COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

September 12, 2006

MEDICAID MANUAL – VOLUME XIII

TRANSMITTAL #85

The following acronyms are used in this transmittal:

- ABD – Aged, Blind, Disabled
- BCCPTA – Breast and Cervical Cancer Prevention and Treatment Act
- CMS – Centers for Medicare and Medicaid Services
- DRA – Deficit Reduction Act of 2005
- LDSS – Local Department of Social Services
- LTC – Long-term Care
- MI – Medically Indigent
- SSA – Social Security Administration
- SSI – Supplemental Security Income
- SSN – Social Security Number
- SVES – State Verification Exchange System

Medicaid Transmittal #85 contains revised and clarified Medicaid eligibility policy as outlined within this letter. The majority of the policy revisions and clarifications result from the publication of federal Interim Final Regulations on citizenship and identity documentation requirements for Medicaid and additional guidance on the regulations issued by CMS since July 1, 2006.

Revised Policy

The most significant change in policy is the exclusion of Medicare beneficiaries and current or former Supplemental Security Income (SSI) recipients from the requirement that they provide documentation of their citizenship and identity at application or redetermination of Medicaid eligibility. Local Departments of Social Services are to obtain verification of the individual's SSI or Medicare entitlement from the Social Security Administration. This policy revision is effective July 1, 2006. If an SSI or Medicare recipient was denied Medicaid or had Medicaid coverage canceled after July 1, 2006, because of failure to verify citizenship and/or identity, the individual's Medicaid eligibility must be re-evaluated without requiring the citizenship and identity documentation.

Included in policy is the requirement that LDSS must provide assistance to individuals who have mental or physical impairments and who do not have anyone in the community to assist them.

Agencies are not to deny or terminate Medicaid until an individual has been given a reasonable amount of time to provide the required citizenship and identity documentation and have been provided with the necessary assistance by the agency to secure the documentation. Revisions to policy also include an explanation of what constitutes a reasonable opportunity in terms of time frames for processing applications and redeterminations that are impacted by attempts by individuals to provide the necessary citizenship and identity documentation. This policy revision is effective July 1, 2006. If an individual was denied Medicaid or had Medicaid coverage canceled after July 1, 2006, because of failure to verify citizenship and/or identity without being given a reasonable opportunity to provide the documentation, the individual's eligibility must be re-evaluated and the individual must be given a reasonable opportunity to provide the documentation.

The policy for counting life estates as resources is also revised in this transmittal. Life estates in real property are not counted as a resource for ABD covered groups other than QDWI; however, the purchase of a life estate must be evaluated as an asset transfer for individuals seeking Medicaid payment of long term care services. The resource policy on life estates has been restored to the policy in place prior to July 1, 2006. A new subsection on evaluating the purchase of life estates as asset transfers has been added to subchapter M1450. If an application was denied or coverage was terminated because of a life estate interest in property after July 1, 2006, the individual's eligibility must be re-evaluated.

The personal maintenance allowance that is deducted from the monthly patient pay for individuals receiving Medicaid CBD services under all waivers **except** the AIDS Waiver has been increased effective September 1, 2006. Prior to September 1, 2006, the personal maintenance allowance is equal to the 100 % of the SSI payment for one person. On or after September 1, 2006, the new amount will be equal to 165% of the SSI payment for one person, which is currently $995. New patient pay amounts for September must be calculated for individuals receiving services under the affected waivers. A new DMAS-122 is to be sent to the provider, and a Notice of Obligation must be sent to the enrollee or authorized representative for the new patient pay amount beginning September 1, 2006.

The age range for the BCCPTA covered group was expanded effective July 1, 2006, to cover women as young as 18 years of age. Women aged 18 through 64 may be eligible for Medicaid coverage under BCCPTA. The screening and eligibility determination processes have not changed.

Clarification

The requirement to verify SSNs has been clarified in subchapter M0130 to conform to policy in subchapter M0240 which was effective in January 2006.

Effective date

The policy revisions and clarifications contained in this transmittal are effective as stated above in this transmittal letter.

Remove and Destroy Pages	Insert Attached Pages	Significant Changes
Subchapter M0130 pages 3-6	Subchapter M0130 pages 3-6	Page 3 is a reprint. On page 4, removed Social Security number from the list of eligibility requirements that do not require

Remove and Destroy Pages	Insert Attached Pages	Significant Changes
		verification. On page 5, added Social Security number to the list of requirements that require verification. Page 6 is a runover page.
Subchapter M0220 Table of Contents pages 1-4j Appendix 9	Subchapter M0220 Table of Contents pages 1-4p Appendix 9	Updated the Table of Contents. Page 1 is a reprint. On pages 2-4n, revised the policy and procedures regarding verification of citizenship and identity of applicants and recipients to include the interim federal regulations and procedures in the Citizenship and Identity Verification Procedures document posted on the intranet. Pages 4o and 4p are runover pages. In Appendix 9, added a space for the place of the child's birth.
Subchapter M0320 pages 69-71	Subchapter M0320 pages 69-71	On page 69, changed the age range for women eligible in the BCCPTA covered group to 18 though 64 years and added the MI Child Under Age 19 covered group to the list of mandatory covered groups that supersede Medicaid eligibility under the BCCPTA covered group. On pages 70 and 71, added the MI Child Under Age 19 covered group to the list of mandatory covered groups.
Subchapter M1110 pages 13, 14	Subchapter M1110 pages 13, 14	Page 13 is a reprint. On page 14, removed policy on life estates that was changed in TN #84 and restored the policy that was in place prior to July 1, 2006.
Subchapter S1140 pages 11, 12	Subchapter S1140 pages 11, 12	On pages 11 and 12, removed policy on life estates that was changed in TN #84 and restored the policy that was in place prior to July 1, 2006.

Remove and Destroy Pages	Insert Attached Pages	Significant Changes
Subchapter M1450 Table of Contents pages 19, 20	Subchapter M1450 Table of Contents pages 19- 20a	Added the new subsection M1450.545 to the Table of Contents. Page 19 is a reprint. On page 20, added the new subsection M1450.545, Transfers Involving Life Estates. Page 20a is a runover page.
Subchapter M1470 pages 21, 22	Subchapter M1470 pages 21, 22	On page 21, revised the personal maintenance allowance amount. Page 22 is a reprint.
Subchapter M1480 pages 69, 70	Subchapter M1480 pages 69, 70	On page 69, revised the personal maintenance allowance amount. Page 70 is a reprint.

Please retain this transmittal letter in the back of Volume XIII.

Thomas J. Steinhauser, Director
Division of Benefit Programs

Attachment

4. Time Standard Exceptions

The specified time standards apply unless the agency cannot reach a decision within the time standard because of one of the following reasons:

- the applicant's inability to furnish necessary information for a reason beyond his/her control,
- a delay in receipt of information from an examining physician,
- a delay in the disability determination process,
- a delay in receiving DMAS decision on property transfer undue hardship claim, or
- an administrative or other emergency beyond the agency's control.

If action is not taken within the time standard, the case record must show the cause for the delay and the applicant must be notified in writing of the status of his application, the reason for the delay, and his right of appeal.

When an application is delayed after 90 days because of a disability decision and the agency has determined that excess resources exist at the time the delay notice is sent, the NOA must inform the applicant that he/she has excess resources and the amount. The notice must also state that:

- a final action cannot be taken until the disability decision is made;
- if the applicant is determined to be disabled, he/she will not be eligible unless the excess resources are reduced; and
- he will be notified when the disability decision is made.

C. Application for Retroactive Coverage

When an applicant for Medicaid reports that he, or anyone for whom he requests assistance, received a medical service within the three months prior to application, retroactive Medicaid eligibility must be determined. The retroactive period is based on the month in which the application is filed with the agency. The retroactive period is the three months prior to the application month.

Retroactive coverage can be requested at any time subsequent to an application even if the application was denied or the applicant signed a statement saying he did not want retroactive coverage. The retroactive period is based on the application month regardless of whether the application was denied or approved.

If the application was denied, the application is reopened for determination of eligibility in the three months prior to the application month. The applicant must provide all verifications necessary to determine eligibility during that period.

If the applicant is found eligible for retroactive coverage and a Medicaid-covered medical service was received over one year prior to the date the retroactive eligibility is determined, the applicant must be given an "Eligibility Delay" letter to give to the medical provider so that Medicaid will pay the claim (see M1510, Appendix 1).

Once retroactive eligibility is established, Medicaid coverage begins the first day of the earliest retroactive month in which eligibility exists.

M0130.200 Required Information and Verifications

A. Identifying Information

An application must contain basic identifying information about the applicant. Basic identifying information is the applicant's name, address, Social Security number or application for the number, and date of birth.

B. Required Verifications

An individual must provide verifications of most Medicaid eligibility requirements. Before taking action on the application, the applicant must be notified in writing of the required information. The eligibility worker must allow at least 10 days for receipt of the necessary verifications, but additional time may be allowed depending on the type of information requested. The specific information requested and the deadline for receipt of the verifications must be documented in the case record.

Legal documents and documents that may be needed for future eligibility determinations must be copied and preserved for the record. These include alien status documentation, verification of legal presence, trusts, annuities, contracts, wills, and life insurance policies. It is not necessary to retain a copy of verifications of income or the current value of resources in the case record. However, if a copy is not retained, the worker must document the date and method used to obtain the information (viewed, telephone call, etc.), the type of verification, the source, and a description of the information.

If information necessary to make an eligibility determination is requested but not provided by the applicant and cannot be obtained from any other source, the application must be denied or the coverage cancelled due to the inability to determine eligibility.

C. Verification of Nonfinancial Eligibility Requirements

The applicant’s statements on the application may be accepted for the following identifying information and nonfinancial eligibility requirements unless the eligibility worker has reason to question the applicant’s statements:

- Virginia state residency,
- application for other benefits,
- institutional status,
- age for children under age 19,
- health insurance information (see sections E and F below), and
- dependent child information for individuals applying as parents or the caretaker-relative of a dependent child.

The following information must be verified:

- identity and citizenship;
- *Social Security number (see section D below);*
- legal presence in the U.S. of applicants age 19 or older;
- age of applicants age 65 and older;
- disability and blindness; and
- pregnancy.

See item E. below for instructions on the verification of legal presence. See subchapter M0220 for instructions on the verification of identity and citizenship. See subchapter M0310 for instructions on the verification of age, disability and pregnancy.

D. Social Security Numbers

Applicants must provide the Social Security number (SSN) of any person for whom they request Medicaid. An individual who is applying only for others and is not applying for himself is not required to provide an SSN for himself.

If an SSN has not been issued, the applicant must cooperate in applying for such a number with the local Social Security Administration Office (SSA). An Enumeration Referral Form, form #032-03-400, must be completed by the applicant. The applicant must provide the SSN to the local social services department as soon as it is received and the number must be entered in the MMIS. Applicants who refuse to furnish an SSN or to show proof of application for a number will be ineligible for Medicaid.

In the case of a newborn child not born to a Medicaid-eligible woman, the applicant can request hospital staff to apply for an SSN for the child through hospital enumeration procedures. Form #SSA-2853 will be given to the applicant as proof of application for an SSN.

Exceptions:

- Children under age one born to Medicaid-eligible mothers are deemed to have applied and been found eligible for Medicaid, whether or not eligibility requirements have actually been met, as long as the mother would still be eligible for Medicaid had the pregnancy not ended and the mother and child continue to live together. A child eligible in this category does not need a Social Security number.

- Illegal aliens who are eligible only for Medicaid payment of emergency services are not required to provide or apply for SSNs (see M0220).

E. Legal Presence (Effective January 1, 2006)

Effective January 1, 2006, Section 63.2-503.1 of the Code of Virginia requires most applicants for or recipients of public assistance who are age 19 or older to provide proof of citizenship or legal presence in the U.S. Applicants or recipients age 19 or older for whom medical assistance is requested must prove their citizenship or legal presence. Individuals who, on June 30, 1997, were Medicaid eligible and were residing in long-term care facilities or participating in home and community-based waivers, and who continue to maintain that status (eligible for Medicaid and reside in long-term care facilities or participate in home and community-based

waivers) are **exempt** from this requirement. **Non-citizens applying for Medicaid payment for emergency services are not subject to the legal presence requirement.** An individual who is applying on behalf of another and is not requesting assistance for himself is not subject to the legal presence requirement.

1. Documents That Demonstrate Legal Presence

An applicant may demonstrate legal presence by presenting one of the following documents:

- valid evidence of U.S. citizenship;
- valid evidence of legal permanent resident status;
- valid evidence of conditional resident alien status;
- a valid SSN verified by SSA;
- a U.S. non-immigrant visa;
- a pending or approved application for legal asylum;
- a refugee or temporary protected status document; or
- a pending application for an adjustment of residence status.

2. Failure to Provide Proof of Legal Presence

An applicant who cannot provide documentation that he is a citizen or legally present at the time of application must sign an affidavit under oath attesting that he is a U.S. citizen or legally present in the U.S. in order to meet the requirement for proof of legal presence for either:

- a period of 90 days or until it is determined that he is not legally present in the U.S., whichever is earlier; or

- indefinitely if the applicant provides a copy of a completed application for a birth certificate that has been filed and is pending and being actively pursued in accordance with federal or state law. Such extension shall terminate upon the applicant's receipt of a birth certificate or determination that a birth certificate does not exist because the applicant is not a U.S. citizen.

The affidavit form is in Appendix 2 to this subchapter. NOTE: The individual's address on the affidavit form must be the individual's **residence** address, not the mailing address.

3. Relationship to Other Medicaid Requirements

Providing proof of legal presence or submitting a signed affidavit meets the legal presence eligibility requirement. To be eligible for Medicaid, however, the individual must meet all other state and federal Medicaid eligibility requirements. Submission of the affidavit without proof of application for an SSN as required by M0130.200 D. does **NOT** meet the SSN requirement.

F. Third Party Liability (TPL)

Applicants must be asked to provide information about any health insurance they may have. The eligibility worker must enter that information into the Medicaid Management Information System (MMIS) TPL file. Verification of health insurance information is not required.

In the event the client is eligible for benefits to be used exclusively for the payment of medical expenses (i.e. an insurance settlement), but there is no TPL code for that benefit, the worker must forward the information to:

DMAS Third Party Liability Section
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

TABLE OF CONTENTS

M02 NONFINANCIAL ELIGIBILITY REQUIREMENTS

M0220.000 CITIZENSHIP & ALIEN REQUIREMENTS

Appendices

M0220.000 CITIZENSHIP & ALIEN REQUIREMENTS

M0220.001 GENERAL PRINCIPLES

A. Introduction

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) made major changes to the Medicaid eligibility of non citizens of the U.S. These changes eliminated the permanently residing under color of law (PRUCOL) category of aliens. The level of Medicaid benefits for aliens is based on whether the alien is a "qualified" alien and the alien's date of entry into the U.S.

As a result of these federal changes in Medicaid eligibility for aliens, the 1997 Virginia General Assembly enacted legislation to protect Medicaid eligibility for certain aliens who would otherwise lose their Medicaid benefits.

This subchapter (M0220), effective on July 1, 1997, explains in detail how to determine if an individual is a citizen or alien eligible for full Medicaid benefits (referred to as "full benefit aliens") or emergency services only (referred to as "emergency services aliens"). It contains the entitlement and enrollment procedures for full benefit aliens and emergency services aliens who meet all other Medicaid eligibility requirements.

B. Declaration of Citizenship/Alien Status

The Immigration Reform and Control Act (IRCA) requires as a condition of eligibility that the adult applicant who is head of the household (with exceptions below) declare in writing under penalty of perjury whether or not the individual(s) for whom he is applying is a citizen or national of the United States, and if not, that the individual is a lawfully admitted alien. For children under 18 years of age, the declaration is made by an adult family member. *The declaration statement is on the application form.*

EXCEPTION: An individual who is an "unqualified" alien (as defined in section M0220.410) does NOT complete the declaration.

Individuals who are required to sign the declaration and who fail or refuse to sign are NOT eligible for any Medicaid services.

C. Procedures

The policy and procedures for determining whether an individual is a citizen or a "full benefit" or an "emergency services" alien are contained in the following sections:

M0220.100 Citizenship & Naturalization;
M0220.200 Alien Immigration Status;
M0220.300 Full Benefit Aliens;
M0220.400 Emergency Services Aliens;
M0220.500 Aliens Eligibility Requirements;
M0220.600 Full Benefit Aliens Entitlement & Enrollment;
M0220.700 Emergency Services Aliens Entitlement & Enrollment.

M0220.100 CITIZENSHIP AND NATURALIZATION

A. Introduction

A citizen or naturalized citizen of the U.S. meets the citizenship requirement for Medicaid eligibility, and is eligible for all Medicaid services if he meets all other Medicaid eligibility requirements.

The Deficit Reduction Act (DRA) of 2005 requires that effective July 1, 2006, all Medicaid applicants and enrollees who declared citizenship at the time of application, or for whom citizenship was declared at the time of application, present satisfactory evidence of citizenship and identity.

Title IV-E children who apply for or receive Medicaid must have in their case record a declaration of citizenship or qualified immigration status AND documentary evidence of the children's citizenship or declared qualified immigration status. Title IV-E eligible children do NOT have to verify identity.

EXCEPTION *1*: this policy does not apply to newborns who meet the Medically Indigent (MI) Newborn children in section M0320.301, or Medically Needy (MN) Newborn Children in section M0320.302, covered groups because a Medicaid application is not required for these newborns.

EXCEPTION 2: *this policy does not apply to Medicare beneficiaries and SSI recipients, including former SSI recipients, if the local department of social services (LDSS) has verification from the Social Security Administration (such as a SVES response) of the individual's Medicare enrollment and/or current or former SSI entitlement.*

NOTE: *A parent or caretaker who is applying for a child, but who is NOT applying for Medicaid for himself is NOT required to verify his or her citizenship and identity; the parent or caretaker must verify only the child's citizenship and identity, unless the parent signs an Affidavit of Citizenship on Behalf of Medicaid Applicants and Recipients attesting to a Medicaid applicant/recipient's citizenship.*

B. Procedures

1. Individual Born in the U.S.

An individual born in the United States, any of its territories (Guam, Puerto Rico, U.S. Virgin Islands, or Northern Mariana Islands), American Samoa, or Swain's Island is a U.S. citizen.

NOTE: A child born in the U.S. to non-citizen parents who are in the U.S. as employees of a foreign country's government may not meet the U.S. citizen requirement. When a child born in the U.S. to non-citizen parents is a U.S. citizen by birth, the child may not meet the Virginia residency requirements in M0230.201 because of the parents' temporary stay in the U.S.

2. Individual Born Outside the U.S.

a. Individual Born to or Adopted by U.S. Citizen Parents

A child or individual born outside the United States to U.S. citizen parents (the mother, if the child was born out-of-wedlock) automatically becomes a citizen by birth. A child under age 18 years who is a lawful permanent resident, who is currently residing permanently in the U.S. in the legal and physical custody of a U.S. citizen parent, and who meets the requirements applicable to adopted children under immigration law automatically becomes a citizen when there is a final adoption of the child, and does not have to apply for citizenship.

b. Individual Born to Naturalized Parents

A child born outside the United States to alien parents automatically becomes a citizen after birth, if his parents (the mother, if the child was born out-of-wedlock) are naturalized before he becomes 16 years of age.

c. Naturalized Individual

A child or individual born outside the U.S. and not automatically a citizen as in a) or b) above, must have been naturalized to be considered a citizen.

3. Verification Required *One Time*

At the time of application, the applicant must be given a reasonable opportunity to present documents establishing U.S. citizenship and identity. An individual who is active in Medicaid and who was enrolled in Medicaid prior to July 1, 2006, must present documentation of his citizenship and identity at the time of the first redetermination of eligibility occurring on or after July 1, 2006. Once documentation has been provided and recorded in the case record, it is not necessary to obtain documentation again. Documentary evidence may be accepted without requiring the applicant or recipient to appear in person.

C. Documents Establishing U.S. Citizenship and Identity

1. Citizenship Document

To establish U.S. citizenship, the document must show:

- a U.S. place of birth, or
- that the person is a U.S. citizen.

NOTE: Children born in the U.S. to foreign sovereigns or diplomatic officers are not U.S. citizens.

NOTE: A state driver's license issued by any state or territory, including Virginia, does NOT prove citizenship. It will satisfy requirements for proof of identity if the license has either a photograph of the individual or other identifying information about the individual such as name, age, sex, race, height, weight or eye color.

2. Identity Document

To establish identity a document must show:

- evidence that provides identifying information that relates to the person named on the document.

3. Acceptable Documents

All documents must be either originals or copies certified by the issuing agency. Photocopies of original documents, including notarized copies **are not** acceptable.

4. *Levels of* Acceptable Documents

The *tables* in section *D*, below, list acceptable evidence of U.S. citizenship and identity *in the order of their reliability level*. *Level tables* 1-4 address citizenship; *Level table* 1 and Chart 5 address identity.

If an individual presents documents from *Level 1*, no other information is required. If an individual presents documents from *Levels 2-4*, then an identity document from Chart 5 must also be presented. *Level tables* 1-4 establish *the* hierarchy of reliability of citizenship documents.

The following instructions specify when a document of lesser reliability may be accepted by the agency. An asterisk by the document in the charts means that the document is listed in the law, section 6036 of DRA 2005 (public law No. 109-171).

*See the Level 2 section (**subsection 6)*** for documents that prove citizenship by collective naturalization.

See M0220, Appendix 10 for information about the documents, the document issuer, and contact information for each document.

5. How to Verify Citizenship and Identity

First, ask the individual if he has a *Level 1* document listed – U.S. Passport, Certificate of Naturalization or a Certificate of Citizenship. If the individual presents the original of one of these documents, he has verified his citizenship and identity.

6. How to Verify Citizenship

If the individual does not have one of the *Level 1* documents, ask if he has one of the *Level 2* documents to prove citizenship. If the individual presents the original of one of the documents in *Level* 2, he has verified his citizenship, but not his identity. He must present a document from Chart 5 to verify his identity.

If the individual does not have one of the *Level 2* documents, ask if he has one of the *Level 3* documents to prove citizenship. If the individual presents the original of one of the documents in *Level* 3, he has verified his citizenship, but not his identity. He must present a document from Chart 5 to verify his identity.

If the individual does not have one of the *Level 3* documents, ask if he has one of the *Level 4* documents to prove citizenship, which includes a written affidavit. If the individual presents the original of one of the documents in *Level* 4, he has verified his citizenship, but not his identity. He must present a document from Chart 5 to verify his identity.

If the individual does not present one of the *Level 4* documents to verify citizenship, he is not eligible for Medicaid because he has failed to provide documentary evidence of citizenship. ***However, see section E that follows before denying or cancelling Medicaid because of failure to verify citizenship.***

7. How to Verify Identity

If the individual presents the original of one of the documents in *Levels* 2, 3, or 4, he has verified his citizenship, but not his identity. He must present a document from Chart 5 to verify his identity, which includes a written affidavit for a child under age 16 *if an affidavit was not used to prove the child's citizenship*. M0220, Appendix 9 contains the Affidavit of Identity for Medicaid Applicants and Recipients Under Age 16.

NOTE: An affidavit of identity for a child under 16 cannot be used if an affidavit was used to verify the child's citizenship. An affidavit of identity cannot be used for an individual age 16 or older.

If the individual does not present one of the documents in Chart 5 to verify identity, he is not eligible for Medicaid because he has failed to provide documentary evidence of identity. ***See section E below before denying or cancelling Medicaid because of failure to verify identity.***

D. Hierarchy of Documentation

The agency's contact with the client about citizenship documents must follow the hierarchy of documentation. If the client does not have a Level 1, Level 2 or Level 3 citizenship document, the client must tell the agency why he or she cannot obtain these documents. The agency must write in the case record why the client cannot get Level 1, 2 or 3 document in order to explain why a Level 4 document was used (Level 4 includes the affidavits of citizenship).

***NOTE:** Applicants or recipients born outside the U.S. must submit a document listed under Level 1 - **primary evidence** of U.S. citizenship.*

For a child under age 16, the Affidavit of Identity for Medicaid Applicants and Recipients Under Age 16 may be used. The agency should send the client an Affidavit of Identity for Medicaid Applicants and Recipients Under Age 16 with an application or renewal form when the agency knows that the client is applying for a child under age 16. If the applicant is age 16 or older, the agency must assist the applicant in obtaining an identity document. There is no affidavit of identity for an individual age 16 or older.

1. *LEVEL* 1 – Primary Documents to Establish Both U.S. Citizenship and Identity

Level 1 primary evidence of citizenship and identity is documentary evidence of the highest reliability that conclusively establishes that the person is a U.S. citizen. Obtain primary evidence of citizenship and identity before using secondary evidence. Accept any of the documents listed in *the Level 1 table* as primary evidence of both U.S. citizenship and identity if the document meets the listed criteria and there is nothing indicating the person is not a U.S. citizen (e.g., lost U.S. citizenship).

NOTE: Persons born in American Samoa (including Swain's Island) are generally U.S. non-citizen nationals. References in this guidance to "citizens" should be read as references to non-citizen nationals.

NOTE: References to documents issued by the Department of Homeland Security (DHS) include documents issued by its predecessor, the Immigration and Naturalization Services (INS). On March 1, 2003, the former INS became part of DHS, and its naturalization function was assumed by U.S. Citizenship and Immigration Services (USCIS) within DHS. However, even documents issued after this date may bear INS legends.

Applicants or recipients born outside the U.S. who were not citizens at birth must submit a document listed under primary evidence of U.S. citizenship.

***LEVEL 1* – Primary Documents**	**Explanation – *Level* 1**
* U.S. Passport	The Department of State issues this. A U.S. passport does not have to be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. Note: Spouses and children were sometimes included on one passport through 1980. U.S. passports issued after 1980 show only one person. Consequently, the citizenship and identity of the included person can be established when one of these passports is presented. Exception: Do not accept any passport as evidence of U.S. citizenship when it was issued with a limitation. However, such a passport may be used as proof of identity.
* Certificate of Naturalization (N-550 or N-570)	Department of Homeland Security issues this document for naturalization. *NOTE: A Certificate of Naturalization may not have a number on it. Form numbers N-550 and N-570 are no longer used. DHS now uses form number N-565. The application form for naturalization is now N-400.*
* Certificate of Citizenship (N-560 or N-561)	Department of Homeland Security issues certificates of citizenship to individuals who derive citizenship through a parent.

2. *LEVEL* 2 - Secondary Documents to Establish U.S. Citizenship

Level 2 secondary evidence of citizenship is documentary evidence of satisfactory reliability that is used when primary evidence of citizenship is not available. Available evidence is evidence that exists and can be obtained within the application processing time frame (see section M0130.100). **A second document establishing identity MUST also be presented (see Chart 5, Evidence of Identity)**.

Accept any of the documents listed in *the Level 2 table* as secondary evidence of U.S. citizenship if the document meets the listed criteria and there is nothing indicating the person is not a U.S. citizen (e.g., lost U.S. citizenship).

NOTE: Applicants or recipients born outside the U.S. must submit a document listed under **primary evidence** of U.S. citizenship.

***LEVEL 2* – Secondary Documents**	**Explanation – *Level* 2**
A U.S. public birth record	A U.S. public birth record showing birth in: • one of the 50 U.S. states; • District of Columbia; • *Puerto Rico (if born on or after January 13, 1941); • Guam (on or after April 10, 1899). • *Virgin Islands of the U.S. (on or after January 17, 1917); • American Samoa; • Swain's Island; *or* • *Northern Mariana Islands (after November 4, 1986 (NMI local time).
A U.S. public birth record	The birth record document may be issued by the State, Commonwealth, Territory or local jurisdiction. It must have been issued before the person

LEVEL 2 – Secondary Documents	Explanation – *Level* 2
A U.S. public birth record	was 5 years of age. An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship.
	NOTE: Individuals born to foreign diplomats residing in one of the states, the District of Columbia, Puerto Rico, Guam or the Virgin Islands are not citizens of the United States. If the document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. Collective naturalization occurred on *the* dates listed for each of the Territories. *The following will establish U.S. citizenship for collectively naturalized citizens:* **a. Puerto Rico:** 1) Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or 2) Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain. **b. U.S. Virgin Islands:** 1) Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; *or* 2) The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or 3) Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or Territory or the Canal Zone on June 28, 1932.

***LEVEL 2* – Secondary Documents**	**Explanation – *Level* 2**
A U.S. public birth record	**c. Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):** 1) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); *or*
	2) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or 3) Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). 4) NOTE: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.
*Certification of Report of Birth (DS-1350)	The Department of State issues a DS-1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth, based on the information shown on the FS-240. When the birth was recorded as a Consular Report of Birth (FS-240), certified copies of the Certification of Report of Birth Abroad (DS-1350) can be issued by the Department of State in Washington, D.C. The DS-1350 contains the same information as that on the current version of Consular Report of Birth FS-240. The DS-1350 is not issued outside the U.S.
*Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240)	The Department of State consular office prepares and issues this. A Consular Report of Birth can be prepared only at an American consular office overseas while the child is under the age of 18. Children born outside the U.S. to U.S. military personnel usually have one of these.
*Certification of Birth *Issued by the Department of State* (*Form* FS-545 *or DS-1350*)	Before November 1, 1990, Department of State consulates also issued Form FS-545 along with the prior version of the FS-240. In 1990, U.S. consulates ceased to issue Form FS-545. Treat an FS-545 the same as the DS-1350.
U.S. Citizen Identification Card	*(This form was issued as Form I-197 until the 1980s by INS. Although no longer issued, holders of this document may still use it*

***LEVEL 2* – Secondary Documents**	**Explanation – *Level* 2**
U.S. Citizen Identification Card	*consistent with the provisions of section 1903(x) of the Act. Note that section 1903(x) of the Act incorrectly refers to the same document as an I-97).* INS issued the I-179 from 1960 until 1973. It revised the form and renumbered it as Form I-197. INS issued the I-197 from 1973 until April 7, 1983. INS issued Form I-179 and I-197 to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.
Northern Mariana Card (I-873)	*Issued by the DHS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 4, 1986).* The former Immigration and Naturalization Service (INS) issued the I-873 to a collectively naturalized citizen of the U.S. who was born in the NMI before November 4, 1986. The card is no longer issued, but those previously issued are still valid.
American Indian Card (I-872)	*(Issued by DNS to identify a member of the Texas Band of Kickapoos living near the U.S./Mexican border).* DHS issues this card to identify a member of the Texas Band of Kickapoos living near the U.S./Mexican border. A classification code "KIC" and a statement on the back denote U.S. citizenship.
Final adoption decree *showing the child's name and a U.S. place of birth*	The adoption decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized **and** the State in which the child was born will **not** release a birth certificate prior to final adoption, a statement from a State-approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.
Evidence of civil service employment by the U.S. government	The document must show employment by the U.S. government before June 1, 1976.
Official Military record of service	The document must show a U.S. place of birth (for example a DD-214 or similar official document showing a U.S. place of birth).

3. *LEVEL* 3 – Third Level Documents to Establish U.S. Citizenship

Level 3 third level evidence of U.S. citizenship is documentary evidence of satisfactory reliability that is used when neither primary nor secondary evidence of citizenship is available. Third level evidence may be used ONLY when the following conditions exist:

- primary evidence cannot be obtained within the State's reasonable opportunity period (see reasonable opportunity discussion below),
- secondary evidence does not exist or cannot be obtained, **and**
- the applicant or recipient alleges being born in the U.S.

In addition, a second document establishing identity MUST be presented as described in Chart 5, "Evidence of Identity."

Third level evidence is generally a non-government document established for a reason other than to establish U.S. citizenship and showing a U.S. place of birth. The place of birth on the non-government document and the application must agree. Accept any of the documents listed in *the Level 3 table* as third level evidence of U.S. citizenship if the document meets the listed criteria, the applicant alleges birth in the U.S., and there is nothing indicating the person is not a U.S. citizen (e.g., lost U.S. citizenship).

***LEVEL 3* - Third Level Documents**	**Explanation – *Level* 3**
Extract of hospital record on hospital letterhead *established at the time of the person's birth that was created 5 years before application and indicates a U.S. place of birth*	(For children under 16 the document must have been created near the time of birth or 5 years before the date of application). An extract of a hospital record on hospital letterhead *that was* established at the time of the person's birth, *that* was created at least 5 years before the initial Medicaid application date and *that* indicates a U.S. place of birth *is acceptable*. Do not accept a birth certificate "souvenir" issued by the hospital. Note: For children under 16 the document must have been created near the time of birth or 5 years before the date of application.
Life or health or other insurance record *that* was created at least 5 years before the initial Medicaid application date and *that indicates* a U.S. place of birth	Life or health insurance records may show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth *and it was created at least 5 years before the initial Medicaid application date*.

4. *LEVEL* 4 - Fourth Level Documents

Level 4 fourth level evidence of citizenship is documentary evidence of the lowest reliability. Fourth level evidence should ONLY be used in the rarest of circumstances. This level of evidence is used ONLY when primary evidence is not available, both secondary and third level evidence do not exist or cannot be obtained within the State's reasonable opportunity period, and the applicant alleges a U.S. place of birth. In addition, a second document establishing identity MUST be presented as described in Chart 5, Evidence of Identity. Available evidence is evidence that can be obtained within the State's reasonable opportunity period as discussed below.

Fourth level evidence, as described in *the Level* 4 *table* below, consists of documents established for a reason other than to establish U.S. citizenship and showing a U.S. place of birth. The U.S. place of birth on the document and the application must agree. Accept any of the documents listed in *the Level* 4 *table* 4 as fourth level evidence of U.S. citizenship if the document meets the listed criteria, the applicant alleges U.S. citizenship, and there is nothing indicating the person is not a U.S. citizen (e.g., lost U.S. citizenship). A second document establishing identity must be presented.

The written affidavit described in *the Level* 4 *table* may be used only when the State is unable to secure evidence of citizenship listed in any other *Level.*

***LEVEL 4* - Fourth Level Documents**	**Explanation – *Level* 4**
Federal or State census record showing U.S. citizenship or a U.S. place of birth (Generally for persons born 1900 through 1950).	The census record must also show the applicant's age. NOTE: Census records from 1900 through 1950 contain certain citizenship information. To secure this information the applicant, recipient or agency should complete a Form BC-600, Application for Search of Census Records for Proof of Age. Add in the remarks portion "U.S. citizenship data requested." Add that the purpose is for Medicaid eligibility. This form requires a fee.
One of the documents listed that was created at least 5 years before the application for Medicaid	This document must be one of the following and show a U.S. place of birth: • Seneca Indian tribal census record, • Bureau of Indian Affairs tribal census records of the Navaho Indians, • U.S. State Vital Statistics official notification of birth registration, • An amended U.S. public birth record that is amended more than 5 years after the person's birth, or • Statement signed by the physician or midwife who was in attendance at the time of birth.
Institutional admission papers from a nursing home, skilled nursing care facility or other institution	Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. *There is no requirement that the institutional record be established a particular length of time before the Medicaid application date.*
Medical (clinic, doctor, or hospital) record created at least 5 years before the initial application date and indicates a U.S. place of birth.	*(For children under 16 the document must have been created near the time of birth or 5 years before the date of Medicaid application).* Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. NOTE: An immunization record is not considered a medical record for purposes of establishing U.S. citizenship. NOTE: For children under 16 the document must have been created near the time of birth or 5 years before the date of Medicaid application.
Written affidavit of citizenship	Affidavits should ONLY be used in rare circumstances. *If the citizenship documentation requirement needs to be met through affidavits, the following rules apply:*

***LEVEL 4* - Fourth Level Documents**	**Explanation – *Level* 4**
Written affidavit of citizenship	• *There must be at least two affidavits by* two individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship. • *At least one of the individuals making the affidavit cannot be* related to the applicant/recipient. *Neither of the two individuals can be the applicant/recipient.* • ***In order for the affidavits to be acceptable,* the persons making the affidavits must be able to provide proof of *their* own citizenship and identity.** • If the *individuals making the affidavits have* information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit **must** contain this information as well. • *The agency must obtain a separate affidavit* from the applicant/recipient or other knowledgeable individual *(or guardian or representative)* explaining why *the* evidence does not exist or cannot be readily obtained. • *The affidavits* must be signed under penalty of perjury by the persons making the affidavits. M0220, Appendix 7 contains the Affidavit of Citizenship On Behalf Of Medicaid Applicants and Recipients, *to be used by the two persons attesting to the applicant/recipient's citizenship.* M0220, Appendix 8 contains the Affidavit of Citizenship By Medicaid Applicants and Recipients, *to be used by the applicant/recipient or his guardian or authorized representative.*

5. CHART 5 - Evidence of Identity

Section 1903 *(x) of the Act* provides that identity must be established. When *Level 1* primary evidence of citizenship is not available, a document from the *Level 2, Level 3 or Level 4 tables above* 4 may be presented if accompanied by an identity document from the *following* Chart 5 *Identity Documents table.*

The identity documents do not have a hierarchy of reliability. For applications or renewals that include children under age 16, the LDSS workers can send an Affidavit of Identity for Medicaid Applicants and Recipients Under Age 16 with the application or renewal forms.

CHART 5 – *Identity* Documents	**Explanation – Chart 5**
Driver's license	*A driver's license issued by State or Territory either with a photograph of the individual, or other identifying information such as name, age, sex, race, height, weight or eye color, is acceptable.*

CHART 5 – *Identity* Documents	**Explanation – Chart 5**
School identification card	*A school identification card with the name and photograph of the individual is acceptable. The school ID card must be an official ID card issued by the school; unofficial ID cards such as those provided as a courtesy with school photographs, are not acceptable.*
U.S. military card or draft record	*U.S. military card or draft record is acceptable.*
Identification card issued by the Federal, State, or local government	*An identification card issued by the Federal, State, or local government with the same information included on driver's licenses is acceptable. At a minimum, the ID must have the individual's name, address and photo. For photo ID cards, the photo must have been affixed to the ID card by the government agency that issued it. ID cards issued by a government agency that just have a space for the individual to attach a photo are NOT acceptable.*
Military dependent's ID card	*A military dependent's identification card is acceptable.*
Native American Tribal document	*A Native* American *Tribal document is acceptable.*
U.S. Coast Guard Merchant Mariner card	*A U.S. Coast Guard Merchant Mariner card is acceptable.*
Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native tribal document	*A Certificate* of Degree of Indian Blood, or other U.S. American Indian/Alaska Native tribal document *with* a photograph or other personal identifying information relating to the individual *is acceptable*.
State Agency Computer Data	*Identifying information from a Virginia state governmental data system can be used to provide identity verification for applicants and recipients. A copy of the screen(s) from a state data system that shows the individual's name, DOB, gender and SSN is acceptable documentation of the individual's identity if the agency establishes the true identity of the individual.*
Special identity rules for children under age 16	For children under 16, school records may include nursery or child care records. *The school, nursery or daycare record must contain the child's name, date of birth, place of birth and the parents' names. The form agencies should use to request the school, nursery or daycare record is posted on the intranet. The school record request form workers can give to a child's parent or guardian to give to the school is posted to the intranet at http://localagency.dss.virginia.gov/divisions/bp/me/citizenship/forms.cgi.* ***a. Foster Care Children*** *The Child Protective Services (CPS) notarized affidavit that is attached to the court petition requesting custody of the child is an acceptable identity verification document. Place a copy of the CPS affidavit in the child's Medicaid case record.*

A copy of the Online Automated Services Information System(OASIS) screen that contains the child's name, date of birth, gender and race is acceptable as identity verification for a foster care child. Place a copy of the computer system screen in the child's Medicaid case record.

b. Written affidavit of identity

For children under 16 only, an affidavit of identity may be used. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and **cannot be used if an affidavit for citizenship was provided for the child.**

M0220, Appendix 9 contains the Affidavit of Identity for Medicaid Applicants and Recipients Under Age 16.

D. Agency Action

1. Documentation From Case Record and Individual

Documentation of citizenship and/or identity may be obtained from a number of different sources including the following:

- *Existing LDSS agency records as long as the documentation conforms to Medicaid policy for citizenship and identity verification in M0220 of the Medicaid Eligibility Manual.*

- *Applicants and Recipients. All applicants and recipients, except SSI recipients and Medicare beneficiaries, must provide documents that show proof of U.S. citizenship and proof of the person's identity. Contact information for obtaining the various acceptable documents is available on the VDSS local agency intranet and the DSS public website and may be given to individuals to facilitate their obtaining documentation.*

Original documents may be viewed by all eligibility, administrative, and services staff of the LDSS as long as the person viewing the document makes a copy of the document, notes that the original was viewed, and signs and dates the copy.

2. Authorized Representative

For individuals who have authorized representatives, such as the disabled or individuals who are institutionalized, initiate efforts to assist in securing documentation with the appropriate representative.

In those instances in which an authorized representative lives in another locality than the Medicaid enrollee and the authorized representative's LDSS is more convenient to them than the locality where the case is maintained, a LDSS may copy and verify an original document for an authorized representative. The LDSS is not to give the copy to the client's representative; the agency staff must send it to the LDSS that holds the Medicaid enrollee's case. In this way, the "chain of evidence" is not broken—it has always stayed within DSS.

A local DSS agency may accept the copy as verification providing another LDSS:

- *saw the original document,*
- *made the copy of the original,*
- *wrote on the copy that the staff member saw the original document on (date), and*
- *signed and dated the copy.*

3. Documents From Other Approved Organizations

Original citizenship and identity documents can be accepted from other organizations approved by DMAS when the original document is viewed, the authorized person makes a copy and affixes a statement to the copy that has the following information:

- *the original document was viewed and copied by (name and title of the individual who viewed the documentation),signature of staff member who saw the original,*
- *the name of the entity with which the individual is affiliated, and*
- *the date the documentation was viewed and copied.*

DMAS has approved documentation copies from the following:

- *an established outreach organization,*
- *local health department,*
- *Department of Corrections personnel for prisoners leaving the correctional system,*
- *Federally Qualified Health Centers (FQHC),*
- *hospital discharge planners or social workers.*

Two lists of approved organizations are posted on the local agency intranet site: *"Project Connect and Independent Outreach Projects List" and "FQHC-Virginia Primary Care Association Membership Roster".*

Hospital contractors, such as Chamberlin-Edmonds, are ***not*** *considered authorized to view original documents.*

4. DMAS FAMIS Plus Unit

Original documents can be viewed by local department of social services (LDSS) for applications handled by the Department of Medical Assistance Services (DMAS) FAMIS Plus Unit. As a service to clients, staff from any LDSS are to view an original document, make a copy, and note on the copy that the original was viewed, including the date and signature of the staff person. The LDSS are to send or fax the annotated copy to the DMAS FAMIS Plus Unit. The DMAS FAMIS Plus Unit will accept the copy and place it in the record. This process will significantly reduce the likelihood of important and possibly irreplaceable documents being misplaced or destroyed.

5.* SSI Recipients *and Medicare Beneficiaries

Verify the SSI recipient's or Medicare beneficiary's entitlement to benefits through SVES. A copy of the SVES printout must be placed in the case file.

6. **Individual NOT Required to Submit Documents in Person**

Individuals do not have to submit their citizenship and identity to the agency worker in person. They may mail-in the **original document** for the agency to copy and mail back to the individual. The worker must write on the copy made for the case record that "the original document was viewed on (date) and the original was mailed back to the individual on (date)."

For renewals, LDSS may request birth certificate verification from the Virginia Department of Health (VDH) without receiving additional approval from the recipient beyond the recipient's original signature on the individual's application for Medicaid.

7. ***Special Populations Needing Assistance***

The agency must assist special populations who need additional assistance, such as the homeless, mentally impaired, or physically incapacitated individual who lacks someone who can act on his behalf, to provide necessary documentation. Many of these individuals have (or had) SSI and/or Medicare and are excluded from the citizenship and identity documentation requirements.

For individuals who are not current or former SSI recipients or Medicare beneficiaries, and who are mentally impaired or physically incapacitated and lack someone who can act on their behalf, the agency should initiate action to secure the documentation for the individual using the Virginia Department of Health (VDH) procedure for requesting birth certificate documentation described in the Citizenship and Identity Verification Procedures document posted on the intranet.

8. **Reasonable Opportunity to Verify Citizenship and Identity**

a. Reasonable Opportunity

Many individuals will be able to produce the required citizenship and identity verification requirements given the maximum amount of time allowed by processing time frames and inquiries should be made to determine if they can produce the documentation required by this subchapter. LDSS agencies must assist these individuals in helping to secure the required documentation by providing information on what documentation is necessary and alerting them to agencies that may be contacted to issue the needed documentation.

The "reasonable opportunity period" permits exceptions from the *standard* time limits *for processing applications* when an applicant or recipient in good faith tries to present documentation, but is unable to do so because the documents are not available. In such cases, the agency should extend the application processing time limit and assist the individual in securing evidence of citizenship and/or identity.

If the individual cannot readily or easily produce citizenship documentation or it is a hardship to secure that documentation, secure the documentation for the individual using the process explained in the Citizenship and Identity Verification Procedures document posted on the local agency intranet for contact with the Virginia Department of Health for birth certificate documentation.

If the individual, legal guardian or other responsible party indicates that additional time is required, allow a reasonable amount of additional time based on the *time frames below*.

b. Extending the Processing Time Frames

Applicants and recipients, with the exception of those needing a disability determination, who have attempted to obtain citizenship and identity documentation will be given additional time beyond the normal time frame for processing cases (45 days for applications, 30 days for renewals) as follows:

- *An extension of 30 calendar days may be granted when the applicant/recipient has requested, but not received the required documents, or requested assistance in obtaining documents.*

- *An additional extension of up to 10 working days may be granted at the end of the 30-day extension when there is documentation that the information has been requested, but has not been received.*

If the required information has not been received by the end of the extensions, appropriate action to deny or cancel coverage must be taken.

Information regarding the need for the extension and agency's efforts to assist in helping obtain documentation must be included in the case file.

*Because the processing time for applicants who require a disability determination remains 90 calendar days, which actually exceeds the extension periods listed above**, these applicants do not receive the extensions.***

9. ***Failure to Provide Requested Verifications***

Failure to provide *satisfactory evidence of citizenship and identity, after being provided a reasonable time to present such documentation, is to result in the denial or termination of Medicaid.*

An applicant or recipient who fails to cooperate with the agency in presenting documentary evidence of citizenship may be denied or terminated. Failure to cooperate consists of failure by an applicant, recipient or that individual's representative, after being notified, to take a required action within the reasonable opportunity time period.

10. Denial or Cancellation Action

Local agencies must give the maximum allowable time for securing citizenship and identity verification permitted by the processing time frames and to pend cases of those individuals who are acting in good faith to secure the documentation not available through the agencies' efforts.

Eligibility should only be denied or cancelled for lack of citizenship and/or identity verification reasons if there is clear and convincing evidence that the recipient has failed to present a good faith effort to produce the required documentation. Agencies are to recognize that, particularly for individuals who are aged, disabled and/or institutionalized, the intervention and assistance of authorized representatives may be needed to secure this information, and the maximum time and necessary assistance from the agency should be provided to the authorized representatives acting in good faith on behalf of the recipient.

A local agency is neither to deny nor terminate Medicaid eligibility based solely upon lack of citizenship or identity documentation without supervisory review and approval. An agency that has questions about

a denial or a termination of eligibility should first consult the Medical Assistance Program Consultant assigned to the agency's service area.

11. **Notification Requirements**

Prior to the termination of benefits, the enrollee must be sent the Advance Notice of Proposed Action (Form 032-03-018) at least 10 calendar days (plus one day for mailing) prior to the effective date of the closure.

A Notice of Action and appeal rights must be sent to an individual whose application is denied because of failure to provide citizenship and/or identity verification.

12. Maintain Documents in Case Record

The agency must maintain copies of the documents used to verify citizenship and identity in the individual's case record or data base and must make the documents available for state and federal audits.

13. Reporting Requirements

Each month, agencies will report information regarding denials or cancellations of eligibility when one of the reasons, or the only reason, for the action was due to failure to verify citizenship or identity. Until a system-generated report becomes available for reporting this information, use the EXCEL spreadsheet on the VDSS local agency intranet at http://localagency.dss.virginia.gov/divisions/bp/files/me/citizenship/forms/medicaiddeniedcanceled.xls. ***Email the monthly report by the 10th of the following month to the Medical Assistance Unit, Division of Benefit Programs, staff person named in the "Citizenship and Identity Verification Procedures" document posted on the local agency intranet. Email a copy of the report to the Medical Assistance Program Consultant assigned to the LDSS' service area.***

The Medical Assistance Program Consultants will also be conducting reviews of cases where Medicaid eligibility was denied or terminated because of lack of citizenship and/or identity verification.

14. **Refer Cases of Suspected Fraud to DMAS**

If documents are determined to be inconsistent with pre-existing information, are counterfeit, or are altered, refer the individual to DMAS for investigation into potential fraud and abuse. See section M1700.200 for fraud referral procedures.

M0220.200 ALIEN IMMIGRATION STATUS

A. Introduction

An alien's immigration status is used to determine whether the alien meets the definition of a "full benefit" alien. All aliens who meet the state residency, covered group and all other nonfinancial eligibility requirements (except SSN for illegal aliens), and who meet all financial eligibility requirements are eligible for Medicaid coverage of emergency services. "Full benefit" aliens may be eligible for all Medicaid covered services. "Emergency services" aliens may be eligible for emergency services only.

B. Procedure

An alien's immigration status must be verified. Use the procedures in sections M0220.201 and 202 below to verify immigration status. After the alien's immigration status is verified, use the policy and procedures in section M0220.300 to determine if the alien is a full benefit alien. If the alien is a full benefit alien and is eligible for Medicaid, use the policy and procedures in section M0220.600 to enroll the alien in Medicaid.

If the alien is an emergency services alien who is eligible for Medicaid, use the policy and procedures in section M0220.700 to enroll an eligible emergency services alien in Medicaid for emergency services only.

M0220.201 IMMIGRATION STATUS VERIFICATION

Verification Procedures

An alien's immigration status is verified by the official document issued by the USCIS and a comparison with the Systematic Alien Verification for Entitlements (SAVE) system. The EW must see the original document or a photocopy. Submission of just an alien number is NOT sufficient verification.

If the alien

- has an alien number but no USCIS document, or
- has no alien number and no USCIS document,

use the **secondary verification** SAVE procedure in M0220.202 below if the alien provides verification of his or her identity.

NOTE: If the alien claims to be an illegal alien, do not use the verification procedures in this section or the SAVE procedures. Go to section M0220.400 below to determine the illegal alien's eligibility.

B. Documents That Verify Status

Verify lawful permanent resident status by a Resident Alien Card or Permanent Resident Card (Form I-551), or for recent arrivals a temporary I-551 stamp in a foreign passport or on form I-94.

Verify lawful admission by a Resident Alien Card (issued from August 1989 until December 1997) or Permanent Resident Card (Form I-551); a Re-entry Permit; or a Form I-688B with a provision of law section 274A.12(A)(1).

Form I-151 (Alien Registration Receipt Card – the old “green card”), Form AR-3 and AR-3a are earlier versions of the Resident Alien Card (Form I-551). An alien with one of the older cards who does not have an I-551 should be referred to USCIS to obtain the application forms for the I-551. The forms may be ordered by calling 1-800-375-5283. When an I-151 is presented, refer the alien to USCIS, but accept the document for further verification (see M0220.201.E below).

C. Letters that Verify Status

The USCIS and the Office of Refugee Resettlement (ORR) issue letters that are used in lieu of or in conjunction with USCIS forms to identify alien status. If the letter is the only document provided, it is necessary to verify the status of the alien. For USCIS letters, contact the local USCIS office for assistance in identifying the alien's status (see Appendix 1 of this subchapter). For ORR letters, contact the toll-free ORR Trafficking Verification Line at 866-401-5510 (see Appendix 5 of this subchapter). Do not verify ORR letters via the SAVE system.

D. Local USCIS Office Documents

Some USCIS offices have developed their own stamps. Therefore, it is possible that a locally produced stamp or legend will be on an USCIS form. If there is any question as to the veracity or status of the document, contact USCIS.

E. Expired or Absent Documentation

If an applicant presents an expired USCIS document or is unable to present any document showing his/her immigration status, refer the individual to the USCIS district office to obtain evidence of status **unless** he/she provides an alien registration number.

If the applicant provides an alien registration number with supporting verification of his or her identity, use the SAVE procedures in M0220.202 below to verify immigration status. If an applicant presents an expired I-551 or I-151, follow procedures for initiating a primary verification. If the alien presents any expired document other than an expired I-551 or I-151, follow procedures for initiating a secondary verification.

Affidavit of Identity for Medicaid Applicants/Recipients Under Age 16

The Deficit Reduction Act of 2005 requires proof of citizenship and identity for Medicaid applicants and recipients. This affidavit may be used to establish a claim of identity for a child under the age of 16 when acceptable documentation of identity is not available and cannot be obtained in a reasonable period of time. The Department of Social Services may request additional information if needed.

If an affidavit is used to establish a claim of identity for a child under age 16, an affidavit cannot be used to establish the child's citizenship.

I _____ (name) have been informed of the requirement to provide proof of identity for the children listed below. I do not have proof of identity, such as, a driver's license, school identification card, school records or child care records for my children. I am unable to provide this documentation because:

_____

_____

Name of Child	Relationship to Child	Date of Birth	Place of Birth
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I hereby certify, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.

_____ _____

Signature of Parent/Guardian Date

M0320.312 BREAST AND CERVICAL CANCER PREVENTION AND TREATMENT ACT (BCCPTA)

A. Policy

The Breast and Cervical Cancer Prevention and Treatment Act (BCCPTA) of 2000 (P.L. 106-354) provides for payment of medical services for certain women with breast and cervical cancer. Virginia chose to cover this group beginning July 1, 2001.

Women eligible for the BCCPTA program must be age *18* through 64. They must have been screened and certified as needing treatment for breast or cervical cancer (including pre-cancerous conditions) by a medical provider operating under the Center for Disease Control and Prevention's Breast and Cervical Cancer Early Detection Program (BCCEDP) and referred to LDSS for a Medicaid eligibility determination. These women must not have creditable health insurance coverage for treatment of breast or cervical cancer.

Women diagnosed with cancer by a provider who is not operating under the BCCEDP are not eligible in this covered group.

B. Nonfinancial Eligibility

1. Required Nonfinancial Requirements

BCCPTA women must meet the following Medicaid nonfinancial requirements in chapter M02:

- citizenship/alien status;
- Virginia residency;
- Social Security number provision/application requirements;
- assignment of rights to medical benefits requirements;
- application for other benefits; and
- institutional status.

In addition, BCCPTA women must not be eligible for Medicaid under the following mandatory categorically needy covered groups:

- LIFC;
- MI Pregnant Women;
- *FAMIS Plus (MI Child Under Age 19);*
- SSI recipients.

2. Creditable Health Insurance Coverage

BCCPTA women must not have creditable health insurance coverage for the treatment of breast or cervical cancer. Creditable health insurance coverage includes:

- a group health plan;
- health insurance coverage under any hospital or medical service policy or certificate, hospital or medical service plan contract or health maintenance organization contract offered by a health insurance issuer;

- Medicare;
- Medicaid;
- armed forces insurance a medical care program of the Indian Health Service (IHS) or of a tribal organization;
- a state health risk pool.

There may be situations where a woman has creditable health insurance coverage as defined above, but the coverage does not include treatment of breast or cervical cancer due to a period of exclusion or exhaustion of lifetime benefits.

C. Financial Eligibility

There are no Medicaid financial requirements for the BCCPTA covered group. The BCCEDP has income and resource requirements that are used tc screen women for this program.

D. Application Procedures

The application procedures for women who meet the BCCPTA non-financial requirements have been streamlined to facilitate the prompt enrollment and immediate access to services for women who are in need of treatment for breast or cervical cancer. In addition to the nonfinancial information required to evaluate eligibility in the BCCPTA covered group, the following information is needed for enrollment in Medicaid:

- name,
- address,
- sex and race,
- date of birth,
- country of origin and entry date, if an alien.

Women who meet the description of individuals in the LIFC, MI Pregnant Women, *FAMIS Plus,* or SSI recipients covered groups must complete the appropriate Medicaid application for the covered group and must have a Medicaid eligibility determination completed prior to determining their eligibility in the BCCPTA covered group. If not eligible in the LIFC, MI Pregnant Women, *FAMIS Plus,* or SSI recipients covered groups, then determine their eligibility in the BCCPTA covered group.

1. Application Form

This covered group has a special application, BCCPTA Medicaid Application (form #032-03-384), that must be initiated by a BCCEDP provider. The application includes the BCCEDP certification of the woman's need for treatment and the information needed to determine the nonfinancial eligibility in the BCCPTA covered group. Appendix 7 to subchapter M0120 contains a sample of the BCCPTA Medicaid Application form.

If eligibility in another Medicaid covered group must first be determined, the applicant must be given the appropriate Medicaid application.

2. Application Processing Time Frames

BCCPTA Medicaid applications filed by women who do not meet the description of an individual in the LIFC, MI Pregnant Women, *FAMIS Plus,* or SSI recipients covered groups must be processed within 10 working days of the agency's receipt of the signed application.

BCCPTA Medicaid applications filed by women who meet the description of an individual in the LIFC, MI Pregnant Women, *FAMIS Plus,* or SSI recipients covered groups must be processed as soon as possible, but no later than 45 calendar days of the agency's receipt of the signed application.

3. Notices

If the BCCPTA Medicaid application is the only application required and no additional information is required, the eligibility decision must be made immediately and applicant must be notified of the decision within 10 working days of the agency's receipt of the application.

If a decision cannot be made within 10 working days of receipt of the BCCPTA application, the worker must send a "Notice of Action on Medicaid", form #032-03-008, on the 10th day stating why action has not been taken, specifying what information is needed and a deadline for submitting the information.

E. Entitlement

1. Entitlement Begin Date

Eligibility under this covered group is met the beginning of the month the screening is completed if the woman later has a positive diagnosis as a result of the screening and is determined to be in need of treatment for her breast and/or cervical cancer.

Eligible BCCPTA women are entitled to full Medicaid coverage beginning the first day of the individual's application month if all eligibility requirements are met in that month.

2. Retroactive Entitlement

Retroactive coverage is applicable to this covered group if the individual was screened by a medical provider operating under the BCCEDP and diagnosed as needing treatment for breast or cervical cancer in the retroactive month(s).

F. Enrollment

The aid category for BCCPTA women is "066".

G. Renewal

Annual renewal requirements are applicable to the BCCPTA covered group. At the time of the annual renewal, the recipient must provide a statement from her medical provider verifying continued treatment for breast or cervical cancer. The BCCPTA Redetermination (form #032-03-653) is used for the renewal. See M1520.200 for renewal requirements.

2. Joint Tenancy

a. Each Owner Has Same Interest

In joint tenancy, each of two or more persons has one and the same undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owner owns all of the property.

b. Survivorship Rights

Upon the death of one of only two joint tenants, the survivor becomes sole owner. On the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest.

c. Conversion to Tenancy-in-Common

In most States, it is possible for joint tenants to take action during their lifetime to convert the joint tenancy to a tenancy-in-common (see 1. above).

3. Tenancy by The Entirety

a. Married Couples Only

A tenancy by the entirety can exist only between the members of a married couple. The wife and husband as a unit own the entire property which can be sold only with the consent of both parties. However, if a marriage has been legally dissolved, the former spouses become tenants-in-common and one can sell his or her share without the consent of the other.

b. Survivorship Rights

Upon the death of one tenant by the entirety, the survivor takes the whole.

D. Operating Policy--Shared Ownership

1. General Rule

With the exception noted below, we assume, absent evidence to the contrary, that each owner of shared property owns only his or her fractional interest in the property. We divide the total value of the property among all of the owners in direct proportion to the ownership share held by each.

2. Exception: Checking/ Savings Accounts and Time Deposits

For a joint checking or savings account or a jointly-owned time deposit, we assume that all of the funds in the account belong to the applicant(s) recipient(s), in equal shares if there is more than one applicant or recipient (S1140.205 B and .210 B).

3. Determining the Countable Value of Jointly Owned Real Property

The procedures for determining the countable value of jointly owned real property are found in Appendix 1 to subchapter S1130.

M1110.515 OWNERSHIP IN FEE SIMPLE OR LESS THAN FEE SIMPLE

A. Definitions

1. Fee Simple

Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power of disposition of the property during his or her lifetime. Upon his or her death, property held in fee simple can always pass to the owner's heirs. Fee simple ownership may exist with respect to property owned jointly or solely.

2. Less than Fee Simple Ownership

a. Life Estate

A life estate confers upon one or more persons (grantees) certain rights in a property for his/her/their lifetimes or the life of some other person. A life estate is a form of legal ownership and usually created through a deed or will or by operation of law. See B. below.

b. Equitable Ownership

An equitable ownership interest is a form of ownership that exists without legal title to property. It can exist despite another party's having legal title (or no one's having it). See C. below.

B. Description-- Life Estate

1. Rights of Life Estate Owner

a. What Owner Can Do

Unless the instrument (will or deed) establishing the life estate places restrictions on the rights of the life estate owner, the owner has the right to possess, use, and obtain profits from the property and to sell his or her life estate interest.

Life estate in real property is not counted as a resource.

b. What Owner Cannot Do

A life estate owner owns the physical property only for the duration of the life estate. The owner generally can sell only his or her interest; i.e., the life estate. The owner cannot take any action concerning the interest of the remainderman.

2. Remainder Interest

a. Future Interest in Physical Property

A life estate instrument often conveys property to one person for life (life estate owner) and to one or more others (remaindermen) upon the expiration of the life estate. A remainderman has an ownership interest in the physical property but without the right to possess and use the property until termination of the life estate.

M1140.110 OTHER PROPERTY RIGHTS

A. Introduction

1. Mineral Rights Mineral rights represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.

2. Timber Rights Timber rights permit one party to cut and remove free standing trees from the property of another property.

3. Easements An easement gives one party the right to use the land of another party for a special purpose.

4. Leaseholds A leasehold gives one party control over certain property of another party for a specified period. In some States, a "lease for life" can create a life estate under common law.

5. Water Rights Water rights usually confer upon the owner for riverfront or storefront property the right to access and use the adjacent water.

6. Life Estates A life estate conveys to the individual to whom it is given certain property rights for the duration of his or her life, or someone else's life. In some cases, it may be conditional: e.g., for life or until remarriage.

The owner of a life estate can sell the life estate but does not have title to the property and thus normally cannot sell it or pass it on as an inheritance.

Life rights to real property are *not counted as a resource,* except for the QDWI covered group (see Appendix 1 to chapter S11).

7. Remainder Interests When the owner of property gives it to one party in the form of a life estate, and designates a second party to inherit it upon the death of the life estate holder, the second party has a remainder interest in the property.

B. Development and Documentation

1. General

Treat the items in A. above as real property and develop ownership and value per S1140.100. See 4. below for additional instructions regarding life estates and remainder interests.

2. Mineral Rights

a. **Ownership of Land and Mineral Rights**
If the individual owns the land to which the mineral rights pertain, the CMV of the land can be assumed to include the value of the mineral rights. Additional development is unnecessary.

b. **Ownership of Mineral Rights Only**
If the individual does not own the land to which the mineral rights pertain, obtain a CMV estimate from a knowledgeable source. Such sources include, in addition to those listed in S1140.100 D.*2*.c.:

- the Bureau of Land Management;
- the U.S. Geological Survey;
- any mining company that holds leases.

3. Lease for Life

Refer any "lease for life" agreement and related information to the regional coordinator for a determination of whether it creates a life estate under State law.

4. Value of Life Estate or Remainder Interest

a. General

Using the table in S1140.120, multiply the CMV of the property by the life estate or remainder interest decimal that corresponds to the individual's age. Record the result.

If there is more than one life estate, divide the equity value of the real property by the number of people having a life estate interest. Multiply the prorated equity value of the property by the life estate or remainder interest decimal that corresponds to the individual's age. Record the result.

b. **Life estate in real property *is not a resource for an applicant or recipient, except for the QD*WI covered group (see Appendix 1 to chapter S11).**

c. Any countable equity value of real property would be affected if it is:

- subject to someone else having life estate interest, or
- the applicant/recipient transfers their real property retaining a life estate interest, thus affecting the value for evaluation of transfer of assets.

See S1140.120, Life Estate and Remainder Interest Tables to determine CMV of real property owned by an applicant or recipient.

TABLE OF CONTENTS

M14 LONG-TERM CARE

M1450.000 TRANSFER OF ASSETS

Appendices

M1450.530 PURCHASE OF ANNUITY ON OR AFTER FEBRUARY 8, 2006

A. Introduction

The DRA established new policy for evaluating the purchase of an annuity as an asset transfer. The policy applies to annuities purchased on or after February 8, 2006. A significant change made under the DRA is that annuities purchased by either the institutionalized individual or the community spouse must be evaluated even after initial eligibility as an LTC recipient has been established. ***The policy in this section applies to applications processed on or after July 1, 2006 to transfers made on or after February 8, 2006****.*

B. Policy

1. *An annuity purchased by the institutionalized individual or the community spouse on or after February 8, 2006, will be treated as an uncompensated transfer unless:*

   - *the state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant;*

   - *the state is named the remainder beneficiary in the second position after the community spouse or minor or disabled child; and*

   - *if the spouse or the representative of a minor or disabled child disposes of any remainder for less than fair market value, the state is named as the beneficiary in the first position.*

2. *An annuity purchased by the institutionalized individual on or after February 8, 2006, will be considered an uncompensated transfer unless:*

   - *the annuity is described in one of the following subsections of section 408 of the Internal Revenue Service (IRS) Code:*
     - *(b)-individual retirement account,*
     - *(c)-accounts established by employers and certain association of employees, or*
     - *(p)-simple retirement accounts*

   - *a simplified employee pension (within the meaning of section 408(k) of the IRS Code; or*

   - *a Roth Individual Retirement Account (IRA).*

3. *An annuity purchased by the institutionalized individual on or after February 8, 2006, will be considered an uncompensated transfer unless the annuity is:*

   - *irrevocable and non-assignable;*
   - *actuarially sound (see M1450.520.C);*
   - *provides for equal payments with no deferral and no balloon payments.*

4. A copy of the annuity agreement must be sent to:

   DMAS, Division of Policy and Research
   Eligibility Section
   600 East Broad Street, Suite 1300
   Richmond, Virginia 23219

M1450.540 PURCHASE OF A PROMISSORY NOTE, LOAN, OR MORTGAGE ON OR AFTER FEBRUARY 8, 2006

A. Introduction

This policy applies to the purchase of a promissory note, loan, or mortgage on or after February 8, 2006. Subchapter S1140.300 contains explanations of promissory notes, loans, and mortgages.

B. Policy

Funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, must be evaluated as an uncompensated transfer unless the note, loan, or mortgage:

- has a repayment term that is actuarially sound (see M1450.*520*),
- provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments, and
- prohibits the cancellation of the balance upon the death of the lender.

C. Uncompensated Amount

If the promissory note, loan, or mortgage does not meet the above criteria, the uncompensated amount is the outstanding balance as of the date of the individual's application for Medicaid.

Note: The countable value as a resource is the outstanding principal balance for the month in which a determination is being made.

M1450.545 TRANSFERS INVOLVING LIFE ESTATES

A. Introduction

This policy applies to the purchase of a life estate on or after February 8, 2006.

B. Policy

Funds used to purchase a life estate in another individual's home on or after February 8, 2006, must be evaluated as an uncompensated transfer unless the purchaser resides in the home for at least 12 consecutive months. If the purchaser resides in the home for less than 12 consecutive months, the entire purchase amount will be considered a transfer for less than fair market value.

M1450.550 TRANSFERS INVOLVING TRUSTS

A. Introduction

A transfer of assets into or from a trust may be a transfer of assets for less than market value. See M1120.200 for trust resource policy, definitions pertaining to trusts, and for instructions for determining if the trust is a resource.

B. Revocable Trust

1. Transfer Into Revocable Trust

A transfer of assets **into** a revocable trust does not affect eligibility because the entire principal of a revocable trust is an available resource to the individual.

2. Payments From a Revocable Trust

Any payments from the revocable trust which are made to or for the benefit of the individual are counted as income to the individual and are not transfers for less than market value.

Any payments from the revocable trust's principal or income which are NOT made to or for the benefit of the individual are assets transferred for less than fair market value.

B. Procedure Subtract the deduction(s) from gross monthly income in the order presented below:

1. Medicaid CBC Personal Maintenance Allowance (M1470.410)
2. Dependent Child Allowance (M1470.420)
3. Medicaid CBC - Incurred Medical Expenses (M1470.430)

C. Appeal Rights The patient or his representative has the right to appeal the patient pay determination, the amounts used in the calculation and denial of any request for adjustment. If a recipient or his representative appeals the patient pay, the EW who made the decision prepares the appeal summary and attends the hearing.

M1470.410 MEDICAID CBC - PERSONAL MAINTENANCE ALLOWANCE

A. Individuals For the month of entry and subsequent months, deduct from the patient's gross monthly countable income a personal maintenance allowance. The amount of the allowance depends upon under which Medicaid CBC waiver the patient receives LTC services.

1. Basic Maintenance Allowance

a. Elderly or Disabled with Consumer-Direction (EDCD) Waiver, Mental Retardation (MR) Waiver, Technology-Assisted Individuals Waiver, Individual and Family Developmental Disabilities Support (DD) Waiver and Day Support (DS) Waiver

Patients receiving Medicaid CBC under the following waivers are allowed a monthly basic personal maintenance allowance.

- EDCD Waiver,
- MR Waiver,
- Technology-Assisted Individuals Waiver
- DD Waiver, and
- DS Waiver

Prior to September 1, 2006, the personal maintenance deduction equals the monthly SSI payment limit *for one person* (see M0810.002 A. 2.). *Effective September 1, 2006, the personal maintenance deduction is $995, which is equal to 165% of the monthly SSI payment limit for one person.*

b. AIDS Waiver

Patients under the AIDS waiver are allowed a monthly basic personal maintenance allowance that equals 300% of the SSI payment limit for one person (see M0810.002 A. 3.).

2. Guardianship Fee Deduct an amount up to 5% of the patient's gross monthly income (including amounts not counted as income and excluded income) for guardianship fees, if the patient has a legally appointed guardian or conservator AND the guardian or conservator charges a fee. Document how you determined that the guardian/conservator charges a fee and the amount of the fee.

NOTE: The guardianship filing fees CANNOT be deducted from the

individual's income.

NOTE: No deduction is allowed for representative payee or "power of attorney" fees or expenses.

3. Special Earnings Allowance for Recipients in EDCD, DD, MR *or DS* Waivers

Deduct the following special earnings allowance if the patient is working (the work does NOT have to be part of treatment). The special earnings allowance is deducted from earned income only. Deduct:

1) for individuals employed 20 hours or more per week, all earned income up to 300% of SSI (see M0810.002 A. 3.) per month.

2) for individuals employed at least 8 but less than 20 hours per week, all earned income up to 200% of SSI per month.

The total amount of the personal maintenance allowance and the special earnings allowance cannot exceed 300% SSI.

EXAMPLE #9: **(Using January 2005 figures)**
A working patient receiving EDCD waiver services is employed 18 hours per week. His income is gross earnings of $928.80 per month and SSA of $300 monthly. His special earnings allowance is calculated by comparing his gross earned income ($ 928.80) to the 200% of SSI maximum ($ 1,158.00). His gross earned income is less than 200% of SSI; therefore, he is entitled to a special earnings allowance. His personal maintenance allowance is computed as follows:

$ 579.00	CBC personal maintenance allowance
+ 928.80	special earnings allowance
$ 1,507.80	total personal maintenance allowance

B. Couples

The Medicaid CBC waivers do not specify personal maintenance allowances for a married couple living together when both spouses receive Medicaid CBC because each spouse is considered an individual for patient pay purposes. The individual maintenance allowance in section M1470.410 applies to each spouse in a couple when each receives Medicaid CBC.

$875 gross earned income
- 75 first $75 per month
800 remainder
÷ 2
400 ½ remainder
+ 75 first $75 per month
$475 which is > $190

His personal needs allowance is calculated as follows:

$ 30.00 basic personal needs allowance
+190.00 special earnings allowance
+ 17.50 guardianship fee (2% of $875)
$237.50 personal needs allowance

2. Medicaid CBC Waiver Services

a. Maintenance Allowance

Deduct the appropriate maintenance allowance for one person, based on the specific Medicaid CBC waiver under which the individual receives LTC services:

1) *For the* Elderly *or* Disabled with Consumer Direction Waiver (EDCD Waiver), Mental Retardation (MR) Waiver, Technology-Assisted Individuals Waiver, Individual and Family Developmental Disabilities Support (DD) Waiver, and Day Support (DS) Waiver:

   - *Prior to September 1, 2006, the personal maintenance allowance is equal to* the monthly SSI payment limit for one person *(see M0810.002 A. 2).*

   - *Effective September 1, 2006, the personal maintenance allowance is $995, which is 165% of the monthly SSI payment for one person.*

2) *For the* AIDS Waiver: *the personal maintenance allowance is equal to* 300% of the SSI limit *for one person* (see M0810.002 A. 3.).

b. Guardian Fee

Deduct the actual fee a guardian or conservator charges, up to a maximum of 5% of the patient's actual gross income (including amounts not counted as income and excluded amounts) for guardianship fees, IF:

- the patient has a legally appointed guardian or conservator AND
- the guardian or conservator charges a fee.

Document how you determined that the guardian/conservator charges a fee and the amount of the fee.

NOTE: The guardianship filing fees CANNOT be deducted from the individual's income.

c. Special Earnings Allowance *For DD, DS and MR Waivers*

EXAMPLE #19: *(deleted)*

For DD, *DS* and MR Waivers, deduct the following special earnings allowance if the patient is working (the work does NOT have to be part of treatment). The special earnings allowance is deducted from earned income only. Deduct:

a) for individuals employed 20 hours or more per week, all earned income up to 300% of SSI per month.

b) for individuals employed at least 8 but less than 20 hours per week, all earned income up to 200% of SSI per month.

EXAMPLE #20: **(Using January 2000 figures*)***

A working patient *in* the *MR* Waiver is employed 18 hours per week. *He has* gross earnings of $928.80 per month and SS of $300 monthly. His special earnings allowance is calculated first:

$	928.80	gross earned income
-	1,024.00	200% SSI maximum
$	0	remainder

$928.80 = special earnings allowance

His personal maintenance allowance is calculated as follows:

$	512.00	maintenance allowance
+	928.80	special earnings allowance
	$1,440.80	personal maintenance allowance