

August 11, 2006

Honorable Mark B. McClellan, MD, PhD
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 443-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

REF: CMS-2257-IFC

RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Fed.Reg. 39214 (July 12, 2006)



Dear Dr. McClellan,

The Catholic Health Association of the United States (CHA) is pleased to submit the following comments on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We are deeply concerned about the impact of the regulation on U.S. citizens and their ability to obtain Medicaid coverage. We respectfully request that CMS act to further minimize the likelihood that U.S. citizens applying for or receiving Medicaid coverage will not face delay, denial, or loss of Medicaid coverage.

U.S. citizens applying for benefits should receive benefits once they declare they are citizens and meet all eligibility requirements.

Under the DRA, the new citizenship documentation requirement applies to all individuals (other than Medicare beneficiaries and, in most states, SSI beneficiaries) who apply for Medicaid. The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. The rule itself states that states "must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." 42 CFR 435.407(j).

Under the DRA, documentation of citizenship is not a criterion of Medicaid eligibility. Once an applicant for Medicaid declares that he or she is a citizen and meets all eligibility requirements, eligibility should be granted. There is nothing in the DRA that requires a delay in providing coverage.

This year, about 10 million U.S. citizens are expected to apply for Medicaid who are subject to this requirement. Most of these citizens are children, pregnant women and parents who will be subject to the new citizenship documentation requirement. The net effect of the prohibition on granting these individuals coverage until they provide documentation of their citizenship will be to delay Medicaid coverage for large numbers of eligible, low-income pregnant women, children and other vulnerable Americans. This is likely to delay their medical care, worsen their health problems and create financial losses for health care providers.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation.

WASHINGTON OFFICE

1875 Eye Street, NW
Suite 1000
Washington, DC 20006-5409

Phone 202-296-3993
Fax 202-296-3997

www.chausa.org

A state Medicaid agency's record of payment for the birth of an infant in a U.S. hospital should be considered satisfactory documentary evidence of citizenship and identity.

Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. The rule provides that in such circumstances, extracts of a hospital record created near the time of birth could be used as proof of citizenship, 42 CFR 435.407(c)(1), and if this "third level" of evidence was not available, a medical (clinic, doctor, or hospital) record created near the time of birth could be used, but only in the "rarest of circumstances," 42 CFR 435.407(d)(4).

Under current law, infants born to U.S. citizens receiving Medicaid at the time of birth are deemed to be eligible for Medicaid upon birth and to remain eligible for one year so long as the child remains a member of the woman's household and the woman remains eligible for Medicaid (or would remain eligible if pregnant). The preamble to the interim final rule states that, in such circumstances, "citizenship and identity documentation for the child must be obtained at the next redetermination." 71 Fed. Reg. 39216. Since the state Medicaid agency paid for the child's birth in a U.S. hospital and the child is by definition a citizen, we see no reason for CMS to require citizenship and identity documentation to be obtained at the next redetermination and request that CMS modify the regulations accordingly.

In the case of a child born in a U.S. hospital to a mother who is either a legal immigrant subject to the 5-year bar on Medicaid coverage or an undocumented immigrant, the preamble states that, in order for the newborn to be covered by Medicaid, an application must be filed and the citizenship documentation requirements would apply. 71 Fed. Reg. 39216. Prior to this regulation, CMS required states to provide a full year of deemed newborn eligibility to infants born to pregnant women eligible only for emergency Medicaid, to the same extent as infants born to mothers eligible for full Medicaid coverage. In preamble, CMS reversed this policy. Under the interim final rule, the mothers of these babies will now have to file a application for Medicaid on behalf of their babies, who will have to meet the new citizenship documentation requirements, even though the baby was born in a U.S. hospital, their birth was paid for by the state Medicaid program, and their U.S. citizenship is not in question. Undocumented mothers, in particular, may be reluctant to do so.

The interim final rule as drafted may unnecessarily risk the health of newborns by delaying coverage and potentially increase uncompensated care for providers. We strongly urge that 42 CFR 435.407(a) be amended to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

CMS should not require applicants and beneficiaries to submit originals or certified copies.

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. Unfortunately, CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1). Requiring original or certified copies adds to the burden of the new requirement for applicants, beneficiaries, and states and makes it more likely that health care providers will experience delays in reimbursement and increased uncompensated care.

Applicants and beneficiaries will be required to make unnecessary visits to state offices with original and certified copies. While the regulations state that applicants and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. Currently, most states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Eliminating the face-to-face interview requirement was one of a number of steps states took to simplify their eligibility processes and make it easier for eligible children and parents to enroll in Medicaid. Mail-in applications are also more efficient for

state Medicaid agencies. Requiring originals and certified copies to document citizenship will make it harder for working families to enroll in Medicaid and increase the workload of Medicaid agencies. This requirement will also delay coverage while applicants wait for appointments at state Medicaid agencies. In some cases, having to visit a state office will discourage applicants from completing the application process causing children and families to go without coverage.

We urge CMS to revise the regulation by modifying the requirement at 42 CFR 435.407(h)(1) to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by the issuing state agency. States should be able to accept copies when the state has no reason to believe that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or beneficiary.

In closing, we want to thank you for the opportunity to comment on the interim final rule and look forward to working with you to preserve access to the Medicaid program for the most vulnerable among us.

Sincerely,

Lisa Atchison Smith
Senior Director, Advocacy and Federal Affairs
The Catholic Health Association