

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

FINAL

PUBLIC NOTICE

DSSM: Citizenship and Alienage

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) to make administrative changes regarding *Citizenship and Alienage*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The reason for this regulatory action is to amend existing rules in the Division of Social Services Manual (DSSM) necessitated by the citizenship requirements of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA).

Statutory Authority

- Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, enacted on February 3, 2009
- Section 1903(v)(4) of the Social Security Act, *Payment to States*
- Section 2107(e)(1)(J) of the Social Security Act, Application to Certain General Provisions, *Relating to Presumptive Eligibility for Children*

Background

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.

Summary of Proposed Amendments

The purpose of the proposal is to comply with the guidance issued by the Centers for Medicare and Medicaid Services (CMS) about the phrase “lawfully residing in the United States” as it relates to the eligibility of certain aliens and to clarify that certain alien pregnant women may be found eligible under Medicaid only and not CHIP.

On July 1, 2010, CMS issued State Health Official (SHO) letter #10-006, CHIPRA #17 to provide guidance regarding the phrase “lawfully residing in the U.S.” This guidance clarifies the immigration classifications of individuals who may be found eligible for Medicaid or CHIP. As such, DSSM 14320 and DSSM 14350 are amended, as follows:

DSSM 14320, *Lawfully Residing Nonqualified Aliens*: These immigration classifications of individuals are also used in the eligibility determinations for the state funded legal noncitizen program.

DSSM 14350, *Legal Immigrant Pregnant Women and Children under age 21*: Section 214 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, permits States to cover certain children and pregnant women in Medicaid and the Children’s Health Insurance Program (CHIP) who are “lawfully residing in the U.S.” as described in section 1903(v)(4) and 2107(e)(1)(J) of the Social Security Act.

CMS guidance included a revised State plan amendment template at Attachment 2.6-A, Page 2; which DMMA has submitted for approval.

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

In April, we endorsed (subject to one amendment) a DMMA regulation extending Medicaid and CHIP coverage to some classes of pregnant women and children based on a change in federal law. See attached April 23, 2010 letter. DMMA then adopted the regulation in June with the recommended amendment. [13 DE Reg. 1540 (June 1, 2010)] CMS subsequently issued guidance via the attached State Health Official Letter #10-006 (July 1, 2010). The guidance includes a model State Plan amendment. DMMA is now revising the regulation adopted in June to conform to the latest guidance. DMMA has also submitted a revised State Plan amendment to CMS based on the model. At 364.

Since the original regulation expanded health care coverage while diverting some beneficiaries from a State-funded program to federally-subsidized programs; and, since the technical revisions are designed to conform to federal guidance, both Councils endorse the regulation.

Agency Response: DMMA appreciates the endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2010 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Citizenship and Alienage, specifically, *Medicaid Coverage of "Lawfully Residing" Children and Pregnant Women under CHIPRA 214*, is adopted and shall be final effective January 10, 2011.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATIONS #10-57 REVISIONS

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.~~

13 DE Reg. 1540 (06/01/10)

1. 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.

2. 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 and pending applicants for Temporary Protected Status who have been granted employment authorization

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.

3. 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 fiancé 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

4. An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.

5. An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA for less than one year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.

6. Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24).

7. Aliens currently in deferred action status.

8. A pending applicant for asylum under section 208(a) of the INA or for withholding of removal under section 241(b)(3) of the INA or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.

9. An alien who has been granted withholding of removal under the Convention Against Torture.

10. A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA.

11. An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e).

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

(Break In Continuity of Sections)

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. Delaware will cover these certain alien pregnant women under Medicaid and will cover these certain alien children under Medicaid or CHIP. 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 and pending applicants for Temporary Protected Status who have been granted employment authorization

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 fiancé 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

7. An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.

8. An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA for less than one year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.

9. Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24).

10. Aliens currently in deferred action status.

11. A pending applicant for asylum under section 208(a) of the INA or for withholding of removal under section 241(b)(3) of the INA or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.

12. An alien who has been granted withholding of removal under the Convention Against Torture.

13. A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA.

14. An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e).

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

13 DE Reg. 1540 (06/01/10)

14 DE Reg. 654 (01/01/11)