

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 239B.4(6) and 249A.4, the Department of Human Services proposes to amend Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” and Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments update and clarify the Family Investment Program (FIP) and Medicaid rules on eligibility for persons who are not United States citizens. There has been frequent federal legislation in this area and development of federal regulations which necessitate changes to conform to federal funding requirements.

For the Family Investment Program (FIP), the amendments:

- Clarify that a FIP participant must be a citizen or national of the United States or a qualified alien and specify how applicants and participants attest to citizenship or alien status.
- Add definitions of “qualified alien” and “qualifying quarters” and clarify which qualified aliens are subject to a five-year bar on assistance and which are exempt from the bar.
- Require consideration of the income and resources of a sponsor when an alien has been sponsored by a person who executed an enforceable affidavit of support. Deeming of the sponsor’s income ends when the alien becomes a naturalized citizen, can be credited with 40 qualifying quarters of employment, or has been determined to be a battered alien or when the sponsor or the sponsored alien dies.
- Exempt the income and resources of a sponsor from consideration when the sponsored alien is considered indigent and define that determination.

For Medicaid, the amendments:

- Update the definitions of “care and services necessary for the treatment of an emergency medical condition,” “emergency medical condition,” and “qualified alien.”
- Clarify how qualified aliens become eligible for Medicaid.
- Add an exemption from verifying citizenship for a person born to a Medicaid-eligible mother and make technical corrections to clarify other exemptions from verifying citizenship.
- Define the deductions allowable in calculating the income and resources subject to sponsor-to-alien deeming when an alien is sponsored by a person who executed an enforceable affidavit of support.
- Allow an exception to consideration of the income and resources of a sponsor when the sponsored alien is considered indigent and define that determination.
- Clarify that deeming of the sponsor’s income does not apply when the sponsored alien is a child under age 21, is a battered alien, becomes a naturalized citizen, or can be credited with 40 qualifying quarters of employment. Deeming ends when the sponsor or the sponsored alien dies. For SSI-related Medicaid, deeming also ends when the sponsored alien becomes blind or disabled after admission to the United States. as a lawful permanent resident or three years after the date the sponsored alien was admitted to the United States as a lawful permanent resident.

These amendments do not provide for waivers in specified situations because the amendments are required by federal law or confer a benefit. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before January 18, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des

Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 239B.3, 239B.5, 239B.6, and 249A.3 and 8 United States Code Section 1641 as amended by the Immigration and Nationality Act, the Immigration Reform Act of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Balanced Budget Act of 1997, the Trafficking Victims Protection Act of 2000, and the Children's Health Insurance Reauthorization Act of 2009.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **441—40.21(239B)**:

"Qualified alien" means an alien:

1. Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);
2. Who is granted asylum in the United States under Section 208 of the INA;
3. Who is a refugee admitted to the United States under Section 207 of the INA;
4. Who is paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year;
5. Whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010;
6. Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;
7. Who is admitted to the United States as an Amerasian as described in 8 U.S.C. Section 1612(b)(2)(A)(ii)(V);
8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);
9. Who is a battered alien as described in 8 U.S.C. Section 1641(c); or
10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

"Qualifying quarters" means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act that were worked by a parent of an alien while the alien was under the age of 18 and all of the qualifying quarters that were worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased. No qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien if the parent or spouse of the alien received any federal means-tested public benefit during the period for which the qualifying quarter is so credited.

ITEM 2. Amend subrule 41.23(5) as follows:

41.23(5) Citizenship and alienage.

a. Eligible status. A family investment program assistance grant may include the needs of a citizen or national of the United States, or a qualified alien as defined at ~~8 United States Code Section 1641~~ rule 441—40.21(239B).

(1) A person who is a qualified alien as defined at ~~8 United States Code Section 1641~~ rule 441—40.21(239B) is not eligible for family investment program assistance for ~~five years~~. ~~The a five-year period of ineligibility begins~~ beginning on the date of the person's entry into the United States with a qualified alien status as ~~defined at 8 United States Code Section 1641~~.

(2) EXCEPTIONS: The five-year prohibition from family investment program assistance does not apply to: ~~battered aliens as described at 41.23(4), qualified aliens described in 8 United States Code Section 1612, or to qualified aliens as defined at 8 United States Code Section 1641 who entered the United States before August 22, 1996.~~

1. A qualified alien residing in the United States before August 22, 1996.
2. A battered alien as described at subrule 41.23(4).
3. A qualified alien veteran who has an honorable discharge that is not due to alienage.
4. A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.

5. A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in numbered paragraph “3” or “4,” including a surviving spouse who has not remarried.

6. A refugee admitted under Section 207 of the Immigration and Nationality Act (INA).

7. An alien granted asylum under Section 208 of the INA.

8. An alien admitted as an Amerasian as described in 8 U.S.C. Section 1612(a)(2)(A)(ii)(V);

9. A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).

10. An alien whose deportation is withheld under Section 243(h) or Section 241(b)(3) of the INA.

11. An alien certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

12. An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

~~(2) A person who is not a United States citizen, a battered alien as described at 41.23(4), or a qualified alien as defined at 8 United States Code Section 1641 is not eligible for the family investment program regardless of the date the person entered the United States.~~

b. *Attestation of status.* As a condition of eligibility, each applicant shall attest to the applicant’s citizenship or alien status by signing an attestation of citizenship or alien status shall be made for all applicants and recipients on Form 470-0462 or 470-0466 470-0462(S), Health and Financial Support Application, or Form 470-2549, Statement of Citizenship Status. Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligible group. The attestation may be signed by:

(1) The applicant or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant’s behalf shall sign the form;

(2) An adult shall sign the form for dependent children. Form 470-2881, Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Someone acting responsibly on the applicant’s or recipient’s behalf if the applicant or recipient is incompetent or incapacitated; or

(3) Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligibility group Any adult member of the assistance unit, when eligibility is determined on a family or household basis.

ITEM 3. Amend paragraph **41.24(2)“f”** as follows:

f. A person who is not a United States citizen and is not a qualified alien as defined in 8 United States Code Section 1641 or a battered alien as described at 41.23(4) rule 441—40.21(239B).

ITEM 4. Amend subrule 41.26(9) as follows:

41.26(9) Aliens sponsored by individuals. ~~Rescinded IAB 10/4/00, effective 12/1/00.~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the resources of the alien shall be deemed to include the resources of the sponsor (and of the sponsor’s spouse if living with the sponsor). The amount of the resources of the sponsor and the sponsor’s spouse deemed to the alien shall be the total countable resources as described in rule 441—41.26(239B) remaining after a \$1,500 deduction is subtracted. The following are exceptions to deeming of a sponsor’s resources:

a. Deeming of the sponsor’s resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at rule 441—40.21(239B);

or

(3) The sponsored alien or the sponsor dies.

b. An indigent alien is exempt from the deeming of a sponsor's resources for 12 months after indigence is determined. An alien shall be considered indigent if:

- (1) The alien does not live with the sponsor; and
- (2) The alien's gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's resources for 12 months.

ITEM 5. Amend subrule 41.27(10) as follows:

~~41.27(10) Aliens sponsored by individuals. Rescinded IAB 10/4/00, effective 12/1/00.~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the income of the alien shall be deemed to include the income of the sponsor (and of the sponsor's spouse if living with the sponsor). The amount of the income of the sponsor and the sponsor's spouse deemed to the alien shall be the total gross earned and unearned income remaining after allowing the earned income deduction described at paragraph 41.27(2) "a," the work incentive disregard described at paragraph 41.27(2) "c," and diversions described at subrule 41.27(4). The following are exceptions to deeming of a sponsor's income:

a. Deeming of the sponsor's income does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at rule 441—40.21(239B);

or

(3) The sponsored alien or the sponsor dies.

b. An indigent alien is exempt from the deeming of a sponsor's income for 12 months after indigence is determined. An alien shall be considered indigent if:

- (1) The alien does not live with the sponsor; and
- (2) The alien's gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's income for 12 months.

ITEM 6. Amend paragraph ~~41.30(3)"a"~~ as follows:

~~a. Exclusions. Families with an adult as defined in subrule 41.30(1) who is not a U.S. citizen, a battered alien as described at 41.23(4), or a qualified alien under 8 United States Code Section 1641 as described in subrule 41.23(5) as defined in rule 441—40.21(239B) are prohibited from receiving more than 60 months of FIP assistance. The family of an adult who is a nonqualified alien cannot meet the requirements of paragraph "g" of this subrule since the department is precluded from using public funds to provide a nonqualified alien with family investment agreement or PROMISE JOBS services by Iowa Code sections 239B.8 and 239B.18 and rule 441—41.24(239B).~~

ITEM 7. Amend subrule ~~75.11(1)~~, definitions of "Care and services necessary for the treatment of an emergency medical condition," "Emergency medical condition" and "Qualified alien," as follows:

~~"Care and services necessary for the treatment of an emergency medical condition" shall mean~~ means services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care after the sudden onset of ~~for~~ an emergency medical condition, provided the care and services are not related to an organ transplant procedure furnished on or after August 10, 1993. Payment for emergency medical services shall be limited to the day treatment is initiated for the emergency medical condition and the following two days.

~~"Emergency medical condition" shall mean~~ means a medical condition of sudden onset (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in one or more of the following:

1. to 3. No change.

“*Qualified alien*” means an alien ~~who is:~~

1. ~~Lawfully~~ Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);
2. ~~Granted~~ Who is granted asylum in the United States under Section 208 of the ~~Immigration and Nationality Act~~ INA;
3. A ~~Who is a~~ refugee ~~and who is~~ admitted to the United States under Section 207 of the ~~Immigration and Nationality Act~~ INA;
4. ~~Paroled~~ Who is paroled into the United States under Section 212(d)(5) of the ~~Immigration and Nationality Act~~ INA for a period of at least one year;
5. ~~An alien whose~~ Whose deportation from the United States is being withheld under Section 243(h) of the ~~Immigration and Nationality Act~~ INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010; ~~or~~
6. ~~Granted~~ Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the ~~Immigration and Nationality Act~~, INA as in effect prior to before April 1, 1980;₂
7. Who is an Amerasian admitted to the United States as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V);
8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);
9. Who is a battered alien as described in 8 U.S.C. Section 1641(c);
10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010;
11. Who is an American Indian born in Canada to whom Section 289 of the INA applies or is a member of a federally recognized Indian Tribe as defined in 25 U.S.C. Section 450b(e); or
12. Who is under the age of 21 and is lawfully residing in the United States as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii).

ITEM 8. Amend subrule 75.11(2) as follows:

75.11(2) *Citizenship and alienage.*

a. To be eligible for Medicaid, a person must be one of the following:

- (1) and (2) No change.
- (3) ~~An A~~ qualified alien child under the age of 19 who is lawfully admitted for permanent residence under the Immigration and Nationality Act 21.
- (4) A refugee ~~who is~~ admitted to the United States under Section 207 of the Immigration and Nationality Act (INA).
- (5) An alien who has been granted asylum under Section 208 of the ~~Immigration and Nationality Act~~ INA.
- (6) An alien whose deportation is being withheld under Section 243(h) or Section 241(b)(3) of the ~~Immigration and Nationality Act~~ INA.
- (7) to (10) No change.
- (11) An Amerasian admitted as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V).
- (12) A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).
- (13) A certified victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.
- (14) An American Indian born in Canada to whom Section 289 of the INA applies or who is a member of a federally recognized Indian Tribe as defined in 25 U.S.C. Section 450b(e).
- (15) An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

b. As a condition of eligibility, each member shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the member’s citizenship or alien status. When the member is incompetent or deceased, the form shall be signed by someone acting responsibly on the member’s behalf. An adult shall sign the form for dependent children.

(1) and (2) No change.

(3) An attestation of citizenship or alien status completed on any one of the following forms shall meet the requirements of subrule 75.11(2) for children under the age of 19 who are otherwise eligible pursuant to 441—subrule 76.1(8):

1. Application for Food Assistance, Form 470-0306 or 470-0307 (Spanish);
2. Health and Financial Support Application, Form 470-0462 or ~~470-0466 (Spanish)~~ 470-0462(S);

or

3. Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS);

c. No change.

d. Any one of the following documents shall be accepted as satisfactory documentation of citizenship or nationality:

(1) to (4) No change.

(5) Documentation issued by a federally recognized Indian Tribe showing membership or enrollment in or affiliation with that Tribe.

~~(5)~~ (6) Another document that provides proof of United States citizenship or nationality and provides a reliable means of documentation of personal identity, as the ~~secretary~~ Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v).

e. No change.

f. A person for whom an attestation of United States citizenship has been made pursuant to paragraph “b” is not required to present documentation of citizenship or nationality for Medicaid eligibility if any of the following circumstances apply:

(1) to (3) No change.

(4) The person is a child in foster care who is ~~eligible for~~ assisted by child welfare services funded under Part B of Title IV of the federal Social Security Act.

(5) The person is ~~eligible for adoption or receiving foster care maintenance or adoption assistance payments~~ funded under Part E of Title IV of the federal Social Security Act; or,

(6) No change.

(7) The person is or was eligible for medical assistance pursuant to 42 U.S.C. Section 1396a(e)(4) as the newborn of a Medicaid-eligible mother.

(8) The person is or was eligible for medical assistance pursuant to 42 U.S.C. Section 1397ll(e) as the newborn of a mother eligible for assistance under a State Children’s Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act.

g. to i. No change.

ITEM 9. Amend subrule 75.11(3) as follows:

75.11(3) Deeming of sponsor’s income and resources.

a. ~~In determining the eligibility and amount of benefits of~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the income and resources of the alien shall be deemed to include the following:

~~(1) The income and resources of any person who executed an affidavit of support pursuant to Section 213A of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien.~~

~~(2) The the income and resources of the sponsor (and the sponsor’s spouse of the person who executed the affidavit of support, if living with the sponsor). The amount deemed to the sponsored alien shall be the total gross countable income and resources of the sponsor and the sponsor’s spouse for the FMAP-related or SSI-related coverage group applicable to the sponsored alien’s household as described in 441—75.13(249A) less the following deductions:~~

~~(1) For FMAP-related coverage groups: The same income deductions, diversions, and disregards allowed for stepparent cases as described at 75.57(8) “b” and a \$1,500 resource deduction.~~

(2) For SSI-related coverage groups: The deductions described at 20 CFR 416.1166a and 416.1204, as amended to April 1, 2010.

b. When an alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act or has worked 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with qualifying quarters as defined at subrule 75.11(1) and, in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means tested public benefits, as defined in subrule 75.11(1), during any period, deeming of the sponsor's income and resources no longer applies. An indigent alien is exempt from the deeming of a sponsor's income and resources for 12 months after indigence is determined. An alien shall be considered indigent if the following are true:

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income actually received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's income and resources for 12 months.

d. Deeming of the sponsor's income and resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title II of the Immigration and Nationality Act.

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at subrule 75.11(1).

(3) The sponsored alien or the sponsor dies.

(4) The sponsored alien is a child under age 21.

(5) For SSI-related Medicaid, the sponsored alien becomes blind or disabled as defined under Title XVI of the Social Security Act after admission to the United States as a lawful permanent resident.

(6) For SSI-related Medicaid, three years after the date the sponsored alien was admitted to the United States as a lawful permanent resident.