

# Implementation Guide: Medicaid State Plan Eligibility Non-Financial Eligibility Citizenship and Non-Citizen Eligibility

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# Citizenship and Non-Citizen Eligibility

## POLICY CITATION

**Statute:** 1902(a)(46)(B); 1903(v)(2), (3) and (4)

**Regulations:** 42 CFR 435.4; 435.406; 435.407; 435.956

**Additional References:** Section 211 and 214 of CHIPRA 2009;

8 U.S.C. 1611, 1612, 1613 and 1641;

SHO # 10-006 (Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women) dated July 1, 2010;

SHO # 09-016 (Citizenship Documentation Requirement) dated December 28, 2009;

SHO # 12-002 (Individuals with Deferred Action for Childhood Arrivals), dated August 28, 2012).

## BACKGROUND

### Overview

This reviewable unit (RU) describes the rules concerning Medicaid requirements related to U.S. citizenship and the eligibility of certain non-citizens. It also provides criteria for the provision of services for treatment of emergency medical conditions to individuals who cannot document citizenship or satisfactory immigration status but who are otherwise eligible for Medicaid. The RU includes options with respect to the reasonable opportunity period, the provision of Medicaid to Qualified Non-Citizens, and coverage of individuals lawfully residing in the United States.

Regulations at 42 CFR 435.406 require states to provide Medicaid to otherwise eligible individuals who are citizens or nationals of the United States, or qualified non-citizens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (8 U.S.C. 1641) and certain non-citizens described in 8 USC 1612(b), and whose eligibility is not prohibited during the five year waiting period, required at 8 U.S.C. 1613 for certain qualified non-citizens.

### Reasonable Opportunity Period

Section 1137(d)(4) of the Social Security Act (the Act) and regulations at 42 CFR 435.956 require states to provide Medicaid to individuals who have attested to having satisfactory immigration status during a reasonable opportunity period while their immigration status is being verified, if they are otherwise eligible for Medicaid. Section 1903(x) of the Act, as amended by section 211 of the Children’s Health Insurance Program Reauthorization Act (CHIPRA), requires states to provide Medicaid to individuals who have declared themselves to be U.S. citizens during a reasonable opportunity period while their citizenship is being verified, if they are otherwise Medicaid eligible. A reasonable opportunity period should be allowed when an applicant attests to being a citizen, national or in a satisfactory immigration status, and there is a discrepancy with a data source, or electronic verifications are unavailable.

The reasonable opportunity period begins on and extends 90 days from the date the notice of the reasonable opportunity period is received by the individual. The date the notice is received by

the individual is defined to mean 5 days after the date on the notice, unless the individual shows that he or she did not receive the notice within the 5-day period, consistent with Social Security regulations for SSI and OASDI benefits. States have the option to extend this period if the individual is making a good faith effort to resolve inconsistencies or to obtain necessary documentation, or if the state needs more time to complete the verification process. States are entitled to receive FFP for benefits provided to individuals declaring citizenship or satisfactory immigration status during the reasonable opportunity period, regardless of whether eligibility ultimately is approved for such period. The agency may elect to begin to furnish benefits to otherwise eligible individuals, effective the date of application, or the first day of the month of application, consistent with the agency's election under §435.915(b). See 42 CFR 435.956(a)(5).

**Option: Reasonable Limitations.** States may establish reasonable limitations on the number of reasonable opportunity periods that an individual may receive once denied eligibility for Medicaid due to failure to verify citizenship or satisfactory immigration status. Before establishing a limitation, the state needs to demonstrate program integrity concerns related to applicants receiving multiple reasonable opportunity periods. Prior to implementing any limitations, the state must describe the limitations in the ***Additional Information*** section of the **Citizenship and Non-Citizen Eligibility** RU and receive approval of the State Plan Amendment from CMS.

### **Coverage of Qualified Non-Citizens**

States may elect to provide Medicaid coverage to all otherwise-eligible qualified non-citizens whose eligibility is authorized under section 402(b) of PRWORA (8 USC 1612) and 8 USC 1641, and whose eligibility is not prohibited by section 403 of PRWORA (8 USC 1613). States also have the option to limit coverage of non-citizens as follows.

- Lawful permanent residents may be required to have worked 40 qualifying quarters as defined in Title II of the Act, described in 8 USC 1612(b)(2)(B); and/or
- Eligibility for specified classifications of non-citizens may be limited to a period of 7 years, as described in 8 USC 1612(b)(2)(A) and as subsequently amended. The classifications of non-citizens for whom this limitation may be applied are specified below (states may not choose to include additional classifications or to further limit these classifications):
  - Non-citizens admitted to the U. S. as a refugee under section 207 of the Immigration and Nationality Act (INA);
  - Non-citizens granted Asylum under section 208 of the INA;
  - Non-citizens whose deportation is withheld under section 243(h) or 241(b)(3) of the INA;
  - Non-citizens granted Cuban-Haitian Entrant status, as defined in section 501(e) of the Refugee Education Assistance Act of 1980;
  - Non-citizens admitted to the U.S. as Amerasian immigrants; and
  - Non-citizens treated as refugees under other federal statutes for purposes of Medicaid eligibility.

### **Coverage of Lawfully Residing Individuals**

States may elect to provide Medicaid coverage to lawfully residing individuals under the age of 21 and/or pregnant women, who are otherwise eligible for Medicaid in the state, as provided in

section 1903(v)(4) of the Act. This option was added by section 214 of CHIPRA and gives states the option to provide Medicaid to pregnant women (including the 60-day postpartum period) and/or children under age 21, including targeted low-income children described in section 1905(u)(2)(B) of the Act. To meet the criteria of lawfully residing and to qualify under this option, an individual must be both lawfully present in the U.S. and otherwise eligible for Medicaid, including being a resident of the state. “Lawfully present” individuals includes those classified as qualified non-citizens subject to the 5-year waiting period in 8 U.S.C. section 1613, and also several other categories of lawfully present non-citizens.

For more information about this state option, including individuals who are considered “lawfully present” and applicable federal financial participation available, see SHO # 10-006 (Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women), dated July 1, 2010 and SHO # 12-002 (Individuals with Deferred Action for Childhood Arrivals), dated August 28, 2012).

### **Emergency Coverage**

States are required under sections 1903(v)(2) and (v)(3) of the Act and 42 CFR 435.406(b) to provide limited Medicaid services for treatment of an emergency medical condition to otherwise eligible qualified non-citizens subject to the 5-year waiting period in 8 U.S.C. section 1613 and to non-qualified non-citizens. Individuals cannot be required to provide a Social Security Number, nor to present documentation of their immigration status when determining eligibility for limited treatment of an emergency medical condition. See also 8 USC 1611(b)(1)(A).

## **INSTRUCTIONS**

Indicate that the state provides Medicaid consistent with the federal requirements at 42 CFR 435.406, including providing coverage during a reasonable opportunity period pending verification of the individual’s status. To do this, check the box next to the assurance.

### **A. Citizens, Nationals and Eligible Non-Citizens**

This section includes a series of statements at **A.1.** through **A.3.**, which indicate that the state provides Medicaid eligibility to otherwise eligible individuals who are citizens or nationals of the United States, qualified non-citizens, or other non-citizens who meet specific requirements, including eligibility during a reasonable opportunity period.

- At **A.3.a.**, indicate, *Yes or No*, that the agency extends the reasonable opportunity period if the non-citizen is making a good faith effort to resolve inconsistencies or obtain documentation, or the agency needs more time to complete the verification process.
- At **A.3.b.**,
  - Indicate that the agency furnishes benefits to otherwise eligible individuals beginning with the indicated date. To do this, check the box next to the assurance.
  - Select one of the two options (**A.3.b.i.** or **A.3.b.ii**) to indicate the date from which benefits are furnished.

## **B. Optional Coverage of Qualified Non-Citizens**

Select *Yes* or *No* to indicate whether or not the state provides coverage to all otherwise eligible Qualified Non-citizens whose eligibility is not restricted by federal policy requirements. If *Yes*, go to the next section. If *No*,

- At **B.1.**, indicate, *Yes* or *No*, that the state requires Lawful Permanent Residents to have 40 qualifying work quarters.
- At **B.2.**, indicate, *Yes* or *No*, that the state limits eligibility to seven years for the categories of non-citizens listed at **B.2.a.** through **B.2.f.**

## **C. Coverage of Lawfully Residing Individuals**

Select *Yes or No* to indicate whether or not the state elects the option to provide coverage to otherwise eligible individuals who are lawfully residing in the United States, as provided in section 1903(v)(4) of the Act. If *No*, go to the next section. If *Yes*,

- Select one or both of the options listed at **C.1.** and **C.2.**
  - If **C.2.** is selected, select one of the three age options listed at **C.2.a.** through **C.2.c.**
- This section also includes the definitions of individuals (**C.3.** and **C.4.a.** through **C.4.k.**) who are considered “lawfully residing” and “lawfully present” according to the federal policy requirements.
- At **C.4.k.**, select *Other* if instructed by CMS. Except in limited circumstances, this field remains blank.

## **D. Emergency Coverage**

Indicate that limited Medicaid services are provided for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in federal policies, to the individuals listed at **D.1.** and **D.2.** (and **D.3.**, if listed) who meet all Medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status or the requirement to present a Social Security Number. To do this, check the box next to the assurance.

- The statement at **D.3.** is displayed only when *Yes* is selected at **B.1.** or **B.2.**

## **E. Additional Information (optional)**

In this text box, states may describe the reasonable limits placed on the number of reasonable opportunity periods that an individual may receive, after such individual has been denied eligibility for Medicaid due to failure to verify citizenship or satisfactory immigration status. Please consult with CMS before adding any other information concerning this RU.

## **REVIEW CRITERIA**

*No additional criteria.*