

EFFECTIVE  
07/29/2020

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

477 NAC 5

TITLE 477

MEDICAID ELIGIBILITY

CHAPTER 5

CITIZENSHIP/ALIEN STATUS AND IDENTITY

001. SCOPE AND AUTHORITY. These regulations govern the services provided under Nebraska's Medicaid program as defined by the Medical Assistance Act, Nebraska Revised Statute § 68 901 et seq.

002. CITIZENSHIP AND ELIGIBLE NON-CITIZENS. In order to be eligible for Medicaid, an applicant or client must be a citizen of the United States or an eligible non-citizen. Citizenship or non-citizen status must be verified through acceptable documentation, as defined by federal regulations. The following individuals meet the criteria for citizenship or eligible non-citizen status:

- (A) Citizens or nationals of the United States. A child born in the United States is a United States citizen. A newborn who was determined to be eligible for Medicaid in the month of birth meets citizenship and identity requirements without further verification, including newborns whose birth expenses were paid for Emergency Medical Services Assistance (EMSA) for non-citizens;
- (B) Qualified non-citizens as defined in Section 431 of the Immigration and Nationality Act (INA):
  - (i) A non-citizen who was admitted as a lawful permanent resident (LPR) and has resided in the United States for at least five calendar years from the date of entry, or who has worked or can be credited with 40 qualifying quarters of work. Medicaid-eligible pregnant women and children are exempt from the five year bar;
  - (ii) A refugee admitted to the United States under Section 207 of the Immigration and Nationality Act (INA);
  - (iii) An asylee under Section 208 of the Immigration and Nationality Act (INA);
  - (iv) Victims of a severe form of trafficking, as indicated in the Victims of Trafficking and Violence Protection Act of 2000);
  - (v) A non-citizen whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act (INA);
  - (vi) A non-citizen from Cuba or Haiti who was admitted under Section 501(e) of the Refugee Education Assistance Act of 1980;
  - (vii) A refugee who entered the U.S. before April 1, 1980, and was granted conditional entry;
  - (viii) A non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family who is residing in the same household as the non-citizen, but only after having resided in the United States for at least five calendar years from the date of entry or who has worked or can be credited with 40 qualifying quarters of work. The child of a battered non-citizen meeting these requirements is also eligible. Medicaid-eligible pregnant women and children are exempt from the five year bar;

- (C) Iraqi and Afghan aliens granted special immigrant status;
- (D) An Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as amended;
- (E) A non-citizen with past or current military involvement, defined as a non-citizen veteran who is on active duty, other than active duty for training, with any of the United States Armed Forces units or who has been honorably discharged and who has fulfilled minimum active-duty service requirements. Minimum active duty is defined as at least 24 months or the period for which the person was called to active duty. The spouse or unmarried dependent child of a non-citizen veteran as described in this paragraph is also eligible;
- (F) Certain American Indian tribe members born in Canada or outside the United States, or who are a member of an Indian tribe; or
- (G) A non-citizen who is paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act (INA), but only after having resided in the United States for at least five calendar years from the date of entry or who has worked or can be credited with 40 qualifying quarters of work.

003. MEDICAID FOR CERTAIN CHILDREN AND PREGNANT WOMEN. A child or pregnant woman may be eligible if he or she is a Nebraska resident and is lawfully present in the United States. A child or pregnant woman is considered lawfully present if he or she is:

- (A) A qualified non-citizen as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (8 U.S.C. § 1641);
- (B) A non-citizen 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;
- (C) A non-citizen 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 one year, except for a non-citizen paroled for prosecution, deferred inspection, or pending removal proceedings;
- (D) A non-citizen who belongs to one of the following classes:
  - (i) Non-citizens currently in temporary resident status, pursuant to section 210 or 245A of the Immigration and Nationality Act (INA) (8 U.S.C. §§1160 or 1255a, respectively);
  - (ii) Non-citizens currently under temporary protected status, pursuant to section 244 of the Immigration and Nationality Act (INA) (8 U.S.C. §1254a), and pending applicants for temporary protected status who have been granted employment authorization;
  - (iii) Non-citizens who have been granted employment authorization under 8 CFR 274 a.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) Non-citizens currently under Deferred Enforced Departure (DED), pursuant to a decision made by the President;
  - (vi) Non-citizens currently in deferred action status, not including Deferred Action for Childhood Arrival (DACA); or
  - (vii) Non-citizens whose visa petition has been approved and who have a pending application for adjustment of status;
- (E) A non-citizen who has a pending application for asylum under section 208(a) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (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;

- (F) A non-citizen who has been granted withholding of removal under the Convention Against Torture;
- (G) A child who has a pending application for Special Immigrant Juvenile status, as described in section 101(a)(27)(J) of the Immigration and Nationality Act (INA) (8 U.S.C. §1101(a)(27)(J));
- (H) A non-citizen who is lawfully present in the Commonwealth of the Northern Mariana Islands, under 48 U.S.C. § 1806(e); or
- (I) A non-citizen who is lawfully present in American Samoa, under the immigration laws of American Samoa.

**004. INELIGIBLE NON-CITIZENS.** Non-citizens who do not meet these requirements may be eligible for emergency medical services only.

**005. VERIFICATION OF CITIZENSHIP AND NON-CITIZEN STATUS.** When an applicant or clients states one or more of the unit members is a non-citizen, the applicant or client is required to present verification for each non-citizen member. The non-citizen status must be verified using the Federal Data Services hub. If the hub is not available to verify citizenship and non-citizen status, the Systematic Alien Verification for Entitlements Program System of Records (SAVE), or receipt of Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or Medicare is sufficient proof of citizenship or lawfully admitted non-citizen status.

**005.01 FAILURE TO COOPERATE.** If the applicant or client fails to cooperate in providing documentation, the applicant or client is ineligible.

**006. REASONABLE OPPORTUNITY PERIOD.** Applicants or clients who attest to being United States citizens or eligible non-citizens, and meet all other eligibility requirements must be given a reasonable opportunity to present satisfactory documentation of citizenship or non-citizen status. Medical benefits must not be denied, delayed, reduced, or terminated during the reasonable opportunity period. If the Department has requested verification, such as an out-of-state birth certificate, benefits will not be denied or terminated while awaiting receipt. Once an individual has declared himself or herself a United States citizen or eligible non-citizen and has provided all other information to determine eligibility, benefits must be provided.

**006.01 DURATION OF REASONABLE OPPORTUNITY.** A 90-day timeframe is given to verify an individual's attested citizenship or satisfactory non-citizen status if the Department or applicant or client cannot provide verification. A notice will be sent to inform the applicant or client of the reasonable opportunity period. The reasonable opportunity period extends 90 days from the date on which the notice is received by the applicant or client, which means five days after the date of the notice unless the applicant or client shows he or she did not receive the notice within the five-day period. If citizenship or immigration status has not been verified by the end of the reasonable opportunity period, Medicaid benefits will be terminated. If the individual appeals the case closure, the Medicaid case is not subject to reinstatement pending the outcome of a fair hearing. The reasonable opportunity period encompasses all aspects of the process to verify citizenship or immigration status, including not only time for an individual to provide documentation but also time for the Department to resolve inconsistencies or conclude the electronic verification process.

EFFECTIVE  
07/29/2020

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

477 NAC 5

007. REPATRIATION PROGRAM. The Repatriation Program provides temporary assistance, care, and treatment for up to 90 days for United States citizens or dependents of United States citizens who have returned from foreign countries. To qualify for repatriation assistance, the individual must be returned from a foreign country because he or she is destitute or ill or because of war, threat of war, or a similar crisis. A request must be made by the State Department to the United States Department of Health and Human Services to receive the individual in the United States and to provide the necessary care, treatment, and assistance. The assistance may include reception service, food, shelter, clothing, and transportation. It may also include payment for special services such as medical and psychiatric care. Any assistance provided through General Assistance or Emergency Assistance may be reimbursed through federal funds. Central Office will contact the appropriate local office on all arriving cases. If it appears the individual is eligible for another form of assistance, a referral must be made or an application for categorical assistance must be completed.

007.01 ELIGIBILITY PERIOD. Assistance may be provided for up to 90 days from the date the individual arrives in the United States. If the individual needs assistance beyond 90 days and is not eligible for Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI), or categorical assistance, the local office shall contact Central Office.

007.02 MEDICAL PAYMENTS. All payments for medical care must be made at rates no higher than those paid by Medicaid.

007.03 REPAYMENT. The individual is required to sign an agreement to repay the cost of the assistance provided.