

NATIONAL ASSOCIATION OF URBAN HOSPITALS

Private Safety-Net Hospitals Caring for Needy Communities

August 8, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Subject: File Code CMS-2257-IFC

To Whom it May Concern:

I am writing on behalf of the National Association of Urban Hospitals (NAUH) regarding the interim final rule published in the *Federal Register* on July 12, 2006 amending Medicaid regulations to implement section 6036 of the Deficit Reduction Act of 2005, which requires states to obtain satisfactory documentary evidence of Medicaid applicants' or recipients' citizenship and identity so they can receive federal Medicaid matching funds.

On the whole, we believe that CMS did a good job of developing appropriate regulations to implement a complex piece of legislation that was highly prescriptive in a number of ways and posed significant challenges. We appreciate your decision to exempt Medicare and SSI recipients from resubmitting appropriate documentation on the grounds that they have already satisfactorily documented their citizenship and identity and your decision to allow states to enter into agreements with their vital statistics agencies to provide documentation for recipients and applicants.

At the same time, however, we would like to bring several issues to your attention.

The Onerous Nature of Documentation Requirements

NAUH is concerned that the documentation requirements are extremely onerous and that complying with them may be beyond the capabilities of some applicants and recipients. Negotiating through government agencies is always complex, and many low-income people may fail in their good faith efforts to do so. Also, some may encounter fees for securing the documentation they seek – a real potential burden for low-income families. Consider, for example, that birth certificates cost \$10 in Pennsylvania and Oklahoma and \$22 in Texas and that until passage of the Deficit Reduction Act last year, the most a state could require Medicaid recipients to pay for a prescription drug was three dollars. Similarly, individuals with mental illnesses often are in no position either to pursue the required documentation or to help others who are pursuing it for them. Surely something can be done to ease this burden on those with very limited abilities to help themselves.

These challenges, in turn, lead us to worry that some people who truly are qualified for Medicaid will give up and stop trying, leaving hospitals to absorb the cost of the care they continue to provide to such individuals because hospitals do not turn away those who truly need their help, regardless of their ability to pay. For this reason, we encourage CMS to review all of the requirements and consider ways of simplifying them. One possibility, for example, might be to require states to waive fees for individuals seeking documents to prove their identity and citizenship.

Exercise of Discretion to Exempt Individuals From Documenting Citizenship
(Issue identifier “Implementation Conditions/Consideration”)

Another way to ease the difficulty of providing documentation would be to require it of fewer people. The Deficit Reduction Act offers CMS the discretion to exempt individuals who have already documented their citizenship from needing to do so again. CMS has chosen not to exercise this discretion except in the case of Medicare and SSI recipients. NAUH urges CMS to reconsider this decision. If the point of this new law is to ensure that applicants and recipients have adequately documented their citizenship and identity, we believe that those who have already done so for other purposes should not be required to do so again. We believe this is a good idea in general and especially appropriate at a time when more than 40 million Americans are facing this new requirement. If this approach is considered acceptable for Medicare and SSI recipients, we believe it is appropriate for others – such as newborns and individuals enrolled in other government programs, for whom adequate documentation already is available – who have already provided the requisite documentation and therefore urge CMS to consider fully exercising the discretion offered to it in the Deficit Reduction Act.

NAUH believes that many Medicaid applicants and recipients will become discouraged by the proposed documentation requirements and will stop trying to meet them. As a result, some who otherwise qualify for Medicaid will never be deemed eligible and others who currently are enrolled in the program will be disenrolled – yet many who are disenrolled will undoubtedly continue to seek and receive the care they need, with hospitals forced to absorb the cost of this care as uncompensated care. We believe this, in turn, will result in the federal government finding itself saving money that otherwise would have gone to the states as federal financial participation. We encourage CMS to consider setting aside these unanticipated savings in a fund to help hospitals pay for the increased burden of uncompensated care that we believe they will incur as a result of this new rule.

We also believe that the administrative burden of processing all of this documentation and assisting individuals who cannot obtain documentation on their own will be extremely costly for the states. For this reason, we recommend that CMS increase the Federal Medicaid Assistance Percentage (FMAP) for administrative costs associated with implementing this new, unfunded federal mandate.

Delegation of Authority to Certify Required Documentation

NAUH cannot tell, from the text of the regulation, whether states may delegate the authority to certify that an applicant or recipient has provided the requisite documentation. In particular, a number of states have working agreements with partner agencies to provide intake workers who are stationed in hospitals, public health facilities, clinics, and other locations. These intake workers seek to enroll in Medicaid uninsured individuals who turn to these facilities for care. If, in the course of that application process, uninsured individuals provide documentation that meets the new standard, is that good enough to meet the new requirements? Are these intake workers, even though they are not formally state employees, empowered to certify that they have seen the required documentation? Or will applicants be required to present the documentation again to state employees? We appreciate any clarification you can provide on this issue.

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We appreciate your attention to NAUH’s suggestions, questions, and concerns and welcome any questions you may have about them.

Sincerely,

Ellen J. Kugler, Esq.
Executive Director