



## **DEPARTMENT OF HUMAN SERVICES**

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### **COFA Residents and Health Care Assistance in Hawaii**

#### **Background**

In 1996, Congress passed the Welfare Reform Act that made certain noncitizens, including citizens of island nations that have a Compact of Free Association (COFA) with the U.S., ineligible for Medicaid. In response, the State continued to provide Medicaid-like benefits to COFA residents using only State funds.

Under the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, States could opt to cover, under Medicaid, legally residing children and pregnant women who were ineligible for Medicaid due to citizenship or immigration status. Hawaii chose to expand Medicaid eligibility to cover these populations, leaving only non-pregnant adult COFA residents in receipt of state-funded medical assistance.

In 2010, through the Basic Health Hawaii (BHH) program, the State attempted to reduce the state-funded benefits provided to non-pregnant adult COFA residents and extend those benefits to lawful permanent residents who are resident in the U.S. for less than five years after their entry into the country (LPRs). A lawsuit was filed regarding the benefit reduction for COFA residents by individuals whose benefits would have been reduced, and a federal court issued an injunction requiring the State to provide Medicaid-like benefits to all non-pregnant adult COFA residents who would otherwise be eligible for Medicaid but for their citizenship status.

Also in 2010, Congress passed the Affordable Care Act (ACA). Under ACA, COFA residents and other lawfully present noncitizens are eligible to purchase health insurance through the State's health insurance exchange, called the Hawaii Health Connector (the Connector), and receive federal tax credits and cost-share reduction (APTC/CSR), which can significantly reduce the cost of that health insurance. However, lawfully present noncitizens who are ineligible for Medicaid due to their immigration status and have income of less than 100% of

the federal poverty level (FPL) will be treated as if their income is at 100% FPL, for purposes of calculating their tax credits and cost-share reduction. This means that, for example, while a citizen with income of less than 100% FPL would qualify for Medicaid and have no premiums, Medicaid-eligible noncitizens with income of less than 100% FPL will be required to pay the same premium as a citizen who has income of 100% FPL.

The State appealed the federal court injunction to the Ninth Circuit Court of Appeals, which ruled in favor of the State in April 2014. The injunction remained in place pending the plaintiffs' appeal to the U.S. Supreme Court. On November 3, 2014, the Supreme Court declined to hear the case ending the plaintiffs' appeal of the Ninth Circuit decision. The Ninth Circuit subsequently vacated the injunction, which had the practical effect of requiring the State to immediately comply with the BHH rules.

The Ninth Circuit held that Hawaii is not required to provide state-funded Medicaid-like services to noncitizens who are ineligible for Medicaid under federal law. In anticipation of the Supreme Court's decision to not hear the plaintiffs' appeal, DHS drafted and adopted emergency rules to avoid having to comply with the existing BHH rules. By doing so, DHS has ensured that thousands of non-pregnant adult COFA residents will neither lose their health care coverage nor have their health care benefits greatly reduced.

### **Response to Legal Decision in Favor of the State**

Eligible noncitizen children and pregnant women, including COFA residents, have been and continue to be eligible for Medicaid services, and DHS will continue to provide them with benefits under Medicaid.

DHS will continue to provide state-funded medical assistance benefits at the same level as the benefits available under Medicaid, including long-term care, to COFA residents who are aged, blind or disabled (ABD), and will extend those benefits to certain other adult noncitizens who are ABD.

DHS will stop providing state-funded benefits to adult noncitizens who are not ABD. These individuals can purchase federally subsidized health insurance through the Connector. They may also be able to receive state-funded premium assistance if they are enrolled in a 94% actuarial value Silver level plan (i.e., receiving the maximum cost-sharing reduction), and have a household income of less than 100% FPL, provided information necessary to verify household income is provided by the Connector to the individual's qualified health plan. DHS will make these payments directly to the health plan in which the eligible individual is enrolled. This will ensure continued coverage of the individual, and reimbursement at commercial rates for services provided to these individuals. The premium assistance program will not pay for any deductible, co-payment, co-insurance, or other cost-sharing arrangement.

## Transition

Emergency Rules: The emergency rules became effective on November 5, 2014 and will remain in effect for up to 120 days. This will allow the current level of state-funded benefits provided to existing COFA and LPR beneficiaries to continue, and allow DHS to accept applications for medical assistance from new adult noncitizens who are ABD.

**State-funded medical assistance to eligible adult noncitizens who are ABD will continue without interruption, even after expiration of the emergency rules.**

Premium Assistance: Premium assistance will be provided on an emergency basis to eligible adult noncitizens who are not ABD, pending adoption of administrative rules that will replace the temporary emergency rules.

Administrative Rule Making: DHS has started the administrative rule making process to establish a state-funded medical assistance program for adult noncitizens who are ABD, establish a premium assistance program for certain individuals purchasing a health plan through the Connector, and repeal the BHH program. DHS anticipates that this rule making process will be completed before the emergency rules expire.

### Application Processing:

Applications for pregnant women and children are not affected, and will continue to be processed for eligibility under the Medicaid program.

Under the emergency rules, DHS will continue to process applications from adult COFA residents who are ABD and will begin accepting applications from certain other adult noncitizens who are ABD. DHS will announce the start of an open application period.

Beginning November 15, 2014, DHS will transfer information to the Connector regarding COFA residents and other non-pregnant adult noncitizens who are not ABD and are currently receiving state-funded medical assistance so that the Connector can begin determining their eligibility for APTC/CSR. These individuals will have until February 15, 2015, the end of the Connector open enrollment period, to enroll in a health plan through the Connector in order to avoid a gap in coverage.

Also effective November 15, 2014, which is the beginning of the Connector's 2015 open enrollment period, new applications from COFA residents and other adult noncitizens, will be processed by DHS and the Connector in the same manner as any other application for health insurance coverage. Information regarding applicants who are determined by DHS to be ineligible for Medicaid or state-funded medical assistance under the emergency rules will be sent to the Connector for further processing.

Effect of New Administrative Rules: Upon completion of the administrative rule making process anticipated to be March 1, 2015, the BHH program will be repealed and DHS will stop providing medical assistance to adult noncitizens who are not ABD. COFA residents and other adult noncitizens who are ABD and who are receiving state-funded benefits on March 1, 2015 will be automatically transferred to the new state-funded program for adult noncitizens who are ABD and continue to receive Medicaid-like benefits without interruption.