



Bureau of TennCare Policy Manual

Policy No: EED 05-001 (rev. 1)	
Subject: Emergency Medical Services for Illegal and Ineligible Aliens	
Approved by: <i>D-Q-G</i>	Date: 4/3/2009

PURPOSE:

This policy has been updated from the previous version, dated October 13, 2005. The persons discussed in this policy are not TennCare eligible, but TennCare is required by federal law to pay for certain emergency medical services that they receive.

BACKGROUND:

Federal law requires that state Medicaid programs cover emergency medical services for illegal and ineligible aliens, when these persons otherwise meet the financial criteria for Medicaid.¹

An illegal alien is a person who is not a citizen of the United States and “who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.”² Illegal aliens were either never legally admitted to the United States for any period of time or were admitted for a limited period of time and did not leave the United States when that period of time expired.³

An ineligible alien is a person other than an illegal alien who is not a citizen of the United States and whose *alien status* prevents him from qualifying for Medicaid. Examples include the following:

- Certain qualified aliens arriving on or after August 22, 1996, may have been lawfully admitted to the United States but may be prohibited from acquiring Medicaid during the

¹ State Medicaid Manual, Sec. 3210.1

http://www.cms.hhs.gov/manuals/downloads/P45_03.zip (Please open Word documents with the correct chapter ranges).

² 42 USC 1396b. (v)

http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001396---b000-.html

³ State Medicaid Manual, Sec. 3211.10

http://www.cms.hhs.gov/manuals/downloads/P45_03.zip (Please open Word documents with the correct chapter ranges).

first five years of their residence in this country. (This period of time is referred to as the “five-year bar.”)

- Aliens who are not permanently residing in the United States, such as foreign students and tourists, may be in a satisfactory status with the Bureau of Citizenship and Immigration Services (BCIS) but are admitted for only a specified period of time. They cannot qualify for Medicaid during that specified period of time.

POLICY:

Financial eligibility criteria. Once it has been established that a person is an illegal alien or an ineligible alien, his income and resources must be consistent with Medicaid requirements in order for him to qualify for TennCare coverage of his emergency medical services. The following income and resource standards are applied by the Department of Human Services (DHS):

- For pregnant women: Poverty Level Income Standard (PLIS): (185% poverty; no resource limits).
- For children: PLIS (185% poverty for children from birth to age 1; 133% poverty for children from age 1 to age 6; 100% of poverty for children from age 6 to age 19; no resource limits).
- For others: Medically Needy Income Standard (MNIS); Medically Needy resource limits (\$2,000 for a family of 1; \$3,000 for a family of 2; add \$100 for each additional family member).

Definition of emergency services. Federal regulations at 42 CFR § 440.255(c)⁴ describe the emergency services that must be covered for illegal or ineligible aliens who are prevented by the terms of their alien status from qualifying for full Medicaid. The regulation defines an “emergency medical condition” as—

The sudden onset of a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (i) Placing the patient’s health in serious jeopardy;
- (ii) Serious impairment to bodily functions; or
- (iii) Serious dysfunction of any bodily organ or part.

The State Medicaid Manual (SMM), Section 3211.11(D), goes on to clarify “emergency” labor and delivery services for illegal or ineligible aliens: “All labor and delivery is considered emergency labor and delivery.”⁵ This definition is applicable to the groups of aliens who cannot get full Medicaid.⁶

⁴ http://edocket.access.gpo.gov/cfr_2008/octqtr/pdf/42cfr440.255.pdf

⁵ <http://www.cms.hhs.gov/Manuals/PBM/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS021927>

(Please open Word documents with the correct chapter ranges).

⁶ Ibid.

Definition of “sudden onset.” The “sudden onset” qualifier with regard to Medicaid’s coverage of emergency medical services means that services for individuals who need ongoing routine care (i.e. dialysis, chemotherapy) for conditions that could become “emergency medical conditions” in the future are not covered. In addition, per 42 USC § 1396b (v),⁷ care and services related to an organ transplant procedure for “aliens not lawfully admitted for permanent residence” are not a covered emergency benefit.

Comparison with other definitions of “emergency services.” It should be noted that the definition of emergency services for illegal or ineligible aliens is somewhat different from definitions of emergency services used elsewhere in the Medicaid program. The regulations from the Balanced Budget Act (BBA) of 1997 that govern Medicaid managed care programs require use of the “prudent layperson” standard. Per 42 CFR §438.114(a),⁸ an emergency is defined as a situation in which a “prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following—

- Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy.
- Serious impairment to bodily functions.
- Serious dysfunction of any bodily organ or part.”

Note that there is no “prudent layperson” standard in the definition of emergency services for illegal or ineligible aliens.

Role of TennCare Select. Coverage of emergency services provided to illegal or ineligible aliens is not handled through the normal Managed Care Contractors (MCCs) since the individuals receiving these services are not TennCare enrollees. TennCare Select is the entity responsible for payment of the services described in 42 CFR 440.255⁹ and is responsible for payment of emergency medical services only. [Standard Term and Condition (STC) #37, TennCare II Medicaid section 1115 demonstration extension, October 5, 2007]¹⁰

PROCEDURES:

1. DHS takes applications from aliens requiring emergency medical services. Hospitals and birthing or women's centers or others acting on behalf of these individuals have been advised to fax their applications to DHS on the first date of the emergency because no coverage will be granted prior to the date of application. Applications may also be made online.
2. DHS contacts the TennCare Office of the Medical Director if there is a question about whether the service needed by the alien qualifies as an emergency service. If an

⁷ http://www4.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001396--b000-.html

⁸ http://edocket.access.gpo.gov/cfr_2007/octqtr/pdf/42cfr438.114.pdf

⁹ http://edocket.access.gpo.gov/cfr_2007/octqtr/pdf/42cfr440.255.pdf

¹⁰ <http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=dual,%20keyword&filterValue=Tennessee&filterByDID=0&sortByDID=2&sortOrder=ascending&itemID=CMS028494&intNumPerPage=20><http://www.cms.hhs.gov/MedicaidStWaivProgDemoPGI/MWDL/item>

(See Tennessee TennCare Current Approval Documents at this site).

individual qualifies for coverage of an emergency service, then that coverage would apply regardless of whether he receives the service in the Emergency Department or whether he is subsequently admitted to the hospital.

3. If an application is filed on date of admission, and all factors for coverage are met, then coverage begins on the date of admission. Because there is no retroactive coverage for emergency medical services, coverage will not begin prior to the date of application.
4. Coverage will be limited to the length of time required to stabilize the emergent episode. Only the services involved in the emergency itself will be reimbursed and coverage is only provided for the single episode of care. For example: an individual will receive emergency coverage for a stroke but will not receive coverage for rehabilitation related to the stroke that is required post-discharge.
5. DHS sends manual notices to applicants for this category to let them know that they are or are not eligible for services. An appeals information sheet is enclosed.
6. If an individual is found to be eligible, the DHS county office sends a document to DHS central office, which then completes a 1610 manual transaction to interChange indicating the dates of eligibility.

OFFICES OF PRIMARY RESPONSIBILITY:

- DHS (for making eligibility determinations and providing eligibility notice and appeal rights)
- TennCare Office of Medical Director (for decision-making regarding the presence/absence of an emergency condition)
- TennCare Division of Information Services (for enrollment/disenrollment of aliens into the system)
- TennCare Division of Member Services

REFERENCES:

References are limited to those that are cited by footnotes in this policy.