

December 4, 2006

VIA E-MAIL & U.S. MAIL

S. Kimberly Belshé
Secretary
California Health and Human Services Agency
1600 9th Street, Room 460
Sacramento, CA 95814

Re: Hospital Financing Coverage Initiative and the Deficit Reduction Act

Dear Secretary Belshé:

Last Thursday evening, the Department of Health Services sent an e-mail announcing its plans to release an addendum to change the Health Care Coverage Initiative Request for Applications. Specifically, the addendum would apply the Deficit Reduction Act of 2005 (DRA) citizenship verification requirement to the Coverage Initiative. This e-mail has caused considerable confusion and concern. For the reasons explained below, we urge you to clarify immediately that this change will not alter the rules for non-citizens or prevent them from securing coverage under the Initiative. We also urge you to clarify that the DRA does not require all citizens participating in the Coverage Initiative to provide documentation. Rather, only the citizen Initiative applicants who are determined eligible for and apply for Medi-Cal must provide citizenship documents.

The hospital financing waiver which authorized the Coverage Initiative, allows CMS to make changes to its agreed upon terms and conditions “to come into compliance with any changes in federal statutes or regulations affecting the Medicaid program that occur after the approval date of this Demonstration.” Item 3, Part II, General Program Requirements.

The DRA (P.L. 109-171), enacted February 8, 2006, requires that U.S. citizens provide certain documents if they must declare citizenship as a condition of Medicaid eligibility. Section 6036 of the DRA amends section 1903(i) of the Social Security Act (“Act”) to add the following new paragraph:

“(22) with respect to amounts expended for medical assistance for an individual who declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title, unless the requirements of subsection (x) is met.”

The DRA did not change Medicaid eligibility or immigrant eligibility. Similarly, it did not change the rules for individuals who are eligible for services under a waiver. The DRA applies only where a declaration of citizenship must be submitted as a condition of Medicaid eligibility. This is the rationale that CMS applied to justify excluding presumptively eligible children from its requirements. 71 Fed. Reg. 39216 (July 12, 2006)(presumptively eligible children “are not subject to the documentation requirements until they file an application and declare on the application that they are citizens or nationals”). See also *Bell v. Leavitt*, No. 06 C 3520, pp 14-15 (N.D. IL, Order filed Sept. 14, 2006)(finding that application of the DRA to Foster Care children would “appear to conflict with the Medicaid statute” because the DRA provision applies only to persons who declare to be citizens for purposes of establishing eligibility).

This same rationale applies to Coverage Initiative beneficiaries. No federal law requires that individuals submit a declaration of citizenship as a condition of receiving services under a Medicaid waiver. Medicaid waiver beneficiaries are not among the groups required to attest to U.S. citizenship to establish their eligibility for Medicaid funded services. Indeed, state law implementing the Coverage Initiative clarifies that it is designed to benefit only those persons who are currently ineligible for Medicaid. SB 1448, codified at Welf. & Instit Code Section 15902(a).

State law does require that Initiative applicants be screened and enrolled for Medi-Cal eligibility prior to enrolling in the Coverage Initiative. Section 15904(d)(8). Where a citizen Initiative applicant does not actually apply for Medi-Cal, however, the DRA does not require that s/he submit proof of citizenship. In other words, the DRA only applies to citizens who submit an application for Medi-Cal.

Therefore, to fully comply with the DRA and state law, the State and counties need only screen all Initiative applicants for categorical Medi-Cal eligibility before enrolling them into the Coverage Initiative. The State and counties remain in full compliance with the DRA if they then require only the citizen Initiative applicants who apply for and enroll into Medi-Cal to submit the appropriate citizenship documents.

We appreciate your recognition of the burden and challenges that the DRA imposes upon the Medi-Cal program. It has already deterred eligible immigrants and US citizens across the country from securing critical Medicaid coverage. We hope that you will promptly clarify the rules so that counties, including Los Angeles, can proceed with their efforts to design proposals that fully implement the Coverage Initiative and achieve its intended outcomes. Should you have any questions or comments, please

do not hesitate to call either Yolanda Vera at 213/928-8676 or Tanya Broder at 510/663-8282, ext. 307.

Sincerely,

Yolanda Vera
LA Health Action

Tanya Broder
Sonal Ambegaokar
National Immigration Law Center

cc: Speaker of Assembly Fabian Núñez
President Pro Tem Don Perata
Assemblyman Mervyn Dymally, Chair of the Assembly Health Subcommittee
Assemblyman John Laird, Chair, Assembly Budget
Senator Sheila Kuehl, Chair, Select Committee on California Health Insurance Crisis
Sandra Shewry, California Department of Health Services
Diane Van Maren, Consultant, Senate Budget & Fiscal Review
Michael Dimmit, Principal Consultant, Assembly Budget
Teri Boughton, Chief Consultant, Assembly Health Committee
Los Angeles County Board of Supervisors
Dr. Bruce Chernof, Director of Los Angeles County Department Health Services