



POLICY ALERT

Center for Public Policy Priorities

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COMMENTS ON FEDERAL MEDICAID CITIZENSHIP DOCUMENTATION RULES DUE AUGUST 11, 2006

Rules Would Delay Care and Exceed What Law Requires

The deadline approaches for comments to federal Medicaid authorities on interim final rules (which were 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. Though the rule laudably exempts seniors and persons with disabilities from the new requirements, it still threatens to block or delay access to health care for many Texans, including pregnant women and children in foster care. Information on how to comment on the rules is provided below.

How to Comment

The interim final regulations were published for comment on July 12, 2006. The regulations can be found at 71 Federal Register 39214, online at:

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-6033.pdf>

The comment period for these regulations ends on August 11, 2006. Comments can be submitted electronically. Go to www.cms.hhs.gov/eRulemaking. Click on the link "*Submit electronic comments on CMS regulations with an open comment period*" and follow the instructions. Comments can also be mailed to:

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

You should include an original and two copies. Separate instructions for express or overnight mail and hand delivery are included in the preamble to the regulation at 71 Federal Register 39214.

Important Issues Concerns with the Rules

Listed below is a high-level summary of some key problems with the rules. Without revisions, eligible pregnant women, children and their parents seeking Medicaid benefits are likely to experience delays, disruptions, or denials of coverage.

- **Reasonable Opportunity for Applicants to Obtain Required Documentation**

The regulations should permit states to begin providing coverage to newly-applying eligible citizens based on their sworn declaration of citizenship, and to then provide a reasonable opportunity to provide the necessary documentation (the rule allows this for current enrollees renewing benefits, but not for new applicants).

- **Exemption for Foster Care Children**

The regulations do not exempt children in foster care, including those children who are receiving federal foster care payments under Title IV-E. This would require the Medicaid agency to duplicate

the work of the state child welfare agency, which already must verify the citizenship status of foster care children in order to determine their eligibility for Title IV-E.

- **Medical Records of Birth as Allowable Documentation for Newborns**

The regulations 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; and (2) a medical record of birth in a U.S. hospital or other setting. The rule as written would allow this for some children, but not for others, in effect discriminating against children whose mothers had private insurance as well as those who are immigrants (legal and undocumented alike).

- **Other U.S. Citizens Without Documentation**

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.

Additionally, state 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 September 2006). 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.

- **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.

- **Original Documents 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. 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.

Note: Due to a quirk in federal procedures, if you comment on this “original document” issue, you should also send a copy of your comments to:

Centers for Medicare and Medicaid Services
Office of Strategic Operations and Regulatory Affairs, Regulations Development Group
Attn: Melissa Musotto, CMS-2257-IFC, Room C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

AND Mail, Fax or e-mail a copy to:

Office of Information and Regulatory Affairs,
Office of Management and Budget, Room 10235, New Executive Office Building
Washington, DC
Attn: Katherine T. Astrich, CMS Desk Officer, CMS-2257-IFC
[Katherine T. astrich@omb.eop.gov](mailto:Katherine.T.astrich@omb.eop.gov)
Fax (202) 395-6974

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