



## CRS Report for Congress

# Medicaid Citizenship Documentation

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### Summary

Due to recent changes in federal Medicaid law, individuals who declare that they are citizens must present documentation that (1) proves citizenship and (2) documents personal identity. This Medicaid citizenship documentation requirement was included in the Deficit Reduction Act of 2005 (P.L. 109-171) and modified by the Tax Relief and Health Care Act of 2006 (P.L. 109-432). This report discusses issues related to the documentation requirement that have received considerable media and interest group attention, as well as proposed legislation (including H.R. 210, H.R. 1238, H.R. 1328, H.R. 1535, S. 751, S. 895, and S. 909 in the 110<sup>th</sup> Congress) that would modify or repeal the requirement. It will be updated periodically to reflect significant legislative or other activity.

### Overview of Citizenship Requirements for Medicaid

To be eligible for the full range of benefits offered under Medicaid, an individual must be a citizen or national<sup>1</sup> of the United States or a qualified alien.<sup>2</sup> Nonqualified aliens can only receive limited emergency Medicaid benefits (all discussion in this report will refer to full Medicaid, unless otherwise noted).<sup>3</sup> Regardless of citizenship status, individuals must meet all other eligibility requirements to qualify for the program.

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<sup>1</sup> Throughout this report, references to citizens also include nationals.

<sup>2</sup> The term qualified alien was created by P.L. 104-193. Examples include legal permanent residents (LPRs), refugees, and asylees. LPRs entering after August 22, 1996, are barred from receiving full Medicaid benefits for five years, after which coverage becomes a state option.

<sup>3</sup> Examples of nonqualified aliens include those who are unauthorized or illegally present and nonimmigrants who are admitted for a temporary purpose. See CRS Report RL31630, *Federal Funding for Unauthorized Aliens' Emergency Medical Expenses*, by Alison Siskin, and CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

Since 1986, states have been required to obtain a written declaration, under penalty of perjury, stating whether individuals applying for full Medicaid benefits are U.S. citizens or nationals. Individuals who declare that they *are not* citizens have also been required since 1986 to present documentation that indicates a “satisfactory immigration status.” States must verify this documentation with the U.S. Citizenship and Immigration Services Bureau of the Department of Homeland Security.

Due to recent changes in federal law, individuals who declare that they *are* citizens must present documentation that (1) proves citizenship and (2) documents personal identity in order for states to receive federal Medicaid reimbursement for services provided them. This citizenship documentation requirement was included in the Deficit Reduction Act of 2005 (DRA, P.L. 109-171) and modified by the Tax Relief and Health Care Act of 2006 (TRHCA, P.L. 109-432). It applies to Medicaid eligibility determinations and redeterminations made on or after July 1, 2006, and is a one-time activity (once a person presents documentation, the state must retain the information for future use). The law specifies documents that are acceptable for this purpose and exempts certain groups from the requirement, including people who receive Medicare benefits, Social Security benefits on the basis of a disability, Supplemental Security Income (SSI) benefits, child welfare assistance under Title IV-B of the Social Security Act, or adoption or foster care assistance under Title IV-E of the Social Security Act. Before the DRA, states could accept self-declaration of citizenship for Medicaid, although some chose to require additional supporting evidence.<sup>4</sup>

The citizenship documentation requirement does not apply to the State Children’s Health Insurance Program (SCHIP). However, states that opt to cover SCHIP enrollees under Medicaid may use the same eligibility form for all applicants. As a result, it is possible that some SCHIP enrollees would be asked to present evidence of citizenship.

## Citizenship Documentation Issues

Proponents of the new citizenship documentation requirement say that it will deter unauthorized aliens and other ineligible noncitizens from obtaining full Medicaid benefits by falsely claiming to be citizens; that it levels the playing field by holding citizens to the same documentation standards as noncitizens; and that the burden on individuals should be minimal because similar documentation is required in other settings (such as obtaining a driver’s license). Opponents say there is little evidence that noncitizen fraud has been a problem; that many eligible individuals will experience delayed or denied enrollment because they do not have the necessary documents on hand; and that the requirement is burdensome for states. Since enactment of the DRA and the publication of an interim final rule in July 2006,<sup>5</sup> a number of issues related to the requirement have received considerable media and interest group attention. Some of the most prominent issues are discussed below.

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<sup>4</sup> Department of Health and Human Services, Office of Inspector General, *Self-Declaration of U.S. Citizenship for Medicaid*, OEI-02-03-00190, July 2005.

<sup>5</sup> See *Federal Register* 71, no. 133, July 12, 2006 and [[http://www.cms.hhs.gov/MedicaidEligibility/05\\_ProofofCitizenship.asp](http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp)].

**Newborns.** Under a provision of federal law that predates the citizenship documentation requirement, a child born to a woman eligible for and receiving Medicaid on the date of the child's birth is automatically deemed eligible for Medicaid for one year, so long as the child is a member of the mother's household and the mother remains (or would remain if pregnant) eligible for Medicaid.<sup>6</sup> At the end of the year, the child's eligibility must be redetermined. As a result of the new citizenship documentation requirement, which does not provide an exception for newborns, the child's citizenship also must be documented as part of the redetermination.

In the past, at least 20 states chose to deem eligibility for children — who are U.S. citizens by virtue of their birth in the United States<sup>7</sup> — born to noncitizen women on emergency Medicaid (as they did for children born to women receiving full Medicaid benefits).<sup>8</sup> However, in the preamble to the interim final rule on citizenship documentation issued last year, CMS stated that children born to women on emergency Medicaid should *not* be deemed eligible because the mother would not remain eligible for Medicaid if pregnant; therefore a Medicaid application must be filed for the newborn (who is likely to qualify for coverage through a poverty-related eligibility pathway), and the child's U.S. citizenship must be documented. CMS changed its position in a press release dated March 20, 2007, stating that it would modify this policy in an interim final rule to be issued shortly, and that “[a]ny newborn whose mother files an application and is determined eligible for emergency Medicaid ... could be deemed eligible for the first year of life.”<sup>9</sup> As with other deemed eligible newborns, citizenship documentation would be required when the child's eligibility is redetermined at the end of the year.

A number of groups had expressed concern that the previous CMS interpretation of the deemed eligibility statute could impede access to care for newborns by delaying their Medicaid enrollment and increasing the chances that a health care provider would refuse to see them because they lack insurance coverage. To bridge the coverage gap between Medicaid application and approval, states can opt to use presumptive eligibility (an option in federal statute that allows certain individuals to receive temporary coverage while their application is processed). However, states must do so for all children under age 19, making it potentially unattractive to those that would prefer to target a specific age group such as newborns. Under another provision of federal law, states must provide retroactive coverage for individuals who would have been eligible in the three months prior to their

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<sup>6</sup> Section 1902(e)(4) of the Social Security Act. CMS notes in its State Medicaid Manual that an infant's deemed eligibility is never affected by changes in income, because even if the infant's mother loses eligibility during the one-year period following birth, she would remain eligible if pregnant (states are required to continue Medicaid coverage through pregnancy and a postpartum period for pregnant women who would otherwise lose eligibility due to a change in income).

<sup>7</sup> CRS Report RL33079, *U.S. Citizenship of Persons Born in the United States to Alien Parents*, by Margaret Mikyung Lee.

<sup>8</sup> National Health Law Program, *State Responses to the CMS Policy Change on Medicaid Coverage for Newborns*, September 2006.

<sup>9</sup> CMS, “All Low-Income Newborns to Receive Equal Access to Medicaid,” Mar. 20, 2007, available at [[http://www.cms.hhs.gov/apps/media/press\\_releases.asp](http://www.cms.hhs.gov/apps/media/press_releases.asp)].

application for Medicaid.<sup>10</sup> This allows health care providers to receive reimbursement — albeit on a delayed schedule — for services provided before a Medicaid application is approved.

Although deemed eligibility may no longer be an issue, some still assert that a child whose birth occurs in a U.S. hospital and is paid for by the Medicaid program should be entirely exempt from the citizenship documentation requirement. For these children, the argument is that a state's own Medicaid records should be evidence enough to prove that they are U.S. citizens.

**Reasonable Opportunity.** Citizens and noncitizens appear to face disparate treatment when it comes to the availability of Medicaid benefits before evidence of citizenship or immigration status has been presented. Although the interim final rule on citizenship documentation requires states to provide citizens with a reasonable opportunity to present evidence before taking action on their Medicaid eligibility, language in the preamble to the rule states that citizen applicants should not be made eligible until they have presented the required citizenship documentation.

Federal law also requires states to provide noncitizens with a reasonable opportunity to present evidence. However, unlike the interim final rule on documentation for citizens, states may *not* delay, deny, reduce, or terminate Medicaid benefits for a noncitizen on the basis of immigration status until the reasonable opportunity has been provided.<sup>11</sup>

**Acceptable Documents.** Some have applauded the interim final rule for expanding on the list of acceptable documents provided in the DRA and allowing states to obtain documentation through electronic data matching. Others have argued for an even broader list of acceptable documents, and expressed concern that the interim final rule imposes restrictions not required by the DRA. For example, the rule requires all documents to be originals or copies certified by the issuing agency. Although many states have simplified their eligibility processes by allowing Medicaid applications and renewals by mail, some argue that individuals may view a visit to a Medicaid office as their only option when the alternatives include sending original documents — such as passports, birth certificates, and driver's licenses — through the mail with no guaranteed return, or paying to obtain certified copies instead.

**State Implementation.** Although the citizenship documentation requirement took effect on July 1, 2006, some states briefly delayed implementation, citing reasons such as the need to train eligibility staff and adequately notify Medicaid recipients. California had not yet implemented the requirement as of February 2007, but expected to send detailed guidelines to staff within weeks.<sup>12</sup> Despite the possibility that federal Medicaid funds could be withheld from states for periods when they were not in compliance with the law, a CMS spokeswoman has said it is unclear whether there is “zeal” to do so.<sup>13</sup>

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<sup>10</sup> Section 1902(a)(34) of the Social Security Act.

<sup>11</sup> Section 1137(d)(4) of the Social Security Act.

<sup>12</sup> Clea Benson, “Medi-Cal ID Rules Readied,” *The Sacramento Bee*, Feb. 25, 2007.

<sup>13</sup> *Ibid.*

Although comprehensive information is not currently available, a number of states have reportedly experienced declines in Medicaid enrollment since the citizenship documentation requirement was implemented.<sup>14</sup> Among six states detailed in a recent report,<sup>15</sup> Wisconsin is the only one whose data tracking system is set up to identify denials and terminations due to a lack of citizenship documentation. It reports that about 14,000 people had their Medicaid eligibility denied or terminated for this reason between August and December of 2006. Circumstantial evidence is cited for the other five states to support the assertion that enrollment drops are due to the citizenship documentation requirement, rather than broader economic trends or changes in the employment of low-income families. For example, caseloads for food stamps (a means-tested program whose enrollment levels are sensitive to economic conditions) have reportedly risen in these states, rather than fallen.

Even if most or all of the reported Medicaid enrollment declines are due to the citizenship documentation requirement, a key question is whether the people who are being denied or terminated are U.S. citizens, rather than unauthorized aliens or other ineligible noncitizens. In Wisconsin, the report cited above found that about 70% of people who were denied or terminated in the months following implementation had proof of citizenship (assisted by electronic data matching with the state's vital records agency), but lacked an identity document. Medicaid officials in a number of other states have indicated they believe that most of the people who account for recent enrollment declines are U.S. citizens.

In addition, at least six states are projecting an increase in Medicaid administrative costs due to the citizenship documentation requirement.<sup>16</sup> States will be reimbursed for these costs using the 50% federal matching rate that applies to most Medicaid administrative functions. Since existing Medicaid enrollees must present citizenship documentation at their next eligibility redetermination, administrative costs should peak in the year following implementation of the requirement (eligibility redeterminations occur at least once a year for most Medicaid enrollees). Administrative costs in later years should be lower, reflecting the ongoing expense of documenting applicants who are new to the program.<sup>17</sup>

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<sup>14</sup> For example, see Robert Pear, "Lacking Papers, Citizens Are Cut From Medicaid," *The New York Times*, Mar. 12, 2007.

<sup>15</sup> Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement Is Taking a Toll*, Center on Budget and Policy Priorities, Feb. 2, 2007.

<sup>16</sup> *Ibid.*

<sup>17</sup> In its cost estimate for the DRA, the Congressional Budget Office estimated that the citizenship documentation requirement would result in 35,000 fewer enrollees (mostly illegal immigrants) and reduce federal Medicaid spending by \$735 million over 10 years. It is unclear whether the estimate accounted for a potential increase in Medicaid administrative costs.

## Legislative and Other Activity

In the 110<sup>th</sup> Congress,<sup>18</sup> a number of bills that would affect the Medicaid citizenship documentation requirement have been introduced:

- H.R. 210 would exempt all children born to women on Medicaid (including emergency Medicaid) from the citizenship documentation requirement during their first year of life.
- H.R. 1238 would have the effect of permanently exempting all children born to women on Medicaid (including emergency Medicaid) from the citizenship documentation requirement by allowing a state's own Medicaid records to serve as proof of citizenship in cases where a child's birth is paid for by the program.
- H.R. 1328 would require additional documentation options for federally recognized Indian tribes.
- S. 751 would require deemed eligibility and separate identification numbers for children born to noncitizen mothers on emergency Medicaid.<sup>19</sup> It would also permanently exempt all children who are deemed eligible for an automatic year of coverage from the citizenship documentation requirement and allow states to provide retroactive eligibility for newborns who were previously denied.
- H.R. 1535, S. 895, and S. 909 would make Medicaid citizenship documentation a state option. They would require states to use criteria that are no more stringent than those used by the Social Security Administration, require additional documentation options for federally recognized Indian tribes, and specify the reasonable opportunity period for individuals who are required to present documentation. They would also permanently exempt all children who are deemed eligible for an automatic year of coverage from the citizenship documentation requirement, and allow states to provide retroactive eligibility for newborns who were previously denied.

In the absence of legislation, it is possible that some citizenship documentation issues will be addressed through administrative or legal action. As described earlier, CMS has announced it will act administratively to achieve a goal similar to that of H.R. 210. Prior to this announcement, the state of Washington had filed a lawsuit in an attempt to block implementation of the citizenship documentation requirement for children born to noncitizen mothers on emergency Medicaid, and to allow these children an automatic year of coverage.<sup>20</sup> Although H.R. 1238, H.R. 1535, S. 751, S. 895, and S. 909 also contain provisions intended to clarify that deemed eligibility applies to children born to noncitizen women on emergency Medicaid, they would go beyond the anticipated CMS action by permanently exempting all deemed eligible newborns from the citizenship documentation requirement.

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<sup>18</sup> In the 109<sup>th</sup> Congress, three bills were introduced to repeal or delay implementation of the Medicaid citizenship documentation requirement (S. 2305, S. 3590, and H.R. 5023). Two other bills (S. 3524 and S. 4122) would have required additional documentation options for federally recognized Indian tribes.

<sup>19</sup> Under current law, services provided to newborns who are deemed eligible for a year of coverage may be billed under their mother's identification number.

<sup>20</sup> David Ammons, "State Sues Feds Over Health Care for Infants of Immigrants," *The Seattle Times*, Mar. 6, 2007 and [[http://www.governor.wa.gov/news/2007-03-02\\_complaint.pdf](http://www.governor.wa.gov/news/2007-03-02_complaint.pdf)].