

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512  
(16 Del.C., Ch. 5, §512)

### PROPOSED

### PUBLIC NOTICE

#### Citizenship and Alienage and Deemed Newborns

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to make administrative changes to the Title XIX Medicaid and the Title XXI Delaware Healthy Children Program state plans, as well as the Division of Social Services Manual (DSSM) regarding *Citizenship and Alienage and Deemed Newborns*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2010.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### Summary of Proposed Amendments

The purpose of this regulatory action is to amend the Title XIX and Title XXI State Plans and existing rules in the Division of Social Services Manual (DSSM) necessitated by the citizenship documentation requirements of the Deficit Reduction Action (DRA) of 2005 and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). These amendments provide for medical assistance coverage to certain immigrants who are lawfully residing in the United States and are otherwise eligible for assistance, as described under CHIPRA. This population was previously required to complete a 5-year waiting period to be eligible for federal medical assistance. Children who were otherwise eligible for Medicaid and subject to the 5-year bar formerly received medical coverage under Delaware's State-Funded Only (Medical Assistance) Program. Children who were otherwise eligible for the Delaware Healthy Children Program (DHCP) did not receive State-funded coverage.

In addition, this regulatory action proposes amendments that remove the requirements for an infant to be deemed Medicaid-eligible for 12 months because of "newborn" status, a mandatory coverage group under the Medicaid program.

#### Statutory Authority

- Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193, enacted on August 22, 1996
- Deficit Reduction Action (DRA) of 2005, Public Law 109-171, enacted on February 8, 2006
- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, enacted on February 3, 2009

#### Background

##### ***DRA***

The Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) was signed into law on February 8, 2006. Prior to the enactment of the DRA, a signature on the application form under penalty of perjury attesting that an individual was a citizen or national of the United States was sufficient. No further documentation was required unless there was information to the contrary. In addition, there was no requirement to verify identity.

Section **6036** of the DRA of 2005 amends the Federal Medicaid statute to require that individuals declaring to be a citizen or national of the United States for purposes of qualifying for Medicaid must present satisfactory documentary evidence of citizenship or nationality and identity when initially applying for Medicaid or upon a recipient's first Medicaid redetermination. Section 6036 prohibits states from receiving federal reimbursement for medical assistance provided under Medicaid to an individual who has not provided satisfactory documentary evidence of citizenship or nationality.

## **CHIPRA**

### **Citizenship**

Previously, under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193), individuals who entered the United States on or after August 22, 1996, were barred from participating in any federal means-tested program for five years from their date of entry and could only receive emergency services and labor and delivery only.

In State Fiscal Year 1998, the Delaware legislature appropriated State-only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Section **214** of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3), known as CHIPRA, now allows States the option to extend coverage to all otherwise eligible children and pregnant women who are lawfully residing in the United States (U.S.). These amendments do not extend coverage to children and pregnant women who do not have documentation of their legal entry to the U.S.

CHIPRA also requires a state to apply this requirement to both Medicaid and CHIP if they choose to adopt this option.

### **Deemed Newborns**

On January 1, 1991, Section 4603 of the federal Omnibus Budget Reconciliation Act of 1990 required states to adopt Section 1902(e)(6) of Title XIX of the Social Security Act, which continued eligibility for pregnant women when there was a change in income of the family of which she is a member. Additionally, Section 1902(e)(4) provides automatic Medicaid eligibility to infants born to Medicaid eligible women, providing that the infant continues to live with his/her mother and that the mother remain eligible for Medicaid or would remain eligible if still pregnant.

Section **113** of CHIPRA amends the automatic enrollment for children born to women receiving pregnancy-related assistance under Title XIX, Section 1902(e)(4) of the Social Security Act as follows:

*A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year...*

## **Summary of Proposed Amendments**

### **Old Policy - Citizenship**

Currently, certain immigrants who arrived in the United States on or after August 22, 1996 were subject to a five-year bar on receiving federal benefits, including Medicaid and the Delaware Healthy Children Program other than emergency services and labor and delivery only. At this time, Delaware provides coverage for Medicaid children using State-only funds.

### **New Policy - Citizenship**

As a result of the option allowed under Section 214 of the CHIPRA, Delaware is electing, through these amending regulations: 1) to provide coverage to children and pregnant women who are lawfully residing in the United States; and, 2) to receive federal financial participation for services currently provided using State-only funds. Adoption of this option will result in a cost-savings since the cost will now be shared with the federal government. This policy applies to both persons in existing open cases and new applicants.

**Old Policy – Deemed Newborns**

Currently, deemed newborn Medicaid eligibility required that the newborn must come home from the hospital to live with the mother, remain a member of the mother’s household, and that the mother remain eligible for Medicaid, or would remain eligible if still pregnant.

**New Policy – Deemed Newborns**

As a result of the provision mandated under Section 113 of CHIPRA, Delaware will delete the following deemed eligibility requirements: 1) the infant must be a member of the mother’s household and, 2) that the mother remain Medicaid-eligible or would have remained eligible is she were still pregnant. The effect of this amendment is that an infant who was born to a woman who was Medicaid-eligible at the time of the infant’s birth shall remain eligible through the month of the infant’s first birthday, even if the infant is no longer living with the mother or the mother would no longer qualify for Medicaid. This change will ensure the continuous availability of medical care to infants during their first year of life.

**State Plan Amendments (SPAs)**

The sections of the Title XIX Medicaid State Plan that are affected by this regulatory action are Attachment 2.2-A, *Mandatory Coverage – Categorically Needy and Other Required Special Groups* and Attachment 2.6-A, *Eligibility Conditions and Requirements*.

The section of the Title XXI Delaware Healthy Children State Plan that is affected by this regulatory action is Section 4, *Eligibility Standards and Methodology*.

**Division of Social Services Manual (DSSM)**

The sections of the Division of Social Services Manual (DSSM) affected by this regulatory action are:

DSSM 14300 through DSSM 14420, *Citizenship and Alienage* and DSSM 18100, *Delaware Healthy Children Program*: The proposed revisions are being made to reorganize and reformat the content to align and conform to federal regulations and guidance. This includes updating, revising, clarifying, and deleting text /terminology, where necessary. DMMA is not changing existing polices or procedures, but is clarifying the content to reflect current practices.

DSSM 14350, *Ineligible Aliens*: This proposed amendment authorizes coverage under Medicaid or CHIP to certain legal immigrant pregnant women and children. CHIP does not currently provide coverage of emergency services and labor and delivery only.

DSSM 14810, *Continuously Eligible Newborn*, DSSM 14920.6, *Retroactive Eligibility for Newborns*, DSSM 16280, *Deemed Eligibility of Newborns*: The proposed revisions are being made to eliminate the requirement that a deemed newborn must come home from the hospital to live with the mother, remain in the mother’s household, and that the mother remain eligible for Medicaid.

**Fiscal Impact Statement**

Currently, the medical services used by these groups of eligible persons are being reimbursed with State-only Funds. This proposal will allow the State to claim a federal match on all medical services reimbursed through the Delaware Medical Assistance Program for this group of lawfully admitted noncitizen children and pregnant women. Implementation of these rules will result in a projected annual savings to the General Fund of \$555,600.00.

**DMMA PROPOSED REGULATION #10-20a REVISIONS:**

Revision: CMS-PM- ATTACHMENT 2.2 -A  
Page 6  
OMB No.:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State: **DELAWARE**

A. Mandatory Coverage - Categorically Needy and Other Required Special Groups (Continued)

12. ~~A child born to a woman who is eligible for and receiving Medicaid as categorically needy on the date of the child's birth. The child is deemed eligible for one year from birth as long as the mother remains eligible or would remain eligible if still pregnant and the child remains in the same household as the mother.~~

Deemed Newborns. (42 CFR 435.117, 1902(e)(4) of the Act)

A child born in the United States to a woman who was eligible for and receiving Medicaid (including coverage of an alien for labor and delivery as emergency medical services) for the date of the child's birth, including retroactively. The child is deemed eligible for one year from birth.

**DMMA PROPOSED REGULATION #10-20b  
REVISIONS:**

Revision:

CMS-PM-

ATTACHMENT 2.6-A

Page 2

OMB No.:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Citation(s)	Condition or Requirement
42 CFR 435.406	<p>3. Is residing in the United States (U.S.), and--</p> <ul style="list-style-type: none"> <li>a. Is a citizen or national of the United States;</li> <li>b. Is a qualified alien (QA) as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended, and the QA's eligibility is required by section 402(b) of PRWORA as amended, and is not prohibited by section 403 of PRWORA as amended;</li> <li>c. Is a qualified alien subject to the 5-year bar as described in section 403 of PRWORA, so that eligibility is limited to treatment of an emergency medical condition as defined in section 401 of PRWORA;</li> <li>d. Is a non-qualified alien, so that eligibility is limited to treatment of an emergency medical condition as defined in section 401 of PRWORA;</li> <li>e. Is a QA whose eligibility is authorized under section 402(b) of PRWORA as amended, and is not prohibited by section 403 of PRWORA as amended. <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> State covers all authorized QAs.</li> <li><input type="checkbox"/> State does not cover authorized QAs.</li> </ul> </li> <li>f. State elects CHIPRA option to provide full Medicaid coverage to otherwise eligible pregnant women or children as specified below who are aliens lawfully residing in the United States; including the following: <ul style="list-style-type: none"> <li>(1) A "Qualified alien" otherwise subject to the 5- year waiting period per section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;</li> <li>(2) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-</li> </ul> </li> </ul>

- immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.;
- (3) An individual described in 8 CFR section 103.12(a)(4) who does not have a permanent residence in the country of their nationality and is in a status that permits the individual to remain in the U.S. for an indefinite period of time, pending adjustment of status. These individuals include:
- (a) An individual currently in temporary resident status as an Amnesty beneficiary pursuant to section 210 or 245A of the Immigration and Nationality Act (INA);
  - (b) An individual currently under Temporary Protected Status pursuant to section 244 of the INA;
  - (c) A family Unity beneficiary pursuant to section 301 of Public Law 101-649 as amended by, as well as pursuant to, section 1504 of Public Law 106-554;
  - (d) An individual currently under Deferred Enforced Departure pursuant to a decision made by the President; and
  - (e) An individual who is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status; and
- (4) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including the following as specified in section 101(a)(15) of the INA:
- A parent or child of an individual with special immigrant status under section 101(a)(27) of the INA, as permitted under section 101(a)(15)(N) of the INA;
  - A Fiancé of a citizen, as permitted under section 101(a)(15)(K) of the INA;
  - A religious worker under section 101(a)(15)(R);
  - An individual assisting the Department of Justice in a criminal investigation, as permitted under section 101(a)(15)(S) of the INA;
  - A battered alien under section 101(a)(15)(U) (see also section 431 as amended by PRWORA); and
  - An individual with a petition pending for 3 years or more, as permitted under section 101(a)(15)(V) of the INA.
- Elected for pregnant women.
- Elected for children under age 21.
- g.  The State provides assurance that for an individual whom it enrolls in Medicaid under the CHIPRA section 214 option, it has verified, at the time of the individual's initial eligibility determination and at the time of the eligibility redetermination, that the individual continues to be lawfully residing in the United States. The State must first attempt to verify this status using information provided at the time of initial application. If the State cannot do so from the information readily available, it must require the individual to provide documentation or further evidence to verify satisfactory immigration status in the same manner as it would for anyone else claiming satisfactory immigration status under section 1137(d) of the act.

**DMMA PROPOSED REGULATION #10-20c  
REVISIONS:**

STATE CHILD HEALTH PLAN UNDER TITLE XXI OF THE  
SOCIAL SECURITY ACT

**Delaware Healthy Children Program**

Section 4. Eligibility Standards and Methodology (Section 2102(b))

4.1.9 x Other standards (identify and describe): must be (1) a citizen of the United States or must have legally resided in the US for at least 5 years if their date of entrance into the US is 8/22/96 or (2) meet the Personal Responsibility and Work Opportunity Reconciliation Act of 1997 (PRWORA) definition of qualified alien; and (3) ineligible for enrollment in any public group health plan; and, (4) a social security number is required for an applicant child, effective August 24, 2001.

4.1.10 x Check if the State is electing the option under section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) to provide coverage to the following otherwise eligible individuals lawfully residing in the United States:

(1) "Qualified aliens" otherwise subject to the 5-year waiting period per section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(2) Citizens of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who have been admitted to the United States (U.S.) as non-immigrants and are permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.;

(3) Individuals described in 8 CFR 103.12(a)(4) who do not have a permanent residence in the country of their nationality and are in statuses that permit them to remain in the U.S. for an indefinite period of time pending adjustment of status. These individuals include:

(a) Individuals currently in temporary resident status as Amnesty beneficiaries pursuant to section 210 or 245A of the Immigration and Nationality Act (INA);

(b) Individuals currently under Temporary Protected Status pursuant to section 244 of the INA;

(c) Family Unity beneficiaries pursuant to section 301 of Public Law 101-649 as amended, as well as pursuant to section 1504 of Pub. L. 106-554;

(d) Individuals currently under Deferred Enforced Departure pursuant to a decision made by the President; and

(e) Individuals who are the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status; and

(4) Individuals in non-immigrant classifications under the INA who are permitted to remain in the U.S. for an indefinite period, including the following who are specified in section 101(a)(15) of the INA:

- Parents or children of individuals with special immigrant status under section 101(a)(27) of the INA as permitted under section 101(a)(15)(N) of the INA;
- Fiancées of a citizen as permitted under section 101(a)(15)(K) of the INA;
- Religious workers under section 101(a)(15)(R);
- Individuals assisting the Department of Justice in a criminal investigation as permitted under section 101(a)(15)(S) of the INA;
- Battered aliens under section 101(a)(15)(U) (see also section 431 as amended by PRWORA); and
- Individuals with a petition pending for 3 years or more as permitted under section 101(a)(15)(V) of the INA.

Lawfully Residing children enrolled in the Delaware Healthy Children Program (DHCP) are required to provide valid immigration documentation and proof of lawful residency. Valid immigration documentation and proof of lawful residency is documentation that demonstrates legal immigrant status and lawful residency as defined by the United States Citizenship and Immigration Services (USCIS). While enrolled in the DHCP, these Lawfully Residing children are eligible for funding under Title XXI, however will be subjected to re-verification of immigration documentation and proof of lawful residency at the annual redetermination

process, to the extent necessary to ensure continued valid immigration and lawful residency status.

x The State elects the CHIPRA section 214 option for children up to age 19

x The State elects the CHIPRA section 214 option for pregnant women through the 60-day postpartum period

4.1.10.1The State provides assurance that for individuals whom it enrolls in CHIP under the CHIPRA section 214 option that it has verified, both at the time of the individual's initial eligibility determination and at the time of the eligibility redetermination, that the individual continues to be lawfully residing in the United States. The State must first attempt to verify this status using information provided at the time of initial application. If the State cannot do so from the information readily available, it must require the individual to provide documentation or further evidence to verify satisfactory immigration status in the same manner as it would for anyone else claiming satisfactory immigration status under section 1137(d) of the Act. Under the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, eligible Lawfully Residing children will be funded under Title XXI. These Lawfully Residing children will be funded under Title XXI, as long as they are able to demonstrate their valid immigration/residency documentation.

## **DMMA PROPOSED REGULATION #10-20d**

### **REVISIONS:**

#### **Division of Social Services Manual**

#### **14300Citizenship And Alienage**

~~The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.~~

~~In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.~~

~~Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens ARE NOT ELIGIBLE for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.~~

~~All applicants, whether citizens or aliens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, emergency services and labor and delivery only, or the state funded benefits.~~

#### **14310 United States Citizens**

~~An individual qualifies as a U.S. citizen if the person was born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S., may automatically be eligible for a Certificate of Citizenship. In order to receive the certificate, an INS Form N-600 needs to be filed.~~

#### **14310.1 Medicaid Eligibility for U.S. Citizens**

~~Medicaid must be provided to eligible citizens or nationals of the United States.~~

#### 14315 Noncitizens Or Aliens

The word "alien" is a technical, legal term for a person who is not a U.S. citizen. Common immigration terms are listed at the end of this section. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The previous category of lawful permanent resident becomes a subcategory of the new term qualified alien. The category known as permanently residing in the United States under color of law (PRUCOL) no longer applies and is no longer an eligibility classification. Individuals who were formerly PRUCOL are now considered nonqualified aliens.

#### 14320 Qualified Aliens

A qualified alien is:

- a. an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
- b. a refugee who is admitted to the United States under §207 of the INA;
- c. an alien who is granted asylum under §208 of the INA;
- d. an alien whose deportation is being withheld under §243(h) of the INA or §241(b)(3) of the INA;
- e. an alien who is paroled into the United States under §212(d)(5) of the INA for a period of at least 1 year;
- f. an alien granted conditional entry pursuant to §203(a)(7) of the INA as in effect before April 1, 1980;
- g. honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman. The discharge must not be due to alien status and the active duty status must not be for training. For example, the 2 weeks of active duty training usually required of members of the National Guard does not meet the definition of active duty. Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the U.S. during the Vietnam conflict and who have lawfully been admitted for permanent residence are considered veterans;
- h. an alien granted status as a Cuban and Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980);
- i. an alien admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988;
- j. aliens who have been subjected to battery or extreme cruelty and who meet certain criteria, including an alien whose child has been battered or an alien child whose parent has been battered;
- k. an American Indian born in Canada who is at least one-half American Indian blood and to whom the provisions of §289 of the INA apply or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act.

#### 14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/Or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does not include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive state funded benefits. The adult expansion population, under the 1115 demonstration waiver entitled, Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the state funded benefits.

The Delaware legislature appropriated state only funds to restore full Medicaid benefits to legally residing noncitizens who are eligible for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 were subject to a 5-year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the 5-year PRWORA bar, is subject to the availability of state funds.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of state funds. In the event such state funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below. Under PRWORA, there are both mandatory and optional coverage groups for qualified aliens depending upon the alien's date of entry into the U.S. Delaware has decided to cover both the mandatory and optional groups.

#### 14320.2 Date Of Entry Into U.S. For Qualified Aliens

The date of entry is significant for the Qualified Aliens (Section 14320) listed as a), e), f), j). These aliens who enter the U.S. on or after 8/22/96 are not eligible for full Medicaid benefits for 5 years after date of entry. These aliens are eligible only for emergency services and labor and delivery services during the first 5 years in the U.S.



#### 14320.3 Medicaid Eligibility Not Based On Date Of Entry Into U.S.

The following qualified aliens may be found eligible for Medicaid regardless of their date of entry into the U.S.:

- Refugees (§207 of INA)
- Asylees (§208 of INA)
- Aliens who have had deportation withheld under §243(h) or §241(b)(3) of the INA
- Honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman.
- Cuban and Haitian entrants
- Amerasians
- American Indian born in Canada, Mexico or who is a member of an Indian tribe under section 4(c) of the Indian Self-Determination and Education Assistance Act

In addition, title IVE Foster Children and Adoption Assistance children may be found eligible for Medicaid regardless of date of entry provided the foster or adoptive parent of the child is also a qualified alien or a citizen. The IVE agency is responsible for making that determination about the parent. If a IVE payment is being made on behalf of the child, then the child is deemed eligible for Medicaid.

#### 14320.4 Medicaid Eligibility Based On Date Of Entry Into U.S.

For the following qualified aliens, eligibility under PRWORA is determined based upon the date of entry into the U.S.:

- Lawful permanent residents
- Aliens granted parole (parolees)
- Aliens granted conditional entry (conditional entrants)
- battered immigrants

If these aliens (lawful permanent residents, parolees, conditional entrants, battered immigrants) were living in the U.S. before August 22, 1996, they may be found eligible for Medicaid. If these aliens entered the U.S. on or after August 22, 1996, they are not eligible for full Medicaid benefits for 5 years from the date of entry into the U.S. They may be found eligible for emergency services only during the first 5 years after entering the U.S. Once these aliens have been in the U.S. for 5 years, they may be found eligible for full Medicaid.

#### 14320.5 Eligibility For State Funded Benefits (Qualified Aliens)

The following qualified aliens who enter the U.S. on or after 8/22/96 and are subject to the 5 year PRWORA bar may be found eligible for state funded benefits:

- Lawful permanent resident
- Aliens granted parole (parolees)
- Aliens granted conditional entry (conditional entrants)
- Battered immigrants

Once these aliens have been in the U.S. for five years, they may be found eligible for Medicaid.

#### 14330 Legally Residing Nonqualified Aliens

These are aliens who do not meet the above definition of qualified aliens. Individuals formerly known as PRUCOL are now considered nonqualified aliens. Nonqualified aliens have to provide a Social Security Number (SSN) if one is available, or apply for a SSN if the applicant does not have one.

Legally residing nonqualified aliens include the following:

- aliens granted permission to remain and work in the U.S.
- individuals who have been paroled into the U.S. for less than 1 year
- applicants for immigration status such as applicants for asylum, adjustment to lawful permanent resident status, suspension of deportation
- aliens in Temporary Protected Status (TPS)
- aliens in temporary resident status
- Family unity beneficiaries
- aliens under deferred enforced departure
- aliens in deferred action status
- aliens who are the spouses or children of U.S. citizens with approved visa petitions and pending adjustment

of status application.

#### 14330.1 Medicaid Eligibility For Legally Residing Nonqualified Aliens

Under PRWORA, legally residing nonqualified aliens, who meet the technical and financial requirements of a specific Medicaid eligibility group, are only eligible for the treatment of an emergency medical condition, as defined in this section, and labor and delivery services. Under PRWORA, legally residing nonqualified aliens (Section 14330) are not eligible for any long term care Medicaid program.

#### 14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does not include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. The adult expansion population, under the 1115 demonstration waiver, entitled Diamond State Health Plan, is not eligible for state funded benefits.

The Delaware legislature appropriated state only funds to restore full coverage of Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of state funds. In the event such state funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described in Section 14330.1

#### 14340 Illegally Residing Nonqualified Aliens

The term nonqualified aliens also includes aliens who are illegally residing in the U.S. These aliens either were never legally admitted to the United States for any period of time, or were admitted for a limited period of time and did not leave the United States when the period of time expired. Unlike other nonqualified aliens, they are not issued SSNs. Aliens who are illegally residing in the U.S. do not have to provide a SSN. Legal nonimmigrants are not included in the group of nonqualified aliens. Legal nonimmigrants are included with the group known as ineligible aliens.

#### 14340.1 Medicaid Eligibility For Illegally Residing Nonqualified Aliens

Illegally residing nonqualified aliens, who meet the technical and financial requirements of a specific Medicaid eligibility group, are only eligible for the treatment of an emergency medical condition, as defined in this section, and labor and delivery services. Illegally residing nonqualified aliens are not eligible for any long term care Medicaid program.

Illegally residing nonqualified aliens are not eligible for state funded benefits.

#### 14350 Ineligible Aliens

Some aliens may be lawfully admitted to the United States but only for a temporary or specified period of time as legal nonimmigrants. They are known as ineligible aliens. These aliens do not have to provide a Social Security Number. The following categories of individuals are known as ineligible aliens:

- Foreign government representative on official business and their families and servants
- Visitors for business or pleasure, including exchange visitors
- Aliens in travel status while traveling directly through the U.S.
- Crewmen on shore leave
- Treaty traders and investors and their families
- Foreign students
- International organization representation and personnel and their families and servants
- Temporary workers including agricultural contract workers
- Members of foreign press, radio, film, or other information media and their families.

#### 14350.1 Documentation of Ineligible Aliens

Ineligible aliens may present the following documentation:

- Form I 94 Arrival-Departure Record with codes other than those listed for qualified aliens, such as a nonimmigrant code
- Form I 185, Canadian Border Crossing Card

- Form I-186, Mexican Border Crossing Card
- Form I-95A, Crewman's Landing Permit.

#### 14350.2 Medicaid Eligibility For Ineligible Aliens

In some cases an alien in a currently valid nonimmigrant classification may meet State residence rules. When this is the case, the alien may be found eligible for Medicaid.

Ineligible aliens, who meet the technical and financial requirements of a specific Medicaid eligibility group (including State residency), are only eligible for the treatment of an emergency medical condition, as defined in this section, and labor and delivery services. Ineligible aliens are not eligible for any long term care Medicaid program. Ineligible aliens can NOT be eligible for State funded benefits.

#### 14360 Treatment Of An Emergency Medical Condition

To be eligible for coverage of labor and delivery and emergency services, the alien must meet all eligibility requirements for a specific Medicaid eligibility group such as in the SSI related groups, poverty level related groups, or AFDC related groups. The alien does not have to meet the requirement concerning declaration of satisfactory immigration status and verification of that status.

Under PRWORA, nonqualified noncitizens (aliens) are eligible ONLY for coverage of emergency services and labor and delivery services. As noted previously, legally residing nonqualified aliens may be found eligible for full Medicaid benefits effective January 1, 1998. Illegally residing aliens and ineligible aliens are eligible ONLY for coverage of emergency services and labor and delivery services. These services must be rendered in an acute care hospital emergency room or in an acute care inpatient hospital. In addition, emergency services must be rendered for diagnoses designated by the Delaware Medical Assistance Program (DMAP) as an emergency. A comprehensive list of the covered diagnoses is available in Appendix G of the DMAP Provider General Policy Manual.

The DMAP defines an emergency as:

- a sudden serious medical situation that is life threatening; OR
- a severe acute illness or accidental injury that demands immediate medical attention or surgical attention;

AND

- without the treatment a person's life could be threatened or he or she could suffer serious long-lasting disability.

Medically necessary physician (surgeon, pathologist, anesthesiologist, emergency room physician, internist, etc.) or midwife services rendered during an emergency service that meets the above criteria are covered. Ancillary services (lab, x ray, pharmacy, etc.) rendered during an emergency service that meets the above criteria are also covered. Emergency ambulance services to transport these individuals to and from the services defined above are also covered.

Services not covered for nonqualified noncitizens who are determined to be eligible for emergency service and labor and delivery only include but are not limited to:

- any service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital.
- any service (such as pharmacy, transportation, office visit, lab or x ray, home health) that precedes or is subsequent to a covered emergency service. Exception: ambulance transportation that is directly related to the emergency is covered.
- organ transplants
- long term care or rehabilitation care
- routine prenatal and post partum care

#### 14370 Declaration Of Satisfactory Immigration Status

As a condition of eligibility, applicants must sign a written declaration under penalty of perjury stating if he or she is a citizen, national of the United States or an alien in satisfactory immigration status. (qualified alien or alien in lawful status) This declaration is obtained on the Affidavit of Citizenship or Lawful Immigration Status form as part of the application for Medicaid. In the case of a child or incompetent applicant, an adult must sign on the applicant's behalf. The applicant must also sign the Consent of Disclosure (Form SAVE 2), which allows the Immigration and Naturalization Service (INS) to provide verification of the individual's alien status.

If the applicant is not a citizen, national of the United States, qualified alien or an alien in lawful status, the

~~declaration of citizenship or satisfactory immigration status and verification of such status is not required. If the applicant will not sign the declaration, he or she may be found eligible for coverage for labor and delivery and emergency services only~~

#### ~~14380 Documentation Of Citizenship Or Alien Status~~

~~Applicants must provide documentation of qualified alien status, or lawful alien status. All noncitizens who declare they are qualified aliens or in lawful alien status, must provide INS documents to establish immigration status. Examples of acceptable documentation for U.S. citizens, qualified aliens and lawful alien status are given in this section.~~

~~If the applicant will not provide evidence of alien status and does not allege qualified or lawful alien status, the application is not denied, but an eligibility determination is completed for coverage of labor and delivery and emergency services only.~~

~~As required by §1137(d)(4) of the Social Security Act, Medicaid will be provided to individuals who meet all other nonimmigration Medicaid eligibility requirements, pending verification of immigration status. We will provide Medicaid to an otherwise eligible individual who has presented INS documents showing qualified or lawful alien status, pending verification of the document.~~

~~For noncitizen applicants who declare they are qualified or lawful aliens but have no documentation, we must allow the individual a reasonable opportunity to produce evidence of immigration status. We will give the individual 30 days from the date of the receipt of application to produce an INS document. If the individual meets all other eligibility requirements except for this documentation, we will provide Medicaid during this 30 day period.~~

~~If the applicant provides an expired INS document or has no documentation regarding his or her immigration status, refer the individual to the local INS district office to obtain evidence of status. As noted previously, Medicaid coverage is provided for a 30 day period pending verification of alien status. If the applicant can provide an alien registration number, follow the secondary verification procedures outlined below under Section 14390 — "Verification of Immigration Alien Status".~~

#### ~~14390 Verification Of Immigration Alien Status~~

~~States are required to verify alien status with the INS. Delaware Medicaid will verify alien status through the Systematic Alien Verification for Entitlements (SAVE) mechanism in operation in the Division of Social Services. Verification must be completed at initial application and at redetermination.~~

~~Staff will institute primary verification to INS through the DSS form "Record of Contact with ASVI Data Base" (SAVE 1). ASVI is the acronym for Alien Status Verification Index. Clear copies of alien immigration documentation must be attached to the SAVE 1 form. If the response verifies alien status, process the case using the INS information. If the response states institute secondary verification, begin that process by completing all parts of Section A on the revised G-845S. A separate G-845S must be completed for each applicant and must include copies of the documents for that person only. If a family has applied for benefits, each member will require a separate G-845S. The local INS office will complete the G-845S and return it to the State Office SAVE point of contact person, who will forward the response to the eligibility worker.~~

~~INS verification requests and responses (both primary and secondary) must be dated and filed in the case record.~~

~~An alien registration number is required for both primary and secondary verifications. If the applicant provides an alien registration number but does not have the INS document, complete Form G-845S including the alien registration number. If an applicant provides a receipt indicating that he or she has applied to INS for a replacement document, use a Form G-845S attaching a copy of the receipt.~~

#### ~~14400 Acceptable Evidence Of U. S. Citizenship~~

~~Section Deleted — May 2001. No longer applicable.~~

#### ~~14410 Acceptable Evidence Of Qualified Alien Status~~

~~Acceptable documentation of qualified alien status is listed below. The card should show the date of admission or date of entry into the United States.~~

##### ~~A. Lawful Permanent Residents-~~

~~INS Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.~~

NOTE: INS has replaced Forms I-151, AR-3 and AR-3a. If a lawful permanent resident presents one of these old INS forms as evidence of status, contact INS using a G-845S and attach the old card.

#### B. Refugees

INS Form I-94 annotated with stamp showing entry as refugee under §207 of the Immigration and Naturalization Act (INA) and date of entry to the United States; INS Form I-688B annotated 274a.12(a)(3); I-766 annotated A3; or Form I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the U.S. However, for purposes of eligibility, the individual is still considered a refugee and it is important to check the coding on Form I-551 for codes RE-6, RE-7, RE-8, or RE-9.

#### C. Asylees

INS Form I-94 annotated with stamp showing grant of asylum under §208 of the INA; a grant letter from the Asylum Office of the INS; Form I-688B annotated 274a.12(a)(5); I-766 annotated A5; or an order of an Immigration Judge granting asylum. If the applicant provides a court order contact INS using a G-845S and attach a copy of the court order.

#### D. Alien who has had deportation withheld under §243(h) of the INA

Order of an Immigration Judge showing deportation withheld under §243(h) or §241(b)(3) and date of the grant; Form I-688B annotated 274a.12(a)(10); or I-766 annotated A10. If applicant provides a court order contact INS using G-845S and attach copy of court order.

#### E. Parolees

INS Form I-94 annotated with stamp showing grant of parole under §212(d)(5) of the INA and a date showing granting of parole for at least 1 year. INS Form I-688B annotated 274a.12(a)(4) or 274a.12(c)(11) or I-766 annotated A4 or C11 indicates status as a parolee but does not reflect the length of the parole period.

#### F. Conditional Entrant

INS Form I-94 annotated with stamp showing admission under §203(a)(7) of the INA, refugee conditional entry; Forms I-688B annotated 274a.12(a)(3); or I-766 annotated A-3.

#### G. Evidence of Honorable Discharge or Active Duty Status

- Discharge—a copy of the veteran's discharge papers issued by the branch of service in which the applicant was a member. (Department of Defense Form 214)
- Active Duty Military—a copy of the applicant's current orders showing the individual is on full time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or an active military identification card, DD Form 2. Full time National Guard duty is excluded.
- A self declaration under penalty may be accepted pending receipt of acceptable documentation. The individual is given 30 days to produce evidence; and, if the individual is otherwise eligible, Medicaid is provided during this 30 day period.

#### H. Cuban and Haitian entrants

I-551 annotated CH6, CNP, CU6, CU7; I-688B annotated 274a.12(a)(4); I-94 annotated 212(d)(5)

#### I. Amerasian

I-94 annotated AM1, AM2, AM3; I-551 annotated AM1, AM2, AM3.

#### J. Battered Immigrant

In order to be a qualified alien based on battery or extreme cruelty, the alien must meet the following requirements:

1. the alien must not now be residing in the same household as the individual responsible for the battery or extreme cruelty
2. the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered

child, the alien did not actively participate in the battery or cruelty-

3. there is substantial connection between the battery or extreme cruelty and the need for the public benefit sought. There is a substantial connection under any one or more of the following circumstances:

a) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;

b) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;

c) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

d) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to the battery or cruelty (such as child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

e) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

f) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g. inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

g) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

h) Where 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 or her child; and/or to care for any resulting children; or

i) where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

4. the alien or alien's child must have a petition approved by or pending with INS under one of several subsections of the INA that sets forth a prima facie case for the status.

K. American Indian born in Canada or Mexico under section 289 of the INA or member of Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

INS Form I-551 with the code S13; unexpired temporary I-551 stamp with code S13 in a Canadian passport or on Form I-94; satisfactory evidence of birth in Canada and a document that indicates the percentage of American Indian blood in the form of a birth certificate issued by the Canadian reservation or a record issued by the tribe; a membership card or other tribal document showing membership in the tribe that is on the list of recognized Indian tribes published annually by the Bureau of Indian Affairs in the Federal Register.

#### 14420 Common Immigration Terms

##### A. Immigrant

A general term for new arrivals, this includes legal immigrants, refugees, asylees, parolees, and others. Legal immigrants are granted admission to the U.S. on the basis of family relation or job skill.

##### B. Nonimmigrant

An alien allowed to enter the U.S. for a specific purpose and for a limited period of time such as a student, visitor, or tourist.

##### C. Refugee

A person who flees his or her country due to persecution or a well founded fear of persecution because of race, religion, nationality, political opinion, or membership in a social group.

##### D. Asylee

Similar to a refugee, this is a person who seeks asylum and is already present in the U.S. when he or she requests permission to stay.

##### E. Parolee

The Justice Department has discretionary authority to permit certain persons or groups to enter the U.S. in an emergency or because it serves an overriding public interest. Parole may be granted for humanitarian, legal, or medical reasons. Some persons who fear persecution are "paroled" into the U.S. as refugees when the number of refugees allowed to enter that year has been exceeded.

#### F. Alien not lawfully present in the U.S.

Also known as an undocumented immigrant, this is someone who enters or lives in the U.S. without official authorization, either by entering without inspection by the INS, overstaying their visa, or violating the terms of their visa.

#### G. Cuban/Haitian entrants

This category was created for the Cuban and Haitian arrivals in 1980, who were allowed to obtain work permits.

#### H. PRUCOL

Permanently residing under color of law is not a method for entering the country, but indicates that an individual is legally present under statutory authority and may remain under administrative discretion. PRUCOL is no longer an eligibility classification under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (PRWORA)

#### I. Deeming

Some legal immigrants come to the U.S. with the aid of citizens who serve as their sponsors. That sponsor signs an affidavit of support agreeing to help support and sustain the immigrant. Deeming means that the income and resources of the sponsor and his or her spouse are deemed or considered available when determining the sponsored alien's eligibility.

#### J. Affidavit of Support

An affidavit of support is the contract that an immigrant's sponsor signs, agreeing to financially assist the immigrant to prevent him or her from becoming a public charge. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 make affidavits of support legally binding documents and are enforceable until the immigrant naturalizes.

#### K. Public Charge

Immigrants who become dependent upon public assistance, fail to find employment, and are unlikely to be self-supporting in the future may be deported on the grounds that they have become a "public charge."

#### L. Naturalization

Naturalization is the process by which a foreign-born individual becomes a citizen of the U.S. Naturalization requires that the person be over 18 years old, lawfully admitted to the U.S., reside in the country continuously for five years, and have a basic knowledge of English, American government, and U.S. history. There is an exemption from the English and civics requirements for certain disabled immigrants.

Medicaid must be provided to eligible citizens or nationals of the United States. An individual qualifies as a U.S. citizen if the person was born in the 50 states and District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. Children of a U.S. citizen who are born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the U. S. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. Medicaid eligibility for aliens is based on whether the alien is a qualified or nonqualified alien. The term nonqualified alien also includes illegal aliens.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide

coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This coverage is described at 14360.

All applicants, whether citizens or aliens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, emergency services and labor and delivery only, or the state funded benefits.

### **14310 Qualified Aliens**

A qualified alien is:

- a) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA).
- b) A refugee who is admitted to the United States under §207 of the INA.
- c) An alien who is granted asylum under §208 of the INA.
- d) An alien whose deportation is being withheld under §243(h) of the INA or §241(b)(3) of the INA.
- e) An alien who is paroled into the United States under §212(d)(5) of the INA for a period of at least 1 year.
- f) An alien granted conditional entry pursuant to §203(a)(7) of the INA as in effect before April 1, 1980.
- g) Honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman. The discharge must not be due to alien status and the active duty status must not be for training. For example, the 2 weeks of active duty training usually required of members of the National Guard does not meet the definition of active duty. Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the U.S. during the Vietnam conflict and who have lawfully been admitted for permanent residence are considered veterans.
- h) An alien granted status as a Cuban and Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980).
- i) An alien admitted to the U.S. as an Amerasian immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988.
- j) Aliens who have been subjected to battery or extreme cruelty and who meet certain criteria, including an alien whose child has been battered or an alien child whose parent has been battered.
- k) An American Indian born in Canada who is at least one-half American Indian blood and to whom the provisions of §289 of the INA apply or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act.
- l) Victims of trafficking under the Trafficking Victims Protection Act of 2000 including certain family members of victims of a severe form of trafficking.
- m) Iraqi and Afghan special immigrants under The Department of Defense Appropriations Act of 2010. These immigrants are treated in the same manner as refugees.

#### **14310.1 Five Year Bar**

Unless specifically exempt, qualified aliens who enter the U.S. on or after August 22, 1996, are subject to a five-year bar from Medicaid. While subject to the five-year bar from full Medicaid, a qualified alien may be eligible for emergency services and labor and delivery only.

#### **14310.2 Aliens Exempt from Five Year Bar**

The following qualified aliens are exempt from the five-year bar:

- Refugees (§207 of INA)
- Asylees (§208 of INA)
- Aliens who have had deportation withheld under §243(h) or §241(b)(3) of the INA
- Honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman.
- Cuban and Haitian entrants
- Amerasians
- An American Indian born in Canada, Mexico or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act
- Victims of trafficking
- Iraqi and Afghan special immigrants



- Legal permanent residents (LPR) who first entered the U.S. under an exempt category (such as refugee, asylee, Cuban/Haitian entrant) and later converted to LPR

In addition, title IV-E Foster Children and Adoption Assistance children may be found eligible for Medicaid regardless of the date of entry provided the foster or adoptive parent of the child is also a qualified alien or a citizen. The IV-E agency is responsible for making that determination about the parent. If a IV-E payment is being made on behalf of the child, then the child is deemed eligible for Medicaid.

### **14310.3 Date of Entry before August 22, 1996**

An alien who entered the U.S. before August 22, 1996, and obtained qualified alien status before that date, may be found eligible for full Medicaid benefits.

An alien who entered the U.S. before August 22, 1996, but obtained qualified alien status on or after that date, is not subject to the five-year bar provided the alien remained continuously present in the U.S. from the latest date of entry prior to August 22, 1996, until becoming a qualified alien. This also applies to aliens who entered the U.S. without proper documentation or those who overstayed their visa.

Any single absence from the U.S. of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt continuous presence. For most legal entrants, the United States Citizenship and Immigration Services (USCIS) maintains a record of arrivals to and departures from the U.S. Verification of continuous presence may be obtained by filing Form G-845 and Form G-845-Supplement with the USCIS. For some legal entrants, such as Canadian and Mexican border crossers, and for illegal entrants, the USCIS does not maintain an arrival and departure record. These aliens must provide proof of continuous presence, such as tax returns, employment records, or rent receipts.

Once an immigrant has obtained qualified alien status, he or she does not have to remain continuously present in the U.S.

### **14310.4 Date of Entry on or after August 22, 1996**

An alien who entered the U.S. on or after August 22, 1996, is not eligible for full Medicaid benefits for five years. The alien may be eligible for emergency services and labor and delivery only. The five-year bar begins on the date the immigrant obtains qualified alien status.

### **14320 Legally Residing Nonqualified Aliens**

These are aliens who do not meet the definition of a qualified alien. Individuals formerly known as PRUCOL are now considered nonqualified aliens. Nonqualified aliens have to provide a Social Security Number (SSN) if one is available, or apply for a SSN if the applicant does not have one.

Legally residing nonqualified aliens include the following:

- Aliens granted permission to remain and work in the U.S.
- Individuals who have been paroled into the U.S. for less than 1 year
- Applicants for immigration status such as applicants for asylum, adjustment to lawful permanent resident status, suspension of deportation
- Aliens in Temporary Protected Status (TPS)
- Aliens in temporary resident status
- Family unity beneficiaries
- Aliens under deferred enforced departure
- Aliens in deferred action status
- Aliens who are the spouses or children of U.S. citizens with approved visa petitions and pending adjustment of status application.

### **14320.1 Medicaid Eligibility for Legally Residing Nonqualified Aliens**

Legally residing nonqualified aliens may be eligible for emergency services and labor and delivery only. Legally residing nonqualified aliens are not eligible for any long term care Medicaid program.

### **14330 Illegally Residing Nonqualified Aliens**

The term nonqualified aliens also includes aliens who are illegally residing in the U.S. These aliens were never legally admitted to the U.S. for any period of time or were admitted for a limited period of time and did not leave the

U.S. when the period of time expired. Aliens who are illegally residing in the U.S. do not have to provide a SSN.

#### **14330.1 Medicaid Eligibility for Illegally Residing Nonqualified Aliens**

Illegally residing nonqualified aliens may be eligible for emergency services and labor and delivery only. Illegally residing nonqualified aliens are not eligible for any long term care Medicaid program.

#### **14340 Ineligible Aliens**

Some aliens may be lawfully admitted to the U.S. as a nonimmigrant for a temporary or specified period of time. These aliens are not eligible for Medicaid because of the temporary nature of their admission status. An ineligible alien is not eligible for emergency services and labor and delivery only. A U.S. born child of an ineligible alien is also not eligible for Medicaid.

The following categories of individuals are ineligible aliens:

- Foreign students
- Visitors for business or pleasure, including exchange visitors
- Temporary workers including agricultural contract workers
- Foreign government representatives on official business and their families and servants
- Aliens in travel status while traveling directly through the U.S.
- Crewmen on shore leave
- Treaty traders and investors and their families
- Members of foreign press, radio, film, or other information media and their families

Ineligible aliens may present the following documentation:

- Form I-94 Arrival-Departure Record with codes other than those listed for qualified aliens, such as a nonimmigrant code
- Form I-185 Canadian Border Crossing Card
- Form I-186 Mexican Border Crossing Card
- Form I-95A Crewman's Landing Permit

#### **14340.1 Medicaid Eligibility for Certain Ineligible Aliens**

In some cases, an alien in a currently valid nonimmigrant classification may meet state residency requirements. The alien may possess valid employment authorization documents such as Form I-688B or Form I-766.

In these cases, the nonimmigrant may be eligible for emergency services and labor and delivery only. Ineligible aliens are not eligible for any long term care Medicaid program. A U.S. born child of one of these aliens may be eligible for full Medicaid.

#### **14350 Legal Immigrant Pregnant Women and Children under age 21**

Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) authorizes coverage under Medicaid or CHIP for certain alien pregnant women and children who are lawfully residing in the United States and are otherwise eligible. Eligibility under this section will be implemented with the earliest effective date of July 1, 2010. Children who are in one of the legal alien groups must have their immigration status verified at each annual redetermination. The documentation provided for the initial application may be used.

The alien groups who may be determined eligible under this section are:

1. An alien who is lawfully admitted for permanent residence under the INA, who entered the U.S. on or after August 22, 1996, and is subject to the five-year bar under PRWORA.
2. An alien who is paroled into the United States under §212(d)(5) of the INA for a period of at least 1 year who, entered the U.S. on or after August 22, 1996, and is subject to the five-year bar under PRWORA.
3. An alien granted conditional entry pursuant to §203(a)(7) of the INA as in effect before April 1, 1980, who entered the U.S. on or after August 22, 1996, and is subject to the five-year bar under PRWORA.
4. A citizen of a Compact of Free Association State (Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

5. An individual described in 8 CFR section 103.12(a)(4) who does not have a permanent residence in the country of their nationality and is in a status that permits the individual to remain in the U.S. for an indefinite period of time, pending adjustment of status. These individuals include:
  - a) an individual currently in temporary resident status as an Amnesty beneficiary pursuant to section 210 or 245A of the INA
  - b) an individual currently under Temporary Protected Status pursuant to section 244 of the INA
  - c) a family unity beneficiary pursuant to section 301 of Public Law 101-649 as amended by, as well as pursuant to, section 1504 of Public Law 106-554
  - d) an individual currently under Deferred Departure pursuant to a decision made by the President
  - e) an individual who is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status.
6. An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including the following as specified in section 101(a)(15) of the INA:
  - a) a parent or child of an individual with special immigrant status under section 101(a)(27) of the INA, as permitted under section 101(a)(15)(N) of the INA
  - b) a fiance´ of a citizen, as permitted under section 101(a)(15)(K) of the INA
  - c) a religious worker under section 101(a)(15)(R)
  - d) an individual assisting the Department of Justice in a criminal investigation, as permitted under section 101(a)(15)(S) of the INA
  - e) a battered alien under section 101(a)(15)(U)(see also section 431 as amended by PRWORA)
  - f) an individual with a petition pending for 3 years or more, as permitted under section 101(a)(15)(V) of the INA

#### **14360 State Funded Benefits**

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated state only funds to provide coverage of full Medicaid benefits to certain legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. This does not include long term care services. Coverage for these aliens is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

The following groups of aliens may be found eligible for state-funded benefits:

- Qualified aliens subject to the PRWORA five-year bar
- Legally residing nonqualified aliens

Ineligible and illegal aliens are not eligible for state-funded benefits.

State-funded benefits are not provided to the adult expansion population under the 1115 demonstration waiver.

#### **14370 Coverage of Emergency Services and Labor and Delivery Only**

These services must be rendered in an acute care hospital emergency room or in an acute care inpatient hospital. The DMAP defines an emergency as:

- a sudden serious medical situation that is life threatening; or
- a severe acute illness or accidental injury that demands immediate medical attention or surgical attention; and
- without the treatment a person's life could be threatened or he or she could suffer serious long lasting disability.

Medically necessary physician (surgeon, pathologist, anesthesiologist, emergency room physician, internist, etc.) or midwife services rendered during an emergency service that meets the above criteria are covered. Ancillary services (lab, x-ray, pharmacy, etc.) rendered during an emergency service that meets the above criteria are also covered. Emergency ambulance services to transport these individuals to and from the services defined above are also covered.

Services not covered for aliens who are determined to be eligible for emergency services and labor and delivery only include but are not limited to:

- any service delivered in a setting other than an acute care hospital emergency room or an acute care inpatient hospital.
- any service (such as pharmacy, transportation, office visit, lab or x-ray, home health) that precedes or is subsequent to a covered emergency service. Exception: ambulance transportation that is directly related to the emergency is covered.
- organ transplants
- long term care or rehabilitation care
- routine prenatal and post partum care

#### **14380 Declaration of U.S. Citizenship and Satisfactory Immigration Status**

As a condition of eligibility under section 1137(d) of the Act, an applicant must sign a written declaration under penalty of perjury stating if he or she is a citizen or national of the U.S. or an alien in satisfactory immigration status (qualified alien or alien in lawful status). This declaration is obtained as part of the application for Medicaid. In the case of a child or incompetent applicant, an adult must sign on the applicant's behalf.

If the applicant is not a citizen or national of the United States, qualified alien, or an alien in lawful status, the declaration of citizenship or satisfactory immigration status and verification of such status is not required. If the applicant will not sign the declaration, he or she may be found eligible for coverage of emergency services and labor and delivery only.

#### **14390 Documentation of Citizenship and Identity or Alien Status**

Applicants must provide documentation of citizenship and identity, qualified alien status, or lawful alien status.

Exception: The following groups of individuals are not required to provide documentation of citizenship and identity:

- a) Individuals receiving SSI
- b) Individuals entitled to or enrolled in any part of Medicare
- c) Individuals receiving Social Security Disability Insurance benefits
- d) Individuals who are recipients of foster care maintenance or adoption assistance payments under Title IV-E of the Act
- e) Individuals who are in foster care and who are assisted under Title IV-B of the Act
- f) Deemed newborns – a child born in the U.S. to a woman who was eligible for and receiving Medicaid (including coverage of an alien for labor and delivery as emergency medical services) on the date of the child's birth. This includes a retroactive determination of eligibility.

If the applicant will not provide evidence of alien status and does not allege qualified or lawful alien status, the applicant may be eligible for coverage of emergency services and labor and delivery only.

#### **14390.1 Reasonable Opportunity to Provide Documentation of Citizenship and Identity or Alien Status**

An applicant shall have a reasonable opportunity period of 90 days to obtain and provide proof of citizenship and identity, qualified alien status, or lawful alien status. The reasonable opportunity period begins on the date a written request for documentation is issued to the applicant.

Medicaid shall be approved to otherwise eligible applicants during the reasonable opportunity period. If the individual has not provided satisfactory documentation by the end of the reasonable opportunity period, eligibility will be terminated.

#### **14400 Acceptable Evidence of U. S. Citizenship and Identity**

Both citizenship AND identity can be verified by the Social Security Administration through the State Verification Exchange System (SVES). If verification cannot be obtained through SVES, verification of citizenship and identity must be obtained from original documents or certified copies from the issuing agency. Once documentation of citizenship and identity has been provided, it is not necessary to obtain documentation again.

The list below provides acceptable documentation for verifying citizenship and identity. There are four levels of verification listed in order of preference. If a higher level document is not available, a lower level may be used.

- A. First level documentation of both citizenship AND identity

1. A U.S. passport. A U.S. passport does not have to be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. Do not accept any passport as evidence of U.S. citizenship when it was issued with a limitation. However, such a passport may be used as proof of identity. Note: Spouses and children were sometimes included on one passport through 1980. The citizenship and identity of the included person can be established when one of these passports is presented. U.S. passports issued after 1980 show only one person.
2. A Certificate of Naturalization (DHS Forms N-550 or N-570)
3. A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561)

**B. Second level documentation of citizenship**

1. A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam (on or after April 10, 1899), the Virgin Islands of the U.S. (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (after November 4, 1986 (NMI local time)).
2. A Certification of Report of Birth (DS-1350)
3. A Report of Birth Abroad of a U.S. Citizen (Form FS-240)
4. A Certification of birth issued by the Department of State (Form FS-545)
5. A U.S. Citizen I.D. card (I-197 or I-179)
6. A Northern Mariana Identification Card (I-873)
7. An American Indian Card (I-872)
8. A final adoption decree showing the child's name and U.S. place of birth. In situations where an adoption is not finalized and the State in which the child was born will not release a birth certificate prior to final adoption, a statement from a State approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.
9. Evidence of U.S. Civil Service employment before June 1, 1976
10. U.S. Military Record showing a U.S. place of birth. (DD-214 or similar official document showing a U.S. place of birth)
11. A data verification with the Systematic Alien Verification for Entitlements (SAVE) Program for naturalized citizens.
12. Child Citizenship Act - Obtain documentary evidence that verifies that at any time on or after February 27, 2001, the following conditions have been met: (i) at least one parent of the child is a U.S. citizen by either birth or naturalization and this has been verified; (ii) the child is under the age of 18; (iii) the child is residing in the U.S. in the legal and physical custody of the U.S. citizen parent; (iv) the child was admitted to the U.S. for lawful permanent residence and this has been verified; and (v) if adopted, the child satisfies the requirements of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1) pertaining to international adoptions (admission for lawful permanent residence as IR-3 or IR-4).

**C. Third level documentation of citizenship**

1. Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created 5 years before the initial application date and that indicates a U.S. place of birth. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. Do not accept a souvenir "birth certificate" issued by the hospital.
2. Life, health, or other insurance record showing a U.S. place of birth that was created at least 5 years before the initial application date and that indicates a U.S. place of birth. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. Life or health insurance records may show biographical information for the person including place of birth and can be used to establish U.S. citizenship when it shows a U.S. place of birth.
3. Religious record recorded in the U.S. within 3 months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization.
4. Early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the name(s) and place(s) of birth of the applicant's parents.

**D. Fourth level documentation of citizenship**

1. Federal or State census record showing U.S. citizenship or a U.S. place of birth. Census records from 1900 through 1950 contain certain citizenship information. The census record must also show the applicant's age.
2. One of the documents listed that shows a U.S. place of birth and was created at least 5 years before the application for Medicaid. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. This document must be one of the following and show a U.S. place of birth:
  - a) Seneca Indian tribal census record.
  - b) Bureau of Indian Affairs tribal census records of the Navajo Indians.
  - c) U.S. State Vital Statistics official notification of birth registration.
  - d) A delayed U.S. public birth record that is recorded more than 5 years after the person's birth.
  - e) Statement signed by the physician or midwife who was in attendance at the time of birth
  - f) The Roll of Alaska Natives maintained by the Bureau of Indian Affairs.
3. Institutional admission papers from a nursing facility, skilled care facility, or other institution created at least 5 years before the initial application date that indicates a U.S. place of birth. Admission papers generally show biographical information for the person including place of birth. The record can be used to establish U.S. citizenship when it shows a U.S. place of birth.
4. Medical (clinic, doctor, or hospital) record created at least 5 years before the initial application date that indicates a U.S. place of birth. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. Medical records generally show biographical information for the person including place of birth. The record can be used to establish U.S. citizenship when it shows a U.S. place of birth. (Note: An immunization record is not considered a medical record for purposes of establishing U.S. citizenship.)
5. Written affidavit. Affidavits should only be used in rare circumstances. If the documentation requirement needs to be met through affidavits, the following rules apply:
  - a) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship.
  - b) At least one of the individuals making the affidavit cannot be related to the applicant or recipient. Neither of the two individuals can be the applicant or recipient.
  - c) The persons making the affidavits must be able to provide proof of their own citizenship and identity.
  - d) If the individual making the affidavit has information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well.
  - e) The applicant or representative must make a separate affidavit explaining why the evidence does not exist or cannot be obtained.
  - f) The affidavits must be signed under penalty of perjury and need not be notarized.

**E. Documentation of identity.**

1. Identity documents described in 8 CFR 274a.2(b)(1)(v)(B)(1). Exception: Do not accept a voter's registration card or Canadian driver's license as listed in 8 CFR 274a.2(b)(1)(v)(B)(1).
  - a) Driver's license issued by a State or Territory either with a photograph of the individual or other identifying information of the individual such as name, age, sex, race, height, weight, or eye color.
  - b) School identification card with a photograph of the individual.
  - c) U.S. military card or draft record.
  - d) Identification card issued by the Federal, State, or local government with the same information included on drivers' licenses.
  - e) Military dependent's identification card.
  - f) Certificate of Degree of Indian Blood, or other American Indian/Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual such as age, weight, height, race, sex, and eye color.
  - g) U.S. Coast Guard Merchant Mariner card.
2. A cross match with Office of Vital Statistics.
3. Three or more documents that together reasonably corroborate the identity of an individual provided such documents have not been used to establish the individual's citizenship and the individual

submitted second or third level evidence of citizenship. Such documents must at a minimum contain the individual's name, plus any additional information establishing the individual's identity. All documents used must contain consistent identifying information. These documents include employer identification cards, high school and college diplomas from accredited institutions (including general education and high school equivalency diplomas), marriage certificates, divorce decrees, and property deeds/titles.

**F. Special identity rules for children**

For children under age 16, a clinic, doctor, hospital, or school record may be accepted. School records include nursery or daycare records and report cards if verified with the issuing school. If none of the above documents in the preceding groups are available, an affidavit may be used. An affidavit is only acceptable if it is signed under penalty of perjury by a parent, guardian, or caretaker relative stating the date and place of the birth of the child and cannot be used if an affidavit for citizenship was provided. The affidavit is not required to be notarized. An affidavit for children under age 18 may be accepted when a school ID card or driver's license is not available.

**G. Special identity rules for disabled individuals in institutional care facilities**

An affidavit signed under penalty of perjury by a residential care facility director or administrator on behalf of an institutionalized individual in the facility.

**14410 Acceptable Evidence of Qualified Alien Status**

Documentation of alien status is issued by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security. Older documents were issued by the Immigration and Naturalization Service (INS).

Acceptable documentation of qualified alien status is listed below. The card should show the date of admission or date of entry into the United States.

**A. Lawful Permanent Residents**

Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.

NOTE: USCIS has replaced Forms I-151, AR-3 and AR-3a. If a lawful permanent resident presents one of these old forms as evidence of status, contact USCIS using a G-845S and attach the old card.

**B. Refugees**

Form I-94 annotated with stamp showing entry as refugee under §207 of the Immigration and Naturalization Act (INA) and date of entry to the United States; Form I-688B annotated 274a.2(a)(3); I-766 annotated A3; or Form I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the U.S. However, for purposes of eligibility, the individual is still considered a refugee and it is important to check the coding on Form I-551 for codes RE-6, RE-7, RE-8, or RE-9.

**C. Asylees**

Form I-94 annotated with stamp showing grant of asylum under §208 of the INA; a grant letter from the Asylum Office of the USCIS; Form I-688B annotated 274a.12(a)(5); I-766 annotated A5; or an order of an Immigration Judge granting asylum. If the applicant provides a court order contact USCIS using a G-845S and attach a copy of the court order.

**D. Alien who has had deportation withheld under §243(h) of the INA**

Order of an Immigration Judge showing deportation withheld under §243(h) or §241(b)(3) and date of the grant; Form I-688B annotated 274a.12(a)(10); or I-766 annotated A10. If applicant provides a court order contact USCIS using G-845S and attach copy of court order.

**E. Parolees**

Form I-94 annotated with stamp showing grant of parole under §212(d)(5) of the INA and a date showing granting of parole for at least 1 year. Form I-688B annotated 274a.12(a)(4) or 274a.12(c)(11) or I-766 annotated A4 or C11 indicates status as a parolee but does not reflect the length of the parole period.

**F. Conditional Entrant**

Form I-94 annotated with stamp showing admission under §203(a)(7) of the INA, refugee-conditional entry; Forms I-688B annotated 274a.12(a)(3); or I-766 annotated A-3.

**G. Evidence of Honorable Discharge or Active Duty Status**

- Discharge - a copy of the veteran's discharge papers issued by the branch of service in which the applicant was a member. (Department of Defense Form 214)

- Active Duty Military - a copy of the applicant's current orders showing the individual is on full-time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or an active military identification card, DD Form 2. Full time National Guard duty is excluded.

H. Cuban and Haitian entrants

I-551 annotated CH6, CNP, CU6, CU7; I-688B annotated 274a.12(a)(4); I-94 annotated 212(d)(5)

I. Amerasian

I-94 annotated AM1, AM2, AM3; I-551 annotated AM1, AM2, AM3.

J. Battered Immigrant

In order to be a qualified alien based on battery or extreme cruelty, the alien must meet the following requirements:

1. the alien must not now be residing in the same household as the individual responsible for the battery or extreme cruelty

2. the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered child, the alien did not actively participate in the battery or cruelty

3. there is substantial connection between the battery or extreme cruelty and the need for the public benefit sought. There is a substantial connection under any one or more of the following circumstances:

a) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;

b) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;

c) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

d) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to the battery or cruelty (such as child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

e) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

f) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g. inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

g) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

h) Where 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 or her child; and/or to care for any resulting children; or

i) where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

4. the alien or alien's child must have a petition approved by or pending with USCIS under one of several subsections of the INA that sets forth a prima facie case for the status.

K. American Indian born in Canada or Mexico under section 289 of the INA or member of Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

Form I-551 with the code S13; unexpired temporary I-551 stamp with code S13 in a Canadian passport or on Form I-94; satisfactory evidence of birth in Canada and a document that indicates the percentage of American Indian blood in the form of a birth certificate issued by the Canadian reservation or a record issued by the tribe; a membership card or other tribal document showing membership in the tribe that is on the list of recognized Indian tribes published annually by the Bureau of Indian Affairs in the Federal Register.

L. Victims of Trafficking

Form I-797 indicating Class T-1 Visa, T-2 (spouse), T-3 (child), T-4 (parent) or T-5 (unmarried sibling under age 18); letter of certification from the Office of Refugee Resettlement (ORR). Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify ORR of the



benefits for which the individual has applied.

M. Iraqi and Afghan special immigrants

Iraqi passport with an immigrant visa stamp SI1, SI2 (spouse), SI3 (unmarried child under age 21); an immigrant visa stamp SQ1, SQ2 (spouse), SQ3 (unmarried child under age 21); I-551 showing Iraqi nationality (or an Iraqi passport) with code S16 or SQ6, code S17 or SQ7 (spouse), code S19 or SQ9 (unmarried child under age 21).

**14420 Verification of Alien Status**

The Systematic Alien Verification for Entitlements (SAVE) is a program established by USCIS that provides a process to verify the immigration status of aliens who apply for benefits. The documents provided by an alien applicant as verification of immigration status must be authenticated by using SAVE.

Staff will institute primary verification to USCIS through the form "Record of Contact with ASVI Data Base" (SAVE-1). ASVI is the acronym for Alien Status Verification Index. A clear copy of the immigration document must be attached to the SAVE-1 form. If the response verifies alien status, the eligibility determination is completed using the information provided by USCIS.

If the response states institute secondary verification, staff will complete Form G-845 and attach a copy of the immigration document.

An alien registration number is required for both primary and secondary verifications. If the applicant provides an alien registration number but does not have the immigration document, complete Form G-845 including the alien registration number. If an applicant provides a receipt indicating that he or she has applied to USCIS for a replacement document, complete Form G-845 and attach a copy of the receipt.

***(Break In Continuity of Sections)***

**14810 Continuously Eligible Newborns**

An infant born to a woman eligible for and receiving Delaware Medicaid (including emergency services and labor and delivery only coverage) on the date of the child's birth is deemed to have filed an application and been found eligible on the date of birth and to remain eligible for 1 year. ~~provided:~~

- ~~• the child resides continuously in the mother's household, and~~
- ~~• for children born on or after January 1, 1991, the mother remains eligible for Medicaid or would have remained eligible if she were still pregnant.~~

~~For purposes of deemed eligibility, the newborn will be considered to be a member of the mother's household even if the baby is continuously hospitalized after birth, unless the mother has legally relinquished control of the child.~~

A mother who is not required to enroll in the *Diamond State Health Plan* or *Diamond State Partners* can apply after a child is born and we will determine three month retroactive coverage. If the mother is determined retroactively eligible in a month prior to the birth (still pregnant), or in the month of birth, the baby will be deemed eligible for one year.

EXCEPTION: If the mother is eligible for enrollment in the *Diamond State Health Plan* or *Diamond State Partners* she cannot apply for retroactive coverage. She must apply for and be found eligible for Medicaid in the month of birth or in a month prior to the month of birth (while still pregnant) in order for the newborn to be deemed eligible. If the newborn is not deemed eligible, a separate eligibility determination must be made.

***(Break In Continuity of Sections)***

**14920.6 Retroactive Eligibility for Newborns**

A baby born to a woman eligible for and receiving Medicaid on the date of the child's birth is deemed to have filed an application. Also, a mother (who is excluded from *Diamond State Health Plan* or *Diamond State Partners*) can apply after a child is born and we will determine three month retroactive coverage. If the mother is determined retroactively eligible in a month prior to the birth (still pregnant), or in the month of birth, the infant is deemed eligible at birth and remains eligible for 1 year. ~~provided:~~

- ~~• the child lives continuously in the mother's household; and~~
- ~~• if the child was born on or after January 1, 1991, the mother remains eligible for Medicaid or would have~~

~~remained eligible if she were still pregnant.~~

NOTE: Remember that retroactive coverage is only available to individuals excluded from managed care. A woman who is eligible for enrollment in the *Diamond State Health Plan* or *Diamond State Partners* cannot apply after the month of birth and be determined retroactively eligible. In this case, there is no deemed newborn eligibility and a separate determination of eligibility must be made for the baby.

***(Break In Continuity of Sections)***

**16280 Deemed Eligibility of Newborns**

An infant born to a woman eligible for and receiving Medicaid (including coverage for emergency services and labor and delivery only) on the date of the child's birth is deemed to have filed an application and been found eligible on the date of birth and to remain eligible for 1 year. ~~provided:~~

- ~~▪ the child resides continuously in the mother's household, and~~
- ~~▪ for children born on or after January 1, 1991, the mother remains eligible for Medicaid or would have remained eligible if she were still pregnant.~~

~~For purposes of deemed eligibility, the newborn will be considered to be a member of the mother's household even if the baby is continuously hospitalized after birth, unless the mother has legally relinquished control of the child.~~

***(Break In Continuity of Sections)***

**18100 General Eligibility Requirements**

The Medicaid rules at Section 14000 of the Division of Social Services Manual (DSSM 14000) also apply to DHCP except as provided in this section.

**~~18100.1~~ State Residency**

~~The child must be actually residing in Delaware.~~

**~~18100.2~~ 18100.1 Alien Status**

~~The DHCP does not provide state-funded benefits to qualified aliens subject to the 5-year PRWORA bar or to legally residing nonqualified aliens. The DHCP does not provide coverage of emergency and labor and delivery services to illegally residing and ineligible aliens.~~

The DHCP does not provide state-funded benefits or coverage of emergency services and labor and delivery only.

Receipt of DHCP benefits cannot be considered by the ~~Immigration and Naturalization Service (INS)~~ U.S. Citizenship and Immigration Services (USCIS) when making public charge determinations.

**~~18100.3~~ 18100.2 Limitations on Retroactive Coverage**

Retroactive coverage is not available to any child eligible under DHCP. The rules on retroactive eligibility at DSSM 14920 through 14920.5 do not apply to DHCP.

**13 DE Reg. 1273 (04/01/10)**