



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

**December 7, 2016**

By: Sarah Andrews, David Brown, Laurie Anne Dee, Chris Carter, Bob Hayes, Joseph Leonard, Nick Losurdo, Mike Muller, Nancy Nguyen, Marc Reardon

**Morgan, Lewis & Bockius, LLP**

**For: National Immigrant Women’s Advocacy Project, American University, Washington College of Law**

This project was supported by Grant Number 2015-TA-AX-K043, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

# Emergency Medicaid for Non-Qualified Immigrants

## 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. 2d 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. 2d 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. 2d. 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
New Mexico	<p>Coverage of emergency services is available for certain non-citizens who are undocumented or who do not meet the qualifying immigration criteria and meet all eligibility criteria for an existing Medicaid category except for their alien status. Applicant must provide proof of New Mexico residence and must meet the applicable Medicaid resource and income standards. New Mexico Administrative Code (NMAC) 8.285.400.13, 8.285.400.14, 8.285.500.10, 8.285.500.11, 8.325.10.13</p>	<p>For purposes of determining emergency status, the following definition applies: an emergency condition means a medical or behavioral health condition manifesting itself through acute symptoms of sufficient severity (including severe pain) such that a prudent layperson with average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in the health of the individual or with respect to a pregnant woman, the health of the woman or her unborn child to result in serious jeopardy; serious impairment to the individual's bodily functions; or serious dysfunction of any of his or her bodily organs or parts. With respect to a pregnant woman and her unborn child, emergency services includes all emergency labor and delivery services, such as inductions of labor and caesarean sections. Services are covered only when necessary to treat or evaluate a condition meeting the definition of emergency and are covered only</p>	<p>Subsequent to the receipt of emergency services, an applicant must apply through the local county income support division (ISD) office. The application must be filed at the ISD office no later than the last day of the third month following the month the presumed emergency services were received. The applicant must bring a completed emergency medical services for aliens referral for eligibility determination form (MAD 308) to the ISD office for the financial eligibility determination. The emergency services provider must complete the referral form.</p> <p>The applicant must provide all necessary documentation to prove that he/she meets all financial and non-financial eligibility standards. Medical providers cannot submit eligibility applications on behalf of the applicant. The applicant must apprise medical providers of the status of the application. The applicant is financially responsible for any services not covered by Medicaid. A completed and signed application form must be submitted</p>

Jurisdiction	Eligibility (Income, Residency or Time Period Requirements)	Coverage (What services are covered? How are key terms defined?)	Application Process
		for the duration of that emergency. NMAC 8.285.400.10, 8.325.10.13	<p>for each request for emergency medical services for aliens. NMAC 8.285.600.10.</p> <p>Applications for Medicaid must be acted on within 45 days of the date of application.</p> <ol style="list-style-type: none"> <li>1. If an applicant is eligible for medicaid, the ISD worker notifies the individual of approval using notification of approval of application for emergency medical services for aliens form (MAD 310). The approval of financial eligibility is not a guarantee that Medicaid will pay for the services. The form also serves as notice of case closure, since Medicaid covers only emergency services received during the specified term of the emergency. The applicant must give the medical service provider a copy of the MAD 310 form. The provider must use the MAD 310 to submit claims to the Medicaid utilization review contractor for emergency review.</li> </ol>

Jurisdiction	Eligibility (Income, Residency or Time Period Requirements)	Coverage (What services are covered? How are key terms defined?)	Application Process
			<p>2. If an applicant is ineligible for Medicaid or a decision on the application is delayed beyond the 45-day time limit, the ISD worker sends a notification of denial or delay of action on application for emergency medical services for aliens form (MAD 309) to the undocumented alien. The MAD 309 explains the reason for denial or delay and informs the applicant of his/her right to an administrative hearing. If the application is denied, the applicant must notify providers of the denial.</p> <p>3. The applicant is responsible for payment for the medical services if he/she fails to apply promptly for coverage, verify eligibility for coverage, or notify the provider of the approval or denial of the application.</p> <p>NMAC 8.285.600.11, 8.285.400.10</p> <p>See Category 85,  <a href="http://www.hsd.state.nm.us/uploads/fi">http://www.hsd.state.nm.us/uploads/fi</a></p>

Jurisdiction	Eligibility (Income, Residency or Time Period Requirements)	Coverage (What services are covered? How are key terms defined?)	Application Process
			<a href="#">les/Looking%20For%20Information/General%20Information/Rules%20and%20Statutes/Medical%20Assistance%20Division/Eligibility%20Pamphlet%204_16.pdf</a>

© 2016 - Morgan, Lewis and Bockius LLP