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Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits

DEPARTMENT OF HEALTH AND HUMAN SERVICES DEPARTMENT OF AGRICULTURE

Dear State Health and Welfare Officials:

SUBJECT: Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits

Since 1993, the Clinton Administration and states have worked diligently to ensure that eligible persons are enrolled in and have access to federal benefit programs and services. Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF) and Food Stamp supports are critical for all eligible low-income families, especially those trying to make the transition from welfare to work. The Administration will continue to work with states to reduce and eliminate access barriers that discourage the enrollment of all eligible program participants, including those in immigrant families. For example, in May 1999, the Immigration and Naturalization Service (INS) issued comprehensive guidance regarding the standards used for making public charge determinations. The public charge guidance was issued to address concerns in immigrant communities about the consequences of participating in public assistance programs such as TANF, Medicaid, SCHIP and Food Stamps. We also have worked with states to simplify and streamline their application forms and processes and to reduce administrative barriers to enrollment.

Recent information, however, has focused attention on another barrier: that U.S. citizen children and other eligible persons who live in immigrant families still may be deterred from applying for benefits because they are concerned about responding to certain questions on application forms regarding the disclosure of immigration status and social security numbers (SSNs) for family members who are not seeking assistance. This concern appears to stem from uncertainty among immigrant families regarding the confidentiality of information provided to states and the fear that states may provide information about family members to the INS. Although federal law may sometimes require states to ask these questions of applicants, many states are requiring non applicants to disclose immigration status and/or SSNs, even though this information is not legally required. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color and national origin by federal fund recipients. To the extent that states' application requirements and processes have the effect of deterring eligible applicants and recipients who live in immigrant families from enjoying equal participation in and access to these benefit programs based on their national origin, states inadvertently may be violating Title VI.

To help states understand their responsibility for enrolling eligible children and families, and to reduce and eliminate access barriers, we are providing this guidance and the accompanying set of Questions and Answers (Qs&As). Together, they clarify when a state is required to request information about citizenship, immigration status, and social security numbers (SSNs) on joint and single-program applications, when a state is not required to do so, and the circumstances under which a state mayor may not deny benefits when an applicant does not provide the information that the state has requested. The guidance and the accompanying Qs&As also clarify policy in the TANF program and set forth new policy in the Food Stamp program intended to provide states with greater flexibility to design their application forms and procedures to eliminate access barriers for eligible children and adults in immigrant families.

Section I of the guidance sets forth basic rules regarding inquiries into citizenship and immigration status during the application process. Section II addresses the application of the basic requirements of the Privacy Act to inquiries regarding social security numbers on benefit application forms. Section III outlines the content of the accompanying set of Qs&As. These Qs&As are an integral and important part of this guidance, as they detail the specific rules and how those rules are applied in the Medicaid, SCHIP, TANF and Food Stamp programs. Finally, Section IV outlines specific suggestions to help states make changes to their application forms and processes to eliminate access barriers in conformity with this guidance.

I. Application Requirements and Inquiries Regarding Citizenship or Immigration Status

Under federal law, states are required to establish the citizenship and immigration status of applicants for Medicaid (except emergency Medicaid), SCHIP, TANF and Food Stamps. However, states may not require applicants to provide information about the citizenship or immigration status of any non-applicant family or household member or deny benefits to an applicant because a non-applicant family or household member has not disclosed his or her citizenship or immigration status.

Thus, for example, in the Medicaid program, if benefits are being sought only for the child, the child is considered the "applicant," and the state is required to establish the citizenship and immigration status of the child, but not the child's parents. Further, the state may not deny benefits to the child, if otherwise eligible, because the child's parents have not provided information to establish that they are citizens or qualified immigrants.

It is important to underscore that each federal benefit program has somewhat different rules and policies regarding who is and is not considered "an applicant." While Medicaid and SCHIP allow -- indeed encourage -- individual children to apply for and receive benefits, TANF and Food Stamps, as a general rule, require families or households to apply for benefits as a unit. The accompanying Qs&As explain in detail how the rules regarding the requirements for establishing citizenship and immigration status are applied within each benefit program.

II. Application Requirements and Inquiries Regarding Social Security Numbers

States must comply with the Privacy Act and other federal laws when seeking disclosure of an individual's SSN. Under the Privacy Act, ? 7(a),

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states are prohibited from denying an individual any right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her social security number (SSN) unless such disclosure is required by federal statute, or the state maintains a system of records in existence and operating before January 1, 1975, and the disclosure of the SSN was required under statute or regulation adopted prior to that date to verify the identity of an individual.

Where a state is not authorized to require an individual to disclose his/her SSN, states may request that individuals voluntarily provide SSNs. However, under the Privacy Act, any time a state agency requests an individual to disclose his or her SSN, that agency "shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." (Privacy Act of 1974 § 7(b)). Thus, in the Medicaid example cited earlier in Section I, states can ask non-applicant parents for their SSNs to verify income, but to avoid a potential violation of the Privacy Act, they must clearly indicate that the provision of this information is voluntary and that their SSNs will be used, for example, only to verify their income. States also should inform the non-applicant parents that the failure to provide their SSNs voluntarily will not affect the eligibility of their child, if otherwise eligible.

The Privacy Act, as a general rule, prohibits states from denying program benefits to certain applicants who do not disclose their SSNs if the disclosure is not required by federal statute. In addition separate and apart from the Privacy Act prohibitions, Medicaid, SCHIP and Food Stamp laws and federal policies prohibit states from denying benefits to an applicant because of the failure of another household member to disclose his or her SSN.

Again, because of differences among the Medicaid, SCHIP, TANF and Food Stamp programs, the specific rules and procedures for each program with regard to SSN inquiries are set forth in detail in the accompanying set of Qs&As.

III. Program-Specific Rules

The accompanying Qs&As detail program-specific rules and provide further explanation of: (1) the legal and policy basis for this guidance; (2) the circumstances under which a state may and may not request information about citizenship, immigration status and SSNs on single and joint-program applications; (3) when a state may and may not deny benefits because an applicant has not provided the information the state has requested; and (4) other implementation issues.

IV. Suggestions for States

We recognize that most states have consolidated their application forms and use joint applications for Medicaid, SCHIP, TANF, Food Stamps and other benefits. Joint applications eliminate duplication for states and applicants, and they help ensure that applicants receive all the benefits to which they may be entitled, not just benefits for which they had originally intended to apply. We also recognize that designing consumer-friendly, non-discriminatory joint application forms that combine eligibility requirements for different federal and state benefit programs can be challenging, especially given the recent and significant changes introduced by welfare reform. States need to review and possibly modify their application forms to make them consistent with this guidance. Given the variety of application forms and processes used by states, it is difficult to provide specific direction as to how each may need to be modified. Federal regional offices are available to provide technical assistance, and we encourage states to work with them as they adapt application forms to be consistent with this guidance. The following general recommendations may be helpful:

1. As explained in more detail in the accompanying set of Qs&As, states have the flexibility under this guidance to restructure their joint application forms and processes to allow family or household members who are not seeking benefits to be designated as non-applicants early in the eligibility process. This approach eliminates the need to make broad inquiries about citizenship, immigration status or SSNs, while still allowing states to obtain other information from non-applicant family or household members that is necessary to make eligibility determinations, e.g., income and resources.
2. Many joint applications require individuals to provide the citizenship or immigration status, and/or the SSN, of every member of the "household" in order to be eligible for any or all of the benefits under the joint application (including TANF, Medicaid, and Food Stamps). States should delete such general requests from joint applications and replace them with requests that are directed to the relevant "applicant(s)" for benefits, consistent with this guidance (including the attached program specific rules).
3. As noted throughout this guidance letter and the Qs&As, non-applicants cannot be required to disclose information about their citizenship or immigration status as a condition of an applicant's eligibility. Even asking non-applicants to disclose such information, without stating clearly that this information is not required, raises concerns under Title VI of the Civil Rights Act of 1964, if the effect is to deter otherwise eligible applicants who are protected against discrimination by Title VI from applying for benefits.
4. States should make clear statements about the use and confidentiality of personal information collected through the eligibility process, including SSNs and immigration status, in order to address directly the fears of immigrant families. For example, if a state or local agency is collecting SSNs only to verify income and improve administration of its programs, it could add the following statements to its application form: "We only use social security numbers to help us verify your income. We will not share social security numbers with the INS." We believe such clear statements will encourage individuals to more readily provide SSNs, either as required or requested.
5. If a state requires that applications be filed on a "family" or "household" basis under the TANF and/or Food Stamp programs, states

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should clearly provide information about how eligibility is affected and how the application will be processed if any member of the family or household unit does not provide information about citizenship, immigration status or an SSN. For example, with respect to TANF, states are encouraged to advise that if an individual family member does not provide information about his or her citizenship and immigration status, and/or does not provide his or her SSN, he or she will be excluded from the family unit as an ineligible household member. His or her failure to disclose this information will not affect the potential eligibility of other family members, but it will affect the amount of the benefits received. As noted above, states are encouraged to allow family and household members to choose to be identified as non-applicants early in the eligibility determination process.

6. If states decide not to permit individual family or household members to choose to be non-applicants in TANF and/or Food Stamps, states must ensure that their application forms promote enrollment of eligible families and eliminate the potential for discriminatory impact on eligible applicants based on national origin. We recommend that states design their joint application forms so that families and households complete the information needed to apply for Medicaid and/or SCHIP first, since neither of these programs requires a family or household to apply as a unit. States should inform families and households that they may choose not to apply for TANF and/or Food Stamp benefits and that their eligibility for Medicaid or SCHIP benefits will not be affected if the individuals applying for these benefits are otherwise eligible. States should also inform families and households that they may apply for any individual benefit program independent of the other programs. Families can then make informed decisions about whether they will provide additional information needed to establish eligibility for the other programs.
7. In order to ensure that no inappropriate inquiries are made, states should clearly inform applicants which inquiries, or portions of inquiries, applicants are and are not required to answer for each benefit program. For example: "If you are applying for Medicaid only, you only need to answer questions in [the Medicaid] Section or Question(s) xx," or alternatively, "If some family or household members are not applying for assistance for themselves, they do not need to provide [SSN and citizenship/immigration status] information in Section or Question xx." States may include this information on their application forms or provide a separate written notice, attached to the joint application, that identifies what information must be provided in order for the applicant(s) to receive specific benefits. States may wish to consider using the sample notice that is attached to the Qs&As that accompany this guidance.
8. States should provide information to all applicants about how the application will be processed and the effect on other family members. With respect to Medicaid, SCHIP, Food Stamps and TANF, states should emphasize the following points:
 - o Except for non-citizens applying only for Medicaid coverage of emergency services, the state will not provide benefits to applicants who do not disclose their immigration status.
 - o The state will not attempt to determine, via the INS, the immigration status of non-applicant household members who do not provide their immigration status.
 - o When a state allows family or household members who do not provide their immigration status or SSNs to be treated as non-applicants, it also should inform the applicant that the state will not delay or deny the application for the members who disclose their immigration status and SSNs.
 - o Under Medicaid, TANF, and Food Stamps, family members who are applicants, and who do not have SSNs, must apply for one, but the state may not delay, deny or discontinue assistance pending the issuance of their SSNs. States and local agencies also must assist applicants to apply for SSNs.
9. States should consider education and training activities to ensure that intake caseworkers and other staff persons responsible for processing applications and making eligibility determinations understand and adhere to the principles described in this guidance.
10. States should consider developing and implementing a plan for informing prospective applicants of the state's commitment to these principles. Non-profit organizations that provide assistance to or advocate for immigrants and/or low income families should be able to provide help in developing and implementing any such plan.

We look forward to working with you and are available to provide technical assistance at your request. If you have any questions or suggestions regarding the issues discussed in this letter, please contact our regional staff.

Sincerely,

/S/

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