

## **Key Issues on Interim Final Regulations on Medicaid Citizenship Documentation**

There are four issues regarding the new citizenship documentation requirements that can and should be addressed by CMS in issuing final regulations. A brief summary of each follows. The Center will circulate a more detailed discussion of these issues soon. The comment period on the interim final regulations ends August 11, 2006.

### **1. Reasonable Opportunity for Applicants to Obtain Required Documentation**

In the interim final regulations, the Secretary affords current beneficiaries, at their next redetermination of eligibility, a “reasonable opportunity” to provide documentation of citizenship before being terminated from coverage. However, the Secretary did not take an equally important action he could have taken, giving applicants – who otherwise qualify for Medicaid and who self-attest that they are citizens – the same opportunity to receive Medicaid services while making a good faith effort to obtain and present the required documents. The regulations should permit states to begin providing coverage to eligible citizens based on their sworn declaration of citizenship, and to then afford them a reasonable opportunity to provide the necessary documentation.

### **2. Children in Foster Care**

The interim final regulations correctly exempt Medicare beneficiaries and, in most states, SSI recipients from the Medicaid citizenship documentation requirements. However, the regulations do not similarly exempt children in foster care who are receiving assistance under title IV-E. There are two reasons why the Secretary should reverse this policy in final regulations:

- The documentation requirements imposed by the DRA are limited, by the express terms of the statute, to individuals who are required to submit a declaration of citizenship as part of the Medicaid application process. Because recipients of title IV-E benefits are automatically entitled to Medicaid, they have never been required to submit such a declaration. They therefore should not now be required to provide documentation of citizenship in order to receive Medicaid benefits.
- Title IV-E agencies are required to verify the citizenship of children prior to their being found eligible for title IV-E benefits. Even if child welfare agencies retain copies of birth certificates in their records, these copies would not be acceptable documentation under the CMS rules. Under sections 1903(x)(2)(C) of the Act, added by the DRA, the Secretary has the discretion to exempt individuals from the documentation requirements if he finds other satisfactory documentary evidence of citizenship has previously been presented. The Secretary should exercise this discretion to permit state Medicaid agencies to accept the IV-E agency’s verification of citizenship.

### **3. Newborns**

The interim final regulations needlessly jeopardize the health care of newborns, all of whom require immediate well-baby care and many of whom (i.e., those born prematurely or at low birth weight) require more intensive care. Children born in the United States (including those born to undocumented pregnant women, who are eligible only for Medicaid coverage of the labor and delivery of their babies) are U.S. citizens. However, the interim regulations do not

permit states to consider a record of Medicaid (or other insurance) payment for the birth of a child as acceptable documentation of citizenship. (It can take several months – or more – to obtain a birth certificate for a newborn child.)

In addition, while the interim regulations do permit states to accept, as “fourth level” evidence, a hospital or other medical record of birth, these records are to be relied upon only in the “rarest of circumstances.” 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) as secondary evidence of citizenship, at least for children under age 6, a medical record of birth in a U.S. hospital or other setting.

#### **4. Other U.S. Citizens Without Documentation**

There are many other U.S. citizens and nationals for whom the citizenship documentation requirements will pose an extreme hardship, and will result in a denial of critical coverage. 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. The Secretary should exercise his discretion to give states 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.