

Implementation of Section 71109 “Alien Medicaid Eligibility” of the Working Families Tax Cut Legislation (Public Law 119-21)

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Objective

- This slide deck provides technical and operational guidance to assist Medicaid and CHIP agencies in implementing Section 71109 ‘*Alien Medicaid Eligibility*’ of Public Law 119-21, which CMS refers to as the “Working Families Tax Cut” (WFTC) legislation.
- This is intended to supplement the policy and operational guidance provided in the State Health Official (SHO) Letter #26-001, entitled “Implementation of Section 71109 “Alien Medicaid Eligibility” of the Working Families Tax Cut Legislation (Public Law 119-21),” issued April 8, 2026.¹
 - See also: [Section 71109 \(Alien Medicaid Eligibility\) Overview Slide Deck](#)

1. <https://www.medicaid.gov/federal-policy-guidance/downloads/sho26001.pdf>.

Content Overview

- Overview of Section 71109 of WFTC Legislation and Interaction with other Federal Laws
- Implementation Requirements for Current Beneficiaries
- Eligibility Determination Process for Current Beneficiaries
- Processes After an Eligibility Determination
- Other Considerations

Overview of Section 71109 of WFTC Legislation

- Beginning October 1, 2026, section 1903(v)(5) of the Social Security Act¹ (the Act) restricts, with limited exceptions, federal financial participation (FFP) for non-emergency medical assistance under title XIX (Medicaid) and for child and pregnancy-related health assistance under title XXI (CHIP) to the following groups, provided the individual meets all other eligibility criteria:
 - U.S. citizens and U.S. nationals
 - lawful permanent residents (LPRs or “green card holders”)
 - Cuban/Haitian entrants
 - Compacts of Free Association (COFA) migrants
- There are three exceptions to the FFP limitations in section 1903(v)(5) of the Act:
 1. Emergency Medicaid, per section 1903(v)(2) of the Act
 2. Coverage under the CHIPRA 214 option, per section 1903(v)(4) of the Act²
 3. Health Services Initiatives (HSIs), authorized under section 2105(a)(1)(D)(ii) of the Act³

Key Definition:

FFP-eligible noncitizens = LPRs, Cuban/Haitian entrants, and COFA migrants⁴

1. Added by Section 71109 of the WFTC legislation and made applicable to CHIP through section 2107(e)(1)(R) of the Act.

2. Applicable to CHIP through a cross-reference to section 1903(v)(4) of the Act at section 2107(e)(1)(Q) of the Act.

3. Section 2107(e)(1)(R) of the Act.

4. See [SHO #26-001](#) page 4, footnotes 10, 11, and 12 for additional information on these categories of noncitizens.

Overview of Section 71109: Applicable Benefits & Populations

- Individuals must be a **resident of one of the 50 states, the District of Columbia, or a U.S. territory**¹ and meet all other applicable criteria in the respective jurisdiction.
- “Full Medicaid and CHIP benefits” refers to the coverage for which section 1903(v)(5) of the Act limits the availability of FFP.
 - Applies to **full Medicaid and CHIP benefits, as well as partial or limited Medicaid benefits, with the exception of emergency Medicaid** (see below).
 - Examples of populations receiving full and/or partial or limited Medicaid benefits to whom the limitations in 1903(v)(5) apply:
 - Categorical and medically needy groups (e.g., Supplemental Security Income (SSI) recipients, IV-E foster care children, other children and adults)
 - Dually eligible individuals (e.g., Medicare Savings Programs (MSP) and MSP-plus)²
 - Individuals receiving non-emergency limited benefits, (e.g., family planning services only)
 - **NOTE:** Does not apply to Medicaid coverage of care and services necessary to treat an emergency medical condition (“emergency Medicaid”) under section 1903(v)(2) of the Act.³

1. 42 C.F.R. §§ 435.403 and 457.320(e).

2. Also referred to as full and partial dually eligible individuals. See also: <https://www.cms.gov/files/document/dual-eligible-categories.pdf>.

3. Emergency Medicaid coverage does not apply to separate CHIPs.

Overview of Section 71109: Applying the Five-Year Waiting Period under PRWORA

- **Section 71109 did not change the definition of qualified noncitizen, the five-year waiting period requirement, or exceptions to the five-year waiting period, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (P.L. 104-193).**
 - Under PRWORA, certain “qualified noncitizens”¹ are eligible for full Medicaid and CHIP benefits and many qualified noncitizens are subject to a five-year waiting period from the date the individual is granted qualifying immigration status before becoming eligible for full Medicaid or CHIP benefits.²
 - Some noncitizens are excepted from the five-year waiting period:³
 - Refugees, asylees, those granted withholding of removal, Cuban/Haitian entrants, Amerasians, noncitizen veteran and active-duty military, military spouses and unmarried dependent children, certain tribal members, victims of trafficking, and COFA migrants.
- **States must continue to apply the five-year waiting period and exceptions to the five-year waiting period, as applicable, to FFP-eligible noncitizens on and after October 1, 2026.**
 - Noncitizens who meet an exception to the five-year waiting period generally remain excepted after adjusting to, or otherwise obtaining, LPR status.

1. “Qualified alien” defined at 8 U.S.C. § 1641(b) and (c); “Qualified noncitizen” defined at 42 C.F.R. §§ 435.4 and 457.320(c). Qualified noncitizens must also meet all other eligibility requirements in the state (e.g., residency, income).

2. 8 U.S.C. § 1613. The five-year waiting period is commonly referred to as the “five-year bar.”

3. 8 U.S.C. § 1613(b) and (d).

Implementation Requirements for Current Beneficiaries

- States must treat this statutory amendment as a change in circumstance for current beneficiaries and **redetermine the eligibility of the potentially affected population by October 1, 2026.**¹
 - In slides 8-14, we detail the “Eligibility Determination Process for Current Beneficiaries.”
- **NOTE:** Section 71109 of the WFTC legislation is applicable on and after October 1, 2026. **States must not limit full Medicaid or CHIP benefits to only FFP-eligible noncitizens and, in states that have elected the CHIPRA 214 option, lawfully residing children and pregnant women prior to October 1, 2026,** as this would not be consistent with current federal statutes and regulations related to noncitizen eligibility for Medicaid and CHIP.²

See **Appendix A: Overview of Change in Circumstances Flow Diagram** for a visual representation of this process.

1. 42 C.F.R. §§ 435.916(d) (2023) and 457.343. See [SHO #26-001](#) page 8, footnote 37 for additional information on referring to regulations in effect 2023.

2. See 8 U.S.C. §§ 1611, 1612, 1613, 1641, and 42 C.F.R. §§ 435.406 and 457.320(b)(6).

Eligibility Determination Process for Current Beneficiaries: Step 1 – Identifying Potentially Affected Beneficiaries

- **“Potentially affected beneficiaries”** are not:
 - U.S. citizens or nationals
 - FFP-eligible noncitizens (i.e., LPRs, Cuban/Haitian entrants, or COFA migrants)
 - Lawfully residing children or pregnant women in states that have elected the CHIPRA 214 option
 - Individuals eligible only for emergency Medicaid
- **States that are unable to identify all potentially affected beneficiaries will need to reverify the immigration status for a broader population** of noncitizens enrolled in Medicaid and CHIP.
 - Example: A state that retains only the immigration status for LPRs would need to redetermine eligibility for any other noncitizen receiving full Medicaid or CHIP benefits, (except for those beneficiaries receiving full Medicaid or CHIP benefits under a state’s election of the CHIPRA 214 option).

Eligibility Determination Process for Current Beneficiaries: Step 2 – Redetermining Eligibility and Verifying with DHS’s SAVE Program (1/2)

- For potentially affected beneficiaries, states must use information in the beneficiary record to determine whether potentially affected Medicaid or CHIP beneficiaries continue to have satisfactory immigration status.
- **States must first attempt to reverify a beneficiary’s satisfactory immigration status through the Department of Homeland Security’s (DHS’s) Systematic Alien Verification for Entitlements (SAVE) program** before attempting to contact the beneficiary.
- When submitting a large volume of requests for DHS SAVE verification, states may utilize the following:
 - **GUI:** SAVE browser users may **create cases in bulk** (i.e., via a large, single data file).¹
 - **Hub VLP:** Hub VLP states can leverage **synchronous batch processing** to initiate Step 1 requests.
 - States should coordinate with the CMS Hub team to identify dates & times, volumes, and transactions per second.²

Key Definition:

Satisfactory Immigration Status = noncitizens for whom states can receive FFP for full Medicaid or CHIP benefits (i.e., LPRs, Cuban/Haitian entrants, and COFA migrants). In states that have elected the CHIPRA 214 option, satisfactory immigration status includes children (up to age 21 for Medicaid and up to age 19 for CHIP) and/or pregnant women who are lawfully residing in the U.S. See SHO # 26-001 for more information.³

1. <https://www.uscis.gov/save/current-user-agencies/guidance/save-user-reference-guide/8-case-creation/82-how-to-submit-cases-in-bulk>.
2. For questions about the Hub VLP service, please email cmsvlp.support@hcgov.us.
3. <https://www.medicaid.gov/federal-policy-guidance/downloads/sho26001.pdf>.

Eligibility Determination Process for Current Beneficiaries: Step 2 – Redetermining Eligibility and Verifying with DHS’s SAVE Program (2/2)

- **If the state verifies that the beneficiary continues to have a satisfactory immigration status for full Medicaid or CHIP benefits with SAVE**, including under a state’s election of the CHIPRA 214 option, the beneficiary must retain full Medicaid or CHIP coverage.
- **If the state is unable to verify the beneficiary remains in a satisfactory immigration status** (i.e., in a status that confers continued eligibility for full Medicaid or CHIP benefits), the state must take further action described in Step 3 of this process.

Electronic verification of an individual’s immigration status or category occurs through DHS/USCIS’s SAVE program. CMS and DHS/USCIS make available three pathways for states to access SAVE (states may also use a combination of the pathways): (1) the Hub VLP service; (2) a direct connection between the state’s eligibility system and SAVE; or (3) SAVE’s web-based GUI.

Eligibility Determination Process for Current Beneficiaries: Step 3 – Request Additional Information and ROP (1/2)

- When the state is unable to verify satisfactory immigration status electronically, **the state must request additional information from the beneficiary** and give the beneficiary a reasonable period of time to respond.¹
- If the beneficiary responds and provides a new declaration of U.S. citizenship, U.S. national status, or satisfactory immigration status and the state is still unable to promptly verify such status through SAVE, **the state is required to provide the beneficiary with a 90-day reasonable opportunity period (ROP).**²
 - **Certain beneficiaries may still be in an ROP on and after October 1, 2026.**
 - **Per section 1137(e) of the Act, FFP will continue to be available for expenditures for individuals receiving Medicaid or CHIP benefits provided during an ROP before, on, and after October 1, 2026.**

1. 42 C.F.R. §§ 435.952(c)-(d) and 457.380(f).

2. Sections 1137(d)-(e), 1902(ee)(1)(B), 1902(a)(46), 1903(x), and 2105(c)(9) of the Act: states are required to provide an ROP to individuals who have declared U.S. citizenship, U.S. national status, or satisfactory immigration status and are otherwise eligible, except for verification of their citizenship, nationality, or satisfactory immigration status.

Eligibility Determination Process for Current Beneficiaries: Step 3 – Request Additional Information and ROP (2/2)

- If, during the ROP:
 - **the beneficiary provides documentation and the state verifies satisfactory immigration status for full Medicaid or CHIP benefits with SAVE**, then the beneficiary must retain full Medicaid or CHIP coverage. (See Step 5)
 - **the beneficiary provides information or documentation that demonstrates the beneficiary no longer has satisfactory immigration status, or if they do not respond within the time specified**, the state must consider all bases of eligibility (see Step 4) and must provide advance notice of adverse action (see Step 5) before terminating coverage or reducing benefits.

Eligibility Determination Process for Current Beneficiaries: Step 4 – Consider All Bases of Eligibility for Full Medicaid and CHIP Benefits

- If, during this eligibility redetermination process, the state is unable to verify that an affected beneficiary is an FFP-eligible noncitizen, **prior to taking adverse action, states must evaluate whether that beneficiary is eligible for full Medicaid or CHIP on any basis under the state plan**, including under the CHIPRA 214 option (if elected).
- For beneficiaries who do not have satisfactory immigration status for full Medicaid or CHIP benefits:
 - **In Medicaid** – FFP remains available in Medicaid for emergency Medicaid coverage only, after October 1, 2026.¹
 - **In Separate CHIP** – No FFP is available after October 1, 2026, as there is no authorization for coverage of emergency services in separate CHIP.

Eligibility Determination Process for Current Beneficiaries: Step 5 – Providing Notice

After the state redetermines a beneficiary's eligibility for full Medicaid or CHIP benefits, the state provides notice:

- If a beneficiary is determined eligible: states should notify the beneficiary that they continue to be eligible for the coverage in which they are enrolled.
- If a beneficiary no longer has satisfactory immigration status for full Medicaid or CHIP benefits or does not respond within the timeframe specified: **states must provide advance notice of adverse action**, including the right to a Medicaid fair hearing or CHIP review before terminating coverage or reducing benefits.
 - For **Medicaid**¹ - States must provide at least ten days advance notice of the proposed termination and an opportunity for a fair hearing.
 - For **CHIP**² - States must provide a timely and adequate written notice of the proposed termination and an opportunity for review.

1. 42 C.F.R. §§ 435.917, 435.918, and 42 C.F.R Part 431 Subpart E.

2. 42 C.F.R. §§ 457.340(e), 457.1130(a), and 457.1180 (2023). See [SHO #26-001](#) page 10, footnote 42 for additional information on referring to regulations in effect 2023.

Processes After an Eligibility Determination: Inbound Account Transfers

- States should continue to follow policies in the 2016 CMCS Informational Bulletin: [Coordination of Eligibility and Enrollment between Medicaid, CHIP and the Federally Facilitated Marketplace \(Federally Facilitated Exchange \(FFE\)\)](#)
 - States **must send** inbound account transfers (AT) for individuals who are ineligible for Medicaid or CHIP based on immigration status and potentially eligible for Advance Payments of the Premium Tax Credit (APTC).
 - States **are not precluded** from sending inbound ATs for individuals who are ineligible for Medicaid and CHIP based on immigration status to the FFE, even if they may not be eligible for APTC.
 - Lawfully present immigrants who are not “eligible noncitizens”¹ may be eligible for full-price Marketplace coverage without APTC.

1. “Eligible noncitizens” are defined as LPRs, Cuban/Haitian entrants, and COFA migrants. See Section 71301 of the WFTC legislation and 45 C.F.R. §§ 155.20, 155.305(f)(1), and 155.320(c)(3)(ix).

Processes After an Eligibility Determination: Medicaid Fair Hearing

- In Medicaid, if the individual thinks that the agency made an error, **the applicant or beneficiary can request a fair hearing.**¹
- The state **must provide benefits pending the outcome of a fair hearing to a beneficiary that requests a fair hearing** before the date of action (includes either termination, suspension, or reduction of eligibility or benefits).²
 - The state **does not** need to grant a fair hearing if the only issue raised by the individual is the change in law.³
 - A fair hearing **must** be granted if the individual raises an issue of fact or law that must be considered.
 - Example: an individual is a child who is a refugee who could be eligible for full Medicaid benefits under a state's election of the CHIPRA 214 option, but the state issued a termination of eligibility effective September 30, 2026.
- **FFP is available for payments of services pending a fair hearing decision, including on and after October 1, 2026.**⁴

1. 42 C.F.R. § 431.220(a).

2. Goldberg v. Kelly, 397 U.S. 254 (1970); 42 C.F.R. §§ 431.205(d), 431.230(a).

3. 42 C.F.R. § 431.220(b).

4. 42 C.F.R. § 431.250(a).

Processes After an Eligibility Determination: CHIP Review

- If the individual thinks that the agency made an error in determining CHIP eligibility, **the individual can request a CHIP review.**¹
 - The state must ensure the opportunity for continuation of enrollment pending the completion of the review of a suspension or termination of enrollment.²
- **FFP is available to states who incur costs for continued enrollment until completion of the review, including on and after October 1, 2026.**³

1. 42 C.F.R. § 457.1130.

2. 42 C.F.R. § 457.1170 (2023). (Note: Section 71102 of the WFTC legislation prohibits implementation, administration, or enforcement of amendments to this provision made by the April 2, 2024 Final Rule (89 Fed. Reg. 22780); the pre-2024 regulation remains in effect. The moratorium did not impact the definition of “enrollee” at 42 C.F.R. § 457.10, which includes health benefits coverage within CHIP.)

3. Section 2105(a)(1) of the Act; 42 C.F.R. § 457.1170 (2023).

Other Considerations: SSI Recipients (Medicaid only)¹

- The statutory changes made by Section 71109 of the WFTC legislation are expected to affect Medicaid eligibility for certain SSI recipients.
 - SSI recipients who are qualified noncitizens may not be FFP-eligible noncitizens. Those who are not FFP-eligible noncitizens will generally not qualify for full Medicaid benefits on and after October 1, 2026.
 - **Exception:** In CHIPRA 214 states, SSI noncitizen recipients who are children or pregnant women would remain eligible for full Medicaid benefits because FFP remains available for coverage provided under a state's election of the CHIPRA 214 option.
- States may need to change their eligibility processes for SSI recipients, particularly states that rely on SSA determinations for SSI-related Medicaid eligibility (i.e., 1634 states).
 - **For current SSI Medicaid beneficiaries:** Before October 1, 2026, states will need to redetermine Medicaid eligibility for certain SSI recipients who are noncitizens currently enrolled in Medicaid and ensure compliance with Section 71109 (see slides 8-14 for more on the “Eligibility Redetermination Process for Current Beneficiaries”).
 - **For new SSI recipients** on and after October 1, 2026:
 - **1634 states:** SSA is evaluating potential SDX updates to support implementation of Section 71109. Additional details are forthcoming.
 - **209(b) and SSI-criteria states:** States should ensure that any changes made to their eligibility and verification logic to comply with section 1903(v)(5) of the Act also apply to eligibility determinations for SSI recipients.

1. Section 1902(a)(10)(A)(i) of the Act.

Other Considerations: Applicability to Section 1115 Demonstrations

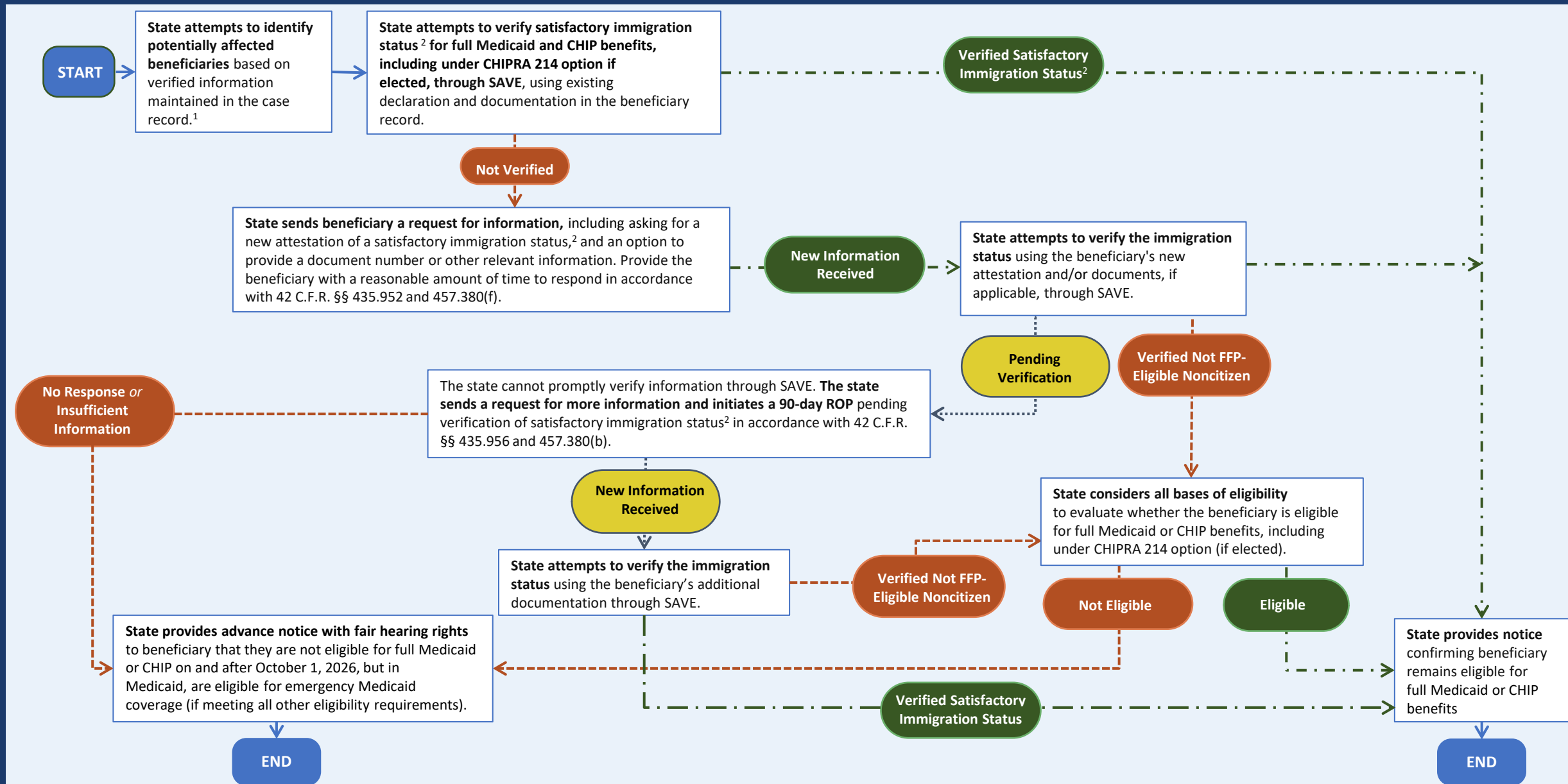
- **States are responsible for ensuring compliance with sections 1903(v)(5) and 2107(e)(1)(R) of the Act in their operation of Medicaid and CHIP Section 1115 demonstrations.**
- CMS may take action to align demonstrations with new statutory requirements in accordance with standard Special Terms and Conditions (STCs).
 - Demonstration project officers will reach out to impacted states in the coming months with more information.

Other Considerations: Operationalizing Presumptive Eligibility (PE) & Hospital Presumptive Eligibility (HPE)

- **The FFP limitations established in sections 1903(v)(5) and 2107(e)(1)(R) of the Act do not apply during PE or HPE periods** because PE and HPE are not full Medicaid or CHIP eligibility determinations.
- **Services provided during PE or HPE periods qualify for FFP regardless of the final Medicaid or CHIP eligibility determination** on a submitted application for full Medicaid and CHIP benefits.¹
- States will need to update their PE materials, including the PE application, provider training materials, or other screening tools to train providers on this change. In states that use an online portal, states may need to update the existing functionality to align with the changes.

1. Sections 1902(a)(47)(B), 1920(d), 1920A(d), 1920B(d), 1920C(d), and 2107(e)(1)(T) of the Act.

APPENDIX A: Eligibility Redetermination Process for Current Beneficiaries – Overview of Change in Circumstances Flow Diagram



1. "Potentially affected beneficiaries" are those noncitizens who may not have satisfactory immigration status for full Medicaid or CHIP coverage beginning October 1, 2026, in accordance with sections 1903(v)(5) and 2107(e)(1)(R) of the Act. See slide 8 for more information.

2. Satisfactory immigration status means noncitizens for whom states can receive FFP for full Medicaid or CHIP benefits: LPRs, Cuban/Haitian entrants, and COFA migrants. In states that have elected the CHIPRA 214 option, satisfactory immigration status includes children (up to age 21 for Medicaid and up to age 19 for CHIP) and/or pregnant women who are lawfully residing in the U.S. See SHO # 26-001 at <https://www.medicaid.gov/federal-policy-guidance/downloads/sho26001.pdf> for more information.