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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**SSP 25-2021**

CHAPTER 461  
DEPARTMENT OF HUMAN SERVICES  
SELF-SUFFICIENCY PROGRAMS

**FILED**

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FILING CAPTION: Temporarily Amending Non-US Citizen APD Medical Program Eligibility

EFFECTIVE DATE: 03/12/2021 THROUGH 09/07/2021

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**NEED FOR THE RULE(S):**

OAR 461-120-0125 needs to be amended as the U.S. Congress passed the Consolidated Appropriations Act of 2021, changing the status of COFA citizens in regard to Medicaid eligibility. Previously, there was no federal Medicaid funds available for these individuals age 19 and older, instead they were granted a special immigration status that allowed them to live and work in the U.S. without the need for a visa. The act referenced above reversed those provisions and effectively made COFA citizens who have immigrated to the U.S. eligible for Medicaid, regardless of age, effective the day the legislation was enacted. The bill was signed on 12/27/20. This rule change aligns the Department with federal regulations by moving the reference to COFA citizens to the section that outlines who meets the non-citizen requirements for Medicaid.

**JUSTIFICATION OF TEMPORARY FILING:**

The Department finds that failure to act promptly by amending OAR 461-120-0125 will result in serious prejudice to the public interest, the Department, and clients of its programs. The Department needs to proceed by temporary rule due to the implementation requirements in H.R. 133- Consolidated Appropriations Act, 2021. The consequences for not making the change immediately include preventing individuals from obtaining and utilizing medical coverage that could potentially prove life-saving, particularly during a pandemic. Also, the Department would be out of compliance with federal regulations, potentially risking federal Medicaid funding. Not making the change would maintain the current prohibition on providing much-needed Medicaid coverage to individuals who are currently only eligible for the package of benefits that covers emergency lifesaving services (CAWEM). Making this change immediately would allow the Department to immediately and retroactively upgrade existing benefits for COFA citizens from CAWEM to the OHP Plus package of benefits, and approve new applicants for much-needed medical benefits for which they could previously not receive.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

No documents relied upon.

AMEND: 461-120-0125

RULE SUMMARY: OAR 461-120-0125 about alien status is being amended to designate citizens of Compact of Free Association States (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) as qualified non-citizens for the OSIPM and QMB programs and include them in the category of individuals who meet the non-citizen requirements for Medicaid. This amendment is retroactively effective December 28, 2020.

CHANGES TO RULE:

461-120-0125

Alien Status ¶¶

(1) For purposes of this chapter of rules,¶¶

(a) In all programs, an individual is a "qualified non-citizen" if the individual is any of the following:¶¶

~~(aA)~~ A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq). This includes:¶¶

~~(Ai)~~ An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.¶¶

~~(Bii)~~ An Amerasian granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.¶¶

~~(bB)~~ A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).¶¶

~~(cC)~~ A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).¶¶

~~(dD)~~ A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).¶¶

~~(eE)~~ A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.¶¶

~~(fF)~~ A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.¶¶

~~(gG)~~ A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).¶¶

~~(hH)~~ A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶¶

~~(iI)~~ A non-citizen who is a "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶¶

~~(jJ)~~ A non-citizen who is a family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶¶

(b) In the OSIPM and QMB programs, in addition to subsection (a) of this section, an individual is a "qualified non-citizen" if the individual is from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective December 28, 2020.¶¶

(2) In all programs except the REF and REFM programs, an individual meets the alien status requirements if the individual is one of the following:¶¶

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.¶¶

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).¶¶

(c) A qualified non-citizen who is any of the following:¶¶

(A) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).¶¶

(B) A member of the United States Armed Forces on active duty (other than active duty for training).¶¶

- (C) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraphs (A) or (B) of this subsection.¶
- (3) In the ERDC, TA-DVS, and TANF programs, an individual meets the alien status requirements if the individual is one of the following:¶
- (a) An individual who is a qualified non-citizen (see subsection (1)(a) of this rule).¶
- (b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.¶
- (4) In the OSIPM and QMB programs an individual meets the alien status requirement if:¶
- (a) The individual is a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996 and has been in the U.S. for five years beginning on the date the non-citizen received his or her qualified non-citizen status; or¶
- (b) The individual meets the requirements of one of the following subsections:¶
- (A) An individual granted any of the following alien statuses:¶
- (i) Refugee - under section 207 of the INA.¶
- (ii) Asylum - under section 208 of the INA.¶
- (iii) Deportation being withheld under section 243(h) of the INA.¶
- (iv) Cubans and Haitians who are either public interest or humanitarian parolees.¶
- (v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.¶
- (vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶
- (vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶
- (viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.¶
- (ix) Retroactively effective December 28, 2020, an individual from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association.¶
- (B) Effective October 1, 2009, an individual is a qualified non-citizen and is under 19 years of age.¶
- (C) Was a qualified non-citizen before August 22, 1996.¶
- (D) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.¶
- (E) Is under the age of 19 and is one of the following:¶
- ~~(i) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.~~¶
- ~~(ii)~~ (ii) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:¶
- (I) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);¶
- (II) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);¶
- (III) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;¶
- (IV) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;¶
- (V) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;¶
- (VI) An alien currently in deferred action status pursuant to Department of Homeland Security Operating

Instruction OI 242.1(a)(22); or¶¶

(VII) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.¶¶

(iii) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).¶¶

(F) In the OSIPM program, is receiving SSI benefits.¶¶

(G) In the QMB program, is receiving SSI and Medicare Part A benefits.¶¶

~~(H) Meets the alien status requirements in section (2) or (5) of this rule.¶¶~~

(5) In the REF and REFM programs, an individual meets the alien status requirements if the individual is admitted lawfully under any of the following provisions of law:¶¶

(a) An individual admitted as a refugee under section 207 of the INA (8 USC 1157).¶¶

(b) An individual granted asylum under section 208 of the INA (8 USC 1158).¶¶

(c) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.¶¶

(d) An individual paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)).¶¶

(e) An Amerasian from Vietnam who is admitted to the U.S. as an immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 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 Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).¶¶

(f) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.¶¶

(g) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).¶¶

(h) Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act.¶¶

(6) In the SNAP program, an individual meets the alien status requirement if the individual meets the requirements of one or more of the following subsections:¶¶

(a) An individual granted any of the following alien statuses:¶¶

(A) Refugee - under section 207 of the INA.¶¶

(B) Asylum - under section 208 of the INA.¶¶

(C) Deportation being withheld under section 243(h) of the INA.¶¶

(D) Cubans and Haitians who are either public interest or humanitarian parolees.¶¶

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.¶¶

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶¶

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶¶

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.¶¶

(b) A qualified non-citizen under 18 years of age.¶¶

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.¶¶

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).¶¶

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.¶¶

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.¶¶

(g) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:¶¶

(A) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).¶¶

(B) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.¶¶

(C) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 413.085, 414.231, 414.685

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, H.R. 133, 116th Cong. (2019-2020)