] contact and appropriate questioning the statement could be strengthened considerably. For example, questioning might determine that
>
> - The individual first met the claimant when they became neighbors in August 1928
> - The individual attended the claimant's birthday party later that same month, the year before the stock market crashed and the Great Depression began
> - Both he and the claimant entered fifth grade the following month
> - It was always a point of pride for him to be two months older than the claimant.

POMS § GN 00302.585. Certainly the evidence given in the POMS example described above would not be excluded just because the affiant is not a citizen of the United States, or because the affiant lacks acceptable proof of citizenship. Such requirements have absolutely no bearing on the inherent probativeness of the evidence.

Similarly, this office has assisted Holocaust survivors whose eligibility for Social Security or Medicare has depended on the flexibility of the procedures in POMS § GN 00302.325 *Establishing the [Date of Birth] DB for Holocaust Survivors — General,* and the following sections. These procedures allow evidence by affidavit to explain why a survivor's documents might have conflicting dates of birth, or lack any proof of birthdate. Instead of limiting proof to an inflexible, finite list, these Social Security procedures correctly allow the agency to weigh varied forms of the evidence, and decide whether the claim is credible.

We ask that CMS modify the affidavit requirements so that the constitute a true safety net for applicants and recipients with special circumstances like the ones listed above. An alternative to the affidavit system could be modeled after the SSI program which provides applicants with an opportunity to explain why they cannot provide the required documents and allows them to provide any information they may have that indicates they are a U.S. citizen. 20 CFR § 416.1610. This procedure is no less warranted or necessary here.

CMS should amend 42 C.F.R. § 435.407 to allow a person who cannot acquire any of the listed documents to explain why the documents cannot be acquired, and to allow a state to provide Medicaid to that person if it finds the explanation to be credible. If the person is incapacitated to such a degree that (s)he cannot provide an explanation, the person's guardian or representative should be able to provide it instead.

f. <u>The Rule should place a clearer burden on the states to assist with applicant and recipient documentation for those with special needs.</u>

We commend CMS' requirement that states assist individuals with "incapacity of mind or body" who cannot comply with the documentation requirements. However, we ask that CMS further specify that states have an affirmative obligation to help these individuals as well as other individuals with special needs (such as the homeless or those affected by natural disasters).

g. <u>The Rule should allow parents to attest to their children's identity to age 18.</u>

Currently, parents of children under the age of 16 can sign an affidavit to document the identity of the child. Children aged 17 and 18 are similarly situated to children who are 16. We see no reason why parents should not be allowed to attest to the identity of any child under the age of 18. We ask that CMS extend the age to 18.

* * *

Thank you for this opportunity to comment. We again commend CMS on its efforts to help our needy, frail elderly or disabled clients as they face these new citizenship and identity documentation requirements. We believe that the above changes to the existing

rule would benefit the overall Medicaid program by ensuring coverage for those in need and preventing state Medicaid agencies from becoming overly burdened.

Very Truly Yours,

/S/

Valerie J. Bogart
Director, Evelyn Frank Legal Resources Program

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

Office of Information and Regulatory Affairs,
Office of Management and Budget, Room 10235, New Executive Office Building
Washington, DC
Attn: Katherine T. Astrich, CMS Desk Officer, CMS-2257-IFC
by e-mail Katherine_T._astrich@omb.eop.gov

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CHILDREN'S RIGHTS

August 10, 2006

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

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

I am writing on behalf of Children's Rights to comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement Section 6036 of the Deficit Reduction Act (DRA, P.L. 109-171). The provision, which went into effect July 1, requires applicants for and recipients of Medicaid to provide proof of U.S. citizenship or nationality and identity. We are particularly concerned about the impact these regulations will have on the ability of children in foster care and those children with special needs adopted from foster care to get the health and mental health care that they often urgently need.

Children's Rights is one of the country's leading child advocacy organizations, an independent watchdog holding state-run child welfare agencies accountable for providing quality services to endangered children. We conduct legal advocacy, research, policy analysis and public education with the goal of ensuring that abused and neglected children known to government child welfare systems receive appropriate protection, care and services, including the receipt of adequate medical and mental health services, and the opportunity to grow up in permanent families.

While we have numerous concerns about the barriers the new documentation requirements create for children getting timely and appropriate health and mental health care, we are focusing our comments today particularly on our concerns about the application of the interim final rules on children in foster care and children with special needs adopted from foster care.

Clarification of the documentation requirement as it applies to children in foster care and those adopted with special needs from foster care is especially important because children in foster care are often children with very special health and mental health needs who are in need of immediate attention and any delay in receiving medical attention could threaten their lives. Many of them have chronic conditions that require ongoing care and the prospect of discontinuing care while documentation is being sought is potentially life threatening.

Given such problems, we recommend that the Centers for Medicare and Medicaid Services (CMS) take steps in the final regulations to exempt these children from the documentation requirements.

330 Seventh Avenue, 4th floor • New York, NY 10001
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Children who receive federal Title IV-E foster care payments are categorically eligible for Medicaid, and children in state-supported foster care are eligible for Medicaid in every state by virtue of the fact that they are in state-supported foster care. Children who are categorically eligible do not technically apply for Medicaid. This makes them similar to the children and adults who are eligible for SSI and are automatically eligible for Medicaid, a group for whom you have clarified that the new documentation requirements do not apply. We urge you to exempt children in foster care from the documentation requirements as well, as the DRA enables you to do.

A similar argument can be made for children with special needs who are adopted from foster care and are placed in families with Title IV-E adoption assistance payments. These children too are categorically eligible for Medicaid by virtue of their IV-E eligibility. Children receiving state adoption assistance payments also are eligible for Medicaid because they are receiving state adoption assistance payments.

Children's Rights recommends that CMS amend the interim final rule at 42 CFR 435.1008 to add children eligible for Medicaid on the basis of their receipt of foster care payments, and adoption assistance payments, to the list of groups exempted from the citizenship and identity requirements.

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

The achievements of Children's Rights during the past decade have made critical differences in the lives of tens of thousands of children involved with public child welfare systems nationwide, including better access to appropriate health care services. We urge you to join us in ensuring that children in foster care and children with special needs adopted from foster care continue to receive the medical care they need and to which they are entitled by adding children eligible for Medicaid on the basis of their receipt of foster care payments and adoption assistance payments to the list of groups exempted from the citizenship and identity requirements.

Sincerely,

Marcia Robinson Lowry

Marcia Robinson Lowry
Executive Director

Who's for Kids and Who's Just Kidding

CHILDREN'S CAMPAIGN, INC.

August 11, 2006

Mr. 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,

Children's Campaign, Inc. is a cutting-edge advocacy organization devoted to making children's issues the focus of public attention and action while staying within the well-documented boundaries of permissible activities for a 501(c)(3) organization. Our overall mission is to improve public policy for children. We appreciate the opportunity to comment on the interim final rule for the Medicaid citizenship documentation requirements outlined in the *Federal Register* (Vol. 71, No. 133, July 12, 2006, pages 39214-39215).

Earlier this year, Congress passed the Deficit Reduction Act of 2005 (DRA) [P.L. 109-362], which includes a provision in section 6036 requiring that all U.S. citizens applying for or receiving Medicaid document their citizenship and identity. The Children's Campaign acknowledges that the Centers for Medicare and Medicaid Services (CMS) have authority to interpret the statute and implement rules that protect Medicaid access for beneficiaries and new applicants.

The Children's Campaign applauds CMS for revising earlier regulations released on June 9 to exempt individuals receiving Supplementary Security Income (SSI) or Medicare benefits from the Medicaid citizenship documentation requirements. This exemption is critical to maintaining insurance coverage for many children with complex health care needs, such as human immunodeficiency virus (HIV), cerebral palsy, muscular dystrophy, severe mental retardation, and other disabling physical and mental conditions. The continuation of benefits for individuals with presumptive eligibility status is also vital for maintaining coverage for vulnerable and at-risk populations. The Children's Campaign also commends CMS for permitting states to use data matches with vital records in order to verify the citizenship and identity of Medicaid beneficiaries and new applicants. This provision will prevent many of the 1,236,913 children receiving Medicaid services in Florida from losing their access to health care due to an inability to secure paper copies of their citizenship documentation.

***Children's Campaign, Inc.* Concerns Regarding the Interim Final Rule**

Although the interim final rule protects Medicaid coverage for a large number of low-income children, the Children's Campaign has concerns about how the citizenship documentation requirements will impact certain children applying for or renewing Medicaid coverage. These concerns and recommendations are outlined below:

435.407 (j) New applicants should have a reasonable opportunity to obtain citizenship documentation

The Children's Campaign has concerns about the lack of benefits available for children who are new Medicaid applicants and do not have citizenship documentation available at the time of their application. The interim final rule provides current beneficiaries renewing their Medicaid coverage a reasonable opportunity to obtain citizenship documentation while still receiving benefits. New applicants with the same income and categorical eligibility status as current beneficiaries do not receive the same opportunity to gather the required documentation while still receiving Medicaid services. Without a reasonable opportunity to obtain their documents, many low-income children will not be able to access Medicaid services while they wait to receive documentation from government agencies. The Children's Campaign urges CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation.

435. 1008 All children in foster care should be exempt from documentation requirements

The interim final rule mandates that children in foster care comply with the Medicaid citizenship documentation requirements. The 39,534 children who receive federal foster care and adoption assistance (Title IV-E) in Florida automatically qualify for Medicaid, and their citizenship is already verified as part of their eligibility review for Title IV-E. Therefore, verifying their citizenship in order to confirm their Medicaid eligibility is a duplicative effort.

Requiring children in foster care to document their citizenship will create new barriers to their access to the health and mental health services they need. Research has repeatedly shown that children in foster care experience greater physical and mental health needs than all other children, with 80% of children in foster care demonstrating mental health needs. Exposure to extreme poverty, family violence, homelessness, and parental mental illness and substance abuse often result in complex health needs among children in foster care, exacerbating the necessity of comprehensive services for such children.

By law, states must provide medical care for children in foster care. Therefore, if states are unable to access Medicaid funding for children in foster care, they must finance the necessary health care services with state funds. When state resources are scarce, such an arrangement will likely delay preventive health care for children in foster care and make early intervention for their health and mental health needs impossible. Prolonging access to necessary services for children in foster care will ultimately result in the need for complex and expensive emergency care. The Children's Campaign strongly urges CMS to exempt all children in foster care from Medicaid citizenship documentation requirements in order to appropriately meet their health and mental health needs.

435.407 (h)(1) Qualifying documents should not be limited to original or certified copies

The provision requiring that citizenship documents be original or certified copies exceeds the requirements of the DRA, placing an additional burden on applicants and beneficiaries. This requirement leaves children who would normally receive Medicaid services without any form of health insurance while they wait to obtain these specific documents.

The mandate will have an especially detrimental effect on children and families faced with homelessness. Nearly one year ago, Hurricane Katrina gave witness to how quickly lives can turn into chaos. As a result of the disaster, many families lost all of their existing records. In addition to Florida's Gulf-coast and Panhandle regions being impacted by Hurricane Katrina, we experienced three other hurricanes (Wilma, Rita and Dennis) and several storms and fires during 2005 which impacted the ability of families in Florida to locate their documents. Requiring these families to provide original or certified documents before they can receive Medicaid services greatly threatens the ability of affected children to access necessary health and mental health services. Obtaining a birth certificate will also be extremely difficult for populations with disparate access to hospitals such as those living in very rural areas, African Americans and Native Americans, who are more likely than others to be born at home and therefore never receive a birth certificate. Due to federal immigration policies, Florida is home to one of the largest immigrant populations in the country. Florida is an ethnically diverse state with large numbers of legal immigrants from virtually every continent in the world. In addition, the cost of obtaining a birth certificate will contribute to the difficulty individuals receiving or applying for Medicaid coverage will experience when attempting to prove their citizenship.

Requiring that all citizenship documentation be original or certified copies will likely hinder the expansion of Medicaid coverage to the millions of children who are eligible but not enrolled in the program. According to preliminary estimates for the 2004 Florida Health Insurance Study, approximately 502,000 Florida children are uninsured. Of these, 374,000 live in families with incomes at or below 200% of the federal poverty level. According to the Florida KidCare Coordinating Council, this estimate may understate current levels of children who are uninsured. Therefore, simple enrollment procedures are vital for expanding Medicaid coverage to eligible children in order to decrease the number of children who are uninsured. Many states have developed simplified and streamlined application processes that ease the enrollment procedure for children. These processes eliminate the need to apply for Medicaid in-person, and some even allow for electronic applications. Providing original or certified documents will require applicants to apply for Medicaid in-person, or to send the only copies of their most important personal documents through the mail. This requirement reverses the progress states have made in adopting more efficient enrollment procedures that have the potential to decrease the number of eligible children who do not receive Medicaid coverage. The Children's Campaign urges CMS to eliminate the requirement that Medicaid beneficiaries and applicants provide original or certified documents so that states can continue to more effectively enroll eligible children.

435.407 (a) Medicaid payment records for birth should qualify as proof of infant citizenship

The Children's Campaign also has concerns about requiring citizenship documentation for infants whose mothers are Medicaid beneficiaries at the time of their births. Such application of the new requirements unnecessarily endangers newborns who require immediate well-baby or critical care. Medicaid pays for the births of approximately 112,000 infants born in Florida hospitals each year. These newborns are automatically United States citizens by law. However, the interim final rule does not permit the use of Medicaid records indicating payment for childbirth as proof of a newborn's citizenship status. Failure to accept these records results in a duplication of efforts that seriously threatens the ability of low-income newborns to receive necessary health care services. The Children's Campaign urges CMS to exempt infants born to mothers with Medicaid coverage from the requirements to provide proof of citizenship as directed in the interim final rule. The Children's Campaign asks that evidence of Medicaid payment for birth serve as proof of citizenship for newborns.

435.407 (a) Native American tribal enrollment cards should qualify as proof of citizenship

The interim final rule does not allow states to accept Native American tribal enrollment cards as proof of citizenship. Such cards are the only proof of citizenship that many Native Americans have in their possession. Native Americans are disproportionately more likely to be born at home, and therefore less likely than other populations to have official birth certificates. Failure to accept tribal enrollment cards will greatly impede the ability of many Native American children to access the health care services they need. The Children's Campaign urges CMS to accept Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants.

Children's Campaign, Inc. greatly appreciates the opportunity to share our comments on the interim final rule of the Medicaid citizenship documentation requirements. If you have any questions, please contact me at cjenkins@iamforkids.org or (850) 425-2600.

Sincerely,

Cassandra D. Jenkins

Cassandra D. Jenkins
Children's Campaign, Inc.

cc: Roy Miller, President

THE LEGAL AID SOCIETY
1876

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Peter Cobb
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Steven Banks
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Civil Division
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Managing Attorney

Adriene L. Holder
Attorney -in-Charge

August 16, 2006

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

Dear Ms. Musotto:

At the request of Lisa Sbrana, Health Law Attorney in this office of The Legal Aid Society, I am enclosing here a copy of a letter commenting on the Medicaid Citizenship Documentation, Interim Final Rule, 71 Red.Reg. 39214 (July 12, 2006). The original letter was sent by Steven Banks, our Attorney-in-Chief, to Secretary Leavitt at the Department of Health and Human Services.

Our temporary comment number is 88937. We are assuming – but are not certain at this point – that number 88936 covers other pertinent comments from The Legal Aid Society.

I hope this material will be useful to you. If you have any questions or comments for Ms. Sbrana, please phone her at her direct number, 212-577-3394.

Yours truly,

Susan Schwartz

Susan Schwartz
Volunteer Attorney

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August 11, 2006

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

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

Dear Secretary Leavitt:

The Legal Aid Society is the nation's oldest and largest provider of legal services to the indigent. The Society provides a full range of civil legal services, including representation and advocacy related to access to health coverage and care. For 130 years, The Legal Aid Society has been part of the social fabric of New York City. Society staff members represent low income families, children in foster care and individuals from diverse immigrant communities in all five boroughs who are faced with a myriad of critical civil and criminal problems.

We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We would like to commend CMS in its steps to reduce the harm to and burden on Medicaid applicants and recipients and state Medicaid agencies caused by the new documentation requirement. The exemption of Medicare and SSI recipients, allowing states to use existing electronic databases to cross-match citizenship and identity records, and the stipulation that states must help those with special needs to obtain documentary evidence alleviate some burden. However, many aspects of the Rule remain problematic and overly burdensome for Medicaid applicants and recipients.

Our comments below address several areas that CMS should correct in its final publication of the Rule.

1. **Applicants for Medicaid benefits should receive benefits once they declare they are citizens and meet all eligibility requirements.**

The new citizenship documentation requirements set forth by the DRA are not additional criteria for Medicaid eligibility. The eligibility requirement for Medicaid remains the declaration of citizenship or qualified alien status. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted.

The language of the CMS Rule prohibits states from granting coverage to eligible citizens until they obtain documents to prove citizenship. The preamble to the Rule states that applicants "should not be made eligible until they have presented the required evidence." However, under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. There is nothing in the DRA that requires a delay in providing coverage. Instead the DRA specifically references § 1137(d)(1)(A) of the Social Security Act which makes the "condition of eligibility" for Medicaid "a declaration in writing under penalty of perjury" that the individual "is a citizen or national of the United States . . .."

We ask that CMS conform the final Rule to the DRA and clarify that establishing documentation of citizenship is a condition of federal financial participation, not eligibility.

2. **Populations in receipt of federal benefits for which their citizenship was previously demonstrated should be exempt from the Rule.**

CMS has statutory authority under 42 U.S.C. § 1396b(x)(2)© to exclude groups other than those listed by Congress from the documentation requirements. We commend CMS for utilizing this authority to exempt Medicare and SSI beneficiaries from the documentation requirements. And we request that CMS also exempt certain other categories of Medicaid recipients and applicants who have already established their citizenship for other government benefit programs.

Below, we have listed two specific groups which should be added to the groups already exempted by the CMS rule.

a. **Children receiving foster care benefits under Title IV-E of the Social Security Act should be added to the list of those exempted from providing documentation**.

Children in receipt of Federal Title IV-E benefits should be exempted from the documentation requirement set forth in this rule. Most states must verify citizenship status when determining a child's IV-E eligibility. In this regard, Title IV-E beneficiaries are indistinguishable from SSI recipients. Unnecessarily burdening abused and neglected children with additional documentation requirements is terrible public policy. It puts members of this vulnerable population, many of whom suffer from poor health, at risk of delay or denial of health coverage that is critical to their well-being.

We urge CMS to include Title IV-E children in the group of applicants and recipients who are exempt from providing documentation.

b. **Individuals receiving Social Security Disability benefits should be added to the list of those exempted from providing documentation.**

Individuals who have been found eligible for Social Security Disability payments, but are still in their two-year waiting period for the receipt of Medicare should be exempted from the documentation requirement set forth in this rule. These individuals are factually indistinguishable from SSI and Medicare recipients, and extending the exemption to them is logical.

We request that CMS include SSD recipients in the group of applicants and recipients who are exempt from providing documentation.

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

The Rule provides that a child born to a "categorically needy," non-citizen woman in receipt of Medicaid when the child is born must apply (and thus provide proof of citizenship and identity) *at birth.* A child born to a woman in receipt of the full scope of Medicaid is no different than a child born to a woman who, because of her immigration status, is covered by Medicaid only for labor and delivery. A child in either situation is, by definition, a U.S. citizen, a fact indisputably known to the Medicaid agency because it has paid for the child's birth in a U.S. hospital.

We ask that CMS instruct states that they must accept a record of Medicaid payment for a birth in a U.S. hospital as sufficient proof of citizenship.

4. **CMS should simplify the documentation and verification process.**

The Rule estimates that it will ordinarily take an applicant or beneficiary ten minutes "to acquire and provide" the documentation required by this rule and that it will take state Medicaid agencies five minutes "to obtain acceptable documentation, verify citizenship and maintain current records." Considering the strict guidelines the Rule gives for what documents are allowed and how they may be submitted, the time estimates quoted are grossly unrealistic.

Below we have outlined a few ways in which CMS may simplify the documentation process to achieve more timely results in documentation compliance.

a. **The Rule should require states to use electronic data matching as a first step to documenting citizenship and identity.**

The Rule allows states to cross-match with the Social Security Administration's State Data Exchange (SDX) to meet documentation requirements without using the hierarchal process outlined in the Rule. We ask that CMS change the Rule to require states to use electronic data

matching as a first step to documenting citizenship and identity – particularly for those who are likely to need assistance.

We also request that CMS clarify that once applicants or recipients have met the documentation requirement in one state, they will not be required to demonstrate citizenship again for Medicaid enrollment if they move to another state.

b. The Rule should allow copies of documents to be sufficient proof of citizenship.

The rule requires that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. Nothing in the language of the DRA imposes this requirement on Medicaid applicants or recipients. This provision unnecessarily places a significant burden on both individuals and state agencies.

Most Medicaid recipients have household incomes that are at or below the federal poverty level. Often the cost of obtaining certified copies of records is between $15 and $20. Eligibility for regular Medicaid for a family of three in New York allows a maximum monthly household income of $1,017. Requiring this family to expend $60 from its monthly budget to obtain a certified copy to document citizenship or identity when a plain copy would document the same facts is unjust and poor public policy.

Additionally, the requirement that medical records submitted for documentation of citizenship must be created at least five years before the initial application date unduly burdens poor individuals and families.

We ask that CMS eliminate the requirement that only original or certified copies may satisfy documentation and that states be allowed to accept copies of documents when there is no reason to believe the copies are counterfeit, altered or inconsistent with information previously supplied by the applicant or recipient, regardless of when the document was created.

c. The Rule should not further limit the types of evidence that may be used to document citizenship.

CMS requested comments regarding whether the documentation used to prove citizenship should be limited to only Tiers I and II. CMS should not further limit the types of documents that can be used to document citizenship status. Restricting documentary evidence to Tiers I and II would overly burden applicants and recipients and state Medicaid agencies. The timing for applicants and recipients to procure and submit documents from such a limited list would greatly overreach the ten minute estimate provided by CMS.

We request that CMS not limit the types of citizenship and identity documentation to Tiers I and II.

d. The Rule should include a safety net for those who cannot prove citizenship.

The Rule fails to adequately address situations in which an individual is simply unable to provide any of the listed documents (in Tiers I through IV). The only substitute measure provided by the

rule allows states to accept an affidavit by two individuals, at least one of whom is unrelated to the applicant or recipient, who have personal knowledge of the event establishing the applicant or recipient's claim of citizenship. It is likely that many individuals will not be able to meet the requirements of the affidavit provision.

Many homeless individuals who may be eligible for Medicaid will not have any of the documents outlined in the Rule. Survivors of life-altering natural disasters (like Hurricane Katrina survivors) will also be unlikely to have any documents required for documentation. It will be extremely difficult, if not impossible, for these individuals to now obtain these documents. Similarly, many if not most individuals who are homeless or displaced will not have access to individuals who can attest to their citizenship.

We ask that CMS include a safety net provision for applicants and recipients with special circumstances like the ones listed above. An alternative to the affidavit system could be modeled after the SSI program which provides applicants with an opportunity to explain why they cannot provide the required documents and allows them to provide any information they may have that indicates they are a U.S. citizen.

e. **The Rule should place a clearer burden on the states to assist with applicant and recipient documentation for those with special needs.**

We commend CMS' requirement that states assist individuals with "incapacity of mind or body" who cannot comply with the documentation requirements. However, we ask that CMS further specify that states have an affirmative obligation to help these individuals as well as other individuals with special needs (such as the homeless or those affected by natural disasters).

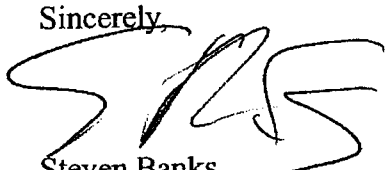
f. **The Rule should allow parents to attest to their children's identity to age 18.**

Currently, parents of children under the age of 16 can sign an affidavit to document the identity of the child. Children aged 17 and 18 are similarly situated to children who are 16. We see no reason why parents should not be allowed to attest to the identity of their children under the age of 18. We ask that CMS extend the age to 18.

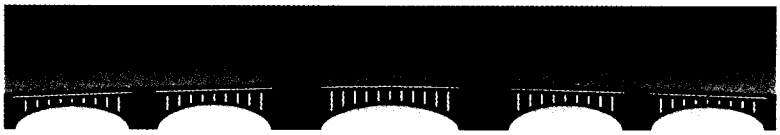
Thank you for this opportunity to comment. We again commend CMS on its efforts to help Medicaid recipients and applicants as they face these new citizenship and identity documentation requirements. We believe that the above changes to the existing rule would benefit the overall Medicaid program by ensuring coverage for those in need and preventing state Medicaid agencies from becoming overly burdened.

If you have questions please feel free to contact Lisa Sbrana at 212-577-3394.

Sincerely,



Steven Banks
Attorney-in-Chief



BOSTON HEALTH CARE FOR THE HOMELESS PROGRAM

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August 11, 2006

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

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

The Boston Health Care for the Homeless Program (BHCHP) submits the comments below on CMS's Interim Final Rule on the new Medicaid citizenship and identity documentation requirements. Our comments specifically address how the Final Rule as written will affect our very vulnerable Boston area patients—men, women, and children without homes, who are often disconnected from the governmental institutions that issue these documents, and who generally lack safe places to keep whatever papers they do have.

Because homeless people will have even greater difficulties providing the documents than other members of vulnerable populations, our hope is that CMS will take a more flexible approach to the verification requirements. We would like the rules to allow applicants to get benefits while they are gathering documents, allow more kinds of documents to satisfy the requirements, and exempt more groups from the requirement to submit documents.

We care for approximately 9,500 individual patients each year, many of them enrolled in MassHealth (the Massachusetts Medicaid program), and many others who will apply each year. The majority of our patients are U.S. citizens who will be affected by this rule. Our patients are low income people, many of them with disabilities, and almost all without a place to live or keep important documents. We are deeply concerned that the interim final rules have made it unreasonably difficult for many of these very vulnerable U.S. citizens to obtain the medical assistance for which they are eligible. Their health and the public health will suffer as a result.

Congress specifically authorized CMS to use its regulatory authority to identify individuals who have already established their U.S. citizenship and should not have to do so again, as well as to identify more acceptable documents than the short list enumerated in the legislation. We commend CMS for exempting individuals on SSI or Medicare from the new rule as Congress plainly intended, for clarifying the continued application of Presumptive Eligibility options for pregnant women and children, and for authorizing the use of SDX and vital records databases. These decisions make our task of helping our patients provide the required documents less

difficult. Other aspects of the rule, however, create unreasonable barriers not required by the legislation and fail to exercise the full regulatory authority conferred on CMS by the statute and necessary to make this new requirement workable.

Our specific comments follow.

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

This comment and the next one are the most important for BHCHP and our patients, whose disabilities and life circumstances make it very difficult for them to get and keep citizenship and identity documentation.

We strongly disagree with the provision in the interim final rules precluding states from providing medical benefits during the "reasonable opportunity period." 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." 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.

Denying benefits during the "reasonable opportunity" period is not required by § 6036 of the DRA and is not consistent with other provisions of federal law applicable to Medicaid such as §1137(d)(4) of the Social Security Act. If an individual declares citizenship and is otherwise eligible, the state should not delay, deny, reduce or terminate that individual's eligibility for benefits based on documentation of citizenship until a reasonable opportunity period has been provided to submit documents.

As discussed below, the Massachusetts §1115 demonstration relies heavily on hospitals and health centers to help uninsured patients apply for MassHealth. Under the new on-line application system, access to our state's uncompensated care pool is now through the same application process as MassHealth. Almost all of these applications occur when an uninsured individual is seeking care for an immediate medical need. BHCHP's patients are generally sicker than the general population, as are most homeless people, and often do not seek care until there is an urgent need for it. Delaying their benefits until citizenship is verified will cause a financial hardship for BHCHP and other safety net providers, which will provide care without a guarantee of payment, and may prevent patients from obtaining timely care. It would be unfortunate to add yet another barrier to getting health care to the already formidable barriers homeless people face.

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.

Further, since Federal regulations suggest in the preamble to the regulations that people who are making an earnest effort to get their documents should be given extra time, we hope that during this extra-time period, the applicants will also be eligible for benefits.

435.407(k) The final rule should include a safety net for those who do not have one of the specified documents.

No U.S. citizen should be denied Medicaid because of an inability to produce a particular document. Yet 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. This would be a particular hardship for many people who are homeless and may not have most of the listed documents because of their disabilities, the disruptions in their lives, and their disconnection from social and governmental institutions.

CMS has recognized SSI records as containing reliable records of citizenship and identity. It should also follow the method used in SSI to verify citizenship and identity when preferred documents are not available. 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. CMS should adopt a similar provision to 42 CFR 435.407 ensuring that citizens who cannot produce "acceptable" documentation under the new rule will not lose access to Medicaid.

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

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

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 requirement may all but assure that many of our homeless patients will not meet these requirements and thus will not have health insurance.

Well over 10 years ago Massachusetts streamlined and simplified its Medicaid application process. MassHealth was early in eliminating the face-to-face interview at application or renewal. For many years, the vast majority of applications and renewals have been conducted entirely by mail. In 2004, Massachusetts launched an innovative tool to enable hospitals, health centers and trained community organizations to submit applications on-line through a system called the "Virtual Gateway." These reforms have been highly successful in enabling eligible residents to obtain Medicaid and reducing the number of the uninsured, and they remain a lynchpin of the state's ambitious 2006 health reform plan.

The Massachusetts Medicaid agency has only four regional offices statewide to handle the currently low demand for face-to-face applications. It has no local offices. There is no regional office in Boston. The Springfield regional office covers a service area encompassing all of central and western Massachusetts.

While the preamble claims that states may continue to dispense with face-to-face applications, the requirement that citizenship and identity documents be originals or copies certified by the

issuing agency effectively requires a face-to-face interview. For many of the most common documents that will be used to prove citizenship and identity the issuing agency does not certify copies. Neither passports nor driver's licenses allow for a certified copy from the issuing agency. No sensible person would mail an original of a passport, or a driver's license, school ID or other forms of identification needed on a daily basis to a distant government office. And for many people who are homeless and anxious about the difficulty of protecting and keeping their possessions, the requirement that they send off their original citizenship and identity documents would be yet another barrier to receiving health care.

In Massachusetts, applicants and renewing recipients will face long drives or even more time-consuming trips by public transportation to bring original documents to one of only four Medicaid offices in the state. For our patients, who do not have cars, often cannot afford public transportation, and frequently come to us in serious medical condition, this requirement could all but bar them from Medicaid eligibility. With the current staffing of regional offices which is based on an almost entirely mail-in and on-line system, citizens will then face a long wait to see a worker. The end result: a photocopy placed in a file.

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 (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. On the contrary, we urge CMS to recognize more ways of verifying citizenship and identity. For our homeless patients, who do not always have the documents that people who live more regular lives have, a wider range of acceptable documents will make compliance with this rule more likely.

435.407(a)(5) An SDX match should be primary evidence for former as well as current SSI recipients.

CMS gives States which do not automatically provide Medicaid to SSI recipients the option to use the State Data Exchange (SDX) to verify citizenship and identity for SSI recipients. This option should also be available to States that do automatically provide Medicaid to SSI recipients in order to enable them to verify citizenship and identity for former SSI recipients. Younger people with disabilities who receive only insurance-based Social Security disability benefits are generally not entitled to Medicare for 24 months, but many will have received SSI during the 5-month waiting period before their SSDI began. Similarly, many children with disabilities may lose SSI when their family income goes up but will remain financially eligible for Medicaid. These disabled former SSI recipients face all the same difficulties supplying documentation as current SSI and Medicare recipients, and all States should be able to use the SDX for primary

verification. Again, because of the special challenges that homeless people face, this is especially important for our patients.

435.405(g) Assistance to special populations should include the costs of obtaining required verification

We commend CMS for making explicit in the regulations the state's obligation to assist people whose disabilities make it difficult for them to obtain documentation. CMS should also make clear that if a fee must be paid to obtain documentation, the state's assistance should extend to paying the fee and that any such payment will be entitled to federal financial participation. Many of the documents required by this rule can only be obtained on payment of a fee. Our patients frequently are unable to pay these fees, and BHCHP could not possibly pay the fees for the number of these documents that are now required under this rule.

Conclusion

We thank you for the opportunity to make these comments. We hope you will adopt the changes recommended above in order to ensure that no eligible US citizens lose access to medical benefits for which they are eligible, and to make it possible for some of our most vulnerable citizens, people without homes, to comply with this rule.

Sincerely,

Robert Taube, Ph.D., MPH
Executive Director

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

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

USPRA US Psychiatric Rehabilitation Association

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August 8, 2006

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

Re: Interim Final Rule on Medicaid Program, Citizenship Documentation Requirements (CMS-2257-IFC)

Dear Dr. McClellan,

Thank for the opportunity to comment on the interim final rule regarding citizenship documentation requirements on behalf of the United States Psychiatric Rehabilitation Association. USPRA is a 501(c)(3) membership organization representing nearly 1,400 psychiatric rehabilitation agencies, practitioners, families and persons living with psychiatric disabilities, universities providing education and research in psychiatric rehabilitation, veterans hospitals, and state government entities.

While USPRA applauds CMS for clarifying and improving many of the requirements for individuals with psychiatric disabilities, the regulations still lack adequate protections to accommodate the challenges facing many individuals with mental illness who rely on Medicaid. Our primary concern is that the administrative burdens indicated by the citizenship rule will pose an undue barrier to individuals seeking medical care, and heighten the risk that these individuals will lose essential Medicaid coverage and forego the vital treatment that, ultimately, will lead to their recovery. Individuals with serious mental health disorders are often forced to be residentially transient and providers change frequently. Such circumstances markedly complicate the challenge of complying with the requirements CMS has established.

Specifically, USPRA requests that CMS readdress the following:

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. Obtaining the required documents could take a considerable amount of time, and given

the vast majority of applicants will be citizens or lawful immigrants, delaying their coverage for this paperwork is unnecessary. In addition, although the rule permits individuals already on the program to remain eligible while documents are gathered, this same rule does not apply to new applicants. Individuals with mental illness are particularly at risk of not being able to secure the required documentation or be fully cognizant of the new requirements. We would urge CMS to provide a reasonable period of time to comply for new applicants, as well.

Individuals receiving Medicare or Supplemental Security Income (SSI) are exempt from the documentation requirement; however, there are many individuals with psychiatric disabilities who receive Social Security Disability Insurance (SSDI) who are in a waiting period for Medicare or SSI and should be included in this exemption. In addition, all individuals receiving federal benefits for which their citizenship has already been determined need to be exempted from the requirements.

As stated above, individuals with serious mental illness are likely to be among those who have the greatest difficulty obtaining the necessary documents due to functional issues. Any difficulty in attempting to acquire these documents could trigger a relapse or, worse, lead to avoidance of obtaining necessary care. States should make every effort to document citizenship and identity through data matches with government agencies and should be required to use these data matches first, particularly for individuals who are likely to need assistance.

The language describing persons who need special assistance is too vague. In place of "incapacity of mind" to describe individuals who must be assisted, it would be more appropriate to require that states must assist individuals who, "due to a physical or mental disability" are unable to comply with the requirement.

In addition, when individuals cannot provide any of the designated documents or affidavits, states should be allowed to determine eligibility based on the evidence that is available or allow continued enrollment as long as there are reasonable grounds to conclude the applicant or recipients is a citizen. Affidavits from providers of long term care or rehabilitation services should be allowed to verify the identity of an applicant with a psychiatric disability for whom providing other more standard forms of identity poses a hardship. Copies and notarized copies of required documents should also be allowed as long as there is no reason to believe these copies are counterfeit, altered or inconsistent with information previously supplied by the applicant or recipient.

Regardless, in all cases where the state is assisting individuals to obtain necessary documents, Medicaid coverage should be provided so that medical care can be furnished in the interim, particularly those in need of immediate medical care. States should have broad flexibility in allowing individuals the time necessary to collect their proof of status. If the individual is working to provide the documents, this should be sufficient. Applicants should not be denied eligibility simply because they failed to meet a state's time standards. Individuals who meet presumptive eligibility standards are still presumptively eligible, regardless of the status of their

proof of citizenship. States should be required to continue assisting individuals having difficulty obtaining the required documents, regardless of the time standards.

USPRA appreciates CMS's forethought in clarifying that the documentation process need only be gone through once. However, language is still rather unclear that once these documents have been procured and citizenship status has been proven, that it will be sufficient for eligibility determination in all states.

Thank you for the opportunity to comment on the proposed rule. We appreciate your consideration.

Sincerely,

Marcie Granahan
Chief Executive Officer

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Affirmative Options Coalition

2314 University Avenue West, #20, St. Paul, MN 55114
After Sept. 4: 555 Park Street, Suite 410, Saint Paul, MN 55103
(651) 292-1568• www.affirmativeoptions.org

Promoting *affirmative options* for low-income Minnesotans

August 10, 2006

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

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

Dear Secretary Leavitt:

The Affirmative Options Coalition is a coalition of Minnesota social service agencies, faith-based organizations, educational institutions and individuals who advocate for policies that create opportunities for people to move out of poverty. This letter in comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1, 2006 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

Affirmative Options is commenting on these rules because we recognize that access to health care is a key component to helping people move out of and stay out of poverty. We urge that the rules finally adopted be focused on the goal that *no citizen* otherwise eligible for Medical Assistance loses or is denied health care coverage because of these new rules. More than 640,000 Minnesotans a year rely on Medical Assistance for their health care coverage: They are elderly, they are disabled, they are families with children – in other words they are the citizens we have recognized as most vulnerable. Creating unnecessary barriers to their health care coverage means risking their health and well-being.

The following recommended changes could meet the goal of ensuring that no United States citizen is denied Medical Assistance coverage for which she or he is eligible while still meeting the goal of Congress that citizenship is verified.

1. **The rules should clarify that the need to prove citizenship is not a condition of eligibility.** Therefore, applicants and enrollees who claim they are United States citizens should not be denied Medical Assistance eligibility during the time

they are gathering the required documentation. The federal rules should not require states to deny coverage until that documentation is produced. Rather the rules should remind states that the issue of proof of citizenship is required for states to claim federal reimbursement for their administration of a Medical Assistance application and case management.

2. **Requiring original documents is unnecessary and creates expense for the applicants and enrollees as well as the states and counties administering the program.** Original passports are very expensive to replace if lost. Original birth certificates also cost their holders money and time to acquire. Requiring originals for Medical Assistance application or renewal either risks the loss of those documents if people mail them into state and county offices or risks the increased cost involved in applicants foregoing mail-in applications and requiring face-to-face appointments. Applicants, for instance, cannot reasonably be expected to mail-in their driver's licenses and do without the license for the weeks or longer it takes the State or county to complete the eligibility determination and to return the license. In many locations the increased delays in Medical Assistance applications will lead to delays throughout the public assistance system, since many offices do not run separate administrative processes for those applications.

3. **In order to ensure that the new citizenship verification policies are not just a means to create administrative burdens on citizens and create unnecessary obstacles to their obtaining or retaining their health care coverage, the rules ought to require states to recognize when citizenship has already been determined.** This would include:
   - Treating RSDI recipients in the same manner as SSI and Medicare recipients -- acknowledge that proof of citizenship was made in determining eligibility for those programs and accept their participation in RSDI as de facto proof of citizenship.
   - Having the administrative agency accept as proof of citizenship the documentation already in files for other public assistance programs such as TANF or SCHIP, for which birth certificates were submitted;
   - Clarifying that once someone has verified their citizenship for Medical Assistance in one state that their status as verified should transfer if they move and must reapply in another state.
   - Using Medicaid records of payments to U.S. hospitals for the birth of children on the program as proof of the child's citizenship – without requiring the family to obtain additional documentation.
   - Accepting children's eligibility for foster care payments as de facto proof of their citizenship. State and county child welfare offices must establish the children's citizenship when determining the children's eligibility for Title IV-E payments.

4. **CMS should accept all forms of tribal documents as acceptable proof of citizenship verification for Native Americans.**

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

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

6. **Adopt the model of the SSI program in creating a true safety net for those citizens unable to produce other forms of verification of their status.** If an SSI applicant who has declared U.S. citizenship cannot produce one of the required documents that indicate U.S. citizenship, they may explain why they cannot provide any of those documents, and instead, may provide any information they do have that might indicate they are a U.S. citizen. (20 CFR 416.1610.) Adopting this procedure by adding a new provision to 42 CFR 435.407 would go a long way towards ensuring that citizens who cannot produce "acceptable" documentation under the new rule still be allowed to get or keep their Medicaid coverage.

Sincerely,

Deborah Schlick
Executive Director

Schoolcraft Memorial Hospital

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(906) 341-3200 • fax (906) 341-3297

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August 10, 2006

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

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

Dear Sir or Madam:

Schoolcraft Memorial Hospital provides healthcare services to many U.S. citizens including those enrolled in our state's Medicaid program. We have reviewed the Interim Final Rules (the Rules) implementing the provisions of the Deficit Reduction Act (DRA) enacted to improve documentation of identity and citizenship for Medicaid recipients. We believe that many of the requirements included in the Rules are inconsistent with the DRA and will negatively affect health care within our state. We outline our concerns below.

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

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

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

Two primary problems arise from this provision: (1) It appears to permit States to delay taking action on a Medicaid application while the applicant is provided with a "reasonable opportunity" to gather documentation to demonstrate identity and citizenship; and (2) It equates the time period for gathering and submitting documentation of citizenship and identity with the time period States typically provide for gathering and submitting documentation of other, more easily obtainable, facets of eligibility.

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

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

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

The same is not true for the documents the Rules require for demonstrating identity and citizenship. Based upon a recent survey of over 1,000 Michigan-based applicants, we understand that nearly 1 in 3 did not have a passport or a birth certificate and government issued pictured identification in their possession. Approximately a quarter of those

individuals (7% of the total surveyed population) were born outside the State of Michigan. If the state treated its request for verification of citizenship and identity as it does other facets of eligibility, applicants born outside the State of Michigan would be expected to identify the appropriate governmental agency in the state in which he or she was born, determine the procedure and costs associated with obtaining a certified copy of the applicant's birth certificate, order the certificate, make arrangements to cover the cost, and deliver the original certificate to the State of Michigan, all within 20 days.

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

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

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

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

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

A child born in this county to a woman who is eligible to receive the full scope of Medicaid benefits is indisputably a citizen of this country. A child born in this country to a woman whose Medicaid benefits are restricted to labor and delivery because of her

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

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

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

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

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

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

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

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

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

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

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

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

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

We trust our comments are helpful to you in your deliberations and that you share our concerns that, in an effort to eliminate fraudulent use of Medicaid, the current Rules establish a bureaucratic maze so dense that the benefits for one of the most vulnerable segments of United States citizenry may be lost. The loss of those health care benefits is likely to increase the need emergency care and admissions to our facilities. Providing

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

health care to this vulnerable group of fellow citizens through emergency procedures will, necessarily, increase the cost of health care for all U.S. citizens, while simultaneously decreasing the quality of care to those who would otherwise receive Medicaid benefits.

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

Sincerely,

Michael J. Mozola
Director of Business Affairs
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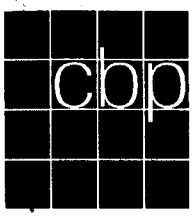
MMozola@scmh.org



CALIFORNIA BUDGET PROJECT

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August 10, 2006

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

SUBJECT: 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 to implement Section 6036 of the Deficit Reduction Act of 2005 (DRA). Section 6036 requires Medicaid applicants and beneficiaries who are citizens to provide documentation of their citizenship and identity.

The California Budget Project (CBP) – a nonprofit organization that engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians – is concerned that the interim final rule will unnecessarily result in the delay, denial, or loss of needed health services for low-income Californians. This letter identifies five areas that the Centers for Medicare & Medicaid Services (CMS) should modify in the final rule to lessen the burden on low-income Californians.

This letter includes comments on the information collection requirements of the regulations. The interim final rule includes an unnecessary provision that requires Medicaid applicants and beneficiaries to submit original or certified copies of documents in order to demonstrate citizenship and identity. Many, if not most, applicants and beneficiaries will need considerably longer than the estimated 10 minutes to comply with this requirement. First, individuals who do not have the documents on hand will have to locate or apply for them, which will often take considerably longer than 10 minutes. In addition, it is likely that few individuals will choose to mail important citizenship and identity documents to county social services offices, thus requiring personal visits to these offices to present the documents – an additional time-consuming step.

1. Interim Rule Unnecessarily Delays Coverage for US Citizens.

The interim final rule takes the unnecessary step of requiring US citizens who apply for health coverage to meet the new citizenship documentation requirement *before* the state can enroll them in Medicaid. The DRA does not require that states delay coverage to otherwise eligible persons who are in the process of locating or obtaining the necessary documents. Congress drafted the documentation

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requirement as a *condition for states to receive federal matching funds and not as a condition of Medicaid eligibility.* States should be allowed to enroll individuals who meet other eligibility requirements during the reasonable opportunity period while they locate or obtain the required documents.

Prohibiting states from granting Medicaid coverage to persons who are locating the necessary documents will unnecessarily delay health coverage and, for some individuals, delay the use of needed medical care services. As a result, individuals could forego preventive care or critically needed medical services, which could lead to worsened health outcomes that require more costly care. To the extent that individuals delay care while they seek the necessary documents, Medicaid costs could increase.

The CBP requests that CMS revise 42 CFR 435.407(j) to require that states provide Medicaid coverage to otherwise eligible applicants who declare to be US citizens while they locate or obtain the required documents during the reasonable opportunity period.

2. Foster Care Children Should Be Exempt from the Citizenship Documentation Requirement.

The interim final rule exempts individuals who are eligible for or enrolled in Medicare or who receive Supplemental Security Income (SSI), but the rule does not exempt foster care children. Approximately 75,000 children are in foster care in California, many of whom are supported by federal Title IV-E funds. Children who receive federal foster care assistance are automatically enrolled in Medicaid without submitting an application. Since these children do not apply for Medicaid and thus do not declare to be citizens for purposes of Medicaid eligibility, they should not be subject to the citizenship documentation requirement. Moreover, child welfare agencies verify the citizenship status of foster care children when determining if they are eligible for Title IV-E payments.

Foster care children are among the most vulnerable in our society. A report by the Government Accountability Office found that foster care children "are sicker than homeless children and children living in the poorest sections of inner cities."[1] However, the likely result of applying the documentation requirement to them will be delays in needed preventive care and increases in emergency care that will increase costs to the state and health care providers.

The CBP requests that CMS revise 42 CFR 435.1008 to exempt children eligible for Medicaid on the basis of receiving federal foster care payments from the documentation requirement.

3. Medicaid Payment for Births Should Be Considered Documentation of Citizenship and Identity.

Children whose births are paid by Medicaid are, by definition, citizens and should not need to provide further documentation of their citizenship. However, the preamble to the final interim rule states that infants whose births are paid by Medicaid must comply with the citizenship documentation requirement. The preamble indicates that these infants must meet the documentation requirement when renewing their coverage or, in the case of infants born to immigrant mothers who are eligible only for emergency coverage, when applying for Medicaid coverage following their birth.

Since children born in the US are clearly citizens, there is no rationale for requiring that they document their citizenship status. Applying the requirement to children whose births are paid by Medicaid will create unnecessary burdens for families and states, and will potentially delay medical care for newborns with special medical needs. Newborns do not yet have birth records on file with the state's vital statistics agency and will have to rely on

documents, such as extracts of hospital records, which the interim final rule classifies as less reliable than birth certificates.

The CBP requests that CMS revise 42 CFR 435.407(a) to specify that a state Medicaid agency's record of payment for a birth in a US hospital is sufficient evidence of citizenship and identity.

4. Applicants and Beneficiaries Should Be Allowed to Use Copies of Citizenship Documents.

The interim final rule calls for applicants and beneficiaries to submit original or certified copies to meet the new documentation requirement, a step not required by the DRA. Obtaining original documents or copies certified by the issuing agencies will greatly increase the amount of time and effort needed for applicants and beneficiaries to meet the documentation requirement. Many applicants and beneficiaries will need to spend more time to obtain the necessary documents, as well as additional time to visit social services offices in person instead of mailing in copies.

Requiring original or certified copies to document citizenship will also discourage children and parents from applying for or renewing their coverage because it will lead to unnecessary visits to county social services offices. California, like many other states, has eliminated face-to-face interviews for children and parents in order to make it easier to enroll in and retain Medicaid coverage. Eliminating face-to-face interviews has also simplified the program and reduced costs for the state and counties. However, the interim final rule essentially requires face-to-face interviews for those applicants and beneficiaries who do not wish to risk mailing original copies of important documents, such as birth certificates and driver's licenses.

The CBP requests that CMS revise 42CFR 435.407(h)(1) to allow states to accept copies or notarized copies of documents.

5. Final Rule Should Address Individuals Who Lack Necessary Documents.

Some individuals will not be able to provide the required documentation through no fault of their own. The interim final rule takes a step in the right direction by exempting Medicare beneficiaries and SSI recipients, many of whom may lack the required documents. However, other vulnerable individuals, including persons displaced by natural disasters, may not have or be able to obtain the required documents. For example, an individual uprooted from Hurricane Katrina living in California may have lost his or her documents and may be unable to obtain a certified copy.

The interim final rule requires states to help certain individuals obtain the required documents, but the rule does not address the situation in which the necessary documents either do not exist or cannot be found. The use of affidavits may help some of these individuals meet the documentation requirement. However, the restrictions on affidavits are rigorous, and affidavits will not likely be feasible for all individuals who lack the necessary documents. For example, only persons familiar with the circumstances leading to an applicant or beneficiary's citizenship can submit affidavits. However, for some individuals, persons with such knowledge may not exist, may be unavailable, or may have passed away.

The DRA gives the Secretary of the Department of Health and Human Services the authority to recognize other documents as proof of citizenship. The Secretary should consider the approach used by the SSI program to recognize additional means of documenting citizenship. The SSI regulations permit individuals who cannot present any of the

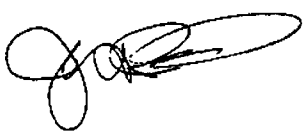
documents allowed under the SSI program to explain why the documents are unavailable and to provide any information they do have.

The CBP requests that CMS add a new subsection (k) to 42 CFR 435.407 to allow state Medicaid agencies to certify that it has obtained satisfactory documentation of citizenship if none of the listed documents are available and it is reasonable to conclude that the individual is in fact a citizen.

The interim final rule adds unnecessary requirements that are not included in the DRA and misses opportunities to make the requirement less burdensome to applicants and beneficiaries. Changes in the five areas outlined in this letter can substantially reduce the burden and loss of health coverage to low-income Californians.

Thank you for your consideration. If you have any questions, please contact David Carroll at (916) 444-0500.

Sincerely,



Jean Ross
Executive Director

JR:dc

[1] US General Accounting Office, *Foster Care: Health Need of Many Young Children Are Unknown and Unmet* (May 1995).

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71

ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOE BARTON, TEXAS
CHAIRMAN

August 9, 2006

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Leavitt:

We are writing to comment on the July 12 interim final rule (71 *Fed. Reg.* 39214) published to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). Section 6036 requires, effective July 1, any individual on Medicaid or applying for Medicaid to document both citizenship and identity. We have grave concerns that, as currently drafted, the rule would impose unnecessary hardship on beneficiaries and unnecessary burdens on States, localities, and healthcare providers. The end result will be millions of American citizens delaying or forgoing needed health care, worsening health outcomes in the United States.

There are numerous instances where the rule imposes requirements for documentation beyond those outlined in the statute. In addition, the rule fails to provide for commonsense, legitimate avenues for States and beneficiaries to obtain and present required documentation. As a result, access to needed care for many vulnerable individuals, such as newborns, individuals with disabilities or life-threatening ailments, and pregnant women in need of prenatal care, will be unnecessarily delayed or not received at all.

Medicaid is now the Nation's largest insurer, covering 60 million Americans, according to most recent estimates by the Congressional Budget Office. Over the past decade, the Federal and State governments have worked in partnership to facilitate enrollment in Medicaid coverage. They have streamlined and simplified the application process so that more families will enroll in this insurance program to help pay for needed care and treatment. Moreover, Congress and Federal agencies have tried in recent years to eliminate government bureaucracy, reduce paperwork, and become more responsive to its citizens. This rule, as proposed, is a step backwards. While it is unavoidable that the added bureaucracy caused by section 6036 of the Deficit Reduction Act will negatively affect public health and efforts to reduce the number of uninsured, we urge the Department to use its authorities to minimize the likelihood that U.S.

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

In that vein, there are a number of provisions in the interim final rule that require modification, particularly relating to newborns, foster children, and Native Americans. In addition, as currently drafted the interim final rule should also be revised with respect to: acceptable proof of citizenship for individuals without documentation; the opportunity to present documentation without delay in access to care or coverage; and methods for States to obtain documentation, including allowing the use of electronic verification as a first level tool. These matters are outlined in more detail in an attachment to this letter and we urge you to incorporate these comments into your final rule.

Our list, however, is not exhaustive, and we hope you will also give great weight to comments put forward by the States, Medicaid Directors, advocates for children and families, and public interest groups. Unfortunately, this provision will ultimately exact the majority of its punishment on U.S. citizens. We hope you will do your best to mitigate its negative effects on our Nation's people.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER
COMMITTEE ON ENERGY AND COMMERCE

SHERROD BROWN
RANKING MEMBER
SUBCOMMITTEE ON HEALTH

HENRY A. WAXMAN
RANKING MEMBER
COMMITTEE ON GOVERNMENT REFORM

Attachment

ATTACHMENT

Comments of Representatives John D. Dingell, Sherrod Brown, and Henry A. Waxman
on
The Medicaid Citizenship Documentation Interim Final Rule
71 *Federal Register* 39214 (July 12, 2006)

Newborns

The interim final rule places an unnecessary burden on families with newborns, potentially jeopardizing infants' access to care and insurance coverage. An infant born in the United States is de facto a U.S. citizen. If the State agency paid for the birth under Medicaid, it would seem logical that the State could use this insurance claim as proof of citizenship for the purposes of the DRA requirements. Under the interim final rule, however, a health insurance record, including a record of Medicaid payment for the birth in a U.S. hospital, would not be satisfactory evidence for an infant. Only records created at least five years before the initial application for Medicaid are allowed, effectively nullifying the use of this evidence for newborns (42 CFR 435.407(e)(2)).

Moreover, under current law, infants born to U.S. citizens receiving Medicaid are deemed to be eligible for Medicaid upon birth and remain eligible for one year so long as the child remains in the family and the mother remains eligible for Medicaid (or would remain eligible if pregnant). The preamble to the interim final rule requires the family to produce citizenship and identity documentation for the child at the next redetermination of eligibility (71 *Fed. Reg.* 39216), which would be at age one. It is unnecessary and duplicative to require subsequent documentation, since the State Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen.

In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant subject to the 5-year ban on Medicaid coverage or an undocumented immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application for Medicaid coverage must be filed and the citizenship documentation requirements would apply (71 *Fed. Reg.* 39216). Again, this makes no sense, since the State Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen. The immigration status of the parent has no bearing on the child's citizenship status or eligibility for Medicaid.

Moreover, the preamble to the interim final rule takes the position that an applicant is not eligible for Medicaid until the documentation requirements have been satisfied. Under the interim final rule, newborns who fall under the requirement to apply for Medicaid would thus be denied coverage for needed care, whether it be wellness checkups or treatment for more serious problems, until additional documentation could be procured, even though the State is in possession of documentation of citizenship, in the form of the claim for payment of the birth. Hospitals and physicians treating newborns in these circumstances will be at risk for non-payment for the treatment of newborns who are low-birth weight, have postpartum

complications, or simply need well-baby care and who must, under the interim final rule, meet the documentation requirements. This is unnecessary, because the State Medicaid agency has already made the determination, by paying for the birth, that the child was born at a hospital in the U.S. and is a citizen.

We strongly urge that 42 CFR 435.407(a) be amended to specify that the State Medicaid agency's record of payment for the birth of a newborn in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship and no further documentation should be required.

Children in Foster Care

The interim final rule applies the DRA citizenship documentation requirements to all children who are U.S. citizens, except those eligible for Medicaid based on their receipt of SSI benefits. Among the children who would be subject to the documentation requirements are those in foster care, including those receiving Federal foster care assistance under Title IV-E.

We believe these onerous new documentation requirements should not apply to children in the foster care system for a number of reasons. First, under current Administration for Children and Families (ACF) policy, State child welfare agencies must verify the citizenship status of all foster care children in order to determine eligibility for Title IV-E payments. We believe current State practice in fulfilling the requirement to verify the citizenship or immigration status of all children receiving Federal foster care maintenance payments, adoption assistance payments, or independent living services (ACYF-CB-PIQ-99-01) have been and continue to be sufficient to meet the requirements for the purpose of Medicaid. The requirement for States to re-document a foster child's citizenship and identity imposed by the interim final rule imposes unnecessary duplication of the State agency effort and will delay health care for these children.

Second, foster children clearly fit into the DRA-allowed category for an exemption from these onerous requirements. The DRA stipulates that the citizenship documentation requirement shall not apply to individuals who are eligible for Medicaid "on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented," section 1903(x)(2)(C) of the Social Security Act. The receipt of Title IV-E payments is precisely such a basis of eligibility.

Third, given the adversarial process often used to remove children from their birth families, the majority of the citizenship determination is completed through electronic verification with vital statistics databases. Birth families often do not have the documents needed or are mentally incapacitated, or unwilling to provide this information. Requiring the foster care family or the State to procure original documentation or additional documentation beyond the proof obtained by the child welfare agency is an unrealistic exercise.

Fourth, the medical needs of foster children necessitate no delay in receiving Medicaid coverage. More than 80 percent of children in care have developmental, emotional, or behavioral problems. Many of the children in foster care have physical and/or psychological problems due to causes such as pre-natal exposure to alcohol or drugs, neglect and/or abuse, and multiple foster care placements. Thirty to 40 percent of children in the child welfare system have physical health problems. And, although children in foster care represent 3 percent of all Medicaid enrollees, they account for 25-41 percent of Medicaid mental health expenditures. This is hardly a group of individuals that should have their health care delayed or denied. Delaying healthcare coverage for these children so often in need of medical attention is unacceptable and contrary to public interest.

We would note that while section 6036 of the Deficit Reduction Act also requires proof of identity as a protection against fraud, the nature of foster care does not lend itself to this type of fraud. Establishing identity is generally a means to ensure that fraud is not committed by someone who is attempting to access services under a false name. Neither children nor their parents apply for foster care or Medicaid through the foster care system. Children are brought into the foster care system (often over the objection of their birth parents) to ensure their safety. Medical services are then provided through Medicaid to meet their often substantial healthcare needs. Caseworkers are rarely unsure about the identity of a child given that they work with the family and other members of community who corroborate the identity of the child, which negates the need for paper documentation. Additionally, most children in foster care do not have a driver's license, military card, identification card, or merchant mariner card and many, particularly those that are very young, do not have school records. Delaying or denying access to Medicaid coverage for foster children as a result of the requirements in the interim final rule will also deter foster families from taking in these children as many foster families could not afford the substantial medical needs of this population without Medicaid's assistance.

While the Centers for Medicare and Medicaid Services (CMS) has suggested verbally to States that foster children will be treated as current beneficiaries rather than applicants, and thus allowed to receive Medicaid-covered services for a period of time while the State seeks documentation, this is inadequate as it requires duplicative verification on the part of the States and ultimately may result in loss of healthcare services for particularly difficult cases. For the reasons listed above, we urge you to revise 42 CFR 435.1005 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirements of the Deficit Reduction Act.

Native Americans

Native Americans will be particularly disadvantaged and disenfranchised from Medicaid if the requirements in the current rule remain in effect for them. Given the chronic under-funding of the Indian Health Service, Medicaid is an important supplement for Native Americans' health care. Moreover, the health needs of this population are great. For example, the infant mortality rate is 150 percent greater for Native Americans than for Caucasian infants and Native

Americans are 2.6 times more likely to be diagnosed with diabetes as are Caucasians. Medicaid helps to offset the relatively low levels of private insurance coverage among American Indians; roughly 17 percent depend on Medicaid for their insurance. But unchanged, the rule will pose a great barrier to gaining access to health care for this population.

The interim final rule does not allow the use of tribal enrollment cards as evidence of citizenship, except in the case of the Texas Kickapoos. There are over 560 Native American tribes that are formally recognized by the Federal Government and are on a nation-to-nation basis with the U.S. Government. All of these tribes issue enrollment cards to individuals who are born in the U.S. (and have a U.S. birth certificate) or who are born to parents who are members of the tribe and who are U.S. citizens. In short, tribal enrollment cards are highly reliable evidence of U.S. citizenship.

The Secretary should exercise his discretion to specify that a tribal enrollment card issued by a Federally-recognized tribe should be treated like a passport and deemed primary evidence of citizenship and identity. However, in the case of a Federally-recognized tribe located in a State that borders Canada or Mexico that the Secretary finds issues tribal enrollment cards to non-citizens, tribal enrollment cards should then only qualify as evidence of identity, not citizenship.

U.S. Citizens Without Documentation

The interim final rule leaves many gaps in its treatment of individuals who are unable to produce necessary documentation. The rule directs States to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship (42 CFR 435.407(g)) but it does not address a situation in which a State is unable to locate the necessary documents for such an individual. The interim final rule also fails to address the situation in which an individual does not have "incapacity of mind or body" but his or her documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. As a result, if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will lose their coverage once their "reasonable opportunity" period expires. Unfortunately, victims of hurricanes and other natural disasters whose records have been destroyed, those who were born at home and never had a birth certificate issued, individuals whose information is housed in an area affected by such a disaster, or homeless individuals whose records have been lost will be unable to qualify for Medicaid under the CMS rule.

We urge the Secretary to use the discretion afforded under the DRA to allow State Medicaid agencies the authority to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility. The regulations for the Supplemental Security Income (SSI) program allow people who cannot present any of the documents SSI allows as proof of citizenship to provide what information they do have and explain why they cannot provide other documents. This is a wise approach to adopt.

Specifically, 42 CFR 435.407 should be revised to enable a State Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of receiving Federal matching funds if an applicant or current beneficiary, or a representative of the State on the individual's behalf, has been unable to obtain primary, secondary, third, or fourth level evidence of citizenship during the reasonable opportunity period and it is reasonable to conclude that the individual is in fact a U.S. citizen or national. The State Medicaid agency would have to place the reasons for its conclusion in the individual's case file.

Reasonable Opportunity for Applicants to Obtain Required Documentation

Approximately 10 million low-income women and children will apply for Medicaid this year. Under the regulation, even if these women and children meet all of the State's criteria for Medicaid eligibility, they must wait for their Medicaid coverage to begin until they have assembled their documents and submitted them to the Medicaid agency. A pregnant mother who is waiting six weeks to have her original birth certificate mailed to her from out of State will have to forgo prenatal care in the interim. Needed care for children and mothers should not be delayed as parents await documents from State or Federal agencies. This delay in coverage also puts hospitals, physicians, clinics, and pharmacies at risk of not being paid for the services they provide.

First, we urge CMS to revise 42 CFR 435.407(j) to clarify that applicants who declare they are U.S. citizens or nationals and who meet the State's Medicaid eligibility criteria are eligible for Medicaid, and States must allow them a "reasonable opportunity" period of at least 45 days after this eligibility determination to obtain the necessary documentation. Individuals who are awaiting documents that require longer to process (for example, a Certificate of Citizenship can take more than six months to be processed, or a passport, which has a normal processing time of six weeks) should either be given additional time to produce documentation commensurate with the type of documentation sought or be able to request a waiver for additional time to produce the documentation.

Second, we urge CMS to revise 42 CFR 435.1008 to clarify that, consistent with current CMS regulations regarding eligibility, coverage is effective the third month before the month of application through the expiration of the "reasonable opportunity" period.

In the absence of this clarification, States and providers will have no assurance that Federal Medicaid matching funds are available for medically necessary covered services furnished by participating Medicaid providers to a U.S. citizen who has applied for Medicaid, been determined eligible, but is waiting for a birth record or an identity document. Failure to make these changes will result in numerous gravely ill individuals forgoing necessary treatment or preventive care. A sick child, for example, should not have his potentially life-saving care delayed while the family and State wait for a bureaucratic process to run its course. A hospital should not have to wait for payment because another government agency, wholly unrelated to health care, is backlogged with applications for citizenship documentation.

Original Copies and Electronic Information Interchange

Although there is no statutory basis for the requirement, the interim final rule requires that all documents proving citizenship, such as a birth certificate, and all documents proving identity, such as a driver's license with photo ID, "must be either originals or copies certified by the issuing agency." The rule estimates that "it would take an individual 10 minutes to acquire and provide to the State acceptable documentary evidence and to verify the declaration" and "it will take each State 5 minutes to obtain acceptable documentation, verify citizenship and maintain current records on each individual." This estimation is unrealistically low, considering the application process and processing times and the fact that many individuals are unlikely to have the necessary documents at hand. Furthermore, because CMS has failed to conduct statutorily required outreach, few people will be aware of the need to obtain these documents prior to application or redetermination.

Not only are individuals required to present original or certified copies of records, but States are also required to maintain copies of the evidence of citizenship and identity in case files or databases. These onerous requirements are not required by Federal law, and impose significant time and effort on both States and families seeking either originals or certified copies of their documents.

We urge CMS to modify the rule to comport with the statute, and eliminate the requirement that documents must either be originals or copies certified by the issuing agency. The final rule should also expand the ability of States to use computer matches to electronically document citizenship. For example, in addition to using automated vital records matches to document citizenship and certain other databases to document identity as allowed in the interim final rule, States should be able to use the Social Security Administration's NUMIDENT database, the SAVE database, or any other eletronic databases that contain identity or citizenship information, without requiring that the applicant or beneficiary first attempt, unsuccessfully, to provide documentation. These options would be highly accurate, less costly, and faster than requiring presentation of original or certified citizenship documents.

In addition, if one State has verified the citizenship or legal status of a Medicaid beneficiary, that verification should be acceptable in all States. When a beneficiary moves from one State to another State he or she would not have to go through the verification process again when applying for Medicaid service in the new State.

Finally, we urge CMS to begin the statutorily-required outreach campaign immediately so that families are aware of the information they must provide in order to receive coverage under Medicaid.

CONGRESS of the UNITED STATES
U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE
DEMOCRATIC STAFF
2322 Rayburn House Office Building, Washington, D.C. 20515

FAX COVER SHEET

DATE: August 9, 2006

TO: **The Honorable Michael O. Leavitt**
Secretary
Department of Health and Human Services

ATTN: **Congressional Liaison Office (202-690-6786 Bus)**

FAX NUMBER: 202-690-6351

FROM: **Representative John D. Dingell**
Ranking Member
Committee on Energy and Commerce, Minority

NUMBER OF PAGES:
(Including Cover) _9 pages

COPY FOR YOUR INFORMATION

COMMENTS: The following is a letter and an attachment. Please distribute to the appropriate staff.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
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HARRISBURG, PENNSYLVANIA 17105-2675

AUG 0 9 2006

James L. Hardy
DEPUTY SECRETARY
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Mark B. McClellan, M.D., PhD
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attn: CMS 2257-IFC
P.O. Box 8017
Baltimore, Maryland 21244-8017

Dear Dr. McClellan:

I am writing to convey to the Secretary of the Department of Health and Human Services (DHHS) the position of the Pennsylvania Department of Public Welfare's (Department) Medical Assistance Advisory Committee (MAAC) regarding the citizenship and identity provisions of the recently enacted Deficit Reduction Act (DRA) of 2005.

The federally enacted DRA of 2005 has created many opportunities as well as challenges to Pennsylvania's welfare program. While the DRA has provided flexibility in the manner through which we can provide necessary health care services, we have found the apparent inflexibility regarding the manner through which we can authorize eligibility counter productive to increasing access to health care services.

The Department has worked with both its consumer and provider constituencies to implement the DRA's citizenship and identity requirements. To this end, revised operational procedures have been issued to the Department's county assistance offices through which eligibility determinations and re-determinations are made, and Medical Assistance (MA) Bulletins have been issued to MA enrolled providers who provide assistance to applicants.

The public input mechanism the Department uses in the MA Program is the federally mandated MAAC, the advisory committee consisting of consumers, providers and advocacy groups. The Department, in the construction of the MAAC, has established four subcommittees to address specific sub-issues and report back to the MAAC. One of these subcommittees is the Consumer Subcommittee (Subcommittee) which consists of both consumers and consumer advocacy organizations. At the Subcommittee meeting held July 26, 2006, a resolution concerning revisions needed to

the DRA's citizenship and identity interim final rule published in the Federal Register July 12, 2006, was unanimously endorsed by the Subcommittee and presented at the July 27, 2006, MAAC meeting for the MAAC's review and possible endorsement.

At the MAAC meeting the following Resolution was unanimously approved by the members with the direction that the Department submit the Resolution to you. The Resolution is:

> "Be it resolved this 26th day of July 2006, that the Consumer Subcommittee of the Pennsylvania Medical Assistance Advisory Committee urges the Secretary of the United States Department of Health and Human Services to amend its interim final rule, published July 12, 2006, in the Federal Register as follows:
>
> 1.) To treat Medicaid applicants like recipients, by finding those who otherwise qualify for Medicaid (except for the documentation of citizenship/identity) to be eligible for Medicaid so long as they cooperate with the Medicaid agency in obtaining such documentation;
>
> 2.) To adopt a more flexible approach with respect to requiring original or certified copies of documents and instead permit the submission of photocopies where the state Medicaid agency deems them reliable and administratively practical;
>
> 3.) To expand the list of hardship exemptions to include children in foster care and to allow individual exceptions where appropriate;
>
> 4.) To permit the payment records of the state Medicaid agencies to serve as acceptable documentary evidence of citizenship; and
>
> 5.) To develop national standards governing the exchange of data and documents among the states for purposes of documenting citizenship and identity hereunder."

On behalf of the Department's MAAC, we strongly urge the DHHS to consider the above Resolution as you evaluate revisions to the DRA citizenship and identity interim final rule. Thank you for your attention to this important matter.

Sincerely,

James L. Hardy

Virginia Poverty Law Center
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August 9, 2006

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

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

Dear Secretary Leavitt:

The Virginia Poverty Law Center provides legal assistance to Virginia's low-income families in a variety of substantive areas, including health law. We are writing to comment on the above Interim Final Rule on Citizenship Documentation.

We believe the published Rule improves upon the guidance previously issued by CMS. Specifically, we support:

- Excluding all Medicare beneficiaries and most SSI recipients from the documentation requirements. As CMS recognized, this was clearly the intent of Congress

- Clarifying that 209(b) states such as Virginia can use the SDX system to verify citizenship for those SSI recipients not subject to the above exemption. However, there is no reason to treat these SSI recipients differently from others. The final regulations should clarify that all SSI recipients (eligible for Medicaid) are exempt. If this full exemption is not adopted, at a minimum, the final regulations should clarify that once the SDX confirms that these individuals are or were citizens receiving SSI, they are not required to separately document their identity.

- Allowing states to do vital records matches in lieu of requiring a birth certificate to establish citizenship.

- Allowing states to consult federal or state governmental, public assistance, law enforcement or correction agency's data systems to establish identity.

- Clarifying that presumptive eligibility remains for children, pregnant women and women with breast and cervical cancer during the presumptive eligibility period regardless of whether they have documented their citizenship.

However, the Interim Regulations do not do enough to insure that people who are indeed citizens will receive Medicaid. Many of the more onerous requirements of the Rule are ill-advised and not mandated by § 6036 of the DRA. We have the following additional comments:

CHILDREN RECEIVING FOSTER CARE BENEFITS UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT CANNOT BE, AND IN ANY EVENT SHOULD NOT BE, REQUIRED TO DOCUMENT THEIR CITIZENSHIP UNDER § 6036 OF THE DRA.

Because foster children never declare to be citizens under 1137(d)(1)(A), they do not fall within the ambit 42 U.S.C. § 1396b(i)(22) and may not legally be subjected to its documentation requirements. The DRA does not require this barrier, and it should be eliminated.. CMS should amend 42 C.F.R. § 435.1008 to include children receiving benefits under Title IV-E as a population that is exempt from the documentation requirements.

MEDICAID BENEFITS MUST BE PROVIDED TO APPLICANTS WHO HAVE DECLARED THEIR CITIZENSHIP UNDER § 1137(d)(1)(A) WHILE THEY ATTEMPT TO ACQUIRE ANY REQUESTED DOCUMENTATION.

Section 6036 does not impose new eligibility requirements on Medicaid applicants or recipients. Rather, it imposed a new condition on the states for receipt of FFP. The eligibility requirement for Medicaid remains the declaration of citizenship or qualified alien status called for by § 1137(d) of the SSA, a section that is specifically referenced by § 6036.

However, the Interim Regulation would convert the provision of documentary evidence of citizenship into an eligibility requirement for citizen Medicaid applicants, as it prohibits states from providing medical assistance to a person before (s)he has presented that evidence. This approach is not legally permissible. It ignores the plain language of § 1137(d)(1)(A), violates 42 U.S.C. § 1396a, and denies U.S. citizens a "reasonable opportunity" to present documentation which is currently available to non-citizens who must present documentation of their alien status.

CMS should, by amending 42 C.F.R. § 435.407(j) or otherwise, clarify that applicants for Medicaid who declare they are citizens or nationals of the United States must, if otherwise eligible, be given Medicaid benefits during the reasonable opportunity period they have to acquire evidence of their status.

MEDICAID BENEFITS MUST BE PROVIDED TO CITIZEN INFANTS BORN TO UNQUALIFIED IMMIGRANT PARENTS ON THE SAME BASIS AS THEY ARE PROVIDED TO OTHER CITIZEN INFANTS.

The Interim Regulation correctly recognizes that children born in this country to women who receive full scope Medicaid should themselves receive Medicaid without the need to document their citizenship, at least until their first birthdays. However, according to your preamble, the same treatment is not afforded to children born in this country to women who are also Medicaid recipients, but whose benefits, because of their immigration status, are limited in scope to labor and delivery. This is a purely arbitrary distinction that is contrary to previous CMS policy and denies U.S. citizen children equal protection.

There is absolutely no meaningful, or legal, distinction between the children that CMS proposes to cover from birth and those that it does not. A child in either situation is by definition a U.S. citizen, a fact indisputably known to the Medicaid agency because it will have paid for the child's birth in a U.S. hospital. Requiring any other documentation is simply unnecessary.

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

EXEMPTION FROM THE DOCUMENTATION REQUIREMENTS SHOULD BE EXTENDED TO ADDITIONAL GROUPS.

Using its authority under 42 U.S.C. §1396b(x)(2)(C), CMS should also exempt certain other categories of Medicaid recipients and applicants who have already established their citizenship for other government benefit programs. These are:

- *former* beneficiaries of Medicare or SSI,
- people who have been found eligible for Social Security Disability payments, but are still in their two-year waiting period for the receipt of Medicare.
- People who receive or have, in the past, received TANF or SCHIP benefits, as such people have already established their citizenship in the context of those programs.

CMS should amend 42 C.F.R. § 435.1008 to include these groups as exemptions from the documentation requirements.

CMS SHOULD AMEND THE RULE TO CREATE A MEANINGFUL OUTREACH PROGRAM AS REQUIRED BY § 6036(C) OF THE DRA.

The Rule does not describe or otherwise address any "outreach program" designed to inform and assist those affected by the new documentation requirements. This failure ignores the mandate of § 6036(c) of the DRA.

CMS should develop an outreach program that is truly designed to reach out, *i.e.,* to assist those whose eligibility might otherwise be frustrated by the new rules.

The Rule should be amended to inform states that: a) they may pay for citizenship and identity documents necessary to meet their obligations under § 6036 of the DRA, b) payment may be made without requiring a showing of a "good faith effort" by the applicant, and c) the cost of acquiring those documents will be fully reimbursed by the federal government. This approach is consistent with the language of § 1396b(a)(4), and it gives meaning to the mandated "outreach plan". .

Outreach also needs to be expanded and improved with regard to "special populations." As written, § 435.407(g) neither provides sufficient guidance regarding a state's responsibilities nor casts a net wide enough to capture all those who will need assistance. State Medicaid agencies have a responsibilities under both § 504 of the Rehabilitation Act of 1973 and the Americans

with Disabilities Act to provide sufficient assistance to people with disabilities to afford them the same opportunity to benefit from Medicaid as is available to people without disabilities. This responsibility to assist cannot legally just be shifted to a "representative", as the Rule currently suggests. At a minimum, CMS should clarify the circumstances under which the Medicaid agency will be responsible for providing assistance for people with disabilities. It would also be useful to provide examples of the scope of assistance that might be necessary for this population.

In addition, CMS should expand the list of reasons why a person may require special assistance to include, for example, people who are limited English proficient (LEP), and everyone who is homeless or who has been displaced by a natural disaster, such as a hurricane or a fire. Finally, CMS should clarify that states can extend the reasonable opportunity period for as long as they and the applicant deem necessary to allow any applicant to comply.

THE DOCUMENTATION STRUCTURE ESTABLISHED BY THE RULE IS UNNECESSARY AND WILL RESULT IN IMPROPER DELAYS AND DENIALS OF NEEDED MEDICAID BENEFITS.

The priority structure for the acceptable documents should be revised so that any document on the list is enough. The "priority" status of certain documents over others should be eliminated.

The rule must also provide a better method of last resort for people who, for reasons ranging from mental illness to natural disasters to past discrimination, simply cannot provide any of the listed documents. The closest thing to such a procedure in the Interim Regulation is the ability to establish one's citizenship through the affidavit of others. But that procedure is so cumbersome and unrealistic, that is has little value.

The regulations should allow people to explain why they cannot comply and allow the state to decide if the offered reason is credible. This is a procedure available to applicants for the SSI program, and it should also apply to Medicaid.

CMS should amend 42 C.F.R. § 435.407 to allow a person who cannot acquire any of the listed documents to explain why the documents cannot be acquired, and to allow a state to provide Medicaid to that person if it finds the explanation to be credible. If the person is incapacitated to such a degree that (s)he cannot provide an explanation, the person's guardian or representative should be able to provide it instead.

REQUIRING ORIGINALS OR CERTIFIED COPIES OF DOCUMENTS WILL INCREASE THE COSTS AND NEGATIVE ERROR RATE ASSOCIATED WITH THE DOCUMENTATION PROCESS.

Section 435.407(h)(1) specifies that only originals or certified copies of qualifying documents may be accepted to verify citizenship or identity. This provision has caused enormous problems in Virginia. It has completely undermined efforts to encourage mail-in applications and has undoubtedly deterred citizens from receiving the health insurance to which they are entitled. It is extremely burdensome for individuals, families and social services offices/staff, since most people will now have to present documents in person – requiring face-to-face meetings.
CMS offers no explanation for this extraordinarily onerous and expensive rule, which is clearly not required by § 6036 of the DRA.

CMS should amend 42 C.F.R. § 435.407(h)(1) to say that states must accept standard copies of qualifying documents and must accept the documents from whomever the beneficiary has designated to deliver the documents.

CMS SHOULD NOT REQUIRE THAT DOCUMENTS BE DATED AT LEAST FIVE YEARS BEFORE THE ORIGINAL MEDICAID APPLICATION DATE.

A number of documents listed in 42 C.F.R. § 435.407(c) and (d) can only be accepted as proof of citizenship if they are dated at least five years before the applicant's or beneficiary's *original* application for Medicaid. CMS has offered no explanation for this extremely restrictive and arbitrary requirement. It will create a great hardship on people, especially those who have been in a nursing home or other institution for many years.

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

CMS SHOULD CLARIFY THAT ONCE A PERSON HAS SUCCESSFULLY VERIFIED CITIZENSHIP IN ONE STATE (S)HE NEED NOT DO SO AGAIN IN ANOTHER STATE.

Section 42 C.F.R. § 435.407(h)(5) clearly states that documentation of citizenship and identity should be a one-time event. However, it should be amended to make clear that a person who has already established eligibility for Medicaid in one state can later get Medicaid in another state without again providing documentation. In addition, CMS should establish a mechanism to enable states to quickly and easily verify previous Medicaid enrollment in other states.

Thank you for your attention to these comments.

Sincerely,

Jill A. Hanken
Staff Attorney

cc: CMS Office of Strategic Operations and Regulator Affairs
Regulations Development Group
Attn: Melissa Musotto, CMS-2257-IFC, Room C4-26-05
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Baltimore, MD 21244-1850

Katherine T. Astrich, CMS Desk Officer, CMS 2257-IFC
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GOOD SHEPHERD SERVICES

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August 9, 2006

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

Subject: Comments on Medicaid Program - Citizenship Documentation Requirements Interim Final Rule

Good Shepherd Services is a 501-c3 non-profit service provider for over 18,000 at risk children, youth and families throughout New York City each year. We offer an array of services in foster care, prevention, family support and education to those most at risk in the communities we serve.

As Executive Director I am writing to offer the following comments during the open comment period, on the interim rule to implement section 6036 of the Deficit Reduction Act (DRA) of 2005 which was published in the Federal register on July 12. Specifically, Good Shepherd Services urges CMS to add an exemption for foster children to Section 6036 which governs citizenship documentation requirements as they apply to children in the foster care system.

If implemented, this new requirement will be:

- Burdensome on children and families already struggling through a complex and challenging foster care system
- Duplicative of existing federal law mandates that foster children already have documented citizenship in order to receive Title IV-E assistance
- Potentially dangerous if delays or rejection of much needed health and mental health care services result from stringent new requirements such as only original or officially certified copies of birth certificates being accepted. Delays of services in the foster care system result in longer stays in foster care with additional costs to federal and state governments.

CITY-WIDE

Barbara Blum Residence

Euphrasian Residence

Marian Hall

McMahon Services for Children

St. Germaine's Residence

St. Helena's Residence

The Chelsea Foyer

The Human Services Workshops

SOUTH BROOKLYN

Bushwick Academy

Children and Youth Development Services

Crossroads at PS 27, PS 32, PS 38
The School for Leadership in the Environment
The School for International Studies
The School for Global Studies

Family Reception Center

Pathways Academy

Red Hook Community Center Beacon

Red Hook Community Center Family Counseling Services

Secondary Schools for Law, Journalism, and Research and John Jay Academy

South Brooklyn Community High School

The Advance Academy

The After-School Centers at PS 27, PS 32, MS 142, and MS 293

Transitions

Young Adult Borough Center

GOOD SHEPHERD SERVICES

In light of these concerns, I urge CMS to:

- Exempt foster and adoptive children from these requirements by adding an exemption at 42 CFR 435.1008 and recognize children in foster care similarly to SSI eligible children and adults already exempted from identity requirements
- Honor states' recognition of the identity of a child entering foster care as valid
- Institute the necessary measures to ensure that all children ages 17 years and younger entering the foster care system are immediately able to receive Medicaid services, even if child welfare agencies need to take additional steps to prove citizenship identity. This is most germane if CMS fails to heed the recommendation for an exemption.

Thank you for considering these recommendations. My fervent hope, along with that of the entire Good Shepherd Services community of providers, is that you will remedy the situation in favor of these children most in need of our care, regardless of proof of citizenship.

Paulette LoMonaco

Sr. Paulette LoMonaco
Executive Director

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August 7, 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

RE: Medicaid Citizenship Documentation Interim Final Rule Comments

Dear Mr. McClellan:

These comments on the Interim Final Rule regarding Citizenship Documentation Requirements are submitted on behalf of Advocacy, Incorporated. Advocacy, Incorporated is a non-partisan, non-profit organization designated to advocate for the legal, human and service rights of Texans with disabilities.

We commend the Centers for Medicare & Medicaid Services ("CMS") for easing the impact of the new documentation requirement by exempting individuals on SSI or Medicare from the new rule, allowing the use of state vital records databases to cross-match citizenship records and clarifying that the new citizenship documentation requirement does not apply to "presumptive eligibility" for pregnant women and children in Medicaid. However, many aspects of the rule remain problematic and overly burdensome for Medicaid recipients and applicants. We offer the following comments and recommendations

1. The rules should not apply to children in foster care (§435.1008)

We strongly oppose applying the citizenship rule to children entering foster care. These children have already endured great suffering and to deny them access to medical care until their citizenship can be proved is unnecessary. It will be difficult or impossible to locate required documentation for many of these children because many birth families will be uncooperative or unable to be located. Moreover, states already verify citizenship of most children in foster care when they determine them eligible for federal foster care payments. States should not have to document citizenship again in order to gain Medicaid coverage for these children.

2. There should be no delay in establishing eligibility for Medicaid (§436.1004)

Applicants who declare they are U.S. citizens and meet eligibility criteria should be enrolled in Medicaid, while they have a "reasonable opportunity period" to obtain necessary documentation. There is no statutory requirement to prohibit applicants who are otherwise eligible for Medicaid from enrolling in the program immediately. 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 an applicant has declared under penalty of perjury that the applicant is an American citizen and met all eligibility requirements for Medicaid, the applicant 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, requiring many to seek more expensive care if their conditions worsen.

3. A state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital should be considered satisfactory documentary evidence of citizenship and identity. (42 CFR 435.407(c)(1)).

According to the preamble to the rule, newborns that are born to mothers on Medicaid will have to provide citizenship documentation at their next renewal. The preamble also provides that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their birth before they can receive Medicaid. There is no question that these children are American citizens by virtue of their birth in U.S. hospitals. Moreover, this policy is problematic because it creates additional paperwork and potential delays or loss of coverage for infants, many of whom will have immediate health care needs, especially for those children who must, under the regulations, show proof of citizenship in order to get Medicaid coverage at birth.

Further, it is unlikely that these children can immediately prove citizenship through state vital record matches, because time delays and processing lags. The easiest way to solve this problem is to allow states to use Medicaid billing records of births as proof of U.S. citizenship and identity. Children born in the U.S., whose births were paid for by Medicaid, should be able to get and keep Medicaid if they are otherwise eligible without the need for their families to provide any additional proof that they are citizens.

4. CMS should not require applicants and beneficiaries to submit originals or certified copies. (42 CFR 435.407(h)(1)).

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirements. This requirement adds to the burden of the new requirement for applicants, beneficiaries, and states and makes it more likely that health care providers will experience delays in reimbursement and increased uncompensated care.

While the regulations state that applicants and beneficiaries can submit documents by mail, it is unlikely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. This will also force applicants and beneficiaries to make additional visits to state offices with original and certified copies. Moreover, they will definitely

not be willing or able to mail in proof of identity such as driver's licenses or school identification cards.

CMS should make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by issuing agencies. States should be able to accept copies when the state has no reason to believe that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or beneficiary.

5. The time frame for collecting documents should be flexible (§435.407(j) and §346.407(j))

States should be given broad flexibility to allow individuals the time necessary to collect proof of status. Unlike other information required on the Medicaid application or 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.

6. State mental health authorities should serve as an evidence of identity (§435.407(e) and §436.407(e))

CMS should include state mental health authorities 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 and the stress of this process could trigger relapse.

Therefore every effort should be made to make this process as easy as possible for such individuals. State mental health agencies and the community providers who serve this population have medical records and other data bases that enable confirmation of identity.

7. Populations needing special assistance should be enlarged (§435.407(g) and §436.407(g))

The regulation language describing persons who need special assistance is not clear. In place of the undefined phrase "incapacity of mind" to describe 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 to assist homeless persons with securing the necessary documents. Furthermore, the regulations should require states to 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.

8. Native American tribal enrollment cards should be included in the list of documents to prove citizenship

The new rules do not allow for Native American tribal identification documents to be used to prove U.S. citizenship, although they may be used for identity purposes. The tribal enrollment process assures 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.

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. Further, 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.

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

We commend CMS for clarifying that this process need only be gone through once. However, it is not completely clear that once these documents have been procured and citizenship status has been proved that this will be sufficient not only for future eligibility determinations in that state, but across all states. This should be made clear.

Thank you for this opportunity to comment on this proposed regulation.

Sincerely,

Jeffrey S. Miller, J.D.
Policy Specialist
Advocacy Incorporated

FAMILY HEALTH COUNCIL
of Central Pennsylvania, Inc.

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Cindy Stewart
President and CEO

August 9, 2006

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

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

Dear Sir or Madam:

The Family Health Council of Central Pennsylvania is the Title X grantee for the 24-county central Pennsylvania region. We support a network of 19 local health care organizations, operating at 39 sites. Together they served 54,000 low-income patients last year. I am writing on behalf of these agencies and the women they serve to comment on the interim rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA), which requires U.S. citizens applying for or receiving Medicaid to provide proof of citizenship and identity.

Pennsylvania has applied to CMS for a Medicaid family planning waiver and we are deeply troubled by the negative impact this provision will have on our efforts to successfully implement the waiver, when it is approved by CMS. Consequently, we urge CMS to modify sections 435.406 and 436.406 of the interim final rule. This rule will impede access to critical, time-sensitive and cost-effective care.

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

Over the past decade, 24 states have obtained federal approval under section 1115 to expand Medicaid eligibility for family planning services to individuals who otherwise would not be covered under traditional Medicaid programs. The impetus for these waivers is to creatively implement programs that can provide preventive health care to an expanded population while saving money at both the state and federal levels. These programs have had a significant impact, and their cost-savings have been well documented.

For example, in 2004, CMS contracted with the CNA Corporation to conduct a national evaluation of six states (Alabama, Arkansas, California, New Mexico, Oregon, and South Carolina) with family planning waivers. The evaluation concluded that the waivers exceeded the CMS budget-neutrality requirement, with all six states and the federal government showing significant savings. In Pennsylvania, we expect to continue this cost savings pattern.

By throwing what could be a sizable impediment in the path of individuals seeking to enroll in these programs, the interim final rule will turn the clock back on this progress. The problem posed by the documentation requirements is particularly acute when it comes to accessing such a time-sensitive service as family planning. Any delay in receiving services may well result in an unintended pregnancy. Women often come to a family planning clinic for sexually transmitted disease (STD) testing. Any delay in both the screening and the treatment poses significant public health risks.

Under the interim rule, services to a woman who might otherwise qualify for services under the Medicaid waiver but who cannot meet the citizenship documentation requirement will be covered by Title X. With its current funding level, the Title X program will be unable to absorb these additional clients.

We therefore urge CMS to modify sections 435.406 and 436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. Requiring these individuals to document citizenship according to the specifications set forth in the July 12 notice will delay or even preclude the receipt of this time-sensitive care. Denying women access to this cost-effective care will result in significant costs to both the federal and state governments.

Sincerely,

Cindy Stewart

Cindy Stewart
President and CEO

Oregon Hunger Relief Task Force

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August 9, 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

To Whom it May Concern:

I am writing in response to the Medicaid Citizenship Documentation Interim Final Rule, 71 Fed. Reg. 39214 (July 12, 2006).

The Oregon Hunger Relief Task Force was created by the State Legislature in 1989. We work closely with the State of Oregon Department of Human Services to expand nutrition and other vital services to all families that need these services.

We would suggest the following changes to help make sure people receive the services they need:

- Expand the list of acceptable documents to prove citizenship. The SSI program allows for more discretion, recognizing that older, more infirm individuals will have difficulty obtaining documents.
- Allow for simple copies of documents. Requiring certification increases the likelihood that some will not be able to afford or produce the documents.
- Allow for people to obtain services while they are gathering the required documentation of citizenship. People who are older and may have moved around during their lifetime will have more difficulty obtaining the required proof but should not be denied needed services.
- Allow foster children to use their initial certification rather than requiring them to prove citizenship a second time.
- Allow Tribal Enrollment Cards as proof of citizenship, since many members were not born in hospitals.

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We also urge you to conduct extensive outreach and education to workers and clients to make sure these new rules are well understood and implemented fairly.

Thank you for the opportunity to help make this program successful while still serving the needs of so many people.

Sincerely,

Patti Whitney-Wise

Patti Whitney-Wise
Executive Director

Planned Parenthood®
of Southwest and Central Florida, Inc.

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

August 9, 2006

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

Dear Administrator McClellan:

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

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

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

In Florida, Medicaid accounts for 40.9% of the total family planning expenditures. Nearly a quarter of all women of reproductive age in Florida have no health insurance.

Individuals applying for Medicaid should receive benefits once they declare citizenship.
Section 6036 of the DRA applies to all individuals (with the exception of Medicare beneficiaries and most SSI beneficiaries) who apply for Medicaid. For those individuals who are already receiving Medicaid benefits, the interim final rule stipulates that they will continue to be eligible for services while they are in the process of producing the required documentation during a "reasonable opportunity" period allotted to them. However, for those individuals who are newly applying to the program, the interim final rule firmly establishes that they will not be eligible for services until

citizenship is proven (see 71 Fed. Reg. at 39216 and 42 CFR 435.407(j)). As a result, U.S. citizens applying for Medicaid who have met all eligibility criteria and are in the process of producing the documentation will experience significant delays in Medicaid coverage. This will have a substantial impact on individuals in need of time-sensitive reproductive health care services.

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

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

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

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

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

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

Attaining the required documents presents its own challenges. Clearly, this calls into question CMS's estimate that it will take 10 minutes for applicants and beneficiaries to comply with the requirements (see 71 Fed. Reg. 39220). Of course, delays in care will occur as a result of the document acquisition process —an especially harmful issue for those who will have to forgo reproductive health care services while they are attempting to attain the required documentation.

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

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

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

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

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

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

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

Sincerely,

Barbara A. Zdravecky

Barbara A. Zdravecky, President/CEO

STATE OF COLORADO

DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
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Bill Owens
Governor

Stephen C. Tool
Executive Director

August 9, 2006

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

RE: File Code CMS-2257-IFC

Dear Sir or Madam:

The Department of Health Care Policy and Financing is the single state agency responsible for administering the Medicaid program in Colorado. We have attached our comments concerning the interim final regulations for the Medicaid citizenship and identity documentation requirements (File Code CMS-2257-IFC).

Sincerely,

Barbara B. Prehmus, M.P.H.
Director
Medical Assistance Office

BBP:baz

Enclosure

Colorado Department of Health Care Policy and Financing
Responses to Interim Regulations on Citizenship Guidelines for Medicaid Eligibility
July 2006
File Code: CMS-2257-IFC

Page 39216, Federal Register July 12, 2006
I. Background, Implementation Conditions/Considerations
Title IV-E Children

Colorado is concerned that the proposed regulations will apply to Title IV-E children who receive Medicaid. The Department of Health Care Policy and Financing (the Department) requests that the rule be amended to exempt these individuals.

42 CFR §435.145 requires States to provide Medicaid to children who receive adoption assistance or foster care maintenance payments under Title IV-E. These individuals do not apply for Medicaid; they receive it automatically by virtue of receiving adoption assistance or foster care maintenance payments. A Title IV-E child who is placed in foster care may not have access to the documentation necessary to satisfy the citizenship and identity documentation requirements, and the child's natural parents may be unwilling or unable to provide the required documentation.

Page 39216, Federal Register July 12, 2006
I. Background, Implementation Conditions/Considerations
Children Born to Nonqualified Aliens

Colorado is concerned that the proposed regulations will apply to children born to nonqualified aliens who were eligible for and were receiving Medicaid on the date of the child's birth and who continue to be eligible for emergency services after the child's birth. The Department requests that the rule be amended to exempt these children.

42 CFR 435.117 requires States to provide categorically needy Medicaid eligibility to a child born to a woman who is eligible as categorically needy and who is receiving Medicaid on the date of the child's birth. These children are deemed to have applied and been found eligible for Medicaid on the date of birth and remain eligible for one year so long as the mother remains eligible and the child is a member of the mother's household. The proposed rule exempts these children from the citizenship and documentation requirements until the next redetermination of eligibility. The proposed rule, however, states that the exemption does not apply to children born to a nonqualified alien because "the mother would not continue to be eligible after the child's birth." These women, however, would continue to be eligible for emergency Medicaid services after the child's birth. The Department requests that the rule be amended to exempt these children until the next redetermination of eligibility.

Page 39224, Federal Register July 12, 2006
§ 435.407 (e)

Colorado welcomes the interim final regulation's expanded list of documents an individual can use to prove his or her citizenship. The Department is concerned, however, that the list of documents for establishing an individual's identity is limited and excludes individuals over the age of 16 from establishing their identity through an affidavit. The Department requests the rule be amended to be consistent with the affidavit provisions for establishing citizenship, thereby allowing an individual of any age to establish his or her identity by an affidavit.

Some adults, particularly elderly or incapacitated individuals, may not have or may not be able to obtain any of the identity documents outlined in the rule. Without an option to establish identity through an affidavit, these individuals would lose access to Medicaid coverage.

Page 39225, Federal Register July 12, 2006
§ 435.407 (g)

Colorado is concerned that this regulation does not define the character and extent of assistance a State must provide an incapacitated individual in obtaining citizenship and identity documentation. The Department requests that the rule be amended to define more clearly what assistance States are expected to provide.

The Department requests clarification as to whether States are required to pay for the cost of obtaining citizenship and identity documents and, if so, whether cost is a valid factor in determining which document to obtain in the hierarchy of citizenship documents. The Department also requests clarification as to whether States need to provide transportation for individuals who need to appear in person to obtain documents. Finally, the Department requests clarification as to how a State should meet its obligations under this regulation if the documents do not exist or cannot be obtained.

Page 39225, Federal Register July 12, 2006
§ 435.407 (h)(1)

Colorado is concerned about the requirement that all citizenship and identity documents be originals or copies certified by the issuing agency and that notarized copies of documents are not acceptable. The Department requests that the rule be amended to allow individuals to submit notarized copies of original documents.

Colorado currently accepts mailed applications, and many applications are sent by community based organizations that assist individuals who need help completing the application. Although the interim final regulation states that States may accept original documents by mail, it is unlikely that many individuals will be comfortable mailing original documents, particularly those

documents that are difficult or costly to replace (such as a passport or naturalization certificate) or that are needed on a regular basis (such as a driver's license). Some of these individuals may not be physically able to present their documents in person, and they may lack a guardian or authorized representative who can assist them. For these people, the requirement that all citizenship and identity documents be originals will be particularly burdensome. The effect of requiring original documents will be to increase the number of individuals who apply in person rather than by mail at county departments of social/human services. This will place a burden both on the county departments of social/human services as well as on the individuals who appear in person to apply for Medicaid.

generations united
a national coalition dedicated to intergenerational policy, programs and issues.

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August 9, 2006

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

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

I am writing on behalf of Generations United to comment on the interim final rule, which was published in the Federal Register on July 12, 2006, to implement Section 6036 of the Deficit Reduction Act (DRA, P.L. 109-171). The provision, which went into effect July 1, requires applicants for and recipients of Medicaid to provide proof of U.S. citizenship or nationality and identity. We are particularly concerned about the impact the regulations will have on the ability of children in foster care and those children with special needs adopted from foster care to get the health and mental health care that they often urgently need. Generations United is the only national membership organization focused solely on improving the lives of children, youth, and older people through intergenerational strategies, programs, and public policies. Children in foster care, vulnerable and uprooted from their homes, face a world of uncertainty. Often grandparents and other relatives step in to meet the needs of these displaced children. Grandparents raising grandchildren already face several challenges when accessing resources and the Medicaid citizenship documentation requirement is another unnecessary obstacle.

While we have numerous concerns about the barriers the new documentation requirements create for children getting timely, appropriate health and mental health care, we are focusing our comments today particularly on our concerns about the application of the interim final rules on children in foster care and children with special needs adopted from foster care.

Clarification of the documentation requirement as it applies to children in foster care and those adopted with special needs from foster care is especially important for at least 2 reasons.

1) **New Costs for Child Welfare.** If Medicaid is not available and the child welfare agency must pick up the tab for health and mental health treatment for children in its care, normally paid for by Medicaid, the costs incurred by the child welfare agency will mean that scarce dollars are taken away from other important needs of these children.

2) **Difficulties in Securing Documentation.** Because of the fact that many children enter foster care from situations where parents have been charged with abuse or neglect, it is likely that there would be delays in obtaining the necessary documentation, in part because of the parents' hesitancy or unwillingness to cooperate with the agency in providing the necessary documentation to fulfill this requirement. There may also be cases where the whereabouts of the parent are unknown, further complicating and delaying the documentation process. Children who were abused and neglected are also more urgently in need of medical treatment and more likely to be in danger if there is an interruption in services.

Since state child welfare agencies certify citizenship for many of these children anyway for purposes of their eligibility for foster care payments and also establish their identity when they take them into care and assume custody of them, they seem to be clear candidates to be exempt. By doing so, you will make it more likely that they will receive necessary health and mental health treatment and services in a timely and appropriate manner and less likely that that their well-being will be threatened by delays as required documentation is sought.

Given such problems, we recommend first that the Centers for Medicare and Medicaid Services (CMS) take steps in the final regulations to exempt these children from the documentation requirements.

Generations United is the only national membership organization focused solely on improving the lives of children, youth, and older people through intergenerational strategies, programs, and public policies. GU represents more than 100 national, state, and local organizations and individuals representing more than 70 million Americans. Since 1986, GU has served as a resource for educating policymakers and the public about the economic, social, and personal imperatives of intergenerational cooperation. GU acts as a catalyst for stimulating collaboration between aging, children, and youth organizations providing a forum to explore areas of common ground while celebrating the richness of each generation.

Sincerely,

Donna Butts
Executive Director

SGIM

Society of General Internal Medicine

To Promote Improved Patient Care, Research, and Education in Primary Care and General Internal Medicine

August 10, 2006

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

Attn: CMS-2257-IFC
Medicaid Program; Citizenship Documentation Requirements

Dear Sir or Madam:

On behalf of the Society of General Internal Medicine, I am pleased to provide comments on the Centers for Medicare & Medicaid Services (CMS) on its Medicaid citizenship documentation interim final rule published in the July 12 Federal Register. We commend CMS on the effort evident in formulating these significant regulations within a short period of time. Also, we endorse CMS's decision to exempt seniors and people with severe disabilities from the Medicaid citizenship documentation requirement. However, we still have serious concerns that the law leaves more than 40 million low-income people at risk of losing their Medicaid coverage and joining the ranks of the uninsured. We will continue to work to repeal this statute.

The policies set forth in the regulation could have a very significant impact on the patients our members serve. Medicaid provides an important safety net that allows Americans to access critical medical services. We appreciate CMS's effort to ensure that individuals without legal eligibility do not receive services to which they are not entitled. However, without modifications, these regulations may impose significant barriers to patients in our communities in obtaining Medicaid coverage, which could delay or prevent them from receiving necessary medical care.

Our main concerns are the following:

- There is ample evidence that a large proportion of uninsured U.S. residents are Medicaid eligible, and that for many the administrative requirements for enrolling and re-enrolling are the primary reason they do not participate in this program. Thus, most attempts at improving insurance coverage for low income persons call for simplifying the process for applying and re-applying for Medicaid. This new citizenship documentation requirement is a drastic shift in policy, moving in the opposite direction from recent laudable federal and state initiatives to improve Medicaid coverage.

- For new applicants, the guidelines prohibit states from providing Medicaid until they provide documented proof of both their citizenship and identity. Not only does this create an additional disincentive to applying, it also can prolong the application

process by months as applicants in need of health care scramble to find documentation that might not even exist. Thus, it will undoubtedly discourage enrollment altogether for future applicants or at the very least cause substantial delays in enrollment. In addition, for the millions of US citizens re-applying for coverage, who need to continue to make good faith efforts to provide documentation, it also causes major additional paperwork hurdles.

- We also believe that this interim rule creates a supposed solution for a nonexistent problem. Within the last two years, reports by the Department of Heath and Human Services found no substantial problem with fraudulent Medicaid enrollment and did not feel that the implementation of a documentation requirement was necessary. Thus, it is unclear why the federal government continues to pursue this administratively burdensome policy which will negatively impact U.S. citizens. It would seem that the primary motive for the legislation is to reduce Medicaid spending by limiting the enrollment or re-enrollment of eligible U.S. citizens.

- The policy also for the first time sets a de facto application fee for Medicaid applicants not possessing the required documentation. Most states require a processing fee of between $10 and $20 before issuing a copy of a birth certificate. In addition, applying for a passport costs $97 for adults and $82 for children. Thus, low income applicants will need to pay such fees in order to obtain the needed paper work to apply for Medicaid. The interim rule is imposing an additional financial burden on the U.S. citizens most in need of assistance. Therefore, the rule should stipulate rule that states will cover the costs and associated fees for obtaining the necessary documentation so that that these costs are not borne by the low-income applicants.

- We believe that many Medicaid eligible U.S. citizens will have difficulty obtaining the necessary documentation; therefore, the written affidavit may be the only method of eligibility verification for many citizens. We disagree with CMS's assertion that third and fourth level categories of documentation, including affidavits, would be used relatively infrequently. We strongly urge that the rule omit language suggesting that the written affidavit is expected to be used only rarely and urge that audit processes track the extent to which states rely on such indirect categories of documentation.

- Besides the financial burden this policy places on the Medicaid eligible population, it also places unnecessary burdens on the physically and mentally incapacitated and non-English speaking citizens. The interim final rule stipulates that "states are required to provide assistance in securing documentation to those who are not able due to physical or mental incapacitation and lack of a representative." The rule must also require that these individuals be designated a state representative who will have the primary responsibility of obtaining the required documentation. In the instance that a state representative is unable to obtain the required documentation, the state must proceed with processing a written affidavit. We also recommend that presumptive eligibility be applied for these individuals to ensure they receive the necessary care.

- In states with a high proportion of non-English speakers, states must follow the federal requirements for provision of language services to non-English speakers. The final rule must state the federal government will be especially vigilant in ensuring compliance with this requirement. For those whom the states have deemed to require assistance, such assistance must be provided by representatives who are language concordant or have available a professionally trained interpreter. A citizen's language should not become barrier to his Medicaid eligibility.

While we support the modifications CMS proposed in the interim final rule that allow more Americans to have access to Medicaid, the Society of General Internal Medicine cannot support a policy that will prevent the neediest U.S. citizens from receiving necessary medical care when they need it most. In order to ensure that this inequitable policy harm the fewest number of citizens, we urge CMS to incorporate our proposed changes into the final rule. We appreciate the opportunity to present our comments and would be pleased to discuss them further. For additional information, please contact David Karlson, Executive Director, by phone at (202) 887-5150 or by e-mail at karlsond@sgim.org.

Thank you for your consideration.

Sincerely,

Robert M. Centor, M.D.
President

NATIONAL YAP™
YOUTH ADVOCATE PROGRAM

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August 9, 2006

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

Re: Medicaid Program; Citizenship Documentation Requirements
Interim Final Rule

The West Virginia Youth Advocate Program, Inc., (WVYAP) submits the following comments with regard to the interim rule to implement Section 6036 of the Deficit Reduction Act of 2005 (DRA), published in the Federal Register on July 12, 2006. Section 6036 governs the citizenship documentation requirements as they apply to children in our nation's foster care system. Specifically, WVYAP is concerned about the application of the rule to children in foster care ('435.1008), and encourage CMS to add an exemption at 42 CFR 435.1008 for foster children.

WVYAP is a non-profit child welfare agency and an affiliate of the National Youth Advocate Program, Inc., and provides services to children in the state of West Virginia. The majority of services provided by WVYAP is in the area foster care. The bulk of WVYAP's foster care clients are children who have been abused or neglected.

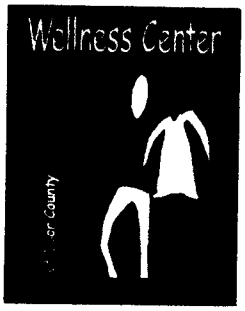
It is the position of WVYAP that an exemption must be added to 42 CFR 435.1008 for foster children. To apply the citizenship documentation requirement to foster children is unfair, unrealistic and over burdensome. These new requirements to prove U.S. citizenship or nationality and identity will create a critical burden on foster children, foster families, and an already overburdened child welfare system.

Furthermore, the new requirements are duplicative in the case of foster children, as according to federal law, foster children already must have documented citizenship to receive Title IV-E assistance. This unnecessarily duplication could result in the delay or denial of needed health care to foster children, many of who enter state custody in poor health. This may result in a shift of funds from other needed services, such as prevention, intervention and support services, further denying these children of the help they most direly need.

WVYAP strongly recommends that CMS carefully evaluate the impact of these regulations in light of the compelling health care needs of the foster care population and an exemption at 42 CFR 435.1008 for foster children.

Sincerely,

Renee J. Ellenberger MSW/LGSW
Executive Director



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August 8, 2006

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

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

As the Nurse Practitioner and volunteer Executive Director of a dedicated family planning clinic located in Northeast Wisconsin, I am writing to comment on the interim rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA), which requires U.S. citizens applying for or receiving Medicaid to provide proof of citizenship and identity. The Wellness Center of Door County, Inc. is deeply troubled by the negative impact this provision will have on states granted Medicaid family planning waivers by CMS. Consequently, we urge CMS to modify sections 435.406 and 436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. If implemented, this rule would impede access to critical, time-sensitive and cost-effective care and severely limit the ability of these innovative state-initiated programs to enable low-income women to avoid unplanned pregnancy and reduce health-related costs to states.

The Wellness Center of Door County is a family planning clinic dedicated to providing affordable and accessible reproductive health care services . Over 90% of our clients have absolutely no health care coverage and many are employed half of the year due to the seasonal/tourist nature of our location.

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

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

In 2004, CMS contracted with the CNA Corporation to conduct a national evaluation of six states (Alabama, Arkansas, California, New Mexico, Oregon, and South Carolina) with family planning waivers. The evaluation concluded that the waivers exceeded the CMS budget-neutrality requirement, with all six states showing significant savings. For example, between 1997 and 1999, the state of Arkansas saved over $14 million and averted more than 7,000 births, while the federal government saved $30 million. Oregon saved $11 million and averted over 5,000 births in 2000 alone, while California saved over $64 million and averted more than 21,000 births between 1999 and 2000. Our data in Wisconsin has demonstrated a reduction in unplanned pregnancies and similar cost savings.

But throwing what could be a sizable impediment in the path of individuals seeking to enroll in these programs, the interim final rule could turn the clock back on this progress, threatening access to care, reductions in unplanned pregnancy and cost-savings that have been a hallmark of these programs. The

problem posed by the documentation requirements is particularly acute when it comes to accessing such a time-sensitive service as family planning. Any delay in receiving services could result in an unintended pregnancy. Such a result would be particularly tragic at this moment in time, when a million more women have joined the ranks of those in need of publicly funded family planning services since 2000, bringing the total number of women in need of these services to 17.4 million in 2004. The costs associated with an increase in unintended births will be staggering. Penalizing women by increasing the hurdles for them to access family planning services is a giant step backward that the men and women of Wisconsin don't wish to see occur.

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

Further, I am also concerned about the increase in administrative costs associated with implementing the documentation requirements. At the local level our Economic Support Workers are already understaffed and clients on assistance have difficulty with follow-up communication that is being requested with the end result being dis-enrollment due to clerical/support issues as opposed to eligibility issues. These situations result in unnecessary additional administrative costs that do and WILL CONTINUE to outstrip the savings incurred from these ground-breaking and arguably effective family planning waivers, thereby obviating the ultimate purpose of the waivers.

I am requesting that CMS modifies sections 435.406 and 436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. Requiring these individuals to document citizenship according to the specifications set forth in the July 12 notice would delay or even preclude the receipt of this time-sensitive care, resulting in an increase in unplanned pregnancies, unplanned births and abortions among low-income Americans. Denying women access to this cost-effective care would result in significant costs to both the federal and state governments.

Respectfully,

Michele Geiger-Bronsky

Michele Geiger-Bronsky MSN, APNP
Executive Director/Nurse Practitioner

Oregon
Theodore R. Kulongoski, Governor

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August 10, 2006

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

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

Dr. McClellan:

Thank you for providing the opportunity to comment on the Interim Final Rule regarding the citizenship requirements stemming from Section 6036 of the Deficit Reduction Act (DRA). Oregon also appreciates the efforts that have been made by the Centers for Medicare and Medicaid Services (CMS) to allow states to participate in conference calls with federal staff to address issues and receive clarification regarding the Act. This willingness on the part of CMS to solicit and consider suggestions for changes or clarifications to the rule will increase the effectiveness of states' implementation of the requirements while allowing the greatest possible level of flexibility afforded under the statute.

Oregon respectfully submits the following comments regarding implementation of the rules contained in Section 6036.

General clarification and guidance

These comments cover a number of subjects that apply to the broad sense of the rule.

Equitable application of reasonable opportunity period:

- The rule creates inequity between Medicaid recipients and applicants. Although both groups are given a "reasonable opportunity period" to provide citizenship and identity documentation, they are not treated the same during that period. ***Recipients*** continue to receive medical assistance during the reasonable opportunity period. ***New applicants*** do not receive medical assistance during this period.

Comment:

- Oregon requests that applicants who are otherwise eligible for medical assistance be afforded the same treatment as recipients, and receive medical assistance during the reasonable opportunity period, with federal matching funds provided.

Legalized Alien/Alien not lawfully admitted 42 CFR 440.255:

- It is not clear whether the rules allow an applicant who meets all eligibility criteria for the Medicaid program except the ability to document citizenship to receive emergency medical assistance under 42 CFR 440.255, known in Oregon as CAWEM.

Comment:

- Oregon requests clear guidance from CMS as to whether undocumented ***citizens*** are eligible to receive emergency medical assistance under Title XIX. If citizens are eligible for emergent medical assistance, Oregon seeks clarification as to whether this is a mandatory coverage group or an optional coverage group. Oregon considers babies born under these circumstances to be, by birthright, citizens of the United States and therefore will continue to provide medical care under Medicaid to these babies for the first 12 months of their lives, as currently allowed.

Use of original documents:

- The majority of Medicaid applications in Oregon are mailed in for processing. In order to comply with the CMS standard of first seeking higher tiered evidence, Oregon citizens would be mailing "originals or copies certified by the issuing agency." These documents may include a passport, a birth certificate, a U.S. Citizen I.D. card, a driver license and a Certificate of Degree of Indian Blood. These are vital and sensitive documents to which individuals may need access on a regular basis.

Comment:

- The Act does not require the use of "originals or certified copies." Oregon requests that CMS allow states to accept copies, rather than originals, of these types of documents, given that states would have the ability to confirm the information contained therein.

Family planning waiver:

- The citizenship requirement for individuals seeking family planning services may lead to a delay in providing those services. Potential delays may increase the likelihood of unintended pregnancies and increase the cost of Medicaid services offered under the Oregon Health Plan and the Citizen/Alien Waived Emergency Medical program.

Comment:

- Oregon requests that individuals seeking assistance under Oregon's family planning waiver be exempt from the citizenship requirement.

Use of affidavits:

- It is not clear in the rule whether individuals providing affidavits must demonstrate their citizenship and identity in the same manner as prescribed by the rule for Medicaid recipients and new applicants.

Comment:

- Oregon requests clarification of the citizenship and identity document requirements for individuals providing affidavits for others.

Use of the term "affidavit":

- As used in the rule, the term "affidavit" is inappropriate.

Comment:

- Oregon requests the rule not use the term "affidavit" in describing what more clearly is a "declaration." Affidavit has specific legal constructs, which are unnecessary and burdensome for these purposes

Three-year eligibility gap:

- It is the stated intent of the rule that once citizenship and identity are established and recorded in an individual's permanent case file, they should not need repeating unless ***later evidence*** raises the question of citizenship. Adding the three-year gap in eligibility caveat does nothing to increase either the validity or reliability of the previously established documentation, nor does it increase the likelihood a state may uncover through this process conflicting evidence to the previous determination.

Comment:

- Oregon requests CMS to withdraw this caveat, which is not found in law and places an extensive and undue burden on states.

Five-year record requirement:

- The effect of the five-year requirement is to exclude use of documentation that may be issued within the five-year period, but is based on records of long standing with the issuing entity. Primarily, the documents subject to the requirement are or would be issued by a government entity or hospital. In many instances, the date of issuance is not the date of origination.

Comment:

- Oregon requests every reference to the five-year requirement as it pertains to allowable evidentiary documents be removed. The five-year period is not found nor suggested in the Act, and compliance would not be administratively cost-effective or efficient.

Implementation concerns

Auditing procedures:

- The rule does not include information about audit, oversight and monitoring procedures. This lack of information prevents states from identifying and complying with expectations from the earliest stages of implementation.

Comment:

- Oregon requests that CMS expedites the development of its audit, oversight and monitoring procedures, and shares those procedures with states as they are developed.

Implementation cost estimates:

- Preliminary estimates by CMS of the time and effort that will be spent on compliance by clients and the states are unreasonably low and misleading in regard to the burden the rule places on states.

Comment:

- Oregon requests that CMS amends these estimates to more accurately reflect the resource, training and systems burden of this mandate, and puts into context the recommendations being made by Oregon. CMS has the opportunity to act in the spirit of the federal-state partnership intended to share the responsibility of providing health care for certain low-income children, families and individuals, and for individuals who are aged and disabled.

Data matches:

- As written, the rule for conducting data matches needs to be clarified to allow the state the maximum amount of flexibility afforded under the law.

Comment:

- Oregon requests that CMS outline acceptable principles and/or standards for states to use in assessing the allowability of certain database applications. Rather than specifying in rule which particular database can be used, Oregon requests CMS to provide acceptable standards of dependability. This approach would enable the states to have flexibility within the intent of the rule regarding allowable electronic transmission of data such as trading computerized databases, sending faxes and permitting increased reciprocity among states.

Exemptions from citizenship and identity requirements

Additional groups exempt from citizenship and identity requirements:

- The rule creates an inequity in the groups of people who can qualify for exemptions from the citizenship documentation requirements by including Medicare and Supplement Security Income (SSI) recipients, but not including comparable groups.

Comment:

Oregon recommends CMS approve the following groups of individuals as meeting the citizenship and identity requirements.

- **SSDI (Title II, Disability Benefits) recipients**: These individuals are subject to the same verification provisions as those required of Medicare recipients. Therefore, Oregon requests that all recipients of SSDI be afforded the same exempt status as Medicare recipients.
- **Former recipients of SSI**: Oregon requests CMS include these individuals in the same exempt group as current recipients. This would include clients deemed eligible for Medicaid based on their Disabled Adult Child (DAC) and/or Pickle status.
- **Foster care and subsidized adoption recipients**: Verification of citizenship is a requirement for this population group and should be sufficient in fulfilling the intent of the law. Oregon requests that an exemption for this group be added to the rule.
- **Infants through Safe Haven/Safe Surrender/Baby Moses settings**: Mothers in crisis may safely relinquish their babies to a safe haven (e.g., birthing clinic, doctor's office, fire department, hospital, or police or sheriff office) where the baby will be protected and provided medical care. Because relinquishing parents are not required to provide personal information, little may be known about these infants. Oregon requests that an exemption for this group be added to the rule.

Document requirements

Expanding acceptable documents:

- The list of acceptable documents for demonstrating citizenship and/or identity does not appear to follow a consistent rationale and needs to be expanded.

Comment:

Oregon recommends CMS add the following documents to those that may be used to establish citizenship ***and*** identity.

- **Certificate of Degree of Indian Blood (CDIB) and/or tribal enrollment cards issued by a federally recognized tribe**: Oregon asks that the Certificate of Degree of Indian Blood (CDIB) and/or tribal enrollment cards be added to Tier 1 as an acceptable form of citizenship ***and*** identity. All branches of the federal government and governmental entities have long recognized their unique government-to-government relationship with federally recognized tribes. Congress has recognized that a special relationship between the United States and Indian tribes exists in the form of treaties, such as the Treaty of Amity (known as the Jay Treaty of 1794), individual treaties with Indian tribes, intergovernmental agreements, and status and court findings. In addition, Congress granted citizenship in 1924 to members of federally recognized tribes. Enrollment records of federally recognized tribal governments are highly reliable, comprehensive and extremely accurate. Oregon requests CMS deem documents issued by a federally recognized tribe (either CDIBs or enrollment cards) as satisfactory evidence of identity and citizenship.

Oregon recommends CMS add the following documents to the list of documents that may be used to demonstrate citizenship.

- **State Medicaid-paid claims for births and copies of birth records submitted to the State Vital Records**: These documents are reliable records and should be accepted as proof of citizenship.
- **Reasonably established records of births**: Children born in the Oregon where a record of birth is reasonably established should be considered to have met the burden of proof for citizenship.
- **Social Security cards**: Oregon requests clarification of the CMS rationale for not accepting Social Security cards as proof of citizenship or legal immigration status.

Oregon recommends CMS add the following documents to the list of documents that may be used to establish identity.

- **Voter registration cards**: Voter registration cards, as government-issued documents, should be considered to represent reliable proof of identity.
- **Birth certificates, immunization records or other hospital or clinic records**: When these types of records contain all necessary information (especially for children under 16), they should be considered acceptable documents for identity.
- **Court order for removal of a child**: Oregon believes that in the circumstance of a child's court order for removal, the related court documents are absolute proof of identity.
- In addition, Oregon requests that CMS develop a process to work with states in consideration of additional documents (citizenship and/or identity) not yet recognized.

Each of these recommendations, if adopted, would afford Oregon and other states the ability to responsibly and effectively implement Section 6036 of the DRA and the subsequent rules while reducing the administrative burden.

Thank you for the opportunity to comment.

Sincerely,

Bruce Goldberg, M.D.
Director

DHS
Oregon Department of Human Services

FAX COVER SHEET

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Re:			

☒ **Urgent** ☐ **For review** ☐ **Please comment** ☐ **Please reply** ☐ **Please recycle**

Hi Christine,

Per our conversation I am faxing over Oregon Department of Human Services comments on the following issue. Please let me know if you need to have me try and send the comments electronically again.

Thank you very much for your assistance

Tracy Hulett
503-945-6299
tracy.hulett@state.or.us

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

Minnesota Department of **Human Services**

August 9, 2006

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

Via Overnight Mail
File Code: CMS-2257-IFC

To Whom It May Concern:

Thank you for the opportunity to comment on the interim final regulations governing citizenship documentation requirements in the Medicaid program. The Minnesota Department of Human Services is the single state agency responsible for administering Minnesota's Medicaid Program, the PMAP+ section 1115 demonstration and the Family Planning Program section 1115 demonstration.

We are pleased to find that the interim final regulations took additional steps since the issuance of the State Medicaid Director's Letter that allow states to establish an exemption for Medicare and SSI beneficiaries, accept electronic data matching with Vital Statistics in substitution of birth certificates, and simplify the identity requirement for children under age 16 by allowing a parent declaration under penalty of perjury.

We have some serious concerns about the regulations. States are left without authority or support for implementing policy that is discussed in the commentary but not found in the regulations. Furthermore, states do not have clear guidance from these regulations on the treatment of individuals who cannot document. We discuss these in more detail in the comments below.

We also question the need for three levels of preferred evidence for citizenship. Federal statute gives the Secretary discretion to specify other documents that provide proof of citizenship or nationality for a person who must meet the requirement with one document for citizenship and a separate document for identity; §1902(x)(3(C)(v). Arguably, other documents that provide proof of citizenship but not identity should be treated equally as reliable, once approved. If CMS' rationale for tiers of preferred evidence is reliability, we see little difference in record reliability once a person has to move beyond the records listed in federal statute (public birth record, FS-545, DS-350, I-97 or FS-240). As a practical matter, the complex hierarchy hinders applicants and recipients

from being able to comply within the reasonable opportunity period. CMS should simplify the documentation process by collapsing the second through fourth tiers.

Our comments addressing specific topics and sections of the commentary and regulations are below.

MINNESOTA COMMENTS: INTERIM FINAL RULE ON CITIZENSHIP DOCUMENTATION REQUIREMENTS

I. Background

Implementation Conditions/Considerations

EXEMPTIONS

CMS has interpreted the word "alien" found in the express exemption language of §1903(x) to mean "individual." The exemption from documentation for supplemental security income (SSI) beneficiaries is stated as follows in §1903(x)(2):

> The requirement of paragraph (1) shall not apply to an [individual] who is eligible for medical assistance under this title –
>
> . . .
>
> (B) on the basis of receiving supplemental security income benefits under title XVI; or
> (C) on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

Comment: We appreciate CMS' interpretation of the exemption language to lend meaning to the exemption. The result is of great benefit to consumers and Medicaid programs because it relieves states of the obligation to document citizenship where such documentation has already been established for other federal programs.

CMS has the authority and should widen the application of the exemption. All recipients of supplemental security income (SSI) who receive Medicaid should be included in the exemption. The language in the Deficit Reduction Act of 2005 (DRA) is sufficiently broad to include all SSI beneficiaries who are approved for Medicaid. However, the commentary on page 39216 appears to limit the meaning of the exemption for SSI beneficiaries to those states that contract with the Social Security Agency (SSA) to determine Medicaid at the time of determining SSI (known as 1634 states after the section of title XVI that authorizes the contracts). CMS' interpretation might include both 1634 states and SSI states, the latter being states that determine Medicaid eligibility but approve it automatically for SSI recipients under §1902(a)(10)(A)(i). However, the above DRA provision does not reference §1634 or §1902(a)(10(A), but title XVI.

All state Medicaid programs must identify beneficiaries of SSI in determining eligibility. States that contract with SSA do so at redeterminations. States that do not contract with SSA but follow SSI do so in processing Medicaid applications. States that use more restrictive policy than SSI

under §1902(f) (known as 209(b) states) in determining Medicaid eligibility must still identify SSI beneficiaries in order to disregard the SSI benefit.[1]

Section 1903(x)(2)(B), which provides an exemption for individuals eligible "on the basis of receiving supplemental security income benefits," can be read to mean SSI beneficiaries who qualify for Medicaid regardless of the state's Medicaid program. Thus, all SSI beneficiaries should be included in the exemption from documentation.

If CMS does not agree that the exemption language for SSI beneficiaries provides authority to exempt all SSI beneficiaries, CMS has alternative authority under §1903(x)(2)(C) to do so on the grounds that SSI beneficiaries all have citizenship documentation previously presented. All SSI beneficiaries have had citizenship and identity documented by SSA. A SSI beneficiary who meets Medicaid eligibility criteria in any state should be exempt from the Medicaid documentation requirement, because citizenship and identity has already been established by a federal program.

The commentary on page 39216 offers states (presumably SSI states and 209(b) states) the option of using information on the SDX as primary documentation of an SSI beneficiary's citizenship and identity. This is an unnecessary step, given that all SSI beneficiaries have previously presented satisfactory documentation to a federal agency that has recorded the information in its data base. This fact is pointed out in the interim final regulation at §435.407(a)(5) describing the location of such information in SSA's data base. No purpose is served in having the Medicaid agency locate SSA's documentation of citizenship in the federal agency database. The intent of Congress in requiring documentation would still be fully served.

Similarly, CMS should use its authority in §1903(x)(2)(C) to extend an exemption to beneficiaries of Social Security disability insurance benefit (title II). These individuals have or should have their citizenship and identity established in the process of having disability benefits approved, according to SSA's policy manual, DI 11010.170. These individuals have a 24-month waiting period to receive Medicare and may qualify for Medicaid during that time. There is no reasonable basis for failing to recognize the previously established citizenship and national status of this group of beneficiaries who are exempt upon qualifying for Medicare.

REASONABLE OPPORTUNITY PERIOD

The commentary discusses the requirement to allow applicants and recipients who have signed a declaration of citizenship under §1137(d) of the Social Security Act a reasonable opportunity to obtain documentation of citizenship. The reasonable opportunity period is any reasonable amount of time a state allows for providing documentation. It may, but need not be, the same time period or periods that states use to process Medicaid applications and renewals.

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[1] 1902(f) requires states using more restrictive eligibility criteria for aged, blind and disabled are required to consider eligibility for SSI beneficiaries who meet state criteria:

> . . . any such individual shall be deemed eligible for medical assistance under such State plan if . . . the income of any such individual as determined in accordance with section 1903(f) (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972.

Recipients remain eligible during the reasonable opportunity period. At 71 FR, page 39216, CMS states that recipients *may be* terminated in one of two circumstances:

> A determination terminating eligibility may be made after the recipient has been given a reasonable opportunity to present evidence of citizenship *or* the State determines the individual has not made a good faith effort to present satisfactory documentary evidence of citizenship.

Additional discussion of the reasonable opportunity period is found in this subsequent paragraph:

> The "reasonable opportunity period" should be consistent with the State's administrative requirements such that the State does not exceed the time limits established in Federal regulations for timely determination of eligibility in §435.911. The regulations permit exceptions from the time limits when an applicant or recipient in good faith tries to present documentation, but is unable to do so because the documents are not available. In these cases, the State must assist the individual in securing evidence of citizenship.

Near the end of the commentary under this topic at 71 FR pages 39127, CMS notes that other regulations related to eligibility determinations continue to apply, and then states:

> Thus, States are not obligated to make or keep eligible any individual who fails to cooperate with the requirement to present documentary evidence of citizenship and identity. Failure to provide this information is no different than the failure to provide any other information which is material to the eligibility determination.
>
> . . . Failure to cooperate consists of failure by an applicant or recipient, or that individual's representative, after being notified, to present the required evidence *or explain why it is not possible to present such evidence of citizenship or identity*. . . . (emphasis added).

Comment: The statements regarding the application of a reasonable opportunity to present documents of citizenship are unclear and not resolved by regulations. The circumstances under which states must deny or terminate eligibility are also not clear. The interim final regulations, at 42 CFR §435.407(j), contains a single paragraph on reasonable opportunity and provides no assistance in reconciling the inconsistent statements in the commentary.

Can a state deny or terminate eligibility *solely* on the grounds that documentation has not been produced at the end of the reasonable opportunity period without consideration of any other factors? At least one statement in the commentary suggests this is possible. Other statements indicate that may not be acceptable. Can a state deny or terminate eligibility before the end of the reasonable opportunity period by determining that a good faith effort was not made? The statement that a recipient may be terminated after being given a reasonable opportunity to present documents is inconsistent with the statement that a state must assist an individual unable to obtain documents with a good faith effort within the reasonable opportunity period.

If an individual has unsuccessfully made a good faith effort, is a state required to give the person more time to obtain documentation? If a state denies or terminates eligibility when documentation is lacking, must it find that the individual was uncooperative? What is the proper course of action when the individual provides an explanation for why it is not possible to present evidence of citizenship or identity within the reasonable opportunity period, or a state's extension of that period? What is the proper course of action for child applicants when the parent is found to be uncooperative? The regulations should resolve these questions and provide a uniform process for states to follow.

If, in CMS' view, states are required to assist individuals facing difficulty in obtaining documents within the reasonable opportunity period, the regulations should so specify and the commentary clarified so as not to suggest the approval of a termination without such state assistance when the individual has made a good faith effort.

With regard to those applicants who have been unable, with some assistance, to document citizenship and identity, CMS says that a state "may" terminate eligibility or deny the application. This implies that a state may choose *not to* terminate or deny. However it is not clear at all in the regulation or commentary that federal financial participation (FFP) is available when a state chooses not to terminate or deny.

This ambiguity is of particular concern because advocates have made the argument that a ban on FFP does not equate to a ban on eligibility. In other words, advocates argue that states are obligated under Title XIX to provide or continue Medicaid for those who cannot document citizenship even though FFP is not available. If CMS does not intend to provide FFP for those states that choose not to terminate or deny at the end of the reasonable opportunity period, CMS is providing support for the argument that state has the obligation to provide Medicaid coverage even when the corresponding federal funds are not available. Such a result would put states in an untenable position. If the optional language is only expressing the idea that states are free to provide additional coverage at one hundred percent state cost outside of Medicaid, that does not belong in the regulation.

SPECIAL POPULATIONS

1. Children entitled to IV-E assistance

The commentary acknowledges that IV-E children (in foster care or receiving adoption assistance) are not required to declare citizenship. The commentary requires that a declaration and documentation of citizenship and identity must be obtained and kept in the child's file. CMS has told states in conference calls that IV-E children can be treated as enrollees, and documentation obtained by the next renewal.

Comment: The interim final regulations are silent on the treatment of children who are receiving IV-E assistance. Because federal statute at §1902(i)(22) (as enacted in section 6036 of DRA) prohibits federal financial participation for an individual *who declares citizenship* under §1137(d) unless the requirements of subsection (x) are met, we question whether IV-E children are subject to the documentation requirements of citizenship and identity even though CMS is delaying the documentation until after enrollment (CMS does not specify a timeframe for this group). Section

1137(d)(1)(A) imposes the declaration of citizenship or national status, or if not a citizen, then on satisfactory immigration status on individuals' eligibility for programs listed in subsection (b). Those programs are titles I, IV-A, X, XIV, XVI, XIX, unemployment compensation and Food Stamps).

The exclusion of title IV-E from the declaration requirement, along with the automatic Medicaid eligibility status of a child eligible for IV-E indicate that a declaration is not a factor in a IV-E child's Medicaid eligibility, before and after enrollment.

If CMS determines that it has the authority to require IV-E children automatically eligible in Medicaid to provide a declaration and document citizenship and identity, CMS must consider and advise states on who is authorized to provide a declaration for a child in the custody of the state. The parent of such children may not be known, or if known, cannot be required to cooperate. Section 1137(d)(1)(A) offers no guidance on who can declare on behalf of children not applying with their family. The interim final regulations do not offer guidance on the declaration of citizenship (42 CFR §435.407(f) merely allows a parent or guardian to submit an affidavit of identity).

We note that children in foster care will have in their child welfare case record a court order that contains the child's date and place of birth. We do not believe it necessary for that record to be copied for the Medicaid case given the privacy and confidentiality issues involved in such records. If documentation is to be required for these children, it should be satisfactory for their Medicaid case record to contain a reference to the court order in the child welfare case record.

2. Children in state-funded foster care

CMS has told states that all children in foster care or adoption assistance would be treated as enrollees for purposes of documentation of citizenship and identify.

Comment: The commentary mentions only children receiving IV-E foster care. If Medicaid children in state-funded foster care or adoption assistance are to be treated in the same manner as IV-E children, that treatment should be described in the commentary and the regulations.

The same issues arise for children in state-funded foster care and adoption assistance as for IV-E children. Unlike IV-E children they are not automatically eligible for Medicaid. However, the same issues arise about the proper person for declaring the child's citizenship or national of the U.S., and the time frame for documentation, if any, of citizenship and identity.

3. Deemed Newborns

The commentary discusses the differing treatment for infants deemed eligible for Medicaid and those not deemed. Infants born to mothers receiving Medicaid on the date of birth have the requirement to document citizenship and identity delayed until the first eligibility redetermination. Other citizen infants born to noncitizen mothers whose labor and delivery costs may be covered under another basis do not qualify as deemed infants; 71 FR page 39216.

Comment: The regulations do not state that documentation may be delayed for newborns automatically eligible for Medicaid until the next redetermination. We request that the regulations expressly state the treatment for infants deemed eligible for Medicaid at birth.

4. Citizen infants

Infants born to noncitizen mothers whose costs are covered either by 1903(v) (alien coverage of emergency medical conditions) or by 42 CFR §447.10 (SCHIP coverage of unborn) are excluded from delayed documentation.

Comment: There is no question about the citizenship status of babies born to noncitizen mothers where the birth costs were paid for by a publicly funded health care program. The child's place of birth is known to the health care program that receives information and pays for the birth. If our recommendation below for eliminating documentation requirements for most children is not accepted, we then maintain that these infants can, without any risk, be enrolled in Medicaid and given the same delayed year of documentation as deemed infants. CMS should allow states to delay any formal declaration and documentation for infants until the eligibility redetermination at one year. In the alternative, CMS should allow states to accept the hospital bill for labor and delivery as temporary documentation of place of birth.

5. Minor children

Other than treatment of certain children as recipients instead of applicants, the interim final regulations require documentation of citizenship and identity from all children without giving consideration to the special circumstances of minor children.

Comment: We request that CMS give serious consideration to whether documentation is actually needed for most children. There is very little question about the citizenship of children born to parents who have documented their citizenship. We do not believe there is any value to obtaining documentation for such children. There is also no question about the citizenship of children born in the U.S. and adopted by parents who are citizens and who document their citizenship. Since the U.S. place of birth has already been established through the adoption process, we do not believe it should be necessary for these parents to produce the adoption decree.

Limiting documentation of children to only necessary groups is far more efficient and cost-effective. There are two groups of children for whom parental status would not assure their citizenship: Children born outside of the U.S. and adopted by parents who are U.S. citizens; and children born in the U.S. to noncitizen parents. We have asked for clarification on the type of documentation needed for the first group. Secondary evidence of citizenship should be accepted for the second group.

If documentation of citizenship for all children will be required, CMS should expand the list of acceptable types of documents showing U.S. place of birth to include a signed recognition of parentage, newspaper announcements of births, hospital website announcements of births, and a public health care program claims' record of payment for labor and delivery at a hospital in the state.

USE OF DATA BASES

CMS has asked for comments and suggestions from states (71 FR page 39216) on other electronic data bases with reliable information about citizenship or identity of individuals.

Comment: As suggested above, we believe that matches with SDX or another SSA data base is unnecessary when a federal program has already documented citizenship and identity. Confirmation that an individual is a current or former beneficiary of SSI or social security disability benefits should be the basis for exemption from the Medicaid documentation of citizenship and identify. In addition, receipt of other federal benefits such as veteran's benefits and railroad retirement benefits should be accepted as a basis for the exemption from the documentation requirement.

Other electronic data matches that might be considered:

- CMS might determine whether Department of Homeland Security electronic data matches would be available to confirm the status the primary sources of documentation and eliminate the need for people to relinquish such documents, or states to copy them. If data matching on primary sources occurred between the DHS and CMS, the federal agency could in turn advise state Medicaid programs of the individuals whose documentation requirement had been met.

- If CMS will not exempt all beneficiaries of federal benefits from the Medicaid documentation requirement, then it should allow use of data matching with other federal benefit programs such as SSI, SSDI, and veterans benefits to establish citizenship and identity.

- State cross matches with tribal enrollment records should be approved, either for use as primary evidence should CMS consider revising the regulation, or if no change is made to the interim final regulation, then as evidence of identity.

ORIGINAL DOCUMENTS

CMS notes that it is requiring people to present original or certified copies of originals. They are not required to appear in person to submit documents. 71 FR 39216 and 42 CFR §435.407(h).

Comment: The requirement for original documents is unworkable and unreasonable. People with limited means cannot be expected to relinquish original documents such as a passport, birth certificate, certificate of naturalization, driver's license, state identity card, student identity care in an exchange by mail to an agency that deals with large volumes of paper. It is nearly impossible for people to conduct their daily business in this society without their identity documents. For example, it is illegal in Minnesota to operate a motor vehicle without a driver's license on your person. This requirement will have government agencies accepting by mail thousands of original documents, copying them, and returning them by mail to clients. In the end, the case record will only contain photo copies.

States should be allowed to accept as satisfactory documentation copies of the primary evidence of both citizenship and identity; and copies of the second through fourth levels of evidence for citizenship, except affidavits. Copies of photographic evidence of identity should also be permitted.

States are not required by 1903(i)(22) and (x) to determine the validity of documents, nor to verify them by third party contacts. Copies should be perfectly acceptable sources of documentation.

Compliance

In the commentary at 71 FR page 39217 CMS provides that:

- FFP will not be available for states that do not require individuals to provide satisfactory documentation of citizenship and identity, "which includes the responsibility to accept only authentic documents on or after July 1, 2006."

- As a check against fraud, states are required to conduct matches with social security numbers.

Comment: The federal statute does not use the word "authentic" in describing the documents required to provide satisfactory documentation of citizenship and identity, nor does CMS insert that qualifier in the regulations themselves. State agencies are not required to authenticate documents and any such suggestion is inappropriate in the commentary.

There seems to be little added value to a "check against fraud" being made using social security numbers. Currently, states must obtain a social security number as a condition of Medicaid eligibility for the purpose of verifying income and eligibility electronically under section 1137 of the Social Security Act (IEVS). Non-matches with a given SSN would be reported through this electronic process, and the requirement of another match is a duplication of effort.

II. Provisions of the Interim Final Rule with Comment Period

INTERIM FINAL REGULATION §435.406

CMS amends §435.406(a)(1) to require states to provide Medicaid to individuals who declare under penalty of perjury that they are citizens or nationals of the United States, restating the requirement in §1137(d) of the Social Security Act, and who, under (a)(1)(ii), have provided satisfactory documentation of citizenship and identity.

Section 435.406 (a)(1)(iv) provides that individuals must declare their citizenship and the "State must document the individual's citizenship in the individual's eligibility file on initial applications and initial redeterminations effective July 1, 2006."

Comment: This regulation lacks the specificity necessary to implement the requirement in a uniform manner. It does not provide adequate guidance for states to determine the circumstances under which Medicaid may be denied, or appropriate circumstances under which Medicaid may be approved in the absence of documentation; for example, what is the status of an individual who offers an explanation for why documentation is not available?

INTERIM FINAL REGULATION §435.407; PRIMARY EVIDENCE OF CITIZENSHIP

Section 435.407, paragraph (a)(5) provides an option for states that do not provide Medicaid to individuals by virtue of receiving SSI to conduct Medicaid eligibility to use the State Data Exchange as primary documentation of citizenship and identity of SSI recipients.

> (5) At the State's option, for States which do not provide Medicaid to individuals by virtue of their receiving SSI, a State data match with the State Data Exchange for Supplementary Security Income recipients. The statute gives the Secretary authority to establish other acceptable forms of citizenship documentation. SSA documents citizenship and identity for SSI applicants and recipients and includes such information in the database provided to the States.

Comment: All SSI recipients, whether current or former, whether in an SSI or a 1902(f) state, should be included in the exempt group described in the new §435.1008. The rationale, aptly stated in paragraph 5 above, is that the federal agency has documented citizenship and identity and it should be unnecessary for a state to confirm the federal agency's activity.

As discussed below, we strongly recommend that CMS accept tribal membership as primary evidence of citizenship and identity from tribes that use U.S. citizenship in establishing tribal membership. In the alternative, allow states to identify the tribes in their state for which tribal membership is primary evidence.

CMS should also use its authority under §1903(x)(2)(C) to approve as primary evidence the identity cards issued by the Texas Vital Statistics Office to migrant workers. Minnesota has already been presented with such cards. These identity cards contain not only a photograph of the individual but the person's date of birth and U.S. place of birth that assures U.S. citizenship, and are comparable to the criteria listed in §435.5507(a)(4) for state driver's licenses requiring proof of citizenship.

Secondary Evidence of Citizenship

CHILDREN BORN OUTSIDE THE U.S.

In the commentary on pages 39218, CMS advises states to follow Public Law 106-395 for children born outside the U.S. who derive citizenship from their adoptive citizen parents. 71 FR page 39218.

Comment: The Child Citizenship Act of 2000, P.L. 106-395, section 101 establishes automatic citizenship for a child residing permanently in the U.S. who was born outside the U.S., and who has at least one citizen parent whether by U.S. birth or naturalized. The provision is made applicable to adopted children born outside the U.S. but its effect is not limited to them. Minor children of naturalized U.S. citizens also derive citizenship from their parents automatically as a result of this provision.

CMS should recognize the automatic citizenship of *any* child affected by P.L. 106-395. In addition, CMS has not indicated whether any documents must be produced in these cases, given that citizenship is automatic for these children. For example, for an adopted child born outside the U.S.,

must the decree of adoption be produced? The regulations should specify what type of documentation is needed, if any, or that an exemption applies to children who automatically derive citizenship from their parents.

BIRTH RECORDS AS SECONDARY EVIDENCE

The interim final regulation at §435.407(b)(1) establish public birth records as secondary evidence of citizenship. To be acceptable as secondary evidence of citizenship, the U.S. birth record, whether a certificate or an electronic data match with vital statistics, must be recorded within five years of birth and cannot be amended after five years of age.

Comment: These restrictions attached to state public birth records create unnecessary complexity to the documentation process. CMS has not offered any rationale for the restrictions, or assurance that such criteria produce greater reliability in establishing a person's U.S. place of birth.

Authorizing as secondary evidence of citizenship a state data exchange with vital statistics has been an encouraging sign for states faced with a short implementation timeframe. Placing restrictions on birth records that can be matched electronically will add complexity and cost to the data exchange for states that may reduce its value.

If a match with Vital Statistics records is to help states establish a more efficient process for citizenship documentation, all birth records should be treated equally.

CMS should also permit financial workers who view birth records at a vital statistics office in person to place a statement in the case file to that effect as another method of establishing U.S. place of birth. Workers in rural areas in particular may want to use this method of documenting a U.S. place of birth if they find it provides the information more quickly than the use of a statewide data exchange.

Third Level of Evidence of Citizenship

The interim final regulation at §435.407(c)(1) and (2) establishes two types of acceptable documents for establishing citizenship when documents from the above list cannot be obtained or do not exist:

- a hospital record on letterhead paper created at the time of birth, or at least five years before the Medicaid application
- life or health insurance records with biographical information that includes U.S. place of birth if created five years or more before application.

Comment: The restrictions on hospital records for the third level of citizenship documentation are unreasonable. We do not believe that hospital records are normally created on letterhead paper. A hospital might create such a record to confirm place of birth upon request, but that option is ruled out by the requirement that the letterhead hospital record be created at or near the time of birth or five years before application, and that hospital birth certificates (which might have a hospital letterhead) are not acceptable.

The restriction that these records must be created at least five years before application provides no assurance of reliability. If CMS believes that reliability is improved by these criteria, then such records belong in the secondary evidence list.

Fourth Level of Evidence of Citizenship

Documentation that is considered the lowest level of reliability is fourth level evidence, found in the interim final regulations at §435.407(d). The list includes:

Census record showing citizenship or U.S. place of birth;
Records created 5 years before application showing U.S. place of birth -

- Seneca Indian tribe record
- BIA tribal census record for Navaho Indians
- U.S. State Vital Statistics notice of birth registration
- U.S. public birth record amended more than 5 years after birth
- Statement of medical personnel in attendance at birth
- Admission record to a medical institution (no time frame requirement)
- Medical record of a clinic, hospital or physician; and if for a child under age 16, record must have been created near birth or 5 years before application.

If none of the above can be produced, three affidavits are required: one from a citizen who is a relative, one from a citizen not a relative with personal knowledge of the person's circumstances of birth; and an affidavit from the applicant or recipient explaining why evidence of U.S. place of birth does not exist.

Comment: The list of records for fourth level evidence appears highly arbitrary. Comments below address specific parts of fourth level evidence.

AMERICAN INDIANS

We question the basis for requiring citizenship documentation from individuals identifying themselves as American Indians. We agree with the position in the June 23, 2006 letter to Dr. McClellan from the chair of the CMS Tribal Technical Advisory Group. Tribal enrollment and Certificates of Degree of Indian Blood (CDIB) are processes that have previously established U.S. citizenship. In Minnesota, all tribes require individuals to show a U.S. place of birth, or U.S. citizenship if born outside the U.S., as part of the process for enrollment as a tribal member.

We know of no basis for restricting acceptance of tribal records to two out of hundreds of American Indian tribes in the U.S. as found in the interim final regulations; see §435.407(d)(2). CMS does not appear to have considered other valid approaches for the use of tribal records. CMS has authority under §1902(x)(2)(C) and should consider providing an exemption for American Indians who have previously presented proof of U.S. citizenship in their tribal enrollment process. At a minimum, CMS has authority under §1902(x)(3)(B)(v) to approve in regulation other documents as primary evidence that provide a reliable means to establish citizenship and identity. Documents from a tribal government that requires proof of U.S. birth or citizenship for purposes of tribal enrollment certainly qualifies under this provision. American Indians would need to present only

the tribal enrollment or CDIB cards for both citizenship and identity. States and tribes would certainly be willing to participate in establishing those tribes that require proof of citizenship for tribal enrollment as a condition of accepting tribal enrollment as primary evidence of citizenship and identity.

HEALTH RECORDS

Fourth level evidence for a child under age 16 cannot be met with a medical record (hospital, clinic or physician) unless it was created near the time of birth or at least five years before application. However, the same type of record for an adult and showing a U.S. place of birth can be created at any time. Also acceptable is an admission record for a person of any age to a nursing facility or other institution if the record shows a U.S. place of birth. No basis for the restriction on medical records for children is offered, or why an admission record to a facility for a child under 16 would be accepted but a medical record would not unless created near birth, or five years before application. Children who need to move to the fourth level of documentation, for example, because it takes six months to produce their public birth record will have the same difficulty in producing a five-year old medical record from another state as they are with the public birth record. Medical records showing a U.S. place of birth should be acceptable fourth level evidence regardless of age.

AFFIDAVITS

The affidavit requirements are unnecessarily cumbersome and complex. Affidavits are the least preferred form of fourth level evidence and are not to be used unless all other forms of documentation are unavailable. Two affidavits must be submitted, one by a relative one by a non-relative, with personal knowledge of the circumstances of the person's birth. The affiants must also document their citizenship. A third affidavit is required from the applicant or recipient explaining why documentation cannot be produced.

People without public birth records are likely to be elderly individuals born before the establishment of the public birth record offices or before a procedure was established to record births outside of a hospital. The requirement for the two affidavits, one must be from a relative and one from a non-relative, is unnecessarily restrictive especially for seniors who may not have many options for documentation.

We request that CMS consider alternative approaches that address the circumstances of citizens who have difficulty the meeting documentation requirements:

- Allow the applicant/recipient to sign an affidavit describing the circumstances under which no U.S. birth record is available; allow the person's authorized representative or power of attorney to submit the affidavit when the applicant/recipient is incompetent.

- Accept the applicant/recipient affidavit explaining why records cannot be obtained, along with one additional affidavit from either a relative or non-relative.

- Accept the applicant/recipient declaration of citizenship under penalty of perjury, and put a description in the case file of explaining why no U.S. birth record is available.

We expect there will be situations in which people are unable to meet the documentation requirement, either because the documentation does not exist or the data necessary to get the documentation is unavailable. Elderly people are the most likely to be affected because there will be some who have neither a birth record nor living relatives or other people who qualify to submit an affidavit. There may be people who lack the mental capacity and other individuals to assist the state in helping them obtain documents. In these cases, there is no amount of assistance that will resolve the situation. These types of circumstances require that a more reasonable approach be adopted with the use of affidavits, or alternatives to affidavits. If CMS is reluctant to take a less restrictive approach with all fourth level evidence, it might consider using good cause criteria to determine its use.

A less restrictive or 'good cause' approach would also assist children who cannot document because their parents' are uncooperative, homeless children or children without known parents. Adults with information about their circumstances should be permitted to put the information in the case file that explains the reason for the unavailability of documents.

IDENTITY

The interim final regulations at §435.407(e) provide a list of ten types of acceptable identity documents that are largely applicable to adults and children 16 years of age and older. Section 435.407(f) is specific to children applying with parents or guardians, or who attend day care.

Comment: Identity documentation for children, especially for children under the age of 16, has not been carefully considered. Other than tribal enrollment cards or CDIB cards in §435.407(e)(6) and (9), none of the identity records apply to children under the age of 16. Unfortunately, the cross matches allowed by §435.407(e)(10) with other programs are ones likely to have used birth records for documentation of children, and so would appear to be disqualified from use as a Medicaid identity record.

Section 435.407(f) provides that "For children under 16, school records may include nursery or daycare records." We note that "school records" is not in the list of identity documents found in §435.407(e). Only a school photographic identification card is on the list. The regulations must specify that school records for a child of any age are satisfactory documentation of identity.

The only other method of documenting identity for children under the age of 16 is an affidavit signed under penalty of perjury by a parent or guardian. While such an affidavit is extremely helpful for establishing identity for minor children who apply for Medicaid with their families, it does not address the needs of children who do not.

Some of the obvious groups of children who will not have a parent or guardian available or subject to cooperation requirements are homeless children, children removed from their homes and in the custody of the state including children in foster care, child-only applications, and children living with a relative caretaker who is not a legal guardian. (other circumstances anyone?) We believe that children in the custody of the state should be excused from identity documentation in Medicaid, since other branches of government have already addressed identity. However, the regulations

should specify the methods states may use to establish identify for children in other types of circumstances, or in the alternative allow states to determine the identity of a child without parent or guardian in any reasonable manner.

IDENTITY AND INTERIM FINAL REGULATION §435.407(e)(10); STATE OPTION

This provision gives states an option to use cross matching with other governmental data bases "if the agency establishes and certifies true identity of individuals." Such agencies "may include" those in the list that follows: food stamps, child support, corrections, motor vehicle divisions or child protective services. The availability of this option is limited: "The State Medicaid Agency is still responsible for assuring the accuracy of the identity determination."

Comment: The regulations do not define the terms used in this provision. States have no way of knowing what CMS means by true identity, or a process of establishing and certifying of true identity. States cannot know whether the federal and state government programs listed are acceptable for data matching if CMS does not specify what is meant by these terms.

There is no purpose to the last sentence of §435.407(e)(10). If in fact the other agency or program must be one that establishes and certifies true identity, it is duplicative for the Medicaid agency to assure accuracy of information that has already been established as true. Neither the federal law nor any other part of the regulations establish make it the obligation of the Medicaid agency to assure the accuracy of information from another agency or program.

ONE-TIME DOCUMENTATION

The regulation and commentary state that documentation is a one-time event. 42 CFR §435.407(h)(5). Although states are required to maintain documentation in the case record, no state is required to exceed the record retention requirement in 45 CFR §74.53. That means no state must keep records after a gap in enrollment of more than three years.

Comment: CMS can reconcile the apparent inconsistency of a one-time requirement with record retention provisions. CMS should make it clear that states need only maintain system indicators of citizenship at the end of the record retention schedule. States should not have to maintain paper copies of documentation indefinitely in order to avoid potential disallowances.

NO DOCUMENTATION

Section 1903(v) of the Social Security Act provides for coverage of emergency medical condition for noncitizens.

Comment: CMS has not issued policy on whether people without documentation of citizenship who would not declare themselves to be "aliens" might be treated as noncitizens under this provision of title XIX. We request that CMS address this in the regulations. States have the right to know if FFP is available under any other basis for applicants and recipients denied or terminated from receiving full Medicaid.

Thank you again for the opportunity to comment on the interim final regulations on citizenship documentation. If you have questions about this document please contact Pat Callaghan by phone at 651/431-2185 or email at pat.callaghan@state.mn.us.

Sincerely,

Ann Berg

for Christine Bronson
Medicaid Director

cc: Ruth Hughes, Acting Associate Regional Administrator, Region V

National Mental Health Association

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David Shern, Ph.D., President and CEO ▪ **Sergio Aguilar-Gaxiola, M.D., Ph.D.**, Chair of the Board

August 10, 2006

Mark McClellan, M.D. Ph.D., Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Interim Final Rule on Medicaid Program; Citizenship Documentation Requirements [CMS-2257-IFC]

Dear Dr. McClellan:

On behalf of the National Mental Health Association (NMHA), I am submitting the following comments on the interim final rule regarding the new citizenship documentation requirements for the Medicaid program published by the Centers for Medicare and Medicaid Services (CMS) on July 12, 2006. Thank you for this opportunity to comment.

NMHA is the nation's oldest and largest nonprofit organization addressing all aspects of mental health and mental illness. Our network of over 340 state and local affiliates nationwide includes consumers of mental health services, family members of consumers, providers of mental health care, and other concerned citizens -- all dedicated to improving mental health care and preventing mental illness.

We are particularly concerned with ensuring that the Medicaid program continues to serve effectively individuals with mental disorders. Medicaid has been critical to improving access to mental health treatment, especially community-based care. Mental illness is a leading cause of disability in this country and those with mental health disorders often are impoverished by their illness owing to discriminatory coverage in the private market and then must turn to Medicaid for access to the range of supports and services they desperately need. Medicaid provides a vital lifeline for millions with mental health disorders.

The Rule's Disproportionate, Deleterious Impact on Those with Mental Illness

We urge a reconsideration and revision of this rule in light of its disproportionate and foreseeably deleterious impact on individuals with mental illness. For many who have had to overcome stigma and discrimination before attempting to access treatment, the formidable new administrative burdens dictated by this rule will pose yet another barrier, heightening the risk that they will inappropriately forego medications and therapies that could dramatically improve and even save their lives.

The rule provides little accommodation to the kind of functional and cognitive impairment that some individuals with mental illness may experience. For example, some mental health disorders can disrupt organizational skills. Yet these are among the very skills required to maintain and access the kinds of records called for by this new requirement. Those with very serious mental health disorders can be transient and change providers frequently. Such circumstances markedly complicate the challenge of complying with requirements CMS has established.

We know that a large percentage of the homeless population have mental illnesses. For them and really for all of the homeless population who may be eligible for Medicaid, it is likely that many will not have any of the documents that the DRA provision and CMS guidance and regulation have designated as acceptable. Moreover, it will be extremely difficult if not impossible for these individuals to now obtain these documents. A mailing address may be needed, not to mention the fees that are likely charged for providing these documents.

Maintaining uninterrupted access to treatment for individuals with mental health disorders is a critical concern because abruptly discontinuing psychiatric medication can be very harmful and costly. People with serious mental illnesses can decompensate very rapidly and require hospitalization or worse may injure themselves or others..

Additional Protections Are Needed

We recognize and appreciate the efforts CMS has made to expand the types of documents that may be used to document citizenship beyond what was specifically referenced in the statute, to exempt individuals receiving Medicare or SSI, and to encourage states to use electronic records checks for verifying citizenship and identity. However, because individuals with mental illnesses are particularly at risk of not being able to secure the required documents in a timely manner, we strongly believe that additional protections are sorely needed and should be addressed by CMS in issuing final regulations. In the meantime, these issues should be clarified in policy guidance. In particular, we urge CMS to –

- Specify that states must use every effort to simplify this process for individuals with mental or physical conditions that make it difficult to comply with the new documentation requirement, including using all electronic means possible to verify citizenship and identity, and clarify that this special assistance must be provided to homeless individuals and victims of disasters as well;
- Exempt all individuals with disabilities including those receiving Social Security Disability Insurance (SSDI), as well as populations receiving other federal benefits for which their citizenship previously had to be demonstrated, especially children in foster care;
- Press states to use electronic means to verify citizenship and identity whenever possible and clarify that state mental health authority electronic records may also be used to verify identity;

- Specify that affidavits from providers of long term care or rehabilitation services may suffice to demonstrate the identity of an applicant or recipient who has a disability and for whom providing other more standard forms of identity presents a real hardship;
- Clarify that states must presume applicants are citizens for a reasonable period while they are searching for their documents just as CMS has provided for recipients, or at least provide this presumption for applicants with an immediate need for medical care;
- For individuals who simply cannot provide any of the designated documents or affidavits, allow states to base a determination on all the evidence that is available and to allow or continue enrollment as long as there are reasonable grounds to conclude the applicant or recipient is a citizen;
- Explain that states may accept copies or notarized copies of documents when there is no reason to believe these copies are counterfeit, altered or inconsistent with information previously supplied by the applicant or recipient;
- Specify that applicants cannot be denied eligibility simply because they failed to meet a state's reasonable opportunity time standards and once this reasonable opportunity period has ended, make clear that states must help individuals who are still having difficulty producing the required documents; and
- Clarify that once applicants or recipients have met the documentation requirement in one state, they will not be required to demonstrate citizenship again for Medicaid enrollment if they move to another state.

Please see additional comments regarding each of these recommendations below.

Special Populations Needing Assistance (§435.407(g) and §436.407(g))

We appreciate that CMS explicitly directs the states to assist individuals who "because of incapacity of mind or body . . . would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner and the individual lacks a representative to assist him or her." In the preamble to this rule, CMS explains that these individuals include individuals who are homeless, mentally impaired, suffering from amnesia, or physically incapacitated."

While CMS has identified a critical problem, the provision lacks the specificity needed to assure that it achieve its objective. CMS should provide additional guidance specifying actions states must take to assist these special-needs populations, including using all electronic means available to verify citizenship without requiring these individuals to themselves secure paper copies. The provision also falls short, in our view, of recognizing those populations that will require special assistance. For example, the regulatory language itself would not necessarily cover individuals who are homeless. In addition, individuals who were victims of natural or man-made disasters also need special assistance accessing the required documents. This regulation must be amended, and in the meantime policy guidance must be issued, to clarify that states must also assist individuals who are homeless and those who have lost access to their records due to natural or man-made disasters.

Exemptions (§435.1008)

In addition, we were gratified to see that CMS has remedied a drafting error in the Deficit Reduction Act (DRA) provision establishing the new documentation requirement to exempt individuals enrolled in Medicare or Supplemental Security Income (SSI). We also fully support provisions in the rule allowing states that do not base Medicaid eligibility on SSI eligibility to use the SSI database to verify citizenship electronically without demanding any documentation from the individual beneficiaries.

However, there are likely hundreds of thousands of individuals with disabilities who are not covered by the exemption CMS has made for individuals receiving Medicare or SSI. These individuals are primarily those receiving Social Security Disability Insurance (SSDI) who have not yet satisfied the two-year waiting period for Medicare eligibility, those receiving services through home and community-based care waivers, and other non-elderly persons with disabilities with incomes just above the SSI levels. In addition, there are a number of other federal programs for which individuals must prove their citizenship, including TANF, SCHIP, OASDI, and those verified by SSA for early age retirement. Section 1903(x)(2)(C) of the Social Security Act (added by the DRA) gives the Secretary discretion to exempt individuals from the documentation requirements if he finds other satisfactory documentary evidence of citizenship has previously been presented. Thus, CMS should also exempt Medicaid enrollees or applicants that are enrolled in one of these federal programs from having to document their citizenship again for purposes of Medicaid eligibility.

In this regard, we are also extremely concerned about the impact of this regulation on children in foster care. Many of these children have significant mental health disorders and urgently need care. We urge CMS to explicitly exempt children in foster care and particularly those receiving Title IV-E benefits from this documentation requirement in light of the fact that child welfare agencies are required to verify the citizenship of children prior to enrolling them in IV-E. We urge you to exercise the authority granted by section 1903(x)(2)(C) to assist these very vulnerable children. At the very least, CMS should clarify in implementation guidance that these children should be presumed to be citizens while their documents are sought.

Use of Electronic Records to Verify Citizenship and Identity
(§ 435.407(a)(5), (b)(1), and (e)(10) and §436.407(b)(1) and (e)(10)

Furthermore, we are encouraged by the provisions in the rule authorizing states to use electronic records, specifically the State Data Exchange for SSI and state vital statistics agency records of birth certificates, in place of paper copies. States are also authorized to verify applicants' and recipients' identity using electronic records of various federal or state governmental agencies, including food stamps, child support, corrections, motor vehicle, or child protective services. We urge CMS to facilitate the use of these records to verify citizenship and identity electronically, and to press all of the states to use this more automated process whenever possible. Such instruction could ensure that a majority of eligible individuals receive the benefit of Medicaid coverage to which they are entitled.

CMS should clarify in the final rule and implementation guidance that state mental health authority electronic records may also be used to verify the identity of applicants or recipients for Medicaid. Records of state mental health agencies and the community-based providers who serve individuals with severe mental illnesses may be used to facilitate this process and help ensure these individuals do not lose access to needed care.

Evidence of Identity (§ 435.407(e) and §436.407(e))

We are concerned that some individuals with mental illnesses, and other disabilities, will be unable to produce the required evidence of identity, with grave and foreseeable results. We urge CMS to act to avert such harm. To that end, we urge that it incorporate all of the regulations implementing the Immigration and Nationality Act and particularly the provisions addressing situations in which individuals with disabilities are unable to produce the standard forms of identification found at 8 CFR. 274a.2(b)(1)(v)(B)(4). Although these regulations deal with employment situations, the DRA provision listing acceptable forms of identification for purposes of citizenship documentation specifically references the Immigration and Nationality Act provision and by extension all of the regulations implementing that provision as describing forms of identification that should be considered acceptable. However, in this interim final rule, CMS only includes identity documents described in 8 CFR 274a.2(b)(1)(v)(B)(1) as authorized forms of identification for purposes of the Medicaid citizenship documentation requirement. However, the Immigration and Nationality Act regulations (found at 8 CFR. 274a.2(b)(1)(v)(B)(4)) address the difficulty some individuals with disabilities face in producing standard forms of identification and could easily be adapted to the Medicaid context to allow providers of long-term care or rehabilitation services to attest (with written affidavits) to the identity of disabled individuals who have been receiving their services for significant periods of time. In this interim final rule, CMS is allowing individuals to prove their citizenship with records from physicians or hospitals and CMS should similarly allow affidavits from providers of long-term care and rehabilitation services to suffice as demonstrating the identity of an applicant or recipient who has a disability and for whom supplying any standard form of identity presents a hardship.

Presumption of Citizenship

We also strongly support the statement in the preamble clarifying that individuals already receiving Medicaid are to remain eligible as long as an individual is making a good faith effort to secure the required documents. However, we are very concerned that CMS chose not to provide the same presumption for individuals applying for Medicaid. The statute does not require this unequal treatment of applicants and recipients. To the contrary, we strongly believe that CMS also has the authority to presume that applicants are citizens and the authority to act on that presumption while the applicant seeks to obtain the required documents.

Specifically, we urge CMS to clarify that states must presume applicants are citizens for a reasonable period while they are searching for their documents, just as CMS has provided for individuals who are already enrolled in Medicaid. It is gravely important that individuals with mental illness be able to access needed services in a timely manner. Unlike other more physically apparent conditions, it can be difficult to discern the urgent nature of a mental health problem. Yet mental illnesses can cause permanent and devastating damage to the brain if

untreated. Moreover, some mental health disorders can cause individuals to become easily frustrated; requiring them to produce certain documents before they are permitted to receive needed medical care may cause them to forego receiving treatment altogether. We know it is difficult for some even to seek treatment because of the stigma that surrounds mental illness and their lack of awareness about the many highly efficacious treatments that are now available. To require these individuals to produce documentation and identification before they may receive care will inevitably be a final barrier that discourages many from pursuing treatment. Unfortunately, without treatment, mental health disorders can worsen dramatically and result in tragic consequences including suicide, homelessness, or incarceration. At the very least, CMS should clarify that applicants with an immediate need for medical care are presumed to be citizens while they gather the required documentation.

We are concerned that some individuals who are eligible for Medicaid will nonetheless be denied access to this critical program because they are unable to provide any of the documents listed as acceptable by CMS. The limitations on the use of affidavits are so strict that it is likely many individuals will not be able to utilize that form of documentation either. For individuals who are simply unable to secure any of the documents listed in the regulation or the required affidavits, which are likely to include victims of natural or man-made disasters and homeless individuals, CMS must clarify that in such cases states may use alternative means of verifying citizenship and use their best judgment given all the evidence that is available to allow or continue enrollment as long as there are reasonable grounds to conclude that an individual is a citizen. The regulations for the SSI program adopt this approach at 20 CFR 416.1610, and CMS should revise its interim final rule along these same lines to enable a state Medicaid agency to certify that it has obtained satisfactory documentary evidence of citizenship if an applicant, current beneficiary or a representative or the state acting on an individual's behalf has been unable to obtain any of the documents listed and it is reasonable to conclude that the individual is a U.S. citizen or national based on the information that has been presented.

Originals or Certified Copies (§435.407(h)(1) and §436.407(h)(1)

We strongly urge a reassessment and reversal of the decision to require that the documents submitted to demonstrate citizenship must be either originals or certified copies. This requirement was not included in the DRA and adds greatly to the burden this new documentation requirement will impose on Medicaid applicants and recipients. Its practical import is to require applicants and recipients to personally go into state offices to deliver these documents because they will not want to risk mailing these kinds of documents and it is not clear whether states would return them. In addition, applicants and recipients will not be willing or even able to mail primary forms of identity including driver's licenses and school identification cards. Most states do not require an in-person interview to apply for or renew eligibility for Medicaid. Elimination of this in-person interview was one of the steps states have taken to simplify their eligibility processes. Requiring original documents or certified copies will make it extremely difficult for working families to enroll and will needlessly increase the workload of Medicaid agencies. It will delay access to medical care and may even discourage applicants from completing the enrollment process. We urge CMS to clarify the states may accept copies or notarized copies of documents when the state has no reason to believe the copies are counterfeit, altered or inconsistent with information previously supplied by the applicant or beneficiary.

Time Frame for Collecting Documents (§ 435.407(j) and §436.407(j))

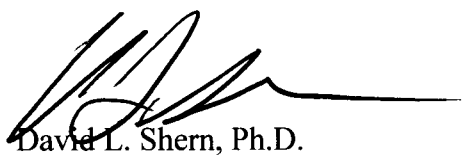
We appreciate the provision in the interim final rule stating that states must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship. But, we are concerned about how the reasonable opportunity period may apply to Medicaid applicants. The preexisting regulations on reasonable opportunity (cited by CMS in this rule) prohibit states from using these time standards "as a reason for denying eligibility (because [the state] has not determined eligibility within the time standards)." (43 CFR 435.911). CMS should clarify that in the context of this citizenship documentation requirement this means applicants cannot be denied eligibility because they failed to meet a state's time standards for the reasonable opportunity period. On the other hand, CMS should also clarify that the reasonable opportunity provision may not be used to delay enrollment indefinitely and therefore if an individual is unable to produce the required documents by the end of the reasonable opportunity period, at that point and not later the state must assist them and if the documents listed in this rule are simply not available, presume an applicant or recipient is a citizen as long as there are reasonable grounds to reach that conclusion based on the information available.

State Reciprocity on Citizenship Documentation (§435.407(h)(5) and §436.407(h)(5))

CMS should clarify in §435.407(h)(5) and §436.407(h)(5) that once the documents demonstrating citizenship for purposes of Medicaid eligibility have been provided in one state that is sufficient for all state eligibility determinations so that if a person moves to another states after meeting this requirement they will not be required to needlessly go through this burdensome process again in their new state of residence.

Thank you for this opportunity to comment and for considering our views. If you have any questions, please contact me or Kirsten Beronio at 202-675-8413 or kberonio@nmha.org.

Sincerely,



David L. Shern, Ph.D.
President and CEO

8.7

August 10, 2006

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

Re: Public Comments on CMS-2257-IFC

To Whom It May Concern:

As Texas State legislators, we support the intent and implementation of section 6036 of the Deficit Reduction Act of 2005 (DRA), requiring citizenship and identity verification for Medicaid recipients. The Texas Conservative Coalition Research Institute (TCCRI) Task Force on Illegal Immigration has studied this issue and we believe that access to public benefits is a cause for illegal immigration. To that end, we encourage federal action to preserve the integrity of programs such as Medicaid.

While we strongly support citizenship verification as required by the rule, and while we recognize and greatly appreciate that a hierarchy of acceptable documents is established, we remain opposed to Code of Federal Regulations §436.407(d)(5), allowing an affidavit as proof of citizenship.

A signed affidavit does not prove the citizenship of an applicant for, or recipient of, Medicaid defeating the purpose of the new rule. Allowing the signatures of three persons to "verify" citizenship blurs the line between clear verification of citizenship and an honor system, under which the state and federal government must trust the information provided by those seeking Medicaid. The penalty of perjury for giving false information on the affidavit is toothless in the absence of verification of the information provided on the affidavits. Furthermore, the requirement that the signatories must "have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship" is vague: what constitutes "personal knowledge" and what event or events establish a claim of citizenship? Such a rule allows hearsay to be treated as solid evidence, a concerning precedent.

The additional requirement that affidavit signatories prove their citizenship and identity has no bearing on the citizenship status or identity of the applicant. Under that rubric, an illegal immigrant only needs American citizen friends willing to sign an affidavit so that he may receive Medicaid. Such an occurrence, we believe, could reasonably occur, especially given the extent of fraud in the system today.

Another of our concerns regarding §436.407(d)(5) stems from the first line of the section, reading: "*[a]ffidavits should ONLY be used in rare circumstances*". This statement is too loosely worded and is open to abuse

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and misinterpretation. If the cases requiring citizenship verification by affidavit are as rare as this line would insinuate, a special allowance such as this one appeals more to the dishonest. In practice, this rule would serve as a loophole through which non-citizens could continue to apply for and receive Medicaid.

In reality, the only documents that absolutely prove citizenship are a birth record, naturalization certificate, or a U.S. passport. Allowing an affidavit as proof of citizenship undermines the entire system. Given CFR §436.407(b)(1), which reads that "[a] State, at its option, may use a cross match with a State vital statistics agency to document a birth record", the state can verify birth records without requiring applicants to bring in hard copies. In discussions with Texas Health and Human Services Commission officials, we are informed that they are prepared to take advantage of the option given in §436.407(b)(1) by cooperating with the State Department of Health Services, which maintains an electronic database of birth records. Cross-matching facilitates citizenship verification by birth record, making citizenship verification by affidavit superfluous and an invitation for non-citizens to fraudulently apply for and receive Medicaid.

The affidavit loophole must be eliminated from the new rules if the proposed regulations are to have any meaning or force.

We would greatly appreciate any feedback or updated information on rules pertaining to section 6036 of the Deficit Reduction Act of 2005 (DRA). Thank you for the opportunity to comment.

Sincerely,

Rep. Linda Harper-Brown
District 105 (Irving)

Rep. Debbie Riddle
District 150 (Tomball)

Rep. Betty Brown
District 4 (Terrell)

Rep. Larry Taylor
District 24 (Friendswood)

Rep. Bill Keffer
District 107 (Dallas)

Rep. Corbin Van Arsdale
District 130 (Tomball)

Rep. Ken Paxton
District 70 (McKinney)

ILLINOIS DEPARTMENT OF
HFS Healthcare and Family Services

Rod R. Blagojevich, Governor
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August 10, 2006

Dennis Smith, Director
Center for Medicaid and State Operations
Centers for Medicare & Medicaid Services
U. S. Department of Health and Human Services
Via electronic transmission

Centers for Medicare & Medicaid Services
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Via e-mail

RE: Interim Final Rule – file code CMS-2257-IFC

Dear Mr. Smith:

On behalf of the Illinois Department of Health Care and Family Services (HFS), I appreciate the opportunity to comment on the interim final rule implementing the provision of the Deficit Reduction Act (DRA) that requires states to obtain satisfactory documentary evidence of an applicant's or recipient's citizenship and identity in order to receive federal financial participation. I recognize that the Centers for Medicare and Medicaid Services (CMS) has attempted in this proposed rule to assist states and our beneficiaries where possible. However,

many challenges remain that may threaten vulnerable citizens' timely access to healthcare. Therefore, HFS is providing these comments in the hope that more changes can be made so that citizens' access to healthcare is not jeopardized. We stand ready to work with CMS on this important issue.

Because almost the entirety of the rule goes to the issue of collection of information, I am submitting these comments for program consideration as well as to address collection of information requirements. In particular, my comments at 2 (f) and 3 (b), (c), (d) and (f) go to the issue of collection of information.

As Governor Blagojevich expressed to Secretary Leavitt in his letter of June 28, 2006, Illinois agrees that only persons who qualify for Medicaid should receive its benefits. However, there is little evidence that people are being dishonest about being citizens of the United States when they apply for medical benefits. We believe the new federal rule will result in many citizens in Illinois losing access to affordable health care for no good reason. We would like to work with you to devise a responsible, safe plan for implementing the DRA citizenship documentation provision without penalizing U.S. citizens in the process.

Since Governor Blagojevich wrote, CMS determined that persons receiving Medicare or Supplemental Security Income are excluded from the application of 42 CFR 435.407 and 435.1008. I commend you for that decision and urge you to make the other adjustments we propose in the following detailed comments.

1. **Persons likely to be most adversely affected by reason that they are not able to document citizenship or identity by any means allowed under the federal rule.**

    a. 435.407 (a) – (e) - The rule makes no allowance for persons who cannot provide any documents or any persons qualified to sign affidavits of the person's citizenship as the rule sets forth. This provision will inevitably cause severe hardship to individuals in this situation.

    At this time, we cannot estimate how large this group is in Illinois. We anticipate, however, that the individuals most affected will be:

        i. Citizens with disabilities who are not enrolled in Medicare or SSI who have mental health problems or those who have cognitive impairments such that they are unable to provide either the state or individuals assisting them with information regarding their identity or the whereabouts of their birth.

        ii. Aged citizens who are not enrolled in Medicare or SSI who were born at home and who have no relatives or other individuals familiar with their birth who might provide an affidavit.

iii. At 435.407 (e) and (f) the rule requires either school records or the affidavit of a parent or legal guardian to attest to the identity of a child under 16. Under Title XIX, states are required to enroll children who are living with relatives who are not their legal guardians or children who are living with no relative. If those children are not yet in school, and their parents are not present or cooperating, according to the rule, we would have to deny Medicaid for those young citizen children.

We urge you to allow any responsible relative raising a child to attest to the child's identity and that the affidavit used for this identification not necessarily identify the child's place of birth. Since documentation of citizenship will require another document showing place of birth, the latter requirement is unnecessary. In addition, states should be permitted to accept a copy of child's birth certificate or a birth record match as evidence of both a child's identity *and* citizenship.

Finally, a state should not lose FFP for serving any individuals if it can identify the reasons they cannot obtain the documents and if there is no reason to suspect that they are not citizens.

2. Persons who will be adversely affected by having enrollment delayed.

a. Medicaid covers the poorest of Illinois' children, parents, seniors and persons with disabilities. These populations are the least able to negotiate successfully the existing barriers to enrollment. The new rule's greatest impact is far more likely to be denial of benefits for a citizen, rather than denial of benefits to undocumented persons.

Many individuals are not currently in possession of the documents required by this new provision. For instance, only 21 percent of U.S. citizens possess a passport and this percentage is likely much lower for the Medicaid population.

Applying for a certified copy of a birth certificate requires time, knowledge of all relevant details of the person's birth and enough money to pay any relevant fees. A person may have to know not only the state but also the county they were born in and must then find out how to apply for their birth certificate in that county. The person must also be able to pay for this birth certificate. Costs vary from state to state. Here in Illinois, a short form abstract of the birth certificate costs $10 and takes as long as 3 to 4 weeks to obtain. It may cost more or take longer to obtain documents from other states.

Congress has previously recognized that the Medicaid population is generally poor and many are living well below the poverty level. For instance, here in Illinois we have over 350,000 parents in the FamilyCare program who are living in households with income below 38 percent of the federal poverty level. The state also provides

health insurance to over 1 million children living in households with income below the poverty level.

Recognizing this fact, the federal Medicaid statute prohibits co-pays for children and limits co-pays for adults to nominal amounts. This is in recognition of the fact that even modest requirements for cost sharing or expenditures by poor beneficiaries will be an impediment to accessing services. Furthermore, providers are not allowed to deny services if certain Medicaid beneficiaries are unable to pay the co-pay.

With this in mind, it is obvious that a fee for a birth certificate or other documents will be a significant impediment for some citizens in accessing this federal entitlement. The proposed rules do not make exception for those who are unable to afford the fees required to procure the necessary documents. The rule may very well result in eligible needy citizens foregoing applying for benefits altogether.

On the other hand, the states should not be required to bear the burden of purchasing birth certificates for recipients or applicants. The federal government should reimburse states for 100 percent of these costs.

b. Requiring a person to wait until they have the requisite documents delays their access to vital healthcare. In Illinois, we are aware that many individuals apply for healthcare benefits when they are imminently in need of healthcare. For instance, HFS has collected data on how people heard about All Kids and FamilyCare. This data indicates that the most common way that applicants hear about these programs is at a healthcare provider.

   In June 2006, of 15,519 individuals responding to the question "How did you hear about All Kids/FamilyCare?," 3,197 responded that they heard from a healthcare provider (doctor's office, clinic, hospital, other healthcare provider). This was in a month when the state had paid advertisements for the All Kids program where a larger than normal number of respondents indicated that they had heard from a TV ad or radio ad.

   Many research studies raise concern over delaying entry into care. We expect this will result in poorer outcomes and more costly care when care is initiated. With a simple search of public health sources, we identified over 64 articles addressing this topic.

c. There are many examples of citizens who will be adversely affected by delays in eligibility determination. Some are very urgently in need of access to medical benefits.

   i. Illinois provides Medicaid coverage to women found to need follow-up diagnostic services or treatment for breast or cervical cancer discovered under

Public Health's Illinois Breast and Cervical Cancer Treatment Program for low-income, uninsured and underinsured women. If a woman is screened through this program and found to have a diagnosis of cancer or found to need follow-up testing, she is referred to HFS for Medicaid enrollment. Rapid entry into treatment is critical for this population. Any delay of enrollment and entry into treatment solely for the purpose of obtaining documents would put these women at undue risk and could well result in severe illness, even death.

Since August 2001 over 1,213 Illinois women have been enrolled. At any point in time, approximately 400 women are receiving benefits. Illinois is currently expanding this program to additional women and making the program more accessible. Clearly, a woman so diagnosed is in desperate need of immediate access to healthcare. Currently, signing up for this program can be done within a few days. Under the new rules, entry into care will likely be delayed.

ii. There are many other diseases (lung cancer, brain tumor with increasing intracranial pressure, meningitis, septicemia, pneumonia, encephalitis) which when diagnosed would likely cause a person to seek publicly funded health coverage urgently. For instance, racial health disparities in regards to mortality and morbidity are well documented in the area of cancer. The Illinois State Cancer Registry data for 2002 and 2003 show significant difference between date of diagnosis for both breast and cervical cancer and first course of treatment for African Americans compared to Caucasians.

iii. Researchers suggest that such delays may contribute to the outcome disparities between these two groups.[1]

While presumptive eligibility, a process whereby a person who appears to be eligible may be temporarily enrolled while eligibility is determined, is available for pregnant women, children and women in the breast and cervical cancer treatment program, this option is not available for adults applying for Medicaid generally. Therefore, delaying access to healthcare benefits while citizenship or identity documents are procured may have a profoundly negative effect on the sickest citizens applying for Medicaid.

iv. Accessing long term care services is another area where beneficiaries are sometimes in need of very timely access to benefits. For instance, if a senior is hospitalized and is unable to return home due to infirmity, this person may apply for Medicaid so as to access nursing home benefits which are so expensive to a private pay individual as to be inaccessible to them. This need

[1] Blackman DJ: Masi CM "Racial and ethnic disparities in breast cancer mortality: are we doing enough to address root causes?" Journal of Clinical Oncology 2006 May 10: 24(14): 2170-8

for nursing home care may be of long or short duration but the individual may not be able to be discharged from the hospital until such coverage is accessed.

It would be most unfortunate for states to be placed in the position of adding a new barrier to enrollment and probable receipt of treatment because of the Interim Final Rule. CMS must allow states to enroll applicants upon declaration of citizenship, understanding that documents would be subsequently obtained. States should not be placed at risk of lost FFP in such circumstances.

d. Neither the rule nor the earlier guidance that CMS issued on documentation requirements make any allowance for the extra burden the requirements will place on persons who have changed their names – notably, women who have taken their husband's surname. These women will frequently have different names on their birth certificates and identity documents, the most common being a driver's license. Given the overall tenor of the rule, we would expect that states might have to require that married women produce marriage certificates to demonstrate that they are the same person as the one named on their birth certificate. This will unfairly adversely affect female citizens.

   CMS should make allowance for declaration of name changes.

e. The preamble, at page 39216, first column last paragraph, lays out a scheme for determining citizenship of young children. It suggests that children whose births are paid for by Medicaid must at annual redetermination prove citizenship. If a birth is in a hospital within Illinois or any of the other 50 states and paid for by the state, then it is clear that the child is a citizen. Such citizenship status is unlikely to change within the year.

   Requiring such demonstration is illogical and serves no useful purpose while increasing the administrative burden for the state and jeopardizing access to healthcare for citizen children.

   If the child is born to an illegal alien mother but still at a hospital in the U.S. where the claim was paid by a state Medicaid program, again the child will be a citizen irrespective of the immigration status of the mother. Therefore, requiring such a child to demonstrate citizenship at birth is unnecessary and again penalizes a newborn citizen.

   CMS should expressly permit states to use State payment of the services provided at a child's birth as adequate evidence of both citizenship and identity.

f. At page 39216, third column, second paragraph, the preamble discusses the "reasonable opportunity period" and sets it at the State's administrative requirements

such that the State does not exceed the time limits established in Federal regulations for timely determinations of eligibility. This is established without regard to the fact

that obtaining these documents may take many considerably longer than obtaining other documents needed for eligibility. This has the potential to jeopardize access to Medicaid for frail seniors and persons with disability in particular that are currently relying on the program for vital healthcare.

The statute does not differentiate between new applicants and current Medicaid enrollees. However, CMS has chosen in the regulations to differentiate between these two groups in a way that significantly undermines citizens' entitlement to timely access to entitlement healthcare. This differentiation is not based on the law and discriminates between two classes of people based merely on whether they are already on the Medicaid program or are applying in the future. This differentiation is not based on the probability of their self-declaration of citizenship being more likely to be false. There is no data to suggest that new applicants are more likely to be non-citizens compared to existing enrollees. This differentiation also puts citizens at a disadvantage compared to qualified legal immigrants whose eligibility may not be delayed due to lack of immigration documents.[2]

CMS should expressly permit states to enroll new applicants pending receipt of documents.

3. Overly Burdensome and Costly Administrative Requirements

a. 435.407(h) The rule requires that only original documents be accepted. There is no compelling reason for requiring such an overly burdensome process. If carried to its limits, it will destroy Illinois' marked advances in mail-in and online application development. The statute does not direct CMS to take this approach.

This requirement, if fully implemented, would substantially reduce enrollment into many of our state's new healthcare initiatives: All Kids, FamilyCare, Illinois Healthy Women (family planning services), Health Benefits for Persons with Breast and Cervical Cancer, Health Benefits for Workers with Disabilities as well as making the process unnecessarily burdensome for others who are unable to appear for a face-to-face interview such as hospitalized patients and residents of nursing facilities and supportive living facilities. Applications for all of these benefits are handled without requiring the applicant to appear at a state office face-to-face. In fact, the state does not have the capacity to handle the onslaught of contacts this would require.

CMS should not expect individuals to place sensitive documents like passports, certificates of naturalization, drivers' licenses, state i.d. cards, birth certificates, etc., in the mail. Furthermore, CMS should not expect states to assume the responsibility

[2] Ruiz v Kizer, 1991 WL 280035 (E.D. Cal., 1991)

for keeping these sensitive documents secure or for assuring that they are returned to the right person.

On the other hand, CMS should not put states in the position of eliminating mail-in and online options for both applications and redeterminations. This would be a step backward in time. The state must be allowed to accept copies of documents. If the authenticity of the documents were questioned, we could then require originals. The statute clearly allows for such an approach and we believe that CMS should adopt such an approach.

b. Illinois conservatively estimates that approximately 368,000 extra casework hours will be required to satisfy the Interim Final Rule as published. This will require additional annual administrative expenditures, for personnel alone, of $16 million to $19 million. These costs do not take into account the costs of reprogramming our data systems, conducting additional outreach, creating additional notices (printing and postage), extending additional assistance to persons with impairments and no personal representatives, or purchasing birth certificates from other states on behalf of Illinoisans.

c. 435.407 (a)(5), (b)(1) and (h) (1) and (2) - The rule allows states like Illinois to use electronic matching against the State Data Exchange (SDX) for persons receiving SSI and the state vital records authority. We welcome this provision. However, the rule must be amended to clarify that no paper documents must be created or filed to defend citizenship verified through these means.

In addition, states should be permitted to use their own medical claims payment records as a source for proving place of birth whenever the state paid for the birth of a child in the U.S.

The rule should also expressly allow broad state discretion to use electronic data matching with other reliable sources.

d. While the Illinois child welfare authority may have acceptable documentation for children in its custody, as well as for children receiving subsidized guardianship or subsidized adoption support, those documents are not maintained in the children's Medicaid case file. They will be found in their child welfare records. The Background section of the preamble to the rule on page 39216, advises that Title IV-E children receiving Medicaid must have *in their Medicaid file* a declaration of citizenship or satisfactory immigration status and documentary evidence of same.

States should not be placed at risk of FFP for this reason. Furthermore, states should not be required to assume the burden of the extra expense of producing documentation a second time for the sole purpose of getting it in the medical eligibility file.

e. 435.407 (a) – (d) and (h)(6) The rule creates four levels of documentation with descending validity. The statute does not require such a scheme. The rule further requires that states be prepared to match files for individuals who use third or fourth tier documents against other information sources that are apparently under development at the federal level. States are charged to ensure that all third and fourth tier case records be identified and made available to conduct these automated matches at some future time upon direction by CMS.

This raises two concerns at least. First, it suggests that states may be at risk for the loss of FFP in the future for costs associated with any recipient enrolled with third or fourth tier documents. If states in good faith accepted such documentation, it should not be placed at risk for a future federal decision that certain recipients' were not really citizens.

Second, given the size and complexity of the data systems states must operate to comply with all the requirements of Title XIX, it is unreasonable to expect that states would have been able to make data systems changes in time to have met these requirements by July 1. While this provision was included in the state Medicaid Director letter of June 9, 2006, three weeks was hardly sufficient time to operationalize.

CMS must acknowledge that states will need considerable lead time to reprogram data systems to enable the kind of matching envisioned in this section. Further, CMS should not lock states into the tiered approach outlined above. The statute does not require such an approach and it unnecessarily puts at risk millions of citizens' access to healthcare and states federal support for such healthcare.

f. Preamble, III. Collection of Information Requirements - CMS's time estimates for obtaining and processing these documents, 10 minutes for individuals to acquire them and 5 minutes for states to obtain, verify and maintain such records, are also unreasonable. In a best-case scenario, Illinois conservatively estimates we will need an average of 11 minutes per individual to process the documents. Even with these modest amounts of time, given the size of our Medicaid population, we will need approximately 368,000 additional casework hours as noted previously.

We expect it will take many applicants and recipients days at a minimum and not infrequently weeks or even months to obtain the documents and submit them.

4. Risk of Loss of FFP

a. 435.406 and I. Background in the Preamble. CMS has instructed states to deny applications from persons who cannot present documents within the state's normal time for processing applications. We have 45 days for most cases, 60 days if the

person must be reviewed for disability status. These limits are set in federal law. We normally give applicants 10 days to supply missing information. Few will be able to present documents within this time period. Illinois has opted not to deny applications for lack of documents at this time. The state should not be put at risk for this decision. We should be permitted to claim FFP for any service provided to a citizen as long as copies of documents are eventually obtained that show the person was indeed a citizen at the point in time when the service was provided

This would give the state needed time to implement the new policy without unnecessarily putting the health of any citizen at risk for lack of timely entry into treatment.

b. Should CMS disallow FFP to Illinois as a result of the new law, the impact on our citizens could be profound. Loss of as little as $300 million annually, 5 percent of Illinois' FFP, could translate into reducing benefits to a quarter of a million children. This is just too high a price to pay to implement a well-intentioned but unnecessary process.

I look forward to your careful consideration of these comments and relief in the final rule.

Sincerely,

Anne Marie Murphy

Anne Marie Murphy, Ph.D.
Medicaid Director

cc: Governor Rod R. Blagojevich
Barry S. Maram, Director, Illinois Department of Healthcare and Family Services
Illinois' Congressional Delegation
Michelle Mills, CMS, Region V
Alice Holden, CMS Region V

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Victoria A. Doud
PRESIDENT

August 10, 2006

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

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

To Whom it May Concern:

As President of the Lac du Flambeau Band of Lake Superior Chippewa Indians, I am providing comments to the interim final rule, published in the Federal Register on July 12, 2006, at Vol. 71, No. 133, amending Medicaid regulations to implement the new documentation requirements of the Deficit Reduction Act (DRA) requiring persons currently eligible for or applying for Medicaid to provide proof of U.S. citizenship and identity.

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

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concerns expressed by the national Indian organizations and the CMS TTAG were not incorporated into the interim regulations.

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 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. Based on heroic efforts of Indians serving in the military during World War I, the Congress in 1924 granted U.S. citizenship to members of Federally Recognized Tribes. To this day, Tribal genealogy charts establish direct descendency from these Tribal members. With very few exceptions, Federally-recognized Tribes issue Tribal enrollment cards or CDIBs to members and descendants of Federally-recognized Tribes who are born in the United States. Thus, Tribal Enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship as required by the DRA.

I strongly recommend that the CMS recognize Tribal enrollment cards or CDIBs as legitimate documents of citizenship as a Tier 1 document 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.

I 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 all AI/AN Medicaid beneficiaries.

Thank you for your thoughtful consideration of my comments.

Sincerely Yours,

Victoria A Doud

Victoria A. Doud, President
Lac du Flambeau Band of Lake Superior Chippewa Indians

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COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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August 10, 2006

Mark B. McClellan, M.D., Ph.D
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS 2257-IFC
Post Office Box 8017
Baltimore, Maryland 21244-8017

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

Dear Dr. McClellan:

Thank you for the opportunity to provide comments on the Interim Final Rule regarding Medicaid citizenship and identity documentation requirements that was published on July 12, 2006. Our comments below will summarize the specific concerns we have regarding the Interim Final Rule and offer some suggestions to provide greater opportunity for our citizens to meet the requirements.

Before I get to the specific comments, however, I would like to first provide a general comment that we believe the interpretation of this Deficit Reduction Act of 2005 (DRA) provision that has been articulated to date through the interim regulation and various formal and informal guidance from Centers for Medicare and Medicaid Services (CMS) staff goes well beyond the intent and requirements found in the DRA itself. The extremely rigid interpretation is causing Virginia's Medicaid and S-CHIP programs to teeter on the brink of crisis in terms of pending applications for services and the resulting denial/postponement of healthcare services. I offer the following facts:

- In the 48 months since we implemented significant administrative reforms in the enrollment process for children in Medicaid and FAMIS (our S-CHIP program), we have only experienced a net monthly decrease in the number of children enrolled in Medicaid three times. This monthly decrease ranged from 350 children up to a loss of 2,753. Most of these dips in the enrollment trend can be

attributed to computer system adjustments or bad weather – including Hurricane Isabell. In every case, the enrollment has jumped significantly the following month, making up for any temporary decline.

As of August 1, 2006 our net enrollment of children in Medicaid dropped by 4,788 children. We also experienced a highly unusual drop in the number of pregnant women covered by Medicaid (-327). While the number of children that drop off the rolls is high every month through normal attrition, it is usually matched by even higher new enrollments, which provides an overall net increase for the month.

- Our central processing site for SCHIP alone, where families also apply for Medicaid through the telephone, mail, or online, had over **900 applications for Medicaid pending at the end of July for lack of original citizenship and/or identity documentation (as of August 9, this number was up to 1,300). At the end of June, before this requirement took effect, there were only 44 pending cases.**

- We have heard that our local departments of Social Services in the Roanoke Valley / Southwest portion of the state **each have 100 or more pending applications specifically held up due to citizenship/identity documentation requirements.**

- Because of the reasonable time available to existing recipients to produce the documentation, the crisis situation that is emerging has only been impacting new applicants – the situation will only worsen, and worsen significantly, once the reasonable time for existing applicants begins to expire.

The following specific comments will address how we believe CMS should modify the regulations in order to provide states more opportunity to address the intent of the DRA while minimizing the significant burden, and resulting postponement or denial of needed medical services for an extremely vulnerable and needy population.

I. Background

Exempting Additional Groups

We appreciate the decision by CMS to exempt individuals receiving SSI and Medicare from this new Federal requirement. This has mitigated the potential negative impact of these new requirements on a significant portion of our most vulnerable Medicaid population, our seniors and persons with disabilities. We would request that foster care and adoption Medicaid recipients be treated similarly and also be exempt since they are an equally vulnerable population whose citizenship and identity has already been proven as part of the foster care process.

We further ask that SSDI recipients who have already proven citizenship to the Social Security Administration and homeless individuals and the mentally incapacitated for whom producing this documentation is a particular hardship be exempt from this requirement.

Deemed Newborns

Children born in the United States to a 5-year bar qualified mother or an illegal alien mother should be considered "deemed" newborns. At the time of the child's birth, the mother was eligible for Medicaid and would have remained eligible had the pregnancy not ended. We ask that you consider these children eligible with a "deemed" newborn status and continue prior formal policy in this regard.

Hierarchy of Documentation

We ask that CMS remove the tiered hierarchy of documentation. The Deficit Reduction Act of 2005 mandates that documentation must be provided, but does not establish a hierarchy ranging from most reliable to least reliable as specified in the regulations.

Data Matches

We request that CMS allow data matches with other federal and state agencies for purposes of establishing identity and if required for participation by the other agency, proof of citizenship. For example, all members of a household certified for participation in the Food Stamp or TANF programs would meet the identity documentation requirement without having to provide additional information.

Data matches with Medicaid records that show that Medicaid paid for a birth should be acceptable as proof of citizenship and identity.

Copies versus Original Documentation

We are particularly concerned that the requirement to submit original documentation cripples the effectiveness of our telephone, mail-in and web-based application processing. Staff in local departments of social services should be given the flexibility to accept copies when the agency has no reason to believe that the documents provided were altered, counterfeit, or otherwise questionable.

It is not realistic to expect families to mail-in valuable original documents and subject themselves to identity theft or loss of documents. Individuals who mail their driver's license to the agency have no proof of their authorization to legally operate a motor vehicle until the original document is returned. Additionally, many of our records already contain copies of birth verification for children.

In previous CMS issued clarifications, we have been instructed not to request information already contained in the case records that is not subject to change. Requiring this information to be presented again as an original document is a duplication of efforts that

results in an unnecessary delay in health care and causes additional workload and increased costs. We ask that CMS revise this requirement to allow copies to be accepted.

The Certificate of Naturalization states that "it is punishable by U. S. law to copy, print or photograph this certificate without lawful authority." We request further clarification on this issue.

II. Provisions of the Interim Final Rule with Comment Period

Expanding Acceptable Documentation

We appreciate CMS' efforts to offer a range of acceptable documentation for citizenship and identity. However, we believe there are additional forms of documentation that should be accepted. To document citizenship, the following documentation should be allowed:

- copies of birth records,
- proof of birth letters issued on hospital letterhead (also contains verification of the application for a Social Security number),
- souvenir birth certificates, and
- matches with state Medicaid claims for the birth of a child.

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

- birth certificates as they contain the same information as other identity documents,
- immunization records for children as parents are more likely to retain these records,
- voter registration cards,
- private agency identification cards for children including, but not limited to, I-Dent-A-Kid and identification cards issued through local police department sponsored programs,
- affidavits for individuals over the age of 16, and
- attestation of identity on Medicaid application/redetermination forms.

We ask that states be given the option to request copies of documentation from another state's Medicaid agency and to consider them to meet the citizenship and identity documentation requirements without being placed at risk. This would eliminate the need for the new state to ask the applicant to provide the information and reduce the burden on the applicant for having to provide the information.

III. Collection of Information Requirements

We are concerned with CMS' estimates of the length of time it will take applicant/recipients to acquire and provide to the state acceptable documentary evidence.

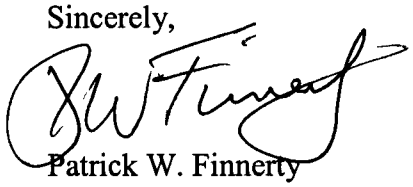
Because many of our recipients do not have these documents on hand, it will take far longer than 10 minutes to acquire and provide the necessary documentation. Our Office of Vital Records estimates a 10-day turnaround time for requesting and receiving birth documentation. If the information must come from another state, the time frame is increased. Our Division of Motor Vehicles requires a birth certificate in order to obtain a driver's license or a state identification card. It may take several weeks for an individual to obtain the required documentation. It will also take longer for the state to obtain acceptable documentation, verify citizenship and maintain records than the five-minute time frame described in the regulations.

Additionally, these processes will have associated costs. While it appears that CMS understands that these will be valid administrative costs for state Medicaid programs, it would be helpful for CMS to clarify, either in regulation or through official guidance, that costs associated with data match/collection processes undertaken to verify citizenship and identity are federally reimbursable (at the relevant match rate), regardless of whether the costs are incurred as a rate per search or otherwise.

Finally, we have participated in the discussions of the American Public Human Services Association (APHSA) and its affiliate, the National Association of State Medicaid Directors (NASMD), regarding the implementation of the citizenship and identity requirements. In doing so, we concur with the comments provided by these organizations and consider them to reflect Virginia's position, in addition to the comments herein, regarding the interim final regulations.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me at (804) 786-8099.

Sincerely,



Patrick W. Finnerty

Cc: The Honorable Marilyn Tavenner, Secretary of Health and Human Resources
Anthony Conyers, Commissioner, Department of Social Services

Texas Academy of Family Physicians

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August 3, 2006

Mark B. McClellan, M.D., Ph.D.
Administrator, Centers for Medicare and Medicaid Services
(CMS)
Department of Health and Human Services
Attention: CMS-1512-PN
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Dr. McClellan:

I am writing on behalf of the Texas Academy of Family Physicians and the 5,500 family physicians, residents and medical students in the state of Texas. Specifically, I am writing to offer our comments on the proposed notice regarding "Medicare Program: Five-Year Review of Work Relative Value Units Under the Physician Fee Schedule and Proposed Changes to the Practice Expense Methodology," as published in the *Federal Register* on June 29, 2006.

In the proposed notice, CMS states, "We are in agreement with these RUC-recommended work RVUs for E/M services." TAFP appreciates your support and adoption of RUC recommendations related to E/M services. Agreement on these values reflects the hard work of the RUC, and specialty societies like AAFP, TAFP and others.

The proposed changes to the Medicare physician fee schedule for the evaluation and management of patients are positive indicators that we are moving in the correct direction. The changes reflect many recent studies that have conclusively shown the effectiveness of primary care in lowering health care costs and improving the overall quality of care. A 2005 study by Barbara Starfield, M.D., M.P.H., a professor at the Johns Hopkins Bloomberg School of Public Health, and three colleagues, revealed that in markets where primary care physicians provide the majority of care, patients are healthier and costs are lower. The researchers analyzed federal data from 3,000 counties nationwide and found that a higher ratio of primary care physicians in a population results in lower mortality rates and lower cost. Conversely, a higher ratio of specialists did not improve mortality rates and costs were actually higher.

Another study by the Dartmouth Atlas Project found that the country could save as much as 30 percent on Medicare spending while providing better care by changing the way patients with severe chronic illnesses are treated. Researchers found that states relying more on primary care rather than

specialty care for the treatment of patients suffering from chronic illnesses had lower health care spending and better quality outcomes. The extra spending, resources, physician visits, hospitalizations and diagnostic tests in high-spending states did not buy longer life or better quality of life for patients, the study reported.

Investing in increased reimbursement for E&M services will begin to correct the payment inequities in health care and will benefit the whole U.S. health care system. We appreciate CMS's validation of our effort, and we strongly encourage CMS to finalize its proposal in the final rule this fall.

To maintain budget-neutrality, CMS proposes reducing all work RVUs by an estimated 10 percent, and not the conversion factor. As we understand it, this means CMS would add a factor of 0.9 to the formula for calculating Medicare allowances as follows:

$$((0.9)(RVU_w)(GPCI_w) + (RVU_{PE})(GPCI_{PE}) + (RVU_{PLI})(GPCI_{PLI})) \times \text{Conversion Factor}$$

We disagree with CMS's proposed approach to budget neutrality and believe that CMS should implement any statutory budget neutrality adjustments through an adjustment to the conversion factor. We believe this option is preferable for at least four reasons.

First, adjusting the conversion factor does not affect the relativity of services reflected in the recommended RVUs. Adjusting the RVUs has the potential to inappropriately affect that relativity if all of the RVUs are not adjusted consistently. Primary care physicians, who make up TAFP's membership, will be at a sharp disadvantage as these adjustments unfairly affect specialties whose payments are based mostly on work RVUs.

Second, if the RVUs are adjusted as proposed, it will obfuscate the recommended changes. Adjusting the conversion factor will leave the recommended changes in work RVUs unscathed.

Thirdly, an adjustment in the Medicare conversion factor is preferable because it has less impact on other payers who use the Medicare RVUs. That is, an adjustment in the Medicare conversion factor will not necessarily affect the payment rates of other payers who use the Medicare RVUs and their own conversion factors. However, any adjustment in the RVUs will impact the payment rates of such payers. Family physicians have been continuously called on to care for Medicare patients, but dropping reimbursement rates has made this service nearly unsustainable. If this continues, the care of millions of Medicare patients will be jeopardized.

Finally, we believe an adjustment to the conversion factor is preferable because it recognizes that budget neutrality is a fiscal issue, not an issue of relativity. Budget neutrality is mandated for monetary reasons. Thus, the conversion factor, as the monetary multiplier in the Medicare payment formula, is the most appropriate place to adjust for budget neutrality.

We appreciate this opportunity to comment on matters related to the Medicare Fee Schedule. As always, the Texas Academy of Family Physicians looks forward to working with CMS in its continued efforts to ensure access to appropriate physician services.

Sincerely,

Doug Curran, M.D.
President
Texas Academy of Family Physicians

Cc:
Sen. Kay Bailey Hutchison
Sen. John Cornyn
Rep. Louie Gohmert
Rep. Ted Poe
Rep. Sam Johnson
Rep. Ralph Hall
Rep. Jeb Hensarling
Rep. Joe Barton
Rep. John Culberson
Rep. Kevin Brady
Rep. Al Green
Rep. Michael McCaul
Rep. Mike Conaway
Rep. Kay Granger
Rep. Mac Thornberry
Rep. Ron Paul
Rep. Ruben Hinojosa
Rep. Silvestre Reyes
Rep. Chet Edwards
Rep. Sheila Jackson Lee
Rep. Randy Neugebauer
Rep. Charlie Gonzalez
Rep. Lamar Smith
Rep. Henry Bonilla
Rep. Kenny Marchant
Rep. Lloyd Doggett
Rep. Michael Burgess
Rep. Solomon Ortiz
Rep. Henry Cuellar
Rep. Gene Green
Rep. Eddie Bernice Johnson
Rep. John Carter
Rep. Pete Sessions

Children's Hospital Association of Texas

An Association for the Advancement of Children's Healthcare in Texas

August 7, 2006

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

The Children's Hospital Association of Texas (CHAT) represents freestanding not for profit children's hospitals in Texas. More than 1.8 million children in Texas are covered by the Medicaid program, and children's hospitals have extensive experience serving children on Medicaid. Medicaid pays for more than half of the inpatient days of care in children's hospitals in Texas.

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

We are deeply concerned about any barriers in eligibility policy and processes that would discourage healthy children from enrolling in the Medicaid program. Eligibility barriers often mean that children do not get the needed preventive and primary care services that are at the heart of pediatric care for children. We are also concerned about any eligibility barriers that could impede or discourage a family from seeking timely medical care when a child is sick or injured.

As you may know, Texas is in the process of implementing a new system which will take advantage of technology including the internet and call centers to improve the eligibility system. As a state we have taken thousands of evacuees from other Louisiana who have put down roots in Texas but who may not have access to all their personal records. We have a well functioning state birth registry that can provide electronic information on births in Texas.

We recommend that the rules give states sufficient flexibility to design and implement policies to minimize the likelihood that children applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage.

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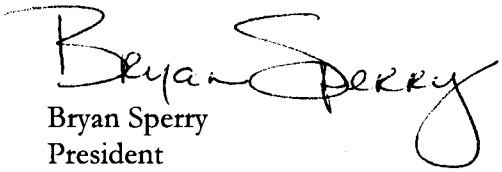
We are concerned that requiring that only originals and certified copies can be accepted as satisfactory documentary evidence of citizenship increases the burden and cost of the new requirement on children and families as well as the state Medicaid agency. In addition to locating and obtaining documents, applicants may have to visit state offices to submit them. State agencies will have to meet with individuals, make copies, and track and maintain additional documents. We urge CMS to revise the rules to state that applicants who declare they are U.S. citizens and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation, and that states can accept copies of required documents.

The interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. Among the children subject to the documentation requirements are more than 30,000 children in foster care in Texas, including those children receiving federal foster care assistance under Title IV-E. This duplicates work done by our child welfare agency, the Department of Family and Protective Services. We recommend exempting foster care children from the Medicaid citizenship documentation requirements as is done for children receiving SSI.

Infants born in Texas hospitals are subject to the new documentation requirements. Under current law, an infant born to a U.S. citizen receiving Medicaid at the time of birth is deemed to be eligible for Medicaid upon birth and remains eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). Because the state Medicaid agency paid for the child's birth in a U.S. hospital, the child is by definition a citizen. We believe the rules should be revised to allow the use of Medicaid or other insurance payment records of birth in a U.S. hospital as satisfactory documentation of citizenship.

Sincerely,



Bryan Sperry
President

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

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

STATE OF NEW YORK
DEPARTMENT OF HEALTH

93

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Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 8, 2006

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

RE: New York State Comments
Citizenship Guidelines for Medicaid Eligibility
Interim Final Rules File code CMS-2257-IFC

Dear Sir or Madam:

The purpose of this correspondence is to provide comments on the interim final rules implementing the citizenship verification requirements under the provisions of the Deficit Reduction Act of 2005 (DRA).

New York State is one of only four states in the nation that already requires documentation of citizenship for their Medicaid applicants and recipients. Based upon our experience, we believe the Department of Health and Human Services could make wider use of the discretionary authority granted to it under the Deficit Reduction Act (DRA), to specify other forms of acceptable documentation and provide the states adequate flexibility to address the myriad circumstances of citizens who need Medicaid services. Instead, as written, the rules are more prescriptive and inflexible than anything New York has implemented in all of our successful experience with citizenship documentation.

As New York State implements the provisions of the DRA, the following issues within the federal regulations are of significant concern:

- **Basic Features of New Provision:**

  1) "Hierarchy of reliability of citizenship and identity documents":
  The interim final rules establish 4 different tiers for citizenship and one for identity that cite specific types of acceptable documentation. (§435.407 Types of acceptable documentary evidence of citizenship)

Comment:
New York has always accepted a U.S. birth certificate as primary evidence of citizenship and identity. If U.S. citizenship is supported by a preponderance of the documentation provided, states should be allowed to determine which documents are acceptable to verify citizenship or identity.

The tiered process in the regulation is unnecessary and goes beyond the requirements of the DRA.

Requesting primary, then secondary and/or third/fourth level documents creates an administrative burden for states and could create barriers to enrollment for manly elderly and disabled citizens. The list of acceptable documents should be expanded and/or states should be given the option of more flexibility. States should be allowed to determine the reliability of documentation presented by the applicant/recipient without regard to "levels" (primary, secondary, third and fourth levels) established in these interim rules.

2) Exemption of individuals in receipt of Medicare or Supplemental Security Insurance (SSI).

Comment:
We support the provisions of the interim rule that exempt individuals in receipt of Medicare and SSI as these individuals must establish their citizenship for participation in these programs. In the same manner, children in receipt of Title IV-E foster care and individuals in receipt of Social Security Disability (SSDI) should be exempt from these requirements.

Individuals who are in receipt of Temporary Assistance to Needy Families (TANF) are automatically eligible for Medicaid in New York State under §1931 of the Social Security Act. For ease of administration New York and other states have kept the "link" with TANF and these individuals are required to prove/verify citizenship when they apply for TANF. Therefore, individuals in receipt of TANF who are automatically eligible for Medicaid should be exempt from these requirements.

3) Newborns "categorically needy":
The preamble to the draft regulations specifies that "a Medicaid agency must provide categorically needy Medicaid eligibility to a child born to a woman who is eligible as categorically needy and is receiving Medicaid on the date of the child's birth." Additionally, they state that a child born to an illegal alien mother, or 5-year bar alien mother is not a deemed newborn under 1902(e) (4) and an application must be filed for the newborn and these regulations applied.

Comment:
Section 1902(e)(4) of the Social Security Act states, "A child born to a woman eligible for and receiving medical assistance under a State plan (emphasis added) on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one

year so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance." Further, 42 CFR 435.117 and 42 CFR435.301 cite this requirement for infants born to categorically needy and medically needy pregnant women, respectively. The interim final rules suggest that only infants born to "categorically needy" women are eligible until the infant is one year old. This is contrary to section 1902(e) (4) of the Act and the Medicaid regulations.

The requirement to make a child of a non-qualified alien mother, an illegal alien mother, or 5-year bar alien mother make an application at 1 year of age is also contrary to section 1902(e)(4), as the mother "would remain eligible under the state plan," if only for emergency services. States are under a federal mandate to provide deemed eligibility status to any child whose birth was paid for by Medicaid. Clearly, the law was intended to cover citizen children born to any Medicaid recipient, regardless of her citizenship/immigration status. Treating these infants differently than other citizen newborns could be considered discriminatory, and a violation of constitutional equal protection guarantees.

Additionally, a Medicaid paid claim (UB-92) for the birth of a newborn should be allowed as proof of citizenship for such newborns.

4) Reasonable Opportunity Period:
The preamble to the draft regulations specifies that applicants for Medicaid (who are not currently receiving Medicaid) should not be made eligible until they have presented the required evidence of citizenship.

Comment:
Section 1137(d) of the Social Security Act provides that all applicants for Medicaid must sign a declaration under penalty of perjury that they are either a U.S. citizen, or national or an individual in satisfactory immigration status. If the individual declares that he/she is an individual in satisfactory immigration status, he/she must present documentary evidence of such status. When such documentary evidence is not provided, the state must provide the individual with a reasonable opportunity to submit such evidence and may not delay, deny, reduce or terminate the individual's eligibility for benefits. Not affording citizen applicants for Medicaid, when they have made a declaration under penalty of perjury that they are citizens, the same reasonable opportunity period to submit documentary evidence is inconsistent and subject to court challenge. CMS should provide citizens the same reasonable opportunity to provide documentation as is currently provided to immigrant applicants, without a delay in benefits.

5) Documentary evidence:
"All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted."

Comment:
Requiring original or certified copies from the issuing agency is adding an unnecessary "extra step" for both the applicant/recipient and eligibility worker.

Many states have mail-in application processes, and most individuals would not entrust original documents to be safely returned, especially in an age of identity theft. This will force individuals to make in person visits, which are not possible for many elderly/disabled, and create an administrative burden for many states. Also, assuming the cost for obtaining replacement documents is a considerable expense and burden. CMS should consider allowing copies, or at a minimum, facilitating a fee waiver with DHS for the costs of replacing such documents for the purposes of Medicaid eligibility. For example: the cost for a replacement copy of the Naturalization or Citizen Certificate issued by Department of Homeland Security (DHS) is in excess of $200.

As noted previously, New York has always accepted copies of documents. Requiring originals will not prevent document forgery by the truly determined. It will merely place obstacles in the process for the disadvantaged who need Medicaid services the most.

Further, CMS should remove any language which would require states to obtain hard copies of electronic verification if the state has access to the same electronic information if needed for an audit.

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

1) "Request to rescind the "**at least five years before the initial application date**" requirement.

Comment:
Applicants applying for Medicaid coverage, in most instances, have an immediate need for medical care and services. It makes no sense to require that a document be "created at least five years before the initial application date". This type of restriction makes access to medical coverage more difficult for the Medicaid applicant and could result in delaying Medicaid authorization.

We ask that the five year rule that applies to a number of documents be removed.

2) §435.407 Types of acceptable documentary evidence of citizenship:
(e) (1) Evidence of identity:

Comment:
The statement lacks the notation that the driver's license should be "valid". We presume that documents that were issued according to government protocols are acceptable, even if the document is recently expired, because identity had to be proved for the license or passport to be issued.

3) §435.407 Types of acceptable documentary evidence of citizenship:
(f) Special identity rules for children.

For children under 16 years of age, identity may be supported by school records which may include nursery or day care records. If none of the documents listed in

the identity check list are available, an affidavit may be used. This affidavit is only accepted if it is signed under penalty of perjury by a parent or guardian stating the date and place of birth of the child.

Comment:
Similar affidavits should be allowed for individuals over 16 years of age, who under specific circumstances can not obtain or are physically or mentally unable to provide any other form of identity. It is more likely that these individuals will have the most difficulty in procuring identity documents.

In addition, CMS should allow a "good cause" exemption for applicants who have difficulty producing documents because of circumstances such as domestic violence or family planning confidentiality requirements. A precedent for good cause exemptions already exists in federal regulations pertaining to medical support, at §435.610.

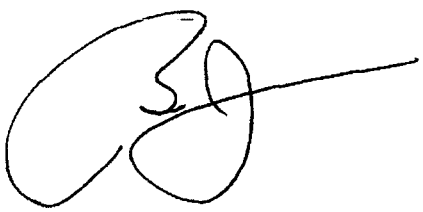
4) §436.406 Citizenship and alienage: (e)(6) Evidence of identity: Native American Tribal Document

Comment:
The reliability of the Native American Tribal Card/Document should be allowed as proof of citizenship and identity. The tribal membership card demonstrates membership in a federally recognized tribe. It contains a photograph of the individual and their date of birth (obtained from an original birth certificate or tribal records).

Native American Tribal Cards/documents should be added to the list of acceptable documentation of citizenship and identity.

Thank you for the opportunity to provide our comments to you.

Sincerely,



Brian J. Wing
Deputy Commissioner
Office of Medicaid Management

cc: Linda LeClair

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August 11, 2006

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

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

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

SFPA is a national organization for state level administrators of family planning programs, and our mission is to provide a forum for leaders of the state/territorial family planning programs to exchange ideas and strategies that improve services, and to influence, support and promote policies that foster quality family planning as an essential component of health care for all. As such, we are committed to ensuring that our family planning programs are efficient and cost-effective and continue to serve low-income women in our states in a timely manner.

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

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

while saving money at both the state and federal levels. These programs have had a significant impact, and their cost-savings have been well-documented.

In 2004, CMS contracted with the CNA Corporation to conduct a national evaluation of six states (Alabama, Arkansas, California, New Mexico, Oregon, and South Carolina) with family planning waivers. The evaluation concluded that the waivers exceeded the CMS budget-neutrality requirement, with all six states showing significant savings. For example, between 1997 and 1999, the state of Arkansas saved over $14 million and averted more than 7,000 births, while the federal government saved $30 million. Oregon saved $11 million and averted over 5,000 births in 2000 alone, while California saved over $64 million and averted more than 21,000 births between 1999 and 2000. (*** States can add other state-specific data here ***)

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

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

Further, SFPA is also concerned about the increase in administrative costs associated with implementing the documentation requirements. For many states, the administrative costs will outstrip the savings incurred from these ground-breaking and arguably effective family planning waivers, thereby obviating the ultimate purpose of the waivers.

We therefore urge CMS to modify sections 435.406 and 436.406 of the interim final rule to exempt individuals receiving benefits under section 1115 family planning demonstrations from the requirements of the interim final rule and instead to allow these individuals to attest to citizenship in order to comply with the statute. Requiring these individuals to document citizenship according to the specifications set forth in the July 12 notice would delay or even preclude the receipt of this time-sensitive care, resulting in an increase in unplanned pregnancies, unplanned births and abortions among low-income Americans. Denying women access to this cost-effective care would result in significant costs to both the federal and state governments.

Respectfully submitted,

Kathleen D. Widelski

Kathleen D. Widelski, Iowa
Chair, State Family Planning Administrators

On behalf of the SFPA Executive Committee

Sydney Atkinson, North Carolina
Judy Hauser, Ohio
Jeanette Lightning, Michigan
Sharon McAllister, Washington
Barbara Parker, Virginia
Bradley Planey, Arkansas

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August 6, 2006

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

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

Dear Secretary Leavitt,

Western Center on Law & Poverty (WCLP) is California's oldest and largest legal services support center. Through education, negotiation and litigation, WCLP works to ensure fairness and access to justice for low-income individuals. We devote our resources to effectuating broad-based change aimed at breaking the cycle of poverty, focusing primarily in the areas of health care, affordable housing and public assistance programs. Leaving the representation of individual clients on individual cases to neighborhood legal aid offices, we take the lead on advocacy designed to make large scale improvements in the way low-income Californians receive the most critical services and benefits.

As advocates for California's low-income population, we have several concerns about the proposed regulations implementing the Medicaid citizenship documentation rule as required by the Deficit Reduction Act of 2005 (DRA). Not only do these regulations overstep their statutory authority, they raise unnecessary burdens and costs for both our Medicaid beneficiaries and the agencies administering the program, leading to human suffering and fewer resources for the administration of the program.

1. Medicaid applicants should be made eligible for full scope Medicaid while trying to secure the necessary documentation.

Section 6036 of the DRA did not impose a new eligibility requirement on applicants or beneficiaries, but rather imposed a new condition upon states for receiving federal matching dollars. This is evidenced by the location of the new requirement within 42 U.S.C. § 1396b(x) rather than in 42 U.S.C. § 1320b-7(d) relating to eligibility. The regulations otherwise step beyond what Congress has authorized and is improper conduct for an administrative agency. Converting a condition for a state to receive FFP to an eligibility requirement on applicants improperly shifts the burden from states to vulnerable applicants. CMS may not simply regulate this way because it feels like it with no Congressional

authorization. In addition to overstepping the agency's authority wrongly treating this new requirement as an eligibility requirement will have real impact on peoples' lives as some will not be able to get needed medical care and will suffer worse health.

CMS must amend 42 C.F.R. § 435.407(j) to state that applicants who declare under penalty of perjury that they are citizens or nationals of the United States, must be given Medicaid benefits if otherwise eligible.

2. Title IV-E foster care children are not covered by the federal statute and thus should not be required to document their citizenship.

Section 6036 of the DRA applies only to the federal financial participation under Title XIX of the Medicaid Act, not other federal programs, including Title IV-E. Foster care children receive Medicaid automatically by virtue of their receipt of foster care, not because they have applied for Medicaid. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(I). Moreover, foster children do not have to attest to their citizenship at all under 42 U.S.C. § 1320b-7(d)(1)(A) and therefore do not fall within the purview of the new DRA provision. Again, we urge the state to follow the controlling language of the federal statute

Furthermore, even with the provision that foster care children be treated as beneficiaries rather than applicants and the provision that they be given a reasonable opportunity to comply with citizenship and identity requirements, this requirement is simply absurd. Is CMS really going to require that foster care children, some of whom are babies or toddlers and all of whom have been taken from their parents, be responsible for obtaining evidence of their citizenship? No other children are responsible for documenting their own citizenship. The state and counties are responsible for foster care children's health care needs regardless of these proposed federal regulations. As these children are in the custody of the county, if a good faith effort to obtain these documents is required by anyone, it is by the county itself, not the child, the parents, or the foster care parents. However, in order to do so, counties would be required contact the children themselves, their parents, their foster parents, their social workers, or other parties, which could be counter to the child's well-being. No foster care child should be penalized for the county's failure to secure such documents. As such, including foster care children in the preamble to the regulations, which is an improper form of regulating with no statutory authority, serves only to increase administrative burdens and costs to states and counties while serving no beneficial purpose and imposing a barrier to medical care for our neediest children.

3. Medicaid benefits must be provided to all citizen infants on the same basis.

The regulations correctly recognize that children born in this country to women who receive full scope Medicaid should themselves receive Medicaid without the need to document their

citizenship, at least until their first birthdays. However, children born in this country to women who are also Medicaid recipients, but whose benefits, because of their immigration status, are limited in scope to labor and delivery are required to document their citizenship, despite the fact that the Medicaid program has paid for their U.S. birth and thus knows for a fact that they are citizens. The Medicaid eligibility in question is that of the child, not the parent. As to the children, there is absolutely no meaningful, or legal, distinction between the children that CMS proposes to cover from birth and those that it does not. CMS should instruct states not only that they may, but that they must, accept a record of Medicaid (or other insurance) payment for a birth in a U.S. hospital as sufficient proof of citizenship. Any other approach with regard to any child is so arbitrary as to be a violation of the due process component of the Fifth Amendment. And a different approach that is applied only to some children and not to others, when all are demonstrably citizens simply by the known fact of their birth, also violates the equal protection component of the Fifth Amendment.

CMS should amend 42 C.F.R. § 435.407(a) or (b) to include a record of Medicaid payment for a child's birth as acceptable evidence of that child's citizenship, regardless of the immigration status of the child's mother. It should also clarify that no child whose birth was paid for by Medicaid needs to document his or her citizenship.

4. Explanations of SSI and Medicare exemptions should be more explicit and expansive.

While the new regulation now exempts Medicare and most SSI beneficiaries, CMS should also exempt certain other categories of Medicaid recipients and applicants who have already established their citizenship for other government benefits programs per its authority under 42 U.S.C. 1396b(x)(2)(C). Anyone who has *ever* received SSI or Medicare has already provided sufficient documentation because those programs have a citizenship documentation requirement. Persons who are currently or have ever been in TANF, SCHIP, Medicare Savings Programs, or in the two-year waiting period for receipt of Medicare due to eligibility for Social Security Disability payments should also be exempted from documenting their citizenship. These people have already proven their citizenship for the purpose of receiving government benefits and should not be required to do so again. Not only is this overly burdensome, this may be impossible for some due to their deteriorating physical or mental condition or due to the loss or destruction of their documents.

CMS should amend 42 C.F.R. 435.1008 to include these groups as exempt from the citizenship documentation requirement for states to receive FFP.

5. CMS should simplify the documentation verification process so that the new requirement does not constitute an additional barrier for otherwise eligible citizen applicants or beneficiaries.

WCLP has long advocated for the simplification of public programs within California. Simplification of eligibility guidelines is cost effective by lowering the cost per beneficiary of the Medicaid program by reducing the workload currently spent processing paper and processing information unnecessary to establish eligibility. This simplification in turn improves health outcomes; insured people are healthier than the uninsured. Studies consistently show that even brief gaps in coverage cause people to skip or delay medical care or leave prescriptions unfilled because of cost, and having a regular source of care improves health outcomes and reduces emergency room use.[1] Even a short break in coverage impacts morbidity.[2] Removing such barriers to eligibility fulfills the primary goal of the Medicaid program: "to furnish medical assistance to limited income families with dependent children and the aged, blind, and disabled." 42 U.S.C. § 1396.

These proposed regulations fly directly in the face of all of the work that states, counties, and advocates have conducted to simplify public programs while at the same time ensuring that the only those eligible are enrolled. Rather than basing these regulations on incidents of actual fraud or studies of this population's ability to verify citizenship, these regulations seem to be based on unfounded fears that will cost the federal government, state, counties, and the Medicaid population far more in time and money spent than will ever be saved in finding persons falsely claiming citizenship. The following provisions must be amended to ensure no eligible citizens are terminated or denied eligibility and money is not wasted on administrative tasks.

a. The requirement that original or certified documents be used is overly burdensome

The proposed regulations require that individuals submit original documents (or copies certified by the issuing agency) to satisfy the citizenship and identity requirements. 42 C.F.R. § 435.407(h)(1). This provision poses a significant burden for both individuals and state agencies. California is one of the many states that 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

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[1] Leighton Ku and Donna Cohen Ross, "Staying Covered: The Importance of Retaining Health Insurance for Low Income Families," The Commonwealth Fund, December 2002 p. 7-8

[2] Institute of Medicine, *Consequences of Being Uninsured*, May 21, 2002.

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.

Finally, a great number of residents in California were not born in California, thus the local eligibility workers may not have be able to readily assist those born out of state in locating the proper agency and contact person that requests for certified birth certificates should be sent to. As our numbers of persons born out-of-state is higher, the expected 5-10 minutes that CMS anticipates will be necessary to comply with this rule seems an absurd estimation at best. 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.

b. The hierarchical structure of documents is burdensome to both the Medicaid population and those administering the program

The proposed regulations create a hierarchical structure of documents that are acceptable verification of citizenship status. This will cause both agencies and beneficiaries to waste time and money to locate higher level documents when other acceptable proof is readily available. The documents should either be labeled acceptable or not, and agencies and beneficiaries should not waste resources looking for better evidence when no evidence to the contrary exists.

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 in the preamble to the regulations. 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.

c. The 5-year requirement should be eliminated as overly burdensome

A number of documents listed in 42 C.F.R. § 435.407(c) and (d) can only be accepted as proof of citizenship if they are dated at least five years before the applicant's or beneficiary's *original* application for Medicaid. In the absence of any attempted explanation by CMS of what it believes it is accomplishing with such an onerous requirement, the five year requirement appears so arbitrary and capricious as to be in violation of the both the Administrative Procedures Act and the due process requirement of the Fifth Amendment. This requirement seems to presume that any doctor, midwife, hospital or other persons attesting to the citizenship of an applicant or beneficiary are lying if they do so contemporaneously with the Medicaid application, with no evidence that shows that such persons or agencies would do such a thing. If the evidence is acceptable, the age of it should not matter.

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

d. No reasonable contingency plan is offered to those citizens who cannot produce the required documents

These regulations fail to provide for a reasonable contingency plan for those citizens who have none of the documents on the list. Even the affidavit option, which is highly discouraged, requires affidavits from two citizens who can attest to the fact of the person's citizenship and prove their own. This is not sufficient. There is no reason these regulations should not mimic the regulations for the SSI program, which allow people who cannot present any of the documents SSI allows as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have. 20 C.F.R. 416.1610.

We urge you to revise 42 C.F.R. 435.407 by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain acceptable documents showing evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented. This approach would ensure that the applicants and beneficiaries who are U.S. citizens can continue to receive the health care services they need.

e. No assistance is offered for the payment of fees related to obtaining documents

As CMS has recognized, the documentation provisions of § 6036 are directed to the states' ability to get FFP for the Medicaid services they provide. If read as written by Congress, it is the states' FFP, not an individual's eligibility, that is at stake if the evidence of citizenship is not produced.

As such, it is the states that have the greatest stake in seeing that the evidence of citizenship is acquired, and if they deem it advisable to do so, they should be able to pay to acquire a qualifying document. But the Rule states that beneficiaries are responsible for the cost of qualifying documents, and it is our understanding that CMS has informed the states that the federal government will not reimburse them if they pay for the required evidence. This position is wrong both as a matter of law and policy. As discussed above, 42 U.S.C. § 1396b(x) merely requires that Medicaid applicants declaring to be citizens or nationals of the United States under § 1137(d) provide evidence of their claimed immigration status in the same way that qualified aliens have always been required to do. The Medicaid Act specifically addresses the situation in which a state expends money implementing or operating the immigration status verification system described in § 1137(d). 42 U.S.C. § 1396b(a)(4). That provision provides for 100% federal reimbursement for such costs, and the Rule should therefore be amended to inform states that: a) they may pay for citizenship and identity documents necessary to meet their obligations under § 6036 of the DRA, b) payment may be without requiring a showing of a "good faith effort" by the applicant, and c) the cost of acquiring those documents will be fully reimbursed by the federal government. This approach is not only consistent with the language of § 1396b(a)(4), it gives meaning to the "outreach plan" mandated in § 6036(c). There is simply nothing in § 6036 to suggest that Congress intended to deny Medicaid benefits to people who are able to identify documents that verify their citizenship status but simply lack the resources to pay for those documents.

Since Medicaid is a means tested program and its beneficiaries by definition do not have disposable income, forcing applicants and beneficiaries to pay for evidence of their citizenship status essentially imposes an application fee for Medicaid. Had Congress intended such a fee, it would have put it, or at least the documentation requirement, in § 1396a, not in the part of the Medicaid Act that deals with reimbursement for state expenses. Therefore, both as a matter of law and good policy, CMS should clarify that states may pay for any necessary evidence that may be identified and that the federal government will, pursuant to 42 U.S.C. § 1396b(a)(4), fully reimburse the states for any such costs.

f. The regulations must offer more guidance in assisting "special populations."

As written, § 435.407(g) neither provides sufficient guidance regarding a state's responsibilities nor casts a net wide enough to capture all those who will need assistance. As recipients of federal funds, state Medicaid agencies have a responsibility under both § 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act to provide sufficient assistance to people with disabilities to afford them the same opportunity to benefit from Medicaid as is available to people without disabilities. This responsibility to assist cannot legally just be shifted to a "representative", as the Rule currently suggests. At a minimum, CMS should clarify the circumstances under which the Medicaid agency will be responsible for providing assistance for people with disabilities. It would also be useful to provide examples of the scope of assistance that might be necessary for this population.

In addition, CMS should expand the list of reasons why a person may require special assistance to include, for example, people who are limited English proficient (LEP), and everyone who is homeless or who has been displaced by a natural disaster, such as a hurricane or a fire, or persons who may not have current access to their personal belongings due to incidents of domestic or other violence. Finally, CMS should clarify that states can extend the reasonable opportunity period for the period that they and the applicant deem necessary to allow any applicant, but especially those deemed to be in a "special population", time to comply with the documentation provisions.

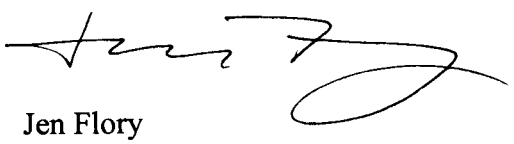
g. CMS must clarify that this is a one-time requirement no matter where the beneficiary goes.

The regulations, at 42 C.F.R. § 435.407(h)(5), clearly state that documentation of citizenship and identity should be a one time event. However, what is less clear is whether a person who has already established eligibility for Medicaid in Oregon, for example, can later get Medicaid in California without again providing documentation. This appears to be the intent of the Rule, but clarification is important, especially if the Rule is not amended to lessen the financial cost to applicants of compliance.

CMS should amend 42 C.F.R. § 435.407(h)(5) to clarify that a person who has verified citizenship in one state does not need to verify his or her status again upon moving to another state. In addition, CMS should establish a documentation hot-line, or some other mechanism by which one state can quickly and easily verify whether an applicant for Medicaid has, subsequent to July 1, 2006, received Medicaid in another state and therefore does not again need to verify citizenship.

Thank you for the opportunity to provide comments on the interim final regulations. We urge you to implement our recommendations so that eligible citizens continue to receive Medicaid benefits and money is not wasted administratively that could be spent on the delivery of care.

Sincerely,



Jen Flory
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