

August 10, 2006

Mark B. McClellan
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IRC
PO Box 8017
Baltimore, MD 21244-8017

Dear Mr. McClellan,

I write on behalf of the Wisconsin Council on Children and Families (WCCF), regarding the interim final regulations requiring that all U.S. citizens applying for or receiving Medicaid must document their citizenship and identity. WCCF is a statewide organization involved in research, education and advocacy on issues relating to Wisconsin's children and families. We are celebrating our 125th anniversary this year.

I want to thank you for this opportunity to comment on these regulations, and also to applaud the recent changes made by CMS to the guidance that was initially released on June 9. Yet despite those improvements, such as the continuation of benefits for individuals with presumptive eligibility status, we are extremely disappointed that the rules continue to create substantial hurdles that will delay, and in some cases deny, access to Medicaid for many children and other vulnerable citizens in our state.

WCCF's Concerns Regarding the Interim Final Rule

Although the interim final rule made several significant improvements, WCCF is very troubled by a number of your agency's interpretations of the statutes and the implications of those interpretations for eligible citizens applying for or renewing Medicaid and BadgerCare coverage. These concerns and our recommendations are outlined below.

CMS should not require applicants and beneficiaries to submit original or certified copies (s. 435.407 (h)(1))

It is vitally important in Wisconsin and other states to continue the practice of allowing people to mail in their applications for coverage, or for renewal of their coverage. The proposed regulations would effectively preclude that cost-effective practice. Our understanding is that CMS has made statements to the effect that mail-in applications would still be allowed, but it is totally unrealistic to think that applicants are going to mail in original copies of documents, such as their driver's license, birth certificate or passport.

The provision requiring that citizenship documents be original or certified copies exceeds the requirements of the Deficit Reduction Act (DRA), placing an additional burden on applicants and beneficiaries. Children and parents who would normally receive Medicaid services will be

left without any form of health insurance while they navigate the additional hurdles of personally producing the documents or waiting to obtain certified copies.

Please also consider that by requiring more in this respect than is required by the statute, you are creating an obstacle that will be especially harmful for children and families faced with homelessness. We find it very distressing to think of what these excessive requirements would have meant had they been in place last fall, resulting in yet another maddening hurdle for the tens of thousands of families in Louisiana and Mississippi who lost their jobs, homes, health care and all of their papers.

Requiring that all citizenship documentation be original or certified copies will also hinder the expansion of Medicaid coverage to the millions of children across the nation who are eligible but not enrolled in the program. Among the estimated 91,000 uninsured children in Wisconsin, roughly half are thought to be eligible for Medicaid or BadgerCare. Simple enrollment procedures are vital for expanding coverage to those eligible children, as Wisconsin strives to close the gaps in health care coverage for the children of our state.

It is also important to note that Wisconsin has made substantial investments in developing a system enabling people to apply for benefits online. The requirement in the rule to produce original or certified copies of documentation reverses the progress our state and others have made in adopting more efficient enrollment procedures that will decrease the number of eligible children who do not receive Medicaid and SCHIP coverage.

WCCF urges CMS to eliminate the requirement that Medicaid beneficiaries and applicants provide original or certified documents so states can continue to employ more cost-effective procedures for enrolling eligible children and other eligible citizens.

Medicaid and SCHIP payment records for birth should qualify as proof of infant citizenship (s. 435.407 (a))

Another portion of the rules that creates unnecessary hurdles for applicants and unreasonable costs for the counties administering Medicaid and BadgerCare is the redundant requirement for citizenship documentation for infants whose mothers are Medicaid beneficiaries at the time of their births. As you know, these newborns are automatically United States citizens at birth, and evidence of Medicaid payment for birth should be able to serve as proof of citizenship for newborns.

As you are also aware, Wisconsin is one of the states where SCHIP funds pay for the cost of prenatal care and the delivery of “unborn children.” This is an option granted to the states because, according to your agency’s interpretation of the statutes, “an unborn child is not an alien”(Federal Register, Vol. 67, No. 191, p. 61966). Since the child was not an alien prior to its birth, we find it very perplexing that after the child has been born, and after state and federal funds have paid for that infant’s prenatal care and delivery, there suddenly becomes a question of the child’s citizenship.

Medicaid pays for the births of about 28,000 infants born in Wisconsin hospitals each year, which is a little over two-fifths of all deliveries in our state. By not allowing Medicaid or SCHIP records that clearly indicate place of birth to be used as proof of a newborn’s citizenship status, the interim final regulations unnecessarily endanger newborns who require immediate

well-baby or critical care. Since this result is not required by statute, we sincerely hope that it was simply an oversight and does not reflect an indifference to the lives of the newborn children, who are indisputably citizens and whose birth costs were reimbursed either by Medicaid or by SCHIP coverage of “unborn children.”

WCCF urges CMS to allow payment records to be used to document citizenship for infants whose deliveries were reimbursed by Medicaid or by SCHIP coverage for “unborn children.”

Children who are eligible for federal foster care payments should be exempt from documentation requirements (s. 435.1008)

The interim final rule mandates that children in foster care comply with the Medicaid citizenship documentation requirements. There are currently more than 20,000 Wisconsin children each month who are in foster care or in families receiving adoption assistance who automatically qualify for and are enrolled in Medicaid. Since their citizenship is already verified as part of their eligibility review for Title IV-E, verifying their citizenship for Medicaid purposes is unnecessary and counterproductive.

Requiring children in foster care to document their citizenship will create new barriers to their access to the health and mental health services they need. Research has repeatedly shown that children in foster care experience greater physical and mental health needs than all other children, with 80% of children in foster care demonstrating mental health needs. Exposure to extreme poverty, family violence, homelessness, and parental mental illness and substance abuse often result in complex health needs among children in foster care, exacerbating the necessity of comprehensive services for such children.

States are required by federal law to provide medical care for children in foster care. Therefore, if states are unable to access Medicaid funding for children in foster care, they must finance the necessary health care services with state funds. When state resources are scarce, such an arrangement will likely delay preventive health care for children in foster care and make early intervention for their health and mental health needs impossible. Prolonging access to necessary services for children in foster care will ultimately result in the need for complex and expensive emergency care.

We strongly urge CMS to exempt all children in foster care from Medicaid citizenship documentation requirements in order to appropriately meet their health and mental health needs.

Native American tribal enrollment cards should qualify as proof of citizenship (s. 435.407 (a))

Wisconsin has a substantial Native American population that is likely to be adversely affected by the failure of the interim final rule to allow states to accept Native American tribal enrollment cards as proof of citizenship. Such cards are the only proof of citizenship that many Native Americans have in their possession. Native Americans are more likely to be born at home, and therefore less likely than other populations to have official birth certificates. Failure to accept tribal enrollment cards will greatly impede the ability of many Native American children and parents to access the health care services they need. WCCF strongly recommends that you give

states the option to use Native American tribal enrollment cards as proof of citizenship and identity for Medicaid beneficiaries and applicants.

New applicants should have a reasonable opportunity to obtain citizenship documentation (s. 435.407 (j))

WCCF also has concerns about the lack of benefits available for children who are new Medicaid applicants and do not have citizenship documentation available at the time of their application. The interim final rule provides current beneficiaries renewing their Medicaid coverage a reasonable opportunity to obtain citizenship documentation while still receiving benefits. However, new applicants with the same income and categorical eligibility status as current beneficiaries do not receive the same opportunity to gather the required documentation while still receiving Medicaid services. Without a reasonable opportunity to obtain their documents, many low-income children will not be able to access Medicaid services while they wait to receive documentation from government agencies. WCCF urges CMS to allow states to provide Medicaid benefits to new applicants while they are waiting to obtain their citizenship documentation.

The rules should exempt women applying for or receiving family planning waiver services

We are also very concerned about the unintended effects the interim final regulations will have for access to family planning services. Since Wisconsin's family planning waiver services have been implemented, there has been a significant decrease in the number of teen pregnancies and deliveries. From 2002 through 2004 (the most recent data), the birth rate among minors in Wisconsin has fallen from 17.0 to 15.7. The data on abortions, which is a little more current, shows that the abortion rate for teens under age 18 fell from 5.9 in 2002 to 4.9 in 2005.

We urge CMS to exempt individuals who receive services under a Medicaid family planning demonstration project from the documentation requirements.

WCCF greatly appreciates the opportunity to share our comments on the interim final rule relating to the Medicaid citizenship documentation requirements. The changes we have suggested will not conflict with the Congressional intent of targeting Medicaid to those who are truly eligible. Instead, they will ensure that states don't unnecessarily deny or delay needed health care services for people who are clearly eligible citizens, and they will also ensure that the enrollment process isn't forced to add unnecessary costs and inefficiency. If you have any questions, please contact WCCF's research director, Jon Peacock, at jpeacock@wccf.org or 608.284.0580 x 307.

Sincerely,

Charity Eleson
Executive Director