

Technical Corrections Relating to Citizenship Documentation Requirement

Some of the most significant problems with CMS' new guidance on the citizenship documentation requirement can be addressed by including a few provisions in the technical corrections legislation:

1. Medicare beneficiaries and SSI recipients. In designing the law, Congress intended to exempt all Medicare beneficiaries and all SSI recipients from this citizenship requirement but an inadvertent drafting error in the bill means that these individuals are not exempt. Congress needs to fix this and clarify the exemption which would spare well over 7 million elderly or disabled American citizens (including 1.5 million nursing facility residents), as well as the State agencies that process their Medicaid eligibility, from the costs and administrative burden of this documentation requirement.

2. Foster Care Children. The citizenship documentation requirement does not exempt title IV-E foster care children from the documentation requirements. The CMS new guidance says that "Title IV-E children receiving Medicaid must have in their Medicaid file a declaration of citizenship or satisfactory immigration status and documentary evidence of the citizenship or satisfactory immigration status claimed on the declaration." This will require that state Medicaid agencies duplicate the work of state child welfare agencies by documenting the citizenship of children whose citizenship has already been verified in order to qualify for IV-E services, adding burden and costs to states. Any delay in this duplicate process will result in a delay in enrollment of the foster care child in Medicaid, further burdening the foster families and the providers that serve these children.

3. Birth Records in Electronic Form. The DRA citizenship provision requires that, in the absence of a U.S. passport or similar document, the documentation requirements must be met with a U.S. birth certificate plus an identity document. The law is silent as to the form that the birth certificate must take. CMS' guidance states that "All documents must be either original or copies certified by the issuing agency. Copies or notarized copies may not be accepted." This language calls into question the ability of states to use alternative evidence of U.S. birth such as the electronic transmission of documentation by a state vital statistics agency to a state Medicaid agency, or the use of electronic claims data kept by the state Medicaid agency indicating that it paid for the birth of a baby in a U.S. hospital. Therefore, a clarification is needed to the law to explicitly allow the use of electronic records. The use of electronic records is not only far less burdensome and costly for state agencies and citizen applicants and beneficiaries than the use of paper records; it is also consistent with the HHS emphasis on IT to modernize the administration of Medicare, Medicaid, and other federally funded programs.

4. Reasonable opportunity for applicants. The June 9 guidance states "applicants for Medicaid (who are not currently receiving Medicaid), should not be made eligible until they have presented the required evidence." (p. 10). So, anyone who confronts a delay in obtaining a birth certificate for whatever reason — loss or delay in the mails, processing delays in the vital statistics agency, etc. — will be subject to a delay in Medicaid enrollment — postponing needed health care services. CMS guidance on this puts American citizens in a worse position than legal immigrants. Under current law, if an individual declaring to be a legal immigrant is otherwise eligible for Medicaid, the individual is enrolled in Medicaid and receives coverage while being given a reasonable opportunity to submit evidence of satisfactory immigration status and while the State Medicaid agency verifies this documentation. The DRA law itself did not require states to deny eligibility until applicants have produced the necessary documentation. Delaying benefits for eligible U.S. citizens would be particularly onerous for victims of hurricanes or other disasters, who have lost all of their belongings. These individuals would be unable to get Medicaid coverage for necessary medical care until they can obtain birth certificates or other documents showing that they are citizens.