

This is an emergency amendment to 8.200.410 NMAC, Sections 8 and 11, effective October 1, 2009.

8.200.410.8 **MISSION:** To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.
[8.200.410.8 NMAC - N/E, 10/1/09]

8.200.410.11 **CITIZENSHIP:** To be eligible for medicaid, an individual must be a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC.

A. **Aliens who entered the United States prior to August 22, 1996:** Aliens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar on eligibility for purposes of medicaid eligibility, and will continue to be eligible for medicaid on the basis of alien regulations in effect prior to August 22, 1996. These classes of aliens are as follows:

(1) aliens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified alien status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence";

(2) aliens lawfully admitted for permanent residence or permanently residing in the United States under color of law as follows:

(a) The individual may be eligible for medicaid if the individual is an alien residing in the United States with the knowledge and permission of the immigration and naturalization services (INS) and the INS does not contemplate enforcing the ~~aliens~~ alien's departure. The INS does not contemplate enforcing an ~~aliens~~ alien's departure if it is the policy or practice of INS not to enforce the departure of aliens in the same category, or if from all the facts and circumstances in a particular case it appears that INS is otherwise permitting the alien to reside in the United States indefinitely, as determined by verifying the aliens status with INS.

(b) Aliens who are permanently residing in the United States under color of law are listed below. None of the categories include applicants for an immigration and naturalization service status other than those applicants listed in Item (vi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC or those covered under Item (xvi) of Subparagraph (b) of Paragraph (2) of Subsection A of 8.200.410.11 NMAC. None of the categories allow medicaid eligibility for non-immigrants; for example, students or visitors. Also listed are the most commonly used documents that the INS provides to aliens in these categories.

(i) aliens admitted to the United States pursuant to 8 U.S.C. 1153(a)(7)(Section 203(a)(7) of the Immigration and Nationality Act); ask for a copy of INS Form I-94 endorsed "refugee-conditional entry";

(ii) aliens, including Cuban/Haitian entrants, paroled in the United States pursuant to 8 U.S.C. 1182(d)(5)(Section 212(d)(5)) of the Immigration and Nationality Act; for Cuban/Haitian entrant (Status Pending) reviewable January 15, 1981; (although the forms bear this notation, Cuban/Haitian entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

(iii) aliens residing in the United States pursuant to an indefinite stay of deportation; ask for an immigration and naturalization services letter with this information or INS Form I-94 clearly stated that voluntary departure has been granted for an indefinite period of time;

(iv) aliens residing in the United States pursuant to an indefinite voluntary departure; ask for an immigration and naturalization services letter or INS Form I-94 showing that voluntary departure has been granted for an indefinite time period;

(v) aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or Form I-210 or a letter clearly stating that status;

(vi) aliens who have filed applications for adjustment of status pursuant to Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the immigration and naturalization services has accepted as properly filed (within the meaning of 8 CFR 245.2(a)(1) or (2) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for a copy of INS Form I-94 or I-181 or a passport appropriately stamped;

(vii) aliens granted stays of deportation by court order, statute, or regulation, or by individual determination of the immigration and naturalization services pursuant to Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105 a) or relevant immigration and naturalization services instructions, whose

departure that agency does not contemplate enforcing; ask for a copy of INS Form I-94 or a letter from the immigration and naturalization service, or a copy of a court order establishing the ~~[aliens]~~ alien's status;

(viii) aliens granted asylum pursuant to Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); ask for a copy of INS Form I-94 and a letter establishing this status;

(ix) aliens admitted as refugees pursuant to Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)); ask for a copy of INS Form I-94 properly endorsed;

(x) aliens granted voluntary departure pursuant to Section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing; ask for a Form I-94 or Form I-210 bearing a departure date;

(xi) aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(ii) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later; ask for a copy for INS Form I-210 or a letter showing that departure has been deferred;

(xii) aliens residing in the United States under orders of supervision pursuant to Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)); ask for a copy of Form I-220 B;

(xiii) aliens who have entered and continuously resided in the United States since before January 1, 1972, (or any date established by Section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259); ask for any proof establishing this entry and continuous residence;

(xiv) aliens granted suspension for deportation pursuant to Section 244 of the Immigration and Naturalization Act (8 U.S.C. 1254) and whose departure the immigration and naturalization service does not contemplate enforcing; ask for an order from an immigration judge showing that deportation has been withheld;

(xv) aliens whose deportation has been withheld pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); ask for an order from an immigration judge showing that deportation has been withheld;

(xvi) any other aliens living in the United States with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing (including permanent non-immigrants as established by Public Law 99-239, and persons granted extended voluntary departure due to conditions in the alien's home country based on a determination by the secretary of state);

(3) aliens granted lawful temporary resident status under Section 245A and 210A of the Immigration and Nationality Act if the individual is aged, blind or disabled as defined in Section 1614(a)(1) of the act, under 18 years of age, or a Cuban/Haitian entrant as defined in Section 510(e)(1) and (2)(A) of the Public Law 96-422; ~~[or]~~

(4) aliens granted lawful temporary resident status under Section 210 of the Immigration and Nationality Act unless the alien would, but for the 5-year bar to receipt of AFDC contained in such section, be eligible for AFDC.

B. Aliens who entered the United States on or after August 22, 1996:

(1) Aliens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under category 85). The five-year bar begins on the date of the ~~[aliens]~~ alien's entry into the United States with a status of qualified alien. The following classes of qualified aliens are exempt from the five-year bar:

(a) an alien admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b) an alien granted asylum under Section 208 of the Immigration and Nationality Act;

(c) an alien whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) an alien who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of alien status; who is on active duty other than on active duty for training, in the armed forces of the United States; or who is the spouse or unmarried dependent child under the age of 18 of such veteran or active duty alien;

(e) an alien is granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) an alien granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g) victims of a severe form of trafficking, in accordance with Section 107(b)(1) of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h) battered aliens who meet the conditions set forth in Section 431(c) of PRWORA, as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against Women Act of 2000, P.L. 106-386. Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c);

- (i) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); and
- (j) American Indians born in Canada to whom Section 289 of the Immigration and Nationality

Act applies.

(2) **Qualified alien:** A “qualified alien”, for purposes of this regulation, is an alien, who at the time the alien applies for, receives, or attempts to receive a federal public benefit, is:

(a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act; or

(b) an alien who is granted asylum under Section 208 of such act; or

(c) a refugee who is admitted to the United States under Section 207 of the act (including certain Amerasian immigrants as refugees); or

(d) an alien who is paroled into the United States under Section 212(d)(5) of such act for a period of at least ~~[1-(one)]~~ one year; or

(e) an alien whose deportation is being withheld under Section 243(h) of such act; or

(f) an alien who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

(g) an alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

(h) certain battered women and alien children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act);

(i) victims of a severe form of trafficking; or

(j) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e); or

(k) American Indians born in Canada to whom Section 289 of the Immigration and Nationality

Act applies.

(3) Children and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing immigrant children and pregnant women, if otherwise eligible, to obtain medicaid coverage.

~~[(3)]~~ **(4) Alien sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996):** The income and resources of an alien sponsor, and the spouse of the sponsor, of any individual applying for medicaid, is deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of alien sponsor income and resources is effective until the sponsored alien achieves citizenship, or can be credited with 40 qualifying quarters.

~~[(4)]~~ **(5) Quarters of coverage:** For purposes of determining the number of quarters of coverage under Title II of the Social Security Act, an alien will be credited with all of the quarters that were worked by him/her, as well as all of the qualifying quarters of coverage worked by such parent of an alien, while the alien was under 18; and all of the quarters credited to a spouse, if the alien remains married to the spouse or such spouse is deceased. Beginning January 1, 1997, any quarter in which the alien received a means-tested federal benefit is not counted as a qualifying quarter.

~~[(5)]~~ **(6) Federal means-tested benefit:** For purposes of determining whether an alien has or has not received any federal means-tested benefits during a quarter, starting with January 1, 1997, the definition of federal means-tested benefits will not include:

(a) medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(b) short-term, noncash, in-kind emergency disaster relief;

(c) assistance or benefits under the National School Lunch Act;

(d) assistance or benefits under the Child Nutrition Act of 1966;

(e) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing or treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(f) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child, is a qualified alien;

(g) programs, services, or assistance, delivering in-kind services at the community level and necessary for the provision of life or safety; that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(h) programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Services Act;

(i) means-tested programs under the Elementary and Secondary Education Act of 1965;

(j) benefits under the Head Start Act;

(k) benefits under the Job Training Partnership Act.

[2/1/95; 1/1/97; 4/1/98; 8.200.410.11 NMAC - Rn, 8 NMAC 4.MAD.412 & A, 7/1/03; A/E, 10/1/09]