

FREQUENTLY ASKED QUESTIONS REGARDING:

**CITIZENSHIP DOCUMENTATION OPTION FOR
AMERICAN INDIANS/ALASKA NATIVE APPLICANTS
FOR MEDICAID AND CHIP**

Summary. To be eligible for Medicaid, an applicant must declare that he/she is a citizen or national of the United States, and, beginning on July 1, 2006, has been required to present satisfactory documentary evidence of U. S. citizenship. Sec. 1903(x) of the Social Security Act [42 USC §1396b(x)] defines what "satisfactory documentary evidence of citizenship or nationality" means, and the Secretary of Health and Human Services has issued detailed regulations on the subject.

On Feb. 4, 2009, President Obama signed into law Pub. L. 111-3 which amended Sec. 1903(x) to include as "satisfactory documentary evidence of citizenship or nationality" a document issued by a Federally-recognized Indian tribe which evidences membership or enrollment in or affiliation with such tribe.¹ This provision became effective upon enactment.

Frequently Asked Questions about this new provision are set out below. For convenience, the newly-enacted provision is referred to here as "the tribal citizenship documentation amendment".

Q.1. Precisely what does the tribal citizenship documentation amendment provide?

A.1. The tribal citizenship documentation amendment states that "*a document issued by a federally-recognized Indian tribe evidencing membership or enrollment in, or affiliation with such tribe (such as a tribal enrollment card or certificate of degree of Indian blood)*" shall be accepted as satisfactory evidence of an individual's U.S. citizenship.

Q.2. What status does such a tribal document have among other documents which can be presented as evidence of citizenship or nationality?

A.2. The placement of the tribal citizenship documentation amendment in Sec. 1903(x) of the SSA gives a tribal document the same status as a U.S. passport for purposes of demonstrating citizenship or nationality. (This placement in the law will make a tribal document a "tier 1" – the highest status – document under the HHS Secretary's regulations.)

Q.3. When does the tribal amendment become effective?

¹ See Sec. 211(b)(1) of Pub. L. 111-3 (Feb. 4, 2009), amending Sec. 1903(x)(3)(B) of the Social Security Act to add a new clause (v); Sec. 211(d)(2) regarding restoration of eligibility for Medicaid; and Sec. 211(d)(3) regarding a special transition rule for Indians.

A.3. The tribal amendment became effective upon enactment of Pub.L. 111-3 – February 4, 2009.

Q.4. What information must be included on a document in order to qualify under the tribal amendment?

A.4. To comply with the tribal citizenship documentation amendment, the document must (i) identify the Federally-recognized Indian tribe which issues it; (ii) must identify the individual by name, and (iii) must evidence the individual's membership or enrollment in, or affiliation with that tribe.

Q.5. What are some examples of tribal documents that would qualify under the tribal citizenship documentation amendment?

A.5. As long as the document contains the three elements identified in A.4, it qualifies under the tribal citizenship documentation amendment. Such a document may be a tribal enrollment card; a certificate of degree of Indian blood issued by a tribe or by the Bureau of Indian Affairs on behalf of a tribe; a letter on the letterhead of a tribe signed by a tribal official.

Q.6. Must the document issued by a Federally-recognized Indian tribe contain a picture of the individual or contain any other specific information in order to qualify under the tribal citizenship documentation amendment?

A.6. No. The tribal citizenship documentation amendment does not require that the document include a picture of the individual or to contain any other specific information in order to be accepted.

Q.7. Are there any additional requirements related to a Federally-recognized Indian tribe located in a State with an international border?

A.7. Yes, but only if such a tribe admits non-U.S. citizens as members. In that case, the tribal citizenship documentation amendment requires the Secretary, after consultation with such a tribe, to issue regulations regarding presentation of other forms of documentation (if any) which the Secretary determines to be satisfactory evidence of citizenship of individuals who are members of, enrolled in or affiliated with such tribe. Other forms of documentation the Secretary identifies may be tribal documentation.

Q.8. Prior to the issuance of regulations by the Secretary, what documentation regarding citizenship is required from an individual who is a member of, enrolled in or affiliated with a tribe in a border state which admits non-U.S. citizens as members?

A.8. Until the Secretary issues regulations requiring any other documentation to be presented by such an individual, a document issued by his/her tribe as describe in A.4 above will be accepted as proof of citizenship. This applies for the period of July 1, 2006, through the effective date of

the regulations issued by the Secretary.

Q.9. Does the tribal citizenship documentation amendment or any other provision in the SSA change the rule that in order to be eligible for Medicaid an individual must be a U.S. citizen or be in a qualified immigration status?

A.9. No. The citizenship requirement remains in the law. The purpose of the tribal citizenship documentation amendment is to identify another form of documentation that must be accepted as evidence of citizenship.

Q.10. Does the tribal citizenship documentation amendment have any retroactive applicability?

A.10. Yes. If, during the period July 1, 2006 through October 1, 2009, an individual was declared ineligible for Medicaid because the he/she was not able to present satisfactory documentary evidence of U.S. citizenship, a State may deem such individual eligible if he/she presents a document issued by a Federally-recognized Indian tribe evidencing membership or enrollment in or affiliation with such tribe. If a State makes such a decision, the individual is eligible for Medicaid as of the date on which he/she had previously been declared ineligible.

Q.11. Is a State required to deem the individual eligible for Medicaid retroactively as described in A.10?

A.11. No. But CMS expects the States to make a good faith effort to facilitate a declaration of eligibility for such individuals retroactive to the date of the prior denial, as intended by the amendment to Sec. 1903(x).

Q.12. Who is responsible for implementing and enforcing the tribal citizenship documentation amendment?

A.12. State Medicaid officials have first-line responsibility to assure that their eligibility workers fully implement the tribal citizenship documentation amendment. At the Federal level, enforcement and implementation are the responsibility of the Center for Medicaid and State Operations (CMSO) of the Centers for Medicare and Medicaid Services (CMS), an agency in the Department of Health and Human Services.

Q.13. What should an individual do if a State Medicaid worker refuses to accept his/her tribal document as satisfactory evidence of citizenship?

A.13. The individual should ask for a statement of appeal rights and file a timely appeal. The individual should also inform tribal officials of the problem so they can initiate corrective action through communication with State and CMSO officials.