



# MEDICAIDAlert

*In February 2006, the President signed into law budget reconciliation legislation—the Deficit Reduction Act (DRA)—that has fundamentally altered many aspects of the Medicaid program. Some of these changes are mandatory provisions that states must enact that have made 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.*

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## The Medicaid Citizenship Documentation Requirement One Year Later

In February 2006, President Bush signed the Deficit Reduction Act (DRA) into law. The law fundamentally altered many aspects of the Medicaid program, and one of the more damaging provisions of the law requires states to obtain proof of citizenship from Medicaid applicants and recipients who declare themselves to be U.S. citizens. This provision of the DRA went into effect on July 1, 2006, and it has now been in place for more than a year.

Although the requirement went into effect on July 1, 2006, the Centers for Medicare and Medicaid Services (CMS) did not issue interim final regulations on how states were required to implement the new law until July 12, 2006. Stakeholders were then allowed to submit comments in response to the agency's regulations. Finally, one year later, on July 13, 2007, CMS issued final regulations.

Over the last year, the Medicaid citizenship documentation requirement has received much publicity. Before it went into effect, states were fearful that this mandate would be difficult to administer and would lead to significant new administrative costs. Advocates were extremely concerned that the requirement would lead to delays or drops in enrollment for new Medicaid applicants and current recipients. In fact, most of these fears turned out to be well-founded, as states, applicants, and recipients have all run into problems.

Because the documentation requirement makes the Medicaid and Children's Health Insurance Program (CHIP) enrollment processes more cumbersome,<sup>1</sup> it jeopardizes the opportunity presented by CHIP reauthorization (which Congress is currently working on) to get health coverage to more children. Lawmakers recognize this and are working to fix the problems associated with the citizenship documentation requirement as part of the final CHIP reauthorization bill.

This issue brief reviews the events that have transpired since the requirement went into effect in July 2006. Since then, states have worked to implement the new documentation law, and Congress has exempted several populations from the requirement. Unfortunately, significant numbers of Medicaid recipients and applicants have lost, been denied, or experienced a substantial delay in getting Medicaid coverage.

## 1. What Does the Citizenship Documentation Law Require?

The new law did not change any of the rules regarding eligibility for Medicaid. Instead, it changed the federal requirement for paperwork that U.S. citizens must submit as part of an application for Medicaid. Since July 1, 2006, most new Medicaid applicants (and current Medicaid recipients who are renewing their coverage for the first time after July 2006) must provide their state's Medicaid agency with documentary evidence proving both their citizenship and identity (if they claim to be U.S. citizens). Prior to this new requirement, most states required only self-attestation of U.S. citizenship under penalty of perjury. This new law did not change the proof of citizenship requirement for legal immigrants, who have always had to present proof of their citizenship status, nor did it require that individuals be U.S. citizens in order to qualify for Medicaid. Illegal immigrants were and remain ineligible for Medicaid, except for limited emergency services.<sup>2</sup>

The interim final regulations issued in July 2006 allow states to verify citizenship and identity by using electronic data matching. Where paper documents are used instead of electronic data matching, however, the regulations strictly prescribe the types of acceptable documents and assign them to four tiers based on their reliability. 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. Tier 2 includes more common forms of documentation, such as a U.S. birth certificate or final adoption decree. Tiers 3 and 4 include less common, and sometimes obscure, documents that many individuals do not have. Applicants or recipients who use Tier 2, 3, or 4 documents to prove citizenship must also submit documentation that proves their identity. The regulations include a list of acceptable identity documents. Another noteworthy requirement is that, for all of the tiers, only original documents may be used—not copies. (For more information about the tiers of documentation and how they work, see one of our other publications on this topic, *The Burden of Proof: New Regulations Worsen Citizenship Documentation Requirement in Medicaid*, which is available online at <http://familiesusa.org/assets/pdfs/DRA-Citizenship-July-2006.pdf>.)

If a person does not have access to any of the acceptable citizenship documents, he or she may supply a written affidavit signed by at least two individuals, at least one of whom cannot be related to the applicant or recipient. If the applicant is a child under age 16 and does not have an acceptable form of identification, he or she is allowed to use an affidavit signed by a parent or guardian in order to prove the applicant's identity.

The regulations also require that current Medicaid recipients who are renewing their eligibility be given a "reasonable opportunity period" to submit documentation and cannot be denied benefits as long as they are working in "good faith" to obtain these documents. However, the regulations prohibit states from providing Medicaid benefits to new applicants until they provide satisfactory proof of their citizenship and identity.

## 2. How Has the Requirement Changed Since July 1, 2006?

There have been several statutory changes made to the citizenship documentation requirement since it went into effect last July. The Final Rule, issued in July 2007, made even more changes to the requirement.<sup>3</sup>

### ■ New Populations Exempted

Before the interim final regulations were issued in July 2006, CMS exempted Medicare recipients and individuals receiving Supplemental Security Income (SSI) benefits in most states. The rationale for exempting these populations was that Congress had intended to do so in the DRA itself, but, due to a drafting error, they were not actually exempt from the requirement. The Tax Relief and Health Care Act, signed into law in December 2006, codified into law further exemptions as follows: individuals receiving Social Security Disability Insurance (SSDI) benefits, and children in foster care or those receiving adoption assistance.

### ■ Deemed Eligibility for Newborns

In issuing the interim final regulations, CMS made it more difficult for newborns 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. Before the DRA, children born to women who were enrolled in Medicaid on the date of the child's birth were automatically deemed eligible for Medicaid for one year. This "deemed eligibility" also applied to U.S. citizen children born to non-citizen women who qualified for emergency Medicaid, which allowed non-citizens to receive Medicaid coverage in certain emergency situations, such as labor and delivery. (Children born in the United States are automatically U.S. citizens, even if their parents are not.)

In the interim final regulations, CMS excluded children born to women receiving emergency Medicaid from being deemed eligible for Medicaid, instead requiring that families provide proof of a child's citizenship at birth before receiving Medicaid services. However, children born to citizen mothers who qualify for Medicaid were considered automatically eligible for Medicaid and did not need to apply for benefits. This caused concern that some newborns would not receive important services necessary in the first year of life, including immunizations.

In March 2007, after Washington State filed a lawsuit against the Department of Health and Human Services (HHS) in response to the change in policy on newborn deemed eligibility, as well as numerous outcries by the advocacy community, CMS announced that it planned to reverse its policy again. Children born in the U.S. to women receiving emergency Medicaid could receive Medicaid benefits at birth. However, after one year, at renewal, these children would have to provide proof of citizenship and identity. This clarification in policy was also included in the Final Rule.

- **The Final Rule: CMS Did Not Substantially Alter the Interim Final Regulations**

The Final Rule was issued in the *Federal Register* on July 13, 2007. Although CMS allowed the use of a number of new documents to prove citizenship and identity, and it made it easier for naturalized citizens to meet the requirement, it did not significantly change the regulations. CMS failed to make any substantial improvements, such as accepting copies of documents, which would make it easier for citizens to comply with the new requirement. (See “New Forms of Proof of Citizenship and Identity Allowed by the Final Rule Issued on July 13, 2007” for changes in the Final Rule.)

### **New Forms of Proof of Citizenship and Identity Allowed By the Final Rule Issued on July 13, 2007**

Tier 2:

- States may verify citizenship of a naturalized citizen through the SAVE program (Department of Homeland Security computer database).
- Evidence of citizenship under the Child Citizenship Act of an adopted or biological child born outside the U.S.

Tier 3:

- Religious records recorded in the U.S. within three months of birth that show a U.S. place of birth and show either the date of birth or the age of the individual at the time the record was created.
- Early school records showing a U.S. place of birth.

Tier 4:

- Naturalized citizens may now use affidavits.
- Roll of Alaska Natives maintained by the Bureau of Indian Affairs.

Identification:

- A state may accept an identity affidavit signed under penalty of perjury by a residential care facility director or administrator on behalf of an individual living in the facility.
- For children under age 16, clinic, doctor, hospital, or school records (including report cards) may be accepted for identity purposes.
- Affidavits are allowed for children under age 18 if neither a school identity document nor a driver's license is available.
- Affidavits for children may be signed by a caretaker relative.
- A combination of three or more of the following documents may be used to prove identity: employer ID cards, high school and college diplomas from accredited schools (including GED certificates), marriage certificates, divorce decrees, and property deeds/titles.

### 3. Lessons Learned: What Do We Know about the Impact of the New Requirement?

The citizenship documentation requirement can be extremely difficult for applicants and recipients to meet. Proof of both citizenship and identity are required, and, for many individuals, providing proof of identity has been at least as problematic as providing proof of citizenship.<sup>4</sup> Only certain documents are acceptable, and they must be originals—states cannot accept copies. Applicants who are otherwise eligible for coverage cannot obtain Medicaid services until they have produced these documents, leading to delays in medical treatment for many individuals.

The documentation requirement is also administratively burdensome for states to implement. States have reported significant cost increases associated with processing applications, hiring new staff, and training existing staff to deal with the new requirement. A number of states have reported large increases in delays and denials of applications for people for whom there is no question that they are citizens.

Many studies and reports have been published that document the impact of the new requirement on Medicaid applicants and recipients, as well as the costs to states. Since July 2006, the following effects of the requirement have come to light:

- **The citizenship documentation requirement has caused countless delays and terminations.** A recent Government Accountability Office (GAO) investigation found that 22 of 44 states reported declines in Medicaid coverage due to the requirement.<sup>5</sup> A study by the Center on Budget and Policy Priorities found that seven states reported a large number of application denials and terminations due to applicants and recipients being unable to produce evidence of their citizenship and/or identity. That study also found that eligibility determinations were significantly delayed in some states, resulting in huge backlogs in processing applications.<sup>6</sup>
- **The requirement has caused the most harm to children.** More than 14,880 children in Louisiana lost Medicaid coverage between July 1 and December 31, 2006. Enrollment in Virginia's Medicaid program declined by 13,279 children between July 1, 2006, and March 1, 2007. The state also reported a substantial backlog in applications at its central processing site, with 3,500 cases pending approval for Medicaid at the end of February 2007 (compared to no more than 50 pending cases at the end of a typical month). New Hampshire reported that between June 2006 and September 2006, enrollment of children in Medicaid dropped by 1,275.<sup>7</sup>
- **The requirement hurts U.S. citizens the most.** Alabama, Kansas, and Virginia—three states that have analyzed the effects of the documentation requirement on specific racial and ethnic groups—found that the greatest number of children who lost health coverage because of the requirement were not Hispanic, but rather were non-Hispanic white and non-Hispanic black children. Undocumented immigrants are predominately Hispanic, so the requirement appears to be hurting U.S. citizen children the most.<sup>8</sup>

- **The requirement is not achieving the intended result.** The legislative intent of the verification law was to reduce the number of undocumented immigrants who were thought to be receiving Medicaid coverage illegally, although there has never been any evidence to suggest that this was a problem in the Medicaid program.<sup>9</sup> In a recent survey of nine states conducted by the House of Representatives Committee on Oversight and Government Reform, the six responding states reported that they found a total of only *eight* undocumented individuals by enforcing the requirement.<sup>10</sup>
- **The costs to states are enormous . . .** In the GAO's survey, all 44 responding states reported that significant administrative measures were necessary to implement the requirement. These measures included hiring and training new Medicaid agency staff, as well as training provider and community agency staff members. For fiscal year (FY) 2007, 10 states appropriated a total of \$28 million in order to implement and comply with the requirement.<sup>11</sup>
- **. . . and the savings for the federal government are very little.** According to the House Committee on Oversight and Government Reform report, for every \$100 spent by federal taxpayers to administer the citizenship documentation requirement, the federal government saved only 14 cents.<sup>12</sup>

## 4. CHIP Reauthorization: An Opportunity to Fix the Citizenship Documentation Requirement

CHIP's original authorization expired on September 30, 2007. Congress spent a great deal of time and energy over the last year crafting a bill to reauthorize and strengthen the program before it was set to expire. In August 2007, the House of Representatives and Senate each passed its own CHIP reauthorization bill, and a compromise bill was announced and quickly passed by both chambers in late September. Because the citizenship documentation requirement presents such an obstacle to decreasing the number of uninsured children in the U.S., lawmakers made fixing the onerous requirement a priority in CHIP reauthorization.

The compromise bill passed by the Senate and House in late September (H.R. 976) maintains the documentation requirement and extends it to CHIP. However, the bill would give states a new way to comply with the requirement: The bill would allow states to submit the names and Social Security numbers of individuals who apply for Medicaid or CHIP to the Social Security Administration (SSA) to check applicants' citizenship status. In the meantime, states could enroll individuals in Medicaid or CHIP as long as they met other eligibility requirements. If SSA found that the individual's name and Social Security number did not match their records, individuals would have an opportunity to correct any mistakes or provide alternate documentation of citizenship before being disenrolled from the program.



The bill also includes a requirement that states track the number of people who are disenrolled because their records did not match SSA and they could not otherwise satisfy the citizenship documentation requirement. If that number exceeded 3 percent of the total number of applications sent to SSA, the state would be required to take corrective action to reduce the error rate, and it may be required to refund a portion of its federal Medicaid or CHIP funds.

Finally, the bill also allows the federal government to pay 90 percent of the cost of developing and installing new technology to implement this provision, as well as 75 percent of the operating costs of such a system.

## 5. What Can Advocates Do?

- **Voice your support for fixes to the citizenship documentation requirement!** Thank your Senators and Representative for including this fix to the citizenship documentation requirement in the compromise bill. If the bill is signed into law, this fix will ease the burden on families and states enormously.
- **Work with your state officials to fine-tune their policies.** Despite the attempts on Capitol Hill to fix the citizenship documentation requirement legislatively, it is important that states do as much as they can to make the requirement easier for themselves and for the people who are applying for or receiving Medicaid. Families USA has surveyed states and has found some innovative ways that states have implemented the requirement while minimizing the burden on consumers. Families USA's issue brief, *Best Practices: How States Can Reduce the Burden of the Citizenship Documentation Requirement*, may be helpful when working with your state to modify its citizenship documentation policy.
- **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.

## Endnotes

<sup>1</sup> Although the citizenship documentation requirement does not apply to CHIP, because many states have created a single application and/or enrollment process for both their Medicaid and CHIP programs, many CHIP applicants are asked to submit proof of citizenship and identity as well.

<sup>2</sup> Illegal immigrants are not eligible for regular, full Medicaid benefits. However, for illegal immigrants, Medicaid will pay for the treatment of emergency medical conditions, such as labor and delivery services related to the birth of a child.

<sup>3</sup> *Federal Register* 72, no. 134 (July 13, 2007): 38,662-38,697.

<sup>4</sup> In Wisconsin, obtaining proof of identity has been more problematic than obtaining proof of citizenship: 66.5 percent of 19,413 Medicaid-eligible individuals who were denied or lost Medicaid coverage between July 31, 2006, and March 1, 2007, did not have a required identity document. This contrasts with the 19.9 percent who did not have a required citizenship document and 12.3 percent who were missing proof of both citizenship and identity. Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement Is Taking a Toll* (Washington: Center on Budget and Policy Priorities, March 13, 2007).

<sup>5</sup> U.S. Government Accountability Office (GAO), *Medicaid: States Reported Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens* (Washington: GAO, July 2007).

<sup>6</sup> Donna Cohen Ross, op. cit.

<sup>7</sup> Ibid.

<sup>8</sup> Donna Cohen Ross, *Medicaid Documentation Requirement Disproportionately Harms Non-Hispanics, New State Data Show* (Washington: Center on Budget and Policy Priorities, July 10, 2007).

<sup>9</sup> Daniel Levinson, *Self-Declaration of U.S. Citizenship for Medicaid* (Washington: Department of Health and Human Services, Office of Inspector General, July 2005).

<sup>10</sup> Majority staff, House Committee on Oversight and Government Reform, *Summary of GAO and Staff Findings, Medicaid Citizenship Documentation Requirements Deny Coverage to Citizens and Cost Taxpayers Millions* (Washington: July 24, 2007).

<sup>11</sup> U.S. Government Accountability Office, op. cit.

<sup>12</sup> Majority staff, op. cit.



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