



To: CEOs and State Medicaid Directors  
From: Ilana Cohen and Martha Roherty  
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Subject: Final Regulation on Medicaid Citizenship and Identity

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This week CMS placed the Final Regulation regarding Medicaid Citizenship and Identity Requirements on display at: <http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CMS2257F.pdf>. It will be published in the Federal Register on July 13. The following summary highlights a number of the changes that CMS has made to the citizenship requirements.

CMS has published a press release and fact sheet on this final regulation which can be accessed at: [http://www.cms.hhs.gov/apps/media/press\\_releases.asp](http://www.cms.hhs.gov/apps/media/press_releases.asp) and [http://www.cms.hhs.gov/apps/media/fact\\_sheets.asp](http://www.cms.hhs.gov/apps/media/fact_sheets.asp). It is our understanding that a citizenship requirements toolkit will be available on the CMS website at: [http://www.cms.hhs.gov/MedicaidEligibility/05\\_ProofofCitizenship.asp](http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp)

#### Overview

The State must obtain evidence of citizenship and identity at the time of application or at the time of the first redetermination occurring on or after July 1, 2006 for new Medicaid applicants and for currently enrolled individuals. Presentation of documentary evidence is a one-time activity; once a person's citizenship and identity have been documented and recorded in the case file or database, subsequent changes in eligibility should not require repeating the documentation unless a question is raised about the individual's citizenship or identity. Individuals declaring to be citizens or nationals of the United States who are receiving SSI or who are enrolled in Medicare are exempt from these requirements. Additionally the following groups are now exempt from the provisions requiring proof of citizenship and identity:

- All individuals receiving SSI;
- Individuals receiving disability insurance benefits under section 223 of the Act or monthly benefits under section 202 of the Act based on such individual's disability; and
- Individuals who are in foster care and who are assisted under Title IV-B of the Act and individuals who are recipients of foster care maintenance or adoption assistance payments under Title IV-E of the Act.

Additionally, the Secretary has the authority to exempt individuals who declare themselves to be citizens or nationals from the documentation requirements if satisfactory

documentary evidence has been previously presented. If the Secretary chooses to use this option, CMS will notify the states by regulation.

According to the regulations, states are permitted to recognize all newborn children of women who have applied for, have been determined eligible, and who are receiving Medicaid on the date of the child's birth as deemed newborns so long as the mother remains eligible and the child remains a member of the mother's household regardless of the mother's immigration status. Documentation of citizenship and identity would be required at the first period of redetermination. Individuals who received Medicaid because of a determination by a qualified provider (presumptive eligibility) are not subject to the documentation requirements until they file an application and declare on the application that they are citizens or nationals.

Several changes were made in the acceptable documentation for citizenship and identity including:

- Secondary Level of Evidence of Citizenship  
The regulation further clarifies that states may now verify citizenship for naturalized citizens using the Department of Homeland Security's Systematic Alien Verification for Entitlement (SAVE) Program. The affidavit process now permits naturalized citizens to submit an affidavit verifying their citizenship status in rare circumstances.
- Fourth Level of Evidence of Citizenship  
Naturalized citizens are now permitted to use the affidavit process.
- Identity  
The use of identity affidavits is now acceptable for disabled individuals in residential care facilities. Additionally there are new rules for States to address special populations who need additional assistance. States may accept three or more corroborating documents to prove identity such as marriage licenses, divorce decrees, high school and college diplomas, and employer ID cards. These additional documents can be used if the person submitted a second or third tier citizenship document but not if they submitted a fourth tier citizenship document.

#### Storage of documentation

States must maintain copies in the case record or database. The copies maintained may be electronic records of matches or other electronic methods of storing information.

Below is an abbreviated list of some of CMS' responses to the comments they received on the citizenship and identity documentation regulation. Some of the comments are significant changes from statements made by CMS officials in the past.

- CMS believes that the burden of requiring applicants and recipients to submit original documentation outweighs the importance of States being able to verify that the documents are valid thus only originals will be accepted.

- A determination made by one State is not binding on another state. Therefore, if a State accepts evidence of citizenship or identity from another State, it should request a copy or electronic copy of the documentation reviewed by another State to keep in its own files. States may establish partnerships with other states that enable them to share citizenship data.
- CMS believes the hierarchy is appropriate as the States should strive to collect the most reliable evidence first.
- Religious records recorded in the U.S. within three months of birth and early school records showing a U.S. place of birth are now accepted as third level evidence of citizenship.
- CMS indicated that not all tribes require members to be U.S. citizens or to have been born in the U.S., therefore, they cannot ensure that all Tribal members are U.S. citizens.
- The Roll of Alaska Natives is now acceptable as fourth level evidence of citizenship. Individuals had to demonstrate U.S. citizenship as part of the application process to be included on the Roll.
- Hospital claims do not contain sufficient information to establish citizenship and will not be accepted to prove such.
- Affidavits must be signed written declarations made under penalties of perjury but need not be notarized.
- In areas where both a school ID card with a photograph that meets the criteria or a driver's license that meets the criteria are not available to an individual before the age of 18, States will be permitted to accept affidavits establishing the identity of children up to age 18. School records, such as report cards are also acceptable.
- Identity documents now include a combination of three or more of the following: employer identification cards, high school and college diplomas from accredited institutions, marriage certificates, divorce decrees, and property deeds/titles. A combination of these may be used to verify identity if the individual used secondary or third level evidence of citizenship and the document was not used to verify citizenship.
- States may accept identity documents that have recently expired as long as there is no reason to believe the document does not match the individual.
- Affidavits are acceptable to establish the identity of disabled individuals residing in residential care facilities.

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