

Operations Memorandum - Medicaid OPS120502

May 15, 2012

SUBJECT: Medical Assistance Coverage of “Lawfully-Residing” Children and Pregnant Women

TO: Executive Directors

FROM: Richard Wallace, Acting Director, Bureau of Operations

Purpose

To inform County Assistance Offices that additional non-citizen children and pregnant woman who are “lawfully residing” in the United States (U.S.) may be eligible for Medical Assistance (MA), in addition to those already eligible.

Background

Section 214 of the Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, allows states to elect to provide MA coverage to qualified alien children or pregnant women identified in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 who are subject to the five-year bar. As covered in MA Handbook Section 322.3, qualified alien children under age 21 and pregnant women through the postpartum period (Citizenship Code 02), are exempt from the five-year bar. However, Section 214 also permits states to cover other non-citizen children and pregnant women considered to be “lawfully residing” in the U.S. and who are otherwise eligible for MA. For these children and pregnant women, “lawfully residing” is broader than the term “qualified alien.”

Discussion

Effective with the posting of this Operations Memorandum, “lawfully-residing” children and pregnant women must be reviewed for ongoing MA eligibility at application. These individuals must still meet all other non-financial and financial criteria when being evaluated for the appropriate category. “Lawfully-residing” individuals include both qualified aliens (Citizenship Code 02) and certain temporary aliens (Citizenship Code 03). In interpreting “lawfully residing,” guidance issued by the Centers for Medicare and Medicaid Services relies on existing immigration regulations for the purpose of defining lawful presence and existing MA requirements to establish residency.

A child under age 21 or pregnant woman shall be considered “lawfully residing” if he or she is:

1. A qualified alien as defined in Section 431 of PRWORA (8 U.S.C. § 1641), see MA Handbook Section 322.3 for a list of qualified aliens;

2. An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
3. An alien who has been paroled into the U.S. pursuant to Section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1182(d)(5)) for less than one year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
4. An alien who belongs to one of the following classes:
 - is currently in temporary resident status pursuant to Section 210 or 245A of the INA (8 U.S.C. §§ 1160 or 1255a, respectively);
 - is currently under Temporary Protected Status (TPS) pursuant to Section 244 of the INA (8 U.S.C. § 1254a), and pending applicants for TPS who have been granted employment authorization;
 - has been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - is a family Unity beneficiary pursuant to Section 301 of Pub. L. 101-649, as amended;
 - is currently under Deferred Enforced Departure pursuant to a decision made by the President;
 - is currently in deferred action status; or
 - whose visa petition has been approved and who has a pending application for adjustment of status
5. A pending applicant for asylum under Section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
6. An alien who has been granted withholding of removal under the Convention Against Torture;
7. A child who has a pending application for Special Immigrant Juvenile status as described in Section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));
8. An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or

9. An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

A temporary alien (Citizenship Code 03) child who reaches age 21 or pregnant woman whose postpartum period has expired is no longer eligible for MA. If emergency Medicaid documentation supports a medical emergency, the individual may be eligible for emergency MA.

System Workaround for Lawfully-Residing Temporary Alien Children and Pregnant Women

Some categories listed above are non-immigrants also known as temporary aliens (Citizenship Code 03). Until a system enhancement can be made to accommodate these individuals, a system workaround will be necessary to process eligibility in the Client Information System. For temporary alien children and pregnant women, who are lawfully residing as defined above, Emergency Medical Begin and End dates should be entered on CARFUG. Use the date of eligibility as the begin date and the renewal due date as the end date. "Lawfully Residing" should be entered in the CARFUG field for Nature of the Emergency. Dates should be updated at renewal, if the individual remains eligible based on all criteria, including immigration status. Immigration status must be verified at renewal using existing documentation. If the documentation is no longer valid request additional information. When a lawfully-residing temporary alien child turns 21 or a pregnant woman reaches the end of her postpartum period, the emergency should be end dated on CARFUG.

Next Steps

1. Share and review this information with appropriate staff members
2. Direct questions regarding this Operations Memorandum to your Area Manager.
3. This Operations Memorandum will become obsolete when this information is incorporated into the MA Eligibility Handbook.