



## **Citizenship Documentation Requirement for Medicaid**

### **New Law Creates Insurmountable Hurdle for U.S. Citizens**

As part of the Federal Deficit Reduction Act of 2005, signed into law in February 2006, Congress included a new section that requires Medicaid applicants and recipients to document their citizenship. The new documentation requirement did not change Medicaid eligibility criteria, rather it simply added another hurdle for low-income individuals and families to overcome to attain Medicaid eligibility. Citizenship or legal immigration status has always been a component of the Medicaid eligibility process, but applicants/recipients were able to declare their statuses prior to implementation of the new law. Some members of Congress argued that this new law was necessary to stop illegal aliens from receiving Medicaid benefits. However, there were no studies or Congressional reports that suggested significant numbers of illegal aliens were receiving full Medicaid coverage.

Initially, the Centers for Medicare and Medicaid Services (CMS) interpreted the section of the law very strictly and narrowly, causing an outpouring of protests from a broad range of groups. In addition, lawsuits were filed challenging the validity of the law. Because of CMS's narrow interpretation of the law and the concerns raised by advocates and providers, Congress subsequently acted to modify the requirements, and CMS ultimately relaxed their interpretation of some of the provisions of the law.

The modifications to the Deficit Reduction Act enacted by Congress exempted several groups for whom documentation was initially required

on the basis that their citizenship would have been previously reviewed by the federal government. The exempted groups include Medicare beneficiaries, Supplemental Security Income beneficiaries, and Social Security Disability recipients. Subsequently, children receiving foster care or adoption payments under Title IV-E were exempted from the documentation requirement as well. CMS also later reversed its interim rule and reinstated long-standing Medicaid policy that provides 12 months of Medicaid coverage to infants born to mothers receiving only emergency Medicaid.

#### **Current Interpretation is Stricter than Required by Law**

The CMS interpretation of acceptable documentation of citizenship is far stricter than required in the law. CMS established a hierarchy of acceptable documents and mandated that states seek the highest possible level of documentation. Unless the highest level of documentation is provided, such as a passport, proof of identity must also accompany proof of citizenship. The interim regulations discouraged data matches to establish citizenship, but CMS later recanted that position. Even though it is not specified in the law, CMS is mandating original or certified documents to meet the requirement. The following information, taken from a CMS Medicaid Fact Sheet, provides the hierarchy of acceptable documents identified by CMS in the regulations and demonstrates the level of complexity for Medicaid applicants and recipients, and the agencies administering the Medicaid program.

## Hierarchy of Acceptable Documents to Document Citizenship/Identity

If an applicant or recipient presents evidence from the listing of primary documentation, no other information would be required. When such evidence cannot be obtained, the state will look to the next tier of acceptable forms of evidence. In particular, the following forms of documentation may be accepted:

▶ **Acceptable primary documentation for identification and citizenship:**

- A U.S. Passport.
- A Certificate of Naturalization (DHS Forms N-550 or N-570).
- A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561).

▶ **Acceptable secondary documentation to verify proof of citizenship (an identity document is also required):**

- A U.S. birth certificate (data matches with a State Vital Statistics Agency may be used in place of a birth certificate, at the State's option).
- A Certification of birth issued by the Department of State (Form DS-1350).
- A Report of Birth Abroad of a U.S. Citizen (Form FS-240).
- A Certification of Birth Abroad (FS-545).
- A U.S. Citizen I.D. card (DHS Form I-197).
- An American Indian Card issued by the Department of Homeland Security with the classification code "KIC."
- Final adoption decree showing the child's name and U.S. birthplace.
- Evidence of civil service employment by the U.S. government before June 1976.
- An official military record of service showing a U.S. place of birth.
- A Northern Mariana Identification Card.

▶ **Acceptable third-level documentation to verify proof of citizenship:**

- Extract of U.S. hospital record of birth established at the time of the person's birth and was created at least 5 years before the initial application date and indicates a U.S. place of birth.
- Life or health or other insurance record showing a U.S. place of birth and was created at least 5 years before the initial application date.

▶ **Acceptable fourth-level documentation to verify proof of citizenship:**

- Federal/State census record showing U.S. citizenship or a U.S. place of birth.
- Institutional admission papers from a nursing home, skilled nursing care facility or other institution which indicates a U.S. place of birth.
- Medical (clinic, doctor, hospital) record and was created at least 5 years before the initial application date and indicates a U.S. place of birth.
- Other document that was created at least 5 years before the application for Medicaid.

- Written affidavit. Written affidavits may be used only in rare circumstances when the state is unable to secure evidence of citizenship from another listing. If the documentation requirement needs to be met through affidavits, the following rules apply: There must be at least two affidavits by individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit). At least one of the individuals making the affidavit cannot be related to the applicant or recipient and cannot be the applicant or recipient. In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity. If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well. The State must obtain a separate affidavit from the applicant/recipient or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained. The affidavits must be signed under penalty of perjury.

▶ **Acceptable documentation to verify proof of identity:**

- A current state driver's license bearing the individual's picture or State identity document also with the individual's picture.
- Certificate of Indian Blood, or other U.S. American Indian/Alaska Native tribal document.
- A school identification card with a photograph of the individual.
- U.S. military card or draft record.
- Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.
- Military dependent's identification card.
- Native American Tribal document.
- U.S. Coast Guard Merchant Mariner card.
- Data matches with other agencies can be used to verify identity such as those with Federal or State governmental, public assistance, law enforcement, or corrections agencies, at the State's option. Such agencies may include food stamps, child support, corrections, including juvenile detention, motor vehicle, or child protective services.
- For Children under 16, an Affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

*Source: CMS Medicaid Fact Sheet dated July 6, 2006*

Within just months of implementation of the regulations, many states began reporting significant declines in their Medicaid application approvals and in their caseloads. Studies were conducted in several states that tracked the impact of the new policy. Data from seven states, including Wisconsin, Kansas, Iowa, Louisiana, Virginia, New Hampshire and Ohio were reported in an analysis published by the Center on Budget and Policy Priorities. (*New Medicaid Citizenship Documentation Requirement Is Taking A Toll*, March 13, 2007). All of these states reported significant Medicaid caseload declines that could only be attributed to the citizenship documentation requirement since other programs, such as Food Assistance, which serve similar low-income families and individuals, continued to grow. Several of the states found that it was low-income U.S. citizens, particularly children, who were impacted by these regulations, and that citizens who otherwise qualified for Medicaid were being denied or terminated because they could not provide the required documentation, often due to cost or availability. It is important to note that a U.S. passport, the highest level of acceptable documentation, costs \$100 for a person over the age of 16 and \$85 for a person under the age of 16. The standard cost for a certified Michigan birth certificate is \$36 per person. The cost of a state-issued identification card is \$10. These costs can be prohibitive for a low-income family or individual.

### Michigan Implementation

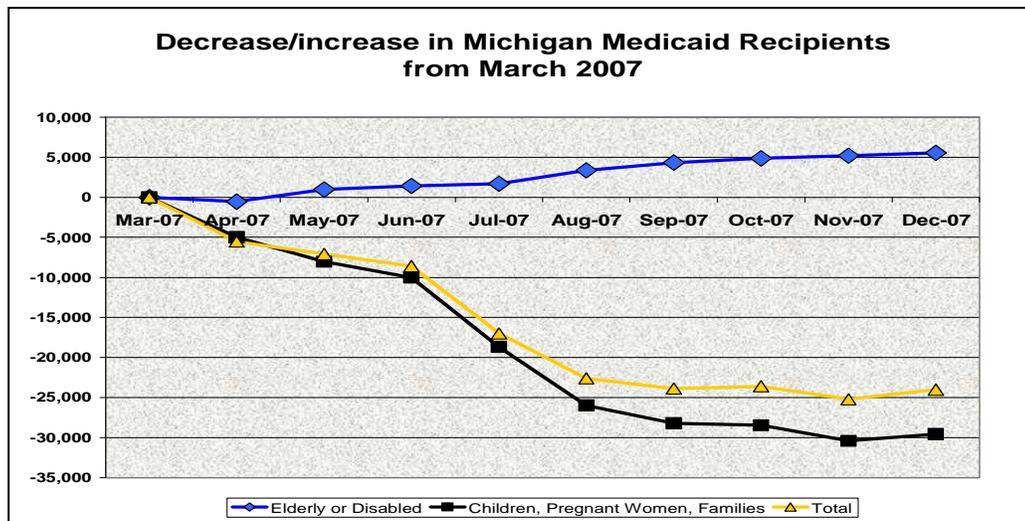
In an effort to minimize the negative impact on U.S. citizens and avoid multiple policy and procedure changes, Michigan delayed implementation of the citizenship documentation requirement until April 1, 2007, after final regulations and guidance were published by CMS. Because Michigan has not delinked its cash assistance and Medicaid eligibility

process, the citizenship documentation requirement is also being applied to cash assistance cases—both the Family Independence and State Disability Assistance Programs. Application of this onerous policy to cash assistance applicants and recipients is a state decision, not a federal mandate.

Unfortunately the Department of Human Services was not able to establish separate coding to clearly document the impact of this federal policy in Michigan on Medicaid or cash assistance applicants or participants. In addition, no funding has been provided to assist applicants or recipients secure the required documents, and as indicated above, they can be very costly.

Following implementation of the documentation requirement, the Michigan Medicaid caseload experienced declines for several consecutive months after more than six years of monthly increases. It is unlikely that the need for public healthcare coverage declined at a time of high unemployment and economic downturn, while during the same period, the Food Assistance caseload continued to set records for participation.

It is difficult not to conclude that U.S. citizens are being inappropriately denied or terminated from coverage for which they are otherwise eligible. Further support for this conclusion comes from the Department of Human Services' quality control reviews from the period October 2004 – March 2006. From a sample of 1,752 Michigan cases reviewed, only one citizenship error was found, demonstrating that citizenship has not been a source of significant error in the Michigan Medicaid program. The following graph depicts the Medicaid caseload decline for the populations most impacted by the citizenship documentation requirement for the period April through December 2007.



Graph prepared by the Center for Civil Justice from data provided by the Department of Human Services.

Because of the 2007 caseload declines, the FY2008 Michigan Medicaid budget includes total savings of \$33.4 million attributable to declining Medicaid caseloads following implementation of the citizenship documentation requirement. In addition, there is no funding provided to cover the increased administrative costs for determining Medicaid eligibility, nor is funding provided to assist low-income families secure the required documentation.

**Increased Administrative Costs from New Law**

In addition to denying healthcare coverage to otherwise eligible citizens, this law has resulted

in dramatically increased state and federal administrative costs for the Medicaid program without producing the intended results—likely because there was no documented problem to be solved, as is demonstrated below. Majority staff from the federal Committee on Oversight and Government Reform surveyed several states to obtain data about actual experience. The following table, prepared for the Oversight Committee, demonstrates the high cost of this federal requirement with little or no financial benefit.

<b>Federal Spending and the Number of Undocumented Immigrants Found</b>				
	<b>Additional Federal Spending</b>	<b>Number of Undocumented Immigrants Found</b>	<b>Number of Medicaid Enrollees for 2004</b>	<b>Estimated Federal Savings from Undocumented Immigrants Found</b>
Colorado	\$1,500,000	0	398,500	\$0
Kansas	\$750,000	1	253,600	\$1,816
Louisiana	\$2,000,795	6	816,700	\$8,095
Minnesota	\$650,000	0	545,000	\$0
Washington	\$2,500,000	1	953,100	\$1,138
Wisconsin	\$900,000	0	688,600	\$0
<b>Total</b>	<b>\$8,300,795</b>	<b>8</b>	<b>3,655,500</b>	<b>\$11,048</b>

For the six states, the administrative costs of implementing the documentation requirements far exceeded the savings to the taxpayers. The total regular non-disabled, non-elderly Medicaid enrollment in these six states was 3,655,500 in 2004. The average federal cost of providing care to a non-disabled Medicaid beneficiary under 65 in the six states ranged from \$1,138 to \$1,816 per year. Assuming that the undocumented immigrants who were denied coverage had average Medicaid expenses, the total savings to the federal government from identifying these eight individuals was \$11,048.

Source: Summary of GAO and Staff Findings, Medicaid Citizenship Documentation Requirements Deny Coverage to Citizens and Cost Taxpayers Millions, Committee on Oversight and Government Reform, Rep. Henry A. Waxman, Chairman, July 24, 2007.

The federal administrative spending identified in the above table would have been matched by an equal amount of state funds, for total administrative spending of \$16.6 million to identify **eight** undocumented immigrants.

An editorial published on March 19, 2007, in the New York Times concluded with the following:

*Exaggerated fears that illegal immigrants are fraudulently receiving Medicaid health benefits have led to a crackdown that is preventing tens of thousands of American citizens from obtaining legitimate coverage. Congress, whose mindless actions led to this travesty, needs to fix this injustice. Their conclusion remains true to this day.*