

**CITIZENSHIP DOCUMENTATION REQUIREMENTS IN
THE DEFICIT REDUCTION ACT OF 2005:
LESSONS FROM NEW YORK**

Prepared by:

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Prepared for The Henry J. Kaiser Family
Foundation's Kaiser Commission On
Medicaid And The Uninsured

June 2006



kaiser commission medicaid and the uninsured

The Kaiser Commission on Medicaid and the Uninsured provides information and analysis on health care coverage and access for the low-income population, with a special focus on Medicaid's role and coverage of the uninsured. Begun in 1991 and based in the Kaiser Family Foundation's Washington, DC office, the Commission is the largest operating program of the Foundation. The Commission's work is conducted by Foundation staff under the guidance of a bipartisan group of national leaders and experts in health care and public policy.

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I. EXECUTIVE SUMMARY

The Deficit Reduction Act of 2005 (DRA) amends federal Medicaid statute to require that all United States citizens applying for or renewing Medicaid coverage present “satisfactory documentary evidence” of their citizenship. This new citizenship documentation requirement goes into effect on July 1, 2006 and will impact an estimated 50 million U.S. citizens receiving Medicaid benefits as well as many more seeking to apply.¹ States that do not comply risk losing federal matching funds. Documentation requirements for qualified aliens remained unchanged.

With the effective date for this new requirement less than one month away, states are grappling with the policy and program implications of its implementation. On June 9, 2006, the Centers for Medicare and Medicaid Services (CMS) issued a letter to State Medicaid Directors providing interim guidance on implementation of the DRA citizenship documentation requirement. The interim guidance outlines a complex system of citizenship documentation for the Medicaid program, including a four-tier “hierarchy of reliability of citizenship documents” that states are required to apply to new Medicaid applications as well as renewals. The interim guidance will serve as the basis for final regulations implementing the DRA citizenship documentation requirement.

State officials and others are raising myriad concerns that implementation of this requirement will prove both costly and burdensome to states, and place eligible Medicaid applicants and beneficiaries at risk of losing services. Indeed, the acceptable forms of citizenship documentation under the DRA are proscriptive and the system by which states are mandated to obtain these documents is complicated at best.

New York State is one of at least four states in the nation that already requires documentation of citizenship for Medicaid applicants (the others are Georgia, Montana and New Hampshire), and the only state with significant implementation experience. The interim guidance notes that New York has required documentation of citizenship in Medicaid for many years without “undue hardship to either applicants or the state,” and indicates that the DRA requirements “mirror” New York’s rules. In fact, there are significant differences between New York’s requirements and those of the DRA which if not addressed in final regulation would undeniably create hardship to both the state and its Medicaid applicants and beneficiaries. New York’s citizenship documentation requirement has been in place since at least the mid-1970s, and provides a solid base of experience that can inform development of federal guidance with respect to DRA implementation, as well as planning in state Medicaid programs that will be documenting citizenship for the first time.

Drawing on legal research, interviews with Medicaid officials, and a roundtable discussion with front-line enrollers who provide Medicaid application assistance, this report provides an in-depth assessment of the New York State Medicaid program experience with citizenship documentation and potential conflicts between New York’s process and DRA citizenship documentation requirements as articulated by CMS to date. Specific lessons learned from New York include the following:

¹ Center on Budget and Policy Priorities, *The New Medicaid Citizenship Documentation Requirement: A Brief Overview*, Washington, DC: Center On Budget and Policy Priorities, April 2006.

- New York’s citizenship documentation requirement has evolved with time and experience, and continues to benefit from a common sense, problem solving approach;
- New York has significant application assistance resources that may not exist in other states to help applicants meet citizenship documentation and other requirements;
- Most applicants are able to comply with citizenship documentation in New York’s Medicaid program, largely as a result of the State’s flexibility and application assistance;
- Even so, citizenship documentation is more often a barrier to obtaining Medicaid coverage for certain special populations including the elderly, institutionalized, homeless, mentally ill, and populations with transient or unstable housing;
- New York accepts copies of all citizenship and identity documents and utilizes electronic matching to promote program efficiency;
- New York automatically enrolls newborns
- New York, like many other states, has linked the application, documentation, and eligibility determination rules and processes for several of its public benefit programs including Medicaid, TANF, SSI, and Title IV-E;
- New York’s current practices in documenting citizenship have been effective in ensuring program integrity.

Findings based on New York’s experience lead to the following statutory and regulatory recommendations to further clarify citizenship documentation requirements of the DRA in a way that meets the goals of the statute, supports successful implementation in the states, and ensures access to Medicaid coverage for eligible citizens.

- Congress should execute a technical amendment to Sec. 6037(a)(2) of the DRA exempting citizens who are beneficiaries of Medicare and SSI from documenting citizenship in Medicaid.
- The final regulations implementing the Medicaid citizenship documentation requirement under Section 6036 of the DRA should incorporate the following recommendations:
 - Provide states with discretion to broaden the list of public benefit programs whose beneficiaries are exempt from the DRA’s citizenship verification requirements to include at least TANF and Title IV-E beneficiaries;
 - Exempt newborn infants born to women who are Medicaid beneficiaries from documenting citizenship in Medicaid;
 - Expand the list of acceptable citizenship documents to include additional documents accepted in New York and other states that require citizenship documentation;

- Give states flexibility and discretion in implementing the DRA requirements by eliminating or simplifying the “tiered” approach to citizenship documentation;
- Eliminate the requirement that states accept only original documents or copies certified by the issuing agency as satisfactory forms of citizenship documentation and allow states to conduct data matches to verify citizenship;
- Clarify that states are obligated to provide Medicaid applicants and beneficiaries with assistance in obtaining the documents necessary to prove citizenship;
- Allocate targeted funds to states for outreach, education and application assistance activities related to DRA implementation;
- Delay implementation of the DRA citizenship documentation requirement, and provide states with adequate time for implementation of the DRA to ensure seamless transition to the new citizenship documentation rules with minimal disruption of program administration or access to Medicaid coverage for eligible citizens.

II. INTRODUCTION

Enacted in February 2006, the Deficit Reduction Act of 2005 (DRA) amends federal Medicaid statute to require that all citizens applying for or renewing Medicaid coverage prove their citizenship using “satisfactory documentary evidence.” Currently, 46 states allow self-declaration of citizenship for all applicants; 44 of these states have “prudent person policies” which require evidence of citizenship if applicants’ statements seem questionable to eligibility staff.² At least four states in the country already mandate documentation of citizenship as a condition of Medicaid application: Georgia, Montana, New Hampshire and New York.³ A summary of the allowable forms of documentation in those states is in Table 1. Effective July 1, 2006, the new requirement becomes effective and will be a condition of receiving federal Medicaid matching funds.

With the implementation of new federally mandated citizenship documentation requirements for Medicaid less than one month away, federal and state officials are grappling with the parameters of this new policy and preparing for its implementation. On June 9, 2006, the Center for Medicaid and Medicare Services (CMS) issued a letter providing guidance to states on implementing the new citizenship documentation requirement under the DRA. The guidance will provide the basis for final regulations with respect to citizenship documentation for Medicaid. Given the long-standing nature of its citizenship documentation requirement, New York’s experience can inform additional federal rulemaking as well as implementation planning for states that will be for the first time documenting citizenship for Medicaid beneficiaries.

² Office of Inspector General, Self-Declaration of U.S. Citizenship for Medicaid, Washington, D.C.: Department of Health and Human Services, OEI-02-03-00190, July 2005.

³Information for GA, MT and NH provided by Donna Cohen Ross and Laura Cox, Center on Budget and Policy Priorities for the forthcoming report for the Kaiser Commission on Medicaid and the Uninsured, Fall 2006. Other states may require documentation of citizenship for specific populations in the Medicaid program.

This report provides an in-depth assessment of citizenship documentation in New York State's Medicaid program, a requirement that has been in place since at least the mid-1970s, and provides policy and implementation recommendations related to the imminent rollout of DRA citizenship documentation requirements.

The report findings and recommendations are based on an analysis of New York state statute and administrative guidance, interviews with state and local Medicaid officials, and a roundtable discussion with individuals who provide enrollment assistance to Medicaid applicants in New York State:

➤ ***Analysis of Statute, Regulation and Administrative Guidance.*** Through analysis of New York State statute, regulations and administrative guidance, the report details New York's long-standing citizenship documentation policy and rules, and compares those rules to the citizenship documentation requirements outlined in the DRA.

➤ ***Interviews with State and Local Officials.*** Drawing on interviews with state and local Medicaid program officials in New York the report explores insights, challenges and successes of New York State's experience in documenting citizenship for Medicaid applicants. Medicaid officials were specifically asked to comment on:

- When and why the citizenship documentation policy was developed;
- The experience of different populations with complying with citizenship documentation requirements;
- How the requirement and rules, specifically as it relates to acceptable forms of documentation, have evolved over time and why;
- The role of state and local eligibility workers in assisting applicants with citizenship documentation requirements;
- Whether the state absorbs the cost of obtaining citizenship documents for Medicaid application purposes; whether the state receives federal match for these administrative costs; and,
- How the DRA will impact current citizenship documentation rules and practices.

➤ ***Roundtable with Facilitated Enrollers.*** A roundtable discussion with health plans and community-based organizations that provide Medicaid application assistance through New York's Facilitated Enrollment program yielded rich insights into the practical realities for New York Medicaid applicants attempting to meet citizenship documentation requirements. Specifically, enrollers from both urban and rural areas of New York State were asked to discuss:

- The most common forms of citizenship documentation used by applicants;
- Populations for whom citizenship documentation is difficult; and,
- The role of facilitated enrollers in assisting applicants with documentation requirements.

The Appendix provides a list Medicaid officials interviewed for this report and facilitated enrollers who participated in the roundtable discussion.

Table 1 Medicaid Citizenship Documentation Requirements For Select States that Currently Document Citizenship for Medicaid				
	Georgia	Montana	New Hampshire	New York
U.S. Passport ¹	✓	✓	✓	✓
Certificate of Naturalization (N-550 or N-570)	✓	✓	✓	✓
Certificate of U.S. Citizenship (N-560 or N-561)	✓	✓	✓	✓
U.S. Birth Certificate	✓	✓	✓	✓
Report of Birth Abroad of a Citizen of the United States (FS-240)	✓	✓		✓
Certification of Birth Abroad (DS-1350)	✓			✓
United States Citizenship Identification Card (I-197)	✓	✓	✓	✓
Baptismal certificate/religious record (within 3 months of date of birth)	✓	✓	✓	✓
Information from a primary source Federal agency (e.g. SSA) verifying U.S. place of birth	✓	✓		✓
Official hospital/doctor birth records			✓	✓
Court records of parentage, juvenile proceedings or child support	✓			✓
American Indian card/Tribal records	✓	✓	✓	✓
Evidence of continuous residence in the US prior to 6/30/48	✓			¥
Evidence of civil service employment by the US government before June 1, 1976		✓		¥
Data from local government sources	✓			¥
Adoption Finalization Papers	✓			✓
Property records verifying US citizenship status	✓			¥
Written statement of a person with knowledge of applicant's place of birth ² .	✓	✓		✓
Northern Marianas Card		✓	✓	✓
Certificate of identity and registration (issued by the Foreign Service Posts until 1972)		✓		✓
Any document not issued by the SSA which was established at least 5 years before the initial application date, indicates a US place of birth, and indicates the same place of birth as stated on the application.		✓		¥

¹ The passport may be current or expired in Georgia and Montana.

² In Montana, written statements must be from at least two people. In New Hampshire written statements are only allowed for proof of citizenship for children; in New York, written statements must be accompanied by a "letter of no record" of birth from the state the applicant claims to have been born in.

[¥] While Medicaid officials in New York were unfamiliar with these forms of documentation, they indicated that such sources of proof would be acceptable if upon review, they meet state requirements and standards.

SOURCE: Information for GA, MT and NH provided by Donna Cohen Ross and Laura Cox, Center on Budget and Policy Priorities for the forthcoming report for the Kaiser Commission on Medicaid and the Uninsured, Fall 2006.

III. BACKGROUND

A. The DRA Citizenship Documentation Requirement for Medicaid

The DRA of 2005 requires Medicaid beneficiaries to present “satisfactory documentary evidence of citizenship or nationality.” The new law mandates that after June 30, 2006, states document citizenship for all new and renewing Medicaid beneficiaries who are U.S. citizens. Failure to do so would be to risk federal Medicaid matching funds. Documentation requirements for qualified aliens remained unchanged.

Acceptable Forms of Citizenship Documentation

The DRA statute specifies a narrow list of primary documents deemed “satisfactory proof of citizenship or nationality” without additional forms of identity documentation⁴; the legislation also offers a secondary list of documents that are acceptable as proof of citizenship provided that they are presented with additional documentation of identity⁵. Finally, the statute provides the Secretary with the authority to specify, by regulation, other documents that provide proof and a reliable means for documenting United States citizenship or nationality and personal identity.

On June 9, 2006, CMS issued a letter to State Medicaid Directors providing interim guidance on implementation of the DRA citizenship documentation requirement. This letter will be referred to as the interim guidance for purposes of this report. The interim guidance confirms the Secretary’s intent to publish final regulations that would exercise the authority to expand the list of acceptable citizenship documents under the DRA. Specifically, the interim guidance establishes a four-tier “hierarchy of reliability of citizenship documents” which expands the list of citizenship documents that states may accept beyond the scope of the primary and secondary documents defined in the DRA statute. Table 2 summarizes the hierarchy of citizenship documents provided in the interim guidance.

⁴ Primary documents specified in Section 6036 of the DRA include: U.S. Passport, Certificate of Citizenship (Form N-560 or N-561), Naturalization Certificate (Form N-550 or N-570), Driver’s License (if the issuing state requires proof of citizenship to obtain a license.)

⁵ Secondary documents specified in Section 6036 of the DRA statute include: U.S. Birth Certificate, Report of Birth Abroad of a Citizen of the United States (Form FS-545 or DS-1350), United States Citizenship Identification Card (Form I-197).

Table 2 Deficit Reduction Act of 2005 Hierarchy of Reliability of Citizenship Documents			
<i>Evidence of Highest Reliability</i>		<i>Evidence of Lowest Reliability</i>	
Primary Documents Prove Citizenship and Identity	Secondary Documents Must be Provided with Identity Document from Table 3	Third Level Documents Must be Provided with Identity Document from Table 3	Fourth Level Documents Must be Provided with Identity Document from Table 3
- United States passport - Certificate of Naturalization (Form N-550 or N-570) - Certificate of Citizenship (Form N-560 or N-561) - Valid, state-issued Driver's license (only if the state issuing the license requires proof of U.S. citizenship before issuance or obtains an SSN from the applicant and verifies that such number is valid and assigned to a U.S. citizen.)¹	- US Public Birth Record² - Certification of Report of Birth (DS-1350) - Certification of Birth Abroad (Form FS-545) - Consular Report of Birth Abroad of a Citizen of the United States (FS-240) - U.S. Citizen I.D. Card (Form I-197 or I-179) - American Indian Card (I-872) - Northern Mariana Card (I-873) - Final Adoption Decree - Evidence of civil service employment by US Government showing employment before 6/1/76 - Office of Military record of service³	- Extract of a hospital record on hospital letterhead established at the time of birth.^{3,4} - Life or health or other insurance record^{3,4}	- Federal or State census record showing U.S. citizenship or a U.S. place of birth (Generally for persons born 1900-1950)⁵ - Seneca Indian tribal census record^{3,4} - Bureau of Indian Affairs tribal census record of the Navaho Indians^{3,4} - U.S. State Vital Statistics official notification of birth registration^{3,4} - Amended U.S. public birth record, amended more than 5 years after the person's birth^{3,4} - Statement signed by the physician or midwife who was in attendance at the time of birth^{3,4} - Institutional admission papers from a nursing home, skilled nursing care facility or other institution and was created at least 5 years before the initial application date and indicates U.S. place of birth - Medical (clinic, doctor or hospital) record (excludes immunization records)^{3,4} - Written Affidavit⁶
¹ The interim guidance notes that CMS is not aware that any state has these processes in place at this time. ² Must show birth in: one of the 50 U.S. States; District of Columbia; American Samoa; Swain's Island; Puerto Rico (DOB on or after 1/17/17); Northern Mariana Islands (DOB after 11/4/86, NMI local time); or, Guam (DOB on or after 4/10/1899). ³ Must show U.S. place of birth. ⁴ Must have been created at least 5 years before the Medicaid application, unless the applicant is a child under the age of 5. ⁵ Must show applicant's age. ⁶ Affidavits should ONLY be used in rare circumstances. An affidavit by at least two individuals of whom one is not related to the applicant/recipient and who have personal knowledge of the event(s) establishing the applicant's/ recipient's claim of citizenship. The person(s) making the affidavit must be able to prove his/her own citizenship and identity for the affidavit to be accepted. A second affidavit from the applicant/recipient or other knowledgeable individual explaining why documentary evidence does not exist or cannot be readily obtained must also be requested.			
Source: CMS State Medicaid Director's Letter: 0612, June 9, 2006			

Consistent with the DRA statute, primary documents are the only forms of documentation that are acceptable as proof of both citizenship and identity. Any other form of documentation in the other three tiers of the hierarchy requires additional documentation of identity. The interim guidance also states that applicants or beneficiaries born outside the United States who were not citizens at birth must submit a primary document as evidence of U.S. citizenship.

The interim guidance provides instructions to states specifying when a document of “lesser reliability” may be accepted, and directs states to apply the hierarchy of reliability by:

- Obtaining primary evidence of citizenship and identity before using secondary evidence;
- Using secondary evidence of citizenship when primary evidence is not available;
- Using third level evidence of citizenship ONLY when primary evidence cannot be obtained, secondary evidence cannot be obtained AND the applicant or recipient alleges being born in the U.S.; and,
- Using fourth level evidence of citizenship only in the “rarest of circumstances,” when primary evidence is not available, both secondary and third level evidence do not exist or cannot be obtained, and the applicant alleges a U.S. place of birth.

Acceptable Forms of Identity Documentation

As authorized in the DRA statute, the interim guidance confirms that any identity document described in section 274a(b)(1)(D) of the Immigration and Nationality Act may be used to document identity. The interim guidance also exercises the Secretary’s authority to specify, by regulation, any other documentation of personal identity of such other type as the Secretary finds provides a reliable means of identification. Specifically, the guidance lists a Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native tribal document as an acceptable form of identity documentation in addition to those documents described in the Immigration and Nationality Act.

Table 3 reflects documents deemed acceptable proof of identity in the Immigration and Nationality Act section 274a(b)(1)(D). The table includes both documents listed in the statute and those described in the regulations promulgated to implement the statute.

Table 3		
Identity Documents Described in Section 274a(b)(1)(D) of the Immigration and Nationality Act and Effectuating Regulations 8 CFR 274a.2		
LIST A	LIST B	LIST C
Individuals 16 years of age or older who are not disabled must provide a document from List A.	The following documents may be used by (i) individuals under 18 and (ii) disabled individuals of any age who cannot produce a document from List A.	The following documents may be used by (i) individuals under 18 and (ii) disabled individuals of any age who cannot produce a document from Lists A or B.
▪ United States passport (unexpired, expired) ▪ A driver's license or identification card containing a photograph, issued by a state or an outlying possession of the United States* ▪ School identification card with a photograph ▪ Voter's registration card** ▪ US military card or draft record ▪ Identification card issued by a federal, state or local government agencies or entities* ▪ Military dependent's identification card ▪ Native American Tribal document ▪ United States Coast Guard Merchant Mariner Card ▪ Driver's license issued by a Canadian government authority**	▪ School record or report card ▪ Clinic doctor or hospital record ▪ Daycare/nursery school record	▪ Attestation signed by the minor's parent or legal guardian
<i>*If the form of identification does not contain a picture, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address.</i> <i>**The interim guidance states that these are not acceptable forms of identity documentation for the purposes of the DRA.</i>		

Reasonable Opportunity Period

The interim guidance directs states to provide Medicaid beneficiaries who claim to be U.S. citizens with a “reasonable opportunity,” consistent with the state’s administration requirements with respect to eligibility processing, to present evidence of citizenship. States may only terminate eligibility after a recipient has been given reasonable opportunity to present evidence of citizenship and the state determines that the application has not made a good faith effort to present such evidence. The interim guidance states that Medicaid applicants who claim to be U.S. citizens may not be made eligible for Medicaid coverage until they have provided satisfactory evidence of citizenship.

Best Practices and Compliance

The interim guidance requires that states accept only original citizenship documents or copies certified by the issuing agency. States must maintain copies of citizenship documents in case records or a database. States that already document citizenship as a condition of Medicaid enrollment are directed to modify their processes as appropriate to comply with the DRA.

The interim guidance states that CMS will review implementation of the DRA citizenship documentation requirement to “determine whether claims for [federal payment] for services provided to citizens should be deferred or disallowed.” The interim guidance further states that CMS will monitor the extent to which the state is using primary evidence to establish citizenship and identity and will require corrective action to ensure that states are seeking the most reliable evidence available from applicants and beneficiaries.

Finally, CMS, in concert with other federal agencies, is establishing an automated system that states can use to verify citizenship and identity of Medicaid applicants and beneficiaries. When such verification system becomes available, states will be required to match files for individuals who use third or fourth tier documents to verify citizenship; the interim guidance directs states to ensure that case records with third and fourth tier documents are identifiable and can be made available for these automated matches.

Many questions have arisen about how this guidance should be interpreted and implemented. In the coming weeks, CMS will be drafting final regulations implementing the DRA citizenship requirement for Medicaid. New York’s experience offers important lessons to inform this process.

IV. NEW YORK'S CITIZENSHIP DOCUMENTATION PROCEDURES

New York has among the most rigorous documentation requirements of any Medicaid program in the country. Applicants for Medicaid are required to present proof of identity, income, home address, age, citizenship or immigration status and other eligibility factors.⁶ The requirements stem from a provision in state law stating it is “the responsibility of the applicant to provide information and documentation necessary for the determination of the initial and ongoing eligibility.”⁷ This has been interpreted broadly under regulation to require documentation of virtually every condition of eligibility.⁸ State regulations specifically require that applicants or beneficiaries provide evidence of their citizenship (or lawful alien status) as a condition for Medicaid eligibility.⁹ According to state officials, this is a long-standing policy in the state dating back to at least the mid-1970s.

While New York is advantaged by the fact that its Medicaid program has required documentation of citizenship for three decades, the extremely complex and rigid nature of the DRA citizenship documentation requirements poses several potential conflicts with New York's current documentation rules. As discussed below, without modifications to the final regulations implementing the DRA citizenship requirement, New York's success in balancing program integrity and access to Medicaid coverage may be compromised, and three decades of practical and successful citizenship documentation policy lost.

A. Acceptable Forms of Citizenship Documentation for Medicaid in New York

New York's list of acceptable citizenship documents has evolved considerably over time and continues to be open to interpretation. The most common acceptable forms of citizenship documentation today include a United States birth certificate, a United States baptismal record recorded within three months of birth, a United States passport and a naturalization certificate. Applicants also must sign as part of the application process a declaration under penalty of perjury, that they are U.S. citizens, nationals, Native Americans or are in satisfactory immigration status (i.e. qualified aliens or PRUCOL) and must provide, or apply for, a Social Security Number.¹⁰ Table 4 details the acceptable forms of documentation for citizenship in New York's Medicaid program.

⁶ Applicants for long-term care are required to provide proof of resources. Applicants are required to provide documentation of dependant care costs or other health insurance, where applicable.

⁷ New York Social Services Law Section 366-a(2)(a);

⁸ 18 NYCRR 360-2.3(a). See also 18 NYCRR 351.1(b), 351.2

⁹ 18 NYCRR 360-3.2(j).

¹⁰ New York State Department of Health Administrative Directive 04 OMM/ADM-7 (October 26, 2004).

Table 4 Acceptable Forms of Documentation of Citizenship in New York¹¹		
Primary Documentation: Requires ONE of the Following	Secondary Documentation: Requires One from Each Column	
• United States Birth Certificate • United States passport • Naturalization Certificate (Form N-550 or N-570). • Naturalization Certificate (Form N-550 or N-570). • Consulate Report of Birth Abroad of a Citizen of the U.S. (Form FS-240) • Certification of Birth (Form FS-545) • Certification of Report of Birth (DS-1350) • U.S. Citizen I.D. Card (Form I-197 or I-179) • Certificate of Citizenship (Form N-560 or N-561) • Information from a primary source Federal agency (e.g. SSA) verifying the United States as the place of birth • Religious Document such as a baptismal record, recorded within 3 months of age showing that the ceremony took place in the U.S. • American Indian Tribal Card/Tribal records • Court records of parentage, juvenile proceedings or child support • Adoption finalization records • Northern Marianas Card • Certificate of identity and registration (issued by Foreign Services Posts until 1972)	• Letter of No Record: To indicate an attempt was made to find a birth certificate a letter issued by the state where the individual was born stating the name, date of birth, year searched for the record and that there is no birth certificate on file for the person.	• Census Record* • Certificate of circumcision* • Early school record* • Family Bible record* • A notarized affidavit from a blood relative familiar with the circumstances of birth, i.e. a parent, aunt, uncle, sibling* • A delayed birth certificate filed more than one year after birth listing the documentation used to create it. It must be signed by the attending physician or midwife or list an affidavit by the parent(s) or show early public records. • Doctor's record of post-natal care (may serve as primary documentation if the mother of the applicant is known to the State's Welfare Management System (WMS)).

**Must be a record showing the date and place of birth and created within the first five years of life.*

¹¹ New York State Department of Health Administrative Directive 04 OMM/ADM-7 (October 26, 2004) and personal communications with New York State Department of Health staff.

New York's system of citizenship documentation defines certain documents as primary and certain other documents as secondary; applicants are required to submit two forms of secondary documentation. However, New York does not assign a hierarchy of reliability (and therefore acceptability) to citizenship documents. The complexity and rigidity of applying and tracking compliance with such a hierarchy is a profound departure from New York's current procedures and would be burdensome to implement for New York, as for all other states.

Current DRA guidance also imposes rules with respect to identity documentation requirements that are not in place in New York. For example, while a birth certificate documents both citizenship and identity in New York, this practice would not be acceptable under the DRA without additional modification to the guidance from the Secretary of HHS.

In contrast to the interim guidance, New York accepts *copies* of documents and does not require originals or certified copies of citizenship documents. In addition, many counties in the State have implemented or plan to implement electronic matching systems to verify citizenship through county vital records. The practical implications of requiring original citizenship documents are potentially enormous. Because New York has accepted copies of citizenship documents from applicants over the past 30 years, many of the state's 4 million Medicaid beneficiaries may have to present original documents in order to retain their Medicaid benefits under the interim guidance.

Additionally, because New York's has a mail-in renewal system, the vast majority of the state's Medicaid applicants and beneficiaries do not have a face-to-face encounter with State or local Medicaid workers at recertification. The prospect of now requiring beneficiaries to mail original documents to New York's local social services offices, to be mailed back at a later date, is unrealistic and encourages people to surrender valuable and important documents best kept in their own possession. The alternative prospect of abandoning a successful mail-in renewal system to require in-person encounters for the purposes of presenting original documents is equally untenable.

Finally, the cost and complexity of obtaining or replacing original or certified copies of citizenship documents would be a significant barrier to applying for and retaining Medicaid coverage under new DRA rules. For low-income citizens who have lost (or never had) the original document(s) that prove their citizenship, the process of obtaining new citizenship documentation under the DRA would be costly, time consuming and complicated. The cost of obtaining or replacing standard forms of documentation articulated in the DRA ranges from \$10 to \$220, depending on the document, costs for expediting receipt of the document, and shipping costs. To the extent that New York and other states will assume the costs for obtaining these documents, these are additional and potentially significant administrative costs. The costs and procedures for obtaining key citizenship documents accepted under the DRA are provided in Table 5.

TABLE 5 PROCESS AND COST FOR OBTAINING/REPLACING SELECT CITIZENSHIP DOCUMENTS ACCEPTABLE UNDER THE DRA				
Document	Issuing Agency	Process	Cost	Length of Time to Receive Document
U.S. Birth Certificate	State or Local Agency	Written request and proof of identity.	\$10-\$70	Ranges from 1-4 weeks
U.S. Citizenship ID Card (I-197)	No Longer Issued	If you already have one, you may continue to use it as acceptable documentation indefinitely.	-----	-----
U.S. Passport	U.S. Department of State Bureau of Consular Affairs	Application along with proof of identity and U.S. citizenship.	\$82-\$157	Ranges from 2-6 weeks
Report of Birth Abroad of a U.S. Citizen (FS-240)	U.S. Department of State Bureau of Consular Affairs	Notarized written request and affidavit.	\$30	Ranges from 4-10 weeks
Certificate of Birth Abroad (FS-545)	No Longer Issued	If you already have one, you may continue to use it as acceptable documentation indefinitely.	-----	-----
Certificate of Report of Birth Abroad of a U.S. Citizen (DS-1350)	U.S. Department of State Bureau of Consular Affairs	Notarized written request and proof of identity.	\$30	At least 6-10 weeks
Certificate of U.S. Citizenship (N-560, N-561)	United States Citizenship and Immigration Services	Application, passport photos, and possible interview and additional documentation.	\$220	Unknown
Naturalization Certificate (N-550, N-570)	United States Citizenship and Immigration Services	Application, passport photos, and possible interview and additional documentation.	\$220	Unknown
Birth Certificates can be obtained either through a State Department or through www.VitalChek.com , a service that provides assistance to electronic orders for vital records for all 50 states. Documents regulated by the U.S. Department of State, Bureau of Consular Affairs, can be found at www.state.gov Additional information such as length of process was obtained through phone interviews with Bureau staff. Documents regulated by the United States Citizenship Immigration Services can be found at www.uscis.gov				

B. Exceptions and Special Populations

As in many states, participation in a limited number of programs with coinciding eligibility requirements triggers Medicaid eligibility in New York.¹² Persons deemed eligible for TANF¹³, SSI or Title IV-E foster care maintenance payments in New York are automatically eligible for Medicaid.¹⁴ While each of these programs have their own federally mandated

¹² New York Social Services Law 366-1(a)(1)

¹³ TANF beneficiaries must affirmatively request Medicaid coverage to be enrolled.

¹⁴ New York Social Services Law 366-1(a)(8)

citizenship and state mandated documentation requirements, New York's documentation requirements for these programs are thought to generally align with existing state Medicaid documentation rules. To the extent that local offices can confirm that copies of documents exist in one program case file, eligibility workers do not obtain separate or additional documents for the Medicaid case record.

Newborn infants born to a mother receiving Medicaid also are automatically enrolled into Medicaid without further documentation in New York.¹⁵ While this policy is rooted in federal law,¹⁶ an automatic enrollment process was enacted into state statute after the deaths of two infants in the state were linked to administrative barriers to coverage. Local departments of social services now perform an “electronic match” to county vital records departments and automatically enroll babies born to women who are Medicaid beneficiaries. These local offices do not obtain copies of birth certificates for any newborns added through the State's automated enrollment process. Nor do they obtain identity documentation for newborns.

Because the DRA does not exempt any populations from citizenship documentation, New York may have to modify its current practices for newborns and populations who derive Medicaid eligibility from other federal programs (such as TANF, SSI, Title IV-E), which do not impose citizenship documentation requirements that are consistent with DRA rules.

C. Assistance with Documentation Requirements

The applicant or recipient is the primary source of documentation in New York and is required, wherever possible, to provide verification of the conditions of eligibility. However, when an applicant or recipient has made reasonable efforts to obtain information or verification from a third party and the third party fails or refuses or seeks to impose a fee for providing the information, the social services official must pay such fee or assist the applicant in obtaining the information from the third party or by other means.¹⁷

In addition to the application assistance and support that New York's local Medicaid offices are obligated by law to provide, New York has invested significant resources in the Facilitated Enrollment (FE) program. Unique in the nation, FE is an application assistance program through which health plans, federally qualified health centers, county health departments, and community services organizations, among others, assist eligible uninsured families in applying for New York's public health insurance programs. Facilitated enrollers assist applicants in completing the Medicaid application, collecting required documentation from applicants (including citizenship, immigration, and income documents), conducting New York's legally mandated face-to-face interview and screening for income eligibility for public health insurance. FEs submit applications to local county Medicaid offices for final determination of Medicaid eligibility, and track and troubleshoot application and documentation problems to ensure that eligible applicants obtain coverage.

¹⁵ To ensure access to health care benefits, the statute further guarantees payment to any provider for services provided to a child under the age of one if the mother is receiving Medicaid. New York Social Services Law 366-g.

¹⁶ Federal law mandates automatic enrollment of infants born to Medicaid enrolled women. 42 USC 1396a(e)(4).

¹⁷ 18 NYCRR 360-2.3. See also 18 NYCRR 351.5(a) and 351.20(b)(4).

FE has developed into a significant and far reaching enrollment assistance infrastructure in New York that has been enormously successful in reaching uninsured New Yorkers and helping them to successfully apply for the public health insurance programs for which they are eligible. In 2005, facilitated enrollers in New York State submitted nearly 575,000 applications for the state's Medicaid programs.

V. THE NEW YORK EXPERIENCE: OBSERVATIONS OF MEDICAID OFFICIALS AND FACILITATED ENROLLERS

The key to effective policy is the ability to implement it in the field. To gain an understanding of how New York's citizenship documentation requirements are functioning in New York the authors interviewed several Medicaid program officials charged with oversight of application and eligibility determinations procedures, as well as front line Facilitated Enrollment staff. Findings from these interviews are summarized below.

New York's citizenship documentation requirement has evolved with time and experience, and continues to benefit from a common sense, problem-solving approach. New York's current list of citizenship documents reflects the State's 30 years of practical experience in applying citizenship requirements to the diverse population eligible for Medicaid benefits. State Medicaid administrators have been forced to think beyond the most common forms of citizenship documentation to accommodate unique circumstances of diverse populations eligible for Medicaid. Local eligibility workers, FEs and providers also have worked with state officials to inform this policy and to develop creative solutions to locating acceptable citizenship documents for Medicaid eligible New Yorkers.

"In 1978, I remember a flurry of activity and a special project in New York City around developing alternative ways for homeless people to meet citizenship and other documentation requirements. We absolutely have had to allow collateral ways of establishing citizenship and immigration status for this population and others over time."
New York State Medicaid Official

Most Medicaid applicants in New York are able to comply with citizenship documentation requirements, largely as a result of New York's flexibility. State and local Medicaid officials and FEs agree that the vast majority of applicants for Medicaid are able to provide one of the forms of documentation of citizenship under the State's documentation rules. Medicaid officials attribute this success in large measure to the flexible nature of New York's citizenship documentation rules, but also to the cultural importance of birth and citizenship records to families.

"People generally seem to treat their birth and other citizenship records with a great deal of care. It seems to us that most people are able to give us these documents." **New York City Medicaid Official**

Diverse populations generate a multitude of unique circumstances with respect to citizenship documentation in New York. Medicaid officials and FEs from throughout the State shared myriad scenarios with respect to citizenship documentation challenges faced by the diverse applicants with whom they work. For example, enrollment staff working with immigrant populations noted that children of naturalized citizens may not be listed on their parent's

Naturalization Certificate – and therefore are hard pressed to produce documentation of citizenship. Enrollment staff serving residents of rural, farming communities in the state noted that applicants tend to move frequently for work, and therefore “lose track” of important documents.

“Boys born to Orthodox Jewish families are not named until their circumcision ceremonies after they’re discharged from the hospital – so the birth certificates for these children have no first names, they read “Baby Boy” and the family’s last name. We work with our local Medicaid office to explain these cases so that they allow us to submit these applications with the birth certificate and a hospital birth record with the first name of the children written in by the family.” **Facilitated Enroller from Brooklyn, New York**

Citizenship documentation is more likely to be a barrier to obtaining Medicaid coverage for certain special populations. Among those U.S. citizens who are most challenged to produce documents are: the elderly, particularly those who are naturalized citizens or southern born African Americans, homeless, mentally ill, people with addictions, and people with unstable or transient housing arrangements. These individuals are at greatest risk for losing access to Medicaid coverage (and therefore access to health care) with the implementation of the DRA citizenship documentation requirement.

Elderly. State and local Medicaid officials share the view that elderly citizens requiring long-term care more frequently have citizenship documentation problems. These individuals often have no family to provide documentation or application information and/or suffer from dementia, further impairing their ability to complete the application process. In these cases, responsibility for proving citizenship cannot be shifted back to the applicant; State and local Medicaid workers and the long-term care providers treating these patients bear the burden of obtaining acceptable proof of citizenship.

In addition to elderly citizens requiring long-term care, children of naturalized parents and African American citizens born in the south in the early 20th century are two additional elderly populations cited by both state and local officials as often lacking source citizenship documentation.

“A 90-year old African American woman born in Tuscaloosa, Alabama is just not going to have the usual documents – no birth certificate, no hospital record. If we can get a church record for her from when she was a small child, we believe that we have good evidence of citizenship. This is as much about common sense as anything else.” **Local Medicaid Official, Nassau County, New York.**

Vulnerable and Marginalized Populations. Medicaid officials and FEs that work with homeless, mentally ill, drug addicted and populations with unstable housing, indicate that these individuals are among their most challenging cases in terms of obtaining citizenship and other documentation.

“We see a lot of homeless applicants – we have multiple encounters with these clients to give them guidance on where to go and how to get their citizenship documents. We follow-up ourselves when we can.” **Facilitated Enroller from the Bronx, New York**

“Applicants who have trouble with citizenship documentation are those who are vulnerable in all aspects of the Medicaid application process: homeless people and people with mental illness and substance abuse problems.” **New York City Medicaid official**

State agencies, local Medicaid offices and facilitated enrollers are significant sources of support for applicants having trouble documenting their citizenship. State agencies, local Medicaid offices and FEs play a critical role in helping at-risk applicants obtain the documents they need to apply for Medicaid. State and local Medicaid officials agree that applicants have the primary responsibility for providing or obtaining citizenship documents, but that eligibility workers are obligated by law to help to the extent the applicant is unable to secure necessary documentation. State officials confirm that to the extent a county does obtain the document and covers the cost, such costs are treated as Medicaid administrative expenses that are submitted for federal matching funds. State officials also point to significant Medicaid application assistance provided by the Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD) to individuals discharged from institutions run by these agencies.

Facilitated Enrollers provide an additional and often “first line” of support to Medicaid applicants. For those families that have no citizenship documentation or cannot meet documentation standards, FEs play a crucial role in helping them submit acceptable documentation. The FE role ranges from working with applicants and County Medicaid offices to request birth certificates from vital records offices, to developing strong working relationships with eligibility workers for troubleshooting specific documentation questions and problems.

“We worked with our county Medicaid office to establish a process where the Medicaid office obtains in-County birth certificates at no cost to applicants – for “Medicaid application” purposes only. They are helping us go to other counties in the state to request birth certificates now too.” **Facilitated Enroller from Cortland County, New York**

New York, like many other states, has linked the application and eligibility determination processes for several public benefit programs including Medicaid, TANF, SSI, and Title IV-E. New York has achieved administrative efficiencies and improved access to coverage by coordinating Medicaid application and eligibility determination processes with other public benefit programs, including TANF, SSI and Title IV-E, which have overlapping eligibility criteria. New York has aligned documentation requirements among these programs, and has streamlined those requirements by eliminating duplicate documentation. For example, if a Medicaid eligibility workers can determine that a specific document, such as a birth certificate or social security card, already resides in an SSI or food stamps case record, they do not require the applicant to provide it again.

“If we can confirm that a document is in one program case record, it meets the documentation requirement for another.” **State Medicaid Official.**

New York's current citizenship documentation requirements are effective in ensuring program integrity. State and local officials emphasize that both as measured against internal audits and based on direct experience in the field, New York's current practices have met or exceeded compliance with state and federal eligibility criteria.

VI. CONCLUSION AND RECOMMENDATIONS

New York has implemented a citizenship documentation requirement that verifies citizenship for Medicaid program beneficiaries without impeding access to coverage. *However*, the achievement of these dual goals has been possible only through significant investment in flexible and thoughtful policy development and supportive resources for applicants, including facilitated enrollment.

The interim guidance regarding implementation of the DRA citizenship documentation requirement for Medicaid references New York as one of a handful of states that has required documentation of citizenship in Medicaid for many years without undue hardship to either applicants or the state, and indicates that the DRA requirements “mirror” New York's rules. In fact, there are significant differences between New York's requirements and those of the DRA which if not addressed in final regulation may create hardship to both the state and its Medicaid applicants and beneficiaries.

These hardships will be more pronounced for other states seeking to implement this new legislation that do not have the advantage of New York's direct and long-standing experience in documenting citizenship, or the extensive enrollment assistance infrastructure to help consumers complete the application and documentation process.

Findings based on New York's experience lead to the following statutory and regulatory recommendations to further clarify citizenship documentation requirements of the DRA in a way that meets the goals of the statute, supports successful implementation in the states, and ensures access to Medicaid coverage for eligible citizens.

- ***Congress should execute a technical amendment to Sec. 6037(a)(2) of the DRA exempting citizens who are beneficiaries of Medicare and SSI from documenting citizenship in Medicaid.*** While Congress intended to exempt citizens receiving SSI and Medicare from the DRA's requirements, a drafting error resulted in an exemption for “aliens.” This error has potentially dramatic consequences for Medicaid beneficiaries and state programs. Given the clear intent to exempt citizens enrolled in SSI and Medicare, Congress should act quickly to correct its error.
- ***The final regulations implementing the Medicaid citizenship documentation requirement under Section 6036 of the DRA should incorporate the following recommendations:***
 - ***Provide states with discretion to broaden the list of public benefit programs whose beneficiaries are exempt from the DRA's citizenship verification requirements to include at least TANF and Title IV-E beneficiaries.*** Because many states link Medicaid enrollment to eligibility in other federal benefit programs, the Secretary must give states the discretion to exempt beneficiaries

whose Medicaid eligibility is linked to other programs, including beneficiaries of the TANF and Title IV-E programs, or risk disrupting the application process for programs far beyond the intended reach of the DRA.

- ***Exempt newborn infants born to women who are Medicaid beneficiaries from documenting citizenship in Medicaid.*** Federal law mandates that these children are automatically enrolled in Medicaid. Further, these children are citizens by virtue of the fact that they are born in the United States; evidence of their birth should be deemed sufficient evidence of citizenship.
- ***Expand the list of acceptable citizenship documents to include additional documents accepted in New York and other states that require citizenship documentation.*** Over the course of 30 years, New York has shown that the documentation procedures currently in place in the state are effective at both preserving program integrity and ensuring access to benefits for eligible citizens. The Secretary should incorporate this experience into final regulation by including all currently acceptable forms of citizenship documentation in New York and other state Medicaid programs that, like New York, have a record of success in documenting citizenship.
- ***Give states flexibility and discretion in implementing the DRA requirements by eliminating or simplifying the “tiered” approach to citizenship documentation.*** Given the enormous diversity in state programs, enrollment procedures and populations participating in Medicaid across the nation, states need the flexibility to formulate workable policies that meet the needs of their communities and to apply common sense in individual cases. The hierarchy of documents described in the interim guidance is rigid and complex; it would be burdensome for states to implement and monitor, and difficult for beneficiaries to follow.
- ***Eliminate the requirement that states accept only original or copies certified by the issuing agency as satisfactory forms of citizenship documentation and allow states to conduct data matches to verify citizenship.*** Providing original or certified documents is not practical, as it would force states to spend more time and resources obtaining documents from government agencies and encourage families to part with personal records best kept in their own possession. States should be permitted to accept copies of citizenship documents. States should also be allowed to conduct matches to vital records and other databases to verify citizenship of Medicaid applicants and beneficiaries before (and instead of) requiring documentary evidence of citizenship.
- ***Clarify that states are obligated to provide Medicaid applicants and beneficiaries with assistance in obtaining the documents necessary to prove citizenship.*** The interim guidance indicates that states “should assist” applicants and beneficiaries in obtaining citizenship documents. Such assistance should be a state obligation and include help applying and paying for government issued documents necessary to establish citizenship. The Secretary would be following

the precedent set by federal officials when implementing the requirement that state agencies assist applicants in obtaining a Social Security Number.¹⁸

- ***Allocate targeted funds to states for outreach, education and application assistance activities related to DRA implementation.*** New York's Facilitated Enrollment Program is instrumental in helping Medicaid applicants meet the citizenship documentation requirements in New York's Medicaid program. It is an advantage that few if any other states in the country share as they prepare to implement the DRA. While other states are unlikely to replicate New York's FE program, they must be offered resources to meet the outreach, education and application assistance needs that have arisen in their states as a result of the DRA.
- ***Delay implementation of the DRA citizenship documentation requirement, and provide states with adequate time for implementation of the DRA to ensure seamless transition to the new citizenship documentation rules with minimal disruption of access to Medicaid coverage for eligible citizens.*** States have an enormous job ahead of them. It is crucial to the 50 million citizens enrolled in and eligible for Medicaid and the many health care providers who serve them that states are given adequate opportunity and time to formulate and implement state policies effectuating the DRA requirements. Further, the interim guidance outlines the Secretary's intent to, in concert with other federal agencies, establish an automated system that states can use to verify citizenship and identity of Medicaid applicants and beneficiaries. It would be most prudent and cost effective make this verification system available to states before implementing a complicated and onerous system that will change dramatically with the introduction of a citizenship matching system.

Above all else, the final guidance issued from federal officials needs to ensure that implementation of the DRA citizenship documentation requirements does not impede the larger goal of the Medicaid program: to provide access to health care for our nation's most vulnerable populations. Drawing on New York's experience, it is possible for state and federal officials to protect program integrity while preserving coverage for eligible citizens.

¹⁸ Federal law generally approaches verification requirements as a state obligation, and therefore does not address the beneficiaries' role in providing documentation.¹⁸ One exception is Social Security Numbers (SSN). Federal regulations require applicants for Medicaid to provide or apply for a SSN as a condition of eligibility.¹⁸ However, the regulation goes on to state that if an applicant does not have or cannot recall his SSN, the state agency must assist the applicant in completing and submitting an application for an SSN, including obtaining evidence required under SSA regulations to establish the age, the citizenship or alien status, and the identity of the applicant.¹⁸

APPENDIX

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