



## Ohio Administrative Code Rule 5160:1-2-12 Medicaid: non-citizens.

Effective: December 14, 2020

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(A) This rule sets forth:

- (1) Medical assistance eligibility criteria for an individual who is not a U.S. citizen or national; and
- (2) Acceptable documentary evidence of qualified non-citizen status; and
- (3) The circumstances under which an individual who declares qualified non-citizen status, under penalty of perjury, may be given a reasonable opportunity to verify that status.

(B) Definitions. For the purposes of this rule:

- (1) "A-number" means the alien registration number issued to a non-citizen by the United States citizenship and immigration service (USCIS) or, in limited circumstances, by the United States department of state.
- (2) "Active duty" means full-time employment in the military service, and does not include reserve or guard duty. The service member shall serve a minimum of twenty-four months or the period for which the person was called to military service in order to be eligible for benefits that are based on the length of active duty service.
- (3) "Amerasian" means a person born in Cambodia, Korea, Laos, Thailand, or Vietnam after December 31, 1950, and before October 22, 1982, who was fathered by a U.S. citizen.
- (4) "Asylee" means a person who has been granted asylum under section 208 of the Immigration and Nationality Act (INA) (as in effect October 1, 2019).
- (5) "Child" means an individual under the age of twenty-one.



(6) "Indefinite detainee" means a non-citizen who has served time for a criminal conviction and has received a final order of removal, but remains indefinitely in the United States because neither the individual's home country nor any other country will accept the individual. Being an indefinite detainee does not confer eligibility for medical assistance upon an individual nor does it serve as an exemption to the five-year bar described in paragraph (C)(3) of this rule.

(7) "Lawful permanent resident" (LPR) means a person who is legally authorized to live permanently within the United States as an immigrant.

(8) "Parolee" means a person who has been given permission by the United States department of justice or the United States department of homeland security to enter the United States in an emergency or because it serves an overriding public interest. Parolees are granted temporary residence and are not on a predetermined path to permanent resident status.

(9) "Qualified non-citizen" means:

(a) An LPR; or

(b) An asylee who has been granted asylum under section 208 of the Immigration and Nationality Act (INA) (as in effect October 1, 2019); or

(c) A refugee admitted to the United States under section 207 of the INA (as in effect October 1, 2019); or

(d) A parolee allowed into the United States under section 212(d)(5) of the INA (as in effect October 1, 2019) for a period of at least one year; or

(e) A person whose deportation is being withheld under section 243(h) of the INA (as in effect prior to April 1, 1997) or whose removal has been withheld under section 241(b)(3) of the INA (as in effect October 1, 2019); or

(f) A person granted conditional entry pursuant to section 203(a)(7) of the INA (as in effect prior to April 1, 1980); or



(g) A Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or

(h) An Amerasian immigrant as defined in Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (Pub. L. No. 100-202); or

(i) A non-citizen or non-citizen's child who has been battered or subjected to extreme cruelty in the United States under Section 501 of Pub. L. No. 104-208, under certain circumstances as defined in 8 U.S.C. 1641(c) (as in effect October 1, 2019); or

(j) An Afghan or Iraqi non-citizen granted special immigrant visa status under Section 8120 of the December 19, 2009 Defense Appropriations Bill (Pub. L. No. 111-118) and section 101(a)(27) of the INA (as in effect October 1, 2019).

(10) "Quarter of coverage" is the basic unit for determining whether a worker is insured under the social security program. The amount of wages and self-employment income which an individual shall have in order to be credited with a quarter of coverage is defined in 42 U.S.C. 413(d) (as in effect October 1, 2019), and is published annually in the Federal Register.

(11) "Veteran" means a person who served in the active United States military, naval, or air service, who fulfilled the minimum active duty service requirements and was released with a discharge characterized as honorable and not on account of alienage, including veterans who die while serving in active duty in the armed forces of the United States as defined in 38 U.S.C. 1101 (as in effect October 1, 2019). A veteran also includes individuals with certain military service before July 1, 1946 in the military forces (including certain organized guerilla forces) of the government of the Commonwealth of the Philippines and certain service in the Philippine scouts as described in 38 U.S.C. 107 (as in effect October 1, 2019).

(12) "Victim of trafficking" refers to:

(a) A victim of trafficking and certain family members, as identified in the Trafficking Victims Protection Reauthorization Act of 2003 (TVPPRA) (Pub. L. No. 108-193), who are eligible for



federally funded or administered benefits to the same extent as refugees, per 22 U.S.C. 7105(b)(1)(A) (as in effect October 1, 2019).

(b) A victim of trafficking who is awarded a certification letter from the office of refugee resettlement (ORR) and is potentially eligible for medical assistance. Certain family members of a victim of trafficking are awarded "Derivative T" visas and are potentially eligible for medical assistance.

(i) The ORR makes the certification determination and issues a letter of certification for an adult victim of trafficking.

(ii) A victim of trafficking who is younger than eighteen years of age does not need to be certified in order to receive benefits. Instead, the ORR issues a notarized letter similar to an adult certification letter, stating the child is a victim of trafficking.

(c) A victim of trafficking is not required to provide any other documentation of immigration status to receive medical assistance, unless the victim's immigration status has changed.

(C) An individual who is not a U.S. citizen or national must be in a satisfactory immigration status to be eligible for medical assistance. An individual is considered to be in satisfactory immigration status if the individual is:

(1) A non-citizen who was lawfully residing in the United States as of August 22, 1996, and continues to be a lawful resident of the U.S.

(2) An indefinite detainee only if the individual was in a satisfactory immigration status when the individual became an indefinite detainee.

(3) A non-citizen who was granted qualified non-citizen status on or after August 22, 1996, does not have a satisfactory immigration status for medical assistance for a period of five years beginning on the date the status was granted, unless the individual is one of the following:

(a) An individual whose immigration status meets any of the following criteria:



- (i) Refugee; or
  - (ii) Asylee; or
  - (iii) A person whose deportation is being withheld under section 243(h) of the INA (as in effect October 1, 2019); or
  - (iv) Cuban or Haitian entrant; or
  - (v) Amerasian immigrant; or
  - (vi) Victim of trafficking; or
  - (vii) Afghan or Iraqi special immigrant.
- (b) A lawfully residing pregnant woman.
- (c) A lawfully residing child.
- (d) An LPR who has forty quarters of coverage under Title II of the Social Security Act (as in effect October 1, 2019) or can be credited with such quarters.
- (i) In determining the number of quarters of coverage, an LPR shall be credited as follows:
    - (a) All qualifying quarters worked by the LPR; and
    - (b) All of the qualifying quarters of coverage worked by a natural or adoptive parent of the LPR before the date the individual attains age eighteen can be credited; and
    - (c) All of the qualifying quarters worked by a spouse of the LPR during their marriage shall be credited so long as the LPR remains married to such spouse or such spouse is deceased; and
    - (d) A parent or spouse whose quarters are credited to the LPR must be a U.S. citizen or an LPR.



(ii) A qualifying quarter does not include any quarter after December 31, 1996, in which the LPR also received a federal means-tested public benefit.

(e) An individual who:

(i) Is a military member on active duty (other than active duty for training) in the armed forces of the United States; or

(ii) Is a veteran who received an honorable discharge, not a discharge on account of alienage as described in 8 U.S.C. 1426 (as in effect October 1, 2019).

(f) A spouse or unmarried dependent child of a veteran or active duty service member as described in paragraph (C)(3)(e) of this rule.

(g) The surviving spouse of a deceased veteran or service member, provided the spouse has not remarried and the marriage fulfills the following requirements:

(i) Married for at least one year; or

(ii) Married before the end of a fifteen-year time span following the end of the period of military service in which the injury or disease was incurred or aggravated; or

(iii) Married for any period if a child was born of or before the marriage.

(h) An American Indian born in Canada with at least fifty per cent American Indian blood, covered by the provisions of 289 of the INA (8 U.S.C. 1359) (as in effect October 1, 2019).

(i) A member of an Indian tribe, as defined in 25 U.S.C. 450b(e) (as in effect October 1, 2019) and the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. No. 93-638).

(D) An individual who is not a U.S. citizen or national and not in a satisfactory immigration status may be eligible for alien emergency medical assistance as described in rule 5160:1-5-06 of the



Administrative Code, and is not required to verify non-citizenship status.

(E) Any individual applying for medical assistance and declaring a satisfactory immigration status shall bear the burden of proof of satisfactory immigration status.

(F) The process for establishing satisfactory immigration status shall include that:

(1) The administrative agency must attempt to verify an individual's immigrant status through the electronic eligibility system.

(2) If the individual's immigrant status cannot be verified through the electronic eligibility system, the individual must present documentary evidence of immigration status. The administrative agency is required to confirm the authenticity of the documentation provided by the individual through the automated systematic alien verification for entitlements (SAVE) system. Documentary evidence of immigration status refers to:

(a) I-94 (arrival/departure record).

(b) I-551 (permanent resident card).

(c) Visa in passport with a stamp from the appropriate issuing agency showing immigration status.

(d) For a victim of trafficking:

(i) The original certification letter or notarized letter from the ORR for a child is to be used in place of immigration documentation from USCIS. Retain a copy in the case file. A victim of trafficking is not required to provide any other immigration documents to receive benefits.

(ii) The SAVE system does not contain information about victims of trafficking.

(e) Other documentation as prescribed or allowed by federal law.

(f) An indefinite detainee may not have documentation of original immigration status, and should



instead present the following documentation, available from the ORR:

- (i) I-220B (order of supervision), which must include the person's A-number and notation concerning exclusion, deportation, or removal; or
  - (ii) I-766 (employment authorization document) which must show 8 U.S.C. 1231(a)(7) (as in effect October 1, 2019) as the provision of law authorizing employment.
- (3) When the individual's eligibility is based upon the veteran status of the individual, the individual's parent, or the individual's spouse, veteran status is verified by viewing an original or certified copy of the veteran's discharge paper, United States department of defense form DD-214 (undated).
- (G) If the administrative agency has been unable to verify satisfactory immigration status through the electronic eligibility system, and the individual has not provided verification as described in paragraph (F)(2) of this rule, the administrative agency:
- (1) Is to provide a reasonable opportunity period in accordance with paragraph (H) of this rule; and
  - (2) Is not to delay, deny, reduce, or discontinue benefits for an individual who is determined by the agency to be otherwise eligible for medical assistance during such reasonable opportunity period, in accordance with 42 C.F.R. 435.911(c) (as in effect October 1, 2019).
  - (3) Is to promptly provide the individual with information obtained from the electronic data source described in paragraph (F) of this rule so that he or she can attempt to resolve any inconsistencies with regard to immigration status.
- (H) The reasonable opportunity period:
- (1) Begins on and extends up to ninety days from the date the notice of reasonable opportunity is received by the individual.
  - (a) The date on which the notice is received is considered to be five days after the date on the notice,





unless the individual shows that he or she did not receive the notice within the five-day period.

(b) The reasonable opportunity period may end before the ninetieth day if the agency verifies the individual's satisfactory immigration status.

(c) Medical assistance coverage for an individual on a reasonable opportunity period is effective the first day of the calendar month in which the Ohio department of medicaid (ODM) receives the application as defined in rule 5160:1-2-01 of the Administrative Code.

(2) May be extended. The administrative agency is to provide an extension of the reasonable opportunity period if the individual is making a good faith effort to resolve any inconsistencies or obtain necessary documentation or if the administrative agency is unable to complete the verification process within the ninety-day reasonable opportunity period.

(3) Is granted with each application needing verification of satisfactory immigration status, provided the individual satisfies all other conditions of eligibility outlined in rule 5160:1-2-10 of the Administrative Code. If an individual who was previously provided a reasonable opportunity period was discontinued after ninety days for failing to provide verification, he or she is to be granted another ninety-day reasonable opportunity period with each subsequent new application.

(4) Ends on:

(a) The date the administrative agency verifies the individual's satisfactory immigration status; or

(b) The last day of the month in which the ninetieth day falls as described in paragraph (H)(1) of this rule; or

(c) An administrative agency approved extension date beyond the ninety-day reasonable opportunity period when:

(i) The administrative agency has determined the individual is making a good faith effort to resolve any inconsistencies or obtain necessary documentation; or



(ii) The administrative agency is unable to complete the verification process within the ninety-day reasonable opportunity period.

(5) Retroactive coverage.

(a) There is no provision for retroactive coverage for individuals on a reasonable opportunity period.

(b) If an individual provides evidence of satisfactory immigration status during his or her ninety-day reasonable opportunity period, he or she may have eligibility explored for retroactive medical assistance in accordance with rule 5160:1-2-01 of the Administrative Code.