

Citizenship Documentation in Medicaid

As of July 1, 2006, under a requirement introduced by the Deficit Reduction Act of 2005 (DRA), most U.S. citizens and nationals applying for or renewing their Medicaid coverage for the first time must document their citizenship and identity. Federal law has long required states to establish that Medicaid applicants are U.S. citizens or belong to narrowly defined categories of legal immigrants. Historically, almost all states complied by requiring applicants to attest to their citizenship under penalty of perjury. However, the DRA now requires documentary proof. The new provisions only affect citizens. Most legal immigrants are barred from Medicaid for their first 5 years in the U.S., and undocumented immigrants are eligible only for emergency Medicaid services.

Since the citizenship documentation requirement became law, it has been modified by subsequent legislation and elaborated in regulations. The new requirement has also led to declines in Medicaid enrollment, as citizens have had difficulty obtaining the required documents and states have faced new administrative burdens to implement the law. This fact sheet summarizes the citizenship documentation requirement and discusses its implications for citizens, providers, and states.

DRA requirement to document citizenship and identity

The DRA does not change who is eligible for Medicaid, but for most U.S. citizens seeking to gain or maintain Medicaid coverage, it imposes a new procedural requirement. Under Section 6036 of the DRA, effective July 1, 2006, citizens applying for or renewing their Medicaid coverage for the first time must provide “satisfactory documentary evidence of citizenship or nationality.” The new requirement applies to citizen children as well as adults.

Under the DRA, no federal Medicaid matching funds are available for services provided to citizens unless the state obtains satisfactory evidence of their citizenship or determines that an exemption applies (see below). The DRA specified documents that are acceptable for this purpose and authorized the HHS Secretary to define additional acceptable documents.

Exempt groups

Certain groups are exempt from the DRA requirement. The Tax Relief and Health Care Act of 2006 (TRHCA) amended the DRA to clarify that citizens receiving Medicare as well as Medicaid, and citizens receiving Medicaid based on receipt of Supplemental Security Income (SSI), are exempt. TRHCA also added exemptions for all SSI recipients, persons receiving Social Security Disability Insurance (SSDI) based on disability, and foster care children who are assisted under Title IV-B of the Social Security Act or receive foster care maintenance or adoption assistance payments under Title IV-E.¹

CMS regulations

On July 13, 2007, CMS published a final rule prescribing the actions states must take to implement the Medicaid citizenship documentation requirement. The final rule, though largely similar to the interim rule issued a year earlier, incorporated the TRHCA

exemptions, made other limited improvements, and clarified federal policy concerning deemed eligibility for newborns of women receiving Medicaid. Key provisions of the rule follow.

Citizens cannot obtain Medicaid until they document their citizenship. Current Medicaid enrollees must document their citizenship when they first renew their Medicaid coverage. They have a “reasonable opportunity” to provide the documentation before the state can take any adverse action on their eligibility, and the state can extend this period for an enrollee who makes a good faith effort to present documentation.

In contrast, citizens who are newly *applying* for Medicaid cannot obtain coverage *until* they document their citizenship. Applicants have a reasonable opportunity to present documentation before Medicaid eligibility can be denied, but they cannot receive Medicaid coverage during this period. Once an applicant is found eligible and provides citizenship documentation, eligibility is retroactive to the date of application or the beginning of the month of application, as under pre-DRA law.

Deemed eligibility for newborns. Under a 1984 federal law, babies born to women who are receiving Medicaid on the date of their child’s birth are deemed eligible for Medicaid for their first year of life. All babies born in the U.S. are, by definition, U.S. citizens.

In its July 12, 2006 interim rule on citizenship documentation, CMS departed sharply from longstanding policy, stating that babies born to immigrant women eligible only for emergency Medicaid are *not* deemed eligible and requiring applications to be filed for these infants to receive benefits. Following constitutional challenges to this policy reversal, CMS reinstated deemed eligibility for all newborns, regardless of maternal immigration status. However, documentation must be presented for these babies at their first Medicaid renewal.

Presumptive eligibility. Pregnant women, children, and women eligible for breast and cervical cancer screening can be granted presumptive eligibility for Medicaid without documenting their citizenship. However, the documentation is required at the time these individuals file a regular Medicaid application.

Hierarchy of acceptable documents. Rather than offer a menu of documentation options as suggested by the DRA, the regulation defines four levels of citizenship documentation, rank-orders them in a “hierarchy of reliability,” and mandates that states seek the highest-tier evidence available. The documents specifically named by DRA – the “primary” and “secondary” evidence cited below – are designated the most reliable. All but primary evidence of citizenship must be accompanied by documentation of identity. Although not required by the DRA, CMS ruled that only original documents and documents certified by the issuing agency are acceptable.

- **Primary evidence:** U.S. passport, Certificate of Naturalization, or Certificate of Citizenship; state driver’s license, subject to criteria met in no state currently.
- **Secondary evidence:** U.S. birth certificate; data match with a state vital statistics agency if the birth record was recorded within 5 years of birth; specified other records. For naturalized citizens, data verification with Systematic Alien Verification for Entitlements (SAVE) program. For

¹ At the same time, TRHCA added a requirement under Title IV of the Social Security Act that state child welfare agencies must have procedures to verify the citizenship or immigration status of children in foster care.

foreign-born children who are adopted by U.S. citizens or become citizens when their birth parents naturalize, the process established by the Child Citizenship Act of 2000.

- **Third-level evidence:** Hospital record; life, health, or other insurance record; religious or early school record subject to tight restrictions. All documents must show birth in U.S.
- **Fourth-level evidence:** Federal, state, or tribal census record; nursing home admission papers; clinic, doctor, or hospital record; others. All documents must show birth in U.S. In rare cases, written affidavit (see below).
- **Identity documents:** State driver's license, government-issued ID, school ID card with photo, tribal document, others; data match with state or federal agency including food stamps, law enforcement, corrections, motor vehicles, and child protective services; three or more documents corroborating identity, subject to tight criteria.

Citizenship affidavits. States can accept affidavits to document citizenship only when no other evidence is available. Written affidavits made under penalty of perjury are required from the applicant or beneficiary and two additional persons, at least one of whom is not a relative. The two latter persons must have knowledge of the events establishing the applicant's or beneficiary's citizenship, explain why documents are unavailable, and prove their own U.S. citizenship and identity.

Special identity rules. For children under age 16, identity documents include school records (e.g., daycare records, report cards) and clinic, doctor, and hospital records. Identity affidavits signed by a parent, guardian, or caretaker relative can be used for children under age 16, and for those under age 18 if other evidence is unavailable. Persons with disabilities in residential care facilities can use identity affidavits signed by the facility director if other evidence of identity is not available.

State assistance. States must assist special populations (e.g., homeless, individuals with physical or mental impairments) who have no one to assist them to document their citizenship and identity. States must also assist individuals who are making a good faith effort to obtain satisfactory evidence but cannot do so within the reasonable opportunity period.

Compliance. States must maintain copies of citizenship and identity documents in the case record or electronic database for audits. CMS will monitor states' compliance with the requirements and take corrective action to ensure states routinely obtain the most reliable evidence.

Impact of citizenship documentation requirement

Data from numerous states as well as national assessments indicate that the citizenship documentation requirement has had a major impact at several levels, most importantly, causing tens of thousands of eligible citizens to experience delays in Medicaid enrollment or not enroll at all.

Delays and losses of coverage. Many citizens do not possess citizenship and identity documents. Fees for passports and birth certificates can be high and processing can take weeks. Groups particularly likely to have problems obtaining documents include Native Americans, people with disabilities who do not receive Medicare, SSI, or SSDI, and the homeless. Individuals unwilling to mail their original documents to the state must now seek Medicaid in person if a data cross-match is not possible.

Concerns that these and other barriers would impede participation in Medicaid have proved valid. In two 50-state surveys, at least half the states responding reported adverse effects on Medicaid enrollment, and most state Medicaid directors cited the citizenship documentation requirement as a factor in the 2007 decline in Medicaid enrollment, the first drop in nearly a decade.¹ State data illustrate the magnitude of the impact: in the first 9 months of implementation, enrollment of children fell by 11,000 in Virginia, and 19,000 individuals lost or were denied coverage in Wisconsin. Kansas estimated 18,000 to 20,000 individuals left without Medicaid coverage due to lack of documentation and delays due to backlogs.² The official estimates of the Congressional Budget Office assume, based on available state evidence, that virtually all those who have been unable to provide the required documentation are U.S. citizens.³

Impact on providers. Providers that serve the Medicaid population are also affected. For example, a national survey of health centers indicates widespread disruptions in patients' coverage, increased staff time for application assistance, increased difficulty arranging specialty referrals, and large expected Medicaid revenue losses.⁴

Impact on states. Nearly all states cite increased administrative costs for training, additional staff, new systems, assistance for applicants and enrollees, etc. Many also say that the documentation requirement runs counter to their efforts to streamline and automate their operations. Finally, they report that longer application processing time and backlogs delay coverage.

Conclusion

According to state authorities, most of the people experiencing Medicaid coverage delays or losses due to the citizenship documentation requirement are eligible citizens, and most of these low-income Americans – many of them children – lack access to other health coverage. Evidence on children indicates that those whose coverage is adversely affected lack access to care and have important unmet health needs.

The rigid protocol prescribed by CMS compromises a decade's progress in simplifying Medicaid enrollment and renewal – progress aimed at reducing the number of uninsured, many of whom are eligible for Medicaid, and promoting stable coverage. The new barrier that the documentation requirement poses is most difficult to overcome for the poorest children and adults. Reflecting concern about the impacts, states, advocates, and many in Congress have pressed for a more flexible approach. Close monitoring of the impact of the DRA requirement continues to provide important data demonstrating the implications of citizenship documentation in Medicaid for efforts to promote increased coverage for America's uninsured.

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¹ *As Tough Times Wane, States Act to Improve Medicaid Coverage and Quality: Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2007 and 2008*, Kaiser Commission on Medicaid and the Uninsured, October 2007. *States Reported that Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, GAO, June 2007.

² *New Medicaid Citizenship Documentation Requirement is Taking a Toll*, Center on Budget and Policy Priorities, March 2007.

³ Letter from CBO Director Peter Orszag to Cong. Nancy Pelosi regarding CBO estimate of SCHIP reauthorization bill, H.R. 3963, October 25, 2007.

⁴ *An Initial Assessment of the Effect of Medicaid Documentation Requirements on Health Centers and Their Patients*, Shin et al. May 2007.