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In February 2006, the President signed into law budget reconciliation legislation—the so-called Deficit Reduction Act (DRA)—that fundamentally alters many aspects of the Medicaid program. Some of these changes are mandatory provisions that states must enact and that will make it more difficult for people to either qualify for or enroll in Medicaid. Other changes are optional provisions that allow states to make unprecedented changes to the Medicaid program through state plan amendments. This series of issue briefs is designed to inform advocates about the specifics of these changes and to highlight key implementation issues and strategies to mitigate the harm these provisions could cause to people on Medicaid.

The Burden of Proof: New Regulations Worsen Citizenship Documentation Requirement in Medicaid

The Deficit Reduction Act (DRA) fundamentally alters many aspects of the Medicaid program. One of the more damaging provisions of the new law requires that states obtain proof of citizenship from most new Medicaid applicants, and from current enrollees who renew their eligibility, beginning on July 1, 2006.¹ On June 9, 2006—just three short weeks before the provision was scheduled to begin—the Centers for Medicare and Medicaid Services (CMS) sent guidelines to states about how to implement the new citizenship documentation requirement. These guidelines made the provision even more stringent than the law required, and they left many unanswered questions for both states and Medicaid enrollees.

On July 12, 2006, CMS published more formal regulations—called “interim final regulations”—that resolve some, but not all, of the lingering questions surrounding the implementation of the documentation requirement.² For example, the regulations exempt from the requirement most Medicaid beneficiaries who are elderly or who have disabilities. The regulations also encourage states to use electronic data matching to verify citizenship, as opposed to demanding paper documentation in all cases.

While these changes constitute a significant victory for some beneficiaries, the regulations issued by CMS fall far short of their potential to ameliorate the harm that the requirement will cause. In fact, the regulations make the situation worse in several key ways by going further than the federal statute requires. So, the documentation requirement still creates an enormous burden for millions of Americans who depend on Medicaid for their health care.

This update reviews the most recent changes to the documentation requirement and outlines the major implications of the regulations issued by CMS. In addition, it addresses three important questions regarding the citizenship documentation requirement for Medicaid:

1. What do advocates need to know about the new regulations?
2. What are the likely consequences of requiring people to provide proof of citizenship status and identity to receive Medicaid benefits?
3. What can advocates do to help mitigate the potential harm that the requirement will cause to Medicaid applicants and recipients?

This is the third in a series of issue briefs from Families USA analyzing the documentation requirement (for earlier analyses, see *Millions Must Now Prove Citizenship to Keep Medicaid Coverage* and *Administration Creates New Barriers to Medicaid Enrollment*). This piece focuses on the implications of the regulations that were published on July 12, 2006, and the problems that remain as states seek to implement the requirement.

1. What Do Advocates Need to Know about the New Regulations?

- **The federal regulations will create more problems than they solve.**

Beginning on July 1, 2006, most new Medicaid applicants and current Medicaid enrollees who have not previously proved their citizenship status must produce documentary evidence to prove both citizenship and identity. Shortly after the requirement took effect on July 1, CMS issued regulations that clarified how the requirement should be implemented, including the types of evidence that could be accepted as proof of citizenship. The following section outlines some of the most significant changes and problems with the latest regulations from CMS. While some changes made by the CMS regulations are commendable, such as exempting from the requirement approximately 8 million Medicaid enrollees who also receive either Medicare or Social Security Income (SSI), many problems and questions still remain.

- **The “hierarchy” of acceptable documentation places the greatest burden on U.S.-born citizens who do not have a birth certificate or passport.**

The regulations continue to mandate that states use a four-tier hierarchy of acceptable documentation in verifying an individual’s citizenship status. Documents listed in Tier 1 of the hierarchy are considered to be the most reliable, and documents in Tier 4 are considered the least reliable. For native-born citizens, a U.S. passport is the only acceptable form of documentation in Tier 1. The next tier includes more common forms of documentation, such as a U.S. birth certificate or final adoption decree. Documents from Tiers 3 and 4 can be used only *after* an applicant or enrollee shows that he or she cannot obtain any documents from the previous tier.

The full list of accepted documents is extensive and complicated (for an overview of the types of documentation allowed under the guidance, see Table 1 on page 10). And although the list appears to include an array of possible forms of documentation, most of the documents listed will not be available to someone who does not have either a birth certificate or passport. For some Americans, these new barriers to enrollment may prove to be insurmountable.

This arduous process for establishing citizenship is not required by the statute. Instead, it is an arbitrarily obstructive measure designed by CMS that will place an increased burden on people who do not have access to a birth certificate or passport. The hierarchical process will have the effect of delaying or discouraging enrollment in Medicaid for many Americans.

- **The regulations do not provide a reliable safety net.**

If a person does not have access to any of the less common documents listed in Tiers 3 and 4, then that person can supply a written affidavit by at least *two* individuals, at least one of whom cannot be related to the applicant or recipient. In addition, the individuals making the affidavit must be able to provide proof of *their own* citizenship and identity, and the applicant or recipient must make an additional affidavit explaining why documentary evidence does not exist or cannot be obtained. Although the affidavit is sometimes characterized as a “safety net” of sorts to catch those who cannot show other proof of citizenship, it is unlikely that people who cannot provide any of the other documents to prove their citizenship status will be able to offer an acceptable affidavit.

Instead of instituting this onerous affidavit process, CMS could have allowed a process similar to that used in the SSI program. In that program, if no other documentation is found, the Social Security Administration will accept a personal explanation about why the individual believes that s/he is a citizen. This process would constitute a genuine “failsafe” measure that would ensure that individuals who are citizens and eligible for Medicaid would not be turned away simply for lack of documentation.

- **The regulations create an unnecessary barrier for new applicants.**

The documentation burden falls particularly hard on new applicants to Medicaid. While current enrollees who are renewing their eligibility must be given a “reasonable opportunity” to submit documentation and cannot be denied benefits as long as they are working in “good faith” to obtain such documents, the new guidelines explicitly prohibit states from providing Medicaid to new applicants until they provide physical proof of their citizenship and identity. Not only does this create an additional disincentive to applying, it also can prolong the application

process by weeks or even months as applicants go through the process of requesting birth certificates from their home states and scrambling to find documentation that might no longer exist.

This delay is entirely unnecessary. The legislation that created the requirement did not make providing documentation a condition for Medicaid eligibility. Instead, the legislation required only that states obtain documentation from Medicaid enrollees in order to receive federal funds. The regulations released by CMS, however, expressly prohibit states from enrolling new applicants who do not have proper documentation of citizenship and identity. By doing this, the regulations effectively make having citizenship and identity documents part of the eligibility criteria for Medicaid.

- **Children in foster care are now at risk of losing health coverage.**

The regulations explicitly require that children in foster care provide proof of citizenship and identity to enroll or stay enrolled in Medicaid. This requirement is senseless and unnecessary because there is no doubt that these children are U.S. citizens. There has been a longstanding link between eligibility for Medicaid and the Title IV-E federal foster care program. In fact, federal law mandates that all children who qualify for Title IV-E foster care payments are eligible for Medicaid. Since the citizenship status of these children is verified for foster care payment purposes, there is no need to request documentation for Medicaid enrollment.³

Any effort to demand documentation from this group of vulnerable children—many of whom have great need for immediate health care—will have the effect of denying health care to American children without achieving the purported goal of ridding Medicaid of undocumented immigrants.

- **The regulations will cause newborns to lose access to vital health care and discriminate against children born to immigrant mothers.**

Any child born in the U.S. to an immigrant mother is a U.S. citizen by virtue of being born in this country. However, even though all babies born in the U.S. are citizens, the regulations distinguish between children born to citizen mothers and those born to immigrant mothers. Babies born to mothers who were on Medicaid or who qualified for Medicaid at the time of their birth can be “deemed” eligible for Medicaid and receive it for a year. However, at their first renewal, their families will have to provide proof of citizenship and of identity—even if Medicaid paid for their birth. This requirement is an unnecessary burden for families with infants that will cause some of those children to lose Medicaid coverage.

For babies born to women who are undocumented immigrants or legal immigrants and who have not been in the U.S. long enough to qualify for ongoing Medicaid coverage, the regulations require a new Medicaid application with

proof of citizenship and identity in order for those babies to get any Medicaid coverage at all—even if Medicaid paid for their birth. These regulations unfairly single out citizen children of immigrant parents by making it more difficult for them to receive health coverage as soon as they are born. This requirement will cause babies who are U.S. citizens by birth, and who are often in need of immediate care, to go without coverage until their Medicaid application is completed and the citizenship documentation requirement has been completed. This discriminatory regulation is entirely unnecessary and creates two categories of American children—those born to immigrants and those born to citizens.

- **The regulations are based on unrealistic assumptions that will hurt both Medicaid recipients and states.**

The regulations issued by CMS grossly underestimate the effect the documentation requirement will have on Medicaid applicants, enrollees, and state agencies. For example, although state officials have reported that they would need to hire additional personnel to handle the increased workload of a documentation requirement,⁴ CMS has declared that the implementation of the requirement “will have no consequential effect on State, local, or Tribal governments or on the private sector.”⁵ Furthermore, CMS officials report that they “do not anticipate that these added requirements will over burden the eligibility process,” despite the amount of outreach and training that will be required to inform eligibility workers about the new regulations.

Even more egregiously, CMS assumes that “Medicaid enrollees who are citizens would eventually provide proof of that fact, and that the savings would come from those who are truly in the country illegally.”⁶ This assumption, however, ignores evidence cited in a report released by the Inspector General of the Department of Health and Human Services (HHS) that *found no substantial problem with fraudulent enrollments in Medicaid and did not recommend the implementation of a documentation requirement.*⁷ There is no doubt that Medicaid enrollment will drop as a result of the requirement. However, any savings that result from the documentation requirement will come largely from depriving eligible Americans of the health care services to which they are entitled.

The regulations issued by CMS also make several unsubstantiated and unreasonable estimates of the time it will take to obtain documentation. For example, in the regulations, officials assume that an individual will be able to obtain acceptable proof of citizenship and identity in about 10 minutes. These estimates greatly downplay the burden the requirement places on Medicaid applicants and enrollees.

2. What Are the Likely Consequences of the Documentation Requirement?

While originally designed to crack down on the number of immigrants illegally enrolling in the Medicaid program, the provision will create additional barriers for millions of Medicaid beneficiaries, particularly minorities, children in foster care, and individuals living in rural communities. Ultimately, the requirement will lead to decreased enrollment in Medicaid, longer delays in applying for Medicaid, and increased costs to states.

- **Eligible citizens will lose Medicaid coverage.**

Under the provision, all U.S. citizens applying for or receiving Medicaid must submit documents proving their citizenship, which in most cases means having access to either a birth certificate or passport. According to the Center on Budget and Policy Priorities, roughly 1.7 million U.S.-born adult Medicaid beneficiaries do not have access to the documents now required for enrollment. In addition, an estimated 1.4 to 2.9 million children lack both a birth certificate and passport.⁸ Without this necessary documentation, millions of eligible citizens could be denied coverage, leaving them entirely uninsured.

Requiring applicants to submit proof of citizenship will needlessly force otherwise eligible beneficiaries off of Medicaid. Much of the savings that will result from the new requirement will stem from keeping eligible low-income citizens away from the program because they are unable to produce the necessary documents.

- **The requirement will hurt the people it was intended to protect.**

Although the requirement ostensibly will prevent non-U.S. citizens from enrolling in Medicaid, the provision will disproportionately hurt low-income citizens and their families by making it more difficult for them to obtain health care services through Medicaid. This is because individuals enrolled in Medicaid are less likely than the general population to have access to a passport or birth certificate. According to a recent survey commissioned by the Center on Budget and Policy Priorities, U.S.-born adults with incomes below \$25,000 are almost twice as likely as adults with incomes above \$25,000 to report not having a passport or birth certificate available.⁹

Moreover, the provision will disproportionately affect African Americans, those who live in rural areas, and those who have less than a high school education. These individuals are least likely to have ever been issued a birth certificate, and they are even less likely to have a passport. In addition, applicants who have been homeless or who have lost their citizenship documents because of a fire, hurricane, or other natural disaster will have to go through the difficult process of obtaining a birth certificate from their home state before enrolling in Medicaid.

- **The most vulnerable beneficiaries will be most affected.**

The new provision will not affect all enrollees equally. Many Medicaid enrollees—for example, those who live in rural areas and were born outside of a hospital, or those who were forced to leave their homes as a result of emergencies or natural disasters—are much less likely to have access to a birth certificate. As a result, the documentation requirement will especially hurt those who have been underserved in the past and who are in the greatest need of care.

In particular, low-income African Americans will be disproportionately affected by the documentation requirement. Compared to other racial and ethnic groups, African Americans are less likely to have been born in a hospital, and therefore issued a birth certificate, due to a historical legacy of racism and segregation in the United States. The regulations from CMS also fail to exempt particularly vulnerable populations, such as children in foster care and children born to immigrant mothers on Medicaid, even though there is no doubt that these individuals are U.S. citizens and entitled to Medicaid benefits.

- **The requirement will create new costs for applicants and beneficiaries and delay applications for Medicaid.**

With millions of U.S. citizens reporting that they do not have access to a birth certificate, passport, or other proof of citizenship, the provision could force many low-income families to pay for certified copies of birth from their home state. While some states might provide funding to help obtain documents for Medicaid applicants and enrollees, they are not required to do so. In states that do not offer such funding, the cost will often fall on those who can least afford it. Most states require a processing fee of between \$10 and \$20 before issuing a copy of a birth certificate.¹⁰ What's more, the time required to process requests could seriously delay by weeks or months the delivery of needed care for applicants waiting to receive a copy of their birth certificate.

Applying for a passport is not a practical option for most Medicaid applicants. Besides the prohibitively high application fee—\$97 for adults and \$82 for children under the age of 16—applicants must also prove citizenship by submitting a birth certificate or similar documentation. Ironically, these are the same documents now required to apply for Medicaid.

3. What Can Advocates Do to Mitigate the Harm of the Requirement?

Although the regulations issued by CMS give states relatively little flexibility when implementing the documentation requirement, there are several steps that Medicaid advocates can take to help mitigate the harm caused by this damaging requirement.

Action Steps for Advocates

- ✓ **Submit comments on the regulations before August 11, 2006.** “Interim final regulations” come with an opportunity for the public to comment before CMS issues final regulations. CMS must accept and respond to the comments it receives. Work with national organizations to draft comments, and encourage other advocates to do the same.
- ✓ **Encourage your state administrative and elected officials to submit comments on the regulations.** It is important that CMS hear from all stakeholders about the harm this provision will cause, including the state officials who are responsible for implementing it.
- ✓ **Encourage your state to adopt presumptive eligibility for children and pregnant women.** All states have the option to “presume” certain populations to be eligible for Medicaid before they receive supporting documentation. Although this option is available only for children and pregnant women, the implementation of the documentation requirement presents a unique opportunity for advocates to encourage their states to adopt presumptive eligibility policies for these individuals so that they can be enrolled in Medicaid while they obtain the appropriate documentation. This will prevent a needless delay in services for many of the citizens who depend on Medicaid most.
- ✓ **Keep track of the harm caused by the requirement.** Document cases of eligible beneficiaries who face delays or are denied Medicaid coverage because of the provision, and track the hardships they experience as a result. Share these stories with appropriate advocates, policymakers, and media sources to show how the documentation requirement hurts eligible citizens. Also encourage affected applicants and beneficiaries to share their experience with Families USA’s story bank, so that we can bring attention to the harm caused by the legislation.
- ✓ **Encourage your state to pay any costs incurred by beneficiaries obtaining documentation.** The regulations from CMS give states the option to provide funding for obtaining documentation and guarantees that states will be reimbursed at their federal administrative match rate for such costs. However, the regulations stop short of requiring states to pay for the necessary documentation, leaving open the possibility that the costs will fall on applicants and beneficiaries.

- ✓ **Encourage your state to use electronic data matching whenever possible.** The regulations provide states with significant flexibility to use electronic data matches as a primary method of verifying citizenship and identity, including performing data matches with other states. Electronic data matching will streamline the process for states and individuals and reduce the number of people who need to produce paper documentation.
- ✓ **Help with outreach activities.** The documentation requirement has caused widespread confusion, and many individuals who are affected by it might not know that they will need to produce proof of citizenship to receive or maintain Medicaid coverage. In addition, many immigrants might mistakenly believe that this requirement changes their eligibility for Medicaid. Lacking clear federal regulations, states and organizations that assist enrollees have waited to inform people about the new requirement. However, with the requirement now in effect, advocates should get their state's latest plan and help get the information to those who need it as soon as possible so that people who rely on Medicaid will know what documentation they might need.
- ✓ **Work with state officials to fine-tune implementation plans.** States began implementing this new provision in July and will continue to refine their policies in the months ahead. As cracks in the system occur, bring these issues to the attention of your state officials and work to get them corrected. Encourage your state to adopt "good practices" employed in other states.
- ✓ **Stay abreast of legislation to repeal the provision.** Senator Daniel Akaka (D-HI) introduced a bill (S. 2305) in the Senate, and Congresswoman Donna Christensen (D-VI) introduced legislation in the House (H.R. 5023) to repeal the documentation requirement entirely. To find the current status of the bills, search for the bill number on the Library of Congress Web site for legislative information at <http://thomas.loc.gov>.

Conclusion

Requiring Medicaid applicants and enrollees to submit proof of their citizenship will force many otherwise eligible beneficiaries to lose access to vital health care. It is a needless provision that will pose an additional barrier for millions of low-income Americans. The requirement stems from highly misleading anti-immigrant rhetoric and hurts the very people it was purportedly designed to protect: U.S.-born citizens who depend on Medicaid for their health coverage.

Advocates can play a critical role in the implementation of this requirement by engaging in outreach efforts, ensuring that their states are adopting best practices, and documenting any harm caused by the requirement. At the same time, Congress should work to provide the maximum possible flexibility to states seeking to implement this harmful and costly requirement in the months ahead, and ultimately repeal the provision altogether.

Table 1

Proving Citizenship and Identity for Medicaid

Note: The applicant or beneficiary who is renewing eligibility must go through the following 4-tier hierarchy until he or she is able to successfully document citizenship. Those who do not have documents from Tier 1 must also supply additional proof of identity. The complete regulations regarding acceptable documentation are explained in the interim final regulations released by CMS on July 12, 2006. For example, states have the option of doing electronic data matches to verify citizenship and identity, so it might not be necessary for every applicant and enrollee to provide paper documentation.

<p>Tier 1 (proves both citizenship and identity)</p> <ul style="list-style-type: none"> • U.S. passport • Certificate of Naturalization • Certificate of U.S. Citizenship 	
<p>Tier 2 (proves citizenship only)</p> <ul style="list-style-type: none"> • A U.S. public birth record • Certification of Report of Birth • Certification of Birth Abroad • U.S. Citizen Identification Card • Consular Report of Birth Abroad of a U.S. Citizen • American Indian card with code KIC^a • Northern Mariana card • Final adoption decree • Evidence of U.S. civil service employment before June 1, 1976 • Official military service record that shows U.S. place of birth 	<p>Proof of Identity^f</p> <ul style="list-style-type: none"> • Any item from Tier 1 <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • U.S. driver’s license with either a photo of the individual or other identifying information (e.g., name, age, sex, race, height, weight, or eye color) • School ID card with photo • U.S. military card or draft record • Government-issued ID with the same information that is included on a driver’s license • Native American tribal document • Certificate of Degree of Indian Blood^g • U.S. Coast Guard Merchant Mariner card • School records for children under 16, including nursery school or daycare records • If none of the above documents is available for a child under 16, a parent or guardian can attest to the identity of the child. The affidavit must be signed under penalty of perjury and cannot be used if an affidavit for citizenship was provided. <p>Note: States also have the option of verifying identity by doing a cross match with other agencies that can certify the identity of the person. Such agencies may include food stamps, child support, corrections, motor vehicle, and child protective services agencies.</p>
<p>Tier 3 (proves citizenship only)^b</p> <ul style="list-style-type: none"> • Extract of hospital record on hospital letterhead • Life or health insurance record showing U.S. place of birth 	
<p>Tier 4 (proves citizenship only)^c</p> <ul style="list-style-type: none"> • Federal or state Census record showing U.S. place of birth • Seneca Indian tribal census record • BIA tribal census records of the Navajo Indians • U.S. state vital statistics official notification of birth • Amended U.S. public birth record • Statement signed by physician/midwife in attendance at birth • Institutional admission papers indicating place of birth^d • Medical record indicating U.S. place of birth • Written affidavit by at least two individuals^e 	

^a Issued by DHS to identify U.S. citizen members of the Texas Band of Kickapoo living near the U.S./Mexican border.

^b Must be established at the time of the person’s birth and must have been created at least five years before the initial application date.

^c The regulations issued by CMS place certain restrictions on the use of Tier 4 documents. For example, most documents listed in this section must have been created at least five years before the application date for Medicaid to be accepted as verification of citizenship.

^d Unlike other Tier 4 documents, the regulations do not place any restrictions on the use of institutional admission papers for the purpose of proving citizenship. For example, there is no requirement that the papers be created prior to the Medicaid application in order to be accepted.

^e At least one individual must be unrelated to the applicant/recipient, and both must have personal knowledge of the events establishing the applicant’s or recipient’s claim of citizenship. The individuals making the affidavit must be able to provide proof of their citizenship and identity. The applicant or recipient or other knowledgeable individual must provide a second affidavit explaining why documentary evidence does not exist or cannot be readily obtained.

^f This list is derived from 8 CFT 274a.2(b)(1)(v)(B)(1). However, the regulations published by CMS explicitly exclude voter registration cards and Canadian driver’s licenses from the list of approved identity documents, although they are accepted as proof of identity by other federal agencies.

^g A Certificate of Degree of Indian Blood or other U.S. American Indian/Alaska Native tribal document is acceptable as proof of identity only if the document contains a photograph of the applicant or recipient, or if it has other personal identifying information relating to the individual.

Endnotes

¹ Deficit Reduction Act of 2005, Pub. L. No. 109-171, Section 6036, available online at <http://www.cms.hhs.gov/MedicaidEligibility/downloads/Public%20Law%20No.%20109-171%20Deficit%20Reduction%20Act%20of%202005%20Section%206036.pdf>.

² The regulations amend 42 CFR Parts 435, 436, 440, 441, 457, and 483. The text of the interim final regulation is available online at http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp.

³ Pat Redmond, *Children in Foster Care May Have to Delay Health Care Because of Federal Regulations on Citizenship Requirement* (Washington: Center on Budget and Policy Priorities, July 7, 2006).

⁴ Daniel Levinson, *Self-Declaration of U.S. Citizenship for Medicaid* (Washington: Department of Health and Human Services, Office of Inspector General, July 2005).

⁵ Centers for Medicare and Medicaid Services, Interim Final Rule, “Medicaid Program; Citizenship Documentation Requirements” (Baltimore: Department of Health and Human Services, July 2006), available online at http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp.

⁶ *Ibid.*

⁷ Daniel Levinson, *op cit.*

⁸ Leighton Ku, Donna Cohen, and Matt Broaddus, *Survey Indicates Budget Reconciliation Bill Jeopardizes Medicaid Coverage for 3 to 5 Million U.S. Citizens* (Washington: Center on Budget and Policy Priorities, January 26, 2006).

⁹ *Ibid.*

¹⁰ According to the National Center for Health Statistics, 38 states charge between \$10 and \$20 for a certified copy of an individual’s birth certificate, five states charge between \$5 and \$10 (Florida, Nebraska, North Dakota, Vermont, and West Virginia), and four states charge between \$20 and \$30 (Michigan, New Jersey, New York, and Texas). The remaining three states (Massachusetts, Mississippi, and Tennessee) and the District of Columbia charge different amounts depending on the method used to obtain the copy.



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