











Qualified aliens subject to the five-year bar are not eligible for Medicaid, except for emergency services, for five years from the date of entry. When these aliens have been in the United States in a qualified status for five years, they may become eligible if all other Medicaid eligibility requirements are met.

NOTE: Lawful permanent residents may have a “sponsor.” See [Sponsor Affidavits of Support and Deeming](#) for information on deeming a sponsor’s income and resources to the lawful permanent resident.

- **“Lawfully residing”** means an immigrant or nonimmigrant alien that the Department of Homeland Security considers as a long-term resident who has moved to the United States, is not required to maintain permanent residence in another country, and is allowed to remain in the United States either permanently or indefinitely.

Only children **under age 21** in a “lawfully residing” status are qualified aliens and may be eligible for Medicaid if all other eligibility requirements (including state residency) are met. Adults age 21 and over in a lawfully residing status are **not** considered qualified aliens for Medicaid eligibility purposes.

NOTE: A person **must meet Iowa residency requirements** in order to qualify for Medicaid. The USCIS may require persons in some alien statuses (e.g., nonimmigrants) to show they intend to maintain and return to their residences abroad. Therefore, such an alien status is an indicator that a person might not meet Iowa residency requirements.

However, alien status may **not** be used to determine a person is not an Iowa resident. All policies found at [8-C](#), *Residency and Intent to Live in Iowa* must be applied when determining whether or not a nonimmigrant meets Iowa residency requirements.

Mr. and Mrs. X have three children. Mrs. X (age 34), Mr. X (age 35), and Child 1 (age 14) each have an I-94, *Arrival/Departure Record*, showing their status as a “lawfully residing” nonimmigrant. Child 2 and Child 3 (ages 10 and 8) are United States citizens.

If all other Medicaid eligibility requirements are met, including state residency, all three children are **eligible** for Medicaid. Mr. and Mrs. X are **ineligible** for full Medicaid because they are “lawfully residing” aliens age 21 and over. Limited Medicaid is available to cover treatment for an emergency medical condition if all other Medicaid eligibility requirements are met.

A **partial** list of “lawfully residing” class of admission and employment authorization codes is provided below. Additional alien categories and status codes may qualify. Contact SPIRS with questions.

- Aliens in a nonimmigrant status who have not violated the terms of the status under which they were admitted or to which they changed after admission. Such persons may include, **but are not limited to:**
  - A parent or child of a person with special immigrant status under Section 101(a)(27) of the INA, as permitted under Section 101(a)(15)(N) of the INA (N8 or N9 visa, or A7 on EAD);
  - A fiancé of a citizen, as permitted under Section 101(a)(15)(K) of the INA (K1 visa or A6 on EAD);
  - A religious worker under Section 101(a)(15)(R) (R1 visa or B16 on EAD);

- A person assisting the Department of Justice in a criminal investigation, as permitted under Section 101(a)(15)(S) of the INA (S visa or C21 on EAD);
- A battered alien under Section 101(a)(15)(U) (U1-U5 visa or A19 or A20 on EAD); and
- A person with a petition pending for three years or more, as permitted under Section 101(a)(15)(V) of the INA (V1-V3 visa).
- Aliens who have been paroled into the United States under section 212(d)(5) of the INA **for less than 1 year**, except for aliens paroled for prosecution, deferred inspection, or pending removal proceedings;
- Aliens belonging to one of the following classes:
  - Aliens whose visa petition has been approved and who have a pending application for adjustment of status (e.g., form I-485, *Application for Adjustment of Status*);
  - Aliens currently in temporary resident status as an amnesty beneficiary (Section 210 or 245A of the Immigration and Nationality Act (INA));
  - Aliens currently under temporary protected status under Section 244 of the INA, and pending applicants for temporary protected status who have been granted employment authorization (A12 on EAD);
  - Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24) (C9, C10, C16, C18, C20, C22, or C24 on EAD);
  - Family unity beneficiaries under Section 301 of the Immigration Act of 1990 or Section 1504 of the Legal Immigrant Family Equity (LIFE) Act amendments (A13 or A14 on EAD);
  - Aliens currently under deferred enforced departure (DED) under a decision made by the President. (DED is not an immigration status. Persons under DED are allowed to remain in the United States during the period ordered by the President.);
  - Aliens currently in deferred action status. (This does not include aliens approved under the Deferred Action for Childhood Arrivals (DACA) process.);
  - Pending applicants for asylum under Section 208(a) of the INA or for withholding of removal under section 241(b)(3) of the INA or under the Convention Against Torture who has been granted employment authorization, and such an applicant under age 14 who has had an application pending for at least 180 days;
  - Aliens who have been granted withholding of removal under the Convention Against Torture; and
  - Aliens who have a pending application for Special Immigrant Juvenile status under section 101(a)(27)(j) of the INA.
- **“Nonqualified alien”** means a noncitizen residing in the United States. This includes all other aliens whose classification is not specifically listed under either [Aliens Subject to Five-Year Bar](#) or [Aliens Exempt from Five-Year Bar](#).

A qualified alien or a nonqualified alien may be eligible for limited Medicaid for emergency services. See [Limited Eligibility for Certain Aliens](#).

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## **Public Charge**

Legal reference: 8 CFR 212.21; 42 CFR 431.300

Most forms of Medicaid do not result in a finding that an alien is “likely at any time to become a public charge”. The term “likely at any time to become a public charge” refers to an alien who is likely at any time to become primarily dependent on the government for subsistence by either:

- The receipt of public cash assistance for income maintenance, or
- Long-term institutionalization at government expense.

“Public cash assistance for income maintenance” includes receipt of:

- Supplemental Security Income (SSI),
- Temporary Assistance for Needy Families (TANF) (the Family Investment Program (FIP) in Iowa),
- State cash assistance programs, such as State Supplementary Assistance, or
- Local cash assistance programs, such as General Assistance.

“Long-term institutionalization at government expense” means long-term government assistance for institutionalization including in a nursing home or mental health institution. “Long-term institutionalization” does not include imprisonment for conviction of a crime or institutionalization for short periods for rehabilitation purposes.

The U.S. Citizenship and Immigration Services (USCIS) makes the “likely at any time to become a public charge” finding on a case-by-case basis.

Individuals with questions about their specific situation should consult an immigration attorney.

Note: State Medicaid agencies restricts the use or disclosure of Medicaid information concerning applicants or members to purposes directly connected with the administration of the Medicaid program. The determination of whether an individual is “likely at any time to become a public charge” **is not** directly related to administration of the Medicaid program. This means that the state Medicaid agency **cannot** share Medicaid enrollment information for an applicant or member with the Department of Homeland Security/USCIS for this purpose.

## **Alien Status Attestation and Verification Requirements**

Legal reference: 42 CFR 435.406, 435.949, 435.952, and 435.956; 44I IAC 75.11(1), (2), and (4); 76.13(3); P.L. 104-193 and 105-33; 42 U.S.C. 1396b(v) as amended by P.L. 111-3

Individuals who are not citizens or nationals of the United States must attest to and have their eligible alien status verified in order to qualify for full Medicaid coverage. See 8-C, [Declaring Citizenship or Alien Status](#) for attestation requirements. **NOTE:** An answer of blank or ‘No’ the question “...do you have eligible immigration status?” is treated as an attestation of eligible immigration status in some scenarios as detailed in NJA0063, Alien Chart.

To have an eligible alien status, an individual must be a “qualified alien” and either have maintained the qualified status for at least five years or be exempt from the five-year waiting period.



Individuals whose eligible alien status cannot be verified through an electronic data match shall be allowed a 90-day Reasonable Opportunity Period (ROP) to provide proof. See [Reasonable Opportunity Period \(ROP\) for Eligible Aliens](#) for details.

Individuals who do not qualify for full Medicaid coverage due to their alien status may qualify for limited Medicaid for emergency services. Attestation and verification of eligible alien status are **not** required in order to qualify for limited Medicaid for emergency services coverage. See [Limited Eligibility for Certain Aliens](#) for information on Medicaid for emergency services.

Electronic data matching is the primary method of verifying attested eligible alien status. An individual shall **only** be required to verify alien status when verification could not be obtained electronically. **Only** verify alien status for applicants or members who claim to have eligible alien status, either by:

- Answering Yes to the question, “Do you have eligible immigration status?”, or
- Otherwise indicating they have eligible alien status. For example, despite answering No to the question, “Do you have eligible immigration status?” the person provides immigration document information indicating a possible eligible alien status. NOTE: Expired documents provided by or on behalf of an applicant or member may be used for attestation or verification of alien status unless questionable.

Do not attempt to verify alien status on individuals who have clearly indicated they are undocumented or not here legally, or whose immigration document information indicates they would never be eligible for anything except limited Medicaid for emergency services (e.g., those whose immigration document would always produce an outcome of “restricted” in the Alien Chart – Medicaid Only document).

Similarly, **never** attempt to verify alien status for individuals who are only listed as members of the household but are not actually applying. [Comm. 233, Rights and Responsibilities](#) informs individuals that we will not contact the Department of Homeland Security about those who are not applying.

However, do attempt to verify alien status for applicants or members who have indicated they are here legally/have eligible alien status, even if it is apparent the person does not yet meet the 5-year bar.

Refer to NJA0063, *Alien Chart* and NJA0062, *Electronic Data Source Verification* for complete verification procedures.

Individuals for whom eligible alien status is not verified are eligible only for limited Medicaid for emergency services if they would otherwise be eligible for Medicaid.

### **Reasonable Opportunity Period (ROP) for Eligible Aliens**

Legal reference: 42 CFR 435.956(b), 435.911(c); 441 IAC 75.11(2)(c)

Individuals whose attested eligible alien status cannot be verified through an electronic data match shall be allowed a 90-day ROP to provide proof. The ROP begins with the date the *Notice of Action* is received and continues for 90 days. The date of receipt is considered to be 5 days from the date of the *Notice of Action*.

Full Medicaid shall be provided during the ROP if the person is otherwise eligible. If proof is not received by the end of the 90-day ROP, benefits end subject to timely notice requirements.

Even though they are eligible for full Medicaid during a 90-day reasonable opportunity period (ROP), individuals are not eligible for full Medicaid for any retroactive months until the attested eligible alien status has been verified. Only approve full Medicaid coverage for any retroactive months once the necessary verification of attested eligible alien status is received, and provided that retroactive coverage is needed and all retroactive eligibility requirements have been met as detailed at 8-B, [Determining Eligibility for the Retroactive Period](#) and 8-A, [Definitions: Retroactive Period](#).

If the attested eligible alien status is not verified via data matching, determine if the person is eligible for a 90-day reasonable opportunity period (ROP) by running EDBC in ELIAS. If the 90-day ROP is approved, send the client a *Notice of Action* approving Medicaid along with Comm. 258, *Verifying Citizenship/Identity and/or Immigration Status*. ELIAS will automatically deny at the end of the 90-day ROP if no verification is returned.

If the 90-day ROP is denied, leave the case in pending status in ELIAS and send a Request for Information (RFI) for verification of alien status. If the verification is not received by the due date, deny or cancel full Medicaid for that individual.

NOTE: Since attestation and verification of an eligible alien status are **not** required in order to qualify for limited Medicaid for emergency services coverage, determine eligibility for limited Medicaid for emergency services, including eligibility for any retroactive months as detailed at 8-B, [Determining Eligibility for the Retroactive Period](#) and 8-A, [Definitions, Retroactive Period](#) as described under [Limited Eligibility for Certain Aliens](#).

A new ROP must be allowed each time the person is required to verify eligible alien status.

To determine continued eligibility for full Medicaid, alien status must be reverified when the individual reports a change in alien status or the department receives information indicating there has been an alien status change, and at annual review for alien statuses that are subject to change. For example, lawful permanent resident (LPR) alien children under the age of 21 who have resided in the United States less than five years, lawfully residing alien children under the age of 21, and children with battered alien or parolee status must have their continued alien status verified at each annual review or if their alien status changes. Refer to NJA0063, *Alien Chart* for additional details.

### **Alien Verification**

Documentation of alien status is issued by the U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security. Older documents were issued by the Immigration and Naturalization Service (INS).

Eligibility Indicators returned by the Verify Lawful Presence (VLP) electronic data matching service are the primary source used to verify and determine alien status for Medicaid eligibility purposes.

When Eligibility Indicators obtained via VLP are insufficient to determine Medicaid eligibility, the determination of alien status is based upon the [Alien Documentation Chart – Medicaid Only](#).

This chart lists some documents commonly used to show alien status. Note that there may be **other** documents acceptable to show alien status that are **not listed** in this chart. See [Aliens Subject to Five-Year Bar](#) and [Aliens Exempt from Five-Year Bar](#) for complete explanation of Medicaid status.

Prior to the creation of VLP, the Systematic Alien Verification for Entitlement (SAVE) system was used to verify alien status. Since SAVE returns the same information as VLP, there is no longer a need to attempt SAVE in most situations. SAVE should only be used in limited circumstances where VLP cannot be accessed, such as when the Medicaid case is being processed in ABC rather than ELIAS or when SAVE needs to be used as a workaround because VLP is not working correctly. Note that a VLP Eligibility Indicator Status of “Invalid Indicators – Insufficient to Run EDBC” simply means that the determination of alien status must be made using the Alien Documentation Chart-Medicaid Only and is **not** a reason to attempt SAVE.

Subject to the requirement to use electronic data matching to attempt to validate reported alien status, expired documents provided by or on behalf of an applicant or member may be used for attestation or verification of alien status unless questionable.

1. When Mr. N applies he provides a passport that expired several years earlier. This passport shows he was born in one of the COFA Islands. Where a person was born is not something that changes, so the passport showing he is a citizen of one of the COFA Islands is a sufficient document to use even though it is expired
2. Same as example 1, but the worker has reason to question either the validity of the passport itself (e.g. it appears to be forged, altered, or is otherwise inauthentic or unreadable) or the alien status shown (e.g. the passport shows a name, DOB, or place of birth that is inconsistent with other available information). The worker requests additional information/verification to resolve any discrepancies.

## **Nonfinancial Eligibility**

Legal reference: 441 IAC 75.11(1), (2), (3), and (4); 42 U.S.C. 1396b(v) as amended by P.L. 111-3; P.L. 117-43 Section 2502

In addition to requirements in this chapter that are specific to aliens, eligible aliens must meet the categorical, financial, and nonfinancial eligibility criteria of an existing MAGI-related or Non-MAGI-related coverage group. See 8-C, [Nonfinancial Eligibility](#) and 8-F, [Coverage Groups](#).

The following sections address:

- [Aliens subject to five-year bar](#)
- [Aliens exempt from five-year bar](#)
- [Migrants](#)
- [Social security numbers](#)
- [Victims of trafficking](#)
- [Iraqi and Afghan Special Immigrants](#)
- [Afghan Parolees](#)

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### **Aliens Subject to Five-Year Bar**

Legal reference: 441 IAC 75.11(249A), P.L. 104-193; 42 U.S.C. 1396b(v) as amended by P.L. 111-3 and Iowa Code 249A.3A

Aliens listed in this section who enter the United States **on or after** August 22, 1996, are barred from receiving Medicaid except limited Medicaid for emergency services for five years. The five-year period begins on the date the person enters the United States with one of the following statuses and retains a legal status:

- Aliens aged 21 or over who are lawfully admitted for permanent residency. NOTE: **Lawful permanent residents (LPRs)** may be required to have a sponsor and may be subject to deeming of income or resources from the sponsor. See [Sponsor Affidavits of Support and Deeming](#) for more information.
- Aliens ages 21 or over who are **paroled** into the United States under section 212(d)(5) of the Immigration and Nationality Act (INA) for a period of at least one year. **NOTE:** See one exception, for children paroled less than one year, under the definition of “[lawfully residing](#)”.
- **Battered aliens** ages 21 or over who are designated under 8 USC 1641(c) and who do not live with the abuser. Refer to [Battered Aliens](#) for more information.

NOTE: The five-year bar does not apply to aliens in these categories who entered the U.S. before August 22, 1996. The five-year bar also does not apply to aliens in these categories who are children under the age of 21.

### **Aliens Exempt From Five-Year Bar**

Legal reference: 441 IAC 75.11(249A), P.L. 104-193, P.L. 105-33; 42 U.S.C. 1396b(v) as amended by P.L. 111-3, and Iowa Code 249A.3A

If all other Medicaid eligibility factors are met, aliens with one of the following statuses are eligible for Medicaid from the date the person obtains the status:

- **Qualified aliens who entered the United States before August 22, 1996**, including conditional entrants under section 203(a)(7) of the Immigration and Nationality Act (INA) as in effect before April 1, 1980.  

NOTE: Contact SPIRS for help when an alien entered before August 22, 1996, but obtained a qualified status on or after that date.
- **Refugees** admitted under section 207 of the INA.
- **Amerasian** aliens treated as refugees.
- Aliens granted **asylum** under section 208 of the INA.
- Aliens whose **deportation or removal is withheld** under section 243(h) or section 241(b)(3) of the INA.
- **Cuban or Haitian entrants** under section 501(e) of the Refugee Education Assistance Act of 1980.

- Members of **federally recognized American Indian tribes and Canadian-born American Indians who have treaty rights** to cross the United States borders with Canada and Mexico. There is an extensive list of these tribes. Contact SPIRS if you question whether a tribe is included.
- Aliens lawfully admitted for permanent residence who are **veterans honorably discharged** for reasons other than alienage and their spouses, surviving unremarried spouses, and unmarried dependent children. This includes the alien spouses, surviving unremarried spouses, and unmarried dependent children of veterans who are U.S. citizens or deceased veterans.
- Aliens lawfully admitted for permanent residence who are **active-duty personnel** of the United States Armed Forces and their spouses, surviving unremarried spouses, and unmarried dependent children.

This includes the alien spouses, surviving unremarried spouses, and unmarried dependent children of active duty personnel who are U.S. citizens or of deceased active-duty personnel. “Active duty” excludes temporary full-time duty for training purposes performed by members of the National Guard or Reserves.

- **Victims of trafficking** with a certification letter (for adults) or an eligibility letter (for minor children) issued by the U.S. Department of Health and Human Services (HHS) that has been verified by calling the trafficking verification line. Trafficking victims are eligible only for a limited period of time from the date in the original certification or eligibility letter, unless HHS issues a recertification letter. See [Victims of Trafficking](#) for additional information.

Without this letter or when the time limit expires, trafficking victims are not eligible for Medicaid unless another qualifying status is obtained.

- **Iraqi and Afghan Special Immigrants.** See [Iraqi and Afghan Special Immigrants](#) for specific instructions. These Special Immigrants are either lawful permanent residents (LPRs) or Conditional Permanent Residents (CPRs) but are eligible for Medicaid to the same extent as refugees.
- **Afghan Parolees.** These individuals are eligible for Medicaid to the same extent as refugees. See [Afghan Parolees](#) for specific instructions, including time limits specific to Afghan Humanitarian Parolees.
- **Citizens of the Compact of Free Association States (COFA)**, which includes the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, who are lawfully residing in the U.S.

NOTE: COFA migrants age 21 and over who adjust to LPR status are no longer exempt from the five-year bar (unless they meet another exemption from the five-year bar); children under age 21 who adjust from COFA to LPR status remain exempt from the five-year bar. The five-year bar for individuals age 21 and over who adjust from COFA to LPR status is calculated as follows:

- If the individual adjusted to LPR status before 12/27/2020, the five-year bar begins on the date they adjusted to LPR.
- If the individual adjusted to LPR status after 12/27/2020, the five-year bar started on the date they entered the US as a COFA migrant. Such individuals could be qualified non-citizens (with a VLP Eligibility Indicator QNC=Y) as early as 12/27/2020.

- Alien children under the age of 21 who are:
  - Paroled into the United States under section 212(d)(5) of the INA for a period of at least one year;
  - Battered as defined in 8 USC 1641(c). Refer to [Battered Aliens](#) for more information; or
  - In one of the statuses listed after the definition of “[lawfully residing](#).” NOTE: Verification that these children continue in one of these statuses is required at each annual review.
  - Attempt to use the documentation presented at application to verify the child’s continued lawfully residing status.
  - If additional documentation is needed, the household must provide proof of continued lawfully residing status for the child.
  - When continuation in one of these statuses cannot be verified, see also [Limited Eligibility for Certain Aliens](#) for benefits available to the child.

When these lawfully residing children reach age 21, they become ineligible for Medicaid other than limited Medicaid for emergency services unless they obtain another qualified alien status.

- Children under age 21 who have been lawfully admitted for permanent residence (LPR).

NOTE: Verification that these children continue in LPR status is required at each annual review. When reverifying alien status for these children, follow policies and procedures detailed at [Alien Status Attestation and Verification Requirements](#), [Reasonable Opportunity Period \(ROP\) for Eligible Aliens](#), and [Limited Eligibility for Certain Aliens](#).

When LPR children reach age 21, they become subject to the five-year bar. They are ineligible for Medicaid other than limited Medicaid for emergency services until they meet the five-year requirement or meet another exemption.

A system-generated notice will be issued canceling the child at age 21 and recalculating eligibility for other household members based on the reduced household size.

1. Child A (age 20) receives FMAP with her 2-year-old son. She has been in the United States as an LPR for seven years. When she turns age 21, she can continue on FMAP with her child, if all other eligibility requirements are met.
2. Same as example 1, except Child A has been in the United States as an LPR for only two years. When she turns age 21, she is no longer eligible for Medicaid (except for emergency services) unless another exemption from the five-year bar applies.

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## **Migrants**

Legal reference: 441 IAC 75.11(1), (2), and (3)

Migrants are people who travel between states or counties to find work on a seasonal basis. They are usually employed in agricultural situations. If the migrant is also an alien, verify the migrant's alien status to determine Medicaid eligibility.

When a migrant enters Iowa for employment purposes, the person is considered a resident. This policy makes it possible for migrants to meet the residency requirement and to receive Medicaid, if otherwise eligible. The migrant must meet all other program eligibility requirements.

## **Social Security Number**

Legal reference: 42 CFR 435.910, IAC 75 (Rules in Process)

Except for aliens in the United States unlawfully who may qualify only for limited Medicaid for emergency services, each person applying for Medicaid must meet the requirements described at 8-C, [Social Security Number](#).

Individuals who are not in the U.S. lawfully do not have the documentation required to apply for a SSN. However, do not assume that an individual currently without a lawful alien status does not have a SSN.

Some unlawful aliens may have SSNs because they originally gained entrance to the United States with a lawful status, but their status has since changed to unlawful. Ask for the SSN from an unlawful alien, but do not deny assistance if the person fails to provide the number.

When necessary, assist Victims of Trafficking in obtaining non-work SSNs by sending a letter to the Social Security Administration that:

- Is on letterhead.
- Includes the applicant's name.
- Mentions that this person is a trafficking victim.
- References that the number is required to receive Medicaid, not for work.
- States that the applicant meets the requirements to receive Medicaid except for the SSN.

## **Victims of Trafficking**

Legal reference: Trafficking Victims Protection Act of 2000 (TVPA), P.L. 106-386 {8 U.S.C. 7105(b)(1)} and Trafficking Victims Protection Reauthorization Act of 2003 (TVRA), P.L. 108-193; 45 CFR 400.211; 441 IAC 60.7(217), 75 (Rules in Process)

Aliens who are certified as Victims of Trafficking by the U.S. Department of Health and Human Services' (HHS) Administration for Children and Families' Office on Trafficking in Persons (OTIP) are "qualified aliens" for Medicaid. A victim of trafficking is eligible for Medicaid to the same extent as a person with refugee status for the period for which HHS certifies them.

The HHS certifies a victim of trafficking for the period described at 6-D(1), [Time Limit](#). The person's "date of entry" is the date stated in the body of the HHS certification letter (for adults) or eligibility letter (for children under 18 years old).

Notify the Bureau of Refugee Services of individuals with victim of trafficking status using form 470-0481, *Notification to the Bureau of Refugee Services*.

Applicants without HHS victim of trafficking letters are subject to all the regular eligibility requirements of the Medicaid program. However, if you encounter a person you believe may meet the definition of a trafficking victim, go through the usual channels to obtain instructions on providing the person with assistance in contacting HHS for possible certification. See Comments at the end of this section for additional instructions for some specific immigration document types.

Some victims of trafficking may have standard immigration documents in addition to the HHS letter, while other victims of trafficking will only have the HHS letter. Processes for determining a Medicaid applicant is a victim of trafficking depend upon what documentation the individual has available.

When a possible victim of trafficking applies for Medicaid:

- If sufficient information is available to attempt an electronic data match and when prompted to do so by the electronic data match response (e.g. when the VLP response sets the Five-Year Bar Apply indicator to P for an individual with a TI or ST6 COA, or Form I-766 Category Code A16), request additional documentation from the individual to verify status as a victim of trafficking.

A victim of trafficking should always have a letter issued by the HHS, and this letter must be obtained from the applicant and verified to establish the individual is a trafficking victim for Medicaid eligibility purposes.

The HHS letter is not a document that can be verified by electronic data match, and it must not be submitted in VLP/SAVE. Instead, contact the trafficking verification line at (866) 401-5510 to confirm the validity of the HHS letter and to notify the HHS of the assistance for which the person has applied.

- **If sufficient information is not available to attempt an electronic data match**, request the HHS victim of trafficking letter from the individual. Contact the trafficking verification line at (866) 401-5510 to confirm the validity of the HHS letter and to notify the HHS of the assistance for which the person has applied.

An HHS letter for an individual with a trafficking victim status means that individual is not subject to the five-year bar during the period described at 6-D(1), [Time Limit](#).

Track the end of the period of trafficking victim status. Redetermine eligibility at that time. If a victim of trafficking becomes a qualified alien based on regular alien policies, use the new eligible alien status when redetermining eligibility for that person.



The time limit for trafficking victim status is set by the procedure found in 45 CFR 400.211. On March 28, 2022, the time limit increased from eight months to twelve months for individuals that entered the country on or after October 1, 2021. This change was communicated to states in Dear Colleague Letter 22-12 and published in the Federal Register at <https://www.govinfo.gov/content/pkg/FR-2022-03-28/pdf/2022-06356.pdf>. Refer also to NJA0063, *Alien Chart*, for ELIAS system instructions.

**Comments:** A victim of trafficking may have a “Derivative T visa.” People who have a Derivative T visa are eligible for Medicaid provided they meet other program criteria.

Alternatively, a victim of trafficking may have a U visa (or code A19 or A20 on the *Employment Authorization Document (EAD)*); this is an indication that a person might be a victim of trafficking. However, U visas are also issued to victims of other crimes, so a U visa does not automatically mean the adult is a victim of trafficking. If an adult provides a U visa (or EAD with code A19 or A20), follow up to find out if they are either a victim of trafficking or a battered alien. NOTE: A child under age 21 with a U visa (or code A19 or A20 on the EAD) is a qualified alien under the definition of “[lawfully residing](#).”

Refer to the [Alien Documentation Chart – Medicaid Only](#) for additional document types and section codes that may indicate status as a victim of trafficking.

### **Iraqi and Afghan Special Immigrants**

Legal reference: P.L. 110-161 (December 26, 2007); P.L. 110-181 Section 1244(g) (January 28, 2008); P.L. 110-329 Section 101 of Division A (September 30, 2008); P.L. 111-08 (March 10, 2009) Section 602; P.L. 111-118 (December 19, 2009) Section 8120; P.L. 117-43 Section 2502

This section only applies to Iraqi and Afghan Special Immigrants (aka Iraqi and Afghan Special Immigrant Visa (SIV) Holders). It does **not** apply to Afghan Parolees (i.e. Special Immigrant Parolees or Humanitarian Parolees) discussed later in this chapter.

Certain Iraqis and Afghans who acted as interpreters for the U.S. military or were employed by or on behalf of the U.S. government were given a special immigrant status. Beginning December 19, 2009, all Iraqi and Afghan aliens granted special immigrant status were lawful permanent residents (LPRs).

In 2021 due to the urgent need to relocate Afghan individuals affiliated with the U.S. mission in Afghanistan (and their spouses/unmarried children under age 21), some Afghan Special Immigrants also began to be admitted with Conditional Permanent Resident (CPR) rather than LPR status. The date of entry is calculated differently for Afghan SI CPRs; see 6-D, [Documentation Required](#) for more information on determining the date of entry for Afghan SI CPRs.

All Iraqi and Afghan Special Immigrants (whether with LPR or CPR status) are exempt from the five-year bar on assistance and eligible for full Medicaid assistance to the same extent as refugees.

Apply all alien status attestation and verification requirements already discussed in this chapter. See also special handling instructions including workaround instructions in the Afghan Evacuees section of NJA0063, *Alien Chart* to ensure correct eligibility results in ELIAS.

**Comment:** The effective date of eligibility for Iraqi and Afghan Special Immigrants initially began no earlier than December 26, 2007. Before December 19, 2009, Iraqi and Afghan Special Immigrants over the age of 21 were subject to the five-year bar after an eight-month initial Medicaid eligibility period; (before March 11, 2009, the initial period for Afghans was limited to six months).

### **Afghan Parolees**

Legal reference: P.L. 117-43 Section 2502

In 2021, due to the urgent need to relocate Afghan individuals affiliated with the U.S. mission in Afghanistan and their spouses/unmarried children under age 21, Afghan individuals began to be admitted with the following Parolee statuses:

- Afghan Special Immigrant (SI/SQ) Parolees - Individuals who would be eligible for a Special Immigrant Visa (SIV) from USCIS but were evacuated to the U.S. before completing the SIV application process.
- Afghan Humanitarian Parolees (Non-SI/SQ) Parolees - Individuals who are not eligible for SIV status from USCIS who were evacuated for humanitarian reasons and paroled into the U.S.

Afghan Parolees (both SI/SQ and Humanitarian) will generally receive a parole period of 2 years. While in such status, they are exempt from the five-year bar on assistance and are eligible for full Medicaid assistance to the same extent as refugees, **with the following limitations** specific to Afghan Humanitarian (Non-SI/SQ) Parolees:

- Only Afghan Humanitarian Parolees paroled into the U.S. between July 31, 2021 and September 30, 2022 are eligible under this provision. In addition, the following family members of Afghan Humanitarian Parolees are eligible under this provision even if they are granted parole after September 30, 2022: spouses or children; and parents or legal guardians if the Afghan individual is an unaccompanied minor.
- Afghan Humanitarian Parolees are **only** eligible for a limited time period, either through March 31, 2023 or until the end of their parole term, whichever is later. At the end of this time limit, eligibility for adults 21 and over will depend upon their updated alien status; children under 21 may remain qualified aliens not subject to a five-year bar while they hold “lawfully residing” status.

NOTE: Adults age 21 and over who arrived in the U.S. as Afghan Humanitarian Parolees before July 31, 2021 are subject to the five-year bar. Children under age 21 who arrived in the U.S. as Humanitarian Parolees before July 31, 2021 are qualified aliens not subject to the five-year bar while they hold “lawfully residing” status.

The date of entry is calculated differently for Afghan Parolees. See 6-D, [Documentation Required](#) for more information on determining the date of entry for these refugee statuses. Apply all alien status attestation and verification requirements already discussed in this chapter. See also special handling instructions including workaround instructions in the Afghan Evacuees section of NJA0063, *Alien Chart* to ensure correct eligibility results in ELIAS.

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## **Sponsor Affidavits of Support and Deeming**

Legal reference: P.L. 104-193, P.L. 104-208, 8 U.S.C. §§ 1182(a)(4), 1183a(1996);  
42 U.S.C. 1396b(v) as amended by P.L. 111-3; 20 CFR 416.1160(a), 416.1166a; 441 IAC  
75.11(3)

Aliens who seek admission to the United States as lawful permanent residents must establish that they will not become a “[Public Charge](#).” Many aliens establish that they will not become public charges by having “sponsors” who pledge to support them. An alien may have more than one sponsor. A sponsor is a person who signs an “affidavit of support” agreeing to support an alien to help the alien obtain lawful permanent resident status. There are three versions of the *Affidavit of Support*:

- Form I-864 or Form I-864A. This form is enforceable since December 19, 1997.
- Form I-134. This form is not enforceable.
- Form I-361. This form is enforceable and must be submitted with a petition for treatment as an Amerasian. However, deeming will not apply to persons with this type of support affidavit.

Sponsor deeming is the process of considering the income and resources of the sponsor to be available to the sponsored person, whether or not the income or resources are actually made available. The sponsor deeming rules apply **only** to persons who:

- Are lawful permanent residents (LPRs),
- Applied for lawful permanent resident status on or after December 19, 1997, and
- Are sponsored by a person who signed Form I-864, *Affidavit of Support*, or Form I-864A. (Sponsors can also include spouses or other eligible adult members of the household of the individual providing the Form I-864, *Affidavit of Support*, if they execute a Contract Between Sponsor and Household Member (Form I-864A).)

**NOTE:** Income (and for Non-MAGI-related, resources) deemed from or actually provided by a sponsor is not countable for the eligibility of other members of a sponsored alien’s household unless they themselves are also sponsored by an individual who signed a Form I-864, *Affidavit of Support*, or a Form I-864A Contract.

For deeming purposes, deeming will not apply when the sponsor is:

- An organization such as a church or service club.
- An employer who does not sign an affidavit of support.
- The alien’s eligible or ineligible spouse or a parent whose income is otherwise considered in determining the alien’s Medicaid eligibility.
- If the eligible couple separates and begins living in separate households, then the sponsor-to-alien deeming rules apply.

The following sections explain:

- [Affidavits of support](#)
- [Verifying the sponsor's information](#)
- [Exceptions to deeming](#)
  - [Establishing qualifying quarters](#)
  - [Verifying qualifying quarters](#)
  - [Battered aliens](#)
  - [Indigent aliens](#)
- [Calculating deemed sponsor income and resources](#)

### **Affidavits of Support**

Legal reference: P.L. 104-193, P.L. 104-208; 8 U.S.C. §§ 1183a(1996);  
44 IAC 75.11(3)

All affidavits of support signed before December 19, 1997, are “old version” affidavits of support. Do not assume that because the person entered the United States after December 19, 1997, the person will have a new *Affidavit of Support*. The person may have entered the country **after** December 19, 1997, but applied for an immigrant visa **before** that date.

The following are affidavits of support:

- **Form I-134:** The USCIS will certify whether an applicant has a sponsor and, if so, what kind of affidavit the sponsor signed. Do **not** deem income or resources from a sponsor that has signed the *Affidavit of Support*, Form I-134, as these are not enforceable contracts.
- **Form I-361:** This is an enforceable contract for Amerasians for certain nationals of Korea, Vietnam, Laos, Kampuchea, or Thailand born after 1950 and before October 22, 1982. However, do **not** deem income or resources from a sponsor that has signed the Form I-361.
- **Form I-864 or Form I-864A:** For people who are applying for either a Non-MAGI-related or MAGI-related coverage group and have an *Affidavit of Support*, Form I-864, or Form I-864A, deem income, and for Non-MAGI-related, resources, to the sponsored lawful permanent resident alien unless one of the exemptions under [Exceptions to Deeming](#) applies. NOTE: Because sponsor deeming only applies to people sponsored under the *Affidavit of Support*, Form I-864, or Form I-864A, electronic data matching returns information only about sponsorships provided under these versions of the affidavit of support.

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## **Verifying Sponsorship and Sponsor's Information**

Legal reference: Section 421 of P.L. 104-193; 42 U.S.C. 1396b(v) as amended by P.L. 111-3

Verify sponsorship of any Medicaid applicant or member who became a lawful permanent resident (LPR) on or after December 19, 1997, unless the person is exempt from sponsor deeming. See [Exceptions to Deeming](#) later in this chapter for additional information on who is exempt from sponsor deeming.

Electronic data matching is the primary method of verifying sponsorship. An individual shall only be required to verify sponsorship when verification could not be obtained electronically. NOTE: If the person voluntarily provides *Affidavit of Support*, Form I-864, or Form I-864A, accept this as proof of sponsorship.

To verify sponsorship via data matching:

- In VLP, enter a value of Y in the VLP INITIREQUESTSPONSORDATAIND field and leave empty the NOSPONSRSNCODE field. These entries will ensure VLP data matching identifies when an individual is sponsored under *Affidavit of Support*, Form I-864, or Form I-864A.
- In SAVE, verify sponsorship through SAVE by selecting REQUEST ADDITIONAL VERIFICATION on the CASE DETAILS page. Complete the *Additional Verification Data Request* form and enter "sponsorship information request" in the SPECIAL COMMENTS field. If the response from SAVE indicates the person was not sponsored on Form I-864, or Form I-864A, sponsor deeming does not apply.

If the electronic data match response verifies that the person has a sponsor who signed *Affidavit of Support*, Form I-864, or Form I-864A, the name, address, and SSN of the sponsor will be provided in the response. NOTE: If the individual has a joint sponsor, substitute sponsor, and/or multiple sponsors, the electronic data match response will return identifying information on each sponsor.

If sponsorship under Form I-864 or Form I-864A is verified, ask the alien applicant or member if their sponsor is actually providing support. See [Indigent Aliens](#) to determine if they are exempt from sponsor deeming based on the actual amount of income the sponsor is providing.

When sponsor deeming applies, request verification of the income (and for Non-MAGI-related, resources) of the sponsor from the sponsored alien. NOTE: Sponsor deeming requirements apply to each sponsor (including joint/substitute/multiple sponsors) who executed Form I-864, as well as to any of their household members who executed a Form I-864A Contract.

Do not approve Medicaid eligibility for sponsored alien(s) until you receive the sponsor's verification. However, when the sponsored person needs more time or help obtaining information from a sponsor, follow the procedures in 8-B, [Verification](#) for obtaining information from a third party.

An applicant or member who provides a signed release to a specific individual for specific information has met the requirement for supplying requested information or verification. If a third party does not provide the requested information, contact the applicant to obtain the best information available about the sponsor's income (and for Non-MAGI-related, resources) and determine eligibility based on the information provided.

NOTE: While waiting for the sponsor's verification, do not delay the eligibility determination for other members of a sponsored alien's household unless they themselves are also sponsored by an individual who signed a Form I-864, *Affidavit of Support*, or Form I-864A.

### **Exceptions to Deeming**

Legal reference: P.L. 104-193 as amended by Section 552 of P.L. 104-208; 42 U.S.C. 1396b(v) as amended by P.L. 111-3; 20 CFR 416.1166a and 416.1204

Lawful permanent resident aliens whose sponsor signed a new version *Affidavit of Support*, Form I-864, or Form I-864A, are exempt from sponsor to alien deeming when the alien:

- Has attained citizenship.
- Can be credited with 40 qualifying quarters. See [Establishing Qualifying Quarters](#) and [Verifying Qualifying Quarters](#).
- Entered the United States or applied for a visa or adjustment of status before December 19, 1997.
- Adjusted to lawful permanent resident (LPR) from an alien status that is not required to have an affidavit of support on file (i.e. refugees, asylees). Persons who adjusted from these statuses are exempt from sponsor deeming, even if they have sponsors.
- Does not have a sponsor. (This includes when a sponsor dies.)
- Has a sponsor who signed an *Affidavit of Support* other than Form I-864 or Form I-864A. Sponsor deeming does not apply if the sponsor signed Form I-134 or Form I-361, which are also affidavits of support.
- Is a victim of battering or extreme cruelty in the United States. The victim's children or parents are also exempt from sponsor deeming. This exception applies for 12 months from the date it is determined that the person qualifies as a battered alien. See [Battered Aliens](#) for more information.
- Is indigent. This exception applies for 12 months from the date it is determined that the person is indigent. See [Indigent Aliens](#).
- Is a "lawfully residing" child under age 21 as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii).

In addition, end sponsor deeming:

- When the sponsored alien dies or permanently leaves the United States (Deeming stops effective with the month the change occurs.)
- For SSI-related Medicaid, if the sponsored alien becomes blind or disabled (at any age) after admission to the United States as an LPR. (Deeming stops effective with the month the person's disability or blindness begins.)
- For SSI-related Medicaid, three years after the date the sponsored alien was admitted to the United States as an LPR. (Deeming stops effective the month in which the third anniversary from admission to the United States occurs.)

**Establishing Qualifying Quarters**

When a lawful permanent resident is not otherwise exempt from sponsor deeming, you must determine the number of qualifying quarters with which the person can be credited.

The following chart lists the amount a person had to earn to get one credit for the years 1978 and later. (For years before 1978, contact SPIRS for assistance.)

To calculate the number of quarters for a year, divide the person’s total earnings for the year by the amount needed to get one credit. Use only full quarters. For example, 2.95 quarters are rounded down to 2 quarters.

For earnings from employment, use the gross amount of earnings. For earnings from self-employment, use the amount of earnings after allowable self-employment expenses have been deducted.

<b>Amount Needed to Earn a Qualifying Quarter</b>			
<b>Year</b>	<b>Earnings Needed to Get One Credit</b>	<b>Year</b>	<b>Earnings Needed to Get One Credit</b>
1978	\$250	2001	\$830
1979	\$260	2002	\$870
1980	\$290	2003	\$890
1981	\$310	2004	\$900
1982	\$340	2005	\$920
1983	\$370	2006	\$970
1984	\$390	2007	\$1,000
1985	\$410	2008	\$1,050
1986	\$440	2009	\$1,090
1987	\$460	2010	\$1,120
1988	\$470	2011	\$1,120
1989	\$500	2012	\$1,130
1990	\$520	2013	\$1,160
1991	\$540	2014	\$1,200
1992	\$570	2015	\$1,220
1993	\$590	2016	\$1,260
1994	\$620	2017	\$1,300
1995	\$630	2018	\$1,320
1996	\$640	2019	\$1,360
1997	\$670	2020	\$1,410
1998	\$700	2021	\$1,470
1999	\$740	2022	\$1,510
2000	\$780	2023	\$1,640

**Each** person can get up to a total of four qualifying quarters of credit each calendar year based on the person's own earnings. (The person may be credited with additional quarters in a calendar year based on earnings of a parent or spouse, as described later in this section.)

Mr. G earned \$5,000 gross income in 1995. ( $\$5,000$  divided by  $\$630 = 7.936$ ) Although the result equals over seven quarters, he is credited with four qualifying quarters in 1995.

NOTE: Starting with January 1, 1997, do not count the income from any quarters in which an alien received any type of federal means-tested public assistance during the quarter. "Means-tested public assistance" includes FIP, SSI, Medicaid, and Food Assistance.

Medicaid received by an individual, household, or family eligibility unit (except for limited Medicaid for emergency services) counts as receipt of "means-tested public assistance."

Child A receives MAC. Although the parents are not receiving Medicaid for themselves, they are part of the family eligibility unit that is receiving "means-tested public assistance." Do not count the parents' income from the quarter that the child received MAC for the 40-quarter determination.

The quarters in a calendar year are: January through March, April through June, July through September, and October through December.

This means if an alien received FIP, Food Assistance, Medicaid, or SSI in June 1997, you would subtract the person's April, May, and June earnings from the total 1997 earnings and divide the remainder to figure how many qualifying quarters the person has.

Lawful permanent residents can count their spouse's quarters earned during the marriage in addition to their own quarters in order to meet the 40-quarter requirement. For example, if each spouse had 20 quarters, you would add the quarters together. Both spouses would be counted as having 40 quarters and both would meet this requirement.

Use the same formula to calculate qualifying quarters earned by a parent or spouse. Count the spouse's quarters earned during the marriage, regardless of whether the spouse is a citizen or not, when:

- The couple is currently married, or
- A spouse is deceased and the surviving spouse is not remarried, or
- The couple is separated but not divorced.

Mr. and Mrs. L are working in 2004. Mr. L earned \$25,000 gross income and Mrs. L earned \$3,000 gross income.  $\$25,000$  divided by  $\$900 = 27.77$ , which is converted to the maximum allowable four quarters.  $\$3,000$  divided by  $\$900 = 3.33$ , which is converted to three quarters. Both Mr. and Mrs. L are credited with seven qualifying quarters for 2004.



When calculating creditable quarters for the year in which the couple became married, count all earnings received beginning with the date of marriage.

Mr. and Mrs. B married on May 25, 2006. Mr. B had no earnings in 2006. Mrs. B earned \$15,000 between May 25 and December 31, 2006.  $\$15,000 \div \$970 = 15.46$ , which is converted to four quarters. Both Mr. and Mrs. B are credited with four qualifying quarters for 2006.

If the couple divorces, any quarters earned by the spouse during marriage are lost. However, if the divorce occurs after the person has already been credited with the 40 quarters and determined eligible for Medicaid, do not subtract qualifying quarters earned by the former spouse.

1. Mr. and Mrs. J entered the United States in July 2006 as lawful permanent residents (LPRs). In July 2011, they apply for Medicaid. Although Mr. J has a sponsor, it is determined that sponsor deeming does not apply because Mr. J can be credited with 20 qualifying quarters of his own and 20 quarters of Mrs. J's.  
  
Mr. J is exempted from sponsor deeming. All other eligibility factors are met, so Medicaid is approved. In October 2011, the couple divorces. The qualifying quarters previously credited to each spouse are not recalculated.
2. Same as Example 1 except the couple has already divorced by the time Mr. J applies for Medicaid in July 2011. Mr. J can be credited with his own qualifying quarters but not those of his former spouse.  
  
Mr. J is not exempt from sponsor deeming until he has 40 creditable qualifying quarters. Eligibility for Mr. J's eligible group will be determined using the income deemed from the sponsor and any other countable income of the eligible group.

In some circumstances, lawful permanent residents can also count the quarters earned by a parent in addition to their own quarters to meet the 40-quarter requirement. For this policy, "parent" means the natural or adoptive parent or the stepparent.

A lawful permanent resident may be credited with any qualifying quarter earned by the person's parents while the person was under 18 years of age. This includes quarters worked by the parents before the person's birth. Count a parent's quarters regardless of whether the parent is a citizen or not.

When calculating creditable quarters for the year in which a child turned 18, count all earnings received by the person's parents while the child was less than 18 years of age.

Child D turned 18 on June 15, 2006. His mother earned \$12,000 between January 1, 2006, and June 14, 2006. Divide  $\$12,000 \div \$970 = 12.37$ , converted to the maximum allowable four quarters. Child D is credited with four qualifying quarters from his mother in 2006.

Count the quarters earned by a stepparent during the stepparent relationship if the stepparent relationship still exists. Do not count quarters earned before the stepparent relationship began. Death of the stepparent does not end the relationship.

If the parent and stepparent divorce, any quarters earned by the stepparent are lost. However, if the divorce occurs after the person has already been credited with the 40 quarters and determined eligible for Medicaid, do not subtract qualifying quarters earned by the stepparent.

Do not count quarters earned by a child toward the eligibility of a parent.

### **Verifying Qualifying Quarters**

When an exception to sponsor deeming will affect the eligibility determination, verification of qualifying quarters must be obtained. Electronic data matching is the primary method of verifying qualifying quarters.

An individual shall only be required to verify qualifying quarters when verification could not be obtained electronically. This includes getting verification of the qualifying quarters earned by a spouse, parent, or stepparent.

In addition to verification from the Social Security Administration (SSA), you can use documentation such as:

- Wage stubs or W-2's
- Employer's statement
- Income tax forms

Do not request proof of qualifying quarters if an exception to sponsor deeming will have no impact on the Medicaid eligibility determination.

Ms. J is a sponsored LPR living with her two minor children. The IM worker determines Ms. J is eligible for FMAP even if income is deemed from her sponsor. Because an exception to sponsor deeming has no impact on Medicaid coverage, proof of qualifying quarters is not requested from Ms. J.

A person who does not have acceptable proof is responsible for obtaining necessary verification from the SSA. SSA can verify quarters starting with the year 1930. If the applicant provides verification from SSA of less than the required 40 qualifying quarters but disputes the SSA records, allow the applicant an opportunity to resolve the discrepancy.

In either situation:

- I. Instruct the applicant in writing to obtain:
  - The necessary verification, or
  - Proof that the verification has been requested or that SSA is investigating the discrepancy.

Include in the note that income (and for Non-MAGI-related, resources) will be deemed from the sponsor if the requested verification is not received within ten calendar days. Also ask that the applicant let you know if more time is needed to obtain the requested verification or proof of request for the verification.

2. Deem income (and for Non-MAGI-related, resources) from the sponsor if you do not receive the requested verification or proof for requesting the SSA verification or investigation by the due date (or the extended due date, if applicable).
3. If the applicant provides the requested proof, pend the application until the SSA verification of qualifying quarters is received or until the SSA investigation is completed. Periodically contact the applicant to check on the status of the SSA verification or investigation of the disputed qualifying quarters.

However, do not delay the eligibility determination for household members who can be determined eligible without proof of 40 qualifying quarters and the resulting exception to sponsor deeming.

Mr. M is a sponsored LPR living with his two minor children. He applies for MAGI-related Medicaid for the entire family. Proof of qualifying quarters is needed to determine eligibility for Mr. M because he will be over income for MAGI-related coverage groups if an exception to sponsor deeming is not allowed.

However, the children are not themselves sponsored. MAGI-related Medicaid eligibility is determined for the children without waiting for proof of 40 qualifying quarters.

4. Process the application upon receipt of the SSA verification or the results of the completed investigation. Do not deem income from the sponsor if SSA verifies at least 40 qualifying quarters.

If the completed SSA investigation still verifies less than 40 qualifying quarters, continue to deem income from the sponsor.

### **Battered Aliens**

**Legal reference:** P.L. 104-193 as amended by Section 552 of P.L. 104-208

The determination of battered alien status may impact both the determination of whether:

- An individual has a qualified alien status, as described earlier in this chapter, and
- An individual is exempt from sponsor deeming. A lawful permanent resident (LPR) alien sponsored under *Affidavit of Support*, Form I-864 or Form I-864A, is exempt from sponsor deeming if it is determined that the sponsored person is a battered alien.

Electronic data matching is the primary method of verifying battered alien status. An individual shall only be required to verify battered alien status when verification could not be obtained electronically.

When prompted to do so by the electronic data match response, request documentation from the individual to verify battered alien status.

When an alien is the spouse or child of a United States citizen or a lawful permanent resident, the citizen or lawful permanent resident generally must file USCIS Form I-130, *Petition for Alien Relative*, to allow these family members to remain in the United States. If the petition is not filed (or is withdrawn), the alien has no lawful immigrant status and may face being deported.

In abusive situations, control over the alien's immigration status strengthens the batterer's hold on the victims. For example, the batterer may threaten to stop the visa process if the abused spouse or child attempted to leave their common home or to report the abuse to authorities.

A U visa (or code A19 or A20 on the *Employment Authorization Document (EAD)*) is an indication that a person might be a battered alien. However, U visas are also issued to other categories of aliens, so a U visa does not automatically mean the adult is a battered alien. If an adult provides a U visa (or EAD with code A19 or A20), follow up to find out if they are either a victim of trafficking or a battered alien. A child under age 21 with a U visa (or code A19 or A20 on the EAD) is a qualified alien under the definition of "[lawfully residing](#)." Refer to the [Alien Documentation Chart – Medicaid Only](#) for additional document types and section codes that may indicate status as a battered alien.

The battered person may be the alien, or the child or parent of the alien. The abuser may be a United States citizen or lawful permanent resident family member (spouse, parent, or other relative) who lived in the same household in the United States. To qualify as a battered alien, the person must:

- Present documentation of an approved or a pending petition for a family-based immigrant visa, a self-petition for an immigrant visa, or cancellation of removal, or suspension of deportation, **and**
- No longer live with the abuser.

NOTE: Because of the abusive relationship, battered aliens may not have copies of documents they filed themselves or that were filed on their behalf. Refer applicants who do not have any documentation or who are not certain that a petition for lawful permanent residency has been filed on their behalf to the USCIS.

These individuals may already be working with a domestic violence service provider. If not, also refer them to the National Domestic Violence Hotline (1-800-799-7233) or to the local domestic violence service provider. The local service provider may be able to assist the applicant in obtaining necessary documentation of alien status without jeopardizing the alien's safety or immigration efforts.

Since the 1994 enactment of the Violence Against Women Act, a battered alien may self-petition for lawful permanent residency by using the USCIS Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, without the cooperation or knowledge of the abuser.

### **Indigent Aliens**

**Legal reference:** P.L. 104-193 as amended by Section 552 of P.L. 104-208

A lawful permanent resident (LPR) alien whose sponsor signs *Affidavit of Support*, Form I-864, or Form I-864A, is exempt from sponsor deeming if it is determined that the sponsored person meets indigent criteria of being unable to obtain food and shelter.

Explain to the applicant or member that income (and for Non-MAGI-related, resources) will be deemed from the sponsor and will be considered the sponsored person's income and resources in determining eligibility, unless it is determined that the sponsored person meets indigent criteria of being unable to obtain food and shelter.

If the sponsored person is living with the sponsor, assume that the sponsor is providing food and shelter, so the need for food and shelter is being met. The indigence exception will not be granted and deeming will apply.

If the sponsored person is living apart from the sponsor, ask the sponsored person how much income the sponsor and others outside the household are making available.

Find the sponsored person unable to obtain food and shelter if the gross income of the sponsored person's household (including any income provided by others, including the sponsor) is less than 100% of the federal poverty level for the sponsored person's household size. (See 6-Appendix, [RC-0130, Desk Aid for MAGI, Non-MAGI, and Hawki.](#))

In determining whether the indigence exemption applies, count only the **actual** amount of income that the sponsor and others make available to the sponsored person.

1. Mr. B is an LPR sponsored by an individual under Form I-864, *Affidavit of Support*. Mr. B does not live with his sponsor and does not have the 40 qualifying quarters needed to exempt him from sponsor deeming. Mr. B and his wife are qualified aliens who have met the five-year bar. Their children are U.S. citizens.  
  
Mr. B applies for Medicaid for himself, his wife (not pregnant), and their two children, ages 2 and 3. The household's only income is Mr. B's gross monthly earnings of \$400, plus \$200 provided by his sponsor.  
  
The \$600 total income of Mr. B's household is less than 100% of the federal poverty level for his household size of four persons. Mr. B is determined to be indigent, and sponsor deeming will not apply.
2. Same as Example 1 except that Mr. B is disabled. He receives \$900 Social Security Disability (SSD) income each month, and each of his two children receives \$100 social security because of his disability. Mr. B's sponsor also provides \$200 to him each month.  
  
The total household income of \$1,300 is less than 100% of the federal poverty level for Mr. B's household size of four persons. Mr. B is determined to be indigent, therefore sponsor deeming will not apply.

3. Same as Example 2 except Mr. B has no earnings history, so neither he nor his children receive any social security income. Mr. B's only income is \$734 SSI and \$200 actually provided by his sponsor. A determination of indigence is not needed for Mr. B since he receives SSI.

The IM worker uses income as reported on Mr. B's State Data Exchange (SDX) to determine Mr. B's Medicaid eligibility.

If the worker is aware of income Mr. B is receiving from his sponsor that is not reported on the SDX, the worker reports this income to the Social Security Administration using form 470-0641, *Report of Change in Circumstances – SSI-Related Programs*.

Since Mr. B is on SSI, eligibility for Mrs. B and the two children is determined as a MAGI-related household of three without considering Mr. B's income.

### **Calculating Deemed Sponsor Income and Resources**

Legal reference: 441 IAC 75.11(3); 20 CFR 416.1166a, 20 CFR 416.1204; 42 U.S.C. 1396b(v) as amended by P.L. 111-3

When a lawful permanent resident (LPR) alien is sponsored by a person who signed form I-864, *Affidavit of Support*, or Form I-864A, and sponsor deeming applies, income (and for Non-MAGI-related, resources) are deemed to the sponsored alien after applying allowable deductions and diversions.

Do not include the sponsor(s) in the household size unless they are required according to policy. Determine the household composition according to policies for either Non-MAGI-related or MAGI-related coverage groups.

Calculate the amount of **income** to deem as follows:

1. Determine the amount of each sponsor's monthly nonexempt gross earned and unearned income in accordance with either MAGI-related or Non-MAGI-related policies.
2. For both MAGI-related and Non-MAGI-related coverage groups, allow deductions as follows:
  - Allow a deduction equal to the full SSI amount for one person for the sponsor, or for each sponsor even if married.
  - Allow a deduction equal to one half the SSI amount for one person for the sponsor's spouse (unless both spouses received the full SSI amount deduction because both are sponsors) and for each of the sponsor's dependents. Do not subtract the dependent's income from the amount allowed as a deduction for the dependent.
  - Deduct alimony or child support payments made to persons not living with the sponsor.
  - Deduct payments made to persons not living with the sponsor but who are claimed (or could be claimed) by the sponsor for federal income tax purposes.
  - Divide the amount remaining by the number of aliens sponsored by this sponsor, if known; if not known, the entire amount counts.

3. The result is the amount of income deemed to the sponsored person. Count this amount as unearned income **only** when determining eligibility for the sponsored person(s). Income deemed from or actually provided by a sponsor is **not** countable for the eligibility of other members of a sponsored alien's household unless they themselves are also sponsored by the individual who signed a Form I-864, *Affidavit of Support*, or a Form I-864A Contract.

1. Mr. H applies for Medicaid for himself, his wife (not pregnant), and their two children, ages 2 and 3, who are U.S. citizens. Mr. H is an LPR who is subject to sponsor deeming. No one else in the household is sponsored.

Mr. H and his wife are qualified aliens who have met the five-year bar but do not have 40 qualifying quarters. Mr. H has gross monthly earnings of \$400.

The sponsor has gross monthly earnings of \$3,000. The sponsor's household includes her husband and one child. The sponsor does not pay any alimony or child support, nor does the sponsor make payments to anyone not living with her who is claimed or could be claimed as a tax dependent.

First, the amount of income to deem from the sponsor is calculated as follows:

\$ 3,000.00	Sponsor's gross earnings
- 914.00	Divert for sponsor
- 457.00	Divert for sponsor's spouse
- <u>457.00</u>	Divert for sponsor's child
\$ 1,172.00	Countable as unearned income to the sponsored person

Next, MAGI-related income for Mr. H is calculated as follows:

\$ 1,172.00	Deemed from sponsor
+ <u>400.00</u>	Mr. H earnings
\$ 1,572.00	Mr. H total countable earned and unearned

The only income countable to the rest of the household is the \$400 earned by Mr. H.

2. Mr. N applies for Medicaid for himself and his wife. Mr. and Mrs. N are both elderly and have no children living with them. Mr. N is an LPR who is subject to sponsor deeming. No one else in the household is sponsored.

Mr. N is a qualified alien who has met the five-year bar. His wife is a U.S. citizen. Mr. N receives \$400 social security per month. Mrs. N receives \$1,100 social security.

The sponsor is married with no children. The sponsor's income is \$1,000 social security and a \$400 monthly pension. The sponsor does not pay any alimony or child support, nor does the sponsor make payments to anyone not living with him who is claimed or could be claimed as a tax dependent.

The amount of income to deem from the sponsor is calculated as follows:

\$ 1,400.00	Sponsor's gross income
- 914.00	Diversion for sponsor
- <u>457.00</u>	Diversion for sponsor's wife
\$ 29.00	Countable as unearned income to the sponsored person

Next, Non-MAGI-related Medicaid income for Mr. N is calculated as follows:

\$ 1,100.00	Mrs. N's social security
+ 400.00	Mr. N's social security
+ <u>29.00</u>	Deemed from Mr. N's sponsor
\$ 1,529.00	Countable income for Mr. N
- <u>20.00</u>	Deduction
\$ 1,509.00	> \$1,371 SSI limit for 2

The only income countable for Mrs. N's eligibility determination is her \$1,100 social security and Mr. N's \$400 social security.

Calculate the amount of **resources** to deem as follows:

1. Determine the amount of nonexempt resources of the sponsor in accordance with Non-MAGI-related policies. There are no resource tests for MAGI-related Medicaid.
2. Allow deductions as follows:
  - \$2,000 if the sponsor does not live with a spouse,
  - \$3,000 if the sponsor lives with a spouse who is not a sponsor, or
  - \$4,000 if the sponsor lives with a spouse who is also the alien's sponsor.
3. The result is the amount of resources deemed to the sponsored member. Resources deemed from or actually provided by a sponsor are **not** countable for the eligibility of other members of a sponsored alien's household unless they themselves are also sponsored by the individual who signed a Form I-864, *Affidavit of Support*, or a Form I-864A Contract.
4. Disregard the resources of all household members, including resources deemed to the sponsored adult, when determining eligibility for children in accordance with policies for the applicable Medicaid coverage groups.



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## **Limited Eligibility for Certain Aliens**

Legal reference: 42 CFR 435.406(b), 42 CFR 440.255(b)-(c), 441 IAC 75.11(1) and 75.11(4)

Medicaid benefits are available to pay for the cost of emergency services for an alien who does not meet Medicaid citizenship or alien requirements or social security number requirements. However, the person must meet the financial and categorical eligibility requirements and state residency requirements of an MAGI-related or Non-MAGI-related coverage group.

Emergency medical coverage is also available to otherwise eligible people whose alien status cannot immediately be determined through data matching and who do not qualify for a 90 day ROP, or who do not claim to have a qualified alien status.

Categories of aliens who are potentially eligible for emergency medical coverage include:

- Qualified aliens not eligible for full Medicaid coverage due to the five-year bar.
- Nonqualified alien adults age 21 or over “lawfully residing” in the United States. This may include adults in a “nonimmigrant” alien status.
- Undocumented aliens or aliens in the U.S. unlawfully.

NOTE: A person eligible only for limited Medicaid for emergency services must cure any prior noncooperation issues if cooperation is a requirement of the applicable coverage group. Inform the applicant in writing of any cooperation issue and allow the applicant ten calendar days to cooperate.

Sponsor deeming does not apply when determining eligibility for this coverage.

As a condition of eligibility, the applicant must have had or currently have an emergency medical condition (including labor and delivery). See [Existence of an Emergency Medical Condition](#). Limits of coverage are described under [Payment for Emergency Services](#).

A person must meet **lowa residency requirements** to qualify for limited Medicaid for emergency services. The USCIS may require persons in some alien statuses (e.g., nonimmigrants) to show they intend to maintain and return to their residence abroad. Therefore, such an alien status is an indicator that a person might not meet lowa residency requirements.

However, alien status may **not** be used to determine a person is not an lowa resident. All policies found at [8-C](#), *Residency and Intent to Live in lowa* must be applied when determining whether or not an alien meets lowa residency requirements.

The following categories of people may be ineligible, depending on their lowa residency status:

- Crewmembers on shore leave.
- Aliens traveling through the United States.
- Treaty traders or investors and their families.
- Temporary workers, including agricultural contract workers.
- Visitors for business or pleasure, including exchange visitors.
- Members of foreign press, radio, film or other information media and their families.

- Foreign government representatives on official business, their families and servants.
- International organization personnel and their families and servants.
- Foreign students and their families who are here as dependents and are not otherwise eligible.

1. Mr. P, 40 years old, is unlawfully living in the United States. He received emergency medical care for treatment of a broken nose sustained in an auto accident. Mr. P has no income and is not the parent or other caretaker of a child. Mr. P could be categorically eligible under IHAWP.
2. Ms. D, age 36 and an LPR still within the five-year bar, is living in the United States with her 13-year-old daughter. Ms. D has received emergency medical care. Ms. D has no income, but she is a parent of a child. Ms. D can be eligible for payment of emergency services.
3. Same as Example 2, but Ms. D. has a previous noncooperation with Child Support Recovery Unit (CSRU). The sanction was not imposed because she was not a Medicaid member at the time. Cooperation with CSRU is a requirement of FMAP, the applicable coverage group for Ms. D. She must cooperate with CSRU in order to be eligible for payment of emergency services.
4. Ms. G, 30 years old, is a nonqualified alien residing in Iowa with her 4-year old son. She has a previous noncooperation with CSRU that was not imposed due to her inactive Medicaid status. She receives emergency medical care related to a current pregnancy.

Because Ms. G meets the categorical eligibility requirement for MAC, and CSRU cooperation is not a requirement for the MAC group, the CSRU sanction does not affect her eligibility for Medicaid coverage of emergency services.

### **Existence of an Emergency Medical Condition**

Legal reference: 42 CFR 440.255(b)-(c), 441 IAC 75.11(1)

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

- Placing the patient’s health in serious jeopardy, or
- Serious impairment of bodily function, or
- Serious dysfunction of any bodily part or organ.

The following medical conditions are not considered emergency medical conditions:

- Organ transplant procedure
- Routine prenatal care
- Routine postpartum care

Before granting eligibility, verify the existence of the emergency medical condition and that medical expenses were incurred. Send the *Verification of Emergency Health Care Services*, form 470-4299, to the medical provider who treated the applicant for the emergency medical condition. Either the provider or the provider’s designee may sign the form.

You may also use a signed statement from the medical provider containing the same information as requested by form 470-4299.

Mr. A, 17 years old, is unlawfully living in the United States. He has no income or resources and has filed an application for Medicaid. Mr. A has not been treated for an emergency medical condition. His application is denied, because aliens unlawfully living in the U.S. are eligible only for payment of medical expenses for treatment of any past or current emergency medical condition.

Keep form 470-4299 or the statement verifying the medical care was an emergency in the electronic case file and available for Iowa Medicaid Enterprise (IME) to identify payable claims to avoid overpayments.

### **Payment for Emergency Services**

Legal reference: 42 CFR 440.255(a), 441 IAC 75.11(1) and 76.13(3)

Payment for emergency services is limited to services necessary to treat an emergency medical condition for the dates of service of the emergency.

“Emergency services” means services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care after the sudden onset of an emergency medical condition. Labor and delivery services are covered, including normal deliveries.

Payment may be made for covered services for an alien who requires emergency medical care more than once in a calendar month or in different months. NOTE: A new application is not required for any subsequent emergencies within the same month or month(s) for which limited emergency Medicaid is approved.

Send form 470-4299, *Verification of Emergency Health Care Services*, to the medical provider for each separate medical emergency, including multiple emergencies within the same month.

The IME Provider Services Unit will identify payable claims based on dates of service and services billed by the providers as indicated by the “E” fund code (the third digit of the aid code) in ELIAS, or by the entry of the “C” code in either the TD03 SRV field in the Automated Benefit Calculation (ABC) system or on the *Request for Special Update*, form 470-0397. NOTE: Do not use the *Request for Special Update* form for ELIAS cases; instead, follow processes in EJA0327, *Medical Condition Manage*.

Do not approve emergency services for anyone who has received care related to an organ transplant procedure furnished on or after August 10, 1993.

When an application is approved for an alien who is eligible for emergency services only, it is approved for the months the emergency occurred. This may mean that a person is eligible for one month; if eligible under the Medically Needy coverage group, use a one-month certification period for ongoing eligibility. (Refer to 8-J, [Retroactive Eligibility](#) for policy on retroactive eligibility certification periods).

If an application was not filed in the month of the emergency services, retroactive eligibility for limited emergency Medicaid may be granted only if the applicant meets a category of eligibility for the retroactive period as defined in 8-A, Definitions.

If the dates of service of the emergency span more than one month, the person must be determined categorically and financially eligible for each month. This may mean that a person is eligible for one month and not the others, or the person may be eligible for all months. If eligible under the Medically Needy coverage group, this may mean a larger spenddown due to using income for more than a one-month certification period.

1. Ms. Q, an LPR still in her five-year bar, delivers a baby on April 30. She applies for Medicaid on May 10. Form 470-4299, *Verification of Emergency Health Care Services*, shows the dates of service for treating her emergency medical condition are April 30 through May 5. She is categorically and financially eligible for both months.

The application is approved for emergency services for April and May. The baby, who is a U.S. citizen, is eligible under deemed newborn status through the month of the child's first birthday.

2. Mr. C, a 65-year-old nonqualified alien, has an emergency March 25. He files an application on March 27. Form 470-4299, *Verification of Emergency Health Care Services*, shows March 25 is the only date of service for treating his emergency medical condition. The application is approved for the month of March only.
3. Ms. W, an undocumented pregnant alien, applies for Medicaid on August 3. Form 470-4299, *Verification of Emergency Health Care Services*, shows she was treated for an emergency medical condition for the dates of service of July 25 through August 2. Ms. W is categorically eligible for Medicaid but exceeds the income limits except for Medically Needy.

Because the emergency spanned two months, the Medically Needy certification period will be August with a one-month retroactive certification for July.

Cases processed in ELIAS will receive correct coverage and notices when processed according to EJA0327, *Medical Condition Manage*. The instructions that follow below are **not** applicable to cases in ELIAS.

For applications processed in ABC, manually issue a notice of decision. For applications received and approved in the same month before timely notice day, make entries in ABC for Medicaid coverage of the emergency services. See I4-B(7), [Emergency Medical Services for Aliens](#).

Close the individual or the case effective the first of the month following the last date of service for the emergency. Suggested wording for the manual notice of decision:

Your application for Medicaid is approved for limited benefits only, because you do not meet Medicaid citizen/alien requirements. Payment for emergency services is limited to services necessary to treat an emergency medical condition for the dates of services of the emergency.

Su solicitud para recibir los servicios de Medicaid está aprobada solo para determinados beneficios debido a que usted no cumple con los requisitos respecto de la condición de ciudadano/extranjero de Medicaid. El pago de servicios de emergencia se limita a aquellos servicios que sean necesarios para el tratamiento de una emergencia médica en las fechas de prestación de dichos servicios.

EM 8-L, Existence of an Emergency Medical Condition; 441 Iowa Administrative Code 75.11(249A) and 76.13(3); EM 8-J, Who is Eligible for Medically Needy; 441 Iowa Administrative Code 75.1(35), 75.11(249A), and 76.13(3); EM 8-C, Citizenship; EM 6-B, Eligibility for Aliens; Iowa Administrative Code 50.2(1); 42 CFR 435.406; 42 CFR 440.255.

For applications approved after timely notice day, complete and submit form 470-0397, *Request for Special Update*, to update eligibility rather than make entries on the ABC system. EXCEPTION: For Medically Needy cases with spenddown, open all cases in the ABC system so that the Medically Needy subsystem can track spenddown.

For denials, make ABC system entries and send a system notice of decision.