

## New Medicaid Regulations Discriminate against U.S.-Born Children of Immigrants

### Medicaid's Role for Children

Medicaid plays an important role in providing health insurance to children in the United States. In 2004, Medicaid covered more than 25 million children, or about one out of every three children.<sup>1</sup> In fact, Medicaid is the nation's single largest health insurer for children. Because it is such an important source of coverage for many young children, covering kids who might not otherwise have health insurance, Medicaid has been crucial to ensuring that kids get the health care they need.

Many children are eligible for Medicaid the day they are born. If a mother has Medicaid when she gives birth, then she often does not need to apply for Medicaid coverage for her baby. Instead, the newborn is automatically enrolled in the program.<sup>2</sup> This provision is essential to ensuring that newborns have continuous coverage in case they face any medical complications after birth. And having health insurance for newborns also enables parents to more easily obtain the health care their babies need during the first year of life.

### New Medicaid Documentation Requirement Threatens Health Coverage

On July 1, 2006, a new citizenship documentation requirement took effect that requires millions of Americans to provide a birth certificate, passport, or other proof of citizenship in order to get or keep Medicaid coverage.<sup>3</sup> This documentation requirement is a dramatic departure from an earlier policy that gave states the option of letting Medicaid applicants declare, under penalty of perjury, that they were citizens.

The new requirement has no effect on non-U.S. citizens—immigrants applying for Medicaid have always had to prove their immigration status to receive coverage. The only effect that the documentation requirement will have is to create an additional barrier to coverage for many of the Americans who need health care the most. For example, the way the requirement is currently being implemented, even newborns might have to have their citizenship proven in order to get Medicaid. However, because all U.S.-born children are by definition citizens of this country, the newborn's eligibility for Medicaid should have nothing to do with whether the mother is a citizen or not. In light of the important role that Medicaid plays during the first year of many children's lives, creating such a barrier to Medicaid enrollment could be very harmful to these children.

## U.S.-Born Children of Immigrants Unfairly Singled Out

This new requirement will make it extremely difficult for children born in the U.S. to immigrant mothers to receive Medicaid upon birth—even if Medicaid paid for their birth. For many low-income undocumented or otherwise unqualified immigrant mothers, the only way to receive care for labor and delivery during pregnancy is through so-called “emergency” Medicaid, which covers the costs of giving birth for non-citizen mothers who would otherwise qualify for full Medicaid benefits. While the mothers are no longer eligible for Medicaid after giving birth, their children are, by definition, eligible for Medicaid, since they were born in this country and their mothers met all other qualifying conditions at the time of delivery. But even though Medicaid has a record of payment for the birth that proves that the newborn is a citizen, the new requirement will force the family to prove both the child’s citizenship and his or her identity.

The Fourteenth Amendment to the U.S. Constitution states, “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens. . . .” Nevertheless, the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for managing the Medicaid program, has drawn up rules that discriminate against “persons born . . . in the United States” based simply on their mothers’ immigration status.

In issuing regulations to implement the new documentation requirement, CMS made it even more difficult for these newborn citizens to get health coverage through Medicaid by drawing an arbitrary distinction between children born in the U.S. to immigrants and children born in the U.S. to citizens.<sup>4</sup> Among other things, the regulations unfairly discriminate against babies born to immigrant women, whether they are undocumented immigrants or legal immigrants who have not been in the U.S. long enough to qualify for ongoing Medicaid coverage. The regulations require the family to submit a new Medicaid application and provide proof of citizenship and identity in order for those babies to get any Medicaid coverage at all. However, children born to citizen mothers who qualify for Medicaid are considered automatically eligible for Medicaid and do not even need to apply for benefits.

This requirement will cause many babies who are U.S. citizens by birth to go without coverage until the citizenship documentation requirement has been satisfied and their Medicaid applications have been approved. Without immediate Medicaid coverage, these children could be denied treatment for a range of serious conditions, including low birth weight and severe birth defects. Even if the child is fortunate enough to be born healthy, the family might not know that they can get Medicaid to cover routine care for the newborn that could prevent more serious health problems later.

This discriminatory policy is entirely unnecessary. What's worse, it creates two categories of American children—those born to immigrants and those born to citizens. It is extremely important that CMS change the regulations so that *any* child born in the U.S. to a mother with Medicaid can automatically receive health coverage through Medicaid. If Medicaid paid for the birth in the first place, it is entirely unnecessary for the agency to then require proof of citizenship for that newborn. The only effect of such a requirement will be to cause more confusion for families and to keep eligible children from enrolling in Medicaid.

## What You Can Do

The regulations issued by CMS are “interim final” regulations, meaning that the public has the opportunity to comment on them before they are finalized. The comment period ends on August 11, 2006, providing a small window for advocates to take action on this important issue. Here are some things you can do.

- ✓ **Comment on the regulations by August 11, 2006.** CMS must accept and respond to all comments that they receive, so it is very important that CMS hears about the ways that its regulations will hurt many of the people who depend on Medicaid for health care. Families USA and other national organizations are available to help you draft comments, or you can have your organization sign on to comments that we have prepared. Contact us at [minorityhealth@familiesusa.org](mailto:minorityhealth@familiesusa.org) for more information about commenting on the regulations.
- ✓ **Encourage others to comment.** Administrators at CMS pay attention to the number of comments they receive on an issue. It is important that CMS hear from all stakeholders about the harm this requirement will cause, so encourage others to either submit their own comments or sign on to existing comments.
- ✓ **Encourage CMS to remove the distinction between children born to non-qualified immigrant mothers and children born to U.S. citizens and qualified immigrants.** This arbitrary distinction creates two classes of U.S.-born citizens based on the mother's citizenship status, which is not only unfair to the child, but it is also potentially illegal because the child's eligibility for Medicaid has nothing to do with whether the mother is a citizen or not.
- ✓ **Encourage your state and CMS to accept Medicaid birth claims as proof of U.S. citizenship.** There is no logical reason for CMS not to accept a state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital as satisfactory evidence of citizenship and identity. These children are by definition U.S. citizens, regardless of the immigration status of their parents.

## Endnotes

<sup>1</sup> Kaiser Commission on Medicaid and the Uninsured, *Health Coverage for Low-Income Populations: A Comparison of Medicaid and SCHIP* (Washington: Kaiser Family Foundation, April 2006).

<sup>2</sup> Federal law requires states to provide Medicaid to any child born in the United States to a mother who has Medicaid at the time of the child's birth (see 42 U.S.C. §1396a(e)(4) and 42 CFR 435.117). In such cases, the newborn is "deemed" to have applied for Medicaid and been found eligible without needing to submit a new application. To maintain coverage, the child must belong to the mother's household, and the mother must remain eligible for Medicaid after giving birth (or meet the same financial eligibility requirements she met when she was pregnant). If those conditions are met, then the newborn should receive Medicaid for one year before needing to renew eligibility.

<sup>3</sup> Pub. L. No. 109-171, Section 6036. For more information about the documentation requirement, see *The Burden of Proof: New Regulations Worsen Citizenship Documentation Requirement for Medicaid* (Washington: Families USA, July 2006).

<sup>4</sup> The text of the interim final regulations is available online at [http://www.cms.hhs.gov/MedicaidEligibility/05\\_ProofofCitizenship.asp](http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp).



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