

## Chapter 2: Eligibility

As explained above, Medi-Cal is a safety net health care program for many low-income individuals. However, not all individuals with low-income and limited resources are eligible for the Medi-Cal program. The Medicaid program was designed to cover the most vulnerable members of our society: elderly, children, pregnant women, and people with disabilities. Although the Medicaid program has expanded to cover more low-income working families and relaxed some rules on financial eligibility, the program's expansions have been largely based around these vulnerable populations. Only individuals who satisfy the eligibility criteria in terms of both personal characteristics and financial condition may enroll.

To meet the personal characteristics qualifications, an individual must: 1) fall within one of the eligibility categories; 2) possess proper immigration status; and 3) show that she is a resident of the State of California.

### Personal Characteristics

Four general groups of individuals qualify for Medi-Cal services: 1) children; 2) parents, including pregnant women; 3) people who are elderly; and 4) people who have a disability. This means that single adults under the age of 65 who are not pregnant, have no children and no disabilities, generally do not qualify for the program. Even an individual who is destitute or homeless cannot qualify for Medi-Cal unless she falls into one of these categories.

### Eligibility Groups

#### Mandatory and Optional

In the federal Medicaid framework, beneficiaries are divided into three groups: 1) mandatory categorically needy; 2) optional categorically needy; and 3) medically needy.<sup>1</sup> Federal law only requires that states provide coverage to individuals who fall within the mandatory categories of eligibility. States may choose whether or not to cover individuals who are optional categorically needy or medically needy.<sup>2</sup>

Currently, California covers all of the mandatory and optional categories of eligibility. Medi-Cal often refers to these eligibility categories as “programs,” though their application procedures, benefit packages and appeal rights are the same. A brief description of these programs is provided in this chapter; a detailed explanation is given in Chapter 7.

Once an individual has qualified for a Medi-Cal program, she is assigned an “aid code,” which identifies the category under which she qualifies for Medi-Cal and the breadth of services she may receive. The aid code also provides information about whether the services are funded by both the state and federal governments, or only by the state. The aid code is a combination of either two numbers or a letter and a number.

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<sup>1</sup> See 42 U.S.C. §§ 1396a(a)(10)(A)(i), (10)(A)(ii), (10)(C).

<sup>2</sup> See *id.*

The following are lists of the federal Medicaid mandatory and optional eligibility categories:

### **Federal Mandatory Categories of Eligibility:<sup>3</sup>**

#### **Families**

- Individuals who would have satisfied AFDC income and resource requirements before the program was abolished<sup>4</sup>
- Pregnant women and children meeting federal poverty level standards<sup>5</sup>
- Families whose increased countable earnings make them ineligible for Medicaid under the old AFDC standards<sup>6</sup>
- Individuals receiving federal foster care or adoption assistance or who lose eligibility under Section 1931 due to increased child or spousal support<sup>7</sup>
- Individuals eligible for Medicaid based on Medicaid's narrower deeming requirements<sup>8</sup>
- Individuals who lost AFDC due to 1972 cost of living increases<sup>9</sup>
- Children whose parents lost Medicaid due to failure to cooperate in establishing paternity<sup>10</sup>
- Children whose parents lost Medicaid because of failure to meet work requirements<sup>11</sup>

<sup>3</sup> See *id.* § 1396a(a)(10)(A)(i).

<sup>4</sup> *Id.* § 1396u-1(b); Cal. Welf. & Inst. Code § 14005.30.

<sup>5</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(i)(III)(IV) 1396a(a)(10)(A)(i)(III)(VI), 1396a(l)(1)(D), 1396d(n)(1); Cal. Welf. & Inst. Code §§ 14005.23, 14148.

<sup>6</sup> 42 U.S.C. § 1396u-1(c)(2), Cal. Welf. & Inst. Code § 14005.8.

<sup>7</sup> 42 U.S.C. § 1396a(a)(10)(A)(i)(I).

<sup>8</sup> *Id.* § 1396a(a)(17)(D); 42 C.F.R. § 453.113.

<sup>9</sup> 42 U.S.C. § 1396a (note), *enacted by* Unempl. Comp. Amend. Act of 1976, Pub. L. No. 94-566, § 503 (Oct. 20, 1976); 42 C.F.R. § 435.114.

<sup>10</sup> 42 C.F.R. § 433.148.

<sup>11</sup> 42 U.S.C. §§ 1396u-1(b)(3)(A), (B).

### Aged, Blind and Disabled

- Recipients of SSI and related programs<sup>12</sup>
- Mandatory state supplement recipients<sup>13</sup>
- Working disabled<sup>14</sup>
- Aged, blind and disabled individuals who lost SSI benefits due to entitlement to Social Security benefits or a COLA in their SSA benefits<sup>15</sup>
- Grandfathered 1973 recipients<sup>16</sup>
- Individuals ineligible for SSI or SSP because of requirements prohibited by Medicaid<sup>17</sup>
- Qualified Medicare Beneficiaries (QMBs)<sup>18</sup>
- Specified Low Income Beneficiaries (SLMBs)<sup>19</sup>
- Qualifying Individuals (QIs)<sup>20</sup>

<sup>12</sup> *Id.* § 1396a(f).

<sup>13</sup> *Id.* § 1396a (note), enacted by Pub. L. No. 93-233, § 13(c) (Dec. 31, 1973); 42 C.F.R. § 435.130. *See also* 42 C.F.R. §§ 435.133(d)(4), 435.4, 435.1010.

<sup>14</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(i)(II), 1396a(a)(10)(E)(ii), 1396d(q), 1396d(s); 42 C.F.R. § 435.120. *See also* CMS, State Medicaid Manual § 3485.2.

<sup>15</sup> 42 U.S.C. §§ 402(d)-(f), 1383c(b)-(c), 1396a (note on Pickle Amendment).

<sup>16</sup> *Id.* §§ 1396a(a)(10)(A)(i)(I), 1396d(a)(vi).

<sup>17</sup> 42 C.F.R. § 435.122.

<sup>18</sup> 42 U.S.C. §§ 1396a(a)(10)(E)(i), 1396d(p).

<sup>19</sup> *Id.* § 1396a(a)(10)(E)(iii).

<sup>20</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, § 4732 (Aug. 5, 1997), amending 42 U.S.C. §§ 1396a(a)(10)(E)(iv), 1396d(b). *See also* Cal. DHCS, ACWDL Nos. 03-02 (Jan. 15, 2003) (notice of discontinuance of QI-2 program and extension of QI-1 program past sunset date), 08-08 (Feb. 28, 2008) (notice of extension of QI-1 program to June 30, 2008). Under the Medicare Improvements for Patients and Providers Act of 2008, passed July 15, 2008, the QI program was extended again until December 31, 2009. Note that California has repeatedly extended the QI-1 program, based on federal extensions of the program, since its original sunset date of Dec. 2002.

## Federal Optional Categories of Eligibility:

### Women and Children

- Certain groups of pregnant women and children<sup>21</sup>
- Children under state adoption assistance agreements<sup>22</sup>
- Adolescents who are in foster care under the responsibility of the state on their 18<sup>th</sup> birthday<sup>23</sup>
- Non-institutionalized disabled children<sup>24</sup>
- Optional targeted low-income children<sup>25</sup>
- Children who do not meet the AFDC-96 definition of “dependent” children<sup>26</sup>
- Individuals who would qualify for AFDC if work-related child care costs were paid from earnings rather than by a state agency<sup>27</sup>
- Continuous eligibility for children<sup>28</sup>
- Presumptive eligibility for children<sup>29</sup>
- Presumptive eligibility for pregnant women<sup>30</sup>
- Women with breast or cervical cancer<sup>31</sup>

<sup>21</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(IX), 1396a(l)(1)(A)-(B) (coverage for pregnant women and infants with incomes of up to 185 percent of FPL); 42 U.S.C. § 1396a(a)(1)(3)(A) (optional use of resource standard for coverage of women, infants and children up to age 19); 42 U.S.C. § 1396a(r)(2) (general option for states to use less restrictive methodologies for both income and resources to extend eligibility to more women and children).

<sup>22</sup> 42 U.S.C. § 1936a(a)(10)(A)(ii)(XVIII); 42 C.F.R. § 435.227.

<sup>23</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XVIII), 1396d(v); 42 C.F.R. § 435.222(b)(1). *See also* CMS, State Child Welfare and Medicaid Dirs. Letter (Dec. 1, 2000) (not numbered); Foster Care Indep. Act of 1999, Pub. L. No. 106-169, § 121 (Dec. 14, 1999).

<sup>24</sup> 42 U.S.C. § 1396a(e)3; CMS, State Medicaid Manual § 3500.2 (Feb. 1997).

<sup>25</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 2101-2110 (Aug. 5, 1997) (added new Title XXI to Social Security Act, creating State Children's Health Insurance Program (SCHIP)); 42 U.S.C. § 1397aa (federal funding for States to initiate and expand health assistance to uninsured, low-income children).

<sup>26</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii), 1396d(a)(i); 42 C.F.R. § 435.222; CMS, State Medicaid Manual §§ 3503, 3503.1, 3503.3. These are sometimes referred to as “Ribicoff children.”

<sup>27</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(III), 1396d(a); 42 C.F.R. § 435.223.

<sup>28</sup> 42 U.S.C. § 1396a(e)(12).

<sup>29</sup> *Id.* § 1396r-1a.

<sup>30</sup> *Id.* § 1396r-1. *See also* CAL. DHCS, ACWDL No. 93-78 (Oct. 27, 1993).

<sup>31</sup> 42 U.S.C. § 1396r-1b.

### Disabled, Elderly and Blind

- Individuals eligible for assistance except for institutional status<sup>32</sup>
- Institutionalized individuals under a special income level<sup>33</sup>
- Individuals receiving hospice care<sup>34</sup>
- Individuals receiving home and community-based services<sup>35</sup>
- Individuals receiving only optional state supplements<sup>36</sup>
- Individuals with tuberculosis<sup>37</sup>
- Individuals with sickle cell anemia<sup>38</sup>
- Work-related categories<sup>39</sup>
- Poor elderly and disabled<sup>40</sup>

<sup>32</sup> *Id.* §§ 1396a(a)(10)(A)(ii)(IV), 1396b(f)(4)(C). States may provide Medicaid to all individuals in medical facilities (primarily nursing homes) who would be eligible under the state’s AFDC-96, SSI, or optional state supplement programs, if they were not institutionalized, so long as their income does not exceed 300 percent of the federal SSI benefit level.

<sup>33</sup> 42 U.S.C. § 1396a(a)(10)(A)(ii)(V), *cross-ref’g* 42 U.S.C. § 1396b(f)(4)(C); 42 C.F.R. §§ 435.1005, 435.236; CMS, State Medicaid Manual §§ 3500.2, 3581.

<sup>34</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(VII), 1396d(o); CMS, State Medicaid Manual §§ 3580, 3581.

<sup>35</sup> 42 U.S.C. § 1396a(a)(10)(A)(ii)(VI); 42 C.F.R. § 435.217. States may provide home and community-based services under a variety of “waiver” programs designed to reach individuals who would be eligible for Medicaid if they were institutionalized and would be institutionalized if they were not receiving home and community-based services. Waivers are available under 42 U.S.C. §§ 1396n(c), (d), (e).

<sup>36</sup> 42 U.S.C. § 1396a(a)(10)(A)(ii)(XI); 42 C.F.R. § 435.232; CMS, State Medicaid Manual § 3500.2 (Feb. 1997) (manual provides criteria for eligibility).

<sup>37</sup> Cal. DHCS, ACWDL No. 98-44 (Oct. 14, 1998); Cal. Welf. & Inst. Code § 14005.20 (repealed 1994); Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13,603 (Aug. 10, 1993), *amending* 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XII), 1396a(z), 1396n(g).

<sup>38</sup> American Jobs Creation Act of 1994, Pub. L. No. 108-357, § 712 (Oct. 22, 2004), *amending* 42 U.S.C. §§ 1396d(a)(1)(A)(iii), 1396d(a)(1)(A)(x), 1396b(a)(3)(E). Treatment for sickle cell disease is provided through the Genetically Handicapped Persons Program (GHPP). *See* Cal. Health & Safety Code §§ 12125-125191.

<sup>39</sup> CMS, State Medical Dirs. Letter (Mar. 29, 2000) (not numbered), (Aug. 29, 2000) (not numbered). States can offer Medicaid to “working disabled individuals” between 16 to 65 who would be eligible for SSI, but for their earnings. 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XVI), 1396(v), *as promulgated by* Ticket to Work & Work Incentives Improvement Act of 1999, Pub. L. No. 106-170, § 201(a)(2) (Dec. 17, 1999); CMS, State Medical Dirs. Letter (Mar. 29, 2000) (not numbered). States can offer Medicaid to working disabled individuals previously on Medicaid but made ineligible because of “medical improvement.” Pub. L. No. 106-170, § 204(a), to be reprinted at 42 U.S.C. § 1396a (note). States can apply for permission from CMS to provide Medicaid coverage to workers with potentially severe disabilities. 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII). States can provide coverage to individuals in families with income below 250 percent of FPL who would be eligible for Medicaid as working disabled individuals, but for their earnings.

<sup>40</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(X), 1396a(m). *See also* CMS, State Medicaid Manual § 3596 (disability must be determined according to SSI standards, except in 209(b) states).

### Other Groups

- Individuals who satisfy AFDC or SSI income and resource requirements but do not receive assistance<sup>41</sup>
- Individuals enrolled in HMOs but losing eligibility<sup>42</sup>
- Qualified COBRA continuation beneficiaries<sup>43</sup>
- Poor families with a primary wage earner who works more than 100 hours per month<sup>44</sup>

### Medically Needy

The third group that Medicaid covers is the medically needy.<sup>45</sup> Medically needy individuals are those who fall within a federal eligibility category, but whose income or resources exceed the categorically needy levels. States covering the medically needy must use a single resource eligibility standard and a single income eligibility standard for all medically needy recipients that take into account the number of persons in the assistance unit.<sup>46</sup> The income standard is called the “medically needy income level.” In California, medically needy beneficiaries may have a “share of cost.”

If states choose the medically needy option, they must cover two groups of individuals: 1) pregnant women who, except for income and resources, would be eligible as mandatory or optional categorically needy<sup>47</sup> and 2) children under the age of eighteen who, but for income and resources, would be covered as mandatory categorically needy.<sup>48</sup>

<sup>41</sup> 42 U.S.C. § 1396a(a)(10)(A)(ii)(I); 42 C.F.R. § 435.210.

<sup>42</sup> 42 U.S.C. § 1396a(e)(2)(A); 42 C.F.R. § 435.212. Individuals who enroll in Medicaid HMOs or primary care case management systems (PCCM) and subsequently lose Medicaid eligibility due to increased income or resources, may retain coverage for up to six months from the date of initial HMO or PCCM enrollment.

<sup>43</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii), 1396d(a)(x), 1396a(u)(1).

<sup>44</sup> 45 C.F.R. § 233.101(a)(1).

<sup>45</sup> 42 U.S.C. § 1396a(a)(10)(C); 42 C.F.R. §§ 435.300 *et seq.*, 435.800 *et seq.*, 436.800 *et seq.*; CMS, State Medicaid Manual § 3600 *et seq.* States have the option of covering the medically needy, except in 209(b) states, where the aged, blind and disabled must be covered. *See* U.S.C. § 1396a(f); 42 C.F.R. §§ 435.121; 435.330; CMS, State Medicaid Manual § 3613.3. Note, California is not a 209(b) state.

<sup>46</sup> 42 U.S.C. §§ 1396a(a)(10)(C)(i), (a)(17); 42 C.F.R. §§ 435.811, 436.811. Methodologies for determining the income and resources of medically needy groups must be comparable to and no more restrictive than those used in the most closely-related cash assistance program. This means that states should give medically needy applicants the same income deductions and resource exclusions as are given to categorically needy recipients in the closest cash-related program. *See* 42 U.S.C. § 1396a(a)(10)(C)(i)(III); 42 C.F.R. §§ 435.831(b), 435.845, 436.601; CMS, State Medicaid Manual § 3625.

<sup>47</sup> 42 U.S.C. § 1396a(a)(10)(C)(ii)(II); 42 C.F.R. § 435.301(b)(1)(i).

<sup>48</sup> 42 U.S.C. § 1396a(a)(10)(C)(ii)(I); 42 C.F.R. §§ 435.301(b)(1)(ii), 436.301(b)(i)(ii).

States also have the option of covering the following medically needy groups: 1) children under the age of 21, or at state option, age 20, 19, or 18 who, but for income and resources, would qualify as categorically needy;<sup>49</sup> 2) caretaker relatives who meet the AFDC-96 definition of caretaker relative and who are taking care of a child who satisfies the AFDC-96 definition of dependent child;<sup>50</sup> 3) the aged, who are 65 years of age or older;<sup>51</sup> 4) the blind;<sup>52</sup> 5) people with disabilities;<sup>53</sup> 6) individuals enrolled in managed care plans who lose eligibility due to increased income or resources for up to six months from the date of the initial enrollment in the managed care plan;<sup>54</sup> and 7) pregnant women who are determined to be presumptively eligible if they meet the state's income-eligibility standards for the medically needy.<sup>55</sup>

## Medi-Cal Programs At-A-Glance

### Programs linked to Cash Assistance Programs:

- CalWORKs
- Supplemental Security Income (SSI) and Supplementary State Payment (SSP)
- Foster Care and Adoption Assistance
- Refugee Medical Assistance (RMA)/Refugee Cash Assistance (RCA)

### Section 1931(B) for Children and Parents:

- Cash-Based Section 1931(b)
- Section 1931(b)-Only

### Children's Programs:

- Percent Programs
  - Federal Poverty Level Program for Infants and Pregnant Women
  - 133% Program
  - 100% Program
- Other Programs
  - Minor Consent Program
  - Accelerated Enrollment

<sup>49</sup> 42 U.S.C. § 1396d(a)(i); 42 C.F.R. §§ 435.301(b)(2)(i), 435.308; CMS, State Medicaid Manual § 3612.A.

<sup>50</sup> 42 U.S.C. § 1396d(a)(ii); 42 C.F.R. §§ 435.301(b)(2)(ii), 435.310; CMS, State Medicaid Manual § 3612.B. *See Clemens v. Harvey*, No. S-93-898, 1994 WL 711230 (Neb., Dec. 23, 1994) (administrative elimination of medically needy coverage for caretaker relatives invalid under state separation of powers doctrine).

<sup>51</sup> 42 U.S.C. § 1396d(a)(iii); 42 C.F.R. §§ 435.301(b)(2)(iii), 435.320; CMS, State Medicaid Manual § 3612.C.

<sup>52</sup> 42 U.S.C. § 1396d(a)(iv); 42 C.F.R. §§ 435.301(b)(2)(iv), 435.322, 435.340; CMS, State Medicaid Manual § 3612.D.

<sup>53</sup> 42 U.S.C. §§ 1396d(a)(v)-(vii); 42 C.F.R. §§ 435.301(b)(2)(v), 435.324, 435.340; CMS, State Medicaid Manual § 3612.E.

<sup>54</sup> 42 U.S.C. § 1396a(e)(2)(A); 42 C.F.R. § 435.326. Recipients are only entitled to the benefits provided by the HMO. *See also* 42 C.F.R. §§ 435.326, 435.212(b).

<sup>55</sup> 42 U.S.C. §§ 1396a(a)(47), 1396r-1(a).

- National School Lunch Program Express Enrollment

### **Pregnancy-Related Programs:**

- Federal Poverty Level Program for Infants and Pregnant Women
- Postpartum Program
- Presumptive Eligibility Program

### **Senior and Disabled Programs:**

- Aged/Disabled Federal Poverty Level Program
- 250% Working Disabled Program
- Medicaid Home and Community-Based Services (HCBS) Waiver Programs
- Medicare Savings Programs
  - Qualified Medicare Beneficiary Program (QMB)
  - Specified Low-Income Medicare Beneficiary (SLMB) Program
  - Qualifying Individuals 1 (QI-1) Program
  - Qualified Disabled Working Individual (QDWI) Program

### **Medically Needy**

### **Medically Indigent**

### **Transitional/Continuing Medi-Cal:**

- Programs for Individuals Transitioning off CalWORKs
  - Transitional Medi-Cal (TMC)
  - Four-Month Continuing Medi-Cal
- Programs for Individuals Transitioning off SSI/SSP
  - Section 1619(b) Program
  - Severely Impaired Working Individuals (SIWI) Program
  - Pickle Program
  - Craig v. Bonta
  - Disabled Adult Children (DAC)
  - Disabled Widow/ers (DW) Program
- Continuing Coverage for Children
  - Continuous Eligibility for Children (CEC) Program
  - Bridging Program
  - Former Foster Care Children (FFCC) Program

### Other Medi-Cal Programs:

- Breast and Cervical Cancer Treatment Program (BCCTP)
- Family Planning, Access, Care and Treatment (PACT)
- Dialysis Program
- Tuberculosis (TB) Program
- Total Parenteral Nutrition (TPN) Program
- Omnibus Budget Reconciliation Act (OBRA) Program

### Citizenship and Immigration Status

In addition to fitting into one of the eligibility categories described above, individuals seeking to enroll in full-scope Medi-Cal must be U.S. citizens or have qualifying immigration status.<sup>56</sup>

### Deficit Reduction Act (DRA) Citizenship Documentation Mandate

The Deficit Reduction Act of 2005, passed by the U.S. Congress and signed by President Bush on February 8, 2006, now requires that most U.S. citizen or U.S. national applicants and beneficiaries provide documentation of their citizenship or national status in order to be determined eligible for or continue receiving full-scope Medicaid benefits.<sup>57</sup> Applicants and beneficiaries in the following groups are exempt from having to provide proof of citizenship and identity to obtain or retain their Medi-Cal benefits:

- Supplemental Security Income (SSI) beneficiaries (current and former)
- Social Security Disability Insurance (SSDI-Title II) beneficiaries
- Social Security Retirement and Survivors Insurance (RSI-Title II) beneficiaries who receive those benefits based on their own disability
- Medicare beneficiaries
- Deemed eligible infants who are born in the U.S. and who therefore are citizens (includes children born to non-citizen mothers and whose delivery was covered by Medi-Cal)
- Minor Consent applicants and beneficiaries

<sup>56</sup> See 42 U.S.C. §§ 1320b-7(d), 1396a(b)(3). See also Cal. Welf. & Inst. Code § 14011.2(d); Cal. Code Regs. tit. 22, § 50301. This includes children born in the United States to undocumented immigrant parents. The citizenship or immigrant status of non-applicant parents or other members of the household is not relevant to a child's eligibility and states may not require parents to disclose this information. 42 U.S.C. § 1320b-7(d); Dep't of Health & Human Servs. and Dep't of Agric., State Health & Welfare Officials Letter (Sept. 21, 2000) (not numbered) (policy guidance regarding inquiries into citizenship, immigration status and Social Security number in state applications for Medicaid, SCHIP, Temporary Assistance for Needy Families (TANF) and Food Stamp Benefits).

<sup>57</sup> See Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6036 (Feb. 8, 2006), *codified at* 42 U.S.C. §§ 1396b(i)(22), 1396b(x). Provision added at the request of Congressmen Charlie Norwood (R-Georgia) and Nathan Deal (R-Georgia), who claimed they wanted to prevent undocumented immigrants from enrolling in Medicaid. A report by Health & Human Services, Office of the Inspector General found no substantial evidence that undocumented immigrants were fraudulently getting Medicaid coverage by claiming citizenship. See Dep't Health & Human Servs., Office of Inspector Gen., *Self-Declaration of U.S. Citizenship for Medicaid* (July 2005), at <http://oig.hhs.gov/oei/reports/oei-02-03-00190.pdf>.

- Children receiving adoption or foster care assistance, including Kinship Guardianship Assistance Payment (Kin-GAP) recipients
- Infants eligible under the Abandoned Baby Program who are also born in the U.S. and have no documentation.<sup>58</sup>

Other U.S. citizen applicants must offer satisfactory documentation of citizenship and identity at the time of application and beneficiaries must provide it at the time of their next annual redetermination.<sup>59</sup> CMS has established an elaborate hierarchy of documents that Medi-Cal applicants and beneficiaries must use to prove citizenship and identity.<sup>60</sup> If available, documents in the first tier, which include a U.S. passport or naturalization certification, should be provided by the applicant or beneficiary.<sup>61</sup> If documents in the first tier are not available, she must seek to offer documents in the second, third or fourth tiers, in that order.<sup>62</sup> Documents should be shown to state or local health officials or staff of federally qualified health centers, disproportionate share hospitals and additional outstation locations.<sup>63</sup> **The citizenship documentation requirement does not change the documentation or eligibility processes for *immigrants* applying for Medi-Cal benefits.**<sup>64</sup>

California counties are mandated by state law to assist applicants and beneficiaries who are required to provide evidence of citizenship/identity.<sup>65</sup> Providing citizenship documentation is a one-time requirement for applicants and beneficiaries, and counties are expected to maintain records

<sup>58</sup> Cal. DHCS, ACWDL No. 07-12 (June 4, 2007). *See also* 42 C.F.R. § 435.407(j).

<sup>59</sup> 42 C.F.R. §§ 435.406(a)(1)(i)-(ii), .407(i)(5). *See* Cal. Welf. & Inst. Code § 14011.2(e)(1); Cal. Code. Regs. tit. 22, § 50301.1;

New applicants who meet all other eligibility requirements are not eligible for Medi-Cal until acceptable documentation of citizenship and identity is provided (in which case they receive full-scope Medi-Cal back to the date of application and any retroactive eligibility period) or, if they stop making a good faith effort to provide it, they are only eligible to receive restricted Medi-Cal. Current beneficiaries who are otherwise eligible and are required to provide evidence of citizenship/identity will remain eligible if they are making a good faith effort to provide documents. Cal. DHCS, ACWDL No. 07-12, at 6 (June 4, 2007).

<sup>60</sup> *See* 42 C.F.R. § 435.407.

<sup>61</sup> *See id.*

<sup>62</sup> *See id.*

<sup>63</sup> *See id.* §§ 435.407(i)(5), 435.904. *See also* Cal. Welf. & Inst. Code § 14011.2(e)(9) (stating “[t]he department shall notify and consult with advocates, providers, counties, and health plans in implementing, interpreting, or making specific this subdivision”).

<sup>64</sup> *See* Cal. DHCS, ACWDL No. 07-12 (June 4, 2007).

<sup>65</sup> The new law requires the California Department of Health Services, now the Department of Health Care Services (DHCS), to:

[I]mplement the federal documentation of citizenship/identity requirement with as much flexibility as is allowed under federal law and policy. CDHS is to provide for exceptions or alternatives in its implementation of the federal requirement to the extent federal financial participation (FFP) is available. These exceptions or alternatives may include, but are not limited to, using an expanded list of acceptable documentation, relying on electronic data matches for birth certificates, and accepting sworn affidavits when there is good cause for not providing other evidence. The State is also required to give applicants and beneficiaries, who are making a good faith effort as much time as federal law and policy will allow, to provide the required evidence of U.S. citizenship and identity. Cal. Welf. & Inst. Code § 14011.2(e)(6).

of receipt of these documents for future eligibility determinations and intercounty transfers.<sup>66</sup> When there is good cause for not providing other evidence, individuals may provide sworn affidavits.<sup>67</sup>

State law requires that applicants who are otherwise eligible for Medi-Cal, but cannot document citizenship within the reasonable opportunity period, be given access to restricted Medi-Cal services, including Medi-Cal emergency room services, pregnancy-related care and state-only long term care.<sup>68</sup> Current beneficiaries who are otherwise eligible will remain eligible if they provide documentation evidencing citizenship and identity or make a good faith effort to provide the documents.<sup>69</sup> If they stop making a good faith effort, they will only be eligible for restricted benefits.<sup>70</sup> Individuals who receive a restricted scope of Medi-Cal benefits because of a failure to provide evidence of citizenship and identification documents can have their eligibility to full-scope benefits restored back to the month in which restricted benefits began if they provide the required documentation within one year of their application or redetermination date.<sup>71</sup> If the documents are provided one year or more after the application or redetermination date, then full-scope eligibility will begin the first of the month in which the documents are received.<sup>72</sup>

DHCS has implemented changes to the Medi-Cal Eligibility Data System (MEDS) to allow counties to request an automated match against California birth records for applicants and beneficiaries who were born in California.<sup>73</sup> Additionally, the department has run several data matches to initiate an automated birth record match for Medi-Cal applicants known to MEDS.<sup>74</sup> DHCS has also developed model Notices of Action for counties to use for applicants and beneficiaries who need to comply with this requirement.<sup>75</sup>

## Immigration Status

Immigrants, like citizens, are eligible for Medi-Cal benefits. Qualified immigrants can receive full-scope Medi-Cal benefits. Qualified immigrants include the following:

- Legal permanent residents (those with “green cards”)<sup>76</sup>
- Asylees<sup>77</sup>
- Refugees<sup>78</sup>
- Cuban and Haitian entrants<sup>79</sup>

<sup>66</sup> See 42 C.F.R. § 435.407(i)(5); Cal. Welf. & Inst. Code § 14011.2(e)(2).

<sup>67</sup> See Cal. Welf. & Inst. Code § 14011.2(e)(3).

<sup>68</sup> *Id.* §§ 14007.2, 14011.2(e)(1). See also 42 C.F.R. § 435.407(k).

<sup>69</sup> Cal. DHCS, ACWDL No. 07-12 (June 4, 2007).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Cal. DHCS, ACWDL No. 08-03 (Jan. 24, 2008).

<sup>76</sup> See 8 U.S.C. § 1641(b)(1). See also Cal. Code Regs. tit. 22, § 50302.2(b)(1).

<sup>77</sup> See 8 U.S.C. § 1641(b)(2); CMS, State Medicaid Manual § 3211.1. Eligibility is limited to the first seven years after asylum is granted. 8 U.S.C. § 1612(b)(2)(A)(i)(II). See also Cal. Code Regs. tit. 22, § 50302.2(b)(2).

<sup>78</sup> See 8 U.S.C. §§ 1612(b)(2)(A)(i)(I), 1641(b)(3) (eligibility is limited to the first seven years in the United States). See also Cal. Code Regs. tit. 22, § 50302.2(b)(3).

- Certain battered spouses and children<sup>80</sup>
- Individuals granted conditional entry<sup>81</sup>
- Individuals granted withholding of deportation/removal<sup>82</sup>
- Individuals paroled into the U.S. for at least one year<sup>83</sup>
- Individuals born in Canada who have 50% blood of the American Indian race or those who are members of certain Indian tribes.<sup>84</sup>

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dictates that immigrants who arrived before August 22, 1996, the date PRWORA was enacted, are eligible for full-scope benefits subject to certain time limitations.<sup>85</sup> PRWORA also holds that most qualified immigrants who arrived lawfully on or after August 22, 1996 are barred from receiving federally-funded full-scope Medicaid for the first five years after they enter the country.<sup>86</sup> In California, all qualified immigrants are eligible for Medi-Cal benefits regardless of their date of entry.<sup>87</sup> The state provides this coverage through state-only funds if federal match is not available.

Immigrants who are not deemed to be “qualified immigrants” may still obtain a limited scope of Medi-Cal benefits, including emergency room services, long term care, kidney dialysis and prenatal care.<sup>88</sup> Nonqualified immigrants who seek to obtain these services must still fit into one of the eligibility categories and meet the financial and state residency requirements.

For more on immigrant eligibility for Medi-Cal and other health care services, including sponsor liability and PRUCOL issues, see Chapter 14.

## State Residency

An applicant seeking to qualify for Medi-Cal benefits also must be a resident of the State of California.<sup>89</sup> State residency is usually not difficult to show, and it is rarely a point of contention.

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<sup>79</sup> See 8 U.S.C. §§ 1612(b)(2)(A)(i)(IV), 1641(b)(7) (eligibility is limited to the first seven years in the United States). See also Cal. Welf. & Inst. Code § 14005.2; Cal. Code Regs. tit. 22, § 50302.2(b)(7).

<sup>80</sup> See 8 U.S.C. § 1641(c). See also Cal. Welf. & Inst. Code § 14005.2; Cal. Code Regs. tit. 22, §§ 50302.2(b)(8), (9), (10).

<sup>81</sup> See 8 U.S.C. § 1641(b)(6). See also Cal. Code Regs. tit. 22, § 50302.2(b)(6).

<sup>82</sup> See 8 U.S.C. §§ 1612(b)(2)(A)(i)(III), 1641(b)(5) (eligibility is limited to the first seven years from the date withholding is granted). See also Cal. Code Regs. tit. 22, § 50302.2(b)(5).

<sup>83</sup> See 8 U.S.C. § 1641(b)(4). See also Cal. Code Regs. tit. 22, § 50302.2(b)(4).

<sup>84</sup> See 8 U.S.C. § 1612(a)(2)(g).

<sup>85</sup> 8 U.S.C. § 1611; CMS, State Medicaid Manual § 3211.

<sup>86</sup> CMS, State Medicaid Manual §§ 3211.3, .3211.6. Immigrants lawfully resident in any state who are honorably discharged veterans and active duty military personnel and legal permanent residents who entered the U.S. before Aug. 22, 1996, who have 40 qualifying quarters of Social Security coverage (work) and who did not receive any federal means-tested public benefit during any quarter after Dec. 31, 1996. See 8 U.S.C. §§ 1612(b)(2)(B), (C).

<sup>87</sup> Cal. Welf. & Inst. Code §§ 11104, 14007.5(b). See Cal. DHCS, ACWDL No. 97-08 (Feb. 28, 1997) (Continued Medi-Cal Benefits for Legal Immigrants Residing in California Prior to Aug. 22, 1996).

<sup>88</sup> Cal. Welf. & Inst. Code §§ 14007.5(d), (k); Cal. Code Regs. tit. 22, §§ 50302(a), 50302.2(e).

<sup>89</sup> Cal. Welf. & Inst. Code § 14007.1(a). Note that the state statute may be out of compliance with federal law because it requires that an applicant be a resident of the state and the county while the federal rules only mandate that an applicant is a state resident. See 42 U.S.C. § 1396a(b)(2); Cal. Code Regs. tit. 22, § 50320(a). See also Cal.

Residency can be shown by being physical present in California and indicating an intent to reside permanently or for an indefinite period in the state.<sup>90</sup> A person may also establish residency by being physically in the state and either looking for work here or having a job offer.<sup>91</sup> Once residence is established, it continues until a person establishes residence outside the state.<sup>92</sup> Family members may have different residences without breaking marital or family ties, but only family members with a residence within California may receive Medi-Cal.<sup>93</sup>

Applicants can meet the residency requirement by offering the following examples of proof:

- Current and valid California driver's license or California I.D. card in the applicant's name with a current address
- Current and valid California motor vehicle registration in the applicant's name with a current address
- Current California rent or mortgage receipt or utility bill in the applicant's name with a current address
- Evidence that the applicant is employed in the state
- Evidence that the applicant's child has enrolled in school in the state
- Evidence that the applicant is receiving public benefits (other than Medi-Cal) in California
- Evidence that the applicant is registered to vote in California.<sup>94</sup>

However, if the applicant is unable to produce one of these documents, she or someone else may submit a declaration that she is a resident of California, but only if there is credible evidence that she either is physically present in California and intending to stay indefinitely or in search of employment or she has a job offer in the state.<sup>95</sup>

Additionally, an applicant must declare, under penalty of perjury, that she does not own or lease a principal residence outside of California and that she is not receiving public assistance outside of the state.<sup>96</sup> Under certain circumstances, the applicant may establish residency in California while maintaining an exempt principal residence outside the state.<sup>97</sup>

A migrant worker may establish California residency if she shows that she entered the state with a job commitment or to seek employment—whether or not she is employed—and a preponderance of the evidence indicates that she is physically present and living in California.<sup>98</sup>

DHCS, ACWDL No. 93-29 (May 18, 1993) (Final Draft of Emergency Regulations to Implement Verification of Residency).

<sup>90</sup> Cal. Code Regs. tit. 22, § 50320(b)(1).

<sup>91</sup> *Id.* § 50320(b)(2).

<sup>92</sup> *Id.* § 50320(e).

<sup>93</sup> *Id.* § 50320(d).

<sup>94</sup> *Id.* § 50320.1.

<sup>95</sup> *Id.* § 50320.2(b).

<sup>96</sup> *Id.* § 50320.1(a)(2). Note, however, that a person may be receiving unemployment insurance benefits from another state and still satisfy this test. *See* Cal. DHCS, ACWDL No. 96-27 (May 24, 1996) (Evidence to the Contrary, Border Crossing Cards and B-1/B-2 Visas). *But see* Cal. DHCS, ACWDL No. 95-47 (Aug. 23, 1995) (Residency Questions and Answers).

<sup>97</sup> Cal. Code Regs. tit. 22, §§ 50320.1(a)(2)(A), 50320.2(c), 50425.

<sup>98</sup> *Id.* §§ 50320(b)(2), 50320.2(d).

Children living with their parents have the same residency as their parents.<sup>99</sup> A child with parents who do not meet the residency requirements can establish her state residency if her parents intend for her to remain in the state on a non-temporary basis and if the parents have made arrangements for her to remain in the state independently of the parents.<sup>100</sup>

A beneficiary's absence from the state for sixty days or less is presumed to be a temporary absence and will not affect residency.<sup>101</sup> An absence of more than sixty days is presumed to indicate an intent to change residence, but a beneficiary may rebut that presumption.<sup>102</sup> A foster child who is placed out of state may retain California residency.<sup>103</sup> An out of state child placed in foster care in California may be able to establish residency in California.<sup>104</sup>

Generally, a person living in a California institution is considered a resident of this state.<sup>105</sup> If a state or county agency responsible for a person places that person in an institution out of state, the person retains California residency.<sup>106</sup> An out of state person placed in a California institution retains that state's residency, unless a California State or county agency accepts responsibility for that person.<sup>107</sup>

If an applicant has been denied Medi-Cal eligibility on the basis of lack of residency, she can appeal it in a manner similar to other Medi-Cal appeals.<sup>108</sup> Evidence of an applicant's intent to remain indefinitely in the state must satisfy the preponderance of credible evidence standard.<sup>109</sup>

**Advocacy Tip** ► If the applicant is not a citizen and she entered the country on a visa, she may have been required to declare for the purposes of her visa that she permanently resided in another country. If she now declares that she resides in California, this may have negative immigration consequences for her. She should consult an immigration attorney. Also see Chapter 14 on services for non-citizens.

## When a Medi-Cal Beneficiary Moves to Another California County

Residency is based on residency in the state, and therefore, moving from one county to another within the state should not result in any break in Medi-Cal coverage. The state cannot terminate eligibility solely because a Medi-Cal beneficiary moves from one county in the state to another, nor can a county require that the beneficiary reapply or comply with redetermination, unless a change in the beneficiary's circumstances, other than simply the change of county, has occurred.<sup>110</sup> Rather, the state as well as the old county of residence must ensure that the beneficiary's Medi-Cal case is transferred to the new county without a break in coverage.<sup>111</sup>

<sup>99</sup> *Id.* § 50320(c).

<sup>100</sup> *Id.* §§ 50320(c)(1), (2).

<sup>101</sup> *Id.* § 50321.

<sup>102</sup> *Id.* § 50323.

<sup>103</sup> *Id.* § 50333(a).

<sup>104</sup> *Id.* § 50334(a).

<sup>105</sup> *Id.* § 50338.

<sup>106</sup> *Id.* § 50333(b).

<sup>107</sup> *Id.* § 50334(b).

<sup>108</sup> *Id.* § 50320.2(f).

<sup>109</sup> *Id.*

<sup>110</sup> *See id.* §§ 50210, 50135, 50136; Cal. DHCS, ACWDL Nos. 03-12 (Feb. 21, 2003), 04-14 (Apr. 30, 2004).

## Definitions of Blind, Aged, and Disabled

Some Medi-Cal beneficiaries qualify for Medi-Cal on the basis of being aged, blind, or disabled. “Aged” individuals are people who are 65 years of age or older.<sup>112</sup> An individual is considered “blind” if she has “central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.”<sup>113</sup> A “disabled” individual must meet the disability definition used for Social Security Disability Insurance and Supplemental Security Income (SSI) purposes.<sup>114</sup> An individual is considered disabled if she is

unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.<sup>115</sup>

Similarly, the physical or mental impairments must be so severe that not only is the individual unable to do her previous work, but she is also unable to engage in any other kind of substantial gainful work which “exists in the national economy.”<sup>116</sup>

The definition of disability for children is slightly different. A child or youth under the age of 18 is considered disabled if

that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.<sup>117</sup>

Note that if the child or youth participates in substantial gainful activity, she will not be considered disabled, even if she meets the definition above.<sup>118</sup>

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<sup>111</sup> See Cal. DHCS, ACWDL Nos. 03-12 (Feb. 21, 2003), 04-14 (Apr. 30, 2004) (specifying the detailed process of an inter-county transfer when a beneficiary moves from one county to another within California). See also CMS, State Medicaid Dirs. Letter (Dec. 4, 2000) (not numbered) (alerting states that it is contrary to federal rules for states to terminate Medicaid eligibility of those who move from one county to another within the same state. States must ensure that case files are transferred with no termination of eligibility).

<sup>112</sup> See 42 U.S.C. § 1382c(a)(1)(A).

<sup>113</sup> See *id.* § 1382c(a)(2).

<sup>114</sup> See *id.* § 1382c(a)(3).

<sup>115</sup> See *id.* § 1382c(a)(3)(A). See also Cal. Code Regs. tit. 22, § 50223(a).

<sup>116</sup> See 42 U.S.C. § 1382c(a)(3)(B). This section defines “work that exists in the national economy” as work in which significant numbers of individuals in the region in which the beneficiary lives or in several regions of the country. *But see* Chapter 7 for more information about a Medi-Cal program for people who are disabled, yet able to work.

<sup>117</sup> See *id.* § 1382c(a)(3)(C)(i). See also CAL. CODE REGS. tit. 22, § 50223(b).

<sup>118</sup> See 42 U.S.C. § 1382c(a)(3)(C)(ii).