

# Implementation Guide: Medicaid State Plan Eligibility Eligibility Groups – Mandatory Coverage Former Foster Care Children

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## Former Foster Care Children

### POLICY CITATION

**Statute:** 1902(a)(10)(A)(i)(IX); Section 1002(a)(2) of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (Pub. L. No. 115-271)

**Regulation:** 42 CFR 435.150

### BACKGROUND

#### Overview

This reviewable unit (RU) describes the eligibility group for former foster care children, as described in section 1902(a)(10)(A)(i)(IX) of the Social Security Act (the Act) and as amended by section 1002(a) of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (the “SUPPORT Act”). It provides the criteria under which individuals may be covered under this group and the options available to states with respect to eligibility for this group.

The former foster care children eligibility group is a mandatory group described in the Act and in 42 CFR 435.150 that generally covers individuals under age 26 who were in foster care when they transitioned to independence as adults, or “aged out” of foster care.

Note that this eligibility group has significant overlap with the existing optional eligibility group for independent foster care adolescents. However, there are some differences in the policies and the individuals covered, and states may continue to elect to cover independent foster care adolescents in addition to the mandatory former foster care children group. For more information, refer to the **Independent Foster Care Adolescents** RU.

#### Eligibility

The former foster care children group was enacted by section 2004 of the Affordable Care Act, Pub. L. No. 111-148 and, as noted above, codified at section 1902(a)(10)(A)(i)(IX) of the Act. Under the original language of section 1902(a)(10)(A)(i)(IX) of the Act, eligibility for the former foster care children eligibility group is limited to individuals who are under 26 and: are not eligible for a separate mandatory eligibility group (except for the adult group); were in foster care under the responsibility of the state or a tribe within the state upon either turning age 18 or such higher age as the state or tribe has elected for the end of federal foster care assistance under title IV-E of the Act; and were enrolled in such state’s Medicaid program while in such foster care. Note: As described below, there is no income or resource test for eligibility in the former foster care children group.

Section 1002(a) of the SUPPORT Act modifies these eligibility requirements for the former foster care children group in two ways.

First, section 1002(a)(1)(A) of the SUPPORT Act eliminates the requirement that an individual not be eligible for another mandatory eligibility group (other than the adult group) to be eligible

for the former foster care children group. As a result, a person may be enrolled in the former foster care children group even if the individual meets the eligibility requirements for a separate mandatory group described in section 1902(a)(10)(A)(i) of the Act, so long as the individual is not actually *enrolled* in such group.

Second, section 1002(a)(1)(B) and (C) of the SUPPORT Act expanded eligibility for the former foster care children group by requiring that states cover individuals who aged out of foster care in a state other than the state in which they are currently seeking Medicaid coverage.

Specifically, sections 1002(a)(1)(B) and (C) of the SUPPORT Act amend sections 1902(a)(10)(A)(i)(IX)(cc) and (dd) of the Act, respectively, to replace each reference to “*the State*” with a reference to “*a State*.” (Emphasis added). This means that all states must cover in the former foster care children group individuals who aged out of foster care in another state, as long as they otherwise meet the eligibility requirements for this group.

Under section 1002(a)(2) of the SUPPORT Act, the changes to the former foster care children eligibility group described above are phased in such that they exclusively affect individuals who turn age 18 on or after January 1, 2023. The operation of these requirements is explained next.

#### ***Individuals who Turned Age 18 before January 1, 2023***

The SUPPORT Act’s changes to the eligibility requirements do not apply to youth formerly in foster care who turned age 18 before January 1, 2023. Therefore, the original eligibility requirements, including certain limitations on eligibility, continue to apply to such individuals. As described above, the original eligibility requirements for the former foster care children group is available to individuals who:

- Are under age 26;
- Are not eligible for or enrolled in another mandatory eligibility group, except for the adult group<sup>1</sup>;
- Were in foster care under the responsibility of the state or a tribe within the state upon turning age 18 or such higher age (up to 21) as the state or tribe has elected for termination of federal foster care assistance in its title IV-E plan; and
- Were enrolled in the state’s Medicaid program while in such foster care.

#### ***Individuals who Turned Age 18 on or after January 1, 2023***

For youth formerly in foster care who turned age 18 on or after January 1, 2023, under the SUPPORT Act changes individuals will be eligible in the former foster care children group who:

- Are under age 26;
- Are not *enrolled* in another mandatory eligibility group, other than the adult group (even if they meet the eligibility requirements for such group);
- Were in foster care under the responsibility of *any* state or a tribe within any state upon turning age 18 or such higher age (up to 21) as the state or tribe has elected in its title IV-E plan; and
- Were enrolled in Medicaid in *any* state while in such foster care.

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<sup>1</sup> If an individual meets the requirements for both the former foster care children group and the adult group (described in section 1902(a)(10)(A)(i)(VIII) of the Act), the individual is enrolled in the former foster care children group. *See* Clause (XVII) in the matter following section 1902(a)(10)(G) of the Act.

Note: These SUPPORT Act changes apply equally to states, the District of Columbia (D.C.), and the United States territories. An individual who ages out of foster care in D.C. or a territory and moves to a state and applies for Medicaid is treated in the same manner as though the individual moved from another state. Likewise, the treatment of an individual who ages out of foster care in a state and moves to D.C. or a territory, or an individual who ages out of foster care and moves between territories or between D.C. and a territory, is the same.

### **Income Eligibility**

There is no income or resource test for eligibility in the former foster care group.

### **Other Requirements**

As described at 42 CFR 435.150, the former foster care group is specific to individuals who were in foster care and enrolled in the state's Medicaid program when they turned 18 or a higher age at which the state's or tribe's IV-E foster care assistance ends.

***Foster Care:*** "Foster care" for the purposes of this group has the meaning in the regulations implementing titles IV-B and IV-E of the Act as administered by the Administration for Children and Families (ACF). (See 45 CFR 1355.20.) This definition applies to all foster care provided in a state or tribe, regardless of whether it is federally funded or not. A foster care maintenance payment is not required for a child to be considered in foster care. However, a child receiving title IV-E guardianship maintenance payments who is not "under the responsibility of the state or tribe" upon turning 18 or higher age, as applicable, is not considered to be in foster care.

The ACF Office of Refugee Resettlement places children in the Unaccompanied Refugee Minor (URM) program. States that receive a grant from ACF to administer a URM program in their states have legal responsibility for children placed in their URM programs. Such children are considered to be in foster care under the state's responsibility, even though they may be privately placed in foster care. Where the state does not have a role in administering a URM program and there is instead a non-governmental (private) URM grantee, the children placed in the URM program are not considered to be under the state's responsibility.

The statute and regulation for the former foster care children group provides for two moments in time when a child can leave foster care and become eligible for this group: upon reaching age 18 or a higher age at which the state's or tribe's IV-E foster care assistance ends (at age 19, 20, or 21). While each state's title IV-E plan is used to establish the higher age threshold for aging out of foster care in the state, this higher age threshold applies to all foster care children in the state for the purpose of this eligibility group, regardless of IV-E status. Note that individuals who exited foster care prior to age 18 and did not return to foster care later are not eligible for this group.

**Option: Placement in another State.** The regulations at 42 CFR 435.150 reflects the original requirements of the group that eligible individuals must have been in foster care under the responsibility of the state or tribe in which they are currently seeking coverage. States have the option to extend coverage to children who were placed by their state in another state and enrolled in that other state's Medicaid program. This option is unchanged by the SUPPORT Act and is

available to states for both individuals who turned age 18 before January 1, 2023, as well as those who turned age 18 on or after January 1, 2023.

Note that this option relates to out-of-state placements and is distinct from extending coverage to individuals who aged out of foster care from another state.

**Medicaid Enrollment:** As described at 42 CFR 435.150, the Medicaid enrollment requirement can be met either through enrollment under the state plan or through a section 1115 demonstration project. Individuals may be enrolled in any eligibility group in order to meet this requirement. Most, but not all, children are enrolled in Medicaid throughout their entire period of foster care, so they would meet the Medicaid coverage requirement when they turn 18 or age out.

Option: Enrollment during the Period of Foster Care. States may also cover individuals who were enrolled in Medicaid at some point during the period of foster care in which they turned 18 or aged out. This flexibility may also be applied to individuals who were placed by the state or tribe in another state and enrolled that state's Medicaid program at some point during the period of foster care.

The Medicaid enrollment option is unchanged by the SUPPORT Act and is available both for individuals who turned age 18 before January 1, 2023, as well as those who turned age 18 on or after January 1, 2023.

## INSTRUCTIONS

### A. Characteristics

There are statements describing the characteristics of the eligibility group.

### B. Individuals Covered

At **B.1.**, there is a statement describing individuals covered.

At **B.2.**, you may select one or more circumstances under which former foster care children also qualify. If none of these apply, do not select any.

#### *Screen Validation:*

- The following selections are permissible:
  - None
  - **B.2.a** alone
  - **B.2.b** alone
  - **B.2.c** alone
  - **B.2.a** and **B.2.b**
  - **B.2.a** and **B.2.c**
- The following selections are not permissible:
  - **B.2.a., B.2.b. and B.2.c.**
  - **B.2.b. and B.2.c.**

**C. Individuals Covered**

At **C.1.**, there is a statement describing individuals covered (individuals who turn 18 on or after January 1, 2023).

At **C.2.**, you may select one or more circumstances under which former foster care children also qualify. If none of these apply, do not select any.

*Screen Validation:*

- The following selections are permissible:
  - None
  - **C.2.a** alone
  - **C.2.b** alone
  - **C.2.c** alone
  - **C.2.a** and **C.2.b**
  - **C.2.a** and **C.2.c**
- The following selections are not permissible:
  - **C.2.a., C.2.b. and C.2.c.**
  - **C.2.b. and C.2.c.**

**D. Additional Information (optional)**

Except in limited circumstances, this field remains blank. Please consult with CMS before adding any additional information concerning this RU.

**REVIEW CRITERIA**

No specific review criteria are needed.