State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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Commissioner

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MEDICAID COMMUNICATION NO. 98-20 **DATE: October 30, 1998**

TO: County Welfare Agency Directors
ISS Area Supervisors

SUBJECT: Implementation of the Alien Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997

Effective **February 1, 1998**, the Division of Medical Assistance and Health Services implemented the alien provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997 as they pertain to children under N.J.A.C. 10:79 (NJ KidCare).

Effective **November 1, 1998**, in conjunction with these federal Acts and New Jersey State law, these provisions apply to **all Medicaid programs.** Accordingly, for all new Medicaid applicants as well as those applicants whose eligibility is currently pending, these provisions are **now** to be applied in determining eligibility (see instructions below regarding the process of terminating ineligible aliens who are currently on Medicaid).

Background: These federal Acts changed the criteria by which legal aliens can qualify for medical assistance. Although the federal law puts certain restrictions on coverage of these aliens, options were given to the State to provide some additional coverage. New Jersey adopted these options in order to maximize services to legal aliens.

Generally speaking, the new State and federal laws bar eligibility for lawful permanent resident aliens who entered the United States **on or after** August 22, 1996, for the first five years after entry into the country, but allow coverage after the five-year bar if all other eligibility criteria are met.

An eligible alien who otherwise meets all other eligibility criteria is entitled to full Medicaid benefits. For those individuals who do not meet the eligible alien criteria for full Medicaid benefits, please use the following cites in your denial notification: for children cite N.J.A.C. 10:79-3.2; for other Medicaid applicants cite State statute (P.L. 1997,c.352.) and federal statute [8 U.S.C. § 1612 and § 1613]

until State regulations are promulgated. Additionally, your denial notice should advise the applicant that emergency coverage may be available for services provided in the three (3) months prior to application or at a later date if an emergency occurs. Applicants should be directed to your agency for more information or to have their application re-evaluated for payment of an emergency service. An "eligible alien" is defined as follows:

1. **The following aliens if present in the United States prior to August 22, 1996 would meet the definition of eligible alien:**

   (a) a lawful permanent resident;

   (b) a refugee, pursuant to section 207 of the Immigration and Nationality Act;

   (c) an asylee, pursuant to section 208 of the Immigration and Nationality Act;

   (d) an alien who has had deportation withheld pursuant to section 243(h) of the Immigration and Nationality Act;

   (e) an alien who has been granted parole for at least one year by the Immigration and Naturalization Service pursuant to section 212(d)(5) of the Immigration and Nationality Act;

   (f) an alien granted conditional entry pursuant to section 203(a)(7) of the immigration law in effect before April 1, 1980; or,

   (g) an alien who is honorably discharged or on active duty in the United States armed forces and his or her spouse and the unmarried dependent children of the alien or spouse;

   (h) an alien who is granted status as a Cuban/Haitian entrant pursuant to section 501(e) of the Refugee Education Assistance Act of 1980;

   (i) an alien admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;

   (j) an alien who is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply;

   (k) an alien who is a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act;

   (l) Certain legal aliens who are victims of domestic violence and when there is a substantial connection between the battery or cruelty

suffered by an alien and his or her need for Medicaid benefits, subject to certain conditions.

2. **An alien entering the United States on or after August 22, 1996 and who is:**

   (a) an alien described in (1)(b), (c), (d), (g) (h), (i), (j), or (k) above; or,

   (b) an alien described in (1)(a), (e), (f), or (l) above **but can not be eligible <u>until</u> <u>five years after</u> entry into the United States.**

A lawful permanent resident should have documentation to that effect since he or she is required by law to carry it. A lawful permanent resident should have in his/her possession a Form I-151, Alien Registration Receipt Card, or an older Form AR-3 and AR-3a, Alien Registration Receipt Card, or reentry permit.

Those who have entered the United States via special sections of the Immigration and Naturalization Act will have Form I-94, Arrival - Departure Record citing the section of the Immigration and Naturalization Act under which they were admitted.

<u>Actions to be taken Immediately:</u>

- With regard to these provisions, a pregnant woman must qualify for Medicaid in her own right. If a pregnant woman is not eligible for Medicaid due to her alien status, she would **only** be entitled to coverage of emergency services as **cited in section 1903(v) of the Social Security Act.** Accordingly, the regulations contained in N.J.A.C. 10:81-3.9 (a) 5.ii. and 10:72 regarding Medicaid on behalf of the unborn child are considered obsolete and will be deleted in the regulatory proposal and adoption. A pregnant woman who is ineligible for Medicaid due only to her alien status should be advised to apply for the Medical Emergency Payment Program for Aliens after she delivers. If hospitalized, she should see an outstationed worker before she is released from the hospital to apply for this program.

NOTE: **Guaranteed Eligibility** - An infant born to an ineligible alien mother whose labor and delivery were covered by the Medical Emergency Payment Program for Aliens is deemed to have filed for and been found eligible for Medicaid. The infant remains eligible until reaching age one so long as it continues to reside in New Jersey with the mother, even though the mother is only eligible to receive emergency services.

- Those aliens who **do not meet** the requirements of "eligible aliens" and are **currently** Medicaid beneficiaries are no longer Medicaid eligible.

NOTE: These individuals will have to be **terminated when their next redetermination is processed**. Pregnant women whose **eligibility does not require a redetermination** will terminate, as usual, on the last

day of the month following the month in which the delivery occurs or the pregnancy ends.

- Those individuals who do not meet the criteria as "eligible aliens" due to changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 but were residing in a Medicaid-certified nursing facility prior to January 29, 1997 **will continue to be covered under recently enacted State legislation.** Assistance shall continue until they are no longer eligible for long-term care services. Instructions for coding these cases are being finalized and will be issued in a subsequent communication. Until that time, these individuals will remain in their current status, but their cases should be "tickled" for future action. Please forward the names and Medicaid ID numbers of these cases to the Bureau of Eligibility Policy on a monthly basis as these cases are redetermined.

Medical Emergency Payment Program for Aliens

An alien who does not qualify as an eligible alien but who is a resident of New Jersey and would otherwise qualify for medical assistance or NJ KidCare-Plan A will **only** be entitled to care and services necessary for the treatment of an emergency medical condition. **For purposes of this program, labor and delivery services will be considered emergencies**. Emergency services must be provided in an acute care hospital (or in any setting for labor and delivery procedures). The symptoms must be severe enough (including severe pain) that not providing immediate medical attention would probably:

- *Place the patient's health in serious danger;*
- *Seriously impair the patient's bodily functions; or*
- *Seriously impair the use of any body part or organ.*

NOTE: NJ KidCare Plans B and C are **not** covered by this program.

If an alien who is later found eligible for payment of emergency services receives care in an acute care hospital (inpatient, outpatient or emergency room) and his/her diagnosis meets the above criteria, his/her hospital, physician and other related medical costs can be covered by this program. However, he/she will not be eligible for services (including pharmacy) following discharge.

Physician, nurse-midwife and other related medical costs (including ambulance service) can be covered by the program for labor and delivery services. Additionally, labor and delivery can be covered when performed in **any** setting.

If the county board of social services has outstationed staff located at the hospital where the emergency occurred, the outstationed staff should make every effort to take the application. If not, the hospital staff must notify the

county that the individual has had an emergency service performed at their facility and is interested in applying for payment of emergency services. This notice requires that the hospital complete and forward Form PA-1C to the county board of social services. That form is required to document the emergency and establish the earliest possible effective date of eligibility if the individual applies at the county board of social services within three (3) months of the date of the PA-1C. **Without a PA-1C**, the county can only process applications for pregnant women relating to **labor and delivery** services. This application must be initiated at the county board of social services no later than three (3) months after the month in which the labor and delivery services were provided. The applicant must have bills indicating that labor and delivery services were performed.

When an individual who is a member of a family unit applies for the Medical Emergency Payment Program for Aliens, he/she should be questioned about the rest of the family in order to determine if other members of the family might qualify for full Medicaid/NJ KidCare coverage (i.e., a child who was born in the United States may be eligible for NJ KidCare).

An applicant for payment of emergency services would have to meet all eligibility criteria for a particular category of Medicaid, including the Medically Needy program, or NJ KidCare-Plan A . Those who apply as disabled individuals who do not receive Social Security disability benefits would have to have their disability determined by Medicaid's Medical Review Team the same as an individual applying for other Medicaid programs.

When an applicant is determined to be eligible for payment of emergency services, eligibility should be entered into the Medicaid Eligibility System the month or months in which the emergency occurred. In instances where the applicant is admitted to a hospital directly or through the emergency room and the stay extends into the next month, eligibility should be entered for both months. If the individual has another emergency at a later date, he/she would have to reapply.

<u>All</u> beneficiaries of the Medical Emergency Payment Program for Aliens (except Medically Needy eligibles) are to be given a special program code.

- Special Program Code 10 will temporarily be assigned to **all** beneficiaries who are found eligible for the Medical Emergency Payment Program for Aliens.

The timeframe for the special program code must match the timeframe for eligibility. Entering the special program code is **essential,** as this triggers an edit that prevents payment of non-emergency claims.

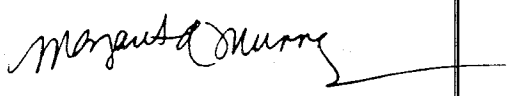
At a later date, additional special program codes may be added to the system to further identify the subgroups of aliens eligible for the Medical Emergency Payment Program for Aliens, i.e., undocumented aliens; legal, non-qualified

aliens including non-immigrants (temporary visitors such as tourists, workers and students); and qualified, restricted aliens (those aliens who entered the U.S. after August 22, 1996 and have five-year restrictions on full Medicaid eligibility).

When these special program codes become available, further instructions will be issued.

Questions should be referred to the Medicaid District Office field service staff assigned to your county.

Sincerely,



Margaret A. Murray
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