

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid, CHIP and Survey & Certification

SHO # 10-006
CHIPRA # 17

July 1, 2010

Re: Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women

Dear State Health Official:

This letter is one of a series that provides guidance on implementation of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3. Section 214 of CHIPRA permits States to cover certain children and pregnant women in both Medicaid and the Children’s Health Insurance Program (CHIP) who are “lawfully residing in the United States” as described in section 1903(v)(4) and 2107(e)(1)(J) of the Social Security Act (the Act). The section 214 option may be applied to pregnant women in Medicaid and CHIP and/or to children up to age 19 for CHIP or up to age 21 for Medicaid (including targeted low-income children described in section 1905(u)(2)(B) of the Act).

Background

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193), placed limitations on Federal funding for health coverage of immigrant families. Section 403 of PRWORA imposed a 5-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid. Medicaid coverage for individuals subject to the 5-year waiting period and for those who do not meet the definition of qualified alien was limited to treatment of an emergency medical condition as described in section 1903(v)(2)(A) of the Act. The 5-year waiting period also applied to children and pregnant women under CHIP. Note that PRWORA did not affect eligibility of undocumented aliens; people who are undocumented were not eligible for Medicaid (except for emergency services) before PRWORA, and remain ineligible under CHIPRA.

Coverage Option Under CHIPRA

Section 214 of CHIPRA amends section 2107 of the Act to grant States the option to provide Medicaid and CHIP coverage to all children and pregnant women (including women covered during the 60-day postpartum period) “who are lawfully residing in the United States... and who are otherwise eligible for such assistance,” as described in section 1903 of the Act. States may

elect to cover these groups under Medicaid only or under both Medicaid and CHIP. The law does not permit States to cover these new groups only in CHIP, without also extending the option to Medicaid.

While the phrase “lawfully residing in the United States” has not previously been used when describing individuals who could be eligible for Medicaid and CHIP, it has been used in various other contexts, such as by the United States Department of Agriculture (USDA) and the Social Security Administration (SSA).

For example, for purposes of determining whether certain individuals are eligible to receive food stamps (now called the Supplemental Nutrition Assistance Program (SNAP)), regulations at 7 CFR 273.4(a)(7) state that “lawfully residing in the U.S.” means that the individual is lawfully present as defined in regulations at 8 CFR 103.12(a). Likewise, for purposes of Title II benefits under SSA, “lawfully residing in the U.S.” means that an individual is “lawfully present” as defined by 8 CFR 103.12(a) and is a resident of the U.S. as defined in SSA regulations and program instructions. In both of these programs, the terms “lawfully residing” and “lawfully present” are broader than the term “qualified alien” in section 431 of PRWORA (8 U.S.C. § 1641) with respect to immigration status (the term “qualified alien” does not include residence-based criteria). We have looked to these programs to assist us in defining “lawfully residing” for purposes of implementing section 214 of CHIPRA.

In interpreting “lawfully residing,” we will rely on existing immigration regulations for the purpose of defining lawful presence and longstanding Medicaid rules to establish residency. In other words, the “residing” part of the “lawfully residing” requirement is construed as synonymous with the longstanding Medicaid residency requirement, rather than as requiring a separate and redundant residency determination for the sole purpose of determining “lawful residence.” For example, a nonimmigrant visitor for business or pleasure may be lawfully present under immigration regulations, but not meet Medicaid or CHIP residency requirements, and therefore will not be able to qualify for Medicaid or CHIP.

Lawfully Present

Children and pregnant women that fall into one of the categories below will be considered lawfully present. Therefore, these individuals are eligible for Medicaid and CHIP coverage if the State elects the new option under CHIPRA, and the child or pregnant woman meets the State residency requirements and other Medicaid or CHIP eligibility requirements.

The basis of our construction of lawful presence is the broad definition provided in DHS regulations at 8 CFR 103.12(a) for the specific purpose of Title II Social Security benefits, with some revisions necessary for updating or clarifying purposes, or as otherwise deemed appropriate for the Medicaid and CHIP programs consistent with the Act.

A child or pregnant woman shall be considered lawfully present if he or she is:

- (1) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;
- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));

- (8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or
- (9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

Under CHIPRA, a State electing to cover children or pregnant women who are considered to be lawfully residing in the U.S. must offer coverage to all such individuals who meet this definition of lawfully residing, and may not cover a subgroup or only certain groups (e.g., only the PRWORA group of qualified aliens, or only citizens of Compact of Free Association nations, or only aliens residing for a specified period, such as 3 years).

Residency

Children and pregnant women who meet the definition set forth above of “lawfully present” also must be residents of the State in which they are applying in order to qualify for Medicaid or CHIP. An individual would not be eligible for Medicaid or CHIP, even if he or she is considered to be lawfully present in the U.S., if the individual is not a resident of the State, as the individual would not be considered as either “lawfully residing” in the U.S. or as a State resident. At the same time, an individual would be eligible for Medicaid and CHIP if he or she is considered to be lawfully present in the U.S. and is a State resident, even if the individual’s current immigration status is of a temporary nature (such as TPS). Implementing regulations at 42 CFR 435.403 specify State residence in Medicaid to mean living in a State and having the intent to remain permanently for an indefinite period. Each individual should have an opportunity to establish that he or she lives in the State and intends to remain there.

Sponsor Deeming and “Public Charge”

The alien sponsor deeming requirements described in section 421 of PRWORA may not be applied to individuals covered under the new CHIPRA section 214 option. A sponsor’s income and resources are not considered when determining eligibility. In addition, no debt will be created for the sponsor by any services provided to such individuals who have been found eligible for Medicaid or CHIP. The cost of Medicaid or CHIP assistance will not be considered as an unreimbursed cost associated with the “public charge” provisions.

Eligibility Determinations and Redeterminations

Under CHIPRA, a State electing to cover children or pregnant women who are considered to be lawfully residing in the U.S. must offer coverage to all such individuals who meet this definition of lawfully residing, and may not cover a subgroup or only certain groups (e.g., only the PRWORA group of qualified aliens, or only citizens of Compact of Free Association nations, or only aliens residing for a specified period, such as 3 years).

States that elect the new option under CHIPRA must verify that the individual meets the definition of lawfully residing in the U.S. at the time of application, according to the rules established under section 1137(d) of the Act. Eligibility also must be verified at renewal. Consistent with other Medicaid requirements, the State should first rely on information provided at the time of initial application under the rules established at section 1137(d) to determine ongoing eligibility. States should only require the individual to provide further documentation or to re-verify satisfactory status if the State cannot verify continued eligibility based on the information already available to the State.

State Plan Amendments

A State may elect the section 214 CHIPRA option by submitting a State plan amendment (SPA) under Medicaid only or amendments under both Medicaid and CHIP. Section 214 of CHIPRA does not permit the application of this option under CHIP only. Attached are two draft State plan templates that States can use to elect the section 214 option under Medicaid and CHIP. States electing to provide CHIP coverage of children and/or pregnant women must submit concurrent CHIP and Medicaid SPAs to CMS for consideration. Also, a State must choose whether to adopt this option for children (all children up to age 19 for CHIP or up to age 21 for Medicaid), pregnant women, or both.

Federal Financial Participation

Because this is a new eligibility group, children up to age 19 covered under the section 214 option (at any income level) are considered targeted low-income children under section 2110(b) of the Act. As such, claims paid on behalf of children eligible under the new option created by section 214 may be matched at the enhanced title XXI match rate, regardless of whether the child is covered through Medicaid or a separate CHIP program. States also have the option under Section 115 of CHIPRA to claim regular Medicaid Federal Financial Participation (FFP) for the children enrolled in Medicaid or a CHIP-funded Medicaid expansion.

Medicaid eligible individuals for whom the State receives FFP at the CHIP enhanced rate and who would be subject to the 5-year waiting period under section 403 of PRWORA, must be claimed at the Medicaid FFP rate once these children have met the 5-year waiting period. For example, a child who entered the country on November 1, 2008 as a “qualified alien” (under section 431 of PRWORA) may be claimed at the enhanced rate until October 31, 2013, the end of the 5-year waiting period for that child. Subsequently, a State must cover this child using title XIX funds. Therefore, States that choose to claim the title XXI enhanced match must have a process for tracking these children in order to determine when the regular matching rate would come into effect. States may continue to claim enhanced title XXI enhanced matching for children under age 19 who are lawfully residing in the U.S. and who are not considered qualified aliens under PRWORA as described above.

For all others who obtain Medicaid coverage due to this option, which includes children ages 19 to 21, and pregnant women enrolled in Medicaid, FFP is available at the Medicaid matching rate. The increased Federal medical assistance percentage, as described under the American Recovery and Reinvestment Act of 2009, will apply to medical assistance payments for this population. Pregnant women covered under the new CHIPRA pregnant women option (section 111) under a CHIP plan will qualify for the CHIP enhanced match rate.

CMS looks forward to its continued work with States on the implementation of the CHIPRA eligibility expansion to lawfully residing pregnant women and children. Thank you for your continued commitment to providing health coverage through these critical programs. If you have questions regarding this letter, please contact Victoria Wachino, Director, Family and Children's Health Programs Group, at 410-786-5647.

Sincerely,

Cindy Mann

Enclosures
State Plan Amendment templates

cc:
CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children's Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

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Debra Miller
Director for Health Policy
Council of State Governments

Christine Evans, M.P.H.
Director, Government Relations
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy

Enclosure

Section 4. Eligibility Standards and Methodology – Expanding Coverage to Individuals Lawfully Residing in the US

Section 4. Eligibility Standards and Methodology

4.1.10 _____ 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 pregnant women and children as specified below who are lawfully residing in the United States including the following:

A child or pregnant woman shall be considered lawfully present if he or she is:

- (1) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;

- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));
- (8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or
- (9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

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

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

4.1.10.1_____ The 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.

Revision: CMS-PM-

ATTACHMENT 2.6-A

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OMB No.:

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

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">a. Is a citizen or national of the United States;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;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;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;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"><input type="checkbox"/> State covers all authorized QAs.<input type="checkbox"/> State does not cover authorized QAs.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:

- (1) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;
- (3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;
- (4) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;
- (5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
- (6) An alien who has been granted withholding of removal under the Convention Against Torture;
- (7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));
- (8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or

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

___ Elected for pregnant women.
___ Elected for children under age ____.

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.

TN No: _____ Approval Date _____ Effective Date _____
Supersedes
TN No. _____