

Attachment 1

DRA Citizenship Documentation Requirement for Medicaid: Documents That Could be Used to Prove Citizenship and/or Identity for Medicaid

Beginning on July 1, states will be faced with implementing the new requirement contained in the Deficit Reduction Act (DRA) that citizens applying for or renewing their eligibility for Medicaid document their citizenship.¹ To date, CMS has not provided any instructions or guidance to states on how they should go about administering the new requirement and we do not know when guidance will be forthcoming.

The Problem

The DRA specifies, in statutory language, certain documents that will enable an individual to meet the documentation requirements. The DRA also gives the Secretary of Health and Human Services (HHS) authority to specify documents other than those listed in the statute that would constitute satisfactory documentary evidence of citizenship or identity. As of this writing, the Secretary has not exercised this authority, and it is not clear when or if HHS will issue guidance specifying additional documents that can be used to prove citizenship or identity.

There are two ways of meeting the DRA requirement for satisfactory documentary evidence of citizenship. One is to present a single document — i.e., a passport or similar document — that proves both citizenship and personal identity. The other is to present two documents: one that proves citizenship and one that establishes personal identity. Because many low-income Americans do not have passports, it is likely that citizens applying for Medicaid, as well as most current Medicaid beneficiaries seeking to renew their eligibility, will have to meet the DRA requirement using two documents.

Documents for States to Consider

Three lists follow. The first is for documents that prove both citizenship and identity; an individual providing one of these documents would meet the DRA requirement. The other two lists are for documents that prove citizenship only, and for documents that establish personal identity only; to meet the DRA requirement, an individual would have to present one document from each list. In each case, the DRA specifies certain documents that will enable an individual to meet these requirements; such documents are listed *without an asterisk*

The lists also include documents, marked *with an asterisk*, that are not specified in the DRA itself, but are specified by the Department of Justice (DOJ) or the Social Security Administration (SSA) as acceptable proof of citizenship in the following federal guidelines:

- (1) Section 104.23 of a proposed regulation issued by DOJ that is posted on the website of the Centers for Medicare & Medicaid Services (CMS) as being “Acceptable Proof of

¹ Section 6036 of the DRA, P.L. 109-171.

Citizenship” by a Medicaid applicant or beneficiary.² These items are cited with the superscript ^{DOJ}.

(2) Social Security Administration guidance concerning evidence of U.S. citizenship for a social security number.³ These items are cited with the superscript ^{SSA}.

As noted, the Secretary of HHS has not specified in guidance or otherwise that documents relied upon by its sister federal agencies, DOJ or SSA, can be used to meet the new DRA requirement. It seems reasonable, however, for state Medicaid agencies to rely on such documents until HHS issues its own guidance.

Proof of Both Citizenship (or Nationality) and Identity

- (1) A United States passport.
- (2) Form N-550 or N-570 (Certificate of Naturalization).
- (3) Form N-560 or N-561 (Certificate of United States Citizenship).
- (4) A valid state-issued driver’s license or other identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act, but only if the State issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen.
- (5) A previous U.S. passport (e.g., expired).^{* 4}

Proof of Citizenship or Nationality_(must be accompanied by Proof of Identity, below)

- (1) A certificate of birth in the United States.⁵
- (2) Form FS-545 or Form DS-1350 (Certificate of Birth Abroad).
- (3) Form I-97 (United States Citizen Identification Card).⁶

² The CMS guidance is available at http://www.cms.hhs.gov/MedicaidEligibility/05_Immigrants.asp#TopOfPage, as accessed on April 24, 2006. The proposed rule was published at 63 *Federal Register* 41662 (August 4, 1998). Section 8 CFR 104.23 was proposed by DOJ to establish “fair and nondiscriminatory procedures” for applicants for public benefits who are U.S. nationals (including citizens and certain residents of U.S. territories) “to provide proof of citizenship,” 63 *Federal Register* 41669. The section is found at 63 *Federal Register* 41680-81. The proposed regulation is primarily based on interim guidance from DOJ, published at 62 *Federal Register*: 61362, Nov. 17, 1997

³ Social Security Administration, Section RM 00203.310 of the Program Operations Manual (POM), “Evidence of U.S. Citizenship for an SSN Card,” <https://s044a90.ssa.gov/apps10/poms.nsf/lrx/0100203310!opendocument>, accessed April 24, 2006.

⁴ Under U.S. State Dept. rules, a previous passport, issued within the past 15 years, can be used to prove U.S. citizenship and secure a new passport (<http://foia.state.gov/FORMS/Passport/ds0082.pdf>). The Social Security Administration (Program Operations Manual, Section RM 00203.310) also permits expired passports to be used to establish citizenship in issuing a Social Security number; it notes that prior to 1980, young children were sometimes listed in their parents’ passports. Both agencies also note that passports that were issued with a validity date of less than five years cannot be used for this purpose.

⁵ The DRA specifies only “certificate of birth in the United States.” However, proposed 8 CFR 104.23, referenced on the CMS website, also specifies a birth certificate showing birth in “Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa or the Northern Marianas Islands (on or after November 4, 1986) (unless the applicant was born to foreign diplomats residing in such a jurisdiction).”

⁶ The DRA lists “Form I-97 (United States Citizen Identification Card),” but this appears to be a drafting error. Form I-97 is not an identification card, but a form entitled “[Record of TRWOV Arrivals and Departures](#),” where TRWOV

- (4) Form FS-240 (Report of Birth Abroad of a Citizen of the United States).
- (5) Form I-873 (or prior versions), Northern Marianas Card.*^{DOJ}
- (6) Statement provided by a U.S. consular official certifying that the individual is a U.S. citizen (given to an individual born outside the United States who derives citizenship through a parent but does not have an FS-240, FS-545, or DS-1350).*^{DOJ, SSA}
- (7) Form I-197 (U.S. Citizen Identification Card) or the earlier version I-179 (ID Card for use of Resident Citizen in the United States).*^{DOJ, SSA}
- (8) Form I-872 (or prior versions), American Indian Card with a classification code "KIC" and a statement on the back identifying the bearer as a U.S. citizen (issued by the Service to U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).*^{DOJ, SSA}

If an individual cannot present one of the documents listed above, any of the following documents may be relied upon to establish U.S. citizenship or nationality:*⁷

- (9) A religious record of birth or baptism or circumcision, recorded in the United States or the territories within three months of birth, which shows that birth occurred in the United States.*^{DOJ, SSA}
- (10) Evidence of civil service employment by the U.S. government before June 1, 1976.*^{DOJ}
- (11) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s).*^{DOJ, SSA}
- (12) Adoption finalization papers showing the child's name and place of birth in the United States or its territories, or if the adoption is not finalized, and no birth certificate is available, a statement from a state-approved adoption agency showing the child's name and place of birth.*^{DOJ, SSA}
- (13) Census records showing name, U.S. nationality or a U.S. place of birth and applicant's date of birth or age.*^{DOJ}
- (14) Military record that shows a U.S. place of birth.*^{SSA}
- (15) Evidence of collective naturalization, such as evidence that shows collective naturalization of those born in Puerto Rico before Jan. 14, 1941, born in the Virgin Islands before Feb. 25, 1927, born in Guam before August 1, 1899, or born in the Northern Marianas Islands before Nov. 4, 1986.*^{SSA}
- (16) Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship.*^{DOJ, 8, 9}

means "transit without visa." The correct forms should be Form I-197 (United States Citizen Identification Card) or Form I-179 (ID Card for use of Resident Citizen in the United States) (see item #7 above). Both the DOJ proposed rule 8 CFR 104.23 and the SSA POMS guidance reference Forms I-197 and I-179, as does the Department of Homeland Security's current version of the Employment Eligibility Verification form (Form I-9).

⁷ Proposed 8 CFR 104.25(a), 63 *Federal Register* at 41681 (August 4, 1998), states that "Documents must be original and unexpired. Certified copies of documents evidencing U.S. nationality are acceptable. The benefit granting agency shall accept documentation . . . that reasonably appears on its face to be genuine and to relate to the applicant." The DRA does not require state Medicaid agencies from applying this same standard for accepting documents with respect to citizenship documentation and CMS has not yet specified a standard.

⁸ Supplemental Security Income regulations (20 CFR 416.1610(c)) state that if a person cannot provide other evidence of citizenship, the person may: "(1) Explain why you cannot give us any of the documents; and (2) Give us any information you have which shows or results in proof that you are a citizen or a national of the United States. The kind of information we are most concerned about shows—

- (i) The date and place of your birth in the United States;

- (17) Evidence of specific circumstances that indicate citizenship or nationality for certain persons living in the U.S. territories (specified in DOJ proposed 8 CFR 104.23(b)(7)-(14), 63 *Federal Register* 41681 (August 4, 1998)).* ^{DOJ}
- (18) Evidence of citizenship for certain persons who are children of U.S. citizens or married to U.S. citizens (specified in DOJ proposed 8 CFR 104.23(b)(15)-(18), 63 *Federal Register* 41681 (August 4, 1998)).* ^{DOJ}

If such documents are not available, the proposed DOJ regulation at 8 CFR 104.23(c), 63 *Federal Register* 41681, provides a benefit granting agency the option to consult agency records:

- (19) An agency may in lieu of requiring an applicant to present evidence of U.S. citizenship rely upon records of citizenship maintained by that agency or by a federal agency responsible for administering a federal benefit program, such as computer matching of records. * ^{DOJ}

Finally, if none of the conditions above can be met, the proposed DOJ regulation at 8 CFR 104.23(d), 63 *Federal Register* 41681, provides a benefit granting agency two additional options:

- (20) An agency may accept a written declaration made under penalty of law from one or more third parties indicating a reasonable basis for personal knowledge that an applicant who cannot produce evidence of U.S. citizenship is a U.S. citizen. * ^{DOJ}
- (21) An agency may accept a receipt for an application for evidence of U.S. citizenship as temporary evidence of citizenship, as long as the agency requires the applicant to present the actual evidence of citizenship before making a final determination. * ^{DOJ}

The Social Security Administration also lists other documents that can serve as satisfactory proof of citizenship if other evidence (such as those listed above) cannot be promptly secured (e.g., within 10 working days):

- (22) Institutional admission papers from a nursing home, skilled care facility or other institution that provide biographical data, such as U.S. place of birth.* ^{SSA}
- (23) Medical records (such as clinic, doctor or hospital records) that provide biographical data, such as U.S. place of birth. * ^{SSA}
- (24) Life or health or other insurance records that provide biographical data, such as U.S. place of birth. * ^{SSA}
- (25) Certain tribal records that were created at least five years earlier, including a Seneca Indian tribal census record or a Bureau of Indian Affairs tribal census record for Navaho Indians. * ^{SSA}

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- (ii) That you have voted or are otherwise known to be a citizen or national of the United States; or
 - (iii) The relationship to you and the citizenship of any person through whom you obtain citizenship.”

⁹ Examples of other documents accepted by the U.S. State Department for issuance of passports include: baptismal records, hospital birth certificates, early school records, family bible record, or doctor’s record of post-natal care. These documents must be early public records showing the date and place of birth, preferably created within the first five years of life. (http://travel.state.gov/passport/get/first/first_830.html)

Proof of Identity (must be accompanied by Proof of Citizenship, above)

The DRA specifies that any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act is satisfactory documentary evidence of personal identity. Although CMS has not specified any documents in guidance, items 1 through 12 are specified by the Department of Justice in final regulations that implement section 274A(b)(1)(D), found at 8 CFR 274a.2 (http://www.access.gpo.gov/nara/cfr/waisidx_02/8cfr274a_02.html)

- (1) Driver's license or identification card issued by a state, the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa or Swains Island, containing a photograph, or a driver's license or identification card without a photograph that contains identifying information such as date of birth, sex, height, color of eyes, and address;
- (2) School identification card with a photograph;
- (3) Voter's registration card;
- (4) U.S. military card or draft record;
- (5) Identification card issued by federal, state, or local government agencies, which contains a photograph or identifying information such as name, date of birth, sex, height color of eyes, and address;
- (6) Military dependent's identification card;
- (7) Native American tribal documents;
- (8) United States Coast Guard Merchant Mariner Card;
- (9) Driver's license issued by a Canadian government authority;
- (10) For individuals under age 18 who are unable to produce any of the documents above:
 - (a) School record or report card;
 - (b) Clinic doctor or hospital record;
 - (c) Daycare or nursery school record.
- (11) For minors under the age of 18 who are unable to produce one of the documents above, an attestation of the minor's identity completed and signed by the child's parent or legal guardian.
- (12) For those who are disabled and unable to produce any of the documents above, the same types of alternative documentation of identity listed for those under the age of 18 (in #10 and #11), except that a parent, legal guardian, representative of a nonprofit organization, association or program may sign the forms for the person.