

Issue Alert
14-01-07

Program Area: Medicaid (MA)

Issue Summary: Michigan Department of Human Services (DHS) has issued new policy on determining whether a person is a Michigan resident for purposes of Medicaid eligibility, which satisfies some -- but not all -- requirements of federal law

Persons Affected: People applying for or receiving Medicaid in Michigan, with some changes or missing provisions specifically affecting: children born in the U.S. who have immigrant parents, children residing in a different state than their parents, individuals (and their families) who move to Michigan looking for work or with a job commitment, and non-citizens who intend to reside in Michigan

Date: January 17, 2014

For More Information:

Center for Civil Justice 436 S. Saginaw St. Suite 400, Flint, MI 48502 (810) 244-8044, (800)724-7441 Fax: (810) 244- 5550 E-mail: info@ccj-mi.org	Michigan Immigrant Rights Center 3030 S. 9th St Ste. 1A Kalamazoo, MI 49009 tel: (269) 492-7196 fax: (269) 492-7198 email:mirc@lsscm.org
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BACKGROUND

Michigan residence is a requirement for receiving Michigan Medicaid. Many non-citizens with visas who live in Michigan lawfully for many years while attending colleges or universities or doing graduate or post-doctoral work, including many people who intend to stay permanently in the U.S., have been denied Medicaid based on Michigan's policy on residency for Medicaid purposes. The same policy was used to deny Medicaid to their non-citizen spouses or children who also were living legally in the U.S.

In addition, children born in the U.S. to international student parents have been denied Medicaid based on a residency policy that DHS issued in January 2012, which said that U.S. citizen children whose parents were lawfully in the U.S. on "temporary or time-limited" visas without employment authorization (work permits) could not be considered residents of Michigan.

The Michigan Immigrant Rights Center (MIRC) filed a federal civil rights complaint in 2012 alleging national origin discrimination and other violations of law and regulation on behalf of a U.S. citizen child who was otherwise-eligible for Medicaid but denied coverage because of her mother's student visa status.

WHAT'S HAPPENING?

Federal regulations effective January 1, 2014 clarify and simplify the rules and definitions that states must apply in determining state residency for purposes of Medicaid eligibility. 77 Fed Reg 17144 (Mar. 23, 2012) and 42 CFR 435.403. In addition, another federal regulation that went into effect October 1, 2013 prohibits the state from using evidence of immigration status in determining whether a person is a state resident. 42 CFR 435.956(c)(2).

DHS has revised its Residency policy in Bridges Eligibility Manual (BEM) 220, effective January 1, 2014. BEM 220 is available at <http://www.mfia.state.mi.us/OLMWeb/ex/BP/Public/BEM/220.pdf>. The new policy partially complies with the new federal regulations.

The Good News

The revised BEM 220 no longer states that the residency of citizen children will be restricted based on their parent's immigration status or documents. The revised BEM 220 no longer refers at all to immigration status in its definition of residency for individuals seeking or receiving Medicaid under MAGI-related categories (these are the Medicaid eligibility categories that do not require proof of disability or age 65 or older).

We have received reports that this change is already helping citizen children access Medicaid while they are living in Michigan with their parents who are international students.

The Bad News

The revised BEM 220 does not remove the unlawful restrictions on residency for people seeking or receiving Medicaid under SII-related categories (those based on disability or age 65+). It also fails to include other important provisions of the federal regulations. As a result, some people who are Michigan residents under federal law may nevertheless be denied Medicaid in Michigan because of lack of residency. Important problems with the new DHS policy include those listed below. The list includes a citation to the federal law that applies.

A. The new DHS policy continues to use different definitions of residency for people who receive Medicaid under SSI-related categories (categories in which eligibility is based on disability or being age 65 or older) and other, "MAGI-related" categories. Under the new federal regulations, Michigan must use one set of residency rules for all Medicaid eligibility categories. 42 CFR 435.403.

B. The DHS policy on residency for SSI-related categories continues to state that DHS will use evidence of a person's immigration status to determine that the person is not a Michigan resident, even though that is prohibited by federal regulations 42 CFR 435.956(c)(2).

C. The policy does not explicitly include the two rules that take precedence over all other rules on residency: (1) Any child receiving federal funding under Title IV-E of the Social Security Act from the state of Michigan is a resident of Michigan. 42 CFR 435.403(g). A child receiving IV-E from another state is a resident of that state, regardless of any other rules. (2) Any person receiving the SSI State Supplement from Michigan is a Michigan resident for the month the supplement is received. This is a \$14 per month benefit that usually is received as a \$42 payment every three months. 42 CFR 435.403(f). A person receiving an SSI state supplement from another state is a resident of that state,

regardless of other residency rules.

D. The policy does not state that any person living in Michigan who is not living in an institution (as explained below) and is not capable of indicating intent (as explained below) is a Michigan resident. 42 CFR 435.403(h)(2).

E. Any adult who entered Michigan with a job commitment or seeking work (even if not currently employed) is a Michigan resident, if they are not receiving an SSI state supplement from another state and are not in an institution (in which case other rules control). 42 CFR 435.403(h)(1)(ii). The new DHS policy does not include this rule in the section of policy that discusses MAGI-related categories. In addition, for individuals in SSI-related categories, the policy impermissibly limits the applicability of this rule based on immigration status.

F. The policy fails to explicitly state that immigration status may not be used to determine that a person is not a state resident. 42 CFR 435.956(c)(2).

G. The policy fails to explicitly provide that a person placed in a Michigan institution by another state will be a Michigan resident if they are competent and present in Michigan following their release from the institution. 42 CFR 435.403(e)(3).

H. The policy continues to say that a person must intend to remain in Michigan permanently or indefinitely in order to establish residency, in spite of the fact that the federal regulation was amended effective January 1, 2014 to remove this requirement. The federal regulation only requires that the individual have an intent to reside in the state, and the preamble to the final regulation makes it clear that the distinction between people who are visiting the state and those who intend to reside in the state.

I. The policy does *not* state that the residence for a child who is not in an institution is either the state where the child resides, or the state of residence of the parent or caretaker with whom the child resides.

WHAT SHOULD ADVOCATES DO?

1. Let your local agencies, colleges, and universities know that the law on residence for Medicaid has changed.
2. Encourage people who previously were denied Medicaid based on lack of residence to re-apply and seek legal advice if they are denied again.
3. Help individuals denied Medicaid based on lack of residence to find legal help (see below).
4. Contact the Center for Civil Justice (contact information above) or the Michigan Immigration Rights Center (mirc@lsscm.org or (269) 492-7196) if you think you have been unlawfully denied Medicaid based on lack of Michigan residence.

WHAT SHOULD CLIENTS DO?

1. Re-apply for Medicaid if you were denied in the past because of lack of residence.
2. Seek legal advice if you are denied again.
3. Contact the Center for Civil Justice or the Michigan Immigrant Rights Center (contact information above) if you think you have been unlawfully denied Medicaid based on lack of Michigan residence.

FINDING HELP

Most legal aid and legal services offices handle these types of cases, and they do not charge a fee. You can locate the "free" legal services or legal aid office that serves your county on the Michigan Legal Help Web Site <http://www.michiganlegalhelp.org/> or look in the yellow pages under "attorneys" or call the toll-free lawyer referral number, (800) 968-0738.