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FACT SHEET:

Citizenship Documentation

Background

On July 1, 2006, new citizenship documentation requirements resulting from an amendment to the federal Medicaid statute (title XIX) passed as part of the Deficit Reduction Act of 2005 (DRA) became effective. The new documentation provision requires all citizens applying for or receiving Medicaid benefits to provide “satisfactory documentary evidence” of their U.S. citizenship and identity. All U.S. citizens who apply for Medicaid or renew their eligibility must prove their citizenship by presenting acceptable documents such as a passport or birth certificate outlined by the law. The requirement may impact 50 million citizens (both immigrants and non-immigrants) receiving Medicaid, as well as many more seeking to apply.

July 2, 2007 CMS published a final regulation implementing the Medicaid Citizenship Documentation requirement. The final regulation makes some improvements to requirements, most importantly allowing the use of some additional documents to prove citizenship and identity. In addition, the regulation clarifies existing CMS policy in several areas that may help states understand how to minimize the burden imposed by the requirement on applicants, beneficiaries and states. However, the final regulation makes it only slightly easier for individuals to meet the documentation requirements in order to qualify and to receive Medicaid benefits. Eligible U.S. citizens still are at risk of having their Medicaid coverage delayed, denied or terminated because of the strict requirements.

Senate legislation to reauthorize the State Children’s Health Insurance Program (SCHIP) introduced in July 2007 includes a provision to moderate this requirement in Medicaid by allowing states greater flexibility to accept social security numbers as proof of citizenship and identity. However, the provision also applies citizenship documentation standards to SCHIP, potentially expanding the impact of the rule.

Allowable Documentation

The DRA listed a number of acceptable documents but also provided the Secretary of Health and Human Services with substantial latitude in specifying other allowable documents. The Department of Health and Human Services published an Interim Final Rule July 12, 2006 outlining all of these specific documents considered acceptable for proof of citizenship by the federal government – listed below – and requiring states to seek the highest level of evidence available. Secondary or lower-tier evidence must be accompanied by an additional document that establishes identity, such as a driver’s license with photograph, a school identification card with photograph, a U.S. military card or draft record, and others. The tiers of evidence follow:

- “Primary evidence” includes a U.S. passport, a certificate of Naturalization, a Certificate of U.S. Citizenship, and some state-issued driver’s licenses (if the state issuing the license establishes citizenship for this purpose).
- “Secondary evidence” includes a birth certificate or a specified other record.



- “Third-level evidence” is a hospital record, or a life, health, or other insurance record.
- “Fourth-level evidence” includes many non-governmental documents, but use of these documents is subject to rigorous conditions with written affidavits.

Additional new methods for proving identity outlined by the final regulation:

- Affidavits attesting to the identity of a child are no longer limited to children under age 16. Affidavits can now be used for children under age 18 if they cannot provide a school ID with a photo or a driver’s license.
- Affidavits attesting to the identity of individuals with disabilities residing in a residential care facility and signed by the facility director now serve as acceptable proof of identity.
- Clinic, doctor and hospital records can now be used to document a child’s identity.
- If no other forms of identification are available and the individual provided second- or third-level evidence of citizenship, identification also can be established through submission of three supportive documents. Each document must contain the individual’s name and other consistent identifying information. A document used to establish citizenship cannot also be used to establish identity under this provision.

The regulation further clarifies and explains:

- States have the discretion to decide when to consider a document in a higher level to be “not available.”
- A “reasonable opportunity period” should be established by states for applicants to submit documentation (before denying eligibility), which should be consistent with the time limits established under federal regulations for processing applications (90 days for applications based on disability, 45 days for all others).
- States should not expect an applicant or beneficiary to purchase or otherwise secure a document that cannot be made available within the “reasonable opportunity period” if a lower level document is already available.
- However “audit processes will track the extent to which states rely on lower (third and fourth level) categories, and on affidavits, with the expectation that such categories would be used infrequently ...” stated in a CMS fact sheet that was released with the final regulation.

Immigrant Eligibility

The eligibility status of undocumented immigrants was not changed by the DRA. Undocumented immigrants remain ineligible for Medicaid, except under specific circumstances for Medicaid emergency services.

The DRA also does not alter the eligibility status of new legal immigrants. New legal immigrants are excluded from Medicaid during their first five years in the United States, based on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Challenges & Flexibilities



The requirements not only create challenges for individuals but also for those who provide services and coverage including states, health care providers, social service providers and health care plans. States that do not comply with the new statute risk losing federal matching funds. No funds will be available to states serving those who declare they are citizens or nationals without satisfactory evidence of their citizenship or a proper state determination that the individual is exempt. However, states can utilize an option promoted by CMS to ease obtaining the valid documentation. This option allows states to obtain evidence of a person's U.S. citizenship and identity by conducting electronic cross-matches with existing databases, such as vital records, Social Security, the Food Stamp Program, and the state Motor Vehicles Department. Additionally, CMS, as required by the DRA, established an outreach program composed of presentations and tools for states and healthcare providers to use to educate individuals about the new documentation requirements. Due to a federal court decision in September 2006, states also exempt children eligible for federal foster care payments from the citizenship documentation requirement.

The rule also allows states to declare individuals exempt from the requirements if the individual meets one of the following conditions:

- the individual has already provided documentation of citizenship;
- the individual receives Supplemental Security Income Medicaid (SSI) and Social Security Disability Insurance (SSDI);
- the applicant is enrolled in Medicare;
- the individual is applying for Medicaid, Family Planning Waiver Program, or Well Woman Medicaid through presumptive eligibility (PE), a temporary enrollment period for individuals who appear eligible after an initial screening. However, once the PE period ends and these individuals apply at their local agency, they may be subject to the requirements at that time.
- all children in foster care and children receiving federal adoption assistance under Title IV-E of the Social Security Act
- individuals eligible for or enrolled in either Medicare Part A or Part B.

The authorization for additional exemptions can be approved but under limited conditions.

Presumptive eligibility is not changed by the citizenship documentation requirements. The regulation clarifies that presumptive eligibility can be granted without citizenship documentation for children, pregnant women and women eligible for breast and cervical cancer screening.

However, state officials and others are raising numerous concerns that implementation of this requirement will be both costly and burdensome to states, and will place eligible Medicaid applicants and beneficiaries at risk of losing services. States perceive the acceptable forms of citizenship documentation under the DRA to be unnecessarily narrow and the system for states to obtain these documents is complicated.

State Citizenship Documentation Laws

Even though this process breaches unfamiliar territory on the national level, a lot can be learned from states, such as New York, and their experience with their own citizenship programs that were



implemented prior to the DRA. New York's citizenship documentation requirement has been around since the mid-1970s, and provides superior insight and experience that should help with the development of federal and state policy. New York State is one of four states, including Georgia, Montana, and New Hampshire, which already require documentation of citizenship for Medicaid applicants. Other states, such as Colorado, are passing their own legislation with state-level citizenship documentation requirements.

For example, New York:

- Allows the list of their acceptable documents to change over time.
- Does not place a restriction of acceptability with their list of primary and secondary documents (i.e. if an individual provides two secondary documents then the individual qualifies for Medicaid).
- Accepts copies of documents and does not require certified copies of citizenship documents.
- Has a "mail-in renewal system" allowing Medicaid applicants and Medicaid recipients to send in copies of their documents without having to come in personal contact with Medicaid recertification employees (requiring original documents would hinder this process and force individuals to entrust valuable documents to the State).

Federal Lawsuit

The requirements have been challenged unsuccessfully – to some degree – in the judicial system. In September 2006 a U.S. District Judge dismissed a lawsuit filed over allegations that some Medicaid beneficiaries would lose coverage as a result of the new law. The lawsuit, filed in U.S. District Court in Chicago against HHS Secretary Mike Leavitt on behalf of nine Medicaid beneficiaries, asserted that the law violates the due process clause of the Fifth Amendment of the U.S. Constitution. The judge decided that the plaintiffs were absent in showing that their injuries can be traced to the regulations and therefore do not have sufficient purpose to pursue their claims. However, the judge did issue an injunction that would exempt 500,000 foster children enrolled in Medicaid from the proof-of-citizenship requirement.

Deemed Eligibility for Newborns

CMS also used the DRA regulation to change deemed eligibility for newborn babies of noncitizen mothers, although deemed eligibility is typically considered to be a policy issue separate from citizenship documentation. Since 1984, federal Medicaid policy has required states to provide one year of automatic Medicaid eligibility to babies when the births were covered by Medicaid. CMS, without modification to the law, directed states not to provide automatic coverage to babies whose mothers do not meet the citizenship documentation requirements. This new requirement has been established even though these babies have been born in the United States and Medicaid covered the cost of their birth. The altered rule states that newborns cannot be covered by Medicaid in their own right until an application is filed with all the necessary documents, including proof of the newborn's citizenship and identity. Since Medicaid eligibility provides coverage for infants for check-ups and other health care services critical to newborn health and development, babies made ineligible for Medicaid until an application is submitted and approved by the state may be subjected to delays in critical coverage.



Clarified by the July 2007 final regulation, babies born to mothers receiving emergency Medicaid are entitled to automatic eligibility for one year. In the preamble to the July 2006 interim final regulations, CMS stated that only babies born to citizen and qualified immigrant mothers eligible for full Medicaid at the time of the baby's birth were entitled to automatic coverage, but babies born to undocumented and five-year bar immigrant women, who are eligible only for emergency services, were not. The final regulation reverses this policy, restoring the longstanding rule under the statute: All babies born to pregnant women on Medicaid at the time of birth — regardless of the immigration status of the mother or the scope of benefits to which she is entitled — are automatically eligible for one year of Medicaid eligibility. However, unnecessary barriers remain for all babies entitled to automatic coverage. At age 1 babies must start to comply with the citizenship documentation requirements.

ACAP and Other Responses to Interim Final Rule

ACAP in August 2006 responded to HHS regarding the new documentation requirements with three main recommendations, which included the following:

- CMS should exempt children eligible for federal foster care payments from the citizenship documentation requirement. (This issue was resolved in September 2006 by the courts, which includes exemption for foster children.)
- CMS should allow a state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital as satisfactory documentary evidence of citizenship and identity.
- CMS should adopt the Social Security Administration's approach for U.S. citizens who lack documentation of their citizenship. (CMS has clarified that states are allowed to obtain evidence of a person's U.S. citizenship and identity by conducting electronic cross-matches with the Social Security database.)

Other groups have advocated additional changes to clarify citizenship documentation requirements, including:

- Exempting newborn infants born to women are Medicaid beneficiaries from documenting citizenship in Medicaid.
- Expanding the list of acceptable citizenship documents to include additional documents accepted in New York and other states that require citizenship documentation.
- Giving states flexibility and discretion in implementing the DRA requirements by eliminating or simplifying the "tiered" approach to citizenship documentation.
- Eliminating the requirement that states accept only original documents.
- Clarifying that states are obligated to provide Medicaid applicants and beneficiaries with assistance in obtaining the documents necessary to prove citizenship.
- Allocating targeted funds to states for outreach, education and application assistance activities related to DRA implementation.

Tax Relief and Health Care Act of 2006

The Tax Relief and Health Care Act of 2006 (TRHCA) passed at the conclusion of the 109th Congress amended the citizenship documentation requirement in two ways. First, it put in statute exemptions two populations, including individuals receiving disability benefits under sections 202 or 223 of the Act (SSI



and SSDI) *and* children receiving foster care or adoption assistance under title IV, for which CMS had previously allowed exemptions through rulemaking. Second, it corrected a scrivener's error in the DRA by replacing the term "alien" with "individual declaring to be a citizen or national of the United States." Guidance on the TRHCA amendments by DHHS was provided in a Dear State Medicaid Director letter on February 23.

Documented Impact of Citizenship Documentation Rule

As early as fall 2006, several states publicized the negative effects of the new citizenship documentation requirement. In early October, just three months after implementation of the rule, The Washington Post ran an article declaring that as many as 10,000 low-income children had been denied Medicaid coverage as a result citizenship documentation.

In addition, a Kaiser Family Foundation report published in January 2007, *Resuming the Path to Health Coverage for Children and Parents*, provides a list of states – including Iowa, Louisiana, New Hampshire, Virginia and Wisconsin – that have reported DRA-related declines in enrollment. The State of Iowa, for example, has demonstrated an unprecedented statewide decline in enrollment, and has shown that the decline is focused among those populations specifically subjected to the documentation requirement, including children and families, but has not affected Medicare and SSI populations, whose citizenship is established by their eligibility for those other programs. Louisiana also has documented a decline in new enrollment, but in addition has shown that individuals attempting to renew Medicaid are losing coverage at rates triple those prior to when the rule came into effect. Some of these States have also incurred backlogs in processing applications and new administrative costs.

In May 2007, The George Washington University School of Public Health and Health Services published a policy brief on the implications of Medicaid's new citizenship and identification documentation requirements for health centers and their patients, enacted as part of the Deficit Reduction Act of 2005. Their findings determined that the new requirements "are expected to cause up to 319,000 health center patients including more than 212,000 children to lose their Medicaid coverage."