

New Requirements for Citizenship Documentation in Medicaid

Effective July 1, 2006, a new federal requirement included in the Deficit Reduction Act of 2005 (DRA) requires all U.S. citizens and nationals applying for or renewing their Medicaid coverage to provide documentation of their citizenship status.

On July 6, HHS issued an Interim Final Rule, effective immediately, that implements the DRA provision and formalizes much of the policy outlined in the CMS guidance issued June 9, with some significant modifications. HHS will accept comments on the regulation for 30 days.

This fact sheet provides information on the new federal requirement and the Interim Final Rule, and discusses their implications for Medicaid beneficiaries and the states.

Medicaid citizenship documentation requirements

Under federal law, all U.S. citizens who meet Medicaid's financial and non-financial eligibility criteria are entitled to Medicaid. Certain legal immigrants are also eligible. 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 allowing 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.

The DRA adds new documentation requirements for establishing eligibility for citizens and does not alter the current restrictions on coverage for immigrants. The intent is to assure that those who establish eligibility for Medicaid coverage are citizens or legal residents entitled to Medicaid.

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 law 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, as discussed below.

The DRA also requires the Secretary to establish an outreach program to educate individuals likely to be affected by the new provision. CMS has announced the launch of an outreach program, including presentations and tools for states, such as talking points and sample press releases.

The new citizenship documentation requirement does not change Medicaid rules relating to immigrants: undocumented immigrants remain eligible only for Medicaid emergency services, and most new legal immigrants are excluded from Medicaid during their first five years in the U.S. Nor does DRA alter the eligibility

criteria for U.S. citizens. However, the documentation provision adds a new requirement to the process of establishing eligibility for citizens.

Interim Final Rule

Exemptions for Medicare and SSI beneficiaries. Citing a widely acknowledged drafting error in the DRA, the HHS regulations depart substantially from the CMS guidance by exempting Medicare beneficiaries and most individuals receiving Supplemental Security Income (SSI) from the citizenship documentation requirements. Some 8 million Medicaid beneficiaries fall into these groups. The DRA provides authority for additional exemptions under limited conditions, but the interim regulation does not exempt any other groups.

Acceptable documents. Consistent with CMS' initial guidance, the regulation establishes four levels of citizenship documentation, rank-ordering them in a "hierarchy of reliability." The regulation requires states to seek the highest-level evidence available, and designates the documents 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; 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.

Children, including many newborns, are also subject to the citizenship documentation requirements. For children under age 16, additional acceptable identity documents are school records, including daycare or nursery school records, and affidavits signed under penalty of perjury by a parent or guardian if an affidavit was not used to document citizenship.

Data cross-matching. Relative to the CMS guidance, the regulations provide states with much greater latitude to use data matches in place of obtaining physical documents. Specifically, states that do not automatically grant Medicaid to SSI beneficiaries can use the Social Security Administration's SDX database as primary evidence of citizenship for these individuals. Further, states may do a cross-match with the state vital statistics agency to document birth records (secondary evidence) and can cross-match 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. Written affidavits can be used to document citizenship when a state cannot secure any 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. The individuals making the affidavit must have knowledge of the events establishing the applicant's or beneficiary's citizenship, be able to prove their own citizenship and identity, and explain, if known, why documentary evidence of citizenship is not available for the applicant or beneficiary.

Presumptive eligibility. In general, applicants cannot obtain Medicaid eligibility until they provide the required documentation. However, states that provide presumptive eligibility may continue to do so and receive federal financial participation for Medicaid services provided to pregnant women and children covered under this state option. Citizenship documentation must be provided at the time the application for Medicaid is completed.

State assistance. The regulation requires that current Medicaid enrollees be given a "reasonable opportunity" to present documentation before a state takes any action to terminate their eligibility. The rule does not define a timeframe. Exceptions to the "reasonable opportunity" time limit are permitted if a Medicaid enrollee has made a "good faith" effort but has been unable to obtain documentation because the documents are not available. States are to assist such individuals in securing evidence.

The regulation also requires states to 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 implemented an effective process to comply with the citizenship documentation requirement and the extent to which states 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.

Funding. The DRA does not allocate any additional federal funds for state costs associated with administering the documentation requirement, such as costs for data systems and storage or application assistance personnel. Federal funds will be available to states based on the 50 percent match rate generally available for Medicaid administrative costs.

Issues

Impact on Medicaid coverage. Pregnant women, children, and parents who have difficulty securing the required documents could face a delay in coverage or be unable to qualify. The regulation authorizes the states to conduct data matches with other programs rather than collect paper documents, which could help to mitigate this problem. Outreach to ensure that citizens are

aware of the new documentation requirement will also be important.

Impact on beneficiaries. Obtaining passports and birth certificates can be costly and time-consuming for the low-income people who are eligible for Medicaid. Groups likely to incur problems establishing documentation include foster children, Native Americans, individuals with disabilities who do not receive Medicare or SSI, the homeless, and Hurricane Katrina victims.

To the extent that states use their flexibility under the regulation to match to other state and federal databases to document citizenship and identity, the documentation requirements will be less burdensome for Medicaid applicants and beneficiaries.

Impact on providers. 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 incur new uncompensated costs. The rule is silent regarding whether services provided during the 3-month retroactive eligibility period that begins with application are eligible for federal matching funds.

Impact on states. In recent years, states have streamlined and simplified the Medicaid application process by minimizing documentation requirements, permitting self-declaration of income, and automating systems. The new requirements reduce states' capacity to streamline their operations, and state implementation activities will increase states' administrative costs, requiring new state dollars, as well as federal matching funds. States may be able to reduce the burden of implementation by exercising their authority to conduct electronic data matches to meet the documentation requirements.

With CMS' guidance issued three weeks before the effective date of the provision and the rule issued July 6, the challenge of establishing the new systems needed to follow the implementation protocol and conduct outreach is significant for states.

Conclusion

Citizens applying for or renewing their Medicaid coverage now must demonstrate their citizenship and identity to obtain eligibility. The rule implementing the DRA citizenship documentation requirements outlines a prescriptive process that states must follow for all citizens except Medicare and SSI beneficiaries. The rule permits states to use electronic data matches, which could help facilitate obtaining Medicaid for low-income citizens, and reduce the administrative burden of the requirement for states.

Evidence from New York, a state that already requires citizenship documentation in Medicaid, reveals that significant flexibility in administering the requirement, extensive outreach, and state financial resources are key elements of an approach to implementation that accommodates both programmatic needs and the circumstances of a low-income population.

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