

## Attachment 2

### **DRA Citizenship Documentation Requirement for Medicaid: States Can Use Procedures that Minimize Burdens on Applicants and Beneficiaries**

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.<sup>1</sup> 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. However, existing federal statutes and administrative guidance can provide states with direction on how to proceed in a way that minimizes the potential harm to Medicaid applicants and beneficiaries.

#### **Procedures for States to Consider**

The following are some suggested procedures states can use to relieve Medicaid applicants and beneficiaries of some of the burden of complying with the new citizenship documentation requirement by obtaining the necessary documents from existing state files and by providing individuals ample time to secure the documents on their own.

**States should allow applicants who declare they are citizens a “reasonable opportunity” to obtain the documents they need to meet the citizenship documentation requirement.**

Many applicants for Medicaid will not have the documents they need readily available, so they will have to send away or follow other procedures to obtain birth certificates or other proof of citizenship. In some states it can take over a month to get a birth certificate. As noted, the new requirement to document citizenship is not an eligibility requirement. Thus, as soon as an applicant declares — under penalty of perjury — his or her citizenship and meets all financial and non-financial eligibility requirements, benefits should be granted

#### **Citizenship Documentation and Medicaid Eligibility**

The new DRA citizenship documentation requirement is *not* a condition of Medicaid eligibility. Rather, it is a prohibition on federal matching payments for the costs of Medicaid services to individuals who have not presented “satisfactory documentary evidence of citizenship.” Because the new rule is *not* an eligibility requirement, it does not change the rules that govern how eligibility should be determined and renewed. As a result, state Medicaid agencies may not deny or terminate Medicaid eligibility for citizens who are otherwise eligible but who have not presented “satisfactory documentary evidence of citizenship.”

In establishing the requirement for citizenship documentation, the DRA did not amend the provisions of the federal Medicaid statute relating to non-financial eligibility requirements. Instead, it amended the provision of the federal Medicaid statute that prohibits the payment of federal matching funds for certain state expenditures. Thus, if an individual declares that he or she is a citizen and meets all the financial and non-financial requirements for Medicaid eligibility under a state’s Medicaid plan, the individual is eligible for Medicaid. The presentation of “satisfactory documentary evidence” affects the availability of federal matching funds for medical assistance provided to the individual but *not* his or her entitlement to Medicaid coverage. This is why state Medicaid agencies will have a strong interest in making documentation procedures as easy as possible. Losing federal matching funds for the costs of Medicaid services to eligible citizens would put unnecessary pressure on state budgets.

<sup>1</sup> Section 6036 of the DRA, P.L. 109-171.

without delay in accordance with federal rules that set standards for timely determinations of Medicaid eligibility.<sup>2</sup>

States can look to the procedures they already use for non-citizens, who are allowed a reasonable opportunity to provide the required documentation of immigration status. Section 1137(d)(1)(A) of the Social Security Act provides individuals who declare that they are not citizens, but that they are in a “satisfactory immigration status” that would make them eligible for Medicaid, with a reasonable opportunity to submit evidence of such status. Once all eligibility requirements are met, states must provide benefits while such individuals obtain the documents they need. If it is later determined that the individual is not eligible because he or she did not supply the required documents, the state must provide the individual notice and an opportunity for a fair hearing. States are protected from penalties for providing erroneous benefits during the entire time period, including the fair hearing process.<sup>3</sup>

**Whenever possible, in processing renewals of Medicaid eligibility by current beneficiaries, states should use information that is already available in Medicaid files and other sources to document citizenship.**

Federal regulations limit the scope of information that can be required of Medicaid beneficiaries at renewal to information that is necessary to determine ongoing eligibility and information that is subject to change, such as income and residency.<sup>4</sup> In addition, longstanding CMS guidance requires that states review existing data sources before requesting information from beneficiaries.<sup>5</sup> Among the information that states must review is information from Social Security files. SSI State Data Exchange (SDX) files and the Social Security Administration NUMIDENT files include information that can be used to document the citizenship status of many SSI recipients and other individuals. **(See Attachment 3, “States Can Use Computer Matching to Document Citizenship.”)** States should consult these files and other sources, such as food stamp and TANF records, before requiring that beneficiaries provide documents proving they are citizens. In many cases, agencies may already have copies of birth certificates or passports in their records that

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<sup>2</sup> 42 CFR §435.911.

<sup>3</sup> Undated draft guidance from CMS on the new DRA provision provides: “At the time of application, the State must give the applicant a reasonable opportunity to present documents establishing U.S. citizenship or Nationality. Therefore, each State may employ a ‘reasonable opportunity period’ consistent with its administrative requirements. The reasonable opportunity period must not cause the State to exceed the Federal regulations for timely determination of eligibility in 42 DFR 435.911. The reasonable opportunity period must also be consistent with the time available to Qualified Aliens who have signed a declaration under section 1137(d) to submit evidence of satisfactory immigration status to the State. FFP will be available with respect to citizen applicants during the reasonable opportunity period and eligibility process, to the same extent as described in section 1137(e)(2) and (e)(4) with respect to qualified alien applicants. These provisions assure FFP during a reasonable opportunity to present documents while not delaying eligibility and during a fair hearing process respecting the sufficiency of the documents presented or compliance by the applicant with the requirement to present.” This undated draft guidance has not to date been issued by CMS and does not necessarily represent CMS policy.

<sup>4</sup> 42 CFR §§ 435.902 and 435.916.

<sup>5</sup> Letter to State Medicaid Directors, April 7, 2000, archived at <http://www.cms.hhs.gov/SMDL/>

were collected for other purposes, such as to document a person's age. For individuals whose birth was paid for by Medicaid, the state Medicaid agency should be able to document that the person was born in the U.S.

**States should allow current beneficiaries a “reasonable opportunity” to obtain documents when renewing their coverage.**

When a state is unable to document a Medicaid beneficiary's citizenship through existing sources of information, the state should allow the beneficiary, or others acting on behalf of the beneficiary, a reasonable opportunity to obtain necessary documents. Because the new documentation requirement is not a condition of eligibility, an inability to supply the documents within the usual renewal period should *not* lead to a termination of coverage. States should process the renewal of eligibility as soon as necessary information, such as income and residency, is submitted.

Timely processing of renewals is especially important for beneficiaries in nursing homes and other institutions. Continuity of care is critical for such vulnerable people and they also are likely to need assistance from nursing home or state agency staff in obtaining the required documents. Staff helping residents obtain the required documents will need ample time to provide assistance to all who need the help, and as a result, they are likely to need more time than usually allowed for renewal of Medicaid eligibility.