

October 12, 2006

The Honorable Mark B. McClellan, MD, PhD
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 443-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Medicaid Coverage for Newborns

Dear Dr. McClellan:

The undersigned organizations are writing to register our concern about an apparent policy change by the Centers for Medicare and Medicaid Services (CMS) that will hurt our nation's youngest citizens.

This apparent policy change is buried in the preamble to the Interim Final Rule on citizenship and identification documentation published in the Federal Register on July 12, 2006 (the Preamble). According to the Preamble, undocumented parents of newborns will now have to apply for Medicaid and prove that their newborns are citizens under the new citizenship documentation policy.

Infants born to pregnant women on Medicaid are automatically eligible for Medicaid for one year if the infant stays with the mother.¹ Undocumented immigrants and legal immigrants who have been in the United States less than five years are eligible for services to treat emergency medical conditions (Emergency Medicaid), as long as they meet the state's Medicaid eligibility criteria. For pregnant immigrants, Emergency Medicaid includes coverage of labor and delivery.

Until the apparent policy change, CMS required states to provide a full year of automatic newborn eligibility to infants born to pregnant women eligible for Emergency Medicaid, to the same extent as infants born to mothers eligible for other Medicaid coverage.² In the Preamble, CMS seems to have reversed this policy. The Preamble may be read to infer that infants born to mothers eligible only for Emergency Medicaid should not be deemed automatically eligible for Medicaid for a year.³ The Preamble may be read to require that mothers of these newborns must apply for Medicaid on behalf of their newborns, in order to document their citizenship.

¹ See section 1902(e)(4) of the Social Security Act.

² It is unclear whether CMS issued formal guidance on this issue, but CMS did instruct some states to provide coverage to infants born to pregnant women receiving Emergency Medicaid.

³ See 71 *Federal Register* 39214 at page 39216, column 2 (July 12, 2006) ("A child born in the United States to an illegal alien mother, or 5-year bar qualified alien mother, is not a deemed newborn under 1902(e)(4) . . .")

Several states have indicated they will comply with the new policy. These states plan to deny eligibility to infants born to women receiving Emergency Medicaid until they apply and prove their citizenship.⁴ Other states may follow suit.

The apparent CMS policy change will cost the health care system more in the long run. Much of the care that will be denied if states comply with the apparent policy change is preventive care in the form of well-baby visits that are needed soon after newborns leave the hospital. Preventive care saves money for states that provide Medicaid coverage and the federal government that helps pay for it. In addition, some infants require immediate post-delivery care for conditions or illnesses detected immediately after birth. Physicians and hospitals, already receiving limited payments under the Medicaid program, will be discouraged from providing vital care for these children. Hospitals and other providers that continue to serve the affected infants will experience delays, if not losses, in Medicaid payment.

Most importantly, children will be hurt by the Rule. It must be remembered that the children in question are citizens born in U.S. hospitals whose births are already paid for by state Medicaid programs. Those parents that do brave the process and apply for Medicaid coverage for their children will experience delays in coverage, pending completion of the Medicaid application, if they are not scared away by the threat of deportation and separation from their children.

The impact on the state and federal governments, health care providers, families and ultimately, infants, is clear: reports have already been received that some newborns with special needs are remaining in the hospital because their lack of coverage prevents the hospital from arranging home care and other necessary follow-up services. We request that CMS inform states that it has not changed its policy on newborns and instruct the states that they should continue to deem them eligible if born to mothers receiving Emergency Medicaid.

Sincerely,

American Academy of Family Physicians

American Academy of Pediatrics

American College of Obstetricians and Gynecologists

Association of Women's Health, Obstetric and Neonatal Nurses

The March of Dimes

National Association of Children's Hospitals

⁴ Advocates are in the process of gathering information on how different states are responding to this policy reversal. To date, Georgia and Tennessee have indicated that they will begin denying automatic newborn eligibility to infants born to pregnant women receiving Emergency Medicaid. In addition, some states, most notably California, have decided not to follow the change in CMS policy and will continue to provide automatic eligibility to newborns whose mothers receive Emergency Medicaid.