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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 66-2022
CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED
07/13/2022 4:03 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Updating OAR with Federal Guidance Regarding Individuals Entering The US From Afghanistan And Ukraine

EFFECTIVE DATE: 07/13/2022 THROUGH 01/08/2023

AGENCY APPROVED DATE: 07/13/2022

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NEED FOR THE RULE(S):

Recent federal guidance mandates that parolees from Afghanistan (and their spouses and unmarried children under the age of 21) do not have to meet the 5-year bar to meet the non-citizen status requirements if they were paroled into the US on or between the dates of July 1, 2021, and September 30, 2022. Such individuals will continue to meet non-citizen status requirements through March 31, 2023, or through the end of their parole, whichever is later.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits. This rule needs to be adopted promptly so that the Authority may provide health coverage as federally mandated for this vulnerable population.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

https://www.medicaid.gov/medicaid/eligibility/downloads/hlth-cov-option-afghan-evac-fact-sheet.pdf
https://www.congress.gov/117/plaws/publ128/PLAW-117publ128.pdf

AMEND: 410-200-0215

RULE TITLE: Citizenship and Non-Citizen Status Requirements

RULE SUMMARY: OAR 410-200-0215 describes the non-citizen status criteria which must be met for an individual to be eligible for full (not emergency-only) OHP coverage. Existing federal regulation requires that parolees must have been in the US for 5 years since their date of entry to meet the non-citizen status requirements; this is referred to as the 5-year bar.
Two recent federal guidance mandates indicate the following parolees do not have to meet the 5-year bar requirement :
-Parolees from Afghanistan (and their spouses and unmarried children under the age of 21) do not have to meet the 5-year bar to meet the non-citizen status requirements if they were paroled into the US on or between the dates of July 31, 2021, and September 30, 2022. Such individuals will continue to meet non-citizen status requirements through

March 31, 2023, or through the end of their parole, whichever is later.
-Parolees who have not had their parole terminated and:
--Are citizens or nationals of Ukraine or who last habitually resided in Ukraine and were paroled into the US on or between the dates of February 24, 2022 and September 30, 2023; or
--Were paroled after September 30, 2023 and:
---Are the spouse or child of an individual described in the first bullet; or
---Are parent, legal guardian, or primary caregiver of an individual described in the first bullet who is determined to be an unaccompanied child under section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) or section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)).

RULE TEXT:
(1) To meet the citizen or non-citizen status requirements for an HSD Medical Program, an individual must be:
(a) A citizen of the United States;
(b) A citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands;
(c) A national from American Samoa or Swains Islands; or
(d) A non-citizen who meets the non-citizen status requirements in section (3) or (4) of this rule.
(2) For the purposes of this rule, the term Qualified Non-Citizen (QNC) refers to the following statuses:
(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 year;
(c) A non-citizen 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;
(d) 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;
(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) To meet the non-citizen status requirements for HSD Medical Programs, an individual must be:
(a) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (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 veteran of the United States Armed Forces who was honorably discharged for reasons other than non-citizen status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d);

(d) A member of the United States Armed Forces on active duty (other than active duty for training);
(e) The spouse or a child of an individual described in subsection (c) or (d) of this section;
(f) An individual with one of the QNC statuses described in (2)(e) - (2)(m);
(g) An individual with a QNC status described in (2)(a) - (2)(d) who meets one or more of the following:
(A) Is under 19 years of age;
(B) Was a QNC before August 22, 1996;
(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 30 consecutive days or a total of more than 90 days between August 22, 1996, and the date qualified non-citizen status was obtained; or
(D) Has active-duty military status or is an honorably discharged veteran, and the spouse or unmarried dependent child of such person.
(h) A non-citizen age 19 or older who meets one of the following:
(A) Is a QNC with one of the statuses described in (2)(a)-(2)(d) of this rule, and:
(i) Obtained the status described in section (A) of this part at least 5 years before the request for benefits; and
(ii) The individual does not otherwise meet the non-citizen status requirements described in 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:
(i) A citizen or national of Afghanistan who is paroled into the US between July 31, 2021 through September 30, 2022;
(ii) The spouse of an individual described in (i); or
(iii) The unmarried child under the age of 21 of an individual described in (i).
(C) Effective February 24, 2022, the individual is a citizen or national of Ukraine, or they last habitually resided in Ukraine, and they:
(i) Were paroled into the United States between February 24, 2022 and September 30, 2023 and their parole has not been terminated; or
(ii) 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 (i); or
(II) they are the parent, legal guardian, or primary caregiver of an individual described in section (i) who is determined to be an unaccompanied child under section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) or section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)).
(i) A non-citizen under the age of 19 who meets one or more of the following:
(A) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of non-citizens 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) A non-citizen currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);
(ii) A non-citizen 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) A non-citizen currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
(vi) A non-citizen currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or
(vii) A non-citizen 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.
(B) 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);
(C) A non-citizen in non-immigrant status who has not violated the terms of the status under which he or she was

admitted or to which he or she has changed after admission;
(D) A non-citizen who has been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
(E) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
(F) A non-citizen who 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 section 101(a)(27)(J) of the INA (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.

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