

Analysis of the Medicaid Citizenship Documentation Regulations

On July 12, 2006 the Department of Health and Human Services (HHS) issued “interim final” regulations implementing the Medicaid citizenship documentation requirement that was part of the Deficit Reduction Act of 2005 (DRA).¹ Interim final regulations take effect immediately, but they allow for changes after a public comment period. Although these regulations are based on guidance issued to states on June 9, 2006, the regulations depart significantly from the guidance on several key issues.² The changes will alleviate the burden of documenting citizenship for millions of people and should make it easier for states as well as Medicaid beneficiaries and applicants to comply with the new requirement. However, there are still many areas of concern in the new regulations, and millions of American citizens who are eligible for Medicaid will be delayed or denied coverage because of this new requirement. HHS will accept public comments on the new regulations through August 11, 2006.

How are the regulations an improvement over the earlier CMS guidance?

- **People on Medicare and SSI are exempt from the documentation requirement.** Most notably, the regulations exempt dual eligibles (people eligible for both Medicaid and Medicare) from the new documentation requirement. Also exempt are SSI recipients in states where people with SSI automatically get Medicaid without completing a separate application.³ Individuals on SSI are either elderly or people with severe disabilities who have incomes below \$603 per month.⁴ Congress had intended to exempt these populations from the citizenship documentation requirement when it passed the DRA, but a “scrivener’s error” in the legislation inadvertently exempted *aliens* on SSI and Medicare, rather than *citizens* on the two programs. This enormous change in the regulations means that approximately 8 million Medicaid beneficiaries will not have to provide additional documentation of their citizenship to get or to stay on Medicaid, since they have already proven it during the Medicare and/or SSI application process.⁵

These individuals are among the most vulnerable people in Medicaid, because they are elderly and/or severely disabled. But while many people with disabilities in Medicaid also have SSI, not all do. Individuals who have a disability that is not severe enough to meet the SSI definition and individuals who do not qualify for SSI because they have family income or assets above the SSI limits remain subject to the new documentation provision.

- **Data matches can ease burden to applicants and enrollees.** The regulations give states the option to conduct electronic data matches with information that is available from other programs. While the June 9 guidance also allowed data matching under certain circumstances, the regulations make it clear that states may use data matching as a first step towards documenting citizenship status of individuals rather than as a last resort. Data matching will allow states to document citizenship or identity for large numbers of Medicaid enrollees without increasing the paperwork burden for individuals. Data matching will be easier for states because it will require less administrative time and effort than gathering documentation from each and every person who applies for or receives Medicaid. States can do this in three different ways:
 1. States that do not link SSI and Medicaid eligibility—called 209(b) states—may conduct a cross-match with the SSI database (the state data exchange or “SDX”) to obtain information about a person’s citizenship status. The following are 209(b) states: CT, HI, IL, IN, MN, MO, NH, ND, OH, OK, and VA.
 2. States may check their vital records databases for birth records of individuals born in that state. This is an attractive option for states because it can streamline the process and dramatically reduce the number of people who need to gather paper documentation. However, this type of match will only suffice for proof of citizenship; applicants and beneficiaries will still have to submit documents to prove their identity.
 3. A state may also, if it chooses, cross match with a federal or state government, public assistance, law enforcement, corrections or other such agency’s data system in order to establish identity, as long as the agency certifies the identity of individuals. This means that the Medicaid agency could document applicants’ and beneficiaries’ identity by cross matching with the state’s department of motor vehicles, the food stamp office, child protective services, or other agencies.

How do the regulations create barriers for people enrolling in or maintaining Medicaid coverage?

- **Citizenship documents are “tiered” according to reliability.** Where paper documents are used instead of electronic data matching, the regulations retain the four-tier hierarchy structure established in the June 9 guidance. Documents listed in Tier 1 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. Applicants or enrollees who use Tier 2, 3, or 4 documents to prove citizenship must also submit documentation that proves their identity as well. The regulations include a list of acceptable identity documents.

The full list of accepted documents is extensive and complicated (see Table 1 on page 4 for more information). Although this list appears to include many possible forms of documentation, most of the documents listed will not be available to someone who does not have either a passport or birth certificate.

The regulations require states to obtain higher-level documentation where it is available, before moving on to documentation from a lower tier. However, the regulations do not spell out what people must do to show that they cannot obtain documents from one tier in order to move to the next lower one. The regulations state that “available evidence” of citizenship is evidence that exists and can be *obtained within the reasonable opportunity period*. This seems to suggest that a person might be required to apply for a passport on an expedited basis if it could be obtained within the time period. Although it seems unlikely that a state would require this of an applicant or enrollee—the high cost of a passport would be prohibitive for most individuals on Medicaid—on this point, the regulations are not clear.

- **People must have a “reasonable opportunity” to submit documents.** Like the earlier guidance, the regulations seem to indicate that people must be given a “reasonable opportunity” to submit documentation and that current enrollees who are renewing their eligibility cannot be denied benefits as long as they are working in “good faith” to obtain such documents. Further, when people are unable to locate these documents, the state must assist them in securing evidence of their citizenship. However, most of this language only appears in the preamble to the regulations (the regulations use less clearly defined language and say nothing about assisting individuals), so states may not adopt such practices.
- **Title IV-E foster children and other populations must show documentation.** Although dual eligibles and SSI recipients are now exempt from proving their citizenship under Medicaid, other groups for whom this new requirement will be a real barrier to enrollment must still comply. For example, even though they were not mentioned in the DRA itself, according to the CMS guidance and the interim final regulations, foster children must provide documentation of their citizenship in order to qualify for Medicaid. Expansion populations who are covered under Medicaid Section 1115 waivers, including individuals who only receive Medicaid coverage of family planning services under family planning waivers, are also subject to this new requirement.
- **New applicants may not receive benefits until they provide documentation.** The state must give new Medicaid applicants a “reasonable opportunity” to submit citizenship documentation that is consistent with the timeframes for making eligibility determinations within the existing Medicaid regulations. But the new regulations also explicitly prohibit states from providing Medicaid to new applicants until they provide this proof, just as the earlier CMS guidance did. Not only does this create an additional disincentive to applying, it also can

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 <li style="text-align: center;">or ■ 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 Kickapoos 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.

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

- **Newborns must also provide documentation, which could delay or disrupt their coverage.** According to the preamble to the regulations, newborns who are born to mothers on Medicaid will have to provide citizenship documentation at their next redetermination (newborns are categorically-eligible for one year if their mothers were categorically-eligible at the child's birth and remain so during this time). The preamble also states that newborns born to undocumented immigrants or legal immigrants within the 5-year bar must apply for Medicaid and provide citizenship documentation following their birth before they can get any coverage at all. Yet, in both situations, Medicaid paid for the births of these children in U.S. hospitals, so they are obviously U.S. citizens. The Medicaid program should be able to use its own billing records of births it has paid for as proof of U.S. citizenship. According to the preamble to the regulations, however, these children would have to prove citizenship by using the hierarchy of documents set forth in the regulations. Children born in the U.S., whose births were paid for by Medicaid, should be able to get and keep Medicaid if they are otherwise eligible without the need for their families to provide additional proof that they are citizens.
- **The requirement puts mail-in applications in jeopardy.** Where paper documentation is used, people will have to submit original or certified copies of these documents to their Medicaid agency, even if the state otherwise allows people to apply for or renew their Medicaid coverage by mail instead of going to the office in person. The requirement that individuals present original or certified copies of documents will prohibit many people from taking advantage of the mail-in application or renewal process, causing additional administrative costs for states as well as added hurdles for individuals to surmount in order to get or keep Medicaid.
- **Using affidavits if proof of citizenship does not exist.** If a person does not have access to any of these less common documents, then that person can supply written affidavits from *two* individuals who have knowledge of the person's citizenship, and at least one of these individuals must not be related to the applicant or enrollee. Additionally, the individuals making the affidavits must be able to provide proof of *their own* citizenship and identity, and the applicant or enrollee must also make an affidavit explaining why documentary evidence does not exist or cannot be obtained. Although this affidavit option might be characterized as a "safety net" for those who cannot show any other proof of citizenship, it is very unlikely that people who cannot provide any of the other documents to prove their citizenship status will be able to offer two acceptable affidavits.
- **Help required for special populations.** Only "special populations" must be explicitly offered assistance from the state in obtaining evidence of citizenship and identity. These populations include homeless individuals, amnesia victims, individuals with mental impairments, or individuals who are physically incapacitated and who do not have a caretaker or someone to help

them obtain the documents. These groups of people will have the most difficulty locating these documents, so assistance from the state is especially needed.

- **Documentation of citizenship might not be a one-time only event.** The regulations state that once a person's citizenship is documented and put into that person's case file, citizenship documentation should not have to be repeated *unless* evidence brings into question their citizenship status or unless there is a gap of more than three years between the individual's last period of eligibility and a subsequent application for Medicaid. In part, this is due to Medicaid's record retention policy that only requires states to retain records for three years after a person loses Medicaid eligibility. For individuals that cycle on and off the program, proving citizenship more than once may be a reality.

Are there any indications that these regulations might change based on comments received by the agency?

Alarming, HHS is soliciting comments on an issue that could make this new documentation requirement even more harmful to Medicaid enrollees and applicants. HHS is seeking comments on whether the agency should limit accepted documents to only those on Tiers 1 and 2. This would mean that most Medicaid enrollees and applicants would have to provide a passport or birth certificate. Most other documentation would not suffice and even the affidavit "safety net" would not be acceptable for those individuals with nothing else.

Yet, on a positive note, the agency is also soliciting comments on whether there are any other electronic databases that might be good options for states to use in cross matching for citizenship status beyond the SDX or state vital records databases.

Conclusion

Although the regulations contain some improvements over the earlier CMS guidance, and now exempt approximately 8 million Medicaid enrollees from the documentation requirement, it will still be difficult for many Medicaid enrollees and applicants to provide the necessary documents. The Center on Budget and Policy Priorities estimates that nationwide, 750,000 people with disabilities on Medicaid will still have to prove their citizenship because they are either not receiving SSI (they may be on SSDI) or not on Medicare.⁶ For these individuals, the other 42 million Medicaid enrollees, and others applying for Medicaid coverage, these new rules establish real obstacles to health care coverage.

Endnotes

¹ *Federal Register* 71, no. 133 (12 July 2006): 39214-39229.

² The June 9 guidance can be found on the CMS Web site at <http://www.cms.hhs.gov/MedicaidEligibility/Downloads/SMD%20Letter%20Improved%20Documentation%20of%20Citizenship.pdf>.

³ These states are sometimes referred to in policy jargon as “1634” states because it is Section 1634 of the Social Security Act that allows them to link Medicaid eligibility to receipt of SSI. There are only 11 states that do not link Medicaid eligibility to receipt of SSI. Those states are: CT, HI, IL, IN, MN, MO, NH, ND, OH, OK, and VA.

⁴ The SSI income limit is updated annually. \$603 is the monthly income limit for an individual in 2006.

⁵ Statement by CMS Administrator Mark B. McClellan. For example, see Robert Pear, “White House to Ease Medicaid Rule on Proof of Citizenship,” *New York Times*, July 7, 2006.

⁶ People with disabilities who are under 65 must be on a waiting list for two years before becoming eligible for Medicare. See Leighton Ku, *Revised Medicaid Documentation Requirement Jeopardizes Coverage for 1 to 2 Million Citizens* (Washington: Center on Budget and Policy Priorities, July, 2006).

