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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 132-2024
CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amend Rule to Align Definition of Lawfully Present for Basic Health Program with Federal Regulation.

EFFECTIVE DATE: 11/01/2024 THROUGH 04/29/2025

AGENCY APPROVED DATE: 10/31/2024

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NEED FOR THE RULE(S):

The federal definition of lawfully present has been updated effective November 1, 2024, for Basic Health programs. Specifically, Deferred Action for Childhood Arrivals (DACA) recipients and certain other noncitizens will be included in the definitions of "lawfully present" for the OHP Bridge – Basic Health Program. Due to this update, section (3) of OAR 410-200-0215 Citizenship and Non-Citizen Status Requirements needs to be revised to include these populations in the definition of lawfully present for the OHP Bridge – Basic Health Program.

JUSTIFICATION OF TEMPORARY FILING:

(1) Failure to revise OAR 410-200-0215 on November 1, 2024, could result in a discrepancy between the eligibility determination made by the OregonONE eligibility system and this OAR for the OHP Bridge – Basic Health Program.

(2) Deferred Action for Childhood Arrivals (DACA) recipients and certain other noncitizens: a noncitizen in a valid nonimmigrant status, any noncitizens who have been granted employment authorization under 8 CFR 274a.12(c), individuals who are granted Family Unity benefits under section 1504 of the Legal Immigration and Family Equity (LIFE) Act Amendments of 2000, individuals with a pending application for adjustment of status.

(3) The OregonONE eligibility system used to determine benefits for medical is being updated to align with the updated federal regulations. This means individuals impacted by this change will be determined to meet the immigration status requirement for the OHP Bridge – Basic Health Program but the corresponding OAR would not support this eligibility decision.

(4) If the OAR is updated using this temporary action, then the eligibility decision made by the OregonONE eligibility system and the OAR would align.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program

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AMEND: 410-200-0215

RULE TITLE: Citizenship and Non-Citizen Status Requirements

RULE SUMMARY: This rule establishes what is needed in order for a person to meet the citizenship or non-citizen status requirements for the MAGI Medicaid/CHIP programs and Oregon Health Plan Bridge Program.

RULE TEXT:

(1) To meet the citizenship requirement for an HSD Medical Program, an individual must be:

(a) A citizen of the United States; or

(b) A citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or

(c) A national from American Samoa or Swains Islands.

(2) For the purposes of this rule, a Qualified Non-Citizen (QNC) is an individual who is:

(a) A non-citizen lawfully admitted for permanent residence under the INA (8 U.S.C. 1101 et seq);

(b) A non-citizen 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 (1) year;

(c) A battered spouse or child who meets the requirements of 8 U.S.C. 1641(c) as determined by the U.S. Citizenship and Immigration Services;

(d) A non-citizen granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as such statute was in effect prior to April 1, 1980;

(e) A refugee admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(f) A non-citizen granted asylum under section 208 of the INA (8 U.S.C. 1158);

(g) 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));

(h) A non-citizen who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(i) An Afghan or Iraqi non-citizen granted Special Immigration Status (SIV) as defined in section 101(a)(27) of the INA;

(j) Effective December 28, 2020, an individual lawfully residing in the United States in accordance with the Compacts of Free Association (i.e., the governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau);

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

(L) 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); or

(m) 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).

(3) For the purposes of this rule, an individual is Lawfully Present as described below:

(a) For the MAGI Medicaid/CHIP programs:

(A) A QNC

(B) A non-citizen with a valid non-immigrant status, as defined in 8 USC 1101(a)(15) or as otherwise defined under other United States immigration laws (as defined in 8 USC 1101(a)(17));

(C) A non-citizen who has been paroled into the United States in accordance with 8 USC 1182(d)(5) for less than one (1) year, provided they have not been paroled for prosecution, for deferred inspection, or pending removal proceedings;

(D) A non-citizen who belongs to one of the following classes of non-citizens:
(i) Granted temporary resident status in accordance with 8 USC 1160 or 1255a;
(ii) Granted temporary protected status (TPS) in accordance with 8 USC 1254a and individuals with a pending application for TPS who have been granted employment authorization;
(iii) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;
(iv) Under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
(v) Granted Deferred Action status; or
(vi) Beneficiary of approved visa petition who has a pending application for adjustment of status.
(E) An individual with a pending applicant for asylum under 8 U.S.C. 1158, or for withholding of removal under section 8 U.S.C. 1231, or under the Convention Against Torture who:
(i) Has been granted employment authorization, or
(ii) Is under the age of 14 and has had an application pending for at least 180 days;
(F) Has been granted withholding of removal under the Convention Against Torture;
(G) A child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);
(H) A non-citizen who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. 1806(e); or
(I) A non-citizen who is lawfully present in American Samoa under the immigration laws of American Samoa.
(b) For the OHP Bridge – Basic Health Program:
(A) A QNC;
(B) A non-citizen with a valid non-immigrant status, as defined in 8 USC 1101(a)(15) or as otherwise defined under other United States immigration laws (as defined in 8 USC 1101(a)(17));
(C) A non-citizen who has been paroled into the United States in accordance with 8 USC 1182(d)(5) for less than one (1) year, provided they have not been paroled for prosecution, for deferred inspection, or pending removal proceedings;
(D) A non-citizen who belongs to one of the following classes of non-citizens:
(i) Granted temporary resident status in accordance with 8 USC 1160 or 1255a;
(ii) Granted temporary protected status (TPS) in accordance with 8 USC 1254a
(E) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended; or section 1504 of the LIFE Act Amendments of 2000, title XV of H.R. 5666, enacted by reference in Pub. L. 106-554 (see section 1504 of App. D to Pub. L. 106-554);
(F) Under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
(G) Granted Deferred Action status including but not limited to individuals granted deferred action under 8 CFR 236.22; or
(H) Has a pending application for adjustment of status;
(I) Is an individual under the age of 14 and has a pending application for asylum under 8 U.S.C. 1158, for withholding of removal under 8 U.S.C. 1231(b)(3)(A), or for protection under the regulations implementing the Convention Against Torture;
(J) Has been granted withholding of removal under the Convention Against Torture;
(K) Has a pending or approved petition for Special Immigrant Juvenile classification as described in 8 U.S.C. 1101(a)(27)(J).
(L) A non-citizen who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. 1806(e); or
(M) A non-citizen who is lawfully present in American Samoa under the immigration laws of American Samoa.
(4) To meet the non-citizen status requirements for MAGI Medicaid/CHIP programs, an individual must meet at least one of the following:
(a) Is a QNC as described in (2)(d) - (2)(m) of this rule; or,
(b) For the period of July 31, 2021 through March 31, 2023, or through the end of the individual's parole, whichever is later:

(A) Be a citizen or national of Afghanistan who is paroled into the US between July 31, 2021 through September 30, 2023;
(B) Be a spouse of an individual described in (4)(b)(A); or
(C) Be an unmarried child under the age of 21 of an individual described in (4)(b)(A).
(c) Effective February 24, 2022, the individual is a citizen or national of Ukraine, or if not a citizen or national of Ukraine but had been habitually residing in Ukraine when they:
(A) Were paroled into the United States between February 24, 2022 and September 30, 2023 and their parole has not been terminated; or
(B) Were paroled into the United States after September 30, 2023, their parole has not been terminated; and
(i) they are the spouse or child of an individual described in subsection (4)(c)(A); or
(ii) they are the parent, legal guardian, or primary caregiver of an individual described in section (4)(c)(A) who is determined to be an unaccompanied child under section 462(g)(2) of the Homeland Security Act of 2002 (6 USC 279(g)(2)) or section 412(d)(2)(B) of the Immigration and Nationality Act (8 USC 1522(d)(2)(B)).
(d) An individual who is under the age of 19 and who is Lawfully Present as described in section (3)(a) of this rule;
(e) An individual who is 19 or older, and is a QNC as described in (2)(a)-(c) of this rule and who meets at least one of the following:
(A) Was a QNC prior to August 22, 1996;
(B) Obtained the status described in section (2)(a)-(c) of this rule at least five (5) years before the request for benefits;
(C) 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 thirty (30) consecutive days or a total of more than ninety (90) days between August 22, 1996, and the date qualified non-citizen status was obtained;
(D) Is a member of the United States Armed Forces on active duty (other than active duty for training);
(E) Is a veteran of the United States Armed Forces who was honorably discharged for reasons other than noncitizen status and who fulfilled the minimum active-duty service requirements described in 38 USC 5303A(d); or
(F) Is the child or spouse, including an un-remarried surviving spouse, of an individual described in section (4)(e)(D) or (4)(e)(E) of this subsection.
(5) To meet the non-citizen status requirements for OHP Bridge - Basic Health Program an individual must be:
(a) Lawfully Present as described in (3)(b) of this rule; or
(b) An individual as described in (4)(b) or (4)(c) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 411.402, 411.404, 413.042, 414.534, 42 CFR: 435.110, 435.112, 435.115, 435.116, 435.118, 435.403, 435.940, 435.1200, 457.80, 457.340, 458.350, 435.3, 435.4, 435.406, 435.407, 435.940, 435.952, 435.956, 435.1008, 457.320, 457.380, 435.117, 435.170, 435.190, 435.916, 435.917, 435.926, 435.1205, 447.56, 457.350, 457.360, 457.805, 433.145, 433.148, 433.146, 435.610, 435.119, 435.222, 433.138, 433.147, 435.602, 435.608

STATUTES/OTHER IMPLEMENTED: ORS 411.402, 411.404, 414.534, ORS 411.400, 411.406, 413.032, 414.025, 414.231, 414.536, 414.706, 411.439, 411.443, 413.038, 414.231, 414.440