

This is an amendment to 8.200.410 NMAC, Sections 11 through 14, and 17, effective 9/1/2024.

**8.200.410.11 CITIZENSHIP:** To be eligible for medicaid, an individual must be a citizen of the United States; United States national or a non-citizen who meets the requirements set forth in either Subsection A or B of 8.200.410.11 NMAC.

**A. Non-citizens who entered the United States prior to August 22, 1996:** Non-citizens who entered the United States prior to August 22, 1996, will not be subject to the five-year bar for purposes of medicaid eligibility. These classes of non-citizens are as follows.

(1) Qualified non-citizens who entered the United States prior to August 22, 1996 and obtained their qualified non-citizens status prior to that date, are eligible for medicaid without the five-year waiting period.

(2) Non-citizens who entered the United States prior to August 22, 1996, and remained continuously present in the United States until the date they obtained qualified non-citizen status on or after August 22, 1996; any single absence from the United States of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt “continuous presence”.

(3) Lawful Permanent Residents (LPRs) are qualified non-citizens per 8 USC 1641.

(4) A non-qualified non-citizen who was permanently residing in the United States under color of law (PRUCOL) on or before August 22, 1996, does not lose medicaid eligibility provided all other factors of eligibility continue to be met. These non-citizens are “grandfathered”. For these individuals, non-citizen eligibility may continue to be based on the PRUCOL standard. An individual eligible under the PRUCOL standard retains his or her grandfathering rights even if benefits terminate.

**B. Qualified non-citizens who entered the United States on or after August 22, 1996:**

(1) Qualified non-citizens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under Category 085), unless meeting an exception below. LPRs who adjust from a status exempt from the five-year bar are not subject to the five-year bar. The five-year bar begins on the date the non-citizen obtained qualified status. The following classes of qualified non-citizens are exempt from the five-year bar:

(a) a non-citizen admitted to the United States as a refugee under Section 207 of the Immigration and Nationality Act;

(b) a non-citizen granted asylum under Section 208 of the Immigration and Nationality Act;

(c) a non-citizen whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act;

(d) a non-citizen who is lawfully residing in the state and who is a veteran with an honorable discharge not on account of non-citizen status; is on active duty other than on active duty for training, in the armed forces of the United States; or the spouse or unmarried dependent child under the age of 18 of such veteran or active duty non-citizen;

(e) a non-citizen who was granted status as a Cuban and Haitian entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) a non-citizen granted Amerasian immigrant status as defined under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988;

(g) victims of a severe form of trafficking, in accordance with Paragraph (1) of Subsection B of Section 107 of the Trafficking Victims Protection Act of 2000, P.L. 106-386;

(h) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);

(i) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies;

(j) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010;

(k) non-citizens receiving SSI; and

(l) battered non-citizens who meet the conditions set forth in Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) as added by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208 (IIRIRA), and amended by Section 5571 of the Balanced Budget Act of 1997, P.L. 105-33 (BBA), and Section 1508 of the Violence Against

Women Act of 200, P.L. 106-386; Section 431(c) of PRWORA, as amended, is codified at 8 USC 1641(c). HSD covers battered non-citizens with state general funds until the five-year bar is met.

~~[(m) — effective December 27, 2020, per section 208 of the Consolidated Appropriations Act, 2021 individuals who are considered compact of free association migrants (COFA) are also referred to as compact citizens. COFA is an agreement between the United States and the three Pacific Island sovereign states of Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau known as Freely Associated States.]~~

(2) Qualified non-citizen: A "qualified non-citizen", for purposes of this regulation, is a non-citizen, who at the time the non-citizen applies for, receives, or attempts to receive a federal public benefit, is:

(a) a non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act;

(b) a non-citizen who is granted asylum under Section 208 of such act; or

(c) a refugee who is admitted to the United States under Section 207 of the act; or

(d) an Amerasian who is admitted to the United States under Section 207 of the act;

or

(e) a non-citizen who is paroled into the United States under Section 212(d)(5) of such act for a period of at least one year; or

(f) a non-citizen whose deportation is being withheld under Section 243(h) of such act or under Section 241(b)(3); or

(g) a non-citizen who is granted conditional entry pursuant to 203(a)(7) or such act as in effect prior to April 1, 1980; or

(h) a non-citizen who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980); or

(i) certain battered women and non-citizen children of battered parents (only those who have begun the process of becoming a lawful permanent resident under the Violence Against Women Act); or

(j) victims of a severe form of trafficking and their spouses, children, siblings, or parents; or

(k) members of a federally recognized Indian tribe, as defined in 25 U.S.C. 450b(e);

or

(l) American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act applies; or

(m) Afghan and Iraqi special immigrants under Section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

~~[(3) — Children under age 21 and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing children under age 21 and pregnant women, if otherwise eligible including meeting state residency and income requirements, to obtain medicaid coverage. Lawfully residing children under age 21 and pregnant women must meet the residency requirement as set forth in 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:]~~

**C. Lawfully present:** New Mexico medicaid covers certain individuals who are lawfully residing in the United States. An individual is lawfully residing in the United States if they are lawfully present and otherwise meet the eligibility requirements, such as state residency and income requirements, in the state plan. The following individuals are lawfully present and are exempt from the five-year bar:

(1) Children under age 21 and pregnant individuals under Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA 214 option). A child or pregnant individual is considered lawfully present if they are:

(a) a qualified non-citizen as defined in Section 431 of PRWORA (8 USC Section 1641);

(b) a non-citizen in nonimmigrant status who has not violated the terms of the status under which ~~he or she was~~ they were admitted or to which ~~he or she has~~ they have changed after admission as defined under 8 USC 1101(a)(15);

(c) a non-citizen who has been paroled into the United States pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)) for less than one year, except for a non-citizen paroled for prosecution, for deferred inspection or pending removal proceedings;

(d) a non-citizen who belongs to one of the following classes:

(i) non-citizen currently in temporary resident status pursuant to Section 210 or 245A of the Immigration and Nationality Act (8 U.S.C. Section 1160 or 1255a, respectively);

(ii) ~~[non-citizens currently under]~~ non-citizens granted temporary protected status (TPS) pursuant to Section 244 of the Immigration and Nationality Act (8 U.S.C. Section 1254a), and pending applicants for TPS who have been granted employment authorization;

(iii) non-citizens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(iv) family unity beneficiaries pursuant to Section 301 of Pub. L. 101-649, as amended including individuals who are granted benefits under Section 1504 of the Legal Immigration and Family Equity (LIFE) Act amendments of 2000;

(v) non-citizens currently under deferred enforced departure (DED) pursuant to a decision made by the president;

(vi) non-citizens currently in deferred action status except those with deferred action under “~~[Defined]~~ deferred action for childhood arrivals” who are not considered lawfully present.

(vii) ~~[non-citizens whose visa petitions have been approved]~~ non-citizens who have pending or approved visa petitions and who have a pending application for adjustment of status;

(e) a non-citizen with pending applicants for asylum under Section 208(a) of the INA (8 U.S.C. Section 1158) or for withholding of removal under Section 241(b)(3) of the INA (8 U.S.C. Section 1231) or under the convention against torture who has been granted employment authorization, or is an applicant under the age of 14 ~~[and has had an application pending for at least 180 days];~~

~~(f) [non-citizens whose applications for withholding of removal under the convention against torture have been granted;~~

~~(g)]~~ children who have pending or approved applications for special immigrant juvenile status as described in Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. Section 1101(a)(27)(J)); or

~~(h) — non-citizens who are lawfully present in American Samoa under the immigration laws of American Samoa; or~~

~~(i) (g)~~ victims of trafficking.

(2) Effective December 27, 2020, per section 208 of the Consolidated Appropriations Act, 2021 individuals who are considered compact of free association migrants (COFA) are also referred to as compact citizens. COFA is an agreement between the United States and the three Pacific Island sovereign states of federated states of Micronesia, the republic of the Marshall Islands, and the republic of Palau known as freely associated states.

D. ~~[(4) — Non-citizen sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996);]~~ The income and resources of a non-citizen sponsor, of any individual applying for medicaid, are deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of non-citizen sponsor income and resources is effective until the sponsored non-citizen achieves citizenship.

E. ~~[(5)]~~ The state assures that it provides limited medicaid services for treatment of an emergency medical condition, not related to an organ transplant procedure, as defined in 1903(v)(3) of the social security act and 8.285.400 NMAC and implemented at 42 CFR 440.255, to the following individuals who meet all medicaid eligibility requirements, except documentation of citizenship or satisfactory immigration status or present an SSN.

(a) qualified non-citizens subject to the five-year waiting period described in 8 USC 1613; or

(b) non-qualified non-citizens, unless covered as a lawfully residing child or pregnant ~~[woman]~~ individual by the state under the option in accordance with 1903(v)(4) and implemented at 42 CFR 435.406(b).

[8.200.410.11 NMAC - Rp, 8.200.410.11 NMAC, 10/1/2017; A/E, 1/18/2018; A, 8/1/2018; A, 1/1/2022; A, 9/1/2024]

#### **8.200.410.12 TYPES OF ACCEPTABLE DOCUMENTARY EVIDENCE OF CITIZENSHIP (42 CFR 435.407):**

**A. Stand-alone evidence of citizenship:** The following must be accepted as sufficient documentary evidence of citizenship:

(1) A U.S. passport, including a U.S. passport card issued by the department of state, without regard to any expiration date as long as such passport or card was issued without limitation.

(2) A certificate of naturalization.

(3) A certificate of U.S. citizenship.

(4) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a SSN from the applicant who is a citizen before issuing such license.

(a) A real ID issued on or after November 14, 2016 is sufficient documentary evidence of citizenship.

(b) A driver authorization card (DAC) is not sufficient documentary evidence of citizenship.

(5) Documentary evidence issued by a federally recognized Indian tribe identified in the federal register by the bureau of Indian affairs within the U.S. department of the interior, and including tribes located in a state that has an international border, which;

(a) Identifies the federally recognized Indian tribe that issued the document;

(b) Identifies the individual by name; and

(c) Confirms the individual's membership, enrollment, or affiliation with the tribe.

(d) Documents described in Paragraph (5) of Subsection A of 8.200.410.12 NMAC include, but are not limited to:

(i) A tribal enrollment card;

(ii) A certificate of degree of Indian blood;

(iii) A tribal census document;

(iv) Documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of Paragraph (5) of Subsection A of 8.200.410.12 NMAC.

(6) A data match with the SSA.

**B. Evidence of citizenship:** If an applicant does not provide documentary evidence from the list in Subsection A of 8.200.410.12 NMAC, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed in Subsection C of 8.200.410.12 NMAC:

(1) A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Guam, American Samoa, Swain's Island, Puerto Rico (if born on or after January 13, 1941), the Virgin Islands of the U.S. or the Commonwealth of the Northern Mariana Islands (CNMI) (if born after November 4, 1986, (CNMI local time)). The birth record document may be issued by a state, commonwealth, territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico or the Northern Mariana Islands before the applicable date referenced in Paragraph (1) of Subsection B of 8.200.410.12 NMAC, the individual may be a collectively naturalized citizen. The following will establish U.S. citizenship for collectively naturalized individuals:

(a) Puerto Rico: Evidence of birth in Puerto Rico and the applicant's statement that ~~he or she was~~ they were residing in the U.S., a U.S. possession, or Puerto Rico on January 13, 1941;

(b) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI));

(i) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that ~~he or she~~ they did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(ii) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975, and the applicant's statement that ~~he or she~~ they did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

(iii) Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that ~~he or she~~ they did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) A certification of report of birth, issued to U.S. citizens who were born outside the U.S.

(3) A report of birth abroad of a U.S. citizen.

(4) A certification of birth in the U.S.

(5) A U.S. citizen identification card.

(6) A Northern Marianas identification card issued by the U.S. department of homeland security (or predecessor agency).

(7) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth.

(8) Evidence of U.S. civil service employment before June 1, 1976.

(9) U.S. military record showing a U.S. place of birth.

(10) A data match with the Systematic Alien Verification for Entitlements (SAVE) Program or any other process established by the department of homeland security (DHS) to verify that an individual is a citizen.

(11) Documentation that a child meets the requirements of section 101 of the Child Citizenship Act of 2000 as amended (8 U.S.C. 1431).

(12) Medical records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility, or other institution that indicate a U.S. place of birth.

(13) Life, health, or other insurance record that indicates a U.S. place of birth.

(14) Official religious record recorded in the U.S. showing that the birth occurred in the U.S.

(15) School records, including pre-school, head start and daycare, showing the child's name and U.S. place of birth.

(16) Federal or state census record showing U.S. citizenship or a U.S. place of birth.

(17) If the applicant does not have one of the documents listed in Subsection A or Paragraph (1) through (17) of Subsection B of 8.200.410.12 NMAC, [~~he or she~~] they may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the applicant's citizenship, and that contains the applicant's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.

**C. Evidence of identity:**

(1) HSD will accept the following as proof of identity, provided such document has a photograph or other identifying information sufficient to establish identity, including, but not limited to, name, age, sex, race, height, weight, eye color, or address:

(a) Identity documents listed at 8 CFR 274a.2 (b)(1)(v)(B)(1), except a driver's license issued by a Canadian government authority.

(b) Driver's license issued by a state or territory.

(c) School identification card.

(d) U.S. military card or draft record.

(e) Identification card issued by the federal, state, or local government.

(f) Military dependent's identification card.

(g) U.S. coast guard merchant mariner card.

(h) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records.

(i) Two other documents containing consistent information that corroborates an applicant's identity. Such documents include, but are not limited to, employer identification cards; high school, high school equivalency and college diplomas; marriage certificates; divorce decrees; and property deeds or titles.

(2) Finding of identity from a federal or state governmental agency. The agency may accept as proof of identity a finding of identity from a federal agency or another state agency including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual.

(3) If the applicant does not have any document specified in Paragraph (1) of Subsection C of 8.200.410.12 NMAC and identity is not verified under Paragraph (2) of Subsection C of 8.200.410.12 NMAC, the agency must accept an affidavit signed, under penalty of perjury, by a person other than the applicant who can reasonably attest to the applicant's identity. Such affidavit must contain the applicant's name and other identifying information establishing identity, as described in Paragraph (1) of Subsection C of 8.200.410.12 NMAC. The affidavit does not have to be notarized.

**D. Verification of citizenship by a federal agency or another state:** HSD may rely, without further documentation of citizenship or identity, on a verification of citizenship made by a federal agency or another state agency, if such verification was done on or after July 1, 2006.

**E. Assistance with obtaining documentation:** HSD will provide assistance to individuals who need assistance in securing satisfactory documentary evidence of citizenship in a timely manner.

**F. Documentary evidence:** A photocopy, facsimile, scanned or other copy of a document must be accepted to the same extent as an original document under this section, unless information on the copy submitted is

inconsistent with other information available to HSD or HSD otherwise has reason to question the validity of, or the information in, the document.

[8.200.410.12 NMAC - N, 10/1/2017; A, 1/1/2022; A, 9/1/2024]

**8.200.410.13 REASONABLE OPPORTUNITY PERIOD (42 CFR 435.956(b)):**

**A.** HSD provides a reasonable opportunity period to individuals who have made a declaration of citizenship or satisfactory immigration status in accordance with 42 CFR 435.406, and for whom the HSD is unable to verify citizenship or satisfactory immigration status. During the reasonable opportunity period, the HSD continues efforts to complete verification of the individual's citizenship or satisfactory immigration status, or request documentation if necessary. The HSD provides notice of such opportunity that is accessible to persons who have limited English proficiency and individuals with disabilities, consistent with 42 CFR 435.905(b). During such reasonable opportunity period, the HSD must, if relevant to verification of the individual's citizenship or satisfactory immigration status:

(1) in the case of individuals declaring citizenship who do not have an SSN at the time of such declaration, assist the individual in obtaining an SSN in accordance with 42 CFR 435.910 and Paragraph (2) of Subsection A of 8.200.410.10 NMAC, and attempt to verify the individual's citizenship once an SSN has been obtained and verified;

(2) provide the individual with information on how to contact the electronic data source so that ~~[he or she]~~ they can attempt to resolve any inconsistencies defeating electronic verification directly with such source, and pursue verification of the individual's citizenship or satisfactory immigration status if the individual or source informs the HSD that the inconsistencies have been resolved; and

(3) provide the individual with an opportunity to provide other documentation of citizenship or satisfactory immigration status, in accordance with section 1137(d) of the Act and 42 CFR 435.406 or 435.407 and 8.200.410.12 NMAC.

**B.** The reasonable opportunity period:

(1) begins on the date on which the notice is received by the individual. The date on which the notice is received is considered to be five days after the date on the notice, unless the individual shows that ~~[he or she]~~ they did not receive the notice within the five-day period; and

(2) ends on the earlier of the date the HSD verifies the individual's citizenship or satisfactory immigration status or determines that the individual did not verify his or her citizenship or satisfactory immigration status or 90 days except that;

(3) HSD extends the reasonable opportunity period beyond 90 days, allowing for up to three 10 day extensions, for individuals declaring to be in a satisfactory immigration status if the HSD determines that the individual is making a good faith effort to obtain any necessary documentation or the agency needs more time to verify the individual's status through other available electronic data sources or to assist the individual in obtaining documents needed to verify his or her status.

(4) if, by the end of the reasonable opportunity period, the individual's citizenship or satisfactory immigration status has not been verified the HSD will take action within 30 days to terminate eligibility. [8.200.410.13 NMAC - N, 10/1/2017; A, 9/1/2024]

**8.200.410.14 RESIDENCE:** To be eligible for medicaid, an applicant or eligible recipient must be living in New Mexico on the date of application and final determination of eligibility and have demonstrated an intention to remain in the state.

**A. Establishing residence:** Residence is established by living in the state and carrying out the types of activities associated with day-to-day living, such as occupying a home, enrolling a child in school or getting a state driver's license. An applicant or recipient who is homeless is considered to have met the residence requirements if ~~[he or she intends]~~ they intend to remain in the state.

**B. Recipients receiving benefits out-of-state:** An applicant or an eligible recipient who receives financial or medical assistance in another state which makes residence in that state a condition of eligibility are considered residents of that state until the ISD office receives verification from the other state agency indicating that it has been notified by an applicant or eligible recipient of the abandonment of residence in that state.

**C. Individuals court ordered into full or partial responsibility of the state children youth and families department (CYFD):** When CYFD places a child in a new state of residence, the new state of residence is responsible for the provision of medicaid; however, the state must provide limited medicaid coverage for medicaid services that are part of the state medicaid benefit package and not available in the new state of residence.

**D. Abandonment:** Residence is not abandoned by temporary absences. Temporary absences occur when an eligible recipient leaves the state for specific purposes with time-limited goals. Residence is considered abandoned when the applicant or the eligible recipient leaves the state for any of the following reasons:

- (1) intends to establish residence in another state;
- (2) for no specific purpose with no clear intention of returning;
- (3) applies for financial, food or medical assistance in another state which makes residence in that state a condition of eligibility; or
- (4) for more than 30 consecutive calendar days, without notifying HSD of his or her departure or intention of returning.

**E.** Evidence of immigration status may not be used to determine that an individual is not a state resident per 42 CFR 435.956 (c)(2).

[8.200.410.14 NMAC - Rp, 8.200.410.12, 10/1/2017; A, 9/1/2024]

**8.200.410.17 INMATE IN A PUBLIC INSTITUTION:**

**A.** A public institution is a:

- (1) state and private correctional facility;
- (2) county and privately operated jail;
- (3) department of health behavioral health facility forensic unit;
- (4) detention facility operated under the authority of CYFD; or
- (5) facility that is operated under the authority of CYFD that provides for the care and rehabilitation of an individual who is under 18 years of age and who has committed an act that would be designated as a crime under the law if committed by an individual who is 18 years of age or older.

**B.** An inmate is a person incarcerated in a public institution listed in Subsection A of 8.200.410.15 NMAC for 30 or more days.

**C.** An inmate who is incarcerated in a public institution is not eligible for MAP services. The only exception are those services provided to an inmate while ~~[he or she is]~~ they are an inpatient in a medical facility outside the public institution for 24 hours or longer.

**D.** Incarceration in a public institution is not a basis for denying or terminating a MAP category of eligibility. During the time of incarceration an inmate may apply or recertify for a MAP category of eligibility.

[8.200.410.17 NMAC - Rp, 8.200.410.15, 10/1/2017; A, 9/1/2024]