

**Stricter Documentation Requirements for Citizens and Nationals**  
DRA Sec. 6036 and

- A. All Medicaid applications filed on or after July 1, 2006, and redeterminations made after that date must establish that the applicants are U.S. citizens or nationals, or the state will not receive federal matching funds for their Medicaid services.

In an “Interim Final Rule” amending 42 CFR Part 435 and 436, published July 12<sup>th</sup>, 2006,<sup>1</sup> these **new documentation requirements will NOT apply to:**

- i. **MEDICARE beneficiaries (dual eligibles and Medicare Savings Program) and**
- ii. **SSI recipients**

The “interim final regulation” and June 2006 CMS directive are posted at [http://www.cms.hhs.gov/MedicaidEligibility/05\\_ProofofCitizenship.asp](http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp).

The NYS DOH GIS 06-MA-015 on citizenship from June 2006 is [http://www.health.state.ny.us/health\\_care/medicaid/publications/docs/gis/06ma015.pdf](http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/06ma015.pdf)

This outline summarizes the new regulations. It does not list every document listed in the regulations, just the broader categories. For the many specified naturalization documents, documents for people born in the U.S. territories, etc., see the regulations.

B. **PROOF MUST BE EITHER:**

- i. **PROVE IDENTITY AND CITIZENSHIP** with one document

- OR -

- ii. **PROVE IDENTITY and CITIZENSHIP** separately

C. **Primary Evidence of Citizenship AND Identity:**

- i. US passport (does not have to be currently valid to be accepted, as long as it was originally issued without a limitation - if it has a limitation, may be used as proof of identity only, not citizenship).<sup>2</sup> Passports issued before 1980 may have included both spouses and children, and may be used to prove citizenship for all listed.
- ii. Certificate of citizenship (N-560, -561) or naturalization, or other CMS-approved document (listed in regulations).
- iii. A *driver's license* is not acceptable -- unless the state requires proof of citizenship to issue the license, which NYS does not, or if NYS verified that the

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<sup>1</sup> Federal Register: July 12, 2006 (Volume 71, Number 133, pp. 39214-39229) posted at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/06-6033.htm>

<sup>2</sup> 42 CFR 435.407(a)(1)

driver's social security number is valid and assigned to the applicant who is a citizen, which NYS does not. In fact no state requires this proof for a driver's license.

**D. EVIDENCE of Citizenship** -- Need one of the following plus one from (C) - Evidence of Identity.

- i. **Secondary evidence of Citizenship** -- If primary evidence unavailable,
  - a. US Public birth certificate showing birth in a state, DC, and territories after the dates they became US territories. (Dates listed in regulation - if born before those dates, may be a "collectively naturalized citizen"). State has option of cross matching a vital statistics agency to document birth.
    - (1) Document must have been issued before the person was age 5. If it was amended after age 5, it is "fourth level" document.
    - (2) Certification of Report of Birth or Report of Birth Abroad of a US Citizen issued by Dept of State for citizens born outside US,
    - (3) US Citizen ID card issued by INS until the 1980's (I-97 or I-179 or I-197), certain ID cards for Mariana islands, American Indians, final adoption decree showing US birth
    - (4) Evidence of US Civil Service employment before 6/1/76
    - (5) US Military record showing US birth
  - ii. **Third level evidence of Citizenship** - may be used only when primary evidence cannot be obtained within the State's reasonable opportunity period, secondary evidence does not exist, or cannot be obtained, and applicant alleges being born in the US.
    - (1) **Hospital record** extract on hospital letterhead established at the time of birth and created 5 years before the INITIAL application for Medicaid ("Do not accept a 'souvenir' birth certificate"). For children under 16, the document must have been created near the time of birth or 5 years before the date of application.
    - (2) **Life, health, or other insurance record** created at least 5 years before INITIAL Medicaid application date and indicating a US place of birth.
  - b. **Fourth level evidence of Citizenship -- Lowest reliability.** "Should only be used in the rarest of circumstances." When primary evidence is unavailable, both secondary and third level evidence do not exist or cannot be obtained within the state's reasonable opportunity period, and applicant alleges being born in the US.
    - (1) **CENSUS RECORD** - federal or state showing US citizenship or birth. Generally if born before 1950. To secure, complete form BC-600 - Application for search of Census Records for Proof of Age, and add in remarks portion "US Citizenship data requested. Add that purpose is for Medicaid eligibility. FEE REQUIRED.

- (2) The following documents created at least 5 years before Medicaid application if show a US place of birth:
  - (a) Indian tribal census records,
  - (b) US State Vital Statistics official notification of birth registration
  - (c) US public birth certificate amended more than 5 years after birth
  - (d) Statement signed by MD or midwife who was present at birth
- (3) **Institutional admission papers from a nursing home or other institution if shows US place of birth** --does not say it must be from a certain number of years before the Medicaid application - may be contemporaneous.
- (4) Medical record *other than an immunization record* created at least 5 years before the initial application date indicating US birth place. For children under 16, the document must have been created near the time of birth or 5 years before the date of application.
- (5) Written sworn affidavits - Use only in rarest circumstances. Must have TWO affidavits by 2 people other than the applicant with personal knowledge of events establishing citizenship. At least ONE of the 2 people cannot be related to the applicant. Both persons must be able to document their own citizenship and identity. Must also submit a separate affidavit from the applicant or other knowledgeable individual (guardian) explaining why evidence does not exist or cannot be obtained.

#### E. EVIDENCE OF IDENTITY

- i. Drivers license issued by state or territory with picture OR other identifying information - sex, race, height, eye color
- ii. School ID with photo
- iii. US Military card or draft record or military dependent's ID card, US coast guard merchant mariner card
- iv. ID issued by US, state, or local govt with same info included on drivers license
- v. Native American Tribal documents - various (see regulation)
- vi. *NOT* voter's registration or Canadian drivers license
- vii. States May use a cross match with a government data system with agencies that may include law enforcement, public assistance, child support, motor vehicles, corrections -- if that agency certifies true identity.
- viii. CHILDREN UNDER 16 - special rules - may include nursery or day care records. If no other documents available, may use a sworn affidavit by parent or guardian stating date and place of birth. Cannot use affidavit to prove BOTH Citizenship and Identity.

- F. SPECIAL POPULATIONS NEEDING ASSISTANCE - States may assist individuals to secure documentation of citizenship if because of incapacity they would be unable to do so and lacks a representative to assist
- G. RULES ABOUT DOCUMENTS
- i. **ORIGINALS - Must be originals or copies certified by ISSUING AGENCY.** Copies, even if notarized, are not acceptable. 435.406(h).
  - ii. States may permit applicants to submit original documents without appearing in person, by mail or by representative.
  - iii. ONE-TIME documentation - Once citizenship is documented, subsequent changes in eligibility should not require repeating. State should maintain in data base. States must maintain for 3 years after person stops receiving Medicaid.
  - iv. States must conduct computer matches of names and SS numbers to check against fraud. When automated capabilities are available, States will be required to match files for those who use 3<sup>rd</sup> or 4<sup>th</sup> tier documents.
  - v. Reasonable opportunity to present satisfactory evidence -- States must give a reasonable opportunity to submit satisfactory evidence of citizenship before taking action affecting eligibility for Medicaid. States must give the same time to submit documentation of citizenship as for other eligibility requirements.
- H. Federal Financial Participation (FFP) - FFP will not be given for individuals unless satisfactory documentation is obtained, unless person has Medicare or SSI. § 435.1008.
- I. LITIGATION -- *Bell v. Leavitt* (N. D. Ill.) a class action lawsuit was filed in federal court on Chicago on June 18, 2006. Just when the preliminary injunction motions were about to be argued, CMS issued the interim regulations described above, which made some improvements on the guidance issued earlier, in June 2006. For example, the exemption of Medicare and SSI recipients from the requirements was new. However, key problems continue with the implementation:
- i. CMS continues to treat the provision of documentation as an eligibility requirement, even though the statute provides otherwise. As a result, CMS says that states are still forbidden to provide Medicaid to applicants until they have provided all the required documentation.
  - ii. The regulations do not exempt children receiving foster care services under Title IV-E of the SSA, even though the statute by its terms does not apply to this group.
  - iii. CMS is still requiring a hierarchy of documentation, and the regulations remain unclear about exactly how, or how rigidly, that hierarchy should be observed.
  - iv. Though the preamble to the regulations says that individuals who are already eligible and who show "a good faith effort" to present satisfactory evidence will remain eligible as long as they continuously show this effort, this is not so clear in the regulations themselves.)

- v. The regulations say nothing about ongoing outreach to affected individuals, continuing CMS' approach of all but ignoring this statutory mandate. In the June 9, 2006 Guidance, CMS sought to "meet" its obligation here by foisting responsibility for it off on the states.
- vi. This provision will particularly affect elderly people born in the South and elsewhere, in poor communities and small towns or rural places where official birth documents were not always issued or maintained. The Center for Budget & Policy Priorities wrote an excellent report on the effects of this new requirement. *Survey Indicates Deficit Reduction Act Jeopardizes Medicaid Coverage for 3 to 5 Million U.S. Citizens*, Feb. 17, 2006 <http://www.cbpp.org/1-26-06health.htm>
- J. It is possible that just as NYS was forced, through litigation, to provide state-funded Medicaid for certain immigrants who would not be covered under federal law alone, NYS may be forced to provide state-funded Medicaid for residents who lack this documentation. See information posted at <http://www.empirejustice.org/MasterFile/IssueAreas/ImmigRights/AccessMed.htm>.

Valerie J. Bogart, Director  
Evelyn Frank Legal Resources Program  
Selfhelp Community Services, Inc.  
520 Eighth Avenue, 5th fl.  
New York, NY 10018  
tel 212.971.7693  
fax 212.947.8737  
vbogart@selfhelp.net

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