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## Citizenship Documentation Requirements in Medicaid

Since July 1, 2006, most U.S. citizens and nationals applying for or renewing their Medicaid coverage face a new federal requirement to provide documentation of their citizenship status. This new federal requirement was added to Medicaid by the Deficit Reduction Act of 2005 (DRA), enacted February 8, 2006. The Tax Relief and Health Care Act of 2006 (TRHCA), signed into law December 20, 2006, included some amendments to the DRA citizenship documentation requirement, primarily to exempt certain groups. This fact sheet provides current information on the citizenship documentation requirement and discusses its implications for Medicaid beneficiaries and the states.

### Medicaid citizenship 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 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.

### New federal 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 adds 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 recently-enacted TRHCA 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.<sup>1</sup> 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 implement 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, including newborns, are subject to the citizenship documentation requirements. As under pre-DRA law, newborns of women who are receiving Medicaid on the date of their child's birth are deemed eligible for Medicaid for one year. However, the DRA requires citizenship documentation for these children at the time of their first redetermination.

For children under age 16, school records, including daycare or nursery school records, are considered acceptable identity

<sup>1</sup> 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.

