

August 11, 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: Medicaid Citizenship Documentation Interim Final Rule
71 Fed. Reg. 39214 (July 12, 2006)**

The Children's Health Fund is submitting the following comments in regards to the Interim Final Rule issued on July 12, 2006 that pertain to new citizenship documentation requirements as part of the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109-171). CHF is a non-profit organization and designated as a 501(c)3 by the Internal Revenue Service. Since its inception in 1987, CHF has supported direct patient care to medically underserved children and families in both rural and urban areas. To date, our national network of child health programs have served over 350,000 children through 21 programs in 14 states. The most recent additions to our national network include three programs, New Orleans and Baton Rouge, LA, and Biloxi, MS, that were established to meet the need in communities ravished by Hurricanes Katrina and Rita. Because most of the children and families that access our programs depend on Medicaid for health insurance, and given our experience in treating hurricane survivors, we are uniquely qualified to comment on the new interim final rule that will shape how CMS implements the citizenship requirements of the DRA.

CHF is most concerned with Section 6036 of the DRA effective July 1, 2006 which requires U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity. We are deeply concerned that U.S. citizens applying for or receiving Medicaid coverage will face delay, denial, or loss of Medicaid coverage due to the new requirement and call on CMS to alter rules so that qualified applicants do not join the ranks of the uninsured. Our comments below highlight areas that CMS should modify in the final rule.

Children in Foster Care

The interim final rule applies the DRA citizenship documentation requirements to all U.S. citizen children except those eligible for Medicaid by virtue of being enrolled in federal Supplemental Security Income program. The Children's Health Fund is especially concerned that these requirements apply to foster care children, whose

citizenship is already documented by state welfare agencies. Children who are in the foster care system, or have been in the foster care system at some point, are subject to new citizenship documentation requirements even though state child welfare agencies must verify the citizenship status of these children in the process of determining their eligibility for Title IV-E payments.

In a large study of the health status of children entering foster care, on physical examination more than 90% had an abnormality in at least one body system; 25% failed vision screening; and 15% failed hearing screening. For children over 36 months of age, 15% verbalized or were suspected of suicidal ideation and 7% of homicidal ideation. (Chernoff et al., *Pediatrics*, 1995). Many of the run away children that CHF programs treat have had experience with foster care systems in their state. If foster care agencies could ensure that children stay enrolled in Medicaid, these children will have one less barrier to accessing care for chronic diseases.

Newborn Children

The regulations state that a child born to a citizen woman whose birth is covered by Medicaid for reasons of being categorically needy is automatically enrolled in Medicaid. However, the preamble also makes a distinction between a child born to a citizen and a child born to an undocumented immigrant. A child born to an undocumented immigrant is not granted automatic enrollment into Medicaid, which was previously the policy of CMS and state Medicaid agencies. These newborn children are citizens by nature of being born in the country and new requirements would deny coverage for lack of paperwork when citizenship is clear. Given these circumstances, CHF recommends that CMS give the same consideration for all citizen children in granting automatic enrollment in Medicaid upon birth.

Section 435.1008 Exemptions

CHF commends CMS for exempting SSI and Medicare beneficiaries from the documentation and identification requirements. CHF calls on CMS to consider exempting other populations who have already proven citizenship and identification for other federal programs, such as TANF families and children and past SCHIP enrollees who qualify for Medicaid. All children on a federal program where citizenship has already been determined should be exempted from these requirements.

Section 435.407(g) Special Populations

Homeless Persons

Homeless individuals clearly fall under Section 435.407(g), special populations needing assistance, establishing that states must assist individuals in securing proper documentation. As providers of health care to homeless populations, documentation is often not readily available, nor do individuals have funds to obtain a certified copy of the original document from state agencies. Most state agencies require a fee for a certified

copy of original documentation. State agencies must be compelled to abide by this rule to assist individuals who have a difficult time providing documentation and provide waivers for any fees for documentations for populations suffering financial hardship.

CMS must implement a provision to the rule to allow these special populations to access Medicaid coverage while waiting for documentation from the state. Section 436.407(i) allows that state a "reasonable opportunity" to gather documentation from a Medicaid applicant, however, Section 436.1004 and § 435.1008 establishes that states will lose their federal match (FFP) if expenditures are incurred while the state is establishing citizenship and identification. Surely a state trying to abide by a federal rule to establish documentation and identity should be allowed to bill for services that were provided with the premise of being reimbursed through Medicaid. If not, this will result in a huge burden for community health centers, small providers and charity care providers.

Include disaster survivors in the definition of special populations

Additionally, CHF urges CMS to include in the final rule an amendment to special populations to include persons who live or lived in federally declared disaster areas during the time of a man-made or natural disaster. After Hurricanes Katrina and Rita, survivors lost not only their homes and possessions but also important documentation, including citizenship and identification records. State agencies in affected states will see an increase in requests and may not be able to handle requests for information, depending on the level of harm to state agency records.

CMS must consider the plight of disaster survivors, who emerge with complicated health problems, and the ability of state agencies to provide aid, whether through direct assistance or tracking records proving citizenship and identification. CMS should exempt disaster survivors from these requirements.

Section 436.407(h)(6) Linkages to State Agencies

Many state agencies already require individuals to prove citizenship, or document citizenship as recordkeeping. CMS should allow states to verify citizenship by cross referencing with agencies that handle food stamps, child support, corrections, juvenile detention, motor vehicle, veteran's affairs or child protective services.

In New York City, for example, city case workers must document all information shelter applicants present at the point of entry into the shelter system. These case workers should be able to easily help a family enroll in Medicaid if they do not have the proper documentation but are already receiving city, state or federal assistance. Linking data will make it easier for applicants to quickly get on Medicaid.

However, when taking into consideration the human error of data programs, CMS should allow individuals to provide other documentation of citizenship in the case of mismatched data.

Outreach

CMS must make a concerted outreach effort, in conjunction with the states and possibly the Health Resources and Services Administration to inform health providers and individuals of the new requirements. Currently, many administrators and front line providers do not have information on how each state will implement the new rule, how to collect such documents, or how to inform patients of the new requirements. Patients facing an imminent renewal of Medicaid benefits must be informed by their state Medicaid offices, with assistance from CMS.

Thank you for the opportunity to comment on the Interim Final Rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'DJohnson', with a long horizontal flourish extending to the right.

Dennis Johnson
Executive Vice President