



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

INFORMATIONAL LETTER

TRANSMITTAL: 08 OHIP/INF-1

DIVISION: Office of Health
Insurance Programs

TO: Commissioners of
Social Services

DATE: January 28, 2008

SUBJECT: Citizenship and Identity Documentation Requirements of the
Deficit Reduction Act (DRA) of 2005: Final Guidelines

SUGGESTED

DISTRIBUTION: Medical Assistance Directors
Temporary Assistance Directors
Staff Development Coordinators
Legal Staff
Fair Hearing Staff

CONTACT PERSON: Local District Liaison
Upstate: (518) 474-8887
NYC: (212) 471-4500

ATTACHMENTS: Desk Guide: Documents Establishing U.S. Citizenship and
Identity (revised 11/19/07)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs	Soc. Serv Law & Other Legal Ref.	Manual Ref.	Misc. Ref
	06 GIS MA/015 06 GIS MA/021 06 GIS MA/024 07 GIS MA/004	18 NYCRR §360-3.2(j)	Section 6036 of the Deficit Reduction Act of 2005 (P.L. 109-171) Tax Relief and Health Care Act of 2006 (P.L.109-432) 42 C.F.R. §435.407		

The purpose of this Office of Health Insurance Program Informational Letter (INF) is to provide Local Departments of Social Services (LDSS) with a comprehensive document that clarifies and defines the citizenship/identity documentation requirements for Medicaid eligibility under the Deficit Reduction Act (DRA) of 2005. This INF outlines the citizenship/identity documentation requirements for the Medicaid Program, and provides a revised desk aid that is important to the eligibility worker when reviewing documentation provided by the applicant/recipient (A/R). This INF also incorporates subsequent technical amendments and the final rules issued by the Centers for Medicare and Medicaid Services (CMS). This INF will replace previously issued General Information System (GIS) messages listed on the cover page of this INF.

BACKGROUND

Effective July 1, 2006, the Deficit Reduction Act of 2005 (DRA) amended federal Medicaid statute to require that all United States citizens applying for or renewing Medicaid coverage provide "satisfactory documentary evidence" of their citizenship. Documentation of United States citizenship or satisfactory immigration status has been a requirement for New York State Medicaid eligibility for over three decades.

NOTE: These new provisions do not affect immigrants. Individuals with satisfactory immigration status can continue to receive Medicaid in New York State as described in OMM 04 ADM-07.

The DRA requires all states to obtain documentary evidence from citizen applicant/recipients (A/Rs) and maintain this documentation in their case files, or risk losing federal matching funds. The federal government has stated that a U.S. passport or a Certificate of Naturalization (N-550 or N-570) or Certificate of U.S. Citizenship (N-560 or N-561) issued by the United States Department of Homeland Security is considered a "primary" document. However, if an individual states they do not have one of these documents, **LDSS may and should continue to accept birth certificates as proof of U.S. citizenship, however an additional identity document is required from the identity section in the attached desk aid to this INF.**

ORIGINAL DOCUMENTS

Documents presented by A/Rs must be **originals or copies certified by the issuing agency.** Districts may copy or scan the documents for the LDSS files. The worker should make photocopies of any original documents and annotate on the copy that she or he saw the original or a document certified by the issuing agency. For individuals who present other than primary documents, including birth certificates, LDSS must obtain additional proof of identity, such as a driver's license. If no other identity document is available for a child under age 16, a parent or guardian may certify to the child's identity, as long as an affidavit has not been used to document citizenship.

NEW APPLICANTS

Districts must follow these guidelines for applications filed on or after July 1, 2006. Pregnant women continue to be eligible for prenatal and postpartum care in New York State without regard to citizenship or immigration status. However, minors who are applying for the Family Planning Benefit Program (FPBP) may no longer attest to their citizenship. There must be a document in the case record showing citizenship or satisfactory immigration status for FPBP participants, as well as identity documentation when other than primary documentation of citizenship is relied upon.

Individuals who cannot provide "satisfactory documentary evidence" of citizenship, but who are making a good faith effort to obtain the documentation must not be denied.

RENEWAL RECIPIENTS

For new Medicaid applicants or for currently enrolled individuals, the district must obtain evidence of citizenship and identity at the time of application or at the first re-determination occurring on or after July 1, 2006. Presentation of documentary evidence of citizenship and identity is a **one-time** activity; once a person's citizenship and identity have been documented and recorded in the case file, subsequent changes in eligibility should not require repeating the documentation unless later evidence raises a question of a person's citizenship or identity.

The local district need not re-document citizenship unless the case record lacks "satisfactory documentary evidence" of citizenship. Cases affected may include minors in receipt of FPBP benefits if they attested to citizenship. Current recipients remain eligible as long as they are undertaking a good faith effort to provide acceptable citizenship/identity documentation to the local district.

REASONABLE OPPORTUNITY

At the time of application or re-determination, the LDSS must give an applicant or recipient a **"reasonable opportunity"** to present documents establishing U.S. citizenship and identity. The guidance advises:

- Applicants for Medicaid should not be made eligible until they have presented the required evidence, however,
- If the applicant or recipient tries in **good faith** to present satisfactory documentation, but is unable because the documents are not available, the LDSS should assist the individual in securing these documents.
- If the applicant or recipient cannot obtain the necessary documents and needs assistance (i.e., is homeless, mentally impaired, or physically incapacitated), and lacks someone who can act on their behalf, then the LDSS should assist the applicant or recipient to document U.S. citizenship and identity.
- An individual who is already enrolled in Medicaid will remain eligible if he/she continuously shows a good faith effort to present satisfactory evidence of citizenship and identity.

FEDERAL EXEMPTIONS

Some individuals who are declaring to be a citizen or national of the U.S. are exempt from both the citizenship and identity documentation requirements established under the DRA. These exemptions were further modified under Section 405(c)(1) of the "Tax Relief and Health Care Act of 2006" (TRHCA) (Public Law 109-432).

The Centers for Medicare and Medicaid Services (CMS) clarified that applicant/recipients who are entitled to or enrolled in any part of Medicare or are receiving Supplemental Security Income (SSI) or Social Security Disability benefits (SSDI) are exempt from documenting both citizenship and identity. These individuals have already established their citizenship and identity to the Social Security Administration.

A Medicaid applicant/recipient declaring to be a citizen or national of the United States is exempt from the citizenship/identity documentation requirements required by the DRA if he or she meets one of the following criteria:

- is entitled to or enrolled in Medicare benefits under any part of Title XVIII (This includes all applicants/recipients for the Medicare Savings Programs [MSP]); or
- is receiving either
 - (1) Social Security benefits under Title II on the basis of a disability (SSDI); or
 - (2) Supplemental Security Income (SSI) benefits under Title XVI; or
- with respect to whom:
 - (1) child welfare services are made available under Title IV-B on the basis of being a child in foster care; or
 - (2) adoption or foster care assistance is made available under Title IV-E.

The State foster care agency, which is the NYS Office of Children and Family Services, is required to have in effect procedures for verifying the citizenship or immigration status of children in foster care under the responsibility of the State under Title IV-E or IV-B of the Social Security Act. This requirement was effective six months from the date of enactment which was June 20, 2007.

Any questions regarding Title IV-E or child welfare services available under Title IV-B on the basis of being a foster care child, may be addressed to:

Nancy White Martinez, Director
Office of Strategic Planning & Policy Development
New York State Office of Children & Family Services
Phone number: 518 473-1776

Citizenship Documentation

Under the final federal regulations, only specific documents that meet certain criteria can be used to prove citizenship (42 C.F.R. § 435.407). The regulations also establish a multi-level hierarchy of acceptable documents under which certain documents are more reliable proof of citizenship than are other documents. This hierarchy includes primary documents, which are the most reliable, as well as secondary documents, third level documents and, of least reliability, fourth level documents. A more reliable document must be used to prove citizenship if it is available to the applicant or recipient ("A/R").

If a more reliable document is unavailable, a less reliable document may be used to prove citizenship. For example, if an A/R does not have a U.S. passport (a primary document), but has a U.S. birth certificate or a U.S. military record showing a U.S. place of birth (such as a DD-214), either document is acceptable to prove citizenship. Both are examples of secondary documents that prove citizenship if a primary document is not available to the A/R. An additional identity document, such as a driver's license, is required when secondary, third or fourth level documents are presented.

Below is a list of primary, secondary, third level and fourth level documents that may be used to prove citizenship. The LDSS worker should inquire whether any of these documents are available to the A/R and use the most reliable, available document as proof of citizenship. A document is considered to be "available" when it (1) exists; and (2) the A/R can obtain it, with LDSS help if needed, if given a reasonable opportunity.

1. Primary documents

Primary documents are the most reliable documents that prove citizenship. If an A/R has a primary document available, it must be used to prove citizenship even if less reliable documents are also available.

In addition to proving citizenship, primary documents prove identity. An A/R who has an available primary document does not have to provide a second document to establish identity.

There are three types of primary documents, as listed below. Each is acceptable proof of citizenship and identity.

- U.S. Passport. The Department of State issues this. A U.S. passport does not need to be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. Spouses and children were sometimes included on one passport through 1980. U. S. passports issued after 1980 show only one person. Consequently, the citizenship and identity of the included person can be established when one of these passports is presented. Exception: Do not accept any passport as evidence of U.S. citizenship when it was issued with a limitation. However, such a passport can be used as proof of identity.
- Certificate of Naturalization (DHS Forms N-550 or N-570). The Department of Homeland Security issues these documents to naturalized citizens.

- Certificate of U.S. Citizenship (DHS Forms N-560 or N-561). The Department of Homeland Security issues certificates of citizenship to individuals who derive citizenship through a parent.

2. Secondary documents

If a primary document is unavailable, an A/R should provide a secondary document, if it is available. Secondary documents are satisfactory proof of citizenship when a primary document is not available.

Unlike primary documents, secondary documents do not establish identity. The A/R who uses a secondary document to prove citizenship must also have another document to prove identity. See page 12 of this INF for a listing of documents that prove identity.

The LDSS worker must accept any of the documents listed below as secondary evidence of citizenship when a primary document is not available, provided that the document meets the listed criteria and there is nothing indicating that the person is not a U.S. citizen.

- U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam (if born on or after April 10, 1899), the Virgin Islands of the U.S. (if born on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands [if born after November 4, 1986 (NMI local time)].

The birth certificate must have been recorded before the person was 5 years of age. A delayed birth record document that is recorded at or after 5 years of age is considered fourth level evidence of Citizenship (See page 10 of this INF).

NOTE: If the document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S. or the Northern Mariana Islands before those areas became part of the U.S., the individual may be a collectively naturalized citizen. Collective naturalization occurred on certain dates listed for each of the territories. The following will establish U.S. citizenship for collectively naturalized individuals:

- *Puerto Rico:* (A) Evidence of birth in Puerto Rico on or after April 11, 1899 and the A/R's statement that he or she was residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941, or (B) Evidence that the A/R was a Puerto Rican citizen and his or her statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.
- *U.S. Virgin Islands:* (A) Evidence of birth in the U.S. Virgin Islands, and the A/R's statement of residence in the U.S., a U. S. possession or the U.S. Virgin Islands on February 25, 1927; or (B) The A/R's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or (C) Evidence of birth in the U.S. Virgin Islands and the A/R's statement indicating residence in the U.S., a U.S. possession or Territory or the Canal Zone on June 28, 1932.

Secondary documents (continued)

- *Northern Mariana Islands (NMI), formerly part of the Trust Territory of the Pacific Islands (TTPI):* (A) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S. or a U.S. Territory or possession on November 3, 1986 (NMI local time) and the A/R's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or (B) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the A/R's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or (C) Evidence of continuous domicile in the NMI since before January 1, 1974 and the A/R's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

NOTE: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

- Certification of Report of Birth (DS-1350): The Department of State issues a DS-1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth, based on information shown on the FS-240.
- Report of Birth Abroad of a U.S. Citizen (FS-240): The Department of State consular office prepares and issues this. A Consular Report of Birth Abroad can be prepared only at an American consular office overseas while the child is younger than 18. Children born outside the U.S. to U.S. military personnel usually have one of these.
- Certification of birth issued by the Department of State (FS-545 or DS-1350): Before November 1, 1990, Department of State consulates also issued this form along with the prior version of the FS-240. In 1990, U.S. consulates ceased issuing the FS-545. Treat an FS-545 the same as a DS-1350.
- U.S. Citizen I.D. Card (I-197 or I-179): This form was issued until the 1980's by INS. Although no longer issued, holders of this document may still use it to prove citizenship. INS issued the I-179 from 1960 until 1973. It revised the form and renumbered it as Form I-197. INS issued the I-197 from 1973 until April 7, 1983. The INS issued Form I-179 and I-197 to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.
- Northern Mariana Identification Card (I-873): Issued to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 4, 1986. The card is no longer issued but those previously issued are still valid.
- American Indian Card (I-872) with classification code "KIC": These are issued by the Department of State to identify U.S. citizen members of the Texas Band of "Kickapoos" living near the U.S./Mexican border. The classification code "KIC" and a statement on the back denote U.S. citizenship.

- Final adoption decree: The adoption decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized and the State in which the child was born will not release a birth certificate prior to final adoption, a statement from a State approved adoption agency that shows the child's name and a U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.
- Evidence of U.S. Civil Service employment before June 1, 1976: The document must show employment by the U.S. government before June 1, 1976. Persons employed by the U.S. Civil Service before June 1, 1976, had to be U.S. citizens.
- U.S. Military Record: The document must show a U.S. place of birth. (For example, a DD-214 or similar official document showing a U.S. place of birth).
- Evidence of meeting the automatic criteria for citizenship under the Child Citizenship Act: Adopted or biological children born outside of the U.S. may establish citizenship obtained automatically under Section 320 of the Immigration and Nationality Act, as amended by the Child Citizenship Act of 2000 (P.L. 106-395). Documentary evidence must be available that establishes that, at any time on or after February 27, 2001, the following conditions have been met: (A) At least one parent of the child is a U.S. citizen by either birth or naturalization; (B) The child is younger than 18; (C) The child resides in the U.S. in the legal and physical custody of the U.S. citizen parent; (D) The child was admitted to the U.S. for lawful permanent residence; and (E) If adopted, the child satisfies the requirements of 8 U.S.C. § 1101(b)(1) pertaining to international adoptions [admission for lawful permanent residence as IR-3 (child adopted outside of the U.S.) or as IR-4 (child coming to the U.S. to be adopted) with final adoption having subsequently occurred].

3. Third level documents

Third level documents are less reliable than secondary documents. They are generally non-governmental documents issued for a reason other than to establish citizenship. Each of the third level documents listed below is satisfactory evidence of citizenship *only* when no primary or secondary document is available and the A/R alleges being born in the U.S.

Third level documents do not establish identity. The A/R must have another document that establishes identity. See page 12 of this INF for a list of documents that establish identity.

The LDSS worker must accept any of the documents listed below as third level evidence of citizenship when neither a primary nor secondary document is available, as long as the document meets the listed criteria and there is nothing to indicate that the A/R is not a U.S. citizen.

- Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created at least 5-years before the initial application date and that indicates a U.S. place of birth: For children younger than 16, the document must have been created near the time of birth or 5 years before the date of application. Do not accept a souvenir "birth certificate" issued by the hospital.
- Life, health or other insurance record showing a U.S. place of birth that was created at least 5 years before the initial application date:
For children younger than 16, the document must have been created near the time of birth or 5 years before the date of application. Life or health insurance records may show biographical information for the person including place of birth; the record can be used to establish citizenship when it shows a U.S. place of birth.
- Religious record recorded in the U.S. within 3 months of birth showing a U.S. place of birth: The religious record must also show either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with a religious organization. An example is a baptismal certificate. In questionable cases, such as where the child's religious record was recorded near a Canadian or Mexican border, and the child may have been born outside the U.S., the LDSS worker must verify the religious record or document that the mother was in the U.S. at the time of birth.
- Early school record showing a U.S. place of birth: The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth and the name(s) and place(s) of birth of the applicant's or recipient's parents. School records must be verified with the school's administrator.

4. Fourth level documents

Fourth level documents have the lowest reliability and should be used only in the rarest of circumstances. Specifically, fourth level documents should be used only when the A/R does not have any available primary, secondary or third level documents.

Many fourth level documents must have been created at least 5 years before the application for Medicaid.

If a fourth level document is used to establish U.S. citizenship, a second document establishing identity must also be presented.

- Federal or State census record showing U.S. citizenship or a U.S. place of birth: (Generally for persons born from 1900 through 1950). The census record must show the person's age. Census records from 1900 through 1950 contain certain citizenship information. To secure this information, the applicant, recipient or LDSS should complete a Form BC-600, Application for Search of Census Records for Proof of Age. Add in the remarks portion "U.S. citizenship data requested." Also add that the purpose is for Medicaid eligibility. This form requires a fee.
- Any of the following documents are acceptable if they show a U.S. place of birth and were created at least 5 years before the application for Medicaid:(For children younger than 16, the document must have been created near the time of birth or 5 years before the date of application):
 - o *Medical (clinic, doctor or hospital) record.* Medical records generally show biographical information for the person including place of birth. The record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purpose of establishing U.S. citizenship.
 - o *Seneca Indian tribal census.*
 - o *Bureau of Indian Affairs tribal census records of the Navajo Indians.*
 - o *U.S. State Vital Statistics official notification of birth registration.*
 - o *A delayed U.S. public birth record that is recorded more than 5 years after the person's birth.*
 - o *Statement signed by the physician or midwife who was in attendance at the time of birth.*
 - o *Bureau of Indian Affairs Roll of Alaska Natives.*
- Institutional admission papers from a nursing facility, skilled care facility, or other institution created at least 5 years before the initial application date and that show a U.S. place of birth. Admission papers generally show biographical information for the person, including U.S. place of birth. The record can be used to establish U.S. citizenship when it shows a U.S. place of birth.
- Written affidavit. Affidavits should only be used in the rarest of circumstances. There must be at least two affidavits by two persons who have personal knowledge of the events establishing the A/R's claim of citizenship. The two affidavits can be combined in a joint affidavit. At least one of the persons making the affidavit cannot be related to the A/R. Neither person can be the A/R. The persons making the affidavit must be able to prove their own citizenship and identity. If they have information which explains why documents

establishing the A/R's claim of citizenship do not exist or cannot be readily obtained, the affidavit should contain this information. A separate affidavit must be obtained from the A/R or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained. The affidavits must be signed under penalty of perjury but do not have to be notarized.

IDENTITY DOCUMENTS

An A/R who uses a primary document, such as a U.S. passport, to establish citizenship is not required to submit a second document to prove identity. All other A/R's must establish their identity by providing a document from the following list or as otherwise specified below:

- Driver's license issued by a State or Territory either with a photograph of the individual or other identifying information such as name, age, sex, race, height, weight or eye color. Canadian driver's licenses may not be used.
- School identification card with a photograph of the individual.
- U.S. military card or draft record.
- Identification card issued by the Federal, State or local government with the same information included on a drivers' licenses.
- Military dependent's identification card.
- Certificate of Degree of Indian Blood or other U. S. Native American/Alaskan Native Tribal document with a photograph or other personal identifying information relating to the individual, such as age, weight, height, race, sex and eye color.
- U.S. Coast Guard Merchant Mariner card.
- A cross-match with a Federal or State government, public assistance, law enforcement, or corrections agency's data system. Some examples are (but not limited to) State Data Exchange (SDX), Beneficiary Data Exchange (BENDEX) and State Online Query (SOLQ).
- If none of the above identity documents is available, a combination of three or more other documents that, when taken as a whole, reasonably verify the A/R's identity. Acceptable documents include marriages certificates, divorce decrees, employer identification cards, high school and college diplomas from accredited institutions (including general education and high school equivalency diplomas) or and property deeds or titles. Voter registration cards are not acceptable. All documents must contain consistent identifying information. None of the documents may have been used to establish the A/R's citizenship. This method of proving identity may be used only when the A/R submitted second or third level evidence of citizenship.

SPECIAL RULES FOR CHILDREN YOUNGER THAN 16

Children who are younger than 16 may have their identity documented through other means:

- Clinic, doctor or hospital record.
- School records, including report card or nursery or daycare record. The LDSS must verify the records with the issuing school.
- If no other documents are available, an affidavit signed under penalty of perjury by a parent, guardian, caretaker relative may be used. An identity affidavit should not be used if a citizenship affidavit was used. Affidavits need not be notarized. Identity affidavits may be used for children under 18 when a school ID card or driver's license is not available to the child until she or he is 18 years of age.

SPECIAL RULES FOR DISABLED INSTITUTIONALIZED INDIVIDUALS

The LDSS may accept an identity affidavit signed under penalty of perjury by the director or administrator of a nursing facility or other residential care facility in which a disabled A/R resides. The LDSS should first pursue all other means to verify identity before accepting such an affidavit. The affidavit need not be notarized.

ATTACHMENT: "DOCUMENTS ESTABLISHING U.S. CITIZENSHIP AND IDENTITY"

The desk aide/chart entitled "Documents Establishing U.S. Citizenship and Identity" released in GIS message 06 MA/021 has been revised to reflect the **final** federal regulations on acceptable documentation for citizenship/identity and is attached to this informational letter. Please discard any previous version of this chart dated prior to 11/19/07.

Deborah Bachrach
Deputy Commissioner