

CITIZENSHIP DOCUMENTATION INTERIM FINAL RULE

Significant Changes

On July 6, 2006, the Centers for Medicare and Medicaid Services (CMS) at the Department of Health and Human Services (HHS) issued an interim final rule to implement the new Medicaid citizenship documentation requirements included in Section 6036 of the Deficit Reduction Act (DRA).

The regulation is different than the June 9th Guidance released by CMS in some significant ways and is quite similar in others. Moreover, many questions with regard to implementation of the law remain unanswered.

This list serves as a preliminary guide to help us evaluate the positive elements of the Interim Final Rule. Discussions regarding issues that continue to require attention and clarification by federal Administrators and Congress, as well as information about state implementation and monitoring, will be provided in separate documents.

Areas of Significant Change and Clarification

The Interim Final Rule made some significant, positive changes to the June 9th guidance. They include the following:

- **SSI and Dual Eligibles are exempt from the citizenship documentation requirement.**
 - Individuals enrolled in both Medicare and Medicaid or those eligible for Medicaid by virtue of receiving SSI are not subject to the new law. (The reference to these individuals as “aliens” in the DRA has been attributed to a “scrivener’s error” allowing HHS to exempt them.) There are still some disabled individuals who will be subject to the requirements. (This issue is discussed later in this document).

- **States that do not directly link Medicaid with SSI eligibility can use the SDX (SSA database) system to cross match for the purposes of the documentation requirement.**
 - **Eleven states (CT, HI, IL, IN, MN, MO, NH, ND, OH, OK, and VA) do not directly link SSI and Medicaid eligibility.** The rule allows states the option to use the SSI database (SDX system) to cross-match to establish both citizenship and identity documentation for SSI recipients. If states do take up this option, this new requirement should be undetectable to the beneficiary.
 - *This may be an opportunity for affiliates in these states to work with State Administrators to “re-link” the two programs to ease potential*

administrative burdens caused by this new rule and to make sure that these states all plan to use the SDX system.

- **For All Other Populations, states can do cross matches to establish citizenship and identity through state Bureaus of Vital Statistics and other agencies.**
 - The Rule clearly give states the ability to use matches with vital statistics agencies in place of a birth certificate and notes that this is a one-time activity.
 - The Rule also give states the option (p.65) to use a cross match with a “...Federal or state governmental, public assistance, law enforcement or corrections agency’s data system to establish identity if the agency establishes and certifies true identity of the individual.”
 - *This provides an opportunity for affiliates to encourage states to immediately take up this option. It may require certain states to build new IT capabilities into their current systems.*

- **Presumptive Eligibility Affirmed**
 - States that have taken up the option to provide presumptive eligibility for children, pregnant women and women with breast and cervical cancer may continue to do so (pages 13-14). These states may provide benefits to these individuals during the presumptive eligibility period regardless of whether they have submitted satisfactory documentation of citizenship. (These women and children will have to submit documentation to establish their Medicaid eligibility if they want to continue receiving benefits when the presumptive eligibility period ends.)
 - *This clarification of presumptive eligibility provides an excellent opportunity for state affiliates located in states that have not taken up this option to consider doing so.*

- **Special Assistance for Certain Populations**
 - On page 66, the Rule makes an important distinction from the June 9th guidance in that it states that states **must** assist those who are mentally or physically incapacitated and who lack a representative to assist them. The Guidance noted that states **should** assist such individuals. Page 31 of the preamble gives a list of examples of who these individuals might be.