

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Dept. Of Health & Welfare: IDAPA 16.03.05 – Rules Governing eligibility for Aid to the Aged, Blind and Disabled (AABD) (Docket No. 16-0305-0903) .

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 8-12-09. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 9-11-09.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: July 24, 2009

SUBJECT: Department of Health and Welfare:
IDAPA 16.03.05 – Rules Governing eligibility for Aid to the Aged, Blind and Disabled (AABD) (Docket No. 16-0305-0903) (Temporary and Proposed)

The Department of Health and Welfare submits temporary and proposed rule docket No. 16-0305-0903(Rules Governing eligibility for Aid to the Aged, Blind and Disabled (AABD), hereafter “temporary and proposed rule”. The Governor’s justification for the temporary rule is to reduce costs and align the rule with federal regulations. Separate parts of the temporary rule went into effect on March 1, March 11, April 1 and July 1, 2009. Broadly speaking, the purpose of the temporary and proposed rule is to reduce costs in the state supplemental payment program, a state-funded program that provides financial assistance to the aged, blind and disabled. The Department states that the temporary and proposed rule incorporates changes made in a previous temporary rule published in February under Docket No. 16-0305-0901.

According to the Department, the temporary and proposed rule is authorized pursuant to section 56-202, Idaho Code, Public Law 111-8, which includes the Afghan Allies Protection Act of 2009, 123 STAT. 809, the American Recovery and Reinvestment Act, Public Law 111-5; 123 STAT. 115, the Child Health Insurance Program Reauthorization Act, Public Law 111-3; 123 STAT. 8, and 20 CFR section 416.1233.

Section 56-202(b), Idaho Code, provides the Department with general and broad rulemaking authority under Idaho’s public assistance law.

The Department has provided a copy of section 602 of Public Law 111-8, the Omnibus Appropriations Act of 2009. Section 602 of Public Law 111-8 is the Afghan Allies Protection Act of 2009. Section 602(a)(8) of that Act, provides for resettlement support and other benefits for a citizen or national of Afghanistan who is granted special immigrant status as prescribed by federal law. 123 STAT. 809.

The Department has provided a copy of section 5006(b) of the American Recovery and Reinvestment Act of 2009. That section requires a state to disregard property located on a reservation, including real property and the improvements thereto, that is held in trust in determining eligibility of an individual who is an Indian for medical assistance under Medicaid.

The Department has provided copies of sections 113 and 211(b) of the Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3. Section 113 of the Act eliminates the requirement that a child be a member of the woman's household and the woman remains eligible for medical assistance, in order to remain eligible for one year. Section 211(b) deals with verification of declaration of citizenship or nationality for purposes of eligibility for Medicaid and CHIP. Section 211(b)(1) provides authority for acceptance of documentary evidence issued by a federally recognized Indian Tribe and section 211(b)(3) clarifies the documentation required for children born in the United States to Mothers eligible for Medicaid.

Twenty CFR section 416.1233, provides for a nine-month exclusion from resources of the unspent portion of any Title II or Tile XVI retroactive payment received by an eligible individual, with exceptions, under the supplemental security income for aged, blind and disabled program of the Social Security Act.

Although not cited as authority, the Department has provided a copy of Governor Otter's Executive Order No. 2008-03, dated December 1, 2008, which imposed a four percent reduction in General Fund spending authority.

Not cited as authority for this temporary and proposed rule are sections 56-203(b) and (g), Idaho Code. Section 56-203(b) provides the Department with the power to cooperate with the federal government in carrying out the purposes of any federal acts pertaining to public assistance or welfare services and other matters of mutual concern. Section 56-203(g) grants the Department the power to define persons entitled to medical assistance in such terms as will meet requirements for federal financial participation in medical assistance payments.

Additional relevant statutes not cited by the Department as authority are sections 56-209, 56-239, 56-240, 56-242, 56-253 and 56-257, Idaho Code. Section 56-209, Idaho Code, authorizes the Department's Director to promulgate rules establishing assistance programs for eligible families, define eligibility and other requirements of participation and establish time

limitations in conformity with federal law and regulation. Section 56-239 of the Idaho Health Insurance Access Card Act requires the Department's Director to implement the CHIP Plan B program by adopting rules recommended by the Board of the Idaho High Risk Reinsurance Pool. Section 56-240 of that Act requires the Director to implement the Children's Access Card Program by adopting rules recommended by that Board and section 56-242 of that Act requires the Director to develop an Idaho Health Insurance Access Card Program to implement the Children's Access Card Program and the Small Business Health Insurance Pilot Program and promulgate rules, as recommended by that Board, to implement these programs. Section 56-253 of the Idaho Medicaid Simplification Act provides broad powers and duties to the Director regarding the Medicaid program while section 56-257 of that Act requires the Department to establish enforceable cost sharing in order to increase the awareness and responsibilities of Medicaid participants for the cost of their health care and to encourage use of cost-effective care in the most appropriate setting.

According to the Department, no fees or charges are imposed by the temporary and proposed rule. The Department states that the temporary and proposed rule has an anticipated twelve month General Fund cost savings of \$1,093,920, regarding the capping of the state supplemental payment, and a twelve month General Fund cost savings of \$24,080, regarding the alignment of AABD citizenship rules with SSA regulations. The Department does not anticipate a fiscal impact to the General Fund for the new changes aligning the rule with federal regulations.

According to the Department, negotiated rulemaking was not conducted because the rulemaking is being made to comply with legislative intent. That legislative intent is not identified. The Department states that public hearing(s) will be scheduled if requested in writing by 25 persons, a political subdivision or an agency, not later than August 19, 2009. All written comments must be delivered to the Department on or before August 26, 2009.

ANALYSIS

1. Afghan Special Immigrant

The temporary and proposed rule describes an Afghan special immigrant as one who is eligible for eight, rather than six, months of assistance under the respective rules. Section 105.15. This provision went into effect on March 11, 2009, as a temporary rule. This change is consistent with Afghan Allies Protection Act of 2009, section 602(a)(8).

2. American Indians

The temporary and proposed rule permits a document issued by a federally recognized Indian tribe proving membership, enrollment in or affiliation with such a tribe to be accepted as the primary level of proof of U.S. citizenship and identity. Section 104.01.d. This temporary rule provision went into effect on April 1, 2009. Presumably because of the primary level of proof established by a tribal issued document, other sections are amended to eliminate certain Indian tribe records as providing lower levels of U.S. citizenship proof. See sections 104.03 and 05. This change is consistent with Children's Health Insurance Program Reauthorization Act of 2009, section 211(b)(1). These temporary rule provisions went into effect on March 1, 2009.

Section 242 of the temporary and proposed rule excludes certain property in determining the eligibility of an Indian, including real property and improvements located on a reservation, ownership interest in rents, leases, royalties or usage rights related to natural resources resulting from federally protected rights, and ownership interests in or usage rights to property that have a unique religious, spiritual, traditional or cultural significance or rights that support subsistence or traditional lifestyle according to applicable tribal law or customs. This provision is consistent with section 5006 of the American Recovery and Reinvestment Act of 2009. Section 210 of the temporary and proposed rule broadly states that a resource excluded by federal law is not counted in determining the resource amount available to the participant. While this provision goes beyond American Indians, it is consistent with section 5006 of the American Recovery and Reinvestment Act and with 20 CFR section 416.1233. These temporary rules went into effect on July 1, 2009.

3. Newborn Children

The temporary and proposed rule provides that individuals deemed eligible for Medicaid as a newborn under section 800 of the rule meets the U.S. citizenship and identity requirements and is not required to provide documentation of citizenship and identity. Section 104.09.e. This change is consistent with Children's Health Insurance Program Reauthorization Act of 2009, section 211(b)(3). Section 800 of the temporary and proposed rule eliminates that requirement that the child live with its mother and that she be eligible for Medicaid (or would be if pregnant). This is consistent with section 113 of the CHIP Reauthorization Act. These temporary rule provisions went into effect on April 1, 2009.

4. AABD Cash Eligibility and Benefits

The temporary and proposed rule provides that an individual must provide documentation of U.S. citizenship and identity to be eligible for AABD cash. Section 104. Also required for AABD cash is membership in a specified group. Section 105. In addition to these eligibility

criteria a qualified noncitizen must meet the eligibility requirement for Supplemental Security Income (SSI) payments. Section 106. If such a qualified noncitizen received an AABD cash payment in February 2009, but does not meet the SSI eligibility requirements, that individual may continue to receive the AABD cash payments, if otherwise eligible, until a break in payment occurs due to failure to complete a redetermination of benefits or the individual fails to become a naturalized citizen within two years and the SSI eligibility requirements have not been met. The temporary and proposed rule caps the maximum AABD cash payment at \$53 per month. Section 500.02. These temporary rule provisions went into effect on March 1, 2009.

SUMMARY

The Department's temporary and proposed rule changes appear to be authorized under sections 56-202(b), 56-203(b) and (g), 56-209 and 56-257, Idaho Code.

cc: Department of Health and Welfare
Tamara Prisock & Peggy Cook

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0903

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of these temporary rules are March 1, 2009, March 11, 2009, April 1, 2009, and July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and, proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, Public Law 111-8, the American Recovery and Reinvestment Act of 2009, CHIP Reauthorization Act of 2009, and 20 CFR 416.1233.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order to reduce costs, the Department worked with the Social Security Administration (SSA) concerning the State Supplemental Payment (SSP) program which is a state-funded program that provides financial aid to the aged, blind, and disabled population in Idaho. The Department amended this chapter under temporary rule Docket No. 16-0305-0901 published in the February 4, 2009, Idaho Administrative Bulletin, Vol. 09-2, pages 12-19. The temporary rule allowed the state to remain in compliance with SSA federal regulations and reduce costs. The original temporary rules are being rescinded in this Bulletin, and republished as temporary and proposed rules under this Docket No. 16-0305-0903 with the same effective dates.

This new docket includes all changes made in the original temporary rules, as well as the following changes made to align these rules with federal regulations:

1. Extension of Afghani immigrant benefits under P.L. 111-8;
2. Resources excluded under the American Recovery and Reinvestment Act of 2009;
3. Citizenship documentation requirements and newborns deemed eligible under the CHIP Reauthorization Act of 2009; and
4. Lump sum payments for retroactive Social Security benefits under 20 CFR 416.1233.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because of his order to reduce cost and to align these rules with federal regulations.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The anticipated fiscal impact for capping the State Supplemental Payment is a net cost savings over a 12-month period of \$1,093,920 in state general funds. The anticipated fiscal impact for aligning AABD citizenship rules with SSA regulations is a net cost savings over a 12-month period of \$24,080 in state general funds. There is no anticipated fiscal impact to state general funds for the new changes aligning these rules with federal regulations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these cost saving measures are being required to meet legislative intent.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 2nd day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0305-0903

102. —~~103.~~ (RESERVED).

1043. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

The applicant must provide his social security number (SSN) or proof he has applied for an SSN, to the Department before approval of eligibility. If the applicant has more than one (1) SSN, all numbers must be provided. The SSN must be verified by the Social Security Administration (SSA) electronically. An applicant with an unverified SSN is not eligible for AABD cash or Medicaid benefits. The Department must notify the applicant in writing if eligibility is denied or lost for failure to meet the SSN requirement. (3-20-04)

01. Application for SSN. To be eligible, the applicant must apply for an SSN, or a duplicate SSN when he cannot provide his SSN to the Department. If the SSN has been applied for but not issued by the SSA, the Department can not deny, delay, or stop benefits. The Department will help an applicant with required documentation when the applicant applies for an SSN. (3-20-04)

02. Failure to Apply for SSN. The applicant may be granted a good cause exception for failure to apply for an SSN if they have a well-established religious objection to applying for an SSN. A well-established religious objection means the applicant: (3-20-04)

- a.** Is a member of a recognized religious sect or division of the sect; and (3-20-04)
- b.** Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number. (3-20-04)

03. SSN Requirement Waived. An applicant may have the SSN requirement waived when he is: (3-20-04)

- a.** Only eligible for emergency medical services as described in Section 801 of these rules; or

(3-20-04)

- b. A newborn child deemed eligible as described in Section 800 of these rules. (4-2-08)

1054. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

To be eligible for AABD cash and Medicaid, an individual must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Subsection 1054.09 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. ~~(4-2-08)~~(3-1-09)T

01. Documents Accepted as Primary Level Proof of Both U.S. Citizenship and Identity. The following documents are accepted as the primary level of proof of both U.S. citizenship and identity: (3-30-07)

- a. A U.S. passport; (3-30-07)
b. A Certificate of Naturalization, DHS Forms N-550 or N-570; or (3-30-07)
c. A Certificate of U.S. Citizenship, DHS Forms N-560 or N-561. (3-30-07)

d. A document issued by a federally-recognized Indian tribe evidencing membership, enrollment in, or affiliation with such tribe. ~~(4-2-08)~~(4-1-09)T

02. Documents Accepted as Secondary Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if the proof in Subsection 1054.01 of this rule is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 1054.05 through 1054.07 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a. A U.S. birth certificate that shows the individual was born in one (1) of the following: (3-30-07)
i. United States fifty (50) states; (3-30-07)
ii. District of Columbia; (3-30-07)
iii. Puerto Rico, on or after January 13, 1941; (3-30-07)
iv. Guam, on or after April 10, 1899; (3-30-07)
v. U.S. Virgin Islands, on or after January 17, 1917; (3-30-07)
vi. America Samoa; (3-30-07)
vii. Swain's Island; or (3-30-07)
viii. Northern Mariana Islands, after November 4, 1986; (3-30-07)
b. A certification of report of birth issued by the Department of State, Forms DS-1350 or FS-545; (3-30-07)
c. A report of birth abroad of a U.S. Citizen, Form FS-240; (3-30-07)
d. A U.S. Citizen I.D. card, DHS Form I-197; (3-30-07)
e. A Northern Mariana Identification Card, Form I-873; (3-30-07)
f. An American Indian Card issued by the Department of Homeland Security with the classification

- code "KIC," Form I-873; (3-30-07)
- g.** A final adoption decree showing the child's name and U.S. place of birth; (3-30-07)
 - h.** Evidence of U.S. Civil Service employment before June 1, 1976; (4-2-08)
 - i.** An official U.S. Military record showing a U.S. place of birth; (4-2-08)
 - j.** A certification of birth abroad, FS-545; (4-2-08)
 - k.** A verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database; or (4-2-08)
 - l.** Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000. (4-2-08)

03. Documents Accepted as Third Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship if a primary or secondary level of proof is not available. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 1054.05 through 1054.07 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a.** A written hospital record on hospital letterhead established at the time of the person's birth that was created five (5) years before the initial application date that indicates a U.S. place of birth; (4-2-08)
- b.** A life, health, or other insurance record that was created at least five (5) years before the initial application date and that indicates a U.S. place of birth; (4-2-08)
- c.** A religious record recorded in the U.S. within three (3) months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization; or (4-2-08)
- d.** An early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the names and places of the birth of the child's parents. (4-2-08)

04. Documents Accepted as Fourth Level Proof of U.S. Citizenship but Not Identity. The following documents are accepted as proof of U.S. citizenship only if documents in Subsections 1054.01 through 1054.03 of this rule do not exist and cannot be obtained for a person who claims U.S. citizenship. These documents are not proof of identity and must be used in combination with a least one (1) document listed in Subsections 1054.05 through 1054.07 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a.** Federal or state census record that shows the individual has U.S. citizenship or a U.S. place of birth; (3-30-07)
- b.** One (1) of the following documents that shows a U.S. place of birth and for a participant who is sixteen (16) years of age or older was created at least five (5) years before the application for Medicaid. For a child under sixteen (16) years of age, the document must have been created near the time of birth; (4-2-08)
 - ~~i.~~ ~~Seneca Indian tribal census record;~~ ~~(3-30-07)~~
 - ~~ii.~~ Bureau of Indian Affairs tribal census records of the Navajo Indians; (3-30-07)
 - ~~iii.~~ U.S. State vital Statistics official notification of birth registration; (3-30-07)
 - ~~iv.~~ ~~ii.~~ A delayed U.S. public birth record that was recorded more than five (5) years after the person's birth; (4-2-08)

- iv. Statement signed by the physician or midwife who was in attendance at the time of birth; (3-30-07)
- vi. Medical (clinic, doctor, or hospital) record; (3-30-07)
- vii. Institutional admission papers from a nursing facility, skilled care facility or other institution; (4-2-08)
- viii. Bureau of Indian Affairs (BIA) roll of Alaska Natives; or (4-2-08)
- c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct." A declaration is accepted for proof of U.S. citizenship or naturalization if no other documentation is available and complies with the following: (4-2-08)
 - i. Declarations must be made by two (2) persons who have personal knowledge of the events establishing the individual's claim of U.S. citizenship; (3-30-07)
 - ii. One (1) of the persons making a declaration cannot be related to the individual claiming U.S. citizenship; (3-30-07)
 - iii. The persons making the declaration must provide proof of their own U.S. citizenship and identity; and (3-30-07)
 - iv. A declaration must be obtained from the individual applying for Medicaid, a guardian, or representative that explains why the documentation does not exist or cannot be obtained. (3-30-07)

05. Documents Accepted for Proof of Identity but Not Citizenship. The following documents are accepted as proof of identity. They are not proof of citizenship and must be used in combination with at least one (1) document listed in Subsection 1054.02 through 1054.04 of this rule to establish both citizenship and identity. ~~(4-2-08)~~(3-1-09)T

- a. A state-issued driver's license bearing the individual's picture or other identifying information such as name, age, gender, race, height, weight, or eye color; (3-30-07)
- b. A federal, state, or local government-issued identity card with the same identifying information that is included on driver's licenses as described in Subsection 1054.05.a. of this rule; ~~(3-30-07)~~(3-1-09)T
- c. School identification card with a photograph of the individual; (3-30-07)
- d. U.S. Military card or draft record; (3-30-07)
- e. Military dependent's identification card; (3-30-07)
- f. U. S. Coast guard Merchant Mariner card; (3-30-07)
- ~~g. Certificate of Degree of Indian blood; (4-2-08)~~
- ~~h. Native American Indian or Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual; (4-2-08)~~
- ig. A cross-match with a federal or state governmental, public assistance, law enforcement, or corrections agency's data system; or (4-2-08)
- jh. A declaration signed under the penalty of perjury by the facility director or administrator of a residential care facility where a disabled participant resides may be accepted as proof of identity when the individual does not have or cannot get any document in Subsections 1054.05.a. through 1054.05.i. of this rule. ~~(4-2-08)~~(3-1-09)T

06. Additional Documents Accepted for Proof of Identity. If the participant provides citizenship documentation as described in Subsections 1054.02 or 1054.03 of this rule, three (3) or more corroborating documents may be used to prove identity. ~~(4-2-08)~~(3-1-09)T

07. Identity Rules for Children. The following documentation of identity for children under sixteen (16) may be used: (3-30-07)

a. School records may be used to establish identity. Such records also include nursery or daycare records. (3-30-07)

b. Clinic, doctor, or hospital records. (4-2-08)

c. A written declaration, signed and dated, which states, "I declare under penalty of perjury that the foregoing is true and correct," if documents listed in Subsection 1054.02 of this rule are not available. A declaration may be used if it meets the following conditions: ~~(3-30-07)~~(3-1-09)T

i. It states the date and place of the child's birth; and (3-30-07)

ii. It is signed by a parent or guardian. (3-30-07)

d. A declaration can be used for a child up to the age of eighteen (18) when documents listed in Subsection 1054.05.a. through 1054.05.c. of this rule are not available. ~~(4-2-08)~~(3-1-09)T

e. A declaration cannot be used for identity if a declaration for citizenship documentation was provided for the child. (3-30-07)

08. Eligibility for Applicants and Medicaid Participants Who Do Not Provide Citizenship and Identity Documentation. (3-30-07)

a. Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation; (3-30-07)

b. Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

i. Does not meet other eligibility criteria required in this chapter of rules; or (3-30-07)

ii. Refuses to obtain the documentation. (3-30-07)

09. Individuals Considered as Meeting the U.S. Citizenship and Identity Documentation Requirements. The following individuals are considered to have met the U.S. citizenship and identity documentation requirements, regardless of whether documentation required in Subsections 1054.01 through 1054.08 of this rule is provided: ~~(4-2-08)~~(3-1-09)T

a. Supplemental Security Income (SSI) recipients; (4-2-08)

b. Individuals determined by the SSA to be entitled to or are receiving Medicare; (4-2-08)

c. Social Security Disability Income (SSDI) recipients; and (4-2-08)

d. Adoptive or foster care children receiving assistance under Title IV-B or Title IV-E of the Social Security Act. (4-2-08)

e. Individuals deemed eligible for Medicaid as a newborn under Section 800 of these rules. (4-1-09)T

10. Assistance in Obtaining Documentation. The Department will assist individuals who are

mentally or physically incapacitated and who lack a representative to assist them in obtaining such documentation. (3-30-07)

11. Provide Documentation of Citizenship and Identity One Time. When an individual has provided citizenship and identity documents, changes in eligibility will not require an individual to provide such documentation again unless later verification of the documents provided raises a question of the individual's citizenship or identity. (3-30-07)

1065. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible for AABD cash and Medicaid, an individual must be a member of one (1) of the groups listed in Subsections 1065.01 through 1065.17 of ~~these~~ this rules. An individual must also provide proof of identity as provided in Section 1054 of these rules. (~~5-8-09~~)(3-1-09)T

- 01. U.S. Citizen.** A U.S. Citizen. (3-30-07)
- 02. U.S. National, National of American Samoa or Swain's Island.** A U. S. National, National of American Samoa or Swain's Island. (3-30-07)
- 03. Child Born Outside the U.S.** A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)
- a.** At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)
 - b.** The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a U.S. Citizen; (3-30-07)
 - c.** The child is under eighteen (18) years of age; (3-30-07)
 - d.** The child is a lawful permanent resident; and (3-30-07)
 - e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member. (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran. (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) and remained continuously present in the U.S. until they became a qualified alien. (3-30-07)
- 07. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and; (3-30-07)
- a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; (3-30-07)
 - b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; (3-30-07)
 - c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C.

1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; (3-30-07)

d. Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)

e. Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry. (3-30-07)

08. Qualified Non-Citizen Entering on or After August 22, 1996. A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years. (3-30-07)

09. American Indian Born in Canada. An American Indian born in Canada under 8 U.S.C. 1359. (3-30-07)

10. American Indian Born Outside the U.S. An American Indian born outside of the U.S., and is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e). (3-30-07)

11. Qualified Non-Citizen Child Receiving Federal Foster Care. A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance. (3-30-07)

12. Victim of Severe Form of Trafficking. A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

a. Is under the age of eighteen (18) years; or (3-20-04)

b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)

i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)

ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

13. Qualified Non-Citizen Receiving Supplement Security Income (SSI). A qualified non-citizen under 8 U.S.C. 1641(b) or (c), and is receiving SSI; or (3-20-04)

14. Permanent Resident Receiving AABD Cash On August 22, 1996. A permanent resident receiving AABD cash on August 22, 1996. (3-20-04)

15. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law 110-161, who has special immigration status after December 26, 2007, are eligible for ~~six~~ eight (68) months from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. ~~(5-8-09)~~(3-11-09)T

16. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law 110-181, who has special immigration status after January 28, 2008, is eligible for eight (8) months from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)

17. Individuals Not Meeting the Citizenship or Qualified Non-Citizen Requirements. Individuals who do not meet the citizenship or qualified non-citizen requirements in Subsections 1065.01 through 1065.16 of this rule, may be eligible for emergency medical services if they meet all other conditions of eligibility. ~~(5-8-09)~~(3-11-09)T

106. QUALIFIED NON-CITIZEN ELIGIBILITY REQUIREMENTS FOR AABD CASH.

01. Eligibility Requirements for AABD Cash Beginning March 1, 2009. Beginning with applications dated March 1, 2009, to be eligible for AABD cash assistance, a qualified non-citizen must meet the requirements in Section 105 of these rules and must meet the eligibility requirements for Supplemental Security Income (SSI) payments. (3-1-09)T

02. Receiving AABD Cash Prior to March 1, 2009. A qualified non-citizen who was eligible for and received an AABD cash payment for February 2009, but does not meet the SSI eligibility requirements, will continue to receive an un-capped cash benefit as long as all other eligibility requirements are met until one (1) of the following occurs: (3-1-09)T

a. A break in the qualified non-citizen's AABD cash payment occurs because he failed to complete a redetermination for benefits; or (3-1-09)T

b. The qualified non-citizen has not become a naturalized citizen and two (2) years have passed from March 1, 2009, and he does not meet the eligibility requirements for SSI payments. (3-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

210. RESOURCES EXCLUDED BY FEDERAL LAW.

A resource excluded by federal law is not counted in determining the resource amount available to the participant. (7-1-09)T

210~~1~~ -- 214. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

242. ~~TRUST OR RESTRICTED INDIAN LANDS PROPERTY EXCLUDED.~~

~~Restricted allotted land, owned by a participant who is of Indian descent from a Federally recognized Indian tribe, is an excluded resource if the participant cannot sell, transfer or otherwise dispose of it without permission from other participants, his tribe or an agency of the Federal Government.~~ For the purposes of determining eligibility for an individual who is an Indian, the following property is excluded: (7-1-99)(7-1-09)T

01. Property. Real property and improvements located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs. (7-1-09)T

02. Natural Resources. Ownership interest in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally protected rights. (7-1-09)T

03. Other Ownership Interests or Usage Rights. Ownership interests in or usage rights to property not covered by Subsections 242.01 or 242.02 of this rule that have a unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle according to applicable tribal law or custom. (7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

255. RETROACTIVE SSI AND AABD BENEFITS.

Retroactive SSI and AABD benefits are issued after the calendar month for which they are paid. Retroactive AABD, SSI and RSDI benefits are excluded from resources for ~~six~~ nine (69) calendar months after the month they are

received. Interest earned by excluded funds is counted as income.

~~(7-1-99)~~(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

500. FINANCIAL NEED AND AABD CASH AMOUNT.

01. Meet Eligibility for Financial Need. To be eligible for AABD cash and Medicaid, the participant must have financial need. The participant has financial need if his allowances, as described in Sections 501 through 513 of these rules, are more than his income. The amount of financial need is the amount that the allowances exceed income. (3-1-09)T

02. Maximum Monthly AABD Cash Payment. If the participant is eligible, his AABD cash payment is the difference between his financial need and his countable income. If the difference is not an even dollar amount, AABD cash is paid at the next higher dollar. The maximum monthly AABD cash payment, for a participant described in Subsections 501.01 and 501.02 of these rules, is fifty-three (\$53) dollars. AABD cash is paid electronically as set forth in IDAPA 16.03.20, "Rules Governing Electronic Payments (EP) of Public Assistance, Food Stamps, and Child Support." ~~(3-30-07)~~(3-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

800. NEWBORN CHILD OF MEDICAID MOTHER.

A child is deemed eligible for Medicaid without an application if born to a woman receiving Medicaid on the date of the child's birth. ~~The child must live with his mother. She must be eligible for Medicaid, or would be, if pregnant.~~ The child remains eligible for Medicaid for up to one (1) year without an application. An application for Medicaid must be filed on behalf of the child no later than his first birthday. He must qualify for Medicaid in his own right after the month of his first birthday. ~~(7-1-99)~~(4-1-09)T