



August 7, 2006

Centers for Medicare and Medicaid Services  
U. S. Department of Health and Human Services  
Att: CMS-2257-IFC  
Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Re: CMS-2257-IFC  
Interim Final Rule on Medicaid Program: Citizenship Documentation Requirements  
RIN 0938-A051  
71 Fed. Reg. 39214, et seq. (July 12, 2006).

Dear Sir/Madam:

The National Association of Community Health Centers (“NACHC”) is submitting these comments regarding CMS’s interim final rule implementing the Medicaid Citizenship Documentation requirements of section 6036 of the Deficit Reduction Act of 2005 (“DRA”) (Pub. L.109-171). NACHC is a membership organization representing Federally Qualified Health Centers (FQHCs) nationally. At present, more than 1,000 FQHCs with more than 5,000 sites serve approximately 15 million patients across the country, the vast majority of whom are impoverished individuals living in medically underserved areas. More than 5.5 million of these FQHC patients are Medicaid recipients.

Beyond the serious impact that these new rules will have on the nearly 60 million Americans who rely on Medicaid today as their only affordable source of health coverage, the rules will have a significant effect on the availability of care for other Americans as well. The loss or denial of Medicaid benefits for individuals who are clearly eligible, but are unable to verify (or to timely verify) their U.S. citizenship, will have a serious adverse impact on the ability of FQHCs to serve their overwhelmingly low-income patients. FQHCs – due both to their mission and to the conditions of the grants they receive under Section 330 of the Public Health Service Act – must make their care available to everyone in their service areas regardless of ability to pay. Thus, FQHCs are obligated to continue to provide primary and preventive care services to their **current** patients who may lose Medicaid coverage because they cannot document that they are citizens. They are also obligated to serve any **new** patients who may lose Medicaid coverage, due to their inability to document their citizenship, and who seek

care from them because they can no longer afford to receive care from their current non-FQHC providers. Caring for these individuals will further strain the ability of FQHCs to meet the needs of their local communities, forcing them to use the federal PHS Act grants that the Congress has provided to support care to the increasing number of uninsured persons who are not categorically eligible for Medicaid to instead serve those individuals.

NACHC clearly recognizes that CMS is obligated to implement the citizenship documentation requirements mandated in Section 6036 of the DRA. **The general thrust of our comments, however, is that CMS should permit as much flexibility as can reasonably be allowed under the statute, and should take the most pragmatic approach possible, to assure that the millions of current recipients and new applicants impacted by this law have the broadest opportunity to meet the requirements of the statute without losing or being denied coverage as they endeavor to do so.** We see CMS's conclusion that Medicare and SSI recipients need not present additional citizenship documentation as an excellent example of such an approach. Similarly, CMS's decision to permit vital records matching in order to secure proof of citizenship, as well as the agency's clarification regarding the extent to which state Medicaid agencies can consult with other public agencies in order to secure evidence of citizenship and identity, meets that standard and thus earns our strong support. On the other hand, there are several aspects of the rule where we believe CMS's approach falls short of that mark and should be reconsidered.

### **Foster Care Children**

The interim rules do not exempt children in foster care from the citizenship documentation requirements, including those who receive federal foster care payments under Title IV-E. However, state child welfare agencies must verify the citizenship of foster care children when determining their eligibility and those found eligible for that program are automatically eligible for Medicaid. Other children may be found eligible for Medicaid through other coverage categories. Nonetheless, the preamble to the rule states that these children must have a declaration of citizenship in their Medicaid file as well as documentary evidence of such citizenship 71 Fed. Reg. at 39216. This policy – which appears to be wholly at odds with the decision exempting Medicare and SSI beneficiaries from these rules – would require unnecessary duplication of state agency efforts and put children at risk of delayed, or even denied, Medicaid coverage. Finally, it is our understanding that CMS staff has indicated that Title-IV foster care children **will be** treated as Medicaid recipients for purposes of the citizenship requirements. The finalized version of the rule, therefore, should clearly exempt foster care children from the documentation requirement

### **Medical Records of Birth**

Under current law, children born in the United States are U. S. citizens, including those born to undocumented pregnant women (for whom Medicaid is available only for coverage of the labor and delivery of the child.). CMS' interim regulations do not permit a State to consider a record of Medicaid or other insurance payment for the birth of the

child in a U.S. hospital as acceptable documentation of the child's citizenship. We believe such an approach is totally illogical. If Medicaid has covered a child's birth in a hospital in the United States, the records of such payment serve as clear and incontrovertible evidence that the child is a U. S. citizen. We urge CMS to permit such records of payment by Medicaid (or any other insurance payment for birth in a U.S. hospital) as sufficient proof of U.S. citizenship.

### **Acceptable Documents to Establish Identity**

The interim final rule accepts in part the recommendation that NACHC suggested in its May 12, 2006 letter to Dr. McClellan, on the need to expand the kinds of documents that would be sufficient to establish identity for Medicaid. The new 42 CFR 435.407(e) provides that identity can be established by various documents, including a school identification card with a photograph, a U.S. military card or draft record, a military dependent's identification card, or a Native American Tribal document (regarding this last example, new 42 CFR 407(e)(6) should be amended in the final rule to clarify that this includes tribal enrollment cards.) We renew our recommendation that in the final rule other documents – such as a voter registration card, school records or report cards, or a clinical doctor or hospital record – should be accepted as sufficient to establish identity.

### **Submission of Original Documents**

While the interim final rule encourages states to use existing state and federal data bases, we regret that the new 42 CFR 435.407(h)(1) requires applicants to submit **original or certified documents**, rather than copies or notarized copies. The DRA does **not** require the provision of original or certified documents exclusively, nor should the final rule contain this burdensome requirement.

### **Documentation Dates**

In several parts of its rule – specifically 42 CFR 435.407 (c) and (d) and 436.407 (c) and (d) – CMS requires that, in order for certain documents to qualify as evidence of citizenship, they must have been created at least five years before the initial Medicaid application date. **Notably, clinic records are listed as one of those documents that must meet the five year rule.** NACHC believes that this five year requirement undercuts the effectiveness of such a rule and will certainly limit the ability of FQHCs and other healthcare providers to assist their patients in documenting their citizenship through such medical records. Such a five year requirement is not provided for in the statute and appears to be an arbitrary standard that will establish an unnecessary obstacle for health center patients and other individuals to surmount in order to qualify for Medicaid services.

### **Reasonable Opportunity for New Applicants**

We are pleased that the final interim rule gives current Medicaid beneficiaries a reasonable opportunity to provide the necessary documents when they renew their Medicaid status, including provisions for continued Medicaid coverage while a current Medicaid beneficiary appeals an adverse eligibility decision. States should be provided broad discretion to allow **current recipients** the necessary time to collect their proof of citizenship. We also recommend that the final rule require states to enroll **new applicants** who otherwise meet Medicaid eligibility requirements while they, too, are given a reasonable opportunity to document their self-attestation that they are citizens. In the preamble to the interim final rule, CMS estimates that the prior self-attestation system for citizens led to less than \$120 million a year in potential Medicaid fraud, or less the 0.0005% (1/50<sup>th</sup> of 1 percent) in total Medicaid spending 71 Fed. Reg. 39221. Thus, the new documentation system, even if it works perfectly in preventing Medicaid fraud by beneficiaries, will save less than \$120 million annually, whereas the cost of compliance with such requirements may very well exceed the potential savings. Rather than deny citizens the Medicaid care to which they are entitled, CMS should amend new 42 CFR 435.407(j) to permit new applicants to enroll in Medicaid while also being given a reasonable opportunity to provide the necessary documentation in support of their self-attestation.

### **Populations Requiring Special Assistance**

We also strongly recommend that the final rule contain more detail as to the populations that will require special assistance and the minimal steps the states must take to assist them. For example, while the preamble to the rule indicates that assistance in securing necessary documents should be provided to homeless persons, the rule itself – at 42 CFR 435.407(g) and 436.407(g) – does not mention the homeless. **FQHCs throughout the country serve nearly 680,000 homeless patients**, and can attest to the fact that it will be very difficult for these individuals, with no fixed address, little or no income, and often in very poor health, to secure necessary documentation of citizenship.

We also believe that it is critical that CMS recognize in its rule and policy that when people have been displaced by natural or man-made disasters, it will be particularly difficult for them to produce citizenship documentation. Recently, FQHCs across the country provided health care for at least 70,000 victims of Hurricanes Katrina and Rita. They can attest to the fact that these patients, in most cases, arrived with only “the shirts on their backs,” and that whatever documents they might have possessed or had access to prior to the storms had been destroyed. Indeed, in a number of cases, the FQHCs themselves have suffered great damage from the hurricanes, and have lost patients’ medical records as a result. It seems obvious that any rules regarding citizenship documentation must factor in and make provision for victims of natural or man-made disasters. While FQHCs will of course serve these patients, they – and other providers who respond to such emergencies – should be able to receive Medicaid reimbursement for those who are able to qualify for Medicaid except for their ability to document that they are citizens.

## **FQHC Participation in Outreach Efforts**

CMS maintains that it “has launched an outreach program to educate states and interested groups about the new requirement” (July 6, 2006 Medicaid Fact Sheet at 5). We, of course, applaud such an effort and **request that CMS strongly recommend to the states that they enter into arrangements with health centers so that centers can assist in expediting the citizenship documentation process on site.** Since 1991, federal Medicaid law has required that states outstation Medicaid eligibility workers at FQHCs, and CMS rules have recognized that states can receive Medicaid administrative matching funds for the costs they incur in reimbursing FQHCs when FQHC staff carry out such outstationing activities in place of, and per agreement with, the state Medicaid agency (42 USC 1396a(a)(55) and 42 CFR 435.904). Coordinated efforts between state Medicaid agencies and FQHCs in assisting individuals to document their citizenship are a natural extension of the statutory outstationing mandate. In this context, we believe that the final rule should clarify that assistance in the collection of citizenship documents is part of the initial processing requirements that must be in place at all Medicaid outstationing locations; the rule should also clarify the circumstances under which FFP not only can be available but in fact must be available.

## **A State Should Be Required to Accept the Determination of another State that a Medicaid Applicant Is a Citizen**

New section 435.407(h)(5) provides that “Presentation of documentary evidence of citizenship is a one time activity.” However, the interim final regulation and its preamble fail to acknowledge that Medicaid beneficiaries, like other citizens, move among the states. A person who has provided adequate citizenship and identity documentation to one state should not be required to provide similar documentation to another state. Thus, new section 435.407(h)(5) should be amended to provide that any state should be expected, even required, to accept the determination by another state (unless it can show that fraud was committed relating to the determination in the first state).

## **The Final Rule Should Be Revised to Reflect the Policy Regarding Presumptive Eligibility Articulated in the Preamble to the Interim Final Rule.**

The preamble to the interim final rule provides that –

“Individuals who receive Medicaid because of a determination by a qualified provider, or entity, under sections 1920 [pregnant women], 1920A [children], or 1920B [certain breast cancer or cervical cancer patients] of the [Social Security] Act are not subject to the documentation requirements until they file an application [for Medicaid] and declare on the application that they are citizens or nationals. These individuals receive Medicaid during the ‘presumptive’ period notwithstanding any other provision of title XIX [of the Social Security Act]...”  
71 Fed. Reg. 39216.

This very important and positive policy on presumptive Medicaid eligibility for these three groups is not included in the actual interim final regulations. The final regulations should correct this important oversight and include that policy in rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Hawkins". The signature is written in a cursive style with a large initial "D" and "H".

Daniel R. Hawkins, Jr.  
Vce President for Federal, State, and Public Affairs