

Questions and Answers
on
Verification of Citizenship and Immigration Status

Q15. Are the verification requirements with respect to citizenship and immigration status the same for all applicants?

No. For purposes of the verification requirements relating to citizenship and immigration status, it is useful to divide applicants into four groups:

- United States citizens and nationals;
- Immigrants who are “qualified aliens” and who, as such, may apply for the full scope of coverage under a state’s Medicaid or SCHIP state plan;
- Immigrants who are “non-qualified aliens” and therefore eligible to apply only for coverage of emergency services under Medicaid; and
- Non-immigrants (as defined in question 16).

Q16. Who are non-immigrants?

Non-immigrant aliens include non-citizens lawfully admitted to the United States, but only for a temporary or limited period of time, such as tourists, foreign diplomats and foreign students. Non-immigrants do not meet the definition of a qualified alien and therefore are never eligible for a separate child health program under SCHIP or for the full range of services available under any state’s Medicaid program. Non-qualified aliens may qualify for emergency services under Medicaid. But because non-immigrants generally will be unable to establish residency in any state, they generally will be ineligible for emergency assistance under Medicaid as well. However, in rare cases, a non-immigrant may be able to establish residency, in which case he or she may be eligible for emergency assistance under Medicaid, provided that all other eligibility criteria are met. The Medicaid eligibility of non-immigrants is discussed in §3211.10 of the State Medicaid Manual.

Q17. What steps are states required under Federal law to take in verifying citizenship and/or immigration status?

Citizens, U.S. nationals and qualified aliens applying for Medicaid and SCHIP must execute a declaration in writing, under penalty of perjury, stating that they are a citizen or national of the United States or, if not a citizen or national of the United States, that they are in satisfactory immigration status. In the case of an unemancipated minor under age 18 or an incompetent adult, a parent, legal guardian or other person legally qualified to act on the applicant’s behalf must sign such a declaration.

Qualified aliens also must present documentation of their immigration status. State and county Medicaid agencies must then verify an immigrant’s immigration status with the Immigration and Naturalization Service (INS) through the automated Systematic Alien Verification for Entitlements (SAVE) system, or by using an

alternative verification system approved under a waiver granted by the Secretary of Health and Human Services. (It should be noted that the INS has published proposed a regulation under which all states would be required to verify the immigration status of non-citizens applying for Medicaid using SAVE; states currently using an alternative system under an approved waiver would no longer be permitted to do so. States would have 24 months to begin using SAVE after publication of the final rule.)

Agencies responsible for determining eligibility for a separate child health program under SCHIP have more flexibility in determining how to verify immigration status. SCHIP agencies can apply to the INS for participation in SAVE or use the alternative waiver system developed by the state for Medicaid, but they are not required to do so.

Non-qualified aliens and non-immigrants applying for emergency assistance under Medicaid are not required to sign a written declaration or otherwise provide documentation of immigration status.

The procedures which states should follow in complying with these verification requirements are discussed in more detail in section 3212 of the State Medicaid Manual.

Q18. What is the statutory authority for these verification requirements?

Since 1986, verification of citizenship, U.S. national and alien status for purposes of Medicaid eligibility has been governed by §1137(d) of the Social Security Act, codified at 42 U.S.C. 1320b-7(d). Separate child health programs under SCHIP, which was enacted over 10 years after passage of §1137,¹ are not expressly covered by its terms. Except as specifically noted, however, CMS policy governing verification procedures for SCHIP and Medicaid are the same.

In addition, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) directed the U.S. Attorney General to establish requirements and procedures for individuals applying for means-tested benefits to verify their citizenship, national or immigration status. The Immigration and Naturalization Service (INS) is the agency with the lead role in this effort. In response to this directive, the Attorney General issued both an Interim Guidance, published on November 17, 1997 at 62 Fed.Reg. 61344, and a Proposed Rule, published on August 4, 1998 at 63 Fed.Reg. 41662. Both the Interim Guidance and the Proposed Rule address the verification requirements for citizenship and immigration status for various public benefits, including Medicaid and SCHIP. No final regulations have yet been published.

Q19. What is the difference between a citizen and a national of the United States?

United States citizens include (1) individuals born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands or the Northern

¹ Section 1137(d) of the Social Security Act was added with the passage of §121 of the Immigration Reform and Control Act of 1986, P.L. 99-603.

Mariana Islands (except for individuals born to foreign diplomats); (2) naturalized citizens; and (3) individuals who otherwise qualify for U.S. citizenship under §301 of the Immigration and Nationality Act, 8 U.S.C. 1401.

The term “national of the United States” is defined in the Immigration and Nationality Act as a person who (1) is a U.S. citizen or (2) though not a citizen, owes permanent allegiance to the United States. As a practical matter, non-citizen nationals include individuals born in American Samoa or Swain’s Island. For purposes of determining Medicaid and SCHIP eligibility, including verification requirements, citizens and non-citizen nationals of the United States are treated the same.

Q20. Can U.S. citizens and nationals be required to submit additional documentary evidence of citizenship or national status?

States currently have the option to accept the signed declaration described in question 17 without requiring further documentation of citizenship or national status. If a state accepts such self-declaration and it is later discovered that the applicant is not a U.S. citizen or national, the state is responsible for any erroneous payments made on the individual’s behalf and for taking appropriate action to recover the amount of any erroneous payments from the individual who falsely claimed citizenship.

Alternatively, states can opt to require applicants to submit documentary evidence of their citizenship or national status. For a list of documents identified by the Immigration and Naturalization Service (INS) as providing reliable evidence of citizenship or national status, states may wish to consult Attachment 4 to the Interim Guidance published by the INS at 62 Federal Register 61362-61364.

Q21. What documents can qualified aliens submit to verify their immigration status?

As explained in question 17, states must require qualified aliens applying for Medicaid and SCHIP to submit documentation establishing satisfactory immigration status. Acceptable documentation and verification of immigration status is discussed in sections 3212.4 and 3212.6 of the State Medicaid Manual. States also may consult Attachment 6 to INS’ Interim Guidance, which can be found at 62 Federal Register 61411-61412.

Q22. Are immigrants required to submit original immigration documents?

No. States have the option to accept a photocopy of an immigration document. The State agency or contractor responsible for determining eligibility does not have to review the original document. States should, however, implement a fair and nondiscriminatory process in order to ensure the integrity of their application process with respect to verification of immigration status. Following the determination of eligibility, for example, States could require a random sample of immigrants to produce original documentation.

In addition, States should be aware that when the INS promulgates final regulations governing verification of citizenship and immigration status, it is possible that states' flexibility to accept photocopies may change.

In order to ensure maximum accuracy of verification and protection of personal information, the Interim Guidance issued by the INS following PRWORA strongly encourages states to require submission of original immigration documents. The proposed regulation published by the INS goes a step further. If published as final, that rule would mandate submission of original immigration documents. As proposed, the rule would give states two years to come into compliance.