



## CRS Report for Congress

# Medicaid Citizenship Documentation

April Grady  
Analyst in Health Care Financing  
Domestic Social Policy Division

### Summary

Due to recent changes in federal law, individuals who declare that they are citizens for Medicaid eligibility purposes must present documentation that proves citizenship and documents personal identity. This report discusses issues related to Medicaid citizenship documentation that have received considerable media and interest group attention, as well as proposed legislation (including H.R. 210, H.R. 1238, H.R. 1328, S. 1200, S. 2532, S. 751, S. 909, H.R. 1535, S. 895, H.R. 1878, H.R. 2055, S. 1224, S. 1364, S. 1893/H.R. 976, H.R. 3269, H.R. 3963, H.R. 3162, H.R. 3176, S. 2193, H.R. 3888, and H.R. 4144 in the 110<sup>th</sup> Congress) that would affect the requirement. It will be updated 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.

Since the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603), 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 IRCA to

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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 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.

present supporting documentation that indicates a “satisfactory immigration status.” Due to recent changes in federal law, individuals who declare that they *are* citizens also must present documentation that proves citizenship and documents personal identity. This Medicaid 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. 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 benefits, or child welfare, adoption, or foster care assistance under Title IV-B or Title IV-E of the Social Security Act. Before 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, some states use the same enrollment procedures for all Medicaid and SCHIP applicants. As a result, some SCHIP enrollees might be required 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 the enactment of DRA, as well as the publication of interim and final rules,<sup>5</sup> the requirement has received considerable media and interest group attention. Some of the most prominent issues are discussed below.

**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 must be documented as part of the redetermination.

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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 72 *Federal Register* 38662, July 13, 2007 and [[http://www.cms.hhs.gov/MedicaidEligibility/05\\_ProofofCitizenship.asp](http://www.cms.hhs.gov/MedicaidEligibility/05_ProofofCitizenship.asp)].

<sup>6</sup> Section 1902(e)(4) of the Social Security Act.

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 its July 2006 interim final rule on citizenship documentation, the Centers for Medicare and Medicaid Services (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 March 2007 press release and in its July 2007 final rule, which states that deemed eligibility applies to all qualified children born to women receiving Medicaid, including emergency Medicaid. As with other deemed eligible newborns, citizenship documentation is still 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 application for Medicaid.<sup>9</sup> This allows health care providers to be reimbursed, 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 Medicaid should be entirely exempt from the citizenship documentation requirement. For these children, the argument is that a state's own Medicaid records are 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. As with the interim final rule, the final rule on citizenship documentation requires states to provide citizens with a reasonable opportunity to present evidence before taking action on their Medicaid eligibility, but specifies 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 rule on documentation for citizens, states may *not* delay, deny, reduce, or terminate

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

Medicaid benefits for a noncitizen on the basis of immigration status until the reasonable opportunity has been provided.<sup>10</sup>

**Acceptable Documents.** Some have applauded CMS for expanding on the list of acceptable documents provided in DRA and allowing states to obtain documentation through electronic data matching. Others have argued for an even broader list, and expressed concern that restrictions not required by DRA have been imposed. For example, the final rule requires all documents to be originals or copies certified by the issuing agency. Although many states have simplified their eligibility processes by allowing 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 delayed implementation, citing reasons such as the need to train eligibility staff and adequately notify beneficiaries (for example, California implemented the requirement in June 2007). 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>11</sup>

Based on a recent survey by the Government Accountability Office (GAO), 22 of 44 states report declines in enrollment due to the new citizenship documentation requirement.<sup>12</sup> Based on another survey by the Kaiser Commission on Medicaid and the Uninsured, 13 states report a significant negative impact on enrollment and another 24 states report a modest impact.<sup>13</sup> Among seven states detailed in an earlier report from the Center on Budget and Policy Priorities,<sup>14</sup> only Wisconsin has a data system that can identify denials and terminations due to a lack of citizenship documentation, and it reports that about 19,000 people had their Medicaid eligibility denied or terminated for this reason between July 31, 2006, and March 1, 2007.

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<sup>10</sup> Section 1137(d)(4) of the Social Security Act. It is unclear how states may be implementing this requirement in practice. For example, Delaware indicates that it will provide a 30-day period of eligibility when a noncitizen meets all other eligibility requirements aside from documentation. In contrast, Hawaii indicates that it will only grant eligibility to an alien that has not submitted documentation if the state fails to provide a reasonable opportunity or if the 10-day reasonable opportunity period goes beyond the 45th day following the date of application. (Policies were obtained from a database compiled by CCH, a proprietary information service.)

<sup>11</sup> See Clea Benson, “Medi-Cal ID Rules Readied,” *The Sacramento Bee*, February 25, 2007.

<sup>12</sup> GAO, *States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, GAO-07-889, June 2007.

<sup>13</sup> Vernon Smith et al., *As Tough Times Wane, States Act to Improve Medicaid Coverage and Quality: Results from a 50-State Medicaid Budget Survey for State Fiscal Years 2007 and 2008*, Kaiser Commission on Medicaid and the Uninsured, October 2007.

<sup>14</sup> Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement Is Taking a Toll*, Center on Budget and Policy Priorities, revised March 13, 2007.

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, terminated, or deterred from applying are U.S. citizens, rather than unauthorized aliens or other ineligible noncitizens. Of the 22 states reporting enrollment declines to GAO, a majority (16 states) attribute them to Medicaid coverage delays or losses for people who appear to be U.S. citizens. The extent to which the citizenship requirement is deterring ineligible noncitizens from applying for Medicaid is unknown.<sup>15</sup>

Administrative costs are also an issue. According to both GAO and Kaiser, most states report that they are spending more time completing applications and redeterminations. GAO reports that 27 states appropriated or budgeted funds in state fiscal year (SFY) 2007 or 2008 to implement the citizenship documentation requirement.<sup>16</sup> Kaiser reports that 19 states indicated a significant increase in administrative costs, and that another 26 states indicated a modest increase. States will receive federal reimbursement for these costs using the 50% rate that applies to most Medicaid administrative functions. Since existing enrollees must present documentation at their next eligibility redetermination (a process that generally occurs at least once a year), administrative costs should peak in the year following implementation of the requirement. Costs in later years should be lower, reflecting the ongoing expense of documenting those who are new to the program.

## Legislative and Other Activity

In the 110<sup>th</sup> Congress,<sup>17</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, S. 1200 (as passed by the Senate in February), and S. 2532 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>18</sup> permanently exempt all children who are deemed eligible for

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<sup>15</sup> See discussion of this issue in GAO, *States Reported*, pp. 27-28.

<sup>16</sup> For 10 states reporting appropriated funds in SFY2007, the amount represented from 1% to 12% of each state's 2005 Medicaid administrative expenditures. *Ibid.*, p. 20.

<sup>17</sup> In the 109<sup>th</sup> Congress, three bills were introduced to repeal or delay implementation of the documentation requirement (S. 2305, S. 3590, and H.R. 5023). Two others (S. 3524 and S. 4122) would have required additional documentation options for federally recognized Indian tribes.

<sup>18</sup> Under current law, services provided to newborns who are deemed eligible for a year of (continued...)

an automatic year of coverage from the citizenship documentation requirement, and allow states to provide retroactive eligibility for certain individuals who were previously denied.

- S. 909, H.R. 1535, S. 895, H.R. 1878, H.R. 2055, S. 1224, and S. 1364 would make citizenship documentation a state option (using criteria that are no more stringent than those used by the Social Security Administration), require additional documentation options for federally recognized Indian tribes, specify the reasonable opportunity period for those who are required to present documentation, 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 certain individuals who were previously denied.
- S. 1893/H.R. 976 (as passed by the Senate in August, amended and passed by the House and Senate in September, and vetoed by President Bush in October), H.R. 3269, and H.R. 3963 (as vetoed by President Bush in December) would allow states to meet citizenship documentation requirements through name and Social Security number validation, make citizenship documentation a requirement for SCHIP, provide an enhanced match for certain administrative costs, include the changes described above for S. 909 (with the exception of making documentation entirely optional), and require separate identification numbers for children born to women on emergency Medicaid.
- H.R. 3162 (as passed by the House in August) would make Medicaid citizenship documentation for children under age 21 a state option (using criteria that are no more stringent than existing rules) and include the changes described above for S. 909 (with the exception of making documentation entirely optional). It would also allow “Express Lane” agencies to determine eligibility without citizenship documentation and require eligibility audits to ensure that federal funds are not spent on individuals who are not legal residents.
- H.R. 3176, S. 2193, and H.R. 3888 would make citizenship documentation a requirement for SCHIP and provide an enhanced match for certain administrative costs.
- H.R. 4144 would make citizenship documentation a requirement for SCHIP, using language that differs from the Medicaid requirement.

As described earlier, CMS clarified in its final rule that deemed eligibility applies to all qualified children born to women receiving Medicaid, including emergency Medicaid. However, a number of the bills cited above would go beyond the final rule by permanently exempting all deemed eligible children from the citizenship documentation requirement<sup>19</sup> and removing the requirement that a newborn remain in his or her Medicaid-eligible mother’s household in order to qualify for deemed eligibility.

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<sup>18</sup> (...continued)

coverage may be billed under their mother’s identification number.

<sup>19</sup> The final rule states that documentation may be required again if there is a gap of more than three years between an individual’s last period of eligibility and subsequent application for Medicaid. This is because states are only required to retain records for three years (a longer period is optional). If there is a new permanent exemption for deemed eligible children, states would have to retain their records on this subset of enrollees for a much longer period of time.