

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

BULLETIN NO.: 06-48F

FROM: Joseph Patrissi, Deputy Commissioner
Economic Services Division

DATE: December 15, 2006

SUBJECT: Deficit Reduction Act of 2005 - New federal citizenship and identity verification requirements for Vermont Medicaid program.

CHANGES ADOPTED EFFECTIVE: January 1, 2007

INSTRUCTIONS:

- Maintain Manual - See instructions below.**
 Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance Bulletin:
 Information or Instructions - Retain until _____

MANUAL REFERENCE(S):

M126	M212	3201.1	3401.2
M170	M311	3301.4	3502.7
			4001.3

This bulletin implements new federal requirements. The new federal law is known as the “Deficit Reduction Act of 2005” (DRA). Among other things, it requires all nonexempt United States citizens who apply for or receive Medicaid to present documentary evidence of their citizenship status and identity. Under former law, self-declaration of citizenship by United States citizens was sufficient. Aliens are already subject to a documentation requirement similar to the one now applicable to nonexempt United States Citizens. These changes are described more fully below.

I.

New Citizenship and Identity Verification Requirements

A. Background

The new citizenship-and-identity verification requirements are mandatory under federal law. While they became effective on July 1, 2006, the agency anticipated that Vermont would be given a reasonable amount of time to implement these changes. The state will be effecting an incremental implementation approach, beginning in September of this year. Beginning on October 1, those who

are expected to apply for Medicaid benefits in the 12 AHS district offices will be asked to provide the needed documents. This will be followed by three additional phase-in stages, to occur on November 1, 2006; December 1, 2006; and February 1, 2007.

The agency began developing its implementation strategy soon after the February, 2006 passage of the DRA. However, it has twice had to change course, in response to the federal government's substantial shifts in its implementation guidance. The Centers for Medicare and Medicaid Services (CMS) issued its first formal guidance on June 12 in a letter addressed to State Medicaid Directors (SMD Letter). The rules unveiled in the letter differed substantially from those indicated in earlier drafts. CMS released its Interim Final Rule on the requirement on Friday, July 7. Again, the rule deviated from the guidance offered in CMS's June 9 SMD Letter.

While these changes delayed efforts to incorporate the new requirements into a draft state rule, the agency met on several occasions between March and August of 2006 with interested parties to discuss the law and possible implementation strategies. This draft is a product of a number of conversations with members of the advocacy organizations and agency partners, including: the Office of Vermont Health Access; the Department for Disabilities, Aging and Independent Living; the Department of Health; and the Department of Buildings and General Services.

Finally, while the impetus for the rule is the new federal verification requirement, the agency has taken advantage of the opportunity to update other aspects of the eligibility rules relating to citizenship and alienage.

B. Summary of Rule Changes

The following health-care rule changes and clarifications are made:

- States general eligibility standards regarding citizenship and alienage.
- Provides a general standard regarding documentation of such statuses and identity.
- Revises definitions of "citizen" and "national."
- Adds guidance regarding citizenship of foreign-born adopted children.
- Adds department's notice obligation regarding documentation requirement.
- Adds delineation of acceptable forms of documentation.
- Revises definition of "qualified alien."
- Adds eligibility standard for battered aliens.
- Adds documentation requirement for qualified aliens.
- Articulates five-year bar for qualified aliens and delineates documentation that is acceptable for determination of five-year bar.
- Sets forth considerations relating to non-qualified aliens, illegal aliens, undocumented aliens, ineligible aliens, and non immigrants.
- Revises standards for verification of citizenship and alienage status.
- Revises rule regarding emergency medical services.

C. Changes

Citizenship and Alienage Requirement – M170.1

This provision specifies that only citizens, nationals, and qualified aliens are eligible for Medicaid benefits. Certain qualified aliens are barred from Medicaid for five years. Except for certain specified categories of individuals, all applicants and beneficiaries must declare their citizenship or alienage status and provide documentation proving that status, as well as their identity.

U.S. Citizen – M170.2

This provision defines “U.S. citizens,” “naturalized citizens,” and “U.S. nationals.” It also provides guidance for determining the citizenship status of foreign-born adopted children.

Notice of Obligation to Satisfy Documentation Requirement – M170.21

This provision explains the department’s discretion to undertake documentation of citizenship and identity on behalf of certain individuals, relieves individuals of their obligation to provide proof of citizenship or identity in cases where the state is able to secure such proof, and specifies that the department will provide individuals with notice of the need to document their citizenship or identities.

Acceptable Documentation of Citizenship and Identity – M170.22

This provision establishes the hierarchy of documentation mandated by the federal government acceptable as proof of citizenship and identity and specifies that individuals must tender original documents or certified copies of the originals. It also provides that individuals need not personally tender proof of citizenship or identity and that the proof requirement specified in the rule is ordinarily a one-time activity. It also sets forth the time periods allowed for compliance, establishes grounds for good-faith extensions, and defines the circumstances in which the state shall offer assistance to the individual in fulfilling the requirement.

Qualified Alien – M170.3

This provision defines a “qualified alien.”

Battered Alien – M170.31

This provision specifies the circumstances in which a battered alien may attain the status of a qualified alien.

Acceptable Documentation of Qualified Alien Status – M170.32

This provision identifies the documentation that is acceptable as proof of qualified-alien status.

Five-Year Bar for Qualified Aliens – M170.4

This provision defines the five-year bar, applicable to certain groups of qualified aliens.

Acceptable Documentation to Determine the Five-Year Bar – M170.41

This provision identifies the documentation that may be used to determine the five-year bar.

Non-Qualified Aliens – M170.5

This provision defines “non-qualified aliens” and specifies that such individuals are eligible for treatment of emergency medical conditions only.

Illegal Aliens – M170.51

This provision defines “illegal aliens.”

Undocumented Aliens – M170.52

This provision defines “undocumented aliens.”

Ineligible Aliens/Non-Immigrants – M170.6

This provision identifies categories of non-immigrant aliens and specifies that such individuals are ineligible for Medicaid.

Verification of Immigration and Citizenship Status – M170.7

This provision states the department’s obligation to verify the immigration status of qualified aliens.

Emergency Medical Services – M170.8

This provision specifies the circumstances in which certain non-qualified aliens are eligible for emergency medical services.

II.
Specific changes

Section Description of change

- M126** Adds cross-reference to the new verification requirement for citizenship and identity.
- M170** Replaces content from rules M212, M311, 3201.1, 3301.4, 3401.2, and 4001.3 as well as from interpretive memoranda at M310-M319 dated 2/16/98 and amends requirements to be consistent with federal law.
- M212** Replaces content and adds a cross-reference to the new citizenship and verification requirements mandated by the DRA specified in M170.
- M311** Replaces content and adds a cross-reference to the new citizenship and verification requirements mandated by the DRA specified in M170.
- 3201.1** Replaces content and adds a cross-reference to the new citizenship and verification requirements mandated by the DRA specified in M170.
- 3301.4** Replaces content and adds a cross-reference to the new citizenship and verification requirements mandated by the DRA specified in M170.
- 3401.2** Replaces content and adds a cross-reference to the new citizenship and verification requirements mandated by the DRA specified in M170.
- 3502.7** Adds cross-reference to the new verification requirement for citizenship and identity.
- 4001.3** Replaces content and adds a cross-reference to the new citizenship and verification requirements mandated by the DRA specified in M170.

III. **Rulemaking Process**

A. Informal Public Input Process

1. On March 9, 2006, the department met with the DAIL Advisory Board and provided it with an overview of the new citizenship mandates.
2. On March 23, 2006, the department met with the Medicaid Advisory Board and provided it with an overview of the new citizenship mandates.
3. On May 12, 2006, the department met with the Vermont Agency of Human Services (AHS) agency partners and provided them with an overview of the new citizenship mandates and a preliminary outline of contemplated implementation strategies.
4. On May 19, 2006, the department met with providers and advocates and provided them with an overview of the new citizenship mandates and a preliminary outline of contemplated implementation strategies.
5. On May 25, 2006, the department met with the Medicaid Advisory Board and provided it with an update on the status of contemplated implementation strategies.
6. On June 22, 2006, the department met with the Medicaid Advisory Board and provided it with a detailed description of the citizenship and identity verification mandates.
7. On July 11, 2006, the department appeared before the Vermont Legislature's Health Access Oversight Committee, provided a description of recent CMS revisions to federal implementation guidance, and offered an outline of a revised implementation strategy.
8. On July 21, 2006, the department met with AHS agency partners and provided them with a description of recent CMS revisions to federal implementation guidance, and offered an outline of a revised implementation strategy.
9. On July 24, 2006, the department met with providers and advocates and provided them with a description of recent CMS revisions to federal implementation guidance, and offered an outline of a revised implementation strategy.
10. On August 1, 2006, the department met with AHS agency partners, providers, and advocates; reviewed draft notices and outreach communications with the group; and accepted advice regarding the documents.
11. The proposed rule was filed with the Medicaid Advisory Board on August 22, 2006 and presented at its meeting on August 31, 2006.

12. On August 22, 2006, department sent the proposed rule to the following groups and announced an upcoming public discussion and invited review and comments.

Central Vermont Home Health & Hospice
Community of Vermont Elders
Department of Disabilities, Aging and Independent Living
Health Care Ombudsman Office
Homeless Health Care Program
Maximus
Northeastern Vermont Area Agency on Aging
Public Guardian Program - DS clients
Public Guardian Program - Elders
Spectrum
State Health Insurance Program
State Long-Term Care Ombudsman
Vermont Assembly of Home Health Agencies
Vermont Center for Independent Living
Vermont Coalition of Clinics for the Uninsured
Vermont Coalition of Disability Rights
Vermont Coalition of Runaway and Homeless Youth Projects
Vermont Council for Developmental and Mental Health Services
Vermont Department of Health/HIV/AIDS
Vermont Health Care Association
Vermont Legal Aid Health Care Ombudsman
Vermont Legal Aid Long-Term Care Ombudsman
Vermont Legal Aid Senior Law Project
Vermont Medical Society
Vermont National Alliance for the Mentally Ill
Vermont Protection and Advocacy
Vermont Psychiatric Survivors
Vermont's Congressional Delegation

13. On August 25, 2006, the department held a public meeting relating to the citizenship and identity rule in Waterbury, Vermont from 1-4 pm.
14. The proposed rule was filed with the Interagency Committee on Administrative Rules (ICAR) on September 8, 2006 and presented at its meeting on September 18, 2006.
15. The proposed rule was filed with the Senate Health and Welfare Committee and House Human Services Committee, Health Access Oversight Committee as well as the Secretary of State's Office on September 22, 2006. The Office published notice of rulemaking on October 5 and October 12, 2006.
16. The department posted the proposed rule on its website and notified advocates and members of the public of the proposed rule.

B. Formal Notice and Comment Period

1. A public hearing was held on October 23, 2006 at 9:00 a.m., in the Agency of Human Services' Blue Room, DCF, State Office Complex, Waterbury, Vermont. No one attended.
2. Written comments were received by October 30, 2006. The department has responded to the comments as set forth in the next subsection.
3. On November 17, 2006, copies of the final proposed rule were filed with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR).
4. The department will present the rule to LCAR as soon as possible.
5. The department expects to file the final rule no later than January 17, 2007.
6. The rule is expected to be effective on February 1, 2007.

C. Responses to Public Comments

The department received written comments from Vermont Office of Health Care Ombudsman. Those comments incorporated earlier comments received from three projects within Vermont Legal Aid (the Senior Citizens Law Project, the Disability Law Project, and the Office of Health Care Ombudsman).

As set forth below, the department has considered the additional revisions requested by the commenters and responds as follows.

Comment: The Department has not assessed the impact of the rule on those who are unable to meet its requirements.

Response: The Department is offering financial and practical assistance to individuals who are unable to independently meet the new federal requirements. Consequently, we anticipate that few who make a good-faith effort to comply with the requirements will experience adverse economic impacts.

Comment: The Department should decline to impose federal citizenship-and-identity requirements as a condition of eligibility.

Response: The citizenship-and-identity verification requirements are not conditions of eligibility. However, as is the case with other verification requirements, they are material to the eligibility determination. As Vermont cannot possibly afford to maintain its Medicaid program without the financial participation of the federal government, the state must comply with the federal requirements. Consequently, failure to comply with the requirements will result in denial of eligibility for new applicants and termination of benefits for active beneficiaries.

Comment: The provisions of M170.1(d)(2) may not be true and may conflict with M170.21.

Response: M170.1(d)(2) sets out the general requirement that individuals must document their citizenship and identity. M170.21 provides that the state may elect to assist the individual in satisfying this requirement by undertaking data cross-matching. Thus, these provisions are not in conflict.

Comment: The rule should specify the efforts the Department will make to secure documentation in behalf of applicants and beneficiaries.

Response: The Department hopes to maximize data-matching and thereby minimize the circumstances in which applicants and beneficiaries must secure and present documentary evidence of citizenship or identity. However, the efficacy and cost-effectiveness of data-matching is as yet unproven. At this time, the department's rule prescribes a flexible practice that can be adjusted as experience may dictate. The Department will specify its intentions in this regard in a written Procedure.

Comment: The rule should exempt individuals receiving Social Security Disability benefits, as they are prequalified for Medicaid.

Response: At this time, we are constrained to follow the guidance of the federal agency charged with implementation and interpretation of the statute in question. CMS does not now consider this group exempt from the requirement. However, the proposed rule has been amended to provide that all subsequent exemptions recognized by the federal government will likewise be recognized by Vermont.

Comment: The rule should exempt foster children for whom the state receives federal IV-E payments.

Response: At this time, we are constrained to follow the guidance of the federal agency charged with implementation and interpretation of the statute in question. CMS does not now consider this group exempt from the requirement. However, the proposed rule has been amended to provide that all subsequent exemptions recognized by the federal government will likewise be recognized by Vermont.

Comment: M170.21 should be separated into two rules; one covering the Department's verification efforts and one setting out the notice provisions and obligations imposed on the individual.

Response: This provision is intended to specify when an individual will receive a citizenship-and-identity notice from the Department. As the need for a notice is dependent upon the Department's success in its discretionary verification efforts, these concepts are appropriately linked.

Comment: At the time of application, the Department should inform applicants of their obligations, as well as the efforts that the Department will undertake in their behalf.

Response: We decided against generically notifying applicants and beneficiaries of the citizenship-and-identity requirements before we attempt data-matching. This decision was based upon concern that generic notification would stimulate unnecessarily burdensome efforts by applicants to acquire documentation. We also felt that, given our ability to rapidly complete data-matching for new applicants, any gap between the application date and notice of an outstanding verification requirement would be minimal. For these reasons, we will attempt to data-match first and then tailor our notices in accordance with our findings.

Comment: The term “available evidence” should be redefined.

Response: While “available evidence” is not defined in the federal rule, CMS indicated how it will construe the term in its preamble to the rule. It provided that “[a]vailable evidence is evidence that exists and can be obtained within a State’s reasonable opportunity period.” The definition in the Rule is consistent with CMS’s guidance in this regard.

Comment: Time periods for compliance are too short.

Response: Several commenters felt that the 10-day time period for compliance was too short. In fact, the rule affords individuals with at least 22 days for compliance. This period is subject to extension for periods of up to 90 days upon a showing that the individual has in good faith, tried to secure the documentation, but has been unable to do so within the prescribed period of time. We believe that these time frames provide ample opportunity for compliance.

Comment: The concept of “good cause” should be expanded to include the inability to pay for the documentation.

Response: In light of the financial assistance that the state is extending to assist in the procurement of documentation, financial hardship need not be factored into the “good-cause” concept.

Comment: The parameters of the Department’s financial assistance program should be specified in the rule.

Response: The state is committed to the extension of financial assistance to those who are unable to cover the cost of securing documents. However, at this time, the department is disinclined to set in rule practices that may need to be adjusted as experience may dictate. The Department will specify its intentions in this regard in a written Procedure.

Comment: The rule should specify the Department's responsibility to assist the individual in securing documentation when it is "unavailable."

Response: The state is prepared to assist individuals in the procurement of necessary proof. To this end, it has expanded its contract for member services to include a specialized capacity for provision of such assistance. However, at this time, the department is disinclined to set in rule practices that may need to be altered as experience may dictate. The Department will specify its intentions in this regard in a written Procedure.

Comment: The section spelling out the assistance the Department will offer is inadequate.

Response: M170.22(j) is derived from § 435.407(g) of the federal rule. It is not intended as the exclusive basis for a state offer of assistance. The all-programs provisions of Rule 2170 regarding the Americans with Disabilities Act apply with equal force in this context. The details of these programs will be specified in a written Procedure.

Comment: The rule should require the Department to notify individuals of the possibility of time extensions.

Response: The availability of extensions is set in M170.22(b)(2). The department includes notice of this fact in all relevant communications with applicants and beneficiaries. There is no need for such a requirement to be set in rule.

Comment: The provision regarding validity of passports issued with limitations is confusing.

Response: M170.21(c)(1)(i) provides that passports that are not currently valid may still be accepted as proof of citizenship and identity. However, an invalid passport that was originally issued with limitation may be used as proof of identity only. This exception is derived from § 435.407(a)(1) of the federal rule and, therefore, was incorporated into the state rule.

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Relevant provisions of the DRA are posted on our website for ease of reference:

http://www.dsw.state.vt.us/resources/resource_menu.shtml

To get more information about the Administrative Procedures Act and the rules applicable to state rulemaking go to the website of the Office of the Vermont Secretary of State at: <http://vermont-archives.org/apa/rules.html> or call Louise Corliss at 828-2863.

For information on upcoming hearings before the Legislative Committee on Administrative Rules go to the website of the Vermont Legislature at: <http://www.leg.state.vt.us/schedule/schedule2.cfm> or call 828-5760.

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Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, correct references, etc., without changing content.

Manual Holders: Please maintain manuals assigned to you as follows.

Manual Maintenance

Medicaid Rules

<u>Remove</u>		<u>Insert</u>	
TOC P.3 (M100)	(06-50)	TOC P.3 (M100)	(06-48)
M125	(06-50)	M125	(06-48)
M170	(06-50)	M170	(06-48)
M170.2	(06-50)	M170.2	(06-48)
M170.21	(06-50)	M170.21	(06-48)
M170.22 P.2	(06-50)	M170.22 P.2	(06-48)
M170.22 P.3	(06-50)	M170.22 P.3	(06-48)
M170.22 P.4	(06-50)	M170.22 P.4	(06-48)
M170.22 P.5	(06-50)	M170.22 P.5	(06-48)
M170.22 P.6	(06-50)	M170.22 P.6	(06-48)
M170.22 P.7	(06-50)	M170.22 P.7	(06-48)
M170.22 P.8	(06-50)	M170.22 P.8	(06-48)
M170.22 P.9	(06-50)	M170.22 P.9	(06-48)
M170.3	(06-50)	M170.3	(06-48)
M170.31	(06-50)	M170.31	(06-48)
M170.32	(06-50)	M170.32	(06-48)
M170.32 P.2	(06-50)	M170.32 P.2	(06-48)
M170.4	(06-50)	M170.4	(06-48)
M170.41	(06-50)	M170.41	(06-48)
M170.6	(06-50)	M170.6	(06-48)
M170.8	(06-50)	M170.8	(06-48)
TOC P.1 (M200)	(06-50)	TOC P.1 (M200)	(06-48)
M212	(06-50)	M212	(06-48)
TOC P.1 (M300)	(06-50)	TOC P.1 (M300)	(06-48)
M311	(06-50)	M311	(06-48)

VScript Rules

TOC (3200)	(06-50)	TOC (3200)	(06-48)
3201	(06-50)	3201	(06-48)

VHAP-Pharmacy Rules

TOC (3300)	(06-50)	TOC (3300)	(06-48)
3300	(06-50)	3300	((06-48))

Healthy Vermonters Rules

TOC (3400)	(06-50)	TOC (3400)	(06-48)
3401	(06-50)	3401	(06-48)

<u>VPharm Rules</u>				
TOC (3500)	(06-50)		TOC (3500)	(06-48)
3502	(06-50)		3502	(06-48)
<u>VHAP Rules</u>				
TOC (4000)	(06-50)		TOC (4000)	(06-48)
4001.3	(06-50)		4001.3	(06-48)

M158	Third-Party Liability
M158.1	Health Insurance Premiums
M159	Adjustment or Recovery
M159.1	Adjustments or Recoveries from Estates
M159.2	Exemptions from Estate Adjustment or Recovery
M159.21	Undue Hardship Exemptions Applicable to Homesteads
M159.22	Methodology for Adjusting a Claim Against a Homestead
M159.23	Methodology for Retroactive Homestead Exemption Claims
M159.24	Exemptions for Qualified Long-Term Care Insurance Partnership
M160	Health Care Improvement Trust Fund
M170	Citizenship or Alienage Status and Identity
M170.1	Requirement
M170.2	U.S. Citizen
M170.21	Notice of Obligation to Satisfy Documentation Requirement
M170.22	Acceptable Documentation of Citizenship and Identity
M170.3	Qualified Alien
M170.31	Battered Alien
M170.32	Acceptable Document of Qualified Alien Status
M170.4	Five-Year Bar for Qualified Aliens
M170.41	Acceptable Documentation to Determine the Five-Year Bar
M170.5	Non-Qualified Aliens
M170.51	Illegal Aliens
M170.52	Undocumented Aliens
M170.6	Ineligible Aliens/Non-Immigrants
M170.7	Confirmation of Immigration and Citizenship Status
M170.8	Emergency Medical Services

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M125

M125 Social Security Numbers

The Department will notify applicants or recipients that Social Security numbers will be used in the administration of the Medicaid program.

Refusal to furnish a Social Security number, refusal to verify a Social Security number, or refusal to apply for a Social Security number for any applicant or recipient shall make that individual ineligible for assistance. However, refusal to furnish a Social Security number shall not affect eligibility if the individual is a member of a religious organization that objects to this practice.

The Department will advise applicants how to apply for Social Security numbers and will not delay, deny or discontinue assistance during the issuance and verification of such numbers.

M126 Verification (Proof)

Verification means proof of an applicant's statements by written records or documents shown to the Department's employee or agent, or by statements of another person who adds to or supports the applicant's statements.

Proof of the following is required:

All applicants' and recipients' Social Security numbers. Verification of application for such numbers is an acceptable substitute until such time as the Social Security numbers are received and verified; and

A medical decision, based on professional examination and judgment, on blindness, disability or incapacity; and

All countable income;

All resources, when the total is within \$200 of the resource maximum; and

Proof of citizenship or alienage status and identity (M170).

Proof may also be necessary when the statement form and interview, if one is held, do not give enough clear and consistent information to make a decision on any other eligibility test.

Proof documents are returned to the applicant as soon as necessary after information is recorded. Proof documents may be brought to the interview if one is held. Added proofs asked for after review of the applicant's statement may be sent or brought to the office.

When an applicant refuses to give necessary proofs, the application may be denied.

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M170

M170 Citizenship or Alienage Status and IdentityM170.1 Requirement

- (a) As a condition of eligibility for Medicaid an individual must be:
 - (1) A citizen or national of the United States (M170.2), or
 - (2) A qualified alien (M170.3).
- (b) Exceptions: Certain qualified aliens are barred from Medicaid for five years. (M170.4).
- (c) Qualified aliens affected by the five-year bar and non-qualified aliens may be eligible for emergency services and/or emergency labor and delivery services. (M170.8).
- (d) Except as provided in paragraph (e) of this section, Medicaid applicants and beneficiaries must:
 - (1) Sign a declaration that the individual is a citizen or national of the United States (M170.2) or a qualified alien (M170.3), and
 - (2) Provide documentation of citizenship or immigration status and identity (M170.21; M170.22).
- (e) Medicaid applicants and beneficiaries who have received either Supplemental Security Income (SSI) or Medicare are not required to document citizenship and identity as a condition of receipt of Medicaid benefits. Any additional exemptions that may be recognized in federal law or regulation shall likewise be recognized in Vermont.
- (f) For purposes of the citizenship requirement, an individual is:
 - (A) A health care applicant or beneficiary or
 - (B) An individual receiving any services under a section 1115 demonstration waiver (*e.g.*, Global Commitment, Choices for Care).

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M170.2

M170.2 U.S. Citizen

(a) A “U.S. citizen” is:

- (1) An individual born in the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands (except for individuals born to foreign diplomats);
- (2) A naturalized citizen; or
- (3) An individual who otherwise qualifies for U.S. citizenship under §301 of the Immigration and Nationality Act (INA), 8 U.S.C. 1401.

(b) A “national of the United States” is an individual who:

- (1) is a U.S. citizen or
- (2) Though not a citizen, owes permanent allegiance to the United States.
 - (i) As a practical matter, non-citizen nationals include individuals born in American Samoa or Swain’s Island. For purposes of determining Medicaid eligibility, including verification requirements, citizens and non-citizen nationals of the United States are treated the same.

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M170.21

M170.21 Notice of Obligation to Satisfy Documentation Requirement

The state may undertake to document citizenship or identity through one or more data-system cross matches that may be available for such purposes. If the state obtains the needed documentation, the individual need not provide additional proof in this regard. However, if the state does not secure such documentation, it will notify the individual as to the extent of the requirement that remains outstanding. The individual will then be responsible for securing acceptable documentation (M170.22) and providing it to the department.

M170.22 Acceptable Documentation of Citizenship and Identity**(a)** Available Evidence

Evidence is “available” if it exists and can be obtained within the period of time specified in paragraph (b) of this section.

(b) Time Requirements

- (1) An individual shall be notified of the need to submit evidence of citizenship and identity. The initial notice shall afford a period of 10 days for compliance. If the individual does not submit the needed documentation within the time period prescribed in the initial notice, the individual shall receive a second notice, affording an additional 10 days to comply.
- (2) The time limit may be extended for periods of up to 90 days upon a showing that the individual has in good faith, tried to secure the documentation, but has been unable to do so within the prescribed period of time.

(c) Primary Evidence of Citizenship and Identity

- (1) The following evidence will be accepted as satisfactory documentary evidence of both identity and citizenship:

- (i) A U.S. Passport

The Department of State issues this. A U.S. passport need not be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. However, a passport that was issued with limitation and is not currently valid may be used as proof of identity.

- (A) U.S. passports issued after 1980 show only one person. However, spouses and children were sometimes included on one passport through 1980. Consequently, the citizenship and identity of the included person can be established when one of these passports is presented.

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M170.22 P.2

M170.22 Acceptable Documentation of Citizenship and Identity

(c) Primary Evidence of Citizenship and Identity (Continued)

- (ii) A Certificate of Naturalization (DHS Forms N-550 or N-570)

Department of Homeland Security issues this.

- (iii) A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561)

Department of Homeland Security issues certificates of citizenship to individuals who derive citizenship through a parent.

- (2) Individuals born outside the U.S. who were not citizens at birth must submit primary evidence of U.S. citizenship and identity. However, children born outside the United States and adopted by U.S. citizens may establish citizenship using the process established by the Child Citizenship Act of 2000 (Pub. L. 106-395, enacted on October 30, 2000). (M170.2(c)).
- (A) Many foreign-born adopted children acquire U.S. citizenship as soon as they enter the United States. They do not need to formally apply (though they are entitled to a certificate of citizenship); they become citizens automatically.
- (B) Other foreign-born adopted children may need to wait until they have satisfied certain criteria before they automatically acquire citizenship. Still others (those living abroad) may need to formally apply to “naturalize.”
- (C) Orphans adopted by a U.S. citizen parent are citizens once their adoption is final and they have lawfully entered the United States as permanent residents. Children who did not immigrate as orphans, but who were adopted by a U.S. citizen parent and obtained lawful permanent resident status also automatically acquire citizenship (so long as they meet all the criteria prior to their 18th birthday).
- (D) Foreign children who are adopted by U.S. citizens who reside overseas are also entitled to citizenship, but under slightly different criteria. Such children may file for naturalization during a legal, temporary visit to the U.S. so long as they are under 18 and their parents or grandparents meet certain other eligibility criteria.

M170.22 Acceptable Documentation of Citizenship and Identity**(d)** Secondary Evidence of Citizenship

If primary evidence from the list in paragraph (c) of this section is unavailable and the person claims a U.S. place of birth, the person should provide satisfactory documentary evidence from paragraph (g) of this section to establish identity, and satisfactory documentary evidence of citizenship from the list below:

- (1) A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam (on or after April 10, 1899), the Virgin Islands of the U.S. (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (after November 4, 1986 (NMI local time)). The birth record document may be issued by the state, commonwealth, territory or local jurisdiction. It must have been issued before the person was 5 years of age. An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship. If the document shows the individual was born in Puerto Rico, Guam, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. Collective naturalization occurred on the dates listed for each of the Territories. The following will establish U.S. citizenship for collectively naturalized individuals:
 - (i) Puerto Rico:
 - (A) Evidence of birth in Puerto Rico on or after April 11, 1899 and the person's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
 - (B) Evidence that the person was a Puerto Rican citizen and the person's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.
 - (ii) U.S. Virgin Islands:
 - (A) Evidence of birth in the U.S. Virgin Islands, and the person's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; or
 - (B) The person's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession, or the U.S. Virgin Islands on February 25, 1927, and that the person did not make a declaration to maintain Danish citizenship; or
 - (C) Evidence of birth in the U.S. Virgin Islands and the person's statement indicating residence in the U.S., a U.S. possession, or Territory or the Canal Zone on June 28, 1932.

M170.22 Acceptable Documentation of Citizenship and Identity

(d) Secondary Evidence of Citizenship (Continued)

- (iii) Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):
- (A) 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 person's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
 - (B) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the person's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
 - (C) Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). 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 person is not a U.S. citizen.

(2) A Certification of Report of Birth (DS-1350)

The Department of State issues a DS-1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth, based on the information shown on the FS-240. When the birth was recorded as a Consular Report of Birth (FS-240), certified copies of the Certification of Report of Birth Abroad (DS-1350) can be issued by the Department of State in Washington, D.C. The DS-1350 contains the same information as that on the current version of Consular Report of Birth FS-240. The DS-1350 is not issued outside the U.S.

(3) A Report of Birth Abroad of a U.S. Citizen (Form FS-240)

The Department of State consular office prepares and issues this. A Consular Report of Birth can be prepared only at an American consular office overseas while the child is under the age of 18. Children born outside the U.S. to U.S. military personnel usually have one of these.

(4) A Certification of Birth Issued by the Department of State (Form FS-545 or DS-1350)

Before November 1, 1990, Department of State consulates also issued Form FS-545 along with the prior version of the FS-240. In 1990, U.S. consulates ceased to issue Form FS-545. Treat an FS-545 the same as the DS-1350.

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M170.22 Acceptable Documentation of Citizenship and Identity(d) Secondary Evidence of Citizenship (Continued)

(5) A U.S. Citizen I.D. Card

(This form was issued as Form I-197 until the 1980s by INS. Although no longer issued, holders of this document may still use it consistent with the provisions of section 1903(x) of the Act. Note that section 1903(x) of the Act incorrectly refers to the same document as an I-97). INS issued the I-179 from 1960 until 1973. It revised the form and renumbered it as Form I- 197. INS issued the I-197 from 1973 until April 7, 1983. INS issued Form I-179 and I-197 to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.

(6) A Northern Mariana Identification Card (I-873)

(Issued by the DHS to a collectively naturalized citizen of the United States who was born in the Northern Mariana Islands before November 4, 1986.) The former Immigration and Naturalization Service (INS) issued the I-873 to a collectively naturalized citizen of the U.S. who was born in the NMI before November 4, 1986. The card is no longer issued, but those previously issued are still valid.

(7) An American Indian Card (I-872) issued by the Department of Homeland Security with the classification code "KIC." (Issued by DHS to identify U.S. citizen members of the Texas Band of Kickapoos living near the United States/Mexican border.) DHS issues this card to identify a member of the Texas Band of Kickapoos living near the U.S./Mexican border. A classification code "KIC" and a statement on the back denote U.S. citizenship.

(8) A final adoption decree showing the child's name and U.S. place of birth

The adoption decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized and the state in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.

(9) Evidence of U.S. Civil Service employment before June 1, 1976

The document must show employment by the U.S. government before June 1, 1976. Individuals employed by the U.S. Civil Service prior to June 1, 1976 had to be U.S. citizens.

M170.22 Acceptable Documentation of Citizenship and Identity(d) Secondary Evidence of Citizenship (Continued)

(10) U.S. Military Record showing a U.S. place of birth

The document must show a U.S. place of birth (for example a DD-214 or similar official document showing a U.S. place of birth.)

(e) Third-Level Evidence of Citizenship

If evidence from the lists in paragraphs (c) and (d) of this section is unavailable and the person claims a U.S. place of birth, the person should provide satisfactory documentary evidence from paragraph (g) of this section to establish identity, and satisfactory documentary evidence of citizenship from the list below:

(1) Extract of a hospital record on hospital letterhead, indicating a U.S. place of birth

The record must have been established at the time of the person's birth and created 5 years before the initial application date. (For children under 16 the document must have been created near the time of birth or 5 years before the date of application.) A souvenir "birth certificate" issued by a hospital does not satisfy this requirement.

(2) Life, health, or other insurance record showing a U.S. place of birth

The record must have been created at least 5 years before the initial application date.

M170.22 Acceptable Documentation of Citizenship and Identity(f) Fourth-Level Evidence of Citizenship

If evidence from the lists in paragraphs (c), (d), and (e) of this section is unavailable and the person claims a U.S. place of birth, the person should provide satisfactory documentary evidence from paragraph (g) of this section to establish identity, and satisfactory documentary evidence of citizenship from the list below:

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

The census record must also show the applicant's age.

- (i) Census records from 1900 through 1950 contain certain citizenship information. To secure this information, complete a Form BC-600, Application for Search of Census Records for Proof of Age. Add in the remarks portion "U.S. citizenship data requested." Also add that the purpose is for Medicaid eligibility. This form requires a fee.
- (2) One of the following documents that show a U.S. place of birth and was created at least 5 years before the application for Medicaid:
- (i) Seneca Indian tribal census record.
- (ii) Bureau of Indian Affairs tribal census records of the Navajo Indians.
- (iii) U.S. State Vital Statistics official notification of birth registration.
- (iv) An amended U.S. public birth record that is amended more than 5 years after the person's birth.
- (v) Statement signed by the physician or midwife who was in attendance at the time of birth.
- (3) Institutional admission papers from a nursing facility, skilled care facility or other institution, showing a U.S. place of birth.
- (4) Medical (clinic, doctor, or hospital) record showing a U.S. place of birth

The record must have been created at least 5 years before the initial application date. (For children under 16 the document must have been created near the time of birth or 5 years before the date of application.) An immunization record is not considered a medical record for purposes of establishing U.S. citizenship.

- (5) Written Declarations of Citizenship

Declarations should only be used in rare circumstances. If the documentation requirement needs to be met through declarations, the following rules apply:

- (i) There must be at least two declarations by two people who have personal knowledge of the event(s) establishing the individual's claim of citizenship (the two declarations could be combined in a joint declaration).

M170.22 Acceptable Documentation of Citizenship and Identity

(f) Fourth-Level Evidence of Citizenship (Continued)

- (ii) At least one of the people making the declaration cannot be related to the applicant or beneficiary. Neither of the two individuals can be the applicant or beneficiary.
- (iii) In order for the declarations to be acceptable, the people making them must be able to provide proof of their own citizenship and identity.
- (iv) If the people making the declarations have information that explains why documentary evidence establishing the individual's claim or citizenship does not exist or cannot be readily obtained, the declaration should contain this information as well.
- (v) The applicant or beneficiary or other knowledgeable person (guardian or representative) must also provide a declaration explaining why the evidence does not exist or cannot be obtained.
- (vi) The declarations must be signed under penalty of perjury.

(g) Evidence of Identity

- (1) The following documents may be accepted as proof of identity and must be submitted when the person uses as proof of citizenship, a document listed in paragraphs (d) through (e) of this section. (A separate document proving identity need not be submitted when the person submits primary documentary evidence of citizenship and identity (M170.22(c)).
 - (i) A driver's license issued by a state or territory
 - (A) The license must either have a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color.
 - (B) Individuals may not rely upon a Canadian driver's license, as the Centers for Medicare and Medicaid Services does not view this as a reliable form of identification.
 - (ii) School identification card

The card must have a photograph of the individual.
 - (iii) U.S. military card or draft record.
 - (iv) Identification card issued by the federal, state, or local government

The card must have the same information that is required for driver's licenses.
 - (v) Military dependent's identification card.

M170.22 Acceptable Documentation of Citizenship and Identity

(g) Evidence of Identity (Continued)

- (vi) Native American tribal document.
- (vii) U.S. Coast Guard Merchant Mariner card.
- (viii) Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document

The document must have a photograph or other personal identifying information relating to the individual.

- (2) Individuals may not rely upon a voter's registration card, as CMS does not view this as a reliable form of identification.

(h) Special Identity Rules for Children

For children under 16, if none of the documents in paragraph (g) are available, a Declaration of Identity (ESD Form No. 201ID) may be used to prove the identity of the child. A Declaration of Identity is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and cannot be used if declarations were used to establish citizenship.

(i) Documentary Evidence

- (1) All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted.
- (2) Copies of citizenship and identification documents shall be maintained in the case record or electronic data base.
- (3) Individuals may submit documentary evidence without appearing in person at a Medicaid office. Documents may be tendered in person, by mail, or by a guardian or authorized representative.
- (4) Presentation of documentary evidence of citizenship is a one-time activity; once a person's citizenship is documented and recorded in a state database, subsequent changes in eligibility should not require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship.

(j) Assistance

ESD shall assist individuals to secure satisfactory documentary evidence of citizenship and identity when, because of incapacity of mind or body, the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship or identity in a timely manner and the individual lacks a representative to assist him or her.

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M170.3

M170.3 Qualified Alien**(a) A “qualified alien” is:**

- (1) A lawful, permanent resident;
- (2) A refugee, including:
 - (i) Individuals admitted to the United States under § 207 of the Immigration and Nationality Act (INA);
 - (ii) A Cuban or Haitian entrant, as defined in § 501(e)(2) of the Refugee Education Assistance Act of 1980;
 - (iii) An Amerasian, admitted to the United States under § 584 of the Foreign Operations Export Financing, and Related Programs Appropriation Act, 1988 (as contained in § 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations Export Financing, and Related Programs Act, 1989, Public Law 100-461, as amended);
- (3) An asylee, as defined in § 208 of the INA;
- (4) An alien whose deportation has been withheld under:
 - (i) § 243(h) of the INA, as in effect prior to April 1, 1997 (the effective date of § 307 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), division C of Public Law 104-208);
 - (ii) § 241(b)(3) of the INA, as amended by section 305(a) of division C of Public Law 104-208;
- (5) An alien who has been granted parole for at least one year by the USCIS under § 212(d)(5) of the INA;
- (6) An alien who has been granted conditional entry under § 203(a)(7) of the INA;
- (7) A battered alien, as defined in M170.31;
- (8) A victim of a severe form of trafficking, in accordance with § 107(b)(1) of the Trafficking Victims Protection Act of 2000; or
- (9) An American Indian, born outside the U.S. and who enters and re-enters and resides in the U.S. is, for Medicaid purposes such a person is, considered lawful permanent resident and, as such, a qualified alien. This includes:
 - (i) An American Indian who was born in Canada and who is of at least one-half American Indian blood. This does not include the non-citizen spouse or child of such an Indian or a non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50% American Indian blood.
 - (ii) An American Indian who is a member of a Federally-recognized Indian tribe, as defined in § 4(e) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e). Abenaki is not a federally-recognized tribe.

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M170.31

M170.31 Battered Alien

- (a) To qualify as a “battered alien” for purposes of establishing qualified alien status, the following conditions must be met:
- (1) The individual must be:
 - (i) A victim of battering or cruelty by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the victim and the spouse or parent consented to, or acquiesced in the battery or cruelty; or
 - (ii) The parent of a child who has been such a victim, provided that the individual did not actively participate in the battery or cruelty; or
 - (iii) The child residing in the same household of such a victim.
 - (2) The individual must no longer be residing in the same household as the perpetrator of the abuse or cruelty.
 - (3) The battery or cruelty must have a substantial connection with the need for medical assistance.
 - (4) The individual must have been approved for legal immigration status, or have a petition pending that makes a prima facie case for legal immigration status, under one of the following categories:
 - (i) Permanent residence under the Violence Against Women Act (VAWA);
 - (ii) A pending or approved petition for legal permanent residence filed by a spouse or parent on USCIS Form I-130 or Form I-129f;
 - (iii) Suspension of deportation or cancellation of removal under VAWA.

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M170.32

M170.32 Acceptable Document of Qualified Alien Status

- (a) All non-citizen applicants for Medicaid must provide USCIS documents to establish immigration status, as specified below:
- (1) Lawful Permanent Resident:
 - (i) USCIS Form I-551, or
 - (ii) For recent arrivals, a temporary I-551 stamp on a foreign passport or on Form I-94.
 - (A) Forms I-151, AR-3 and AR-3A have been replaced by USCIS. If presented as evidence of status, contact USCIS to verify status by filing a G-845 with a copy of the old form. Refer the applicant/recipient to USCIS to apply for a replacement card.
 - (2) Refugee:
 - (i) USCIS Form I-94 endorsed to show entry as refugee under section 207 of INA and date of entry to the United States,
 - (ii) USCIS Form I-688B annotated "274a.12(a)(3)"
 - (iii) Form I-766 annotated "A3", or
 - (iv) Form I-571.

Refugees usually change to Lawful Permanent Resident status after 12 months in the United States, but for the purposes of Medicaid eligibility are still considered refugees. They are identified by Form I-551 with codes RE-6, RE-7, RE-8, or RE-9.
 - (3) Asylee:
 - (i) USCIS Form I-94 annotated with stamp showing grant of asylum under section 208 of the INA,
 - (ii) A grant letter from the Asylum Office of the USCIS,
 - (iii) Form I-688B annotated "274a.12(a)(5)"
 - (iv) Form I-766 annotated "A5" or
 - (v) An order of the Immigration Judge granting asylum.
 - (A) If a court order is presented, file a G-845 with the local USS district office attaching a copy of the document to verify that the order was not overturned on appeal.

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M170.32 Acceptable Document of Qualified Alien Status (Continued)

- (4) American Indian born outside of the United States:
 - (i) Documentation of LPR status (See I-313.1),
 - (ii) Birth or baptismal certificate issued on a reservation,
 - (iii) Membership card or other tribal records,
 - (iv) Letter from the Canadian Department of Indian Affairs,
 - (v) School records, or
 - (vi) Contact with the tribe in question.

- (5) Alien granted parole for at least 1 year by the USCIS:
 - (i) USCIS Form I-94 endorsed to show grant of parole under § 212 (d)(5) of the INA and a date showing granting of parole for at least 1 year.

- (6) Alien granted conditional entry under the immigration law in effect before April 1, 1980:
 - (i) USCIS Form I-94 with stamp showing admission under § 203 (a)(7) of the INA, refugee-conditional entry,
 - (ii) Forms I-688B annotated “274a.12 (a)(3),” or
 - (iii) Form I-766 annotated “A-3.”

- (7) Alien who has had deportation withheld under § 243(h) of the INA:
 - (i) Order of an Immigration Judge showing deportation withheld under § 243(h) of the INA and date of the grant;
 - (ii) USCIS Forms I-688B annotated “247a.12(a)(10)” or
 - (iii) Form I-766 annotated “A10.”

M170.4 Five-Year Bar for Qualified Aliens

- (a) Immigrants who enter the United States on or after August 22, 1996 as qualified aliens are not eligible to receive Medicaid for five years from the date they enter the country. If they are not qualified aliens when they enter, the five-year bar begins the date they become a qualified alien. The following qualified aliens are subject to the five-year bar:
- (1) Lawful permanent residents (LPRs);
 - (2) Aliens granted parole for at least one year;
 - (3) Aliens granted conditional entry (however, as a practical matter the five-year bar will never apply to such aliens, since, by definition, they entered the U.S. and obtained qualified alien status prior to August 22, 1996); and
 - (4) Battered aliens.
- (b) The following qualified aliens are not subject to the five-year bar:
- (1) Refugees;
 - (2) Asylees;
 - (3) Cuban and Haitian Entrants;
 - (4) Victims of a severe form of trafficking;
 - (5) Aliens whose deportation is being withheld;
 - (6) Qualified aliens who are (1) honorably discharged veterans, (2) on active duty in the U.S. military or (3) the spouse (including a surviving spouse who has not remarried) or unmarried dependent child of an honorably discharged veteran or individual on active duty in the U.S. Military;
 - (7) Aliens admitted to the country as Amerasian immigrants;
 - (8) Legal permanent residents who first entered the country under another exempt category (i.e., as a refugee, asylee, Cuban or Haitian entrant, trafficking victim, or alien whose deportation was being withheld) and who later converted to the LPR status.
- (c) The five-year bar does not apply to:
- (1) Immigrants who are applying for treatment of an emergency medical condition only;
 - (2) Immigrants who entered the United States and became qualified aliens prior to August 22, 1996; and
 - (3) Immigrants who entered prior to August 22, 1996 and remained “continuously present” in the United States until becoming a qualified alien on or after that date. Any single absence of more than 30 consecutive days or a combined total absence of 90 days before obtaining qualified alien status is considered to interrupt “continuous presence.”
 - (i) Immigrants who do not meet “continuous presence” are subject to the five-year bar beginning from the date they become a qualified alien.
 - (ii) Immigrants do not have to remain continuously present in the United States after obtaining qualified alien status.
 - (4) Members of a Federally-recognized Indian tribe; and
 - (5) American Indians born in Canada to whom Section 289 of the INA applies.

M170.41 Acceptable Documentation to Determine the Five-Year Bar

- (a) The following are the documents that may be used to determine the five-year bar:
- (1) Form I-94. The date of admission should be found on the refugee stamp. If missing, contact USCIS to verify the date of admission by filing a G-845 with a copy of the document.
 - (2) If a person presents Forms I-688B or I-766 (Employment Authorization Documents), and I-57 (refugee travel document), ask the alien to present Form I-94. If not available, contact USCIS by filing a G-845 with a copy of the document presented.
 - (3) Grant letters or court orders. Derive the date status is granted from the date of the letter or court order. If missing, contact USCIS to verify date of grant by filing a G-845 with a copy of the document.
- (b) If a person presents a receipt indicating that he or she has applied to USCIS for a replacement document for one of the documents identified above, contact the USCIS to verify status by filing a G-845 with the local USCIS district office with a copy of the receipt. Contact the USCIS any time there is a reason to question the authenticity of a document presented or the information on the document is insufficient to determine whether alien status requirements are met.

M170.5 Non-Qualified Aliens

Aliens who do not meet qualified alien status are considered non-qualified aliens. Non-qualified aliens who otherwise meet the Medicaid eligibility criteria of a categorical assistance program are eligible for the treatment of emergency medical conditions only. (M170.8). These aliens do not have to make a declaration of immigration status. Immigration status does not have to be verified. Such aliens do have to provide their Social Security Number if one is available or apply for one if the person does not have one. Non-qualified aliens include illegal and undocumented aliens.

M170.51 Illegal Aliens

These aliens were never legally admitted to the U.S. for any period of time, or were admitted for a limited time and did not leave the U.S. when the time expired. These individuals are not issued Social Security Numbers. Therefore, they do not have to provide one.

M170.52 Undocumented Aliens

Aliens who do not have any type of BCIS documentation are undocumented aliens.

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M170.6

M170.6 Ineligible Aliens/Non-Immigrants

- (a) Some aliens may be lawfully admitted but only for a temporary or specified period of time as legal non-immigrants. These aliens are never qualified aliens. Because of the temporary nature of their admission status, they generally will be unable to establish residency and are not eligible for Medicaid. Thus, an alien in possession of a student visa, for example, is not a qualified alien for Medicaid purposes. In rare instances, an ineligible alien may be able to establish residency and meet all other Medicaid eligibility criteria of a categorical assistance program and therefore be eligible for treatment of emergency medical conditions only. (M170.8).
- (b) Visitors, tourists, some workers and diplomats are also ineligible. These aliens would have the following types of documentation:
- (1) Form I-94 Arrival-Departure Record,
 - (2) Form I-185 Canadian Border Crossing Card,
 - (3) Form I-186 Mexican Border Crossing Card,
 - (4) Form SW-434 Mexican Border Visitor's Permit, or
 - (5) Form I-95A Crewman's Landing Permit.
- (c) The following categories of individuals are ineligible aliens/non-immigrants and are not eligible for Medicaid:
- (1) Foreign government representatives on official business and their families and servants,
 - (2) Visitors for business or pleasure, including exchange visitors,
 - (3) Aliens in travel status while traveling directly through the U.S.,
 - (4) Crewmen on shore leave,
 - (5) Foreign students,
 - (6) International organization representation personnel and their families and servants,
 - (7) Temporary workers including agricultural contract workers, and
 - (8) Members of foreign press, radio, film, or other information media and their families.

M170.7 Confirmation of Immigration and Citizenship Status

A qualified alien's immigration status must be confirmed through the Systematic Alien Verification for Entitlement (SAVE) Program, regardless of documentation presented by the alien.

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M170.8

M170.8 Emergency Medical Services

- (a) Non-qualified aliens are eligible for the treatment of emergency medical conditions if all of the following conditions are met:
- (1) The individual has, after sudden onset, 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 serious:
 - (i) jeopardy to the patient’s health;
 - (ii) impairment of bodily functions; or
 - (iii) dysfunction of any bodily organ or part.
 - (2) Emergency Medical Services are not related to either an organ transplant procedure or routine prenatal or post-partum care.
 - (3) The individual meets all eligibility requirements for SSI- or ANFC-related Medicaid except verification of alien status and, for illegal noncitizens, verification of a social security number.

M200	SSI-Related Medicaid Eligibility
M200.1	Definitions
(a)	Community Medicaid
(b)	Community Spouse
(c)	Coverage Group
(d)	Financial Responsibility
(e)	Institutionalized Individual
(f)	Institutionalized Spouse
(g)	Long-Term Care
(h)	Medicaid Group
(i)	Medicaid Services
(j)	SSI-Related Medicaid
(k)	Waiver Services
M200.2	SSI-Related Categorically Needy Coverage Groups
M200.21	SSI Recipient Coverage Groups
M200.22	SSI-Eligible Coverage Groups
M200.23	Long-Term Care Medicaid Coverage Groups
M200.24	SSI-Related Medicaid Coverage Groups Open to New Aged, Blind, or Disabled Applicants
M200.25	Coverage Groups Open to Former Recipients of SSI, SSI/AABD, or Medicaid
M200.3	SSI-Related Medically Needy Coverage Group
M200.4	SSI-Related Medicare Cost-Sharing Coverage Groups
M200.41	Qualified Medicare Beneficiaries (QMB)
M200.42	Qualified Disabled and Working Individuals (QDWI)
M200.43	Specified Low-Income Medicare Beneficiaries (SLMB)
M200.44	Qualified Individuals (QI-1)
M201 - M209	[Reserved]
M210	Nonfinancial Eligibility Tests for SSI-Related Medicaid
M211	Relationship to SSI Based on Age, Blindness, or Disability
M211.1	Definition of Age
M211.2	Definition of Disability
M211.21	Substantial Gainful Activity
M211.3	Definition of Blindness
M211.4	Determination of Disability or Blindness
M212	Citizenship and Identity
M212.1	Emergency Medical Services

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M212

M212 Citizenship and Identity

The rules for citizenship and identity are in section M170.

M212.1 Emergency Medical Services

The rule for emergency medical services is in section M170.8.

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M310-M319 General Eligibility Factors

M311 Citizenship and Identity

The rules for citizenship and identity are in section M170.

M311.1 Emergency Medical Services

The rule for emergency medical services is in section M170.8.

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3201

3201 Eligibility

An individual must meet the following requirements to be found eligible for this program.

3201.1 Citizenship and Identity

The rules for citizenship and identity are in section M170.

3201.2 State Resident

An individual is a state resident if he/she is living in Vermont at the time of such application:

- a. with intent to remain permanently or for an indefinite period of time: or
- b. while incapable of stating intent.

Temporary absences from Vermont for any of the following purposes does not interrupt or end Vermont residence: visiting, obtaining necessary medical care, or obtaining education or training under a program of vocational rehabilitation or higher education.

3201.3 Living Arrangement

An individual meets the living arrangement requirement unless he/she is living in a correctional facility including a juvenile facility.

An individual living in a psychiatric facility, an alcohol treatment facility, or a drug treatment facility is eligible for VScript.

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3300

3300 Introduction

Legislative Act 14, authorizing and supporting the Vermont Health Access Plan, was adopted by the Vermont General Assembly and signed into law by the Governor on April 12, 1995. The Vermont Health Access Plan extends a pharmacy benefit and vision care services to low-income disabled and elderly Vermonters to assist them to purchase the prescription medicines that maintain their health and prevent unnecessary health problems. Vision care services do not include eyewear.

The policies which follow describe this coverage group called VHAP-Pharmacy.

3301 Eligibility

An individual must meet all of the following requirements (3301.1 - 3301.74) to be found eligible for this program.

3301.1 Age

An individual qualifying on the basis of age must be at least 65 years of age on the date the application is filed.

3301.2 Disability

An individual qualifying on the basis of disability must be receiving disability benefits from Social Security (OASDI) to be considered disabled.

3301.3 Uninsured

Individuals meet the uninsured requirement if they do not have any plan, including VHAP-Limited and Medicare, which pays or reimburses, either in whole or in part, with the exception of VScript, or Healthy Vermonters, their prescription drug expenses.

3301.4 Citizenship and Identity

The rules for citizenship and identity are in section M170.

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3401

3400 Eligibility3401.1 Insurance Coverage

Individuals must be without adequate coverage for prescription drugs to be eligible. Individuals are considered without adequate coverage if they have no insurance policy or program benefit that includes any prescription drug coverage; however, beneficiaries on Part D in an MA-PD or PDP plan will be considered uninsured as to excluded Part D drug classes, except to the extent that such drugs are covered by the MA-PD or PDP plans. They are also considered without adequate coverage if no prescription drugs are covered under their policy because they have reached the annual maximum coverage limit.

The department considers individuals covered by VHAP-Pharmacy insured because that program has prescription drug coverage and no annual maximum. Beneficiaries who are eligible for Part D must be enrolled in a Part D prescription drug plan or a Medicare Advantage-Prescription Drug benefit plan to be eligible for Healthy Vermonters. The department considers individuals covered by VScript, including VScript expanded, to be uninsured for drugs that are excluded from VScript coverage (3202) and for drug classes that are excluded under Part D coverage (3403.4) for Medicare beneficiaries, and automatically extends coverage for these drugs under the Healthy Vermonters program.

3401.2 Citizenship and Identity

The rules for citizenship and identity are in section M170.

3401.3 State Residence

An individual must be a state resident to be eligible. Individuals are considered state residents if they are living in Vermont at the time of submitting the application for the Healthy Vermonters Program:

- a. with intent to remain permanently or for an indefinite period of time or
- b. while incapable of stating intent.

Temporary absences from Vermont for any of the following purposes do not interrupt or end Vermont residence: visiting, obtaining necessary medical care, or obtaining education or training under a program of vocational rehabilitation or higher education.

An individual must remain in contact with the department by providing an up-to-date address.

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3502

3502 Eligibility

An individual must meet the following requirements (3502.1 or 3502.2 and 3502.3 - 3502.6) to be found eligible for the VPharm program.

3502.1 Age

To qualify on the basis of age, an individual must be at least 65 years of age as of the effective date of coverage under VPharm and entitled to Medicare benefits under Part A or enrolled in Medicare Part B and enrolled in Medicare Parts C or D.

3502.2 Disability

To qualify on the basis of disability, an individual must be under 65 years of age as of the effective date of coverage under VPharm and entitled to Medicare benefits under Part A or enrolled in Medicare Part B and enrolled in Medicare Parts C or D.

3502.3 State Residence

An individual must be a resident of Vermont at the time of application.

3502.4 Income

Household income, when calculated in accordance with the rules adopted for the Vermont Health Access Plan (VHAP 4001.81- 4001.83), must be no greater than 225 percent of the federal poverty level.

3502.5 Prescription Drug Plan (PDP) Enrollment

An individual must be enrolled in a PDP or a MA-PD and may not have other private insurance for prescription drugs.

3502.6 Limited Income Subsidy

Individuals eligible for the federal limited income subsidy described in 42 C.F.R. §§ 423.771-423.800 must secure it.

3502.7 Citizenship and Identity

An individual must meet the citizenship and identity rules in section M170.

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4001.3

4001 Eligibility4001.3 Citizenship and Identity

The rules for citizenship and identity are in section M170.

4001.4 State Residence

An individual must be a resident of Vermont to meet the residence requirement.

4001.5 Living Arrangement

An individual meets the living arrangement requirement unless: he/she is expected to remain for over 30 days in a long-term care facility such as a nursing home, a freestanding psychiatric facility, or an ICF/MR facility; is enrolled in a home and community-based waiver program; is receiving services from a hospice program; or is living in a correctional facility, including a juvenile facility.

An individual living in an alcohol treatment facility or a drug treatment facility is eligible for VHAP.