

EMERGENCY RULES**DEPARTMENT OF HUMAN SERVICES
DIVISION OF COUNTY OPERATIONS
AMENDING ADMINISTRATIVE RULES****NUMBER AND TITLE:** Medical Services Policy Sections D-210 and D-224**PROPOSED EFFECTIVE DATE:** March 2, 2021**STATUTORY AUTHORITY:** Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

NECESSITY AND FUNCTION: The Director of the Division of County Operations (DCO) updates the Medical Services Policy Manual sections MS D-210 and D-224 to reflect a change resulting from the Consolidated Appropriations Act, 2021. The Act establishes eligibility for Medicaid to any individual who lawfully resides in any of the fifty states or the District of Columbia in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. DCO amends MS D-210 by removing special rules previously in place regarding Marshall Islanders, thus deeming them qualified aliens for Medicaid. DCO updates the list of aliens exempt from the five-year bar contained in MS D-224 to include aliens lawfully living in the United States in accordance with the Compacts of Free Association but limited to the governments stated above.

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Franklin
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Mary Franklin, Director
Division of County Operations

Promulgation date: March 2, 2021**Contact Person:** Mac Golden
P. O. Box 1437, Slot S295
Little Rock, AR 72203-1437
(501) 563-7634

Statement of Necessity and Rule Summary

Medical Services Policy Sections D-210 and D-224

Statement of Necessity

Medical Services Policy is being updated to reflect a change due to the Consolidated Appropriations Act, 2021, 8 U.S.C. § 1612. The amendment states that any individual who lawfully resides in 1 of the 50 States or the District of Columbia in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau shall be eligible for Medicaid.

What does Policy Sections D-210 and D-224 cover?

Policy MS D-210 outlines the factors that are used to determine citizenship/qualified alien status for applicants Medicaid applicants.

A few steps are used to consider citizenship determination:

- Birth county of the individual or parents,
- U.S. National status, and
- Special note regarding citizens under a Compact of Free Association with United States.

Policy MS D-224 outlines Aliens Exempt from Five-Year Bar:

Aliens with the following statuses are potentially eligible for Medicaid from the date the status is obtained:

Some of the statuses are:

- **Refugees** admitted under section 207 of the Immigration and Nationality Act (INA).
- **Iraqi and Afghan Special Immigrants** admitted as lawfully permanent residents but treated as refugees.

Aliens granted **asylum** under section 208 of the INA.

Rule Summary

The change to MS D-210 and 224 sections include:

- Removing the special note from policy D-210 regarding Marshall Islanders. Marshall Islanders have now been deemed qualified aliens, so the special rules do not apply.

This draft is a working document. All information contained herein is subject to change and may differ substantially from the final document. The information contained in this document should not be considered the position or views of the agency or the Governor.

- Adding information at D-224 aliens who are lawfully living in the United States in accordance with the Compacts of Free Association to be granted an exemption from the five-year bar.

<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>

This draft is a working document. All information contained herein is subject to change and may differ substantially from the final document. The information contained in this document should not be considered the position or views of the agency or the Governor.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Department of Human Services
DIVISION Division of County Operations
DIVISION DIRECTOR Mary Franklin
CONTACT PERSON Mac Golden
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437
PHONE NO. 501-563-7634 FAX NO. 501-404-4619 E-MAIL Mac.E.Golden@dhs.arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Mary Franklin
PRESENTER E-MAIL Mary.Franklin@dhs.arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Medical Services Policy Sections D-210 and D-224

2. What is the subject of the proposed rule? See Attached.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. Consolidated Appropriations Act, 2021, 8 U.S.C. § 1612

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? March 2, 2021

When does the emergency rule expire? June 30, 2021

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

7. What is the purpose of this proposed rule? Why is it necessary? See Attached.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://humanservices.arkansas.gov/resources/promulgation-of-new-rules>

<https://medicaid.mmis.arkansas.gov/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

TBD

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

July 1, 2021

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attached.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Human Services

DIVISION Division of County Operations

PERSON COMPLETING THIS STATEMENT Jason Callan and Brian Jones

TELEPHONE 501-537-2064 **FAX** 501-682-8155 **EMAIL:** Brian.jones@dhs.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Medical Services Policy Sections D-210 and D-224

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency’s statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	<u>\$ 1,874,802</u>	General Revenue	<u>\$ 3,731,280</u>
Federal Funds	<u>\$ 4,669,008</u>	Federal Funds	<u>\$ 9,356,340</u>
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____

Other (Identify) _____
 Total \$ 6,543,810

Other (Identify) _____
 Total \$ 13,087,620

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ _____
 Federal Funds \$ _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$ _____

General Revenue \$ _____
 Federal Funds \$ _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$ _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 1,874,802

\$ 3,731,280

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose; **To comply with consolidated appropriations ACT 2021, 8 U.S.C. 1612**
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; **To cover qualified Aliens and determine citizenship**
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs; **the policy outlines factors that are used to determine citizenship/qualified alien status for applicants**
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule; **None**
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule; **None at this Time**
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and **Clarification to CMS policy required change**
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives. **The Agency monitors State and Federal rules and policies for opportunities to reduce and control cost.**

STATEMENT OF EMERGENCY

The Director of the Division of County Operations (DCO) of the Department of Human Services announces an emergency rule under Arkansas Code § 25-15-204(c). The Consolidated Appropriations Act of 2021 (“the Act”), 8 U.S.C. § 1612, necessitates rule updates to establish Medicaid eligibility for migrants from the Compact of Free Association islands. The following further details the necessity for this emergency rule.

Background: After World War II, the United States of America assumed administration of the Trust Territory of the Pacific Islands, which includes three nations known as the Compact of Free Association islands. The group of islands include what became the sovereign nations of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Between 1946 to 1958, sixty-seven atmospheric nuclear weapons were tested in the Marshall Islands, leading to continuing medical issues for descendants of the residents.

Under the Compact of Free Association treaty, citizens of the three island nations may freely enter, reside, study and work in the United States, and many citizens have served honorably in the United States Armed Services. The Act restored Medicaid eligibility to the citizens of the island nations that had been removed in 1996.

Statement of Emergency: Based on the above, an emergency exists to bring Arkansas into compliance with the Act to provide for the health, safety and welfare of migrants residing in the state. In addition, given the significant impact of the COVID-19 pandemic on Arkansas’s Marshallese population, approval of this emergency rule will ensure that critically-needed medical services are available to address the pandemic and to alleviate any burden of uncompensated care on medical providers in areas where this population resides. DCO amends MS D-210 by removing special rules previously in place regarding Marshall Islanders, thus deeming them qualified aliens for Medicaid. DCO updates the list of aliens exempt from the five-year bar contained in MS D-224 to include citizens of the Compact of Free Association lawfully residing in the United States. This emergency rule shall be effective March 2, 2020, with dates of service retroactive to December 27, 2020, pursuant to the mandates of the Act.

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-210 Citizenship

D-210 Citizenship

MS Manual [3/2/2021](#)

48 U.S.C. 1806e

Consider any person born in the United States to be a citizen. People born abroad are considered U.S. citizens when at least one of the parents is a U.S. citizen. Also, consider a person who is a U.S. national the same as a U.S. citizen. A U.S. national is a person who is born in one of the U.S. territories. The U.S. territories include:

- Puerto Rico
- Guam
- The Virgin Islands
- The Northern Mariana Islands
- American Samoa
- The Swains Island

People who are not citizens or nationals can become citizens through the process of naturalization.

~~**NOTE:** Citizens of the Marshal Islands including Palau and Micronesia are under a Compact of Free Association with the United States. They are free to travel to and from the U.S. without a visa. They are not U.S. citizens, nor are they under an alien status. Marshall Island pregnant women and children who are lawfully residing in the United States may be approved for Medicaid if they meet all other eligibility criteria for the category being applied for ([MS D-224](#)). However, other Marshall Island individuals are not eligible for Medicaid except for Emergency Medicaid Services ([MS B-500](#)).~~

Citizenship must be verified for all Medicaid applicants declaring to be U.S. citizens or nationals. Refer to [MS G-130](#) for verification requirement.

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

D-224 Aliens Exempt from Five-Year Bar

MS Manual ~~??/??/??~~3/2/2021

431 of PRWORA

Aliens with the following statuses are potentially eligible for Medicaid from the date the status is obtained:

- **Refugees** admitted under section 207 of the Immigration and Nationality Act (INA).
- **Iraqi and Afghan Special Immigrants** admitted as lawfully permanent residents but treated as refugees.
- Aliens granted **asylum** under section 208 of the INA.
- Aliens lawfully living in United States in accordance with the Compacts of Free Association. This only applies to: Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. (116HR133SA-RCP-116-68).
- Aliens whose **deportation or removal is withheld** under section 243(h) or section 241(b) (3) of the INA.
- **Cuban** or **Haitian** entrants under section 501(e) of the Refugee Education Assistance Act of 1980.
- **Cuban** or **Haitian** entrants in the Haitian Family Reunification Program.
- **Amerasian** immigrants.
- **Canadian born American Indians** who have treaty rights to cross the U.S. borders with Canada and Mexico.
- Aliens lawfully living in the United States on 8/22/96 who were receiving AABD Medicaid at that time may continue to receive Medicaid benefits. This applies only to AABD categories.
- Aliens lawfully living in the United States on 8/22/96 who subsequently become blind or disabled may receive Medicaid benefits in the future.
- Aliens lawfully admitted for permanent residence who are **veterans** honorably discharged for reasons other than alienage, and their spouses, surviving un-remarried spouses, and unmarried dependent children. This includes alien spouses, surviving un-remarried spouses, and unmarried dependent children of veterans who are U.S. citizens or deceased veterans.
- Aliens lawfully admitted for permanent residence who are **active-duty personnel of**

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

the United States Armed Forces and their spouses, surviving un-remarried spouses, and unmarried dependent children. This includes alien spouses, surviving un-remarried spouses, and unmarried dependent children of active duty personnel who are U.S. citizens or deceased active duty personnel. Active duty excludes temporary full-time duty for training purposes performed by members of the National Guard or Reserves.

- Pregnant Women and Children who are lawfully present. This includes but is not limited to pregnant women and children in the following statuses:
 - 1) A qualified alien as defined in 8 U.S.C. 1641 (b) and (c)
 - 2) An alien in a valid non-immigration status, as defined in 8 U.S.C. 1101 (a)(15) or otherwise under the immigration laws as defined in 8 U.S.C. 1101 (a) (17);
 - 3) An alien who has been paroled into the United States in accordance with 8 U.S.C. 1182 (d)(5) for less than 1 year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
 - 4) An alien who belongs to one of the following classes:
 - Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending application for TPS who have been granted employment authorization;
 - Granted employment authorization under 8 CFR 274a. 12c;
 - Family Unity beneficiaries in accordance with section 301 of Pub. L. 101-649, as amended;
 - Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
 - Granted Deferred Action status;
 - Granted an administrative stay of removal under 8 C.F.R.241;
 - Beneficiary of approved visa petition who has a pending application for adjustment of status;

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

- 5) An alien with a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:
 - Has been granted employment authorization; or
 - Is under the age of 14 and has had an application pending for at least 180 days;
- 6) An alien who has been granted withholding of removal under the Convention Against Torture;
- 7) A child who has a pending application for Special Immigration Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);
- 8) Is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. 1806(e); or
- 9) Is lawfully present in American Samoa under the immigration laws of American Samoa.

EXCEPTION: An alien with deferred action under the USDHS's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered lawfully present with respect to any of the above categories.



NOTE: Documentation that is required to verify lawfully residing status is found at [Appendix C.](#)

D-210 Citizenship

MS Manual 03/02/2021

48 U.S.C. 1806e

Consider any person born in the United States to be a citizen. People born abroad are considered U.S. citizens when at least one of the parents is a U.S. citizen. Also, consider a person who is a U.S. national the same as a U.S. citizen. A U.S. national is a person who is born in one of the U.S. territories. The U.S. territories include:

- Puerto Rico
- Guam
- The Virgin Islands
- The Northern Mariana Islands
- American Samoa
- The Swains Island

People who are not citizens or nationals can become citizens through the process of naturalization.

Citizenship must be verified for all Medicaid applicants declaring to be U.S. citizens or nationals. Refer to [MS G-130](#) for verification requirement.

D-224 Aliens Exempt from Five-Year Bar

MS Manual 03/02/2021

431 of PRWORA

Aliens with the following statuses are potentially eligible for Medicaid from the date the status is obtained:

- **Refugees** admitted under section 207 of the Immigration and Nationality Act (INA).
- **Iraqi and Afghan Special Immigrants** admitted as lawfully permanent residents but treated as refugees.
- Aliens granted **asylum** under section 208 of the INA.
- Aliens lawfully living in United States in accordance with the **Compacts of Free Association**. This only applies to: Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau ([116HR133SA-RCP-116-68](#)).
- Aliens whose **deportation or removal is withheld** under section 243(h) or section 241(b)(3) of the INA.
- **Cuban** or **Haitian** entrants under section 501(e) of the Refugee Education Assistance Act of 1980.
- **Cuban** or **Haitian** entrants in the Haitian Family Reunification Program.
- **Amerasian** immigrants.
- **Canadian born American Indians** who have treaty rights to cross the U.S. borders with Canada and Mexico.
- Aliens lawfully living in the United States on 8/22/96 who were receiving AABD Medicaid at that time may continue to receive Medicaid benefits. This applies only to AABD categories.
- Aliens lawfully living in the United States on 8/22/96 who subsequently become blind or disabled may receive Medicaid benefits in the future.
- Aliens lawfully admitted for permanent residence who are **veterans** honorably discharged for reasons other than alienage, and their spouses, surviving un-remarried spouses, and unmarried dependent children. This includes alien spouses, surviving un-remarried spouses, and unmarried dependent children of veterans who are U.S. citizens or deceased veterans.
- Aliens lawfully admitted for permanent residence who are **active-duty personnel of**

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

the United States Armed Forces and their spouses, surviving un-remarried spouses, and unmarried dependent children. This includes alien spouses, surviving un-remarried spouses, and unmarried dependent children of active duty personnel who are U.S. citizens or deceased active duty personnel. Active duty excludes temporary full-time duty for training purposes performed by members of the National Guard or Reserves.

- Pregnant Women and Children who are lawfully present. This includes but is not limited to pregnant women and children in the following statuses:
 - 1) A qualified alien as defined in 8 U.S.C. 1641 (b) and (c)
 - 2) An alien in a valid non-immigration status, as defined in 8 U.S.C. 1101 (a)(15) or otherwise under the immigration laws as defined in 8 U.S.C. 1101 (a) (17);
 - 3) An alien who has been paroled into the United States in accordance with 8 U.S.C. 1182 (d)(5) for less than 1 year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;
 - 4) An alien who belongs to one of the following classes:
 - Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;
 - Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a, and individuals with pending application for TPS who have been granted employment authorization;
 - Granted employment authorization under 8 CFR 274a. 12c;
 - Family Unity beneficiaries in accordance with section 301 of Pub. L. 101-649, as amended;
 - Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;
 - Granted Deferred Action status;
 - Granted an administrative stay of removal under 8 C.F.R.241;
 - Beneficiary of approved visa petition who has a pending application for adjustment of status;

MEDICAL SERVICES POLICY MANUAL, SECTION D

D-200 General Citizenship and Alien Status Requirements

D-224 Aliens Exempt from Five-Year Bar

- 5) An alien with a pending application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:
 - Has been granted employment authorization; or
 - Is under the age of 14 and has had an application pending for at least 180 days;
- 6) An alien who has been granted withholding of removal under the Convention Against Torture;
- 7) A child who has a pending application for Special Immigration Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);
- 8) Is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. 1806(e); or
- 9) Is lawfully present in American Samoa under the immigration laws of American Samoa.

EXCEPTION: An alien with deferred action under the USDHS's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered lawfully present with respect to any of the above categories.



NOTE: Documentation that is required to verify lawfully residing status is found at [Appendix C.](#)

1 **SEC. 207. CLARIFYING AUTHORITY OF STATE MEDICAID**
2 **FRAUD AND ABUSE CONTROL UNITS TO IN-**
3 **VESTIGATE AND PROSECUTE CASES OF MED-**
4 **ICAID PATIENT ABUSE AND NEGLECT IN ANY**
5 **SETTING.**

6 (a) IN GENERAL.—Section 1903(q)(4)(A)(ii) of the
7 Social Security Act (42 U.S.C. 1396b(q)(4)(A)(ii)) is
8 amended by inserting after “patients residing in board
9 and care facilities” the following: “and of patients (who
10 are receiving medical assistance under the State plan
11 under this title (or waiver of such plan)) in a noninstitu-
12 tional or other setting”.

13 (b) AVAILABILITY OF FUNDING.—Section 1903(a)(6)
14 of the Social Security Act (42 U.S.C. 1396b(a)(6)) is
15 amended, in the matter following subparagraph (B), by
16 striking “(as found necessary by the Secretary for the
17 elimination of fraud in the provision and administration
18 of medical assistance provided under the State plan (or
19 waiver of such plan))”.

20 **SEC. 208. MEDICAID COVERAGE FOR CITIZENS OF FREELY**
21 **ASSOCIATED STATES.**

22 (a) IN GENERAL.—Section 402(b)(2) of the Personal
23 Responsibility and Work Opportunity Reconciliation Act
24 of 1996 (8 U.S.C. 1612(b)(2)) is amended by adding at
25 the end the following new subparagraph:

1 “(G) MEDICAID EXCEPTION FOR CITIZENS
2 OF FREELY ASSOCIATED STATES.—With respect
3 to eligibility for benefits for the designated Fed-
4 eral program defined in paragraph (3)(C) (re-
5 lating to the Medicaid program), paragraph (1)
6 shall not apply to any individual who lawfully
7 resides in 1 of the 50 States or the District of
8 Columbia in accordance with the Compacts of
9 Free Association between the Government of
10 the United States and the Governments of the
11 Federated States of Micronesia, the Republic of
12 the Marshall Islands, and the Republic of Palau
13 and shall not apply, at the option of the Gov-
14 ernor of Puerto Rico, the Virgin Islands, Guam,
15 the Northern Mariana Islands, or American
16 Samoa as communicated to the Secretary of
17 Health and Human Services in writing, to any
18 individual who lawfully resides in the respective
19 territory in accordance with such Compacts.”.

20 (b) EXCEPTION TO 5-YEAR LIMITED ELIGIBILITY.—
21 Section 403(b) of such Act (8 U.S.C. 1613(b)) is amended
22 by adding at the end the following new paragraph:

23 “(3) EXCEPTION FOR CITIZENS OF FREELY AS-
24 SOCIATED STATES.—An individual described in sec-
25 tion 402(b)(2)(G), but only with respect to the des-

1 ignated Federal program defined in section
2 402(b)(3)(C).”.

3 (c) DEFINITION OF QUALIFIED ALIEN.—Section
4 431(b) of such Act (8 U.S.C. 1641(b)) is amended—

5 (1) in paragraph (6), by striking “; or” at the
6 end and inserting a comma;

7 (2) in paragraph (7), by striking the period at
8 the end and inserting “, or”; and

9 (3) by adding at the end the following new
10 paragraph:

11 “(8) an individual who lawfully resides in the
12 United States in accordance with a Compact of Free
13 Association referred to in section 402(b)(2)(G), but
14 only with respect to the designated Federal program
15 defined in section 402(b)(3)(C) (relating to the Med-
16 icaid program).”.

17 (d) CONFORMING AMENDMENTS.—Section 1108 of
18 the Social Security Act (42 U.S.C. 1308) is amended—

19 (1) in subsection (f), in the matter preceding
20 paragraph (1), by striking “subsection (g) and sec-
21 tion 1935(e)(1)(B)” and inserting “subsections (g)
22 and (h) and section 1935(e)(1)(B)”; and

23 (2) by adding at the end the following:

24 “(h) EXCLUSION OF MEDICAL ASSISTANCE EXPEND-
25 ITURES FOR CITIZENS OF FREELY ASSOCIATED

1 STATES.—Expenditures for medical assistance provided to
2 an individual described in section 431(b)(8) of the Per-
3 sonal Responsibility and Work Opportunity Reconciliation
4 Act of 1996 (8 U.S.C. 1641(b)(8)) shall not be taken into
5 account for purposes of applying payment limits under
6 subsections (f) and (g).”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to benefits for items and services
9 furnished on or after the date of the enactment of this
10 Act.

11 **SEC. 209. MEDICAID COVERAGE OF CERTAIN MEDICAL**
12 **TRANSPORTATION.**

13 (a) CONTINUING REQUIREMENT OF MEDICAID COV-
14 ERAGE OF NECESSARY TRANSPORTATION.—

15 (1) REQUIREMENT.—Section 1902(a)(4) of the
16 Social Security Act (42 U.S.C. 1396a(a)(4)) is
17 amended—

18 (A) by striking “and including provision
19 for utilization” and inserting “including provi-
20 sion for utilization”; and

21 (B) by inserting after “supervision of ad-
22 ministration of the plan” the following: “, and,
23 subject to section 1903(i), including a specifica-
24 tion that the single State agency described in
25 paragraph (5) will ensure necessary transpor-



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

Marty Garrity, Director
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MEMORANDUM

TO: Members, ALC – Executive Subcommittee

CC: Marty Garrity, Director, Bureau of Legislative Research;
Jessica Whittaker, Administrator, Administrative Rules Review Section, Legal Services Division

FROM: Lacey Johnson, Legislative Attorney, Administrative Rules Review Section, Legal Services Division

DATE: February 16, 2021

SUBJECT: Legal Authorization for the Department of Human Services, Division of County Operations’ Emergency Promulgation of Medical Services Policy Sections D-210 and D-224

The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). See Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

This emergency rule implements the federal Consolidated Appropriations Act of 2021, 8 U.S.C. § 1612(b)(2)(G). The Act specified that individuals residing “in 1 of the 50 States . . . in accordance with the Compacts of Free Association between” the United States and Micronesia, the Marshall Islands, and Palau “shall be eligible for any designated Federal program.” 8 U.S.C. § 1612(b)(2), (b)(2)(G).