Center *for* Public Policy Priorities

August 7, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Re: Interim Final Rules, Medicaid Program; Citizenship Documentation Requirements published for comment on July 12, 2006 at 71 Federal Register 39214

The Center for Public Policy Priorities, located in Austin, Texas, submits the following comments on the Interim Final Rules implementing §6036 of the Deficit Reduction Act of 2005 (DRA), related to Medicaid Program Citizenship Documentation Requirements.

General Comments:

The Center for Public Policy Priorities commends CMS for several provisions of this rule which represent major improvements in practicality and state flexibility over the procedures outlined earlier in SMDL #06-012. Exclusion of Medicare and SSI beneficiaries from what would have been duplicative documentation requirements was sensible, clearly supported by DRA, and will reduce the burden on state Medicaid agencies and clients.

Likewise, the clear directive that states may rely on electronic vital records matches, as opposed to requiring costly, duplicative, and archaic production of paper certificates, will reduce the administrative cost to the state agency and taxpayers, as well as the burden on individuals and families. Texas has for a number of years relied on electronic vital records data for Medicaid applicants, particularly for many of the 1.8 million children among the 2.7 million Texans served by Medicaid today. Had CMS failed to allow this, Texas would have had to revert to outmoded paper-driven systems.

While Texas does not currently utilize presumptive eligibility options, the center commends the clarification that presumptive eligibility remains an option for children, maternity patients, and breast and cervical cancer coverage enrollees, as these are important options which may be useful to our state in the future.

However, CPPP was surprised and disappointed by other aspects of the rule, which fail to provide common sense flexibility to states, would aggressively undermine a variety of state-of-the-art best practices of states, and in doing so inexplicably appear to go well beyond what the DRA either requires or authorizes. Unless revised, these rules will inevitably result in unnecessary delays and denials of health care to eligible U.S. citizens. These concerns are detailed below.

42 C.F.R. § 435.407(j) Reasonable Opportunity for Applicants to Obtain Required Documentation

The Rule should permit states to begin providing coverage to newly-applying eligible citizens based on their sworn declaration of citizenship, and to then provide them with the same reasonable opportunity to collect the necessary documentation that the rule allows for current enrollees who are renewing benefits, and which is similarly allowed for non-U.S. citizens to collect their immigration documents. There is no legal

or logical rationale for denying the same period for compliance to new applicants as is used for renewing enrollees. And, as a practical matter, it is simpler for the state Medicaid agency to offer the same policy to applicants as it does to those renewing coverage.

This irrational provision threatens to delay critical entry into prenatal care, and access to needed medical care for children and acutely ill adults. And, by delaying or denying coverage to adult women seeking family planning services under Texas pending waiver, it will increase unintended pregnancies, and thus costs for taxpayers.

There appears to be no requirement whatsoever in the DRA that CMS adopt this more burdensome policy for new applicants. As such, we recommend the rule be revised to allow the same reasonable opportunity allowed for renewing clients.

42 C.F.R. § 435.1008 Exemption for Foster Care Children

The Rules do not exempt children in foster care who are receiving federal foster care payments under Title IV-E. This would require Texas' Medicaid agency (Texas Health and Human Services Commission) to duplicate the work of the state child welfare agency (Department of Family and Protective Services), which already must verify the citizenship status of foster care children in order to determine their eligibility for Title IV-E.

Children often enter foster care with medical and behavioral health issues which demand immediate attention. It is unacceptable to create barriers that would delay access to that care, particularly when those barriers are wholly duplicative and in no way add to the integrity of the program. The duplicate documentation requirement will, however, add unnecessary cost to the Medicaid program and Texas taxpayers.

In addition, providers of care to children in Texas foster care are required to "ensure" that the children in their care access medical care promptly. If these redundant documentation requirements are allowed to stand, compliance with these quality standards will be undermined as providers will have no source of payment for the children's medical care.

The center recommends the rule be revised to exempt these foster children from the documentation requirement, on the same reasonable grounds that Medicare and SSI beneficiaries are granted exclusion. DRA clearly grants the Secretary authority to adopt that policy.

42 C.F.R. § 435.407(a) or (b): Medical Records of Birth as Allowable Documentation for Newborns

The Rule should be changed to permit states to accept (1) a record of Medicaid payment (or other insurance payment) for the birth of a child born in the U.S. as proof of citizenship; or (2) a medical record of birth in a U.S. hospital or other setting as proof of citizenship.

The discussion in the preamble to the Rule defies logic. As written, it would seem to allow documentation to be deferred until the first birthday for <u>some</u> children (those whose mothers were enrolled in full Medicaid coverage), but not for others (those whose mothers are not enrolled in full Medicaid coverage). This has the effect of discriminating against children whose mothers are immigrants (legal and undocumented alike). There would appear to be no legal basis in the DRA calling for such a distinction, and it would seem to represent unequal treatment of U.S. citizen children..

As a matter of common sense, states should be allowed to deem a newborn's citizenship to be established on the basis of having paid a Medicaid claim for delivery, regardless of the type of Medicaid coverage the mother had. The state Medicaid agency itself will possess a record of the U.S. birth, and it is irrational and wasteful to require the agency to take additional steps at all, even at the child's first birthday. It is also potentially dangerous for newborns if their coverage is delayed, and onerous for parents.

42 C.F.R. § 435.407(f) Identity Rules for Children

The sections of the Rule related to the documentation of identity for children fly in the face of common sense. The drafters of the Rule appear to believe that newborns, toddlers, pre-schoolers, and elementary students in the U.S. routinely possess identity documents. This is not the case, and clearly CMS did not base this requirement on research of this matter. In reality, is it not only rare for children of elementary school age or younger to have identity documents such as school IDs, but also remains rare even for middle schools to issue IDs. In fact, many smaller schools and schools with tight budgets may find such IDs an unneeded or unaffordable luxury.

The rule should be amended to reflect the real word circumstances of children in the U.S.. In the interest of expediting coverage, eliminating major costs to state Medicaid agencies, and unburdening parents attempting to responsibly provide care for their children, the rule should clarify that an official birth record (electronically verified vital record, Medicaid delivery record, or other hospital or insurance record of U.S. birth) combined with a sworn affidavit of identity should be acceptable for all recipients under the age of 19. While states could be allowed or encouraged to request photo student IDs from students of senior high school age (i.e., age 16-19), the Rule should also clearly allow for identity of teens to be established via affidavit where school ID is not available.

42 C.F.R. § 435.1008 Exceptions Needed for Other U.S. Citizens Lacking Documentation, or Who have Already Proven Citizenship

The rule needs to allow states the flexibility to use alternative methods to verify citizenship or identity in "special circumstances," when the state finds that compliance with the regulations would be a hardship (and the state has reasonable grounds to conclude that the individual is a citizen).

Key examples include victims of hurricanes and natural disasters, whose records have been destroyed; homeless individuals; and naturalized citizens who have lost their certificate of naturalization and others may not be able to meet the new requirement. In Texas, community organizations providing assistance to displaced families after Hurricanes Katrina and Rita have discovered first-hand that many Louisiana parishes were often unable to provide their displaced residents with birth certificates, even as long as 9 months after the event.

CMS should also revise the rule to exempt former Medicare, TANF and SSI beneficiaries, as well as persons receiving SSDI benefits but not yet receiving Medicare (due to the 24 month delay in coverage), because all of these persons will have already satisfied citizenship requirements previously.

Additionally, states need flexibility to exempt or streamline requirements for women who receive only family planning services under Medicaid through a family planning "waiver" (Texas hopes to begin such a program in 2007). The time it may take to acquire such documents may mean the difference between providing a finite set of low-cost services, and the costly treatment of an unplanned pregnancy.

42 CFR §435.407(a) Native American Tribal Documents as Proof of Citizenship and Identity

A tribal enrollment card issued by a federally-recognized tribe should be treated like a passport as primary evidence of citizenship and identity. The federal government recognizes over 560 tribes in 34 states, and their tribal enrollment cards are highly reliable evidence of U.S. citizenship. Rather than requiring new documentation for 559 tribes, the Secretary could require additional documentation of U.S. citizenship only for federally recognized tribes located in a state that borders Canada or Mexico which are known to issue tribal enrollment cards to non-U.S. citizens.

42 CFR§ 435.407(h)(1), Original Documents or Certified Copies Should Not Be Required

The regulation should give states flexibility to accept copies of documents instead of original documents or copies certified by the issuing state agency. States do not want to take on the responsibility and cost of receiving and safeguarding birth certificates and passports, nor do clients wish to entrust them to either the U.S. mail or the state Medicaid agency. To deny states the ability to accept photocopies of these documents will hamstring states' attempts to modernize their eligibility systems by reducing in-person requirements and shifting to electronic and mail transactions, and undermine the investments states have made in transitioning to contemporary technology. Texas is planning to close 100 eligibility offices and convert to a largely paperless system that relies heavily on mail, FAX, internet, and telephone, so this flexibility is critical. Texas and other states have historically accepted legible photocopies of valuable documents. Our continued progress in streamlining eligibility systems will be hampered by a requirement that only original documents and certified copies be allowed for eligibility certification.

42 C.F.R. § 435.407(h)(5) Beneficiaries who have verified citizenship in one state should not have to duplicate verification in another state

The Rule, at 42 C.F.R. § 435.407(h)(5), clearly states that documentation of citizenship and identity should be a one time event. However, no mechanism for eliminating duplication of burden on clients who move to a new state (or of eliminating duplicative administrative cost for state Medicaid agencies) is indicated in the Rule. The rule should be amended to clarify that CMS will create an infrastructure for such verifications across state lines, and such a database or system should be created.

42 C.F.R. § 435.407 General Complexity of the Hierarchical Documentation Structure Proposed

The inflexible and complex structure of first, second, third, and fourth-level evidence, as proposed, will be burdensome and costly for state agencies and clients alike, and is sure to delay access to critically needed health care for new applicants. States have good track records at exercising flexibility in allowable documentation in the eligibility process, and are the experts in understanding the highly diverse circumstances in which Medicaid clients live. The rule should be amended to reflect the 4 levels of documentation as preferences, but states should be empowered to accept best available information, and freed from the obligation to spend client and taxpayer money seeking redundant documents when other acceptable documentation establishing citizenship and/or identity is present. Clearly the language in § 6036 of the DRA does not call for this complex structure.

Whether or not this recommended change is made, the CMS rule should retain the level three and level four documentation options. Again, state Medicaid agencies can (and will) confirm that a broad and flexible array of documentation options is an absolute necessity if eligible persons are not to be denied Medicaid. This is especially important because some of the very neediest clients will also be the ones least able to access documents: the abused, those with cognitive disabilities, disaster survivors, critically ill or injured persons. Giving states the flexibility to easily accept a wide range of documentation options will bee needed to avert potential humanitarian crises, and to avoid denying eligible individuals health care coverage to which they are entitled.

CMS should amend 42 C.F.R. § 435.407 to allow a person who cannot acquire any of the listed documents to explain why the documents cannot be acquired, and to allow a state to provide Medicaid to that person if it finds the explanation to be credible. If the person is incapacitated to such a degree that (s)he cannot provide an explanation, the person's guardian or representative should be able to provide it instead. We note that the SSI program relies on this sort of "fail-safe" mechanism to ensure eligible persons are not denied benefits, and that model can and should logically be adopted here.

42 C.F.R. § 435.407(d)(5)(iii) Only U.S. Citizens May Attest to Citizenship of an Applicant

We are concerned that this requirement may have the effect of denying equal access to Medicaid to U.S. citizen children whose parents are either lawful permanent residents of the U.S., or undocumented aliens. This should be unacceptable to CMS. No eligible individual entitled to Medicaid should face barriers to coverage because of the characteristics of his or her family members. The rule should be clarified to allow non-U.S. citizens to be affiants.

Thank you for considering our comments to The Interim Final Rule. The DRA clearly grants the Secretary discretion to grants states greater flexibility in both the list of documents that are accepted as proof of citizenship or identity, and in determining when acceptable documentation has been provided. We urge that the Secretary use this discretion, and amend the Rule to grant state Medicaid agencies the flexibility they need to determine procedures for establishing U.S. citizenship which are practical, cost-effective, and do not delay access to health care for eligible U.S. citizens.

Sincerely,

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