



Via Facsimile and Electronic Mail

June 20, 2006

The Honorable Michael O. Leavitt  
Secretary of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Leavitt:

As members of the Consortium for Citizens with Disabilities (CCD) Health and Long Term Supports and Services Task Forces, we are writing to urge you to provide additional clarification on three issues that will make a critical difference in whether individuals with disabilities can meet the documentation requirements in the Deficit Reduction Act (DRA) and retain access to essential Medicaid-funded health, mental health and long term services and supports.

Specifically, we urge you to: 1) broaden the list of documents that can be used to establish identity once citizenship is documented; 2) specify procedures that will encourage the use of data matches to relieve the financial and logistical burden on the applicant or beneficiary; and 3) allow parity between legal non-citizens and citizens so applicants can be eligible for Medicaid for a reasonable period while they are obtaining their documents.

The CCD is a Washington-based coalition of national organizations advocating for self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. We represent individuals facing a wide range of disabilities and chronic health conditions including cerebral palsy, mental illness, mental retardation, epilepsy, diabetes, brain injury, and sensory and other physical disabilities. Thus, ensuring access to Medicaid health and long term services for low income individuals with disabilities is one of the CCD's top priorities.

The Centers for Medicare and Medicaid Services (CMS) released a Dear State Medicaid Director Letter on June 9, 2006 giving guidance to the states on the new documentation requirements in the Deficit Reduction Act. We appreciate CMS's efforts to address the concerns of the disability community by specifying that states should assist an applicant or beneficiary who is "mentally impaired or physically incapacitated." We believe, however, that without these three clarifications, states will be significantly hampered in providing that assistance and many individuals with disabilities will not be able to meet the new requirements.

## **1. Broaden the List of Documents That Can Be Used To Establish Identity Once Citizenship Has Been Documented:**

The recent guidance sets forth a very narrow list of documents that can be used to show identity once citizenship is established, most of which are not accessible or available to individuals with disabilities. This will be a major barrier for people with disabilities seeking to meet the new requirements.

If an individual has a passport, they do not need any further identification. However, only 34% of Americans over 18 have a passport and we believe that the number for individuals with disabilities is much smaller. Accordingly, the vast majority of individuals with disabilities will have to provide identity documents or lose coverage for Medicaid-funded health, mental health and long term services and supports.

The CMS letter specifies the following identity documents for adults: driver's license, school identification card, U.S. military or draft record, identification card issued by the Federal, State, or local government, military dependent's identification card, Native American Tribal document, and U.S. Coast Guard Merchant Mariner card. As a result of cognitive, mental or physical impairments, many people with disabilities can not obtain state drivers' licenses. State or federally issued identification cards with photographs either have requirements that individuals with disabilities cannot meet or will place additional financial and logistical burdens on them.

The Deficit Reduction Act specifically references any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act. The regulations for this act are located at 8 C.F.R. 274a.2(b)(1)(v)(B). The CMS letter references subsection (B) (1) of that regulation, but specific identity documents for individuals with disabilities are listed in subsection (B) (4).

Recognizing the difficulties that individuals with disabilities may face producing other forms of identification, such as drivers' licenses or military records, subsection (B)(4) permits program administrators to complete and sign the relevant forms. In particular, that section allows individuals with disabilities who are being placed into employment by a non-profit organization to follow the procedures for minors under the age of 18 and effectively permits the program administrator to attest to the identity of the individual with a disability.

Individuals with disabilities live in a range of home, community and institutional settings. The organizations that provide these services are the repository for extensive health, social, educational, employment and financial records on individuals. Frequently, the state or county agencies assign a representative/designee of private and public organizations that provide services and supports with the authority to act on behalf of individuals with disabilities in order to carry out Medicaid or other state agency requirements. The regulations should authorize that written affidavits by qualified representatives/designees of intermediate care facilities for persons with mental retardation, group homes, home and community waiver services, nursing facilities, community health, mental health, mental retardation, physicians, hospitals, case managers, and rehabilitation providers suffice in meeting the identity requirements. This parallels the procedures that the CMS letter authorizes under which parents can complete an affidavit for children under the age of 18.

In addition, CMS should allow records from these providers to establish identity when citizenship has been documented. Subsection B(2) allows minors to meet the requirements by providing doctor or hospital records. Because individuals with disabilities are served by a broad array of providers, we urge you to allow records from the list of providers above to satisfy the identity requirement for those who have established citizenship.

Subsection (B)(4) of these regulations was clearly added to respond to the concerns raised in this letter that individuals with disabilities do not have access to commonly used identity documents and require an expansion of the list to adequately meet their needs. We urge you to use your authority under the DRA to make a similar accommodation to ensure that individuals with disabilities who can prove citizenship will also be able to document their identity. This will allow people with disabilities to successfully apply for or continue to receive critical services and supports funded by Medicaid.

## **2. Clarify Procedures That Will Encourage States to Use Data Matches:**

Data matches are the simplest way to avoid burden and expense for individuals with disabilities as well as state and county governments. The State Data Exchange and the vital statistics records would allow states to fully assist individuals with disabilities in meeting the new requirements. However, CMS needs to provide additional information to encourage states to use this method.

First, it must be clear that states can use data matches at the outset and do not have to request other documents or wait for the reasonable opportunity period to expire. HHS has the authority to deem these as reliable evidence of citizenship and should do so unequivocally, sparing states and people with disabilities administrative and financial burdens.

In addition, it should be clarified that the State Data Exchange can be used to establish BOTH identity and citizenship and the vital records can be used to establish citizenship. Individuals with disabilities must establish both identity and citizenship to receive SSI benefits so the documentation requirements should be fully met by the data from the Social Security Administration.

Finally, CMS should specify that records of data matches may be kept electronically in recognition that many states no longer have or are moving away from paper files. This will encourage states to use data matches and is consistent with HHS's emphasis on information technology to modernize the administration of Medicaid and other health programs.

## **3. Allow Parity Between Legal Immigrants and Citizens So Applicants Can Be Eligible for Medicaid While They Are Obtaining Their Documents.**

For people with disabilities, it is essential that they have expeditious access to Medicaid to provide critical and often life-saving services and supports. As previously noted, individuals with disabilities have particular barriers to providing documentation due to their mental or physical impairments. Prohibiting a state from providing services until documentation is

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established will needlessly penalize individuals with disabilities for their impairments and deny them quick access to services.

The Deficit Reduction Act did not require states to deny eligibility until applicants have produced the necessary documents. The current CMS guidance puts citizens, including citizens with disabilities, in a worse position than immigrants. Immigrants who declare that they are legal and otherwise eligible for Medicaid are enrolled and receive coverage during a period when they have a reasonable opportunity to submit evidence of their immigration status.

We appreciate your efforts to ensure that individuals with disabilities receive assistance in meeting the documentation requirements. Further clarification is urgently needed to ensure that this goal is achieved and individuals with disabilities continue to have access to critical services and supports. Therefore, we the undersigned national organizations request that any further HHS/CMS guidance to states, outreach materials and interim final regulations incorporate these recommendations.

Thank you for considering this request.

Sincerely,

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On Behalf Of:

American Association of People with Disabilities  
American Association on Mental Retardation  
American Congress of Community Supports and Employment Services (ACCSES) -  
Disability Service Providers of America (DSPA) Alliance  
American Council of the Blind  
American Foundation for the Blind  
American Medical Rehabilitation Providers Association  
American Network of Community Options and Resources  
American Occupational Therapy Association  
Association of University Centers on Disabilities  
Bazelon Center for Mental Health Law  
Easter Seals  
Epilepsy Foundation  
National Alliance on Mental Illness

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National Association for the Advancement of Orthotics and Prosthetics  
National Association of Councils on Developmental Disabilities  
National Association of County Behavioral Health and Developmental Disability Directors  
National Association of School Psychologists  
National Association of Social Workers  
National Disability Rights Network  
National Down Syndrome Congress  
National Mental Health Association  
National Respite Coalition  
National Spinal Cord Injury Association  
The Arc of the United States  
Title II Community AIDS National Network  
Tourette Syndrome Association  
United Cerebral Palsy  
Volunteers of America

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