

ATTACHMENT A

Date: December 12, 2000

Trans. No. 00 OMM/ADM-9

Page No . 2

I. PURPOSE

This Office of Medicaid Management Administrative Directive (OMM/ADM) outlines the citizenship requirements for individuals in the Medicaid program, and provides instructions to social services districts for determining the appropriate Medicaid coverage to be provided, based on an individual's citizenship status.

II. BACKGROUND

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), Illegal Immigration and Immigrant Responsibility Act of 1996 (P.L. 104-208), and the Balanced Budget Act (P.L. 105-33) include significant provisions affecting non-citizens entitlement to Medicaid.

Prior to passage of this legislation, non-citizens were entitled to receive Medicaid benefits if they were determined to be lawfully admitted for permanent residence, or otherwise permanently residing in the United States under color of law (PRUCOL). Non-citizens who did not meet the PRUCOL criteria, but who were otherwise eligible for Medicaid, were provided Medicaid benefits only for care and services necessary for the treatment of an emergency medical condition, as defined in section 1903(v) of the federal Social Security Act.

The new legislation restricts the provision of Medicaid to individuals who are qualified aliens. Certain qualified aliens must receive full Medicaid benefits, if otherwise eligible. Other qualified aliens may receive full Medicaid benefits, depending on their date of entry into the United States. Aliens who are not qualified may be provided Medicaid coverage only when care and services are necessary for the treatment of an emergency medical condition.

The new legislation also contains provisions requiring that the income and resources of a sponsor of an alien, and the income and resources of the sponsor's spouse, must be deemed available to the alien for purposes of determining the eligibility of the alien for Medicaid, other than Medicaid provided for care and services necessary for the treatment of an emergency medical condition. Previously, when determining the eligibility of a sponsored alien, only the amount of income and/or resources actually available to the alien from his or her sponsor was budgeted.

The New York State Legislature, in Chapter 436 of the Laws of 1997, added a new requirement.

III. PROGRAM IMPLICATIONS

Section 122 of the SSL requires that, in order to be considered eligible for all care and services available under the Medicaid program, individuals must be citizens or aliens duly naturalized as citizens. It further provides that aliens who are "qualified aliens" (as defined in section IV. of this directive) and who meet certain conditions may receive full Medicaid benefits. Qualified aliens who do not meet these conditions and aliens who are not qualified may only receive Medicaid coverage for care and services necessary for the treatment of an emergency medical condition.

ATTACHMENT A
(continued)

Date: December 12, 2000

Trans. No. 00 OMM/ADM-9

Page No. 3

Special exceptions are provided for two groups of aliens who are not qualified: 1.) aliens who, on August 4, 1997, were residing in certain residential facilities and receiving Medicaid based on a determination that they were PRUCOL; and 2.) aliens who, on August 4, 1997, had been diagnosed with AIDS, as defined in Section 2780(1) of the Public Health Law, and were receiving Medicaid based on a determination that they were PRUCOL. Such aliens will continue to receive full Medicaid benefits, to the extent they are otherwise eligible.

Section 122 also provides that, under certain circumstances, the earned and unearned income and the resources of a sponsor of an alien, and the income and resources of the sponsor's spouse must be deemed available to the sponsored alien for purposes of determining the eligibility of the alien for Medicaid, other than Medicaid provided for care and services necessary for the treatment of an emergency medical condition. To the extent Medicaid other than for treatment of an emergency medical condition is provided to the sponsored alien, the social services district must request reimbursement from the sponsor and may take legal action to recover Medicaid expenditures when the sponsor does not cooperate.

NOTE: The provisions of this directive do not apply to pregnant women. A woman with a medically verified pregnancy is not required to document citizenship or alien status for the duration of her pregnancy, through the last day of the month in which the 60 day postpartum period ends.

IV. REQUIRED ACTION

A. DEFINITIONS

1. **UNITED STATES CITIZEN:** For purposes of qualifying as a United States citizen, the United States includes the 50 states, the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island are also regarded as United States citizens for purposes of Medicaid eligibility.
2. **QUALIFIED ALIEN:** The term qualified alien means an alien:
 - who has been lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
 - who has been granted asylum under section 208 of the INA;
 - who has been admitted to the United States as a refugee under section 207 of the INA (including Amerasian immigrants admitted under the provisions of Public Law 100-202);
 - who has been paroled into the United States under section 212(d)(5) of the INA for a period of at least one year;
 - whose deportation has been withheld under section 243(h) or 241(b)(3) of the INA;
 - who is a Cuban and Haitian entrant (as defined in section 501 (e) of the Refugee Education Assistance Act of 1980);
 - who has been granted conditional entry pursuant to section 203(a)(7) of the INA; or
 - who has been determined by the social services district to be in need of Medicaid as a result of being battered or subject to extreme cruelty in the United States by a spouse,

ATTACHMENT A
(continued)

Date: December 12, 2000

Trans. No. 00 OMM/ADM-9

Page No. 4

parent, or by a member of the spouse or parent's family residing in the same household as the alien (see section IV.C.4. of this directive).

3. **AMERICAN INDIAN BORN IN CANADA:** An American Indian born in Canada may freely enter and reside in the United States and is considered to be lawfully admitted for permanent residence if he or she is of at least one-half American Indian blood. As such, he or she is a qualified alien. This does not include a non-citizen spouse or child of such Indian or a non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is at least 50 percent Indian blood.

4. **EMERGENCY MEDICAL CONDITION:** The term emergency medical condition means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
 - placing the person's health in serious jeopardy;
 - serious impairment to bodily functions; or
 - serious dysfunction of any bodily organ or part.

Further, provided for treatment of emergency medical conditions does not include care and services related to an organ transplant procedure.

5. **NON-INMIGRANT:** A non-immigrant is an alien who has been allowed to enter the United States for a specific purpose and for a limited period of time. Examples include tourists, students, and visitors on business.

6. **UNDOCUMENTED ALIEN:** Undocumented aliens do not have the permission of the Immigration and Naturalization Service (INS) to remain in the United States. They may have entered the United States legally but have violated the terms of their status, e.g., over-stayed a visa, or they may have entered without documents.

B. DOCUMENTATION REQUIREMENTS

Citizens, nationals and qualified alien applicants for Medicaid must provide appropriate documentation of their citizenship or immigration status. Such individuals must also sign a declaration, under penalty of perjury, that they are citizens, nationals or qualified aliens and must provide, or apply for, a Social Security Number.

Pregnant women are not required to document their immigration status, complete the citizenship declaration, or provide a Social Security Number. In the month following the month in which the 60 day postpartum period ends, the woman must meet these and all other applicable requirements in order to remain Medicaid eligible.

Attachment I provides examples of acceptable documents which establish citizenship and immigration status. Many elderly individuals born in rural areas of the United States have

ATTACHMENT A
(continued)

Date: December 12, 2000

Trans. No. 00 OMM/ADM-9

Page No. 5

particular difficulty in documenting their place of birth. Districts must provide assistance to such persons in exploring all possible sources of primary and secondary verification before denying such individuals on the basis of citizenship status.

C. ELIGIBILITY OF ALIENS FOR BENEFITS

1. QUALIFIED ALIENS

a. Entry Prior to August 22, 1996

A qualified alien who entered the United States prior to August 22, 1996, may receive all care and services available under the Medicaid program, provided he or she is determined to be otherwise eligible. This provision includes individuals who attained qualified alien status subsequent to August 22, 1996, and who can demonstrate to the district's satisfaction that they continuously resided in the United States until attaining qualified alien status.

b. Entry On or After August 22, 1996

The following qualified aliens who enter the United States on or after August 22, 1996, may receive all care and services available under the Medicaid program, provided they are determined to be otherwise eligible:

- refugees under section 207 of the INA (including Amerasian immigrants admitted under the provisions of Public Law 100-202);
- aliens who have been granted asylum under section 208 of the INA;
- aliens for whom deportation has been withheld under section 243(h) or 241(b)(3) of the INA;
- aliens who are Cuban and Haitian entrants (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);
- qualified aliens lawfully residing in the State who are on active duty in the armed forces, or who have received an honorable discharge from the armed forces and their spouses and unmarried dependent children, who are also qualified aliens. (See section IV.C.5. of this directive for further requirements regarding the veteran/active duty exception.)

Qualified aliens who do not meet these requirements are not eligible to receive medical care or services under the Medicaid program beginning on the date the alien enters the United States and continuing for a period ending five years after the date status as a qualified alien is granted, unless the alien is otherwise eligible and is pregnant, or requires treatment of an emergency medical condition.

c. Eligibility Following the Five Year Ban

At the time a qualified alien has resided in the United States for a period of five years with a qualified alien status, the alien may be eligible to receive full Medicaid coverage in the appropriate federal or non-federal category of assistance.

ATTACHMENT A
(continued)

Date: December 12, 2000

Trans. No. 00 OMM/ADM-9

Page No. 10

- the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with the alien or his child, and to care for resulting children; or
- medical coverage and/or health care services are needed to replace medical coverage of health care services the alien had when living with the abuser.

5. VETERAN AND ACTIVE DUTY EXCEPTIONS

a. Veterans

The exception from the five year ban for aliens entering the United States on or after August 22, 1996, applies to qualified aliens who are veterans of the United States Armed Forces. The veteran's discharge must have been characterized as honorable, and not on account of his or her alien status. This exception is also provided to the veteran's qualified alien spouse, including his or her unremarried surviving spouse if the veteran is deceased, and any unmarried dependent children of the veteran who are qualified aliens.

NOTE: The Balanced Budget Act of 1997 provided that Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and have been lawfully admitted to the United States for permanent residence are to be considered veterans for the purpose of this provision.

b. Active Military Duty

The exception from the five year ban for aliens entering the United States on or after August 22, 1996, also applies to qualified aliens who are on active duty in the United States Armed Forces. The alien must be on full-time duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard. Active duty for training and full-time National Guard duty are not included in this exception.

This exception is also provided to the alien's qualified alien spouse and unmarried dependent children who are qualified aliens.

See Attachment I for acceptable documentation of honorable discharge or active duty status.

D. DEEMING THE SPONSOR'S INCOME AND RESOURCES

Section 122 of the SSL requires that the income and resources of a sponsor of an alien, who has signed an affidavit of support pursuant to the sponsor's spouse, will be deemed available to the alien in determining his or her eligibility for Medicaid, except for Medicaid coverage provided for the treatment of emergency medical conditions.