kaiser commission on medicaid and the uninsured
KEY FACTS
THE HENRY J. KAISER FAMILY FOUNDATION
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Citizenship Documentation Requirements in Medicaid

As a result of the Deficit Reduction Act of 2005 (DRA), since July 1, 2006, most U.S. citizens and nationals applying for or renewing their Medicaid coverage have been required to provide documentation of their citizenship status. In recent months, federal legislative and regulatory changes have limited the application of the new requirement in the case of certain groups of Medicaid beneficiaries. This fact sheet provides current information on the citizenship documentation requirement and discusses its implications for Medicaid beneficiaries, providers, and the states.

Medicaid citizenship requirements

Under federal law, all U.S. citizens and certain legal immigrants who meet Medicaid's financial and non-financial eligibility criteria are entitled to Medicaid. The Medicaid program has long required states to establish that individuals applying for Medicaid are U.S. citizens or satisfy the immigration restrictions. Prior to DRA, state Medicaid programs could determine citizenship by requiring applicants, under penalty of perjury, to attest to their citizenship in writing. All states except Montana, New Hampshire, New York, and Georgia used this self-declaration option to establish U.S. citizenship.

DRA requirement to provide citizenship documents

The DRA introduced a new citizenship documentation requirement for U.S. citizens seeking Medicaid coverage. The law does not alter Medicaid eligibility criteria, but for U.S. citizens, it imposes a new requirement to establish eligibility.

Under Section 6036 of the DRA, effective July 1, 2006, citizens applying for or renewing their Medicaid coverage must provide "satisfactory documentary evidence of citizenship or nationality." The DRA specifies documents that are acceptable for this purpose and authorizes the HHS Secretary to designate additional acceptable documents. No federal matching funds are available for services provided to individuals who declare they are citizens or nationals unless the state obtains satisfactory evidence of their citizenship or determines that they are subject to a statutory exemption, discussed below.

The citizenship documentation requirement does not affect Medicaid rules relating to immigrants: most new legal immigrants are excluded from Medicaid during their first five years in the U.S. and undocumented immigrants remain eligible for Medicaid emergency services only.

Exempt groups

The DRA provision included language whose intent was to exempt citizens receiving Medicare and most citizens receiving Supplemental Security Income (SSI) from the Medicaid citizenship documentation requirement. A drafting error failed to produce this policy result, but CMS implementing regulations, outlined below, specifically exempted these two groups as Congress intended. The Tax Relief and Health Care Act of 2006 (TRHCA), enacted December 20, 2006, corrected the DRA error to codify these exemptions properly.

The TRHCA also amended the DRA to exempt two additional groups from the Medicaid citizenship documentation requirement, effective immediately. The TRHCA provision exempts citizens receiving Social Security Disability Insurance (SSDI). It also exempts all children in foster care, including both children who receive foster care or adoption assistance under Title IV-E and foster children for whom child welfare services are made available under Title IV-B.[1] The exemption of foster care children relieves widespread concern that the citizenship documentation requirement might pose an insurmountable barrier to coverage and care for these vulnerable children.

CMS implementing regulations

On July 6, 2006, CMS released an Interim Final Rule implementing the DRA's Medicaid citizenship documentation requirement (published in the July 12, 2006 Federal Register). CMS must incorporate the policy changes made by the TRHCA, but otherwise, the provisions of the published rule remain in effect unless the HHS Secretary adopts additional policy changes within the discretionary authority provided by the DRA. Key provisions of the CMS regulations follow.

Hierarchy of acceptable documents. The rule establishes four levels of citizenship documentation, rank-ordering them in a "hierarchy of reliability." Although the DRA does not direct it, the regulation requires states to seek the highest-level evidence available. The rule designates the documents specifically named by DRA – the "primary" and "secondary" evidence cited below – as the most reliable. Secondary or lower-tier evidence must be accompanied by an identity document specified in the regulations. Original documents or copies certified by the issuing agency are required by the regulation; copies are not acceptable.

- "Primary evidence" is a U.S. passport, a Certificate of Naturalization, a Certificate of U.S. Citizenship, or, subject to specified preconditions, a state-issued driver's license.
- "Secondary evidence" is a birth certificate or a specified other record.
- Third-level evidence is a hospital record, or a life, health, or other insurance record.
- Fourth-level evidence includes many non-governmental documents, including, as a last resort and subject to rigorous conditions, written affidavits.

Provisions for children. Children are subject to the citizenship documentation requirements. For children under age 16, school records, including daycare or nursery school records, are considered acceptable identity documents. If no other identity documents are available, sworn affidavits signed by a parent or guardian are acceptable if an affidavit was not also used to document the child's citizenship.

Deemed eligibility for newborns. Non-citizen pregnant women who are otherwise excluded from Medicaid are eligible for

[1] At the same time, the law adds a requirement under Title IV that state child welfare agencies must have procedures to verify the citizenship or immigration status of children in foster care.

emergency Medicaid coverage of their labor and delivery. Their newborns are U.S. citizens by birth and thus eligible for Medicaid. Generally, as under pre-DRA law, the newborns of women whose labor and delivery was covered by Medicaid are deemed eligible for Medicaid for one year. But the DRA now requires citizenship documentation for these children at the time of their first redetermination.

Longstanding CMS policy provided deemed eligibility to all newborns of women receiving Medicaid. However, the July 6 rule stated that, in the case of immigrant women receiving only emergency Medicaid services, newborns could not obtain Medicaid until an application, including citizenship documentation, was filed on the their behalf. Challenges to the constitutionality of this policy were raised, and on March 20, 2007, CMS announced its intent to reinstate the uniform application of deemed Medicaid eligibility to newborns, regardless of maternal citizenship status.

Data cross-matching. The rule gives states latitude to use certain data matches instead of obtaining documents. States that do not automatically grant Medicaid to SSI beneficiaries can use the SDX database as primary evidence of citizenship for these individuals. States may also cross-match with data from the state vital statistics agency to document birth records (secondary evidence), and with data from other state or federal agencies, including food stamps, law enforcement and corrections, motor vehicles, and child protective services, to document identity.

Written affidavits. States can accept written affidavits when they cannot secure other evidence of citizenship or identity. In such cases, written affidavits made under penalty of perjury are required from both the applicant or beneficiary and two additional individuals, at least one of whom is not related to the applicant or beneficiary. Those making the affidavits must have knowledge of the events establishing the applicant's or beneficiary's citizenship, explain why documentation is not available, and prove their own citizenship and identity.

Presumptive eligibility. Although, in general, Medicaid applicants cannot obtain eligibility until they provide citizenship documentation, states that opt to provide presumptive eligibility for pregnant women and/or children may continue to do so. Citizenship documentation must be provided at the time the Medicaid application is completed.

State assistance. Current Medicaid beneficiaries must be given a "reasonable opportunity" to present documentation before a state takes any action to terminate their eligibility. The rule does not define this timeframe. Exceptions to the "reasonable opportunity" time limit are permitted if an enrollee has made a "good faith" effort but has been unable to obtain documents because they are not available. States are to assist such individuals in securing evidence. States must also assist individuals who "because of incapacity of mind or body" would be unable to comply with the requirements in a timely manner and who have no one to assist them.

Compliance. CMS will monitor whether states have adopted an effective process to comply with the citizenship documentation requirement and the extent to which they are using primary evidence. Corrective action will be taken to ensure states routinely obtain the most reliable evidence. Copies of citizenship and identification documents in the case record or electronic database will be used for compliance audits.

Issues

Impact on Medicaid coverage. Families and children who have difficulty securing the required documents may face a delay in coverage or be unable to qualify. A growing number of states are reporting significant enrollment declines and application backlogs due to incomplete applications or longer application processing time.

Outreach and information. Outreach to inform citizens of the new requirement and targeted outreach efforts to clarify that immigrant eligibility for Medicaid has not changed are needed.

Impact on beneficiaries. Obtaining passports and birth certificates can be costly and time-consuming for low-income people. Groups particularly likely to have problems obtaining documents include Native Americans; people with disabilities who do not receive Medicare, SSI, or SSDI; the homeless; and Hurricane Katrina victims. To the extent states use their flexibility to cross-match to other databases rather than collect paper documents, the documentation requirement will be less burdensome for Medicaid applicants and beneficiaries.

Impact on providers. Hospitals, health centers, and other providers that furnish care to citizens who do not have immediate access to the required documents (e.g., a heart attack victim), or to those who lose coverage because they are unable to supply documents, may face new uncompensated costs.

Impact on states. Nearly all states have designed mail-in enrollment and renewal systems to improve participation in Medicaid, and many have significantly reduced documentation requirements. The new requirement reduces states' capacity to streamline, simplify, and automate their operations. In addition, although implementation increases states' administrative costs, the DRA did not allocate any new federal funds for state costs associated with administering the documentation requirement (e.g., for application assistance staff or data systems and storage). Federal funds to match state costs are available at the 50% match rate generally available for Medicaid administrative costs.

Conclusion

Most citizens applying for or renewing their Medicaid coverage are now required to provide documents to prove their citizenship and identity. Evidence from New York, a state that had already required citizenship documentation in Medicaid, reveals that significant administrative flexibility, extensive outreach, and state financial resources are key elements of an approach that accommodates both programmatic needs and the circumstances of a low-income population. As more data and information become available in the coming months, it will be important to investigate and document the impact of the new requirement on low-income families and children, their providers, and states, and to identify strategies that minimize barriers to Medicaid coverage.

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