



Emergency Medicaid for Non-Qualified Immigrants – Medical Coverage and Services for Immigrants

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Introduction and General Guidelines

Recognizing the importance of ensuring that all residents are able to receive necessary emergency medical care, every state has enacted some sort of emergency Medicaid program. While states are constrained by federal law in their ability to provide public benefits to certain types of “non-qualified” aliens, all states provide them coverage for emergency medical services. While program features and restrictions vary somewhat across the states, most have borrowed essential definitions and restrictions from federal law. Thus, there is some degree of conceptual uniformity. For example, because the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) allows the provision of only emergency benefits to nonqualified aliens, most states have borrowed the federal definition of “emergency medical condition” in order to ensure their compliance.

This information is current as of November 18, 2010. It is intended to provide an overview regarding health benefits and emergency Medicaid for each state. Victims in need of legal advice should contact their local domestic violence/sexual assault program for referrals.

Who Qualifies for Emergency Medicaid?

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”), P.L. 104-193, provides that only “qualified aliens” are permitted access to federal and state public benefits, including Medicaid. A “qualified alien” is one who falls into one of the following nine categories:

1. Aliens lawfully admitted for permanent residence under the INA;(Note that aliens who entered the U.S. after the date of PRWORA, August 22, 1996, are subject to a 5 year bar or waiting period on the receipt of benefits.)
2. Refugees admitted under § 207 of the INA;
3. Asylees admitted under § 208 of the INA;
4. Cuban or Haitian Entrants as defined in § 501(e) of the Refugee Education Assistance Act of 1980;
5. Aliens granted parole for at least one year under § 212(d)(5) of the INA;
6. Aliens whose deportation is being withheld under either § 243(h) of the INA in effect prior to April 1, 1997, or § 241(b)(3) of the INA, as amended;
7. Aliens granted conditional entry under § 203(a)(7) of the INA in effect before April 1, 1980;
8. Battered aliens who meet the conditions set forth in § 431(c) of PRWORA;
9. Victims of a severe form of trafficking, in accordance with § 107(b)(1) of the Trafficking Victims Protection Act of 2000.

Under the PRWORA, aliens who do not fall into the categories enumerated above, including undocumented immigrants, are considered “non-qualified aliens.” “Non-qualified aliens” can receive only limited federal and state public benefits. However, they may receive Medicaid benefits for care and services necessary for the treatment of an emergency medical condition (excluding organ transplants), provided that they meet all other

general Medicaid requirements except those related to immigration status.

State residency is one of the federal Medicaid eligibility requirements that non-qualified aliens must meet in order to receive emergency Medicaid benefits. According to the State Medicaid Manual, “in some cases an alien in a currently valid non-immigrant classification may meet the State rules” for residency (see “Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, State Medicaid Manual (1997), Section 3211.10.) The State Medicaid Manual indicates that non-citizens holding valid Employment Authorization Cards (“EAD” cards) as well as those in valid status as visitors, foreign students, and certain work-authorized non-immigrants may be eligible for emergency Medicaid. However, note that in *Okale v. North Carolina Department of Health and Human Services*, 570 S.E. 2nd 741 (N.C. Ct. App. 2002), the state Medicaid agency of North Carolina denied emergency Medicaid benefits to an individual who was in the U.S. on an unexpired tourist visa. The court took the position that a person holding a tourist visa by definition could not have the requisite intent to reside in the state. *Okale*, 570 S.E. 2d at 741. See also, *Salem Hospital v. Commissioner of Public Welfare*, 574 N.E. 2nd 385 (1991). On the other hand, state residency may be established even by individuals who enter the U.S. illegally or without inspection (see, e.g., *St. Joseph’s v. Maricopa County*, 142 Ariz. 94, 688 P. 2nd. 986 (1984).)

What Constitutes an Emergency Medical Condition?

“Emergency medical condition” is defined at §1903(v)(3) of the Social Security Act (“SSA”) (42 U.S.C. §1396b(v)(3)) as 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 (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part. Although the PRWORA severely limits what public benefits a state can provide to non-qualified aliens, it allows states to provide additional state funded benefits if state laws enacted after August 22, 1996 affirmatively provide for such eligibility. There is also a federal rule requiring that the condition must have had a “sudden onset,” however, the Medicaid Act does not contain this language. See *Medical Coverage of Emergency Medical Conditions* by Jane Perkins, in Clearinghouse Review Journal of Poverty Law and Policy September-October 2004.

In nearly every state, the condition for which treatment is sought must be severe and acute, such that the absence of immediate attention may lead to either placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of a bodily organ or part.

There have been several cases dealing with the issue of the type and/or duration of medical services covered by emergency Medicaid. In *Lewis V. Thompson*, 252 F. 3rd 567 (2nd. Cir. 2001,) the Second Circuit determined that the Welfare Reform Act’s denial of pre-natal care to non-qualified aliens had a rational basis and did not violate equal protection. The court also held that citizen children of non-qualified pregnant women are eligible for Medicaid on the same basis as children of citizen mother.

There is no definitive rule on when an emergency condition ends for the purposes of cutting off emergency Medicaid. In *Scottsdale Healthcare, Inc. v. Arizona Health Care Cost Containment System*, 75 P.3rd. 91, 2003 (Ariz. 2003), five plaintiffs were treated for emergency medical conditions, and

the state agency concluded that the emergency medical conditions had ceased when their conditions had been stabilized and they had been transferred from an acute ward to a rehabilitative type ward. The court concluded that even though a patient's initial injury is stabilized, the emergency medical condition may not have ended. The court found that the focus must be on whether the patient's medical condition was acute and of sufficient severity that the absence of immediate medical treatment could result in (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part, the three consequences set for under the statutory language. Similarly, in *Luna v. Division of Social Services*, 589 S.E.2d 917, 2004, a patient who presented to the hospital's emergency room with weakness and numbness in the lower extremities was diagnosed with cancer and underwent surgery. All charges incurred after the initial hospitalization were denied payment on the basis that this was not treatment of an emergency medical condition. The provider argued that all treatment rendered was for an emergency medical condition, as defined by state and federal law, because the patient's cancer was rapidly progressing in a life-threatening manner. The appellate court determined that the lower court should have assessed whether the absence of the continued medical services could be expected to result in one of the three consequences outlines in the Medicaid statute. However, in *Greenery Rehabilitation Group, Inc. v. Hammon*, 2d Cir., Nos. 97-6236 97-6238, July 28, 1998, undocumented aliens who suffered serious traumatic head injuries were not entitled to payment of their expenses for the ongoing care of chronic conditions following initial emergency treatment because such care did not qualify as an emergency medical condition. The court found that, while the patients' sudden and severe head injuries initially satisfied the plain meaning of Sec. 1902(v)(3), the continuous and regimented care subsequently provided to them did not constitute emergency medical treatment pursuant to the statute.

What Procedures Must be Followed for Qualification?

The procedures for receiving such aid vary significantly as well. Several states require or allow individuals to be preauthorized as emergency Medicaid participants prior to the receipt of services. Others refuse to accept applications without a detailed description of the emergency service required; thereby eliminating the possibility of advance authorization. It is important that applicants check their state's rules to determine what steps must be taken in order to qualify for emergency Medicaid, as failure to follow the proper procedures and meet the stated deadlines may prevent eligibility and place the full financial burden for all services on the applicant. Note that under federal law, non-qualified aliens who are eligible for emergency Medicaid need not furnish Social Security numbers. Many states specify that no Social Security number is required. However, in *Crispin v. Croye*, 27 Cal. App. 4th 700, 34 Cal. Rptr. 2d 10 (1st Dist. 1994), a California court held that the state Department of Health could require applicants to declare whether they are US citizens or nationals, or aliens with "satisfactory immigration status."

Please note that in all jurisdictions (other than Puerto Rico and the U.S. Virgin Islands) covered by this summary, Emergency Medicaid Services are available to Non-Qualified Immigrants

Jurisdiction	Eligibility (Income, Residency or Time Period Requirements)	Coverage (What services are covered? How are key terms defined?)	Application Process
Hawaii	<p>Hawaii’s Med-quest program makes special provision for emergency medical assistance to “non-citizens” if all other categorical, income and asset financial requirements are met. Hi. A.D.C. § 17-1723.1-1, 2, 3. http://humanservices.hawaii.gov/wp-content/uploads/2015/03/HAR-17-1723.1-EMER-MED-ASST-TO-NON-CITIZENS.pdf</p> <p>http://humanservices.hawaii.gov/wp-content/uploads/2013/10/HAR-17-1723.2-REFUGEE-MEDICAL-ASSISTANCE-ag-edits-6-4-13.pdf</p> <p>http://humanservices.hawaii.gov/wp-content/uploads/2013/10/HAR-17-1723.3-MEDICAL-ASSISTANCE-FOR-REPATRIATES-5-28-13-Final.pdf</p> <p>The purpose of this program is to provide emergency coverage to aliens who do not qualify for non-emergency related medical assistance[.]” Hi. A.D.C. §17-1723.1-1, 2, 3</p> <p>The only criteria waived under the</p>	<p>Such individuals may receive emergency medical services necessary to stabilize an “emergency medical condition,” which means a sudden onset of a medical condition, including emergency labor and delivery, manifesting itself in acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could be expected to result in:</p> <p>(1) Placing the patient's health in serious jeopardy. (2) Serious impairment to bodily functions. (3) Serious dysfunction to any bodily organ or part.”</p> <p>Hi. A.D.C. § 17-1723.1-10(b).</p> <p>Organ transplants are specifically excluded. Otherwise, medical care is provided through the existing fee-for-service program.</p> <p>Hi. A.D.C. § 17-1723.1-21(c).</p>	<p>Applicants for emergency care must complete an application for medical assistance and submit it to the Department of Human Services or designee, which begins the application process. The application process ends with the Department issuing an eligibility determination to the applicant.</p> <p>Hi. A.D.C. § 17-1711.1-21. http://humanservices.hawaii.gov/wp-content/uploads/2013/10/HAR-17-1711.1-APPLICATION-PROCESSING-REQUIREMENTS-AG-edits-9-4-13.pdf</p> <p>If determined eligible for medical assistance, the individual shall be issued a Medicaid identification card by the department as appropriate.</p> <p>Hi. A.D.C. § 17-1711.1-34. http://humanservices.hawaii.gov/wp-content/uploads/2013/10/HAR-17-1711.1-APPLICATION-PROCESSING-REQUIREMENTS-AG-edits-9-4-13.pdf</p> <p>Information may be obtained through the Med-Quest Division of the</p>

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	provisions of this section is that an individual be either a U.S. citizen or legal permanent resident alien.		<p>Department of Human Services. The most convenient way to obtain this information is at http://www.hawaii.gov/dhs/health/mquest</p> <p>or</p> <p>http://humanservices.hawaii.gov/mqdl/</p> <p>No social security number is required to receive emergency services. Hi. A.D.C. §17-1723-5(b)(4).</p>

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