

lacks a representative to assist him or her.

(h) *Documentary evidence.*

(1) All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted.

(2) States must maintain copies of citizenship and identification documents in the case record or electronic data base and make these copies available for compliance audits.

(3) States may permit applicants and recipients to submit such documentary evidence without appearing in person at a Medicaid office. States may accept original documents in person, by mail, or by a guardian or authorized representative.

(4) If documents are determined to be inconsistent with pre-existing information, are counterfeit, or altered, States should investigate for potential fraud and abuse, including but not limited to, referral to the appropriate State and Federal law enforcement agencies.

(5) Presentation of documentary evidence of citizenship is a one time activity; once a person's citizenship is documented and recorded in a State database subsequent changes in eligibility should not require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship. The State need only check its databases to verify that the individual already established citizenship.

(6) CMS requires that as a check against fraud, using currently available automated capabilities, States will conduct a match of the applicant's name against the corresponding Social Security number that was provided. In addition, in cooperation with other agencies of the Federal government, CMS encourages States to use automated capabilities to verify citizenship and identity of Medicaid applicants. Automated capabilities may fall within the computer matching provisions of the Privacy Act of 1974, and CMS will explore any implementation issues that may arise with respect to those requirements. When these capabilities become available, States will be required to match files for individuals who used third or fourth tier documents to verify citizenship and docu-

ments to verify identity, and CMS will make available to States necessary information in this regard. States must ensure that all case records within this category will be so identified and made available to conduct these automated matches. CMS may also require States to match files for individuals who used first or second level documents to verify citizenship as well. CMS may provide further guidance to States with respect to actions required in a case of a negative match.

(i) *Record retention.* The State must retain documents in accordance with 45 CFR 74.53.

(j) *Reasonable opportunity to present satisfactory documentary evidence of citizenship.* States must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid. The time States give for submitting documentation of citizenship should be consistent with the time allowed to submit documentation to establish other facets of eligibility for which documentation is requested. (See § 435.930 and § 435.911.)

[71 FR 39222, July 12, 2006]

## Subpart F—Categorical Requirements for Eligibility

### § 435.500 Scope.

This subpart prescribes categorical requirements for determining the eligibility of both categorically and medically needy individuals specified in subparts B, C, and D of this part.

#### DEPENDENCY

### § 435.510 Determination of dependency.

For families with dependent children who are not receiving AFDC, the agency must use the definitions and procedures set forth under the State's AFDC plan to determine whether—

(a) An individual is a dependent child because he is deprived of parental support or care; and