

# Council on Homeless Policies and Services

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August 10, 2006

Mark B. McClellan  
Administrator  
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 Mr. McClellan:

I am writing on behalf of the Council on Homeless Policies and Services (The Council), with comments on the Interim Final Rule, which was published in the Federal Register on July 12, 2006, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). The Council on Homeless Policies and Services is a coalition of sixty non-profit agencies serving homeless and at-risk children and adults in New York City. The Council provides advocacy, information and training to member agencies to strengthen their capacity to deliver high quality services.

We are deeply concerned about the impact that the Interim Final Rule will have on eligible homeless citizens. We urge CMS to modify the final rule to minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage, including those who are homeless, will face delay, denial, or loss of Medicaid coverage. Our comments below highlight eight specific areas in which we urge CMS to modify the final rule.

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

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

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

This year, about 12 million U.S. citizens are expected to apply for Medicaid. Most of these citizens are children, pregnant women and parents who will be subject to the new citizenship documentation requirement. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children and other vulnerable, including homeless, Americans. This is likely to delay their medical care, worsen their health problems and create financial losses for health care providers.

U.S. citizens who have applied for Medicaid, who meet all of the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage. Some U.S. citizens who are unable to navigate the processes or cannot get the documents they need within the time allowed by the state will never get coverage. Because there has been no outreach program to educate U.S. citizens about the new requirement, most applicants are likely to be unaware of it, and there are likely to be significant delays in assembling the necessary documents.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare that they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation. Moreover, states should be given broad flexibility in allowing individuals the time necessary to collect their proof of status.

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

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

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

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

level” of evidence was not available, a medical (clinic, doctor, or hospital) record created near the time of birth could be used, but only in the “rarest of circumstances,” 42 CFR 435.407(d)(4).

Under current law, infants born to U.S. citizens receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman’s household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). The preamble to the interim final rule states that, in such circumstances, “citizenship and identity documentation for the child must be obtained at the next redetermination.” 71 Fed. Reg. 39216. In instances when the state Medicaid agency paid for the child’s birth in a U.S. hospital, the child is by definition a citizen. In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant subject to the 5-year bar on Medicaid coverage or an undocumented immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Again, since the state Medicaid agency paid for the child’s birth in a U.S. hospital the child is by definition a citizen and applying the citizenship documentation requirements is unnecessary and inefficient.

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

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

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

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

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

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

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

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

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

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

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

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

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

Most states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Eliminating the face-to-face interview requirement was one of a number of steps states took to simplify their eligibility processes and make it easier for eligible children and parents to enroll in Medicaid. Mail-in applications are also more efficient for state Medicaid agencies. Requiring originals and certified copies to document citizenship will make it harder for working people to enroll in Medicaid and increase the workload of Medicaid agencies. This unnecessary requirement that goes beyond the requirements Congress imposed in the DRA will also delay coverage while applicants wait for appointments at state Medicaid agencies. In some cases, having to visit a state office will discourage applicants from completing the application process. Children and adults will go without coverage and remain uninsured and providers will not get reimbursed.

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

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

We applaud CMS for issuing the rule that individuals on SSI or Medicare will not be subjected to these requirements. However, individuals on Social Security Disability Insurance who are in the waiting period for Medicare or disability payments should also be included within the exempt group.

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

**6. Evidence of identity should be cross matched with the state's mental health authority.**

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

**7. Those groups who were presumed eligible should retain that status in a clarified DRA rule.**

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

**8. There should be outreach services instituted to provide awareness of the application requirements.**

CMS, as well as the states, should be conducting considerable outreach on this provision. At this time, we are continually learning that not only do individuals on Medicaid have no knowledge that they must collect such documents, but many front line staff at our member agencies lack this information.

**We are deeply concerned that, if the above changes are not made to the DRA requirements, homeless people will suffer greatly and unnecessarily.**

Thank you for this opportunity to comment on the proposed rule. We hope you will make adequate adjustments to assure that Medicaid is accessible to all US citizens.

Sincerely,



Lauren Bholai-Pareti  
Executive Director