



Medicaid Coverage for Immigrants: Eligibility and Verification

Sarah Grusin and Catherine McKee

Table of Contents

Introduction 2

I. Eligibility of Non-Citizens..... 2

A. Not Qualified Immigrants 4

B. Qualified Immigrants 4

 1. The Five Year Bar 5

 2. Groups States Must Cover Temporarily 7

 3. Groups States Must Cover Indefinitely 8

C. Lawfully Residing Children and Pregnant People 9

D. Survivors of Trafficking..... 11

II. Verification of Immigration Status 13

A. Verification of Immigration Status at Initial Application 14

 1. Verification of Satisfactory Immigration Status through SAVE 14

 2. Reasonable Opportunity Period 16

B. Verification at Redetermination 18

 1. Citizenship 18

 2. Satisfactory Immigration Status 19

C. Verification in Presumptive Eligibility Determinations 19

III. Special Income Rules for Certain Lawful Permanent Residents: Sponsor Deeming..... 20

A. When Sponsor Deeming Applies 21

B. Counting the Sponsor’s Income and Resources..... 23

Introduction

To be eligible for full-scope Medicaid coverage, an individual must be a United States citizen or national or hold a satisfactory immigration status.¹ Due to the complexity of the relevant immigration statutes and the flexibility states have to decide which groups of immigrants to cover, there is significant confusion about immigrants' eligibility for Medicaid coverage.

This issue brief outlines which groups of immigrants states must cover, may cover, and cannot cover with federal Medicaid funding (assuming all other Medicaid eligibility criteria are met).² We have included a flow chart to help evaluate whether a particular individual is eligible for Medicaid coverage. The issue brief also explains how states verify applicants' immigration status and calculate immigrants' income for purposes of Medicaid eligibility.³

I. Eligibility of Non-Citizens

Passed in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) dramatically restricted immigrants' eligibility for public benefits, including

¹ For ease of reading, the remainder of this issue brief uses the term "citizens" to refer to citizens as well as nationals who are not citizens. For information on the distinction between U.S. citizens and nationals, *see* Travel.State.Gov, Certificates of Non Citizen Nationality, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Certificates-Non-Citizen-Nationality.html> (last visited March 24, 2021).

² Throughout this issue brief, we have used shorthand to refer to the categories of immigrants described in federal statutes and guidance documents. Please consult the cited provisions to determine if a particular individual falls within one of the categories mentioned. In addition, please be aware that some states use their own funds to provide health care coverage to certain groups of immigrants that are not eligible for full-scope Medicaid under federal law. These states might call the state-funded coverage "Medicaid" for ease of communication.

³ This issue brief does not address immigrants' eligibility for the Children's Health Insurance Program or for assistance in affording marketplace plans. For information about eligibility for tax credits and cost-sharing subsidies, *see* Wayne Turner et al., Nat'l Health Law Program, *The Advocate's Guide to MAGI*, 54-56 (2018), <https://healthlaw.org/resource/advocates-guide-to-magi-updated-guide-for-2018/>.

Medicaid.⁴ The statute created a distinction between immigrants who are “qualified” and those who are not.⁵ Currently, a **qualified** immigrant means an individual who, at the time they apply for, receive, or attempt to receive public benefits:

- Is a legal permanent resident (LPR, also known as a green card holder);
- Is granted asylum;
- Is admitted to the U.S. as a refugee;
- Is paroled into the U.S. for a period of at least one year;
- Has been granted withholding of deportation;
- Has been granted conditional entry;
- Is a Cuban or Haitian entrant;
- Is lawfully residing in the United States in accordance with a Compact of Free Association (individuals from the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau); or
- Was born in Canada and is at least 50 percent American Indian, or is a member of a tribe recognized by the federal government.⁶

The statute also treats as qualified immigrants certain: (1) survivors of battery or extreme cruelty, as well as some of their family members; and (2) victims of severe forms of trafficking, as well as some of their family members.⁷

As described in detail below, the distinction between qualified and not qualified is critical for determining eligibility for Medicaid coverage. Qualified immigrants are potentially eligible to receive full-scope Medicaid coverage (*i.e.*, all services covered by the state Medicaid program for the given eligibility group). With certain exceptions, individuals who are not qualified cannot receive full-scope Medicaid coverage.

⁴ See Pub. L. 104-193, 110 Stat. 2105, 2260-2277 (Aug. 22, 1996).

⁵ The relevant federal statutes use the term “qualified alien.” Because that term is dehumanizing, this issue brief uses the term “qualified immigrant” whenever possible.

⁶ 8 U.S.C. § 1641(b). The statute does not include American Indians born in Canada or members of a tribe recognized by the federal government in the list of qualified immigrants. However, other provisions indicate that they are treated as qualified immigrants for purposes of Medicaid eligibility. See *id.* §§ 1612(b)(2)(E), 1613(d)(1).

⁷ See *id.* § 1641(c).

However, states must provide individuals who are not eligible for full-scope coverage solely due to their immigration status with Medicaid coverage for emergency care and services, including emergency labor and delivery services, but excluding services related to an organ transplant procedure.⁸ This is often referred to as “emergency Medicaid.”

A. Not Qualified Immigrants

Generally, individuals who do not meet the definition of qualified immigrant cannot receive full-scope Medicaid coverage, even if they are otherwise eligible for the program. However, as noted above, there are exceptions.

First, states must provide full-scope Medicaid coverage to certain victims of severe forms of trafficking, and some of these individuals do not meet the definition of a qualified immigrant. This requirement is explained in [section I.D.](#) below.

Second, states have the option to provide full-scope Medicaid coverage to “lawfully residing” children and pregnant “women.”⁹ As described in [section I.C](#) below, the lawfully residing category is broader than the qualified immigrant category.

B. Qualified Immigrants

Generally, the baseline rule is that states have the choice whether or not to provide Medicaid coverage to qualified immigrants.¹⁰ Most states have elected to cover all qualified immigrants. Currently, only ten states have elected not to cover all qualified immigrants – Mississippi, Montana, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming.¹¹

⁸ *Id.* §§ 1611(b)(1)(A); 42 U.S.C. § 1396b(v).

⁹ While the statute refers to “pregnant women,” *see* 42 U.S.C. § 1396b(v)(4)(A), this issue brief uses the term “pregnant people” in recognition that people of all genders, gender identities, and expressions can become pregnant.

¹⁰ 8 U.S.C. § 1612(b)(1).

¹¹ For details on which groups of qualified immigrants these states do not cover, *see* MS State Plan Amendment 13-0023-MM6; MT State Plan Amendment 13-0045-MM; ND State Plan Amendment 13-0022-MM6; SC State Plan Amendment 13-0018-MM6; SD State Plan Amendment 13-0012; TN State Plan Amendment 14-0002-MM6; Texas Health & Human

There are several exceptions to the baseline rule that states have the choice whether or not to cover qualified immigrants. States *cannot* cover some groups of qualified immigrants and *must* cover others.

1. The Five Year Bar

States *cannot* provide full-scope Medicaid coverage to certain qualified immigrants who entered the U.S. on or after August 22, 1996 until five years after their date of entry into the U.S. with a qualified immigration status.¹²

Servs., Texas Works Handbook, § A-342, (2018), <https://hhs.texas.gov/laws-regulations/handbooks/twh/part-a-determining-eligibility/a-300-citizenship#A342>; VA State Plan Amendment 0014-MM6; VA Draft Medical Assistance Eligibility Manual Transmittal #DMAS-19, 7, 14a-14d (April 1, 2001), [https://www.dmas.virginia.gov/files/links/5876/Draft%20Transmittal%20DMAS-19%20\(Effective%204-1-21\).pdf](https://www.dmas.virginia.gov/files/links/5876/Draft%20Transmittal%20DMAS-19%20(Effective%204-1-21).pdf); WV State Plan Amendment 13-0019-MM6; WY State Plan Amendment 13-0011. All state plan amendments are available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html>. In 2004, CMS issued guidance indicating that states cannot pick and choose among groups of qualified immigrants – if a state elects to cover qualified immigrants, it must provide coverage to all individuals who meet the definition. See Ctrs. for Medicare & Medicaid Servs., *Questions & Answers of the Five Year Bar*, Q14 (2004), available at <http://library.niwap.org/wp-content/uploads/2015/PB-faq-QA5YearBar-06.23.pdf> [hereinafter “*Questions & Answers on the Five Year Bar*”]. However, the SPAs cited above reveal that CMS has permitted states to do some picking and choosing among groups of qualified immigrants.

¹² 8 U.S.C. §§ 1613(a) (establishing the five-year bar), 1613(c)(2)(a) (indicating that individuals subject to the five-year bar are eligible for emergency Medicaid). Generally, individuals who entered the U.S. prior to August 22, 1996, but obtained qualified immigrant status on or after that date, are not subject to the five-year bar. However, an individual who was not “continuously present” in the U.S. from their latest date of entry prior to August 22, 1996 until they obtained qualified immigrant status is considered to have entered after August 22, 1996. As a result, they are not eligible for Medicaid coverage until five years after the date they obtained qualified immigrant status. *Questions & Answers on the Five Year Bar*, at Q7-Q9; Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62

A number of groups of immigrants are **exempt** from the five-year bar. It does not apply to an individual who:

- Is granted asylum;
- Is admitted to the U.S. as a refugee;
- Has been granted withholding of deportation;
- Is a Cuban or Haitian entrant;
- Is admitted to the U.S. as an Amerasian immigrant;
- Is lawfully residing in any state and is: (1) an honorably discharged veteran; (2) on active duty in the armed forces; 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;
- Is lawfully residing in the United States in accordance with a Compact of Free Association;
- Was born in Canada and is at least 50 percent American Indian, or is a member of a tribe recognized by the federal government;
- Is granted Iraqi or Afghan special immigrant status; or
- Is a child receiving foster care or adoption assistance under Title IV-E of the Social Security Act.¹³

In addition to the groups noted above, certain survivors of severe forms of trafficking and their family members are exempt from the five-year bar. (See **section I.D.** below.) Lawfully residing children and pregnant people are also exempt from the bar in states that have opted to cover that population. (See **section I.C.** below.)

Fed. Reg. 61344, 61414-61416 (Nov. 17, 1997). An individual was not “continuously present” in the U.S. if they were absent from the country for 30 days at one time or for 90 days in the aggregate. *Id.*

¹³ 8 U.S.C. §§ 1613(b), (d)(1). For individuals granted Iraqi or Afghan special immigrant status, see 8 U.S.C. §§ 1101 note, 1157 note; Congressional Research Serv., *Iraqi and Afghan Special Immigrant Visa Programs* (updated 2020), <https://fas.org/sqp/crs/homesecc/R43725.pdf>. For children receiving foster care or adoption assistance, see Dep’t of Health & Human Servs., Admin. for Children & Families, *Child Welfare Policy Manual* § 8.4B, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45 (last visited March 1, 2021).

CMS has made clear that immigrants who first entered the U.S. under an exempt category (*e.g.*, granted asylum or admitted as a refugee) and later adjusted to LPR status, remain exempt from the five-year bar.¹⁴

Given the exemptions, only a few groups of qualified immigrants who entered the U.S. on or after August 22, 1996 are **subject to** the five-year bar: LPRs (who did not enter under an exempt category); individuals paroled into the U.S. for a period of at least one year; and certain survivors of battery or extreme cruelty and their family members.

Once individuals who are **subject to** the five-year bar have **satisfied** it they could be eligible to receive Medicaid coverage depending on their state policy. Forty-four states (including D.C.) have elected to cover qualified immigrants after they have met the five-year bar. The remaining seven states (Mississippi, Montana, North Dakota, South Carolina, South Dakota, Texas, and Wyoming) do not cover LPRs who have met the five-year bar unless they: (1) fall within a category of immigrants that states must cover indefinitely, as described in **section I.B.3** below; or (2) qualify as a “lawfully residing” child or pregnant person, and their state has chosen to cover that population group.¹⁵ (See **section I.C.** below.) Otherwise, they are only eligible to receive emergency Medicaid.

2. Groups States Must Cover Temporarily

States *must* provide Medicaid coverage to immigrants who fall within one of the groups listed above that are exempt from the five-year bar.¹⁶ But, the period of mandatory coverage is

¹⁴ *Questions & Answers on the Five Year Bar*, at Q5.

¹⁵ See sources cited *supra* note 11.

¹⁶ 8 U.S.C. §§ 1612(b)(2)(A)(i), 1612(b)(2)(C), 1612(b)(2)(E), 1612(b)(2)(G), 1613(b), (d)(1) (listing exceptions to the five-year bar). For individuals granted Iraqi or Afghan special immigrant status, *see id.* §§ 1101 note, 1157 note; Congressional Research Serv., *Iraqi and Afghan Special Immigrant Visa Programs* (updated 2020), <https://fas.org/sgp/crs/homsec/R43725.pdf>. For children receiving foster care or adoption assistance, *see* Dep’t of Health & Human Servs., Admin. for Children & Families, *Child Welfare Policy Manual* § 8.4B, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45 (last visited March 1, 2021). While individuals granted conditional entry are not technically exempt from the five-year bar, by definition, they

limited for some of these groups. Specifically, states must only cover immigrants for **seven years** after they have been granted asylum, admitted to the U.S. as a refugee, granted withholding of deportation, granted status as a Cuban and Haitian entrant, or admitted to the U.S. with (or adjusted to) Iraqi or Afghan special immigrant status.¹⁷ Victims of severe forms of trafficking in persons and their family members are also only guaranteed coverage for **seven years**. (See **section I.D.** below.) In addition, states must only cover immigrants who have been admitted to the U.S. as Amerasian immigrants for **five years** after their date of entry.¹⁸

After the period of mandatory coverage has elapsed, immigrants could be eligible for coverage depending on their state policy. Only seven states – Mississippi, Montana, South Carolina, Tennessee, Texas, Virginia, and West Virginia – have elected not to cover the above groups after the period of mandatory coverage is over.¹⁹ In those states, immigrants are eligible for coverage after seven (or five) years if they: (1) fall within a category of immigrants that states must cover indefinitely (described in section I.B.3 below); or (2) qualify as a “lawfully residing” child or pregnant person, and their state has chosen to cover that population group. (See **section I.C.** below.) In addition, residents of Tennessee, Virginia, or West Virginia are eligible if they have adjusted to LPR status, as those states have elected to cover all LPRs.²⁰ Otherwise, they are only eligible to receive emergency Medicaid.

3. Groups States Must Cover Indefinitely

As for the other groups that are exempt from the five-year bar, states *must* provide Medicaid coverage indefinitely. Thus, states must cover an individual who is:

entered the U.S. and obtained qualified immigrant status prior to August 22, 1996, meaning they are not subject to the bar. *Questions & Answers on the Five Year Bar*, at Q5.

¹⁷ 8 U.S.C. § 1612(b)(2)(A)(i). For individuals granted Iraqi or Afghan special immigrant status, *see id.* §§ 1101 note, 1157 note; Congressional Research Serv., *Iraqi and Afghan Special Immigrant Visa Programs* (updated 2020), <https://fas.org/sqp/crs/homesecc/R43725.pdf>

¹⁸ 8 U.S.C. § 1612(b)(2)(A)(i).

¹⁹ *See* sources cited *supra* note 11.

²⁰ *See* sources cited *supra* note 11.

- Lawfully residing in any state and is: (1) an honorably discharged veteran; (2) on active duty in the armed forces; 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;
- An American Indian: (1) born in Canada who is at least 50 percent American Indian; or (2) who is a member of a tribe recognized by the federal government;
- Lawfully residing in the United States in accordance with a Compact of Free Association; or
- A child receiving foster care or adoption assistance.²¹

In addition, states *must* cover indefinitely certain categories of qualified immigrants that are not exempt from the five-year bar, as long as they are not within the bar. These categories include:

- LPRs who: (1) have worked 40 qualifying quarters of coverage or can be credited with such qualifying quarters; and (2) did not receive any federal means-tested public benefits during any of those 40 quarters beginning after December 31, 1996.
- Immigrants receiving Social Security Income.²²

In summary, all states – including those ten that have elected not to cover all qualified immigrants generally – *must* cover individuals who fall within the groups listed above.

C. Lawfully Residing Children and Pregnant People

The Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) gave states the option to cover children (under age 21) and/or pregnant people (through the 60-day

²¹ 8 U.S.C. §§ 1612(b)(2)(C), 1612(b)(2)(E), 1612(b)(2)(G); *see also id.* § 1613(b), (d)(1) (listing exceptions to the five-year bar). With respect to children receiving foster care or adoption assistance, *see* Dep’t of Health & Human Servs., Admin. for Children & Families, *Child Welfare Policy Manual* § 8.4B, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45 (last visited March 1, 2021).

²² 8 U.S.C. §§ 1612(b)(2)(B), (b)(2)(F); *see also id.* § 1613(b) (listing exceptions to the five-year bar).

period beginning on the last day of the pregnancy) who are “lawfully residing” in the U.S.²³ Immigrants covered under the CHIPRA option are exempt from the five-year bar.²⁴

The lawfully residing category captures many immigrants who do not meet the definition of qualified immigrants. CMS has defined “lawfully residing” to mean individuals who are “lawfully present” and meet the Medicaid state residency requirement.²⁵ For Medicaid purposes, an individual is generally a resident of the state where they live and intend to reside.²⁶ Immigrants are deemed lawfully present if they:

- Meet the definition of qualified immigrant;
- Have a nonimmigrant status and have not violated the terms of the status under which they were admitted or to which they changed after admission;
- Have been paroled into the U.S. for less than 1 year, unless they were paroled for prosecution, for deferred inspection, or pending removal proceedings;
- Belong to one of the following classes:
 - Currently in temporary resident status;
 - Currently under Temporary Protected Status (TPS), or have a pending application for TPS and have been granted employment authorization;
 - Have employment authorization under certain subsections of 8 CFR § 274a.12(c);
 - Family Unity beneficiaries;
 - Currently under Deferred Enforced Departure pursuant to a decision made by the President;
 - Currently in deferred action status; or
 - Have an approved visa petition and a pending application for adjustment of status.

²³ Pub. L. 111-3, 123 Stat. 8, 56-57, § 214 (2009) (codified at 42 U.S.C. § 1396b(v)(4)(A)). States that elect to cover lawfully residing children can choose to cover children up to age 19, 20, or 21.

²⁴ 42 U.S.C. § 1396b(v)(4)(A); *see also* CMS, Dear State Health Official Letter, 10-006 (July 1, 2010), <https://www.medicaid.gov/federal-policy-guidance/downloads/SHO10006.pdf> [hereinafter “Dear State Health Official Letter, 10-006”].

²⁵ Dear State Health Official Letter, 10-006.

²⁶ *See* 45 C.F.R. § 435.403. *See also id.* § 435.956(c)(2) (prohibiting states from using evidence of immigration status to determine individual is not a state resident).

- Have a pending application for asylum, for withholding of removal, or under the Convention Against Torture and: (1) have been granted employment authorization; or (2) if under age 14, have had an application pending for at least 180 days;
- Have been granted withholding of removal under the Convention Against Torture;
- Are a child with a pending application for Special Immigrant Juvenile status; or
- Are lawfully present in the Northern Mariana Islands or American Samoa.²⁷

Although DACA recipients are currently in deferred action status, they are not eligible for Medicaid under the CHIPRA option.²⁸

States that opt to cover lawfully residing children and/or pregnant people must cover all groups of lawfully present immigrants.²⁹ As of 2019, 24 states (including D.C.) provided Medicaid coverage to lawfully residing children and pregnant people, 11 states covered only lawfully residing children, and one state (Wyoming) covered only lawfully residing pregnant people.³⁰

D. Survivors of Trafficking

Under the Trafficking Victims Protection Act (TVPA), “victims of severe forms of trafficking in persons” and some of their family members (the spouse, child, parent, or unmarried minor sibling of a victim under age 21, or the spouse or child of a victim age 21 or older) are eligible for a T visa, which allows them to remain in the U.S. for up to four years.³¹ The TVPA also

²⁷ Dear State Health Official Letter, 10-006.

²⁸ CMS, Dear State Health Official Letter, 12-002 (Aug. 28, 2012), <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf>.

²⁹ Dear State Health Official Letter 10-006.

³⁰ Medicaid.gov, Medicaid and CHIP Coverage of Lawfully Residing Children & Pregnant Women, <https://www.medicaid.gov/medicaid/enrollment-strategies/medicaid-and-chip-coverage-lawfully-residing-children-pregnant-women> (last updated Dec. 11, 2019).

³¹ Pub L. 106-386, 114 Stat. 1464, 1477-78, § 107(e) (codified at 8 U.S.C. § 1101(a)(T)). A victim of a severe form of trafficking in persons means someone who has been subject to the recruitment, harboring, transportation, provision, or obtaining of a person for: (1) a commercial sex act, if the act is induced by force, fraud, or coercion, or if the person induced to perform the act is under 18; or (2) labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or

makes victims of severe forms of trafficking and their family members eligible for Medicaid “to the same extent as” immigrants admitted to the U.S. as a refugee.³² As a result, they are exempt from the five-year bar, and states *must* cover them for a period of 7 years.

Individuals under age 18 are entitled to coverage under this category if they have a letter from the Department of Health and Human Services (HHS) stating that they are a victim of a severe form of trafficking.³³ Individuals who are 18 or older are entitled to coverage if they have a certification from HHS.³⁴ HHS will provide a certification for individuals who have been granted a T visa.³⁵ HHS will also certify some individuals who do not yet have a T visa. Specifically, HHS will certify those who: (1) are willing to assist in every reasonable way with the investigation and prosecution of trafficking (or are unable to cooperate due to trauma); and (2) have either made a *bona fide* application for a T visa that has not been denied, or have been granted continued presence by the Secretary of Homeland Security to effectuate the prosecution of trafficking.³⁶ The mandatory coverage period begins on the date indicated on the HHS certification (adult) or letter (child).³⁷

slavery. See Pub L. 106-386, 114 Stat. 1464, 1469, § 103 (2000) (then codified at 22 U.S.C. § 7102(8), (9), (13)).

³² 22 U.S.C. § 7105(b)(1)(A); see also Dep’t of Health & Human Servs., Admin. for Children & Families, The Trafficking Victims Protection Act of 2000, State Letter #01-13 (May 3, 2001), <https://www.acf.hhs.gov/archive/otip/resource/state-letter-01-13>.

³³ See 22 U.S.C. § 7105(b)(1)(C); Dep’t of Health & Human Servs., Admin. for Children & Families, The Trafficking Victims Protection Act of 2000, State Letter #01-13 (May 3, 2001), <https://www.acf.hhs.gov/archive/otip/resource/state-letter-01-13>; Dep’t of Health & Human Servs., *Services Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers*, 9 (2012), https://www.acf.hhs.gov/sites/default/files/orr/trafficking-services_0.pdf [hereinafter “*Services Available to Victims of Human Trafficking*”].

³⁴ 22 U.S.C. § 7105(b)(1)(C).

³⁵ *Services Available to Victims of Human Trafficking*, at 11; see also Admin. for Children & Families, Office on Trafficking in Persons, Certification Letters, <https://www.acf.hhs.gov/otip/victim-assistance/certification> (Nov. 6, 2020).

³⁶ 22 U.S.C. § 7105(b)(1)(E); *Services Available to Victims of Human Trafficking*, at 11; see also Admin. for Children & Families, Office on Trafficking in Persons, Certification Letters, <https://www.acf.hhs.gov/otip/victim-assistance/certification> (Nov. 6, 2020).

³⁷ *Services Available to Victims of Human Trafficking*, at 11.

It is worth noting that some victims of severe forms of trafficking who are entitled to full-scope Medicaid coverage do not fall within the definition of qualified immigrant. This would include children under age 18 who have not applied for a T visa, as well adults who have not applied for a T visa, but have been granted “continued presence” status.³⁸ Nonetheless, states are required to provide full-scope Medicaid coverage to these individuals.

The family members of a victim of a severe form of trafficking fall within the mandatory coverage category if they have been granted a derivative T visa.³⁹ For a relative who is already in the U.S., the mandatory coverage period begins on the date they are granted a T visa. For a relative outside of the U.S., the mandatory coverage period begins on the date they are admitted to the U.S. on the basis of a T visa.⁴⁰

After the seven years have elapsed, victims of severe forms of trafficking and their family members are eligible for coverage if they meet the definition of qualified immigrant and their state has opted to cover all qualified immigrants. As for their eligibility in the ten states that do not cover all qualified immigrants, see [section I.B.2](#), above.

II. Verification of Immigration Status

States must verify the citizenship or immigration status of applicants for full-scope Medicaid. The citizenship or immigration status of non-applicant household members is not relevant to the eligibility determination, and states are prohibited from requiring individuals to disclose the status of non-applicants.⁴¹ The verification requirements do not apply when an individual applies for emergency Medicaid only.⁴²

³⁸ Compare 22 U.S.C. § 7105(b)(1)(C), (E) with 8 U.S.C. § 1641(c)(4).

³⁹ 22 U.S.C. § 7105(b)(1)(A), (B)(i); *Services Available to Victims of Human Trafficking*, at 11.

⁴⁰ *Services Available to Victims of Human Trafficking*, at 11.

⁴¹ 42 CFR § 435.907(e); see also Medicaid Program; Eligibility Changes Under the Affordable Care Act, 77 Fed. Reg. 17144, 17164 (Mar. 23, 2012).

⁴² 42 U.S.C. § 1320b-7(f).

A. Verification of Immigration Status at Initial Application⁴³

With respect to Medicaid applicants who declare themselves to be U.S. citizens, states have several options to verify the declaration. Generally, states may either require an individual to provide certain documentation, as defined by statute, or verify an applicant's Social Security number with the Commissioner of Social Security.⁴⁴

Individuals who are not U.S. citizens must declare under penalty of perjury that they are in a "satisfactory immigration status."⁴⁵ For purposes of verification, this means "an immigration status which does not make the individual ineligible for benefits."⁴⁶ The applicant must present either "alien registration documentation" or documentation showing their "alien admission number or alien file number."⁴⁷ States can also identify other documents that are reasonable evidence indicating a satisfactory immigration status.⁴⁸

1. Verification of Satisfactory Immigration Status through SAVE

Once documentation is provided, the state Medicaid agency must verify immigration status through the "SAVE" system, operated by the Department of Homeland Security (DHS).⁴⁹ The

⁴³ The statute refers to documentation and verification by the "Immigration and Naturalization Service" or "INS." In 2002, however, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, dismantled the former INS and distributed its functions within the newly created Department of Homeland Security.

⁴⁴ See 42 U.S.C. §§ 1396a(46)(B), 1396b(x) (describing documentation requirements), 1396a(ee) (describing verification through Commissioner of Social Security).

⁴⁵ 42 U.S.C. § 1320b-7(d)(1)(A); 42 C.F.R. § 435.406(a)(2)(i).

⁴⁶ 42 U.S.C. § 1320b-7(d)(1)(B)(iii).

⁴⁷ *Id.* § 1320b-7(d)(2)(A).

⁴⁸ *Id.* § 1320b-7(d)(2)(B).

⁴⁹ 42 U.S.C. § 1320b-7(d)(3). The acronym SAVE is used in the statute to refer to the "system for alien verification of eligibility (SAVE)," see 8 U.S.C. § 1183a(3)(C), but the system established by DHS is called "Systematic Alien Verification for Entitlements." For detailed information on the SAVE system and its history, see Gov't Accountability Office, *Immigration Status Verification For Benefits: Actions Needed to Improve Effectiveness and Oversight* (2017), <https://www.gao.gov/assets/690/683654.pdf> [hereinafter "GAO, *Immigration Status Verification*"]. USCIS's SAVE Program Guide provides additional details about the SAVE

verification process must “protect[] the individual's privacy to the maximum degree possible.”⁵⁰ Moreover, the SAVE system cannot be used for administrative (non-criminal) immigration enforcement purposes.⁵¹

SAVE is intended to provide electronic, real-time verification of immigration status through its automated search processes. If the automated SAVE processes cannot verify the information provided by the applicant, or if there is a discrepancy between the documentation provided and the information in SAVE, the SAVE system should indicate that further research is needed.⁵² This further research, referred to as “second-level” or “third-level” verification, is conducted by DHS employees, who manually investigate and review documents to complete the verification.⁵³ As a result, second- or third-level verifications can take up to several weeks. The need for a second- or third-level verification does not mean the individual is not in a satisfactory immigration status.⁵⁴

States must also use SAVE to verify whether an applicant is exempt from the five-year bar based on a military connection. However, if the state cannot verify the military connection through SAVE, the state may accept self-attestation.⁵⁵

Notably, SAVE can only verify an individual’s current immigration status based on the documentation provided. In many cases, it cannot verify past immigration status, which can be relevant for purposes of Medicaid eligibility, as discussed in [section I](#), above.⁵⁶ (For example,

verification process. U.S. Citizenship & Immigration Servs., *SAVE Program Guide*, 10 (2019), <https://save.uscis.gov/web/media/resourcescontents/saveprogramguide.pdf> [hereinafter “USCIS, *SAVE Program Guide*”].

⁵⁰ 42 U.S.C. § 1320b-7(d)(3)(B).

⁵¹ *Id.* § 1320b-7 (note); Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 121(c)(1), 100 Stat. 3359 (1986).

⁵² GAO, *Immigration Status Verification*, at 10.

⁵³ GAO, *Immigration Status Verification*, at 10.

⁵⁴ USCIS, *SAVE Program Guide*, at 11.

⁵⁵ 42 C.F.R. § 435.956(a)(3).

⁵⁶ See GAO, *Immigration Status Verification*, at 8 (noting that SAVE “draws an applicant’s most current immigration status.”); USCIS, *SAVE Program Guide*, at 11 (“SAVE will provide an electronic response with the applicant’s current immigration status”). Recent guidance from CMS notes that “SAVE provides Class of Admission response codes which can verify that an

if an applicant has LPR status, but was admitted to the U.S. as a refugee, the five-year bar does not apply.) After receiving verification from SAVE, the state must still determine whether an individual is entitled to Medicaid coverage given their current and past immigration status.⁵⁷

2. Reasonable Opportunity Period

a. Satisfactory Immigration Status

If an individual declares that they hold a satisfactory immigration status, but either lacks the necessary documentation when the application is submitted, or the verification cannot be completed in real time through SAVE (*e.g.*, DHS is conducting second- or third-level review), the state must provide a “reasonable opportunity” for the individual to submit evidence showing a satisfactory immigration status.⁵⁸

Crucially, during this time, if the individual otherwise meets the eligibility criteria, the state “may not delay, deny, reduce, or terminate the individual’s eligibility for benefits . . . on the basis of the individual’s immigration status.”⁵⁹ In addition, states must provide the applicant notice of the reasonable opportunity period, information on how to contact SAVE to correct any discrepancies, and an opportunity to provide other documentation of their immigration

immigrant who is a LPR, was also a VAWA self-petitioner.” Ctrs. for Medicare & Medicaid Servs., Dear State Health Official Letter, 19-004, “Sponsor Deeming and Repayment for Certain Immigrants,” 12 (Aug. 23, 2019), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho19004.pdf> [hereinafter “Dear State Health Official Letter, 19-004”].

⁵⁷ See GAO, *Immigration Status Verification*, at 11 (SAVE “officials stated that immigration statuses are complex and can change over time; thus benefit granting agencies may need additional information and context to make benefit eligibility decisions.”). *Cf. generally Darjee v. Betlach*, No. 4:16-cv-00489 (D. Ariz.), <https://healthlaw.org/resource/darjee-v-betlach-united-states-district-court-district-of-arizona/>.

⁵⁸ 42 U.S.C. § 1320b-7(d)(4)(A)(i); 42 C.F.R. § 435.956(b)(1).

⁵⁹ 42 U.S.C. § 1320b-7(d)(4)(A)(ii); 42 C.F.R. § 435.956(a)(5)(ii). If a reasonable opportunity period is provided, states also have the option to provide coverage effective the date of the application, or the first day of the month of the application. See 42 C.F.R. § 435.956(a)(5)(iii).

status.⁶⁰ The agency must also continue its own efforts to verify the individual's satisfactory immigration status.⁶¹

The reasonable opportunity period begins on the date the individual receives the notice explaining the period and lasts for 90 days, unless the agency verifies the individual's immigration status sooner.⁶² The agency may extend the period if the "individual is [1] making a good faith effort to obtain any necessary documentation or [2] the agency needs more time to verify the individual's status . . . or to assist the individual in obtaining documents needed to verify his or her status."⁶³

If the individual is ultimately found **not** to have a satisfactory immigration status, the state must take action within 30 days to terminate eligibility.⁶⁴ The state must provide a notice to the individual and an opportunity for a state fair hearing.⁶⁵ States may, but are not required to, provide continuing Medicaid benefits during the fair hearing process.⁶⁶ Even if an individual is ultimately found not to be eligible based on immigration status, states are not required to return federal matching funds received for providing coverage during the reasonable opportunity period or as a result of the fair hearing process.⁶⁷

States may limit the number of reasonable opportunity periods an individual may receive after being denied eligibility due to failure to verify immigration status. Prior to implementing any limits, however, states must show that the lack of limits "jeopardizes program integrity" and must receive approval from HHS.⁶⁸

⁶⁰ 42 C.F.R. § 435.956(b)(1)(ii), (iii).

⁶¹ *Id.* § 435.956(b)(1).

⁶² *Id.* §§ 435.956(b)(2)(i) (indicating the date on which the notice is received is considered to be 5 days after the date on the notice, unless the individual shows they did not receive the notice within the 5-day period), 435.956(b)(2)(ii)(A).

⁶³ *Id.* § 435.956(b)(2)(ii)(B).

⁶⁴ *Id.* § 435.956(b)(3).

⁶⁵ 42 U.S.C. § 1320b-7(d)(5)(B); 42 C.F.R. § 435.956(b)(3).

⁶⁶ 42 C.F.R. § 435.956(b)(3).

⁶⁷ 42 U.S.C. § 1320b-7(e).

⁶⁸ 42 C.F.R. § 435.956(b)(4) (requiring approval of a state plan amendment prior to implementing limits).

b. U.S. Citizens

States must also provide a reasonable opportunity period to individuals declaring themselves to be U.S. citizens if they are unable to present a Social Security number or satisfactory documentation of citizenship with the application.⁶⁹ The reasonable opportunity period for individuals declaring to be citizens must be at least as long as that provided to individuals declaring to hold a satisfactory immigration status.⁷⁰ Federal regulations have established parallel requirements for the reasonable opportunity period for individuals declaring citizenship and a satisfactory immigration status, including that individuals declaring citizenship receive Medicaid benefits during the reasonable opportunity period.⁷¹

B. Verification at Redetermination

An individual's eligibility for Medicaid must be periodically re-evaluated at least annually.⁷² This process is often referred to as redetermination. This section describes when a state may and may not re-verify an individual's citizenship or immigration status during the redetermination process.

1. Citizenship

Once a state has verified citizenship it generally cannot re-verify that information at redetermination or at a subsequent application following a gap in coverage.⁷³ However, the state may re-verify citizenship if: (1) the individual reports a change in citizenship; or (2) it has received information indicating a potential change in the individual's citizenship.⁷⁴

⁶⁹ 42 U.S.C. §§ 1396b(x)(4), 1396a(ee)(2)(C); 42 C.F.R. § 435.956(a)(5).

⁷⁰ 42 U.S.C. §§ 1396b(x)(4), 1396a(ee)(2)(C).

⁷¹ *See* 42 C.F.R. § 435.956(a)-(b) (establishing same requirements).

⁷² *See id.* § 435.916(a).

⁷³ *Id.* § 435.956(a)(4)(ii).

⁷⁴ *Id.*

2. Satisfactory Immigration Status

For individuals eligible under the lawfully residing children and pregnant people option, states are required to re-verify that the individual “continues to lawfully reside in the United States using the documentation presented” at initial enrollment.⁷⁵ If the state cannot successfully re-verify lawfully residing status, the individual must provide further documentation or evidence.⁷⁶

For other individuals, federal statutes and regulations are silent as to whether their immigration status should be re-verified during the redetermination process. However, recent CMS guidance, states that “[a]n individual’s immigration status does not need to be re-verified if it is not likely to change (e.g. Lawful Permanent Resident status) unless the individual reports such a change has occurred.”⁷⁷ The guidance noted that “there are some exceptions, such as individuals with Temporary Protected Status,” whose status “must be re-verified at renewal.”⁷⁸ When a state does re-verify immigration status, it should use the same “ex parte” process that governs redetermination of other eligibility criteria.⁷⁹

C. Verification in Presumptive Eligibility Determinations

Presumptive eligibility provides immediate, temporary coverage to individuals who are screened as appearing to be eligible for certain Medicaid eligibility categories.⁸⁰ States have the option to extend presumptive eligibility to children under age 19, pregnant people, people

⁷⁵ 42 U.S.C. § 1396b(v)(4)(C).

⁷⁶ *Id.*

⁷⁷ Ctr. for Medicaid & CHIP Servs., *CMCS Informational Bulletin: Medicaid and Children’s Health Insurance Program (CHIP) Renewal Requirements*, 4 n.11 (Dec. 4, 2020),

<https://www.medicaid.gov/federal-policy-guidance/downloads/cib120420.pdf>.

⁷⁸ *Id.*

⁷⁹ *See generally* 42 C.F.R. § 435.916 (requiring states to, if possible, redetermine eligibility based on information available to the state, without requesting additional information from applicant).

⁸⁰ *See generally* 42 U.S.C. § 1396a(a)(47); 42 C.F.R. Part 435, Subpart L. Presumptive eligibility lasts until the last day of the month following the month in which the determination of presumptive eligibility was made. *See* 42 U.S.C. §§ 1396r-1, 1396r-1a, 1396r-1b; 42 C.F.R. § 435.1101.

with breast or cervical cancer, certain individuals receiving family planning services and supplies, and certain individuals seeking home and community-based services.⁸¹ States must also provide presumptive eligibility to individuals that hospitals determine appear eligible for Medicaid.⁸²

The presumptive eligibility determination is based on preliminary information provided by the applicant, and states are prohibited from requiring verification of that information.⁸³ States may require individuals to attest that they hold a satisfactory immigration status.⁸⁴ Of course, if an individual later submits a full application, the verification requirements for full applications would apply at that point.

III. Special Income Rules for Certain Lawful Permanent Residents: Sponsor Deeming

Certain immigrants seeking adjustment of status or admission to the U.S. as LPRs are required to obtain an Affidavit of Support (USCIS Form I-864) from a sponsor. This requirement primarily applies to family-based immigrants.⁸⁵ There are exceptions to the Affidavit of Support requirement for individuals who are victims of “extreme cruelty” or domestic violence.⁸⁶ The Affidavit of Support is a legally enforceable commitment by the sponsor to provide financial support to maintain the sponsored immigrant’s income at 125% of the Federal Poverty Level.⁸⁷

Generally, when a sponsored LPR applies for Medicaid, federal law requires states to take into account the sponsor’s and, if applicable, the sponsor’s spouse’s “income and resources” when

⁸¹ 42 U.S.C. §§ 1396(a)(47)(A), 1396r-1a (children under age 19), 1396r-1 (pregnant people); 1396r-1b (people with breast or cervical cancer), 1396r-1c, 1396a(a)(10)(G)(XVI) (individuals receiving family planning services and supplies), 1396n(i)(1)(J) (certain individuals seeking home and community-based services).

⁸² 42 U.S.C. § 1396a(a)(47)(B); 42 C.F.R. § 435.1110.

⁸³ 42 C.F.R. § 435.1102(d)(2)(ii).

⁸⁴ *Id.* § 435.1102(d)(1)(i).

⁸⁵ *See* 8 U.S.C. § 1182(a)(4)(C). Certain immigrants who are sponsored by an employer are also required to obtain an affidavit of support. *See id.* § 1182(a)(4)(D); 8 C.F.R. § 213a.2(a)(2)(i)(C).

⁸⁶ *See* 8 U.S.C. § 1182(a)(4)(E).

⁸⁷ *Id.* § 1183a.

determining if the applicant meets the financial eligibility criteria.⁸⁸ This is called “sponsor deeming” because the income and resources of the immigrant’s sponsor are “deemed” to be available to the sponsored immigrant.⁸⁹

A. When Sponsor Deeming Applies

Sponsor deeming rules apply when an LPR who has a sponsor who has executed the enforceable Affidavit of Support applies for full-scope Medicaid.⁹⁰ Sponsor deeming does not apply to individuals seeking only emergency Medicaid.⁹¹

However, there are some exceptions. First, sponsor deeming ends once the sponsored immigrant has worked 40 qualifying quarters (as defined by the Social Security Act), when the sponsor dies, or after the sponsored immigrant becomes a U.S. citizen.⁹²

⁸⁸ *See id.* § 1631(a).

⁸⁹ In addition, the Affidavit of Support also requires sponsors to agree to reimburse the government for the cost of certain “federal means-tested public benefits” used by the sponsored immigrant while the Affidavit of Support is in effect, with certain exceptions. This is known as “sponsor liability.” 8 U.S.C. § 1183a(b). States may, but are not required to, seek repayment from the sponsor. *Id.*; 8 C.F.R. §§ 213a.2(d); 213a.4. *See also* Gov’t Accountability Office, *Sponsored Noncitizens and Public Benefits: More Clarity in Federal Guidance and Better Access to Federal Information Could Improve Implementation of Income Eligibility Rules*, 22 (2009) <https://www.gao.gov/assets/290/289864.pdf> (describing agency position that seeking repayment from the sponsor is optional).

⁹⁰ 8 C.F.R. § 213a.1 (“Sponsored immigrant means any alien who was an intending immigrant, once that person has been lawfully admitted for permanent residence, so that the affidavit of support filed for that person under this part has entered into force.”).

⁹¹ *See* 8 C.F.R. § 213a.1 (excluding benefits described in “Section 401(b) . . . of Public Law 104-193 [8 U.S.C. § 1611(b)].”); 8 U.S.C. § 1611(b)(1)(A) (describing emergency medical assistance).

⁹² 8 U.S.C. § 1183a(a)(2), (3); 8 C.F.R. § 213a.2(e)(2). For purposes of counting the 40 quarters, an individual may receive credit for a quarter of work worked by the individual, the individual’s spouse during marriage, or the individual’s parent before the individual turns 18. *See* 8 U.S.C. § 1645.

Second, individuals eligible for Medicaid under the “lawfully residing” children and pregnant people option are exempt from sponsor deeming.⁹³ This would include sponsored LPRs who have not met the five-year bar.

Third, sponsor deeming does not apply if the state makes a determination that the sponsored immigrant is “indigent,” meaning that the sponsored immigrant would, without Medicaid, “be unable to obtain food and shelter.”⁹⁴ The agency must consider the immigrant’s own income, as well as any cash, food, housing, or other assistance provided by any other individuals, including the sponsor.⁹⁵ If the state makes a finding of indigence, the state only counts the income that is actually provided by the sponsor for the 12-month period beginning on the date of the indigence determination.⁹⁶ In addition, the state is required to notify the Attorney General of the indigence determination, including the names of both the sponsor and the sponsored immigrant.⁹⁷ This can be a deterrent to indigence findings because applicants fear that sharing this information could lead to future immigration consequences for themselves or their sponsors.

Fourth, the sponsor deeming rules do not apply if the state determines that the sponsored immigrant, or their child, has: (a) been battered or subjected to extreme cruelty by a spouse or parent (or member of the spouse or parent’s family residing in the same household); and (b) the “battery or cruelty . . . has a substantial connection to the need for the public benefits

⁹³ See Dear State Health Official Letter, 19-004, “Sponsor Deeming and Repayment for Certain Immigrants,” 2 (Aug. 23, 2019), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho19004.pdf>. Dear State Health Official Letter, 10-006, at 4. See also 42 U.S.C. § 1396b(v)(4)(A), (B) (individuals are eligible under this option “notwithstanding section[] . . . 1631 of title 8 [establishing sponsor deeming rules],” and “no debt shall accrue against a sponsor, and Medicaid and CHIP assistance under this option shall not be considered an unreimbursed cost).

⁹⁴ 8 U.S.C. § 1631(e)(2).

⁹⁵ *Id.*

⁹⁶ *Id.* § 1631(e)(1) (“the amount of income and resources . . . which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date.”).

⁹⁷ *Id.* § 1631(e)(2).

applied for.”⁹⁸ This exception lasts for 12 months, but may be renewed if the applicant demonstrates that the battery or cruelty has been recognized by a court, administrative law judge, or a determination of DHS.⁹⁹

States can request that the SAVE system verify whether an individual has a sponsor and if the Affidavit of Support is still in effect.¹⁰⁰

B. Counting the Sponsor’s Income and Resources

To qualify for Medicaid, applicants must meet financial eligibility criteria. To determine financial eligibility for most eligibility groups, states use Modified Adjusted Gross Income (MAGI) methodology, which evaluates income by household composition. MAGI methodology does not count resources, such as savings or property.¹⁰¹ For certain eligibility groups, such as SSI recipients and “medically needy,” states use older financial eligibility requirements that do count certain resources.

When sponsor deeming applies, the statute directs states to count the “income and resources” of the sponsor and the sponsor’s spouse.¹⁰² Where applicable Medicaid income-counting rules already count the sponsor’s income, for instance, if an applicant’s spouse is also their sponsor,

⁹⁸ *Id.* § 1631(f)(1). This exception does not apply if, at the time the sponsored immigrant is applying for benefits, the individual responsible for the battery or cruelty resides in the same household or is in the same family eligibility unit as the applicant. *Id.* § 1631(f)(2).

⁹⁹ *See id.* § 1631(f)(1)(B) (extension past 12 months may be granted “if the alien demonstrates that such battery or cruelty . . . has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service, and that such battery or cruelty (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits...”).

¹⁰⁰ *See id.* § 1183a(3)(C) (requiring the Attorney General to provide sponsor information to SAVE). State eligibility systems must be programmed to receive this data. Dear State Health Official Letter, 19-004 at 12.

¹⁰¹ For more information on MAGI methodology, *see* Wayne Turner et al., Nat’l Health Law Program, *The Advocate’s Guide to MAGI* (2018), <https://healthlaw.org/resource/advocates-guide-to-magi-updated-guide-for-2018/>.

¹⁰² 8 U.S.C. § 1631(a).

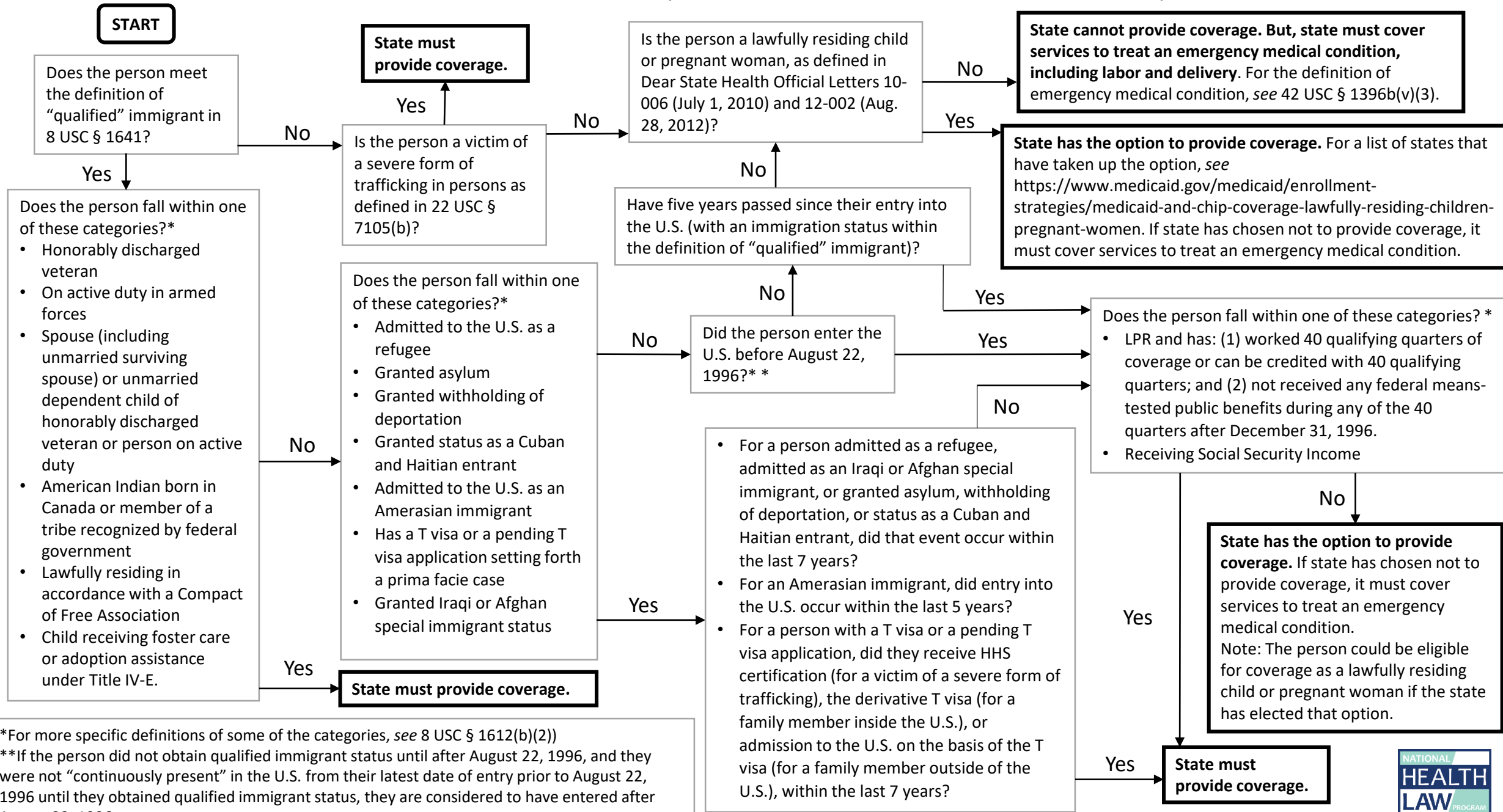
deeming will not alter the individual's financial eligibility determination. When the sponsor is not part of the Medicaid household, states have flexibility to determine how they calculate the sponsor's income, and the approaches vary significantly.¹⁰³ Check your state's eligibility manual for more information about how a sponsor's income is deemed.

Conclusion

As detailed above, determining Medicaid eligibility for immigrants can be extremely complicated and fact-dependent. Individuals assisting immigrants who are applying for or are denied eligibility for Medicaid and believe they should be eligible should seek further guidance from competent sources.

¹⁰³ Dear State Health Official Letter, 19-004. *See generally* Gov't Accountability Office, *Sponsored Noncitizens and Public Benefits: More Clarity in Federal Guidance and Better Access to Federal Information Could Improve Implementation of Income Eligibility Rules* (2009) <https://www.gao.gov/assets/290/289864.pdf>.

IMMIGRANTS' ELIGIBILITY FOR MEDICAID COVERAGE (ASSUMING ALL OTHER MEDICAID ELIGIBILITY CRITERIA MET)



*For more specific definitions of some of the categories, see 8 USC § 1612(b)(2)
 **If the person did not obtain qualified immigrant status until after August 22, 1996, and they were not "continuously present" in the U.S. from their latest date of entry prior to August 22, 1996 until they obtained qualified immigrant status, they are considered to have entered after August 22, 1996

