



Pre-Natal Care for Qualified and Non-Qualified Immigrants - Medical Coverage and Services for Immigrants

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Introduction

Generally speaking, there is a distinction drawn between qualified aliens and non-qualified aliens as to pre-natal care, although there are important exceptions on a state-by-state basis. Consequently, emergency medical care is the only route in many states for non-qualified aliens to receive pre-natal care or services. Necessarily, therefore, while emergency medical services include labor and delivery, “emergency services” generally do not include any non-emergency pre-natal services, as discussed below in the section dealing with “Emergency Pre-Natal Care.”

Pre-natal care is generally available in all states (except where noted below) for “qualified” aliens, as defined by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (discussed below). For a definition of “qualified” and “non-qualified” aliens, reference the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which has certain exceptions of importance for pre-natal care. In addition to aliens legally residing in the United States, “qualified alien” is defined to include:

- Refugees and asylees;
- Cuban or Haitian entrants;
- Battered aliens and victims of trafficking as defined by the Trafficking Victims Prosecution Act of 2000; and
- Aliens granted conditional entry, whose deportation is being withheld, or granted parole for at least one year, as defined by §§ 203, 212, 241 and 243 of the federal Immigration and Naturalization Act.

Certain states have included other groups, such as veterans and Native Americans as “qualified” aliens. Please refer to the information below and referenced legal attributes.

Below are relevant discussions of emergency medical care provisions that are relevant in circumstances where non-qualified aliens fit within the requirements for emergency treatment for pre-natal care.

Emergency Pre-Natal Care

Most states not providing pre-natal care for all aliens, regardless of immigration status, do provide some 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”) allow 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.

The condition for which treatment is sought must generally 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. This standard will preclude most pre-natal services for most non-qualified aliens, except in those states

that do not regard immigration status as a bar to receipt of pre-natal services. In addition, nearly every state requires the non-qualified alien to meet all other criteria for the state's general Medicaid enrollment. These restrictions are generally designed to ensure that the recipient of the public benefit is truly in financial need, and that has a legitimate connection to the state that will bear the cost. Such restrictions often include residency, income, and resource limitations. Applicants must research these provisions carefully, however, as there is substantial variance in these requirements from state to state.

The procedures for receiving such aid vary significantly by state. 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.

Relevant Federal Law

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. Under the PRWORA, non-qualified aliens (including undocumented immigrants) can only receive limited federal and state public benefits, including medical care under Medicaid, for care and services necessary for treatment of an emergency medical condition (except organ transplants) if the non-qualified alien otherwise meets Medicaid eligibility requirements. "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 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. In addition to emergency medical services covering those services necessary to protect life and safety, federally funded Community Health Centers and Migrant Health Centers provide services to underserved populations, which may include undocumented immigrants.

In addition, Chapter XXI of the SSA created the State Children's Health Insurance Program ("SCHIP") (42 U.S.C. §§1397aa, et seq.) Under SCHIP, the Federal Government provides funding to the states to expand health care services for low-income children through stand alone SCHIP plans, Medicaid plans or a combination of both. In 2002, the Dept. of Health and Human Services issued a final regulation (67 Fed. Reg. 61955 (Oct. 2, 2002)) that stated that the definition of the term "children" includes the period from conception to birth and that SCHIP funds may be used by states to provide pre-natal services for the benefit of the child, regardless of the mother's immigration status. As stated in the final rule "requiring exclusion of unborn children on the basis of immigration status is neither legally mandated nor desirable" and "it does not make sense to try to impute an immigration status to an unborn child based on the status of the mother." (See 67 Fed. Reg. 61955, 61967).

State Law Provisions

Pre-natal care consists of preventive healthcare designed to ensure the health and safety of both the mother and child, through the course of pregnancy. The provision of pre-natal care throughout a normal pregnancy increases the likelihood for early detection of any potential complications that may result in a high risk pregnancy, or detrimental health effects once the child is born.

Thirty-nine states plus Puerto Rico, Guam, and U.S. Virgin Islands limit access to subsidized pre-natal care services to citizens and qualified immigrants. Non-Qualified Immigrants are eligible for pre-natal care in 9 states (CA, IL, MI, MO, NE, RI, SD, WA, and WI) plus Washington D.C. In two states (SC and WV) subsidized pre-natal care is not available.

This chart is intended to provide information on state law surrounding public assistance with pre-natal care, specifically in the context of Non-Qualified immigrant mothers. The following chart breaks down relevant laws by state and territory, and provides resources for further analysis. This information on the chart is up to date and current as of 2016. For questions and technical assistance, please contact NIWAP.

Jurisdiction	Eligibility (Name of program(s); Alienage Status; Income Requirement; Residency Requirement)	Coverage (Prenatal care, labor and delivery, post-partum care, emergency medical care)	Application Process
New Mexico	<p>Medicaid Pregnant women who are in families that meet Aid to Families Dependent Children income and resource standards, are eligible for the full range of covered services. Under certain conditions, Medicaid will cover perinatal home health services. Among the conditions considered are whether such services are reasonable and necessary to treat a high risk pregnancy. See NMAC § 8.325.9.13.F (2016).</p> <p>Medicaid covers five hours of case management services per client for each pregnancy. Such services are provided up to 60 days after the end of the month in which the client delivered. Such services include: identification of programs, including programs that teach basic maternal and child health skills; help in accessing identified programs; and help coordinating the delivery of services when multiple providers or programs provide care.</p>	<p>8.325.10.13 COVERAGE CRITERIA: A. “Emergency” as defined for EMSA includes labor and delivery including inductions and cesarean sections, as well as any other medical condition, manifesting itself with acute symptoms of sufficient severity such that the absence of immediate emergency medical attention could reasonably be expected to result in one of the following: (1) the alien recipient’s death; (2) placement of the alien recipient’s health in serious jeopardy; (3) serious impairment of bodily functions; or (4) serious dysfunction of any bodily organ or part. B. Services are covered only when necessary to treat or evaluate a condition meeting the definition of emergency and are covered only for the duration of that emergency. C. After delivery, a child can have legally documented or citizenship status because of its birth in the United States and, therefore, is not eligible for emergency services for aliens. The child may be eligible for another MAD category of eligibility on</p>	<p>MEDICAID ELIGIBILITY/APPLICATION PROCESS</p> <p><u>Presumptive Eligibility for Pregnant Women</u> A pregnant woman may receive ambulatory prenatal care while her Medicaid application is being processed. Her presumptive eligibility must be determined by an approved medical provider. Ambulatory prenatal care will be provided from the date a determination is made through the end of the month following the month in which a determination was made. See NMAC §§8.200.400.11, 8.230.400.18, 8.235.400.18 (2016).</p> <p><u>Citizenship/Immigration Status</u> An individual is eligible for Medicaid if she entered the U.S. prior to August 22, 1996 and is within specific classes of aliens, including aliens lawfully admitted for permanent residence or permanently residing in the U.S. under color of law. Additionally, qualified aliens who entered the U.S. on or after August 22, 1996 and have lived in the U.S. for more than 5 years are eligible for Medicaid.</p> <p>Qualified aliens who entered the U.S. on or after August 22, 1996 are barred from Medicaid eligibility for a period of 5 years. However, such qualified aliens are eligible to receive emergency services. Certain qualified aliens are exempt from the five-year ban, including certain refugees and certain individuals who have been granted</p>

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	<p>See NMAC § 8.326.3.13 (2016).</p> <p>Emergency Medicaid Services for Aliens EMSA is available to undocumented immigrants and others who do not qualify for Medicaid because of their immigration status or who must wait five years to apply for Medicaid. EMSA covers the costs of emergency medical care – including labor and delivery. Patients seeking EMSA must fill out an application form at the hospital <i>or</i> at their local ISD office within 90 days of receiving care. Note that in some cases EMSA may not fully cover emergency medical bills.</p> <p>For undocumented immigrants who reside in the State, Medicaid will pay for necessary emergency services if such persons meet the requirements for Medicaid eligibility. Such services include emergency labor and delivery. See NMAC §§ 8.325.10.9, 8.325.10.13, 8.325.10.14, and 8.325.10.16 (2006)</p> <p>8.325.10.9 EMERGENCY MEDICAL SERVICES FOR ALIENS: The New Mexico MAD is required to pay for necessary emergency medical services furnished to individuals who are aliens, reside in New Mexico and meet the</p>	<p>his or her own.</p> <p>D. Determination of coverage is made by MAD or its designee.</p>	<p>asylum. See NMAC § 8.200.410.11 (2016).</p> <p>Children and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows a lawfully residing child and pregnant woman, if otherwise eligible, to obtain medicaid coverage. A lawfully residing child and pregnant woman must meet the residency requirement as set forth in NMAC 8.200.410.12. See NMAC §8.200.410.11(B)(3).</p> <p><u>Income and Resource Standards</u> In determining an individual’s eligibility for pregnancy-related services, the income standard is 185% of the federal poverty level. This standard is based on the number of family members in the individual’s household. See NMAC § 8.235.500.11 (2016) and NMAC § 8.235.500.13 (2016).</p>

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	<p>requirements for MAD eligibility [42 CFR 440.255(c)].</p> <p>8.325.10.14 SERVICE LIMITATIONS: To meet the categorical eligibility requirements, a recipient who is an alien must be a resident of the state of New Mexico. Proof of residence must be furnished by the alien to the local county ISD office. An individual traveling through New Mexico, entering the United States through New Mexico en route to another destination, visiting in New Mexico or touring New Mexico with a tourist visa does not meet the residence requirement.</p>		

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