



## NEW MEDICAID CITIZENSHIP DOCUMENT REQUIREMENT:

### Initial Federal Guidance Would Create Barriers for Needy and Unnecessarily Costly New Work for Texas

The federal Deficit Reduction Act (DRA) of 2005 imposed a new documentation requirement that will apply to the more than 2.6 million Texans now covered by Medicaid, as well as to all new applicants seeking the program's health and long-term care services in the future. Starting July 1, 2006, all U.S. citizens applying for Medicaid or renewing their Medicaid eligibility will have to prove their citizenship by presenting certain documents, such as a U.S. passport, or the combination of a U.S. birth certificate and an identification document.

States need the flexibility to implement the new requirement without duplicating efforts, undermining the development of paperless systems, or delaying coverage for those in need of immediate attention (e.g., critically ill applicants, pregnant women). Early communications from federal Medicaid authorities led states to expect that they would be given that flexibility. Texas Medicaid officials developed procedures designed to maximize use of existing documentation, and minimize costs for the state, hassles for existing clients, and delays in care for new applicants. Unfortunately, the letter to State Medicaid Directors released by the Centers for Medicare and Medicaid Services (CMS) on June 9 goes far beyond what the federal law requires, and in doing so eliminates flexibility and radically increases costs for states.

Texas needs either congressional action clarifying that states can take a common-sense approach to documenting citizenship or revised federal guidance. This brief summarizes key problems with the new CMS letter, highlights critical flexibility options states need to meet this requirement in a practical manner, and identifies potential vehicles for improving the federal policy.

#### Important Facts

- **This new requirement did not change eligibility for Medicaid in any way.** Texas Medicaid currently covers very few non-U.S. citizens (generally, only Lawful Permanent Residents who came to the U.S before August 1996 can qualify). Undocumented immigrants have never qualified for Medicaid (though hospitals can be paid for certain kinds of emergency care provided to certain undocumented immigrants).
- **The new requirement only affects U.S. citizens.** Ironically, the new requirement does not apply to legal immigrants, who have been required for many years to document their lawful immigration status (as well as their financial need) in order to qualify for Medicaid.

#### CMS' Proposed Stringent Approach Neither Cost-Effective nor Needed to Deter Fraud

- **CMS' own research found that citizenship fraud is not a problem in Medicaid.** In July, 2005, the Office of Inspector General of the US Department of Human Services issued a report that found that there was little evidence of citizenship fraud, and CMS officials indicated that they saw no reason for changes in documentation requirements.

- **The Congressional Budget Office projects the new policy will not catch many impostors.** Today, Medicaid covers about 2.7 million Texans, and 50 million are covered nationwide. Over 10 years, the number of individuals covered will be many times that number. Yet, the CBO predicts only 35,000 persons over ten years (2006-2015) will be denied Medicaid as a result of this requirement. That amounts to just seven one-hundredths of one percent of 2006 U.S. Medicaid enrollment—and a far smaller percentage of the number of individuals who will be covered over 10 years.
- **“The juice ain’t worth the squeeze.”** Smart management must weigh the cost of controls against the expected savings from those controls. The same CBO estimates put the federal budget “savings” over 5 years from the requirement at \$220 million, but the costs to state and federal government of implementing this new policy may exceed the “savings,” particularly if the burdensome and duplicative approach now advocated by CMS is imposed. Arizona and Washington have each estimated first-year costs of at least \$10 million (shared equally by the states and the federal government). If the average cost per state is \$10 million, then the federal costs in the first year alone (\$250 million) would completely eliminate any savings.

### **Reasonable Flexibility is What States Need**

- **Do not require duplicate documentation from elderly and disabled beneficiaries.** Of the 884,000 adults on Texas Medicaid in May 2006, almost 80% are either elderly or disabled. The vast majority of these folks have already been certified by the Social Security Administration as eligible for either Medicare, Supplemental Security Income (SSI) or both; their citizenship status is documented with the federal government and can be verified by the states electronically. States (including Texas) have asked CMS to be able to check the federal records for verification of U.S. citizenship, rather than demanding new documentary proof from these beneficiaries.
- **Allow states to check their own electronic birth certificate databases** to verify U.S. births rather than requiring costly printing, delivery, reproduction, and return of paper documents. Texas has used electronic vital statistics birth certificate records in establishing eligibility for Medicaid for a number of years, and the Texas Health and Human Services Commission had proposed to continue doing so for persons born in Texas and recorded in the Department of State Health Services’ vital statistics records. Electronic verification is not just a convenience for beneficiaries. It is far less expensive for states, and relieves them of the liability for safeguarding clients’ and applicants’ original identity documents.
- **Don’t require states to duplicate documentation for children in Foster Care.** State protective care agencies, like Texas’ Department of Family and Protective Services already must establish and record the immigration status of children in the state’s custody for purposes of IV-E foster care. State Medicaid agencies should not be required to duplicate their work or documentation.
- **Allow states to provide both new applicants and current beneficiaries with a reasonable grace period to collect documents, without delaying access to health care.** States, including Texas, have proposed to allow both applicants and current enrollees a grace period ) to collect identity or citizenship documents in the following circumstances: (1) the person shows a good faith effort to collect documentation; or (2) illness or disability prevents the person from being able to act on his or her own behalf. If new applicants cannot get care until documents are provided to the state, critical health and long term care needs of the aged, disabled, children, and pregnant women will be delayed.
- **Allow states to accept FAX and photocopies of identity documents, rather than requiring that valuable originals be mailed or delivered in person for every client.** States do not want to take on the responsibility and cost of receiving and safeguarding birth certificates and

passports. Texas is planning to close 100 eligibility offices and convert to a largely paperless system that relies heavily on phone, FAX, internet, and telephone, so this flexibility is critical.

### **CMS Guidance is Impractical, Inflexible, and Exceeds what Federal Law Requires**

The June 9 CMS letter:

- Does not allow states to (a) give new applicants the same reasonable period to collect documents as current enrollees; or (b) collect copies by mail or faxes of original citizenship and identity documents;
- Does not allow states to exempt seniors and disabled individuals from providing new documents, to rely on the Social Security Administration's (SSA) prior verification of citizenship, or even to check SSA computer files for verification of citizenship;
- Does not allow states to use electronic checks of their own vital statistics birth certificate databases in lieu of collecting hard copy paper certificates; and
- Does not allow states to rely on prior documentation of citizenship by a IV-E Foster Care agency.

None of the CMS proposed policies described above is required by the federal law.

- Though the federal law defines a long list of acceptable documents for proof of citizenship or identity, the CMS letter classifies a number of these as being acceptable only as a last resort, adds its own additional requirements for the use of other documents, and ignores or excludes certain documents referred to in law altogether. None of these proposed policies is required by the federal law.
- The departure from federal law in the CMS guidance creates particular problems for children, who only rarely have photo identification. Requirements for allowed documents in the CMS guidance are much stricter than in the policies referenced in the federal law.

### **What Practical Experience Has Shown**

New York has required citizenship documentation for Medicaid eligibility since the mid-1970s. The Kaiser Family Foundation has released a report on that state's thirty years of experience (see links at end of this brief). The report points out several key lessons from New York, including:

- New York provides significant application assistance resources that may not exist in other states to help applicants meet their documentation requirements;
- Citizenship documentation is more often a barrier for certain special populations including the elderly, institutionalized, homeless, mentally ill, and foster children;
- The state accepts copies of documents and utilizes electronic matching to promote efficiency; and
- The state automatically enrolls newborns.

### **Recent Developments and Possible Solutions**

- **State Medicaid Directors are united in their concern about the practical barriers and potential costs presented by the CMS guidance.** In a July 21 letter to CMS officials, they articulated a list of concerns, including those described above, as well as a number of others too detailed to include here.
- **CMS could modify its guidance to be more practical and flexible and still comply with the law. This revised guidance could be reflected in any formal rules proposed by the agency.**
- **Congress will soon consider a DRA "technical corrections" bill** that could clarify that states may use electronic vital statistic databases, not duplicate IV-E Foster Care verifications, and offer

the same reasonable grace period for document collection to applicants that they do for renewing enrollees. Apparently congress also intended to exempt all Medicare beneficiaries and SSI recipients from this citizenship requirement, but made an inadvertent drafting error. The technical correction bill would put that intended exemption into the law.

One vehicle for the DRA technical corrections bill may be the Pension Conference bill, which could be brought to the floor before the July 4th recess.

For additional information on this topic, see these reports from the Center on Budget and Policy Priorities: <http://www.cbpp.org/6-16-06health.htm>; <http://www.cbpp.org/6-20-06health.htm>; <http://www.cbpp.org/4-20-06health.htm> .

The Kaiser Family Foundation's Commission on Medicaid and the Uninsured:

<http://www.kff.org/medicaid/7533.cfm>

<http://www.kff.org/medicaid/7534.cfm>

Families USA:

<http://www.familiesusa.org/assets/pdfs/DRA-Citizenship.pdf>

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