



## CMS Attacks Rights of U.S. Citizen Newborns

August 8, 2006

On July 6, 2006, the Centers for Medicare and Medicaid Services (CMS) issued interim regulations on the citizenship documentation requirements of the 2005 Deficit Reduction Act (DRA).

On a positive note, CMS exempts from the DRA's citizenship documentation requirements newborns who qualify for automatic, continuous eligibility (also known as "deemed eligibility"). For over 20 years, qualifying newborns have been entitled to Medicaid at birth without an application or documentation, and this automatic eligibility continues up to the first birthday as long as the mother and infant are part of the same household. *See* 42 U.S.C. § 1396a(e)(4).

However, in the Preamble (pp. 12-13), CMS attempts to deny automatic eligibility to U.S. citizen newborns whose mothers were receiving Medicaid only for emergency labor and delivery services. Mothers are eligible for emergency services if they do not meet the eligibility requirements for "full-scope" Medicaid due to their immigration status. Without automatic eligibility, these newborns instead would need to go through the regular Medicaid application process, including documenting their U.S. citizenship.

**CMS has no authority to deny automatic eligibility to these newborns or to impose the DRA's citizenship documentation requirements on them:**

- **CMS's policy change of the automatic and continuing eligibility rules discriminates against U.S. citizen newborns based on the mother's immigration status** in violation of Equal Protection, as a federal appeals court has already held.
- **The policy change is also inconsistent with the statute authorizing automatic eligibility**, which, on its face includes *all* infants, regardless of the mother's status or her scope of benefits. *See* 42 U.S.C. § 1396a(e)(4).
- **The policy change undermines the goals of automatic and continuing eligibility for newborns.** Infants are extremely vulnerable during the first year of life, and automatic eligibility is

designed to promote timely access to preventive check-ups and necessary medical care to avoid disabling and even life-threatening conditions. **If implemented, this policy change literally would jeopardize infants' lives.**

States are *not* required to follow the Preamble, but may incorrectly believe they must implement this harmful and unconstitutional change to a long-standing Medicaid protection for newborns.

### **Action needed:**

- In your comments on the DRA regulations (due August 11, 2006), please tell CMS that you oppose the policy change denying automatic eligibility for the first year of life to U.S. citizen newborns based on the mother's immigration status. Here is a sample:

**CMS's statement in the Preamble discriminating against deemed eligible newborns based on the mother's immigration status is contrary to public health policy and federal law. We urge CMS to clarify that states must provide infants automatic and continuous eligibility without regard to the mother's scope of Medicaid benefits or immigration status.**

- Ask others to do the same.
- Monitor your state's implementation of the CMS regulations and report any changes of your state's procedures for automatic, continuous eligibility for newborns to NILC or MCHA. Advise your state that the change is not required by federal law and will lead to unnecessary delays in critical care for U.S. citizen newborns.

### **For more information or sample comments, please contact:**

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