

Health Care Finance and Administration	Section: Non-Financial Eligibility Requirements
Policy Manual Number: 100.015	Subject: ABD Qualified Non-Citizens

ABD QUALIFIED NON-CITIZENS

Legal Authority: 42 CFR 435.139; 42 CFR 435.406; 42 CFR 440.225; 42 CFR 457.320; SSA SI 00502

1. Policy Statement

Non-citizen eligibility for TennCare Medicaid is limited to certain immigration statuses. In order to be eligible, an individual must be either:

- A qualified alien, as defined by Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) at 8 USC 1641; or
- An American Indian born outside of the U.S.; or
- An alien who has been granted a certain humanitarian status.

Ineligible aliens are potentially eligible for Emergency Medical Services (EMS) only.

2. Qualified Non-Citizen Status and ABD TennCare Medicaid Categories

All federal public benefit programs, including but not limited to Medicaid, Medicare, SSI, Social Security Retirement and Disability, are subject to similar citizenship and qualified non-citizen eligibility requirements. Therefore, if an applicant is enrolled and receiving another federal public benefit at the time of application for TennCare Medicaid, it can be presumed that the agency responsible for authorizing the other benefit has verified citizenship and non-citizenship status.

3. Qualified Alien

The PRWORA created two general categories of alien status for the purpose of public assistance eligibility: qualified and non-qualified aliens. Alien status is based on an individual's date of entry into the U.S. and their immigration status with the United States Citizenship and Immigration Services (USCIS).

A qualified alien is an individual who belongs to one of several alien categories, each of which is tied to a specific section of the Immigration and Nationality Act (INA) at 8 USC. 1101, *et seq.* Qualified aliens are potentially eligible for full TennCare Medicaid benefits just like U.S. citizens. However, certain categories of qualified aliens have periods of program ineligibility or time limits placed on eligibility.

Qualified aliens are:

- Aliens lawfully admitted for permanent residence, a Lawful Permanent Resident (LPR), as an immigrant as defined in the INA (8 USC 1101);
- Refugees admitted under the INA (8 USC 1157);
- Asylees granted asylum under the INA (8 USC 1158);
- Aliens paroled in the U.S. under the INA (8 USC 1182(d)(5)) for a period of at least one year;

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- Aliens whose deportation is withheld under the INA (8 USC 1253, or 8 USC 1231(b)(3), as amended;
- Battered immigrants and children who meet the conditions set forth in Section 431(c) of the PRWORA, (8 USC 1641(c));
- Cuban or Haitian entrants as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
- Aliens granted conditional entry under the INA (8 USC 1153(a)(7)) in effect before April 1, 1980; and
- Aliens who are victims of a severe form of trafficking or who have been granted nonimmigrant status under section 101(a)(15)(T) of the INA or who have a pending application that sets forth a prima facie case for such nonimmigrant status.

4. Other Eligible Immigration Statuses

The following immigration statuses are not statutorily defined as “qualified aliens.” However, these groups are generally treated like qualified aliens for eligibility purposes:

- Aliens admitted as Amerasian immigrants under Section 584 of the Foreign Operations Export Financing and Related Programs Appropriations Act of 1988;
- Aliens who are members of a Federally-recognized Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, (25 USC 450(b)(e));
- Aliens who are American Indians born in Canada to whom the INA (8 USC 1359) applies;
- Afghan aliens granted Special Immigrant Status under Section 602(b) of the Afghan Allies Protection Act of 2009 as described in the INA (8 USC 1101(a)(27));
- Iraqi aliens granted Special Immigration Status under the National Defense Authorization Act for Fiscal Year 2008 as described in the INA (8 USC 1101(a)(27)).

5. Ineligible Aliens

Ineligible aliens include:

a. Undocumented Aliens

These aliens are individuals who enter and reside in the U.S. without notification of or proper permission from the U.S. government.

b. Lawfully Present Aliens

Lawfully present aliens are a specific group of aliens who are eligible to receive health insurance coverage through the Federally Facilitated Marketplace (FFM), but who are unable to receive TennCare Medicaid benefits. Lawfully present aliens include:

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- Aliens paroled into the U.S. in accordance with 8 USC 1182(d)(5) for less than 1 year, except for an individual paroled from prosecution, for deferred inspection or pending removal proceedings;
- Aliens granted temporary resident status in accordance with 8 USC 1160 or 1255a;
- Aliens granted Temporary Protected Status (TPS) in accordance with 8 USC 1254a and individuals with pending applications for TPS who have been granted employment authorization;
- Aliens granted employment authorization under 8 CFR 274a.12(c);
- Family Unity beneficiaries in accordance with 8 USC 1182;
- Aliens under Deferred Enforced Departure (DED) in accordance with a decision made by the President of the United States;
- Aliens granted Deferred Action status;
- Aliens granted an administrative stay of removal under 8 CFR 241;
- Beneficiaries of approved visa petitions who have a pending application for adjustment of status;
- An individual with a pending application for asylum under 8 USC 1158, or for withholding of removal under 8 USC 1231, or under the Convention Against Torture, who:
 - Has been granted employment authorization; or
 - Is under the age of 14 and has had an application pending for at least 180 days;
- Aliens who have been granted withholding of removal under the Convention Against Torture (8 USC 208.16);;
- Children who have a pending application for Special Immigrant Juvenile status as described in 8 USC 1101(a)(27)(J); and
- Aliens lawfully present in American Samoa under the immigration laws of American Samoa.

c. Aliens Admitted for a Temporary Purpose

These aliens may be lawfully admitted for a temporary or specified period of time. They include foreign students, visitors, foreign government representatives on official business, crewmen on shore leave, treaty traders and investors and families, temporary workers, including agricultural contract workers and members of the foreign press, radio, film and other media.

Listed below are examples of the types of documentation that a non-qualified or ineligible alien may possess:

- Form I-85, Canadian Border Crossing Card;
- Form I-186, Mexican Border Crossing Card; and
- Form SW-434, Mexican Border Visitor's Permit;
- Form I-95A, Crewman's Landing Permit.

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6. Five Year Period of Ineligibility

NOTE: Applicants receiving SSI, OASDI or other public benefit program assistance are considered to have satisfied the five year period of ineligibility.

a. Aliens Subject to the Five Year Period of Ineligibility

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) established a 5-year period of ineligibility for all federally-funded benefits, including TennCare Medicaid, for certain qualified aliens entering the U.S. on or after August 22, 1996.

The following qualified aliens are not eligible for TennCare Medicaid or CoverKids for a period of five (5) years from the date they are granted qualified alien status unless they meet an exception as described in 6(b):

- LPRs admitted under the INA, 8 USC 1101, *et seq.*, after August 22, 1996;
- Aliens granted parole for at least one year under the INA (8 USC 1182(d)(5)); and
- Battered immigrants and children who meet the conditions set forth in Section 431(c) of the PRWORA.

A qualified alien may apply for coverage once the 5-year period of ineligibility expires. The 5-year period of ineligibility expires on the 5-year anniversary of the date he or she was granted qualified status. Once the 5 year bar expires, a qualified alien may apply for benefits as if he or she was a U.S. citizen. No previous application is required. If the qualified alien meets the technical and financial eligibility criteria for a TennCare Medicaid category and the 5 year period of ineligibility has expired, then he or she is eligible to receive coverage in the appropriate category as of the date of application.

b. Aliens Exempt from the Five Year Period of Ineligibility

The following qualified aliens are potentially eligible for benefits from the date they enter the U.S.:

- Aliens admitted to the U.S. as an LPR prior to August 22, 1996;
- Aliens who are victims of a severe form of trafficking or who have been granted nonimmigrant status under section 101(a)(15)(T) of the INA or who have a pending application that sets forth a prima facie case for such nonimmigrant status;
- LPRs who first entered the country under another exempt category (i.e. as a refugee, asylee, Cuban or Haitian entrant, trafficking victim, or alien whose deportation is being withheld) and who later converted to LPR status;
- Aliens who also are:
 - Honorably discharged veterans; or
 - On active duty inside the U.S. military; or

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- The spouses, the unmarried dependent children, or the unremarried surviving spouses of honorably discharged veterans or individuals on active duty in the U.S. military;
- Members of a federally-recognized Indian tribe;
- American Indians born in Canada to whom the INA (8 USC 1359) applies; and
- Aliens granted a specific humanitarian entrance status by the USCIS, including:
 - Refugees and Asylees;
 - Cuban and Haitian Entrants;
 - Aliens whose deportation is being withheld;
 - Amerasian immigrants; and
 - Afghani and Iraqi aliens.

Note: Aliens granted a specific humanitarian entrance status by the UCSIS are exempt from the 5-year bar for TennCare Medicaid eligibility, but they are subject to a 7-Year eligibility time limit.

7. Seven Year Time Limit for Certain Aliens

a. General Rule

Aliens admitted into the U.S. by the USCIS under a specific section of the INA identified below are qualified non-citizens, and are potentially eligible for TennCare Medicaid for the first 7 years after refugee, asylee or other humanitarian status is granted.

b. Non-citizens Subject to 7-year Eligibility Time Limit

Non-citizens granted a specific humanitarian status and subject to the 7 year eligibility time limit include:

- Refugees, admitted under the INA (8 USC 1157);
- Aliens granted asylum under Section 208 of the INA (8 USC 1158);
- Cuban and Haitian Entrants, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
- Aliens whose deportation is being withheld under the INA (8 USC 1253) as in effect prior to April 1, 1997; or 8 USC 1231(b)(3), as amended;
- Aliens admitted as an Amerasian Immigrant pursuant to Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;
- Afghan aliens granted Special Immigrant Status under Section 602(b) of the Afghan Allies Protection Act of 2009 as described in the INA (8 USC 1101(a)(27));
- Iraqi aliens granted Special Immigrant Status under the National Defense Authorization Act for Fiscal Year 2008 as described in the INA (8 USC 1101(a)(27)); and
- Spouses and unmarried children under age 21 of Afghan and Iraqi Special Immigrants who accompany or later join the Special Immigrant are potentially eligible to receive TennCare Medicaid benefits.

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NOTE: The Department of Defense Appropriations Act for fiscal year 2010 changed eligibility policy for Iraqi and Afghan Special Immigrants. Effective December 19, 2009, the day the bill was signed into law, individuals admitted to the U.S. under an Afghan or Iraqi Special Immigrant Visa are to be treated like all other refugees. Afghan or Iraqi Special Immigrants are eligible for benefits through the first seven years after entry into the U.S., if all other Medicaid eligibility requirements are met. Any Afghan or Iraqi special immigrant whose coverage was cancelled after December 19, 2009 because of the prior 8-month time limit, is eligible for benefits if all other eligibility requirements continue to be met and the individual is within the 7-year time limit.

c. Expiration of 7-Year Time Limit

A non-citizen who is subject to the 7-year limit and does not have a change in immigration status or does not meet one of the exemptions listed in the following section, will lose eligibility the first month after the 7 year anniversary date of entrance into the U.S. (or date that deportation was withheld under the INA (8 U.S.C. §§ 1231 and 1253)).

d. Continuing Eligibility After the 7-Year Limit

A non-citizen who is subject to the 7-year time limit can remain eligible beyond the 7-year period if at the time of filing or at any time during or after the 7-year period, the USCIS determines that the alien continues to be a qualified alien and that he or she is one of the following:

- Lawfully residing in the U.S. and was receiving Medicaid benefits on August 22, 1996; or
- Blind or disabled and was lawfully residing in the U.S. on August 22, 1996; or
- LPR; or
- An honorably discharged veteran, an active-duty member of the U.S. Armed Forces, or a spouse, an unmarried dependent child, or an unremarried surviving spouse of an honorably discharged veteran or active-duty member of the U.S. Armed Forces.

e. Adjustment to LPR Status within 7-Year Eligibility Period

A qualified alien who is subject to the 7-year time limit can adjust his or her status to LPR within the 7-year period. Aliens who adjust to LPR status within the 7-year period are not subject to the 5-year bar and remain potentially eligible for benefits beyond the 7-year period of eligibility as an LPR.

8. Victims of Trafficking

The Trafficking Victims Protection Act (TVPA) of 2000 allows victims of human trafficking and aliens classified as nonimmigrants under section 101(a)(15)(T) of the INA, who are physically present in the United States, to receive federally funded benefits and services to the same extent as

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refugees. Victims of human trafficking are non-citizens who are eligible to receive a special visa and benefits once they are identified.

a. Assistance Available to Victims of Human-Trafficking

Adult victims of human trafficking who are certified by the U.S. Department of Health and Human Services (HHS), who are otherwise eligible, may receive Medicaid in any Medicaid category available. Children under age 18 do not have to be certified by HHS to receive benefits. For an adult victim of trafficking to receive certification, he or she must:

- Be a victim of human trafficking as defined by the TVPA or an alien classified as a nonimmigrant under section 101(a)(15)(T) of the INA;
- Be willing to assist with the investigation and prosecution of traffickers; and
- Have completed a bona fide application for a T Visa that has not been denied, or have received continued presence status from the U.S. Department of Homeland Security.

b. The T Visa - Under the TVPA of 2000

The T Visa was established to allow victims of severe forms of trafficking to become temporary residents of the U.S. The Trafficking Victims Protection Act recognizes that returning victims to their country of origin is often not in the best interest of victims and those victims need the opportunity to rebuild their lives without the threat of deportation. A recipient of a T Visa, after three years, may be eligible for permanent residence status if he or she meets the following conditions:

- They are a person of good moral character;
- They have complied with any reasonable request for assistance in the investigation during the three-year period; and
- They will suffer extreme hardship if they are removed from the U.S.

c. The Certification Process

The Certification Process typically takes only a few days after HHS is notified that a person has made a bona fide T Visa application or has been granted continued presence status (both of these actions are completed by the U.S. Department of Homeland Security). If the status of a person who has received HHS certification changes so that they are no longer eligible, HHS may be required to decertify that individual.

d. Verification of Victim Certification

A toll-free number can be used to verify victims of trafficking: 1-866-401-5510. Before victims can receive benefits, the Eligibility Specialist must call the toll-free trafficking victim verification line to verify the validity of the certification letter and to also inform HHS that the individual has applied for program benefits.

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9. Battered Immigrants and Children

a. Battered Immigrant Defined

Certain immigrants who have been subjected to battery or extreme cruelty in the U.S. by a family member with whom they reside are qualified aliens and are potentially eligible for TennCare Medicaid. The alien must be either:

- The individual battered; or
- The parent of a child who is battered; or
- A child whose parent has been battered.

A family member includes a spouse, parent, or member of the spouse or parent's family residing in the same household.

If admitted to the U.S. on or after August 22, 1996, a battered immigrant and/or child is subject to the 5-year period of ineligibility for TennCare Medicaid benefits. The 5-year period of ineligibility begins on the date he or she obtains qualified alien status.

b. Eligibility Conditions

In order to be considered as a qualified alien and become potentially eligible for TennCare Medicaid (subject to 5-year bar), a battered immigrant must meet all of the requirements provided below.

- The immigrant has been approved or has a pending petition which sets forth a prima facie case for:
 - Immigrant status as a battered spouse or child of a U.S. citizen or LPR (Form I-360); or
 - Immediate Relative status (Form I-130); or
 - Suspension of deportation and adjustment to LPR status;
- The immigrant must show that there is a substantial connection between such battery or cruelty and the need for benefits; and
- The immigrant must no longer be residing in the same household as the abuser.

Battered immigrants may be granted good cause for non-cooperation with child support when cooperation requires the involvement of the abuser.

10. American Indians

An Indian born in Canada who is at least one-half American Indian blood may enter and reside lawfully in the U. S., but this does not extend to the spouse or child of the Indian unless they are at least one-half American Indian also. An Indian meeting the above criteria may be eligible for full TennCare Medicaid coverage if all other eligibility requirements are met.

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The following documents may be used to verify an Indian is at least one-half American Indian blood:

- Birth or baptismal certificate issued on reservation;
- Tribal record;
- Letter from the Canadian Department of Indian Affairs; or
- School records.

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