



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
Hawaii	<p>Prenatal benefits are available under the Hawaii Med-QUEST program. Individuals may be eligible if they are US citizens, qualified noncitizens or lawfully present noncitizens, are Hawaii residents, and have household incomes of less than 191% of the federal poverty level. Applicants must also provide a social security number. (Haw. A.D.C. § 17-1714.1; Haw. A.D.C. § 17-1716.)</p> <p>Noncitizens who meet all Med-QUEST eligibility requirements except for citizenship status may be eligible for Med-QUEST to cover medical emergencies, including the birth of a child. (Haw. A.D.C. § 17-1723.1.)</p>	<p>Coverage for US citizens, qualified noncitizens or lawfully present noncitizens includes prenatal care, necessary tests, labor and delivery costs, hospital charges and doctor or certified nurse-midwife charges. Medical services for the newborn will also be covered. (Haw. A.D.C. § 17-1720.)</p> <p>Noncitizens are eligible for coverage relating to labor and delivery only. (Haw. A.D.C. § 17-1723.1.)</p> <p>Hawaii law also provides that that the Department of Health may adopt rules to ensure that all pregnant women in Hawaii are offered appropriate information, quality testing, diagnostic services, and follow-up services concerning neural tube defects and other disorders amenable to prenatal diagnosis. The purpose of prenatal screening and diagnosis is to obtain vital information for the pregnant woman and her family as well as for the providers of her health care. It can be used to provide appropriate care and to assist the woman and her family to achieve optimal health outcomes. Nothing in this section shall be construed to mean that prenatal screening and testing are mandatory. (Haw. Rev. Stat. § 321-331 (2015).)</p>	<p>Individuals may apply by:</p> <ul style="list-style-type: none"> • Completing an online application at www.mybenefits.hawaii.gov; • Calling the Med-QUEST office in your area to receive an application by mail; • Visiting the Med-QUEST eligibility office. Office hours are Monday through Friday from 7:45 a.m. to 4:30 p.m. (except holidays); • Visiting any community health center in Hawaii; • Visiting any hospital in Hawaii; • Visiting any Department of Human Services unit office.

