



5.30.2006

BREAKING DEVELOPMENTS IN LONG TERM CARE AND SENIOR HOUSING LAW

Medicaid Law Changes Require Evidence of Citizenship

Beginning July 1, 2006, U.S. citizens seeking Medicaid benefits will have to provide evidence of citizenship. The new requirement to verify documentation when applying for Medicaid is intended to prevent illegal immigrants from declaring they are citizens and obtaining Medicaid benefits.

Medicaid is the program that plays an important role for providing medical assistance to low income populations. The Deficit Reduction Act that the President signed on February 8, 2005, contains a section entitled "Improved Enforcement of Documentation Requirements." The new mandate will require citizens applying for or renewing their coverage for Medicaid to submit evidence of citizenship and evidence of identity. The following are listed in the law as satisfactory documentary evidence of citizenship:

- A birth certificate showing birth in the United States, plus a government-issued photo identification document;
- A U.S. passport;
- A certificate of U.S. citizenship;
- A certification of naturalization to U.S. citizenship; or
- A state-issued driver's license or other state-issued identity document, if the State required evidence of citizenship before issuing the document.

Commonly used forms of identification, such as driver's licenses issued without requiring evidence of citizenship, Social Security cards, or school records would not be sufficient since they do not prove citizenship and are not limited to people who are citizens. People who do not submit the required documents could be denied Medicaid coverage or have benefits delayed until after submitting the requisite documentation.

What was the law before the change?

States are required to provide Medicaid benefits to all eligible citizens. Before the change, the law permitted citizens applying for Medicaid to receive benefits by attesting, under penalty of perjury, to being a U.S. citizen. While most states have permitted such self attestation, they also have implemented policies requiring documentation of citizenship when there is any reason to question an applicant's statement that he or she is a citizen.

Medicaid for noncitizens is restricted to certain legal permanent residents except for emergency care. The law does not change the requirement that legal immigrants must submit documentation of their immigration status, and that the documents must be verified against the Department of Homeland Security data.

What happens if states provide Medicaid benefits without requiring evidence of citizenship?

The new provision will sharply reduce states' flexibility to establish and implement requirements for determining citizenship. States would have no flexibility to waive the requirement for individuals who do not have one of the specified documents, but for whom there is no question of their citizenship status.

States that provide coverage without requiring documentation would not be eligible for federal reimbursement for costs incurred in providing Medicaid coverage to such individuals and could be at risk of being sanctioned for program errors.

Are there any exceptions to the documentation requirements?

The law allows no exceptions, even for those who cannot locate birth certificates or never had a passport, or who lack documents for any reason. This mandate is likely to fall hardest on nursing-home residents, persons who lost their documents, including disaster victims such as Hurricane Katrina survivors living in temporary facilities, homeless people, those with serious mental or physical disabilities such as Alzheimer's disease, low-income adults, and those who do not have a birth certificate available because they were not born in a hospital or similar institution. Some low-income citizens may be discouraged by the new requirement from applying for Medicaid or renewing their coverage due to difficulties navigating the systems to apply for a passport or duplicate birth certificate or because they were never issued a birth certificate in the first place. In addition, some people, such as foster parents or other caregivers, may find it difficult to obtain copies of birth certificates for their children.

The provision does not appear to authorize any grace period to reduce the burden that could result from this provision. Those already on Medicaid, as well as those applying for Medicaid, who cannot produce the required documents could lose their benefits because of the new requirement or experience delays in obtaining coverage until they produced the documents.

For more information, please contact the Long Term Care and Senior Housing Law Group at:

Lane Powell PC
206.223.7000 Seattle
503.778.2100 Portland
360.754.6001 Olympia
longtermcareandseniorhousing@lanepowell.com
www.lanepowell.com

We provide *The Long Term Care and Senior Housing Law Hot Sheet* as a service to our clients, colleagues and friends. It is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

© 2006 [Lane Powell PC](#)

Seattle - Portland - Anchorage - Olympia - London