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July 7, 2006

CHILDREN IN FOSTER CARE MAY HAVE TO DELAY HEALTH CARE BECAUSE OF FEDERAL REGULATIONS ON CITIZENSHIP REQUIREMENT

by Pat Redmond

Children removed from their homes because of neglect or abuse and placed in foster care may face delays in getting medical care because of the manner in which the federal government is implementing a provision of the Deficit Reduction Act (DRA) of 2005. The DRA requires that all U.S. citizens applying for, or renewing their eligibility for, Medicaid coverage document their citizenship, starting July 1. Interim final regulations on the requirement, issued by the Centers for Medicare and Medicaid Services (CMS) at the U.S. Department of Health and Human Services on July 6, present difficult and unnecessary problems for children in foster care and for the state agencies responsible for their well being.

Medicaid and Foster Care: The Longstanding Eligibility Linkage

There are over 500,000 children in foster care.[1] Nearly all children in foster care are enrolled in Medicaid, although the basis for their eligibility varies from child to child. Under federal law, all children on whose behalf Title IV-E federal foster care payments are made are eligible for Medicaid. Federal foster care payments provide matching funds to states so that states can provide safe and stable out of home care for abused and neglected children. Federal foster care payments are made on behalf of about half of children in foster care nationally; eligibility for these payments is based upon the child's family income.

Because of the longstanding linkage between Medicaid and the Title IV-E program, children eligible for federal foster care payments are eligible for Medicaid without a separate application for Medicaid. Their citizenship status is verified in the process of determining that they are eligible for federal foster care payments.[2] The requirement to document citizenship is therefore duplicative for these children.

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[1] U.S. Department of Health and Human Services, "Trends in Foster Care and Adoption," Adoption and Foster Care Analysis and Reporting System, Administration on Children, Youth and Families. Estimates are based on data submitted by states as of September 15, 2005.

[2] Administration for Children and Families, Child Welfare Policy Manual, Section 8.4B.

The remaining half of children in foster care are generally eligible for Medicaid as well, under Medicaid categories developed for low-income children or children with disabilities. Although these children will not have their citizenship status documented upon admission into foster care, their timely access to Medicaid is unnecessarily jeopardized by the new regulations, which impose obstacles on children in foster care that are not required by the DRA.

To obtain documentation of citizenship for every child entering foster care will be especially difficult because of the instability of the foster care caseload. The caseload turns over to a significant degree each year. For example, in 2004, 304,000 children entered foster care, while 283,000 were discharged.[3] Child welfare and Medicaid agencies will need to devote a significant amount of their increasingly scarce administrative resources to fulfilling the requirements of the new regulations.

Regulations on the Documentation Requirement

The interim final regulations issued on July 6 require that state Medicaid agencies obtain documents showing that citizen children in foster care are indeed citizens. The new requirement applies both to children receiving Title IV-E federal foster care payments and to foster-care children who are not receiving these payments. The regulations also restrict the type of documents that are acceptable. Under the terms of the regulations:

- U.S. citizens applying for or renewing their Medicaid coverage must produce passports or birth certificates to prove their citizenship unless they can show these documents do not exist or cannot be obtained within a reasonable period of time. The regulations allow states to conduct data matches with state vital records agencies to obtain birth certificates. These matches should be helpful where children live in the state where they were born. They are unlikely to be used for children born in other states.

- All documents provided to meet the requirement must either be originals or copies certified by the issuing agency.

- U.S. citizens who apply for Medicaid and meet all eligibility criteria cannot receive coverage for needed health services until they have produced the required documents proving that they are citizens. In most cases, they will remain uninsured in the interim. The regulations prohibit states from making coverage available during the period that an applicant is attempting to obtain a passport or birth certificate from the relevant government agency. This will pose especially difficult problems for some 300,000 children entering foster care each year and the state agencies responsible for their welfare.

[3] U.S. Department of Health and Human Services, "Trends in Foster Care and Adoption," Adoption and Foster Care Analysis and Reporting System, Administration on Children, Youth and Families. Estimates are based on data submitted by states as of September 15, 2004.

Regulations Put Children at Risk and Will Impede Agencies in Protecting Their Health

An abused or neglected child, removed from the home and taken into state custody, does not typically come into foster care with a certified or original birth certificate or passport. Most children are placed in foster care because of abuse or neglect occurring within the context of extreme poverty, homelessness, mental illness, parental substance abuse, or human immunodeficiency virus infection.[4] As a result, families may not have, or may not be willing to relinquish, documentary evidence on their children. The emergency nature of these removals requires that state agencies subsequently work with birth parents and use electronic sources, such as electronic birth records, to establish a complete case file on the child.

Under the terms of the regulations, however, states will not be able to rely on their child welfare records or on electronic exchanges of information between the child welfare and Medicaid agencies. States will need to obtain an original or certified birth certificate (or a passport) for the child's Medicaid file, or to obtain the information through a match with vital records information, before eligibility can be established, even though child welfare agencies may have already verified that the child is a citizen.

The Consequences of Delaying Health Care

An often-cited GAO report notes that children in foster care, as group, are "sicker than homeless children or children living in the poorest sections of inner cities."[5] Even a brief gap between entry into foster care and Medicaid eligibility could have serious consequences. Yet significant gaps are likely as states attempt to fulfill the requirements in the DRA as interpreted in the new regulations.

States have the obligation to provide medical care to children in foster care. With delayed Medicaid eligibility likely for at least some children in foster care, states will have no option other than to rely on state-financed or uncompensated care to ensure that children receive the medical attention they often need right after removal from the home. States and foster parents may end up turning to emergency care, as there will be no Medicaid card to present to primary or specialty providers. Before a child's citizenship is documented and a Medicaid card is provided to his or her foster parents, the child may be forced to defer essential *non*-emergency care — such as prescription drugs, psychological care, dental care or the purchase of medical supplies for conditions such as asthma — until the child's condition deteriorates to the point that it requires emergency care.

Experts in the medical issues faced by children in foster care have developed standards of care for those children.[6] A comprehensive medical screening upon entry into foster care is considered a minimum requirement by the American Academy of Pediatrics Committee on Early Childhood,

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[4] National Commission on Family Foster Care. A Blueprint for Fostering Infants, Children and Youth in the 1990s. Washington, DC: Child Welfare League of America, 1991.

[5] U.S. General Accounting Office, "Foster Care: Health Needs of Many Young Children are Unknown and Unmet," GAO/HEHS-95-114 (1995).

[6] Child Welfare League of America. Standards for Health Care Services for Children in Out of Home Care. Washington, DC: Child Welfare League of America, 1988.

Adoption and Foster Care.[7] Because children in foster care have a high frequency of chronic and complex illnesses, assessing each child's needs at the time of entry into care is critical. [8] Without prompt Medicaid eligibility, however, such screening examinations and follow up care will either be delayed or become the financial responsibility of the states. (Title IV-E does not provide federal funding for health care services.[9])

CMS Could Have Ameliorated the Adverse Impact on Children in Foster Care

The Centers for Medicare and Medicaid Services could have instructed state Medicaid and child welfare directors to approach citizenship documentation in a way that is as consistent as possible with expedited eligibility for children in foster care. CMS could have instructed the states to:

- Exempt children who qualify for Title IV-E from the requirement to document citizenship. Verification of citizenship or qualified alien status is already required by the federal government when child welfare agencies determine eligibility for federal foster care payments. The regulations ignore the longstanding linkage between Medicaid and foster care.[10]

- Provide children in foster care with immediate Medicaid coverage if they otherwise qualify for Medicaid but do not have documentation of citizenship on file with the Medicaid agency. The regulations *prohibit* states from providing coverage while an applicant attempts to obtain a passport or birth certificate. Eligibility should not be held up while records are transferred from child welfare to Medicaid agencies.

Conclusion

The July 6 regulations will hamper the efforts of Medicaid and child welfare agencies to meet the needs of some of the nation's most vulnerable children and will place the health of some of these children at risk. A number of state Medicaid agencies already are on record with strong concerns about the administrative costs and burdens the documentation requirement will entail.[11] Placing states at risk of losing federal matching funds for the provision of health care to these children both risks these children's health and imposes an unnecessary burden on states.

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[7] Committee on Early Childhood, Adoption and Dependent Care, "Health Care of Young Children in Foster Care," Pediatrics. 2002; 109:536.

[8] Committee on Early Childhood, Adoption and Dependent Care, op cit, 537.

[9] 45 CFR 1356.60.

[10] Because of the linkage between Medicaid and the Title IV-E foster care program, children eligible for federal foster care payments are eligible for Medicaid without a separate application for Medicaid. As a result, these children should not be subject to the new DRA requirement that applies to an individual "who declares under section 1137(d)(1)(A) [of the Social Security Act] to be a citizen or national of the United States for purposes of establishing eligibility for [Medicaid] benefits." Children eligible for Medicaid based on their eligibility for federal foster care payments make no such declaration and should therefore be exempt from the requirement.

[11] For example: John Sullivan, "Medicaid Law May Hurt the Poor," The Philadelphia Inquirer, July 3, 2006; Kavati Pillai, "State to Delay Medicaid Change," Greensboro North Carolina News and Record, July 2, 2006; Des Moines Register Editorial Board, "Fix Medicaid Mistake: Citizens Could Lose Care," Des Moines Register, July 5, 2006.