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NEW CHILDREN'S HEALTH LAW REDUCES THE HARMFUL IMPACT OF DOCUMENTATION REQUIREMENT

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The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) enacted in February contains several provisions to reduce the harmful impact of Medicaid's citizenship documentation requirement, which has caused many eligible citizen children to lose or be denied coverage since its 2006 enactment. By implementing these changes immediately, states can lighten the burden that the requirement imposes on otherwise eligible families.¹

Under the documentation requirement, most U.S. citizens applying for Medicaid or renewing their coverage must prove their citizenship by submitting a passport or a combination of a birth certificate and an ID. The requirement's goal, according to sponsors, was to keep illegal immigrants from fraudulently enrolling in Medicaid. (Certain immigrants who are in the United States legally are eligible for Medicaid; the requirement does not affect them.) Yet in many areas, the requirement has impeded or delayed coverage for significant numbers of *eligible U.S. citizens*, many of whom lack the required documents.² To help address this problem, CHIPRA:

- requires states to provide coverage to applicants who meet all other eligibility requirements while they secure the documents needed to meet the documentation requirement;
- exempts from the documentation requirement all infants who received automatic Medicaid coverage because their mothers were receiving Medicaid when they were born; and
- requires states to accept documents issued by federally recognized Indian tribes to meet the documentation requirement.

¹ These amendments are retroactive to the date of enactment of the Deficit Reduction Act of 2005 (which established the documentation requirement), so they are now in effect. CHIPRA also extends the citizenship documentation requirement to the Children's Health Insurance Program (CHIP) and provides states with a new option to satisfy the requirement by checking whether information in the Social Security database confirms that the applicant is a citizen; these provisions become effective on January 1, 2010. (See box on page 3.)

² Donna Cohen Ross, "New Medicaid Citizenship Documentation Requirement Is Taking a Toll: States Report Enrollment Is Down and Administrative Costs Are Up," Center on Budget and Policy Priorities, revised March 13, 2007, <http://www.cbpp.org/cms/index.cfm?fa=view&id=1090>. See also the following report from the Government Accountability Office: "States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens," GAO-07-889, June 2007.

States Must Provide Otherwise-Eligible Applicants with Benefits While They Obtain Needed Documents

Until now, federal law has barred states from providing Medicaid coverage to applicants who declare they are U.S. citizens or nationals and have met all other Medicaid requirements, while they gather the documents needed to meet the documentation requirement. CHIPRA reverses this policy: once an applicant has declared, under penalty of perjury, that he or she is a citizen and has provided all other information the state needs to determine eligibility, the state must proceed to make a decision on whether the applicant is eligible for Medicaid. If the state finds the applicant eligible, it must provide benefits while the applicant secures the documents needed to satisfy the documentation requirement. States may no longer defer an eligibility determination while an otherwise-eligible applicant secures the necessary documents.

Federal law already said that states may not “delay, deny, reduce or terminate” Medicaid benefits for applicants who declare that they are immigrants in this country legally until they have a reasonable opportunity to document their immigration status.³ The change in CHIPRA accords similar treatment to applicants who declare they are U.S. citizens or nationals.

HHS regulations on the documentation requirement, which were issued before enactment of the changes in CHIPRA, instruct states to provide applicants with a reasonable opportunity to submit documents before denying an application. The regulations state that the reasonable-opportunity period should be consistent with the processing time for a Medicaid application, which is 45 days for applicants affected by the documentation requirement.⁴ Federal regulations also instruct states to provide exemptions to this time limit when an applicant cannot comply because documents are not readily available or a third party fails to respond to a timely request for documents.⁵ Under CHIPRA, states should follow these rules, but should now determine eligibility as soon as all other necessary information is provided.

If an applicant has not provided documentation of citizenship by the end of the reasonable-opportunity period (including any necessary extensions), states can terminate the individual’s eligibility for benefits in accordance with usual Medicaid rules, which allow for notice and hearing. States already follow this procedure for immigrants who are in the country legally. The federal government should provide matching funds for medical assistance provided during the reasonable-opportunity period even if the state ends up terminating eligibility because the applicant fails to satisfy the documentation requirement.

Infants Automatically Enrolled in Medicaid Upon Birth Are Exempt from Requirement

Babies born to women who were eligible for and receiving Medicaid on the date of the child’s birth, including women receiving emergency Medicaid, are automatically eligible for Medicaid for up

³ Section 1137(d)(4) of the Social Security Act.

⁴ 42 CFR §435.407(k).

⁵42 CFR §435.911.

CHIPRA Gives States New Option to Meet Documentation Requirement with SSA Datamatch

Beginning January 1, 2010, states will have the option of verifying a Medicaid or CHIP applicant's claim of U.S. citizenship or nationality by working with the Social Security Administration (SSA) to conduct a search of the SSA database to confirm the validity of the applicant's statement.

This option will relieve the paperwork burdens that have caused eligible U.S. citizens to lose or be denied health coverage. It will be particularly valuable for applicants seeking health coverage in a state that is different from the state in which they were born, since obtaining a birth certificate from another state is often time-consuming and costly.

Moreover, a successful match is considered as reliable as a valid U.S. passport, meaning that it serves as proof of both citizenship and identity. Since states already have agreements with SSA to conduct data matches for other purposes, it should not be difficult for them to build on existing inter-agency agreements to match data fields that show whether an applicant is a U.S. citizen.

Once the appropriate agreement is in place, the state will submit applicants' names and Social Security numbers to SSA, which will then notify the state if this information is inconsistent with its records. In such cases, states must make a reasonable effort to resolve any discrepancies (for example, by correcting clerical errors) and re-submit the information to SSA. If the inconsistency persists, the applicant has 90 days to either resolve the problem with SSA or present documents proving his or her U.S. citizenship or nationality. Applicants who are otherwise eligible will get Medicaid or CHIP benefits while the inconsistency is being resolved.

Enhanced federal matching funds are available to states that provide the names and Social Security numbers to SSA electronically. States receive a 90 percent matching rate for the development of their systems and a 75 percent matching rate for its maintenance and operation.

to one year.⁶ Even though state Medicaid programs paid for these babies' births and the births took place in U.S. hospitals, parents have had to document these babies' citizenship when the child reaches age 1 in order to retain Medicaid eligibility.

The new law exempts these infants from the documentation requirement. Babies who became eligible for Medicaid based on their mothers' eligibility are "deemed to have provided satisfactory documentary evidence of citizenship or nationality and shall not be required to provide further documentary evidence" once the automatic coverage period ends.⁷ The family also does not need to provide documentation of citizenship if the baby is not eligible for coverage at the end of the automatic coverage period but returns to the program later.

This provision should be fairly simple for states to implement. States know which babies have automatic coverage. Because citizenship documentation is a one-time requirement, states should already have a procedure in place to note when an individual has met the requirement. States simply need to apply these procedures to babies who are automatically enrolled in Medicaid.

⁶ CHIPRA makes it clear that babies born to non-citizen mothers who are eligible for emergency Medicaid are entitled to automatic coverage when Medicaid covers their birth. It adds a requirement that states immediately issue an identification number for these babies when notified of their birth.

⁷ Section 211(b)(3) of CHIPRA, amending section 1903(x) of the Social Security Act.

Tribal Documents Now Accepted to Meet Requirement

Many tribal members do not have birth certificates, which has made it difficult for them to meet the documentation requirement. CHIPRA addresses this problem by including documents issued by a “federally recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe (such as a tribal enrollment card or certificate of degree of Indian blood)” in the list of documents that can be used to satisfy the documentation requirement. These documents, like U.S. passports and certificates of naturalization, can be used to document both citizenship and identity.⁸

Since some tribal territories extend beyond U.S. borders, CHIPRA directs the Secretary of HHS to consult with tribes located within states having an international border to determine what forms of documentation should be considered as satisfactory documentation of citizenship for these tribes. Until HHS issues its final regulations, however, states must accept documents showing membership in these tribes as satisfactory documentation of citizenship in the same way they will do for other tribes. (Any tribal member applying for Medicaid would make a sworn declaration of citizenship, so accepting the tribal documents during this interim period would *not* allow non-citizen tribal members to enroll in Medicaid.)

Under CHIPRA, states should now be accepting tribal documents such as tribal enrollment cards and certificates of degree of Indian blood as documentation of citizenship.

Conclusion

States are required to implement immediately the three changes described here that CHIPRA makes to the citizenship documentation requirement. States also should consider whether to restore Medicaid eligibility for individuals who would have been found eligible for Medicaid if these changes had been in effect at the time when those individuals applied or when they lost eligibility because of the citizenship documentation requirement. CHIPRA allows states to restore eligibility for individuals who were denied eligibility “solely” as a result of the documentation requirement if they would have been determined eligible under these changes.

In addition, states should consider adopting the new option that the legislation provides, described in the box on page 3, to satisfy the documentation requirement by checking whether information in the Social Security database confirms that the applicant is a citizen. This option takes effect on January 1, 2010.

⁸ Section 211(b)(1) of CHIPRA amending section 1903(x)(3)(B) of the Social Security Act.