

through the end of the month in which a 60-day period following termination of pregnancy ends. Eligibility must be provided, regardless of changes in the women's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

(2) The agency may provide Medicaid to any or all of the following groups of individuals:

- (i) Individuals under age 21 (§ 436.308).
- (ii) Specified relatives (§ 436.310).
- (iii) Aged (§ 436.320).
- (iv) Blind (§ 436.321).
- (v) Disabled (§ 436.322).

(3) If the agency provides Medicaid to any individual in a group specified in paragraph (b)(2) of this section, the agency must provide Medicaid to all individuals eligible to be members of that group.

[46 FR 47990, Sept. 30, 1981; 46 FR 54743, Nov. 4, 1981, as amended at 52 FR 43073, Nov. 9, 1987; 55 FR 48610, Nov. 21, 1990; 58 FR 4935, Jan. 19, 1993]

§ 436.308 Medically needy coverage of individuals under age 21.

(a) If the agency provides Medicaid to the medically needy, it may provide Medicaid to individuals under age 21 (or at State option, under age 20, 19, or 18) as specified in paragraph (b) of this section:

(1) Who would not be covered under the mandatory medically needy group of individuals under 18 under § 436.301(b)(1)(ii); and

(2) Who meet the income and resource requirements of subpart I of this part.

(b) The agency may cover all individuals in paragraph (a) of this section or individuals in reasonable classifications. Examples of reasonable classifications are as follows:

(1) Individuals in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility. If the agency covers these individuals, it may also provide Medicaid to individuals placed in foster homes or private institutions by private nonprofit agencies.

(2) Individuals in adoptions subsidized in full or in part by a public agency.

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. When the agency covers such individuals, it may also provide Medicaid to individuals in intermediate care facilities for individuals with intellectual disabilities.

(4) Individuals receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

[46 FR 47990, Sept. 30, 1981, as amended at 58 FR 4935, Jan. 19, 1993]

§ 436.310 Medically needy coverage of specified relatives.

(a) If the agency provides for the medically needy, it may provide Medicaid to specified relatives, defined in paragraph (b) of this section, who meet the income and resource requirements of subpart I of this part.

(b) *Specified relatives* means individuals who:

(1) Are listed under section 406(b)(1) of the Act and in 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be (or would, if needy, be) dependent, as specified in § 436.510.

[58 FR 4936, Jan. 19, 1993]

§ 436.320 Medically needy coverage of the aged.

If the agency provides Medicaid to the medically needy, it may provide Medicaid to individuals who—

(a) Are 65 years of age and older, as provided for in § 436.520; and

(b) Meet the income and resource requirements of subpart I of this part.

[46 FR 47991, Sept. 30, 1981]

§ 436.321 Medically needy coverage of the blind.

If the agency provides Medicaid to the medically needy, it may provide Medicaid to blind individuals who meet—

(a) The requirements for blindness, as specified in §§ 436.530 and 436.531; and

§ 436.322

(b) The income and resource requirements of subpart I of this part.

[46 FR 47991, Sept. 30, 1981]

§ 436.322 Medically needy coverage of the disabled.

If the agency provides Medicaid to the medically needy, it may provide Medicaid to disabled individuals who meet—

(a) The requirements for disability, as specified in §§ 436.540 and 436.541; and

(b) The income and resource requirements of subpart I of this part.

[46 FR 47991, Sept. 30, 1981]

§ 436.330 Coverage for certain aliens.

If an agency provides Medicaid to the medically needy, it must provide the services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter to those aliens described in § 436.406(c) of this subpart.

[55 FR 36820, Sept. 7, 1990]

Subpart E—General Eligibility Requirements

§ 436.400 Scope.

This subpart prescribes general requirements for determining the eligibility of both categorically needy and medically needy individuals specified in subparts B, C, and D of the part.

§ 436.401 General rules.

(a) The agency may not impose any eligibility requirement that is prohibited under title XIX.

(b) The agency must base any optional group covered under subparts B and C of this part on reasonable classifications that do not result in arbitrary or inequitable treatment of individuals and groups and are consistent with the objectives of title XIX.

(c) The agency must not use requirements for determining eligibility for optional coverage groups that are more restrictive than those used under the State plans for OAA, AFDC, AB, APTD, or AABD.

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§ 436.402 [Reserved]

§ 436.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The conditions under which payment for service is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—*Institution* has the same meaning as *Institution* and *Medical institution*, as defined in § 435.1010 of this chapter. For purposes of State placement, the term also includes “foster care homes”, licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the Intellectual Disability agency in the State;

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of intellectual disability.

(d) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (e) through (h) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (j) of this section.

(e) *Placement by a State in an out-of-state institution—(1) General rule.* Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual’s State of residence.