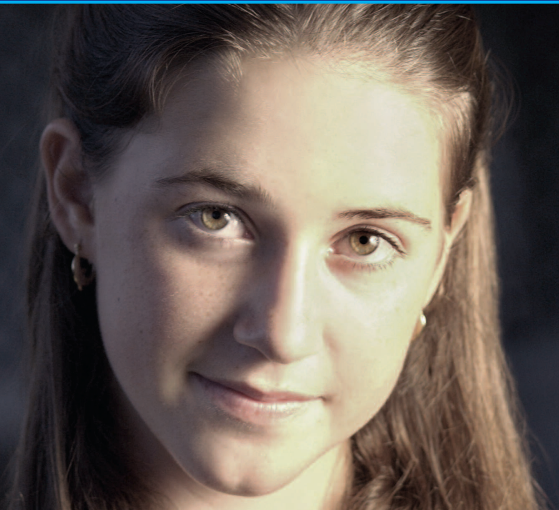
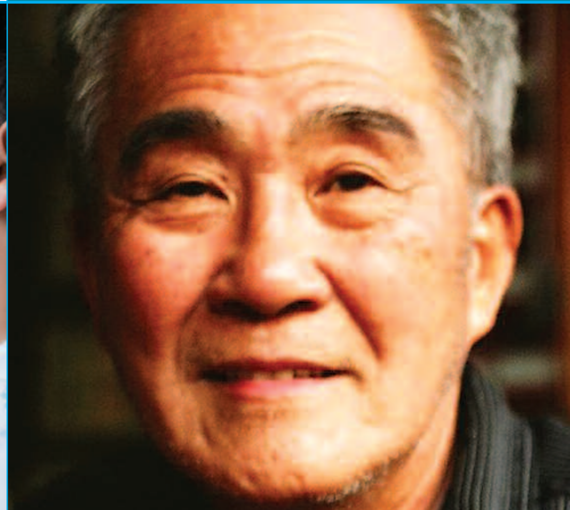
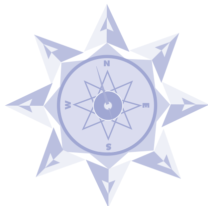




COMMUNITY, MIGRANT AND HOMELESS HEALTH CENTER HANDBOOK

IMMIGRANT ELIGIBILITY FOR PUBLICLY FUNDED HEALTH CARE BENEFITS

Support for this work was provided by the New York State Health Foundation (NYSHealth). The mission of NYSHealth is to expand health insurance coverage, increase access to high-quality health care services, and improve public and community health. The views presented here are those of the authors and not necessarily those of the New York State Health Foundation or its directors, officers, or staff.



CHCANYS would like to thank the hard working staff at health centers across New York State who participated in the Immigrant Eligibility & Coverage Workgroup and provided support for this project and invaluable input to the content of this guide, especially staff from Community Health Center of Buffalo, Finger Lakes Migrant Health Care Project, Oak Orchard Community Health Center and Open Door Family Medical Centers.

CHCANYS's purpose is to ensure that the medically underserved living in New York State have access to quality community-based health care services. To do this, the Community Health Care Association of New York State (CHCANYS) serves as the voice of community health centers as leading providers of primary health care in New York State.

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The Empire Justice Center is a statewide multi-issue, multi-strategy non-profit law firm focused on changing the "systems" within which poor and low-income families live.

PREFACE

The rules governing the eligibility of individuals who are not citizens of the United States for federal or state public benefits, including medical assistance, are complicated. They are also subject to change. This manual addresses the immigrant eligibility rules of the various health care programs in New York as they existed in December of 2008. Although these rules are unlikely to alter substantially within the next few years, advocates should be aware of the potential for change, including the possibility of national immigration reform, which is likely to establish new immigrant classifications. How those classifications will fit into the structure described here remains to be seen.

This manual does not address eligibility requirements in the health insurance programs other than the immigration status restrictions. It is assumed that the immigrant applying for medical assistance otherwise meets all the financial and other non-immigrant related requirements of the particular program.

IMMIGRANT ELIGIBILITY FOR PUBLICLY FUNDED HEALTH CARE BENEFITS

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I. NEW YORK'S PUBLIC HEALTH INSURANCE PROGRAMS

MEDICAID

Medicaid is a health insurance program for very low income people. Although to the applicant or recipient it appears as one program, there are actually two parts to the program – one is paid for by federal (50%), state (25%) and local (25%) funds and the other component is paid for solely by state and local funds (50%-50%). The state and locally funded component (also called State Medicaid) exists for those who, for non-financial reasons, are not eligible for the federally supported program (also called federal Medicaid). The two main groups that rely on State Medicaid are single adults who are neither aged nor disabled and certain groups of immigrants whose status makes them ineligible for the federal program. The latter group includes immigrants in a "qualified alien" status subject to the five year bar and those who do not have a qualifying status but who are permanently residing under color of law (PRUCOL). These immigration categories are discussed more fully in chapter 3.

Medicaid pays for all medically necessary care.[1] This includes hospitalization and out-patient care, mental health services, physical therapy, diagnostic tests, durable medical equipment and prescription drugs. Children under 21 years of age are also entitled to a comprehensive benefits package called Early and Periodic Screening, Diagnosis and Treatment ("EPSDT"). Most, though not all, New York State residents are required to join managed care plans. Application for benefits can be made at a local county social services district; a community based facilitated enroller, at a hospital or with a Managed Care Plan.

Applications must be processed within 30 days for pregnant women and children, within 45 days for adults and within 90 days for disability based applications. [18 N.Y.C.R.R. § 360-2.4(a).][2] Applicants may be eligible for retroactive Medicaid coverage for the 3 month period prior to the date on which the application for Medicaid is filed if they were eligible in the month the medical services were received. [18 N.Y.C.R.R. § 360-2.4(c).] Although a New York State appellate court has held that in case of immediate need, a preliminary or temporary Medicaid authorization must be provided even before the application process is completed, there is as yet no express provision in law or policy providing for immediate assistance. The case is called City of New York v. Novello, 51 A.D.3d 544, 858 N.Y.S.2d 154 (N.Y.A.D. 1 Dept., May 22, 2008).

The income limits for Medicaid vary depending on whether the applicant is a child, a pregnant woman, a household with children or disabled or elderly. There are also resource tests for most applicants over the age of 21. Resources may include bank accounts, life insurance policies, property that is not the applicant's primary residence, some cars and other assets. The income and resource guidelines for Medicaid can be found on the Department of Health (DOH) website at http://www.health.state.ny.us/health_care/medicaid/#qualify.

Even with income or resources over the limits, people who are disabled, over 65 or the caretaker of a child under 21 may be eligible for the "Medicaid spend down program." This program allows such individuals to obtain Medicaid once they have incurred medical bills in any month in the amount their income and/or resources are over the monthly Medicaid limits. For working people who are disabled with incomes significantly above the traditional Medicaid levels, there is a special program called "Medicaid Buy-In for Working People with Disabilities."

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[1] There is no difference between the medical services covered by the federal program and that financed solely through state and local funds.

[2] The reference is to Title 18 of the N.Y. Code of Rules and Regulations governing state administration of the Medicaid program.

For additional information about Medicaid programs, go to the website of the Department of Health: http://www.health.state.ny.us/health_care/medicaid.

EMERGENCY MEDICAID

Emergency Medicaid is a federal Medicaid program for New York residents who, solely because of their immigration status, are ineligible for regular Medicaid. To be eligible for Emergency Medicaid the individual has to be a resident of New York, eligible for Medicaid but for his or her immigration status and suffering from a "medical condition…manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (A) placing the person's health in serious jeopardy; (B) serious impairment to bodily functions; or serious dysfunction of any bodily organ or part." This is the definition found in federal law at 42 USC section 1396b(v)(3). Certification that a medical condition is an emergency must be done by the doctor on a state supplied form. A copy of the current form is found at http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/07ma006att.pdf.

The period of certification cannot exceed 90 days: http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/07ma006.pdf. Subsequent certifications for additional 90 day periods can be submitted if the need for care continues. A new application is required if the need for treatment continues beyond a year.

The certification period must begin at least one day before the application for Emergency Medicaid is filed. Although the period can extend into the future, forward from the date the application for Emergency Medicaid is filed, prospective coverage cannot exceed 60 days. Practically speaking, this means that if certification is sought for the full 90 days, the application for Emergency Medicaid should be filed no earlier than 30 days after the start of treatment of the emergency condition. These time frames are set forth in NYS DOH's Medicaid Update, found at http://www.health.state.ny.us/health_care/medicaid/program/update/2008/2008-07.htm#pay.

FAMILY HEALTH PLUS

Family Health Plus (FHPlus) is a program for adults between the ages of 19 and 64 who, because of income, are not eligible for regular Medicaid. The program provides assistance to adults without children whose income is at 100% of the federal poverty line (FPL).[3] Adults who have children are eligible with income up to 150% of the FPL. All FHPlus participants must enroll in a managed care plan.

The first 6 months of coverage are guaranteed, even if the participant's income goes up above the guidelines. As with Medicaid, if a participant cannot pay his or her co-pay, the provider cannot deny services.

Some services are not covered by FHPlus, like long term care, medical supplies and transportation other than for emergencies. Unlike Medicaid, FHPlus does not pay for medical costs incurred before the date the application, including all required documentation, is completed. The time frame for eligibility determinations are the same as for Medicaid, i.e. 30 days for households with children or a pregnant woman and 45 days from the date of application for all others. However, coverage is not effective until enrollment with a plan and the county has 45 days after the date of the eligibility determination to effect such enrollment. People can apply for FHPlus at the local social services district, a community facilitated enroller or with a FHPlus managed care plan. A list of facilitated enrollers by county is available at the New York State Department of Health website at http://www.health.state.ny.us/nysdoh/fhplus/where.htm.

[3] See the Glossary for more about the Federal Poverty Line.

CHILD HEALTH PLUS AND CHILDREN'S MEDICAID

New York's health insurance program for children under the age of 19 is referred to as Child Health Plus ("CHP"). Until recently, the program was described as consisting of two components, CHP A and CHP B, with CHP A referring to the Medicaid program for children and CHP B referring to a separate, non-Medicaid program for children from families with income above the Medicaid cap and for children without lawful immigration status. The terminology has changed. DOH no longer refers to CHP A and CHP B but instead, uses the term Medicaid for children for what was CHP A and CHP for what was CHP B.

Medicaid for children has higher income eligibility levels than New York's other Medicaid programs and no resource test. Children are guaranteed one year of continuous Medicaid coverage even if the household's income goes above the guideline. New York has also begun implementing a program of presumptive Medicaid eligibility for children, allowing selected Federally Qualified Health Centers to bill Medicaid for services provided to children who have submitted applications and are awaiting eligibility determinations. The DOH policy on presumptive eligibility can be found at: http://www.health.state.ny.us/health_care/medicaid/publications/docs/adm/08adm-2.pdf .

The CHP program, formerly known as CHP B, is for children in families with income above the eligibility levels in the Medicaid for children program. It also covers children who are without lawful immigration status or who are in a temporary non-immigrant status as long as they reside in New York. An example of the latter would be the child of foreign students studying in the U.S. for an extended period. CHP services are provided through a managed care plan and do not include orthodontia treatment, long term care services, medical transportation (other than emergencies) or medical supplies, all of which are covered for children in the Medicaid program. In addition, unlike children enrolled in the Medicaid program, CHP beneficiaries do not have the right to a fair hearing if they have a dispute with the managed care provider.

Income guidelines and other application information for CHIP can be found at http://www.health.state.ny.us/nysdoh/chplus/who_is_eligible.htm.

PRENATAL CARE ASSISTANCE PROGRAM

The Prenatal Care Assistance Program ("PCAP") is a Medicaid program for pregnant women who live in New York State. Anyone whose income is at or below 200% of the federal poverty level (FPL) is eligible. PCAP pays for all pre-natal care and up to 60 days of post-natal care. However, the medical care provided to a pregnant woman whose income is at or below 100% of the FPL is not limited to pre- or post-natal care. A qualified PCAP provider is authorized to treat a pregnant woman as presumptively eligible for PCAP, allowing her to get immediate coverage for her health care. The provider can issue a "pending letter" so that eligible women can get health care even while waiting for their Medicaid card to be issued. A baby born to a PCAP insured mother is automatically eligible for Medicaid for his or her first full year of life. Additional information about PCAP can be found at the DOH website at http://www.health.state.ny.us/nysdoh/perinatal/en/pcap.htm .

AIDS DRUG ASSISTANCE PROGRAM

New York has several programs to assist persons with HIV/AIDS, including the AIDS Drug Assistance Program (ADAP). These programs provide for the payment of prescription drugs, outpatient care, home care and health insurance subsidies. Income and resource limits are relatively high (substantially above the FPL). There are no immigration status requirements; one need only be a New York State resident.

For more information about the services available, call (800) 542-2437 or visit www.health.state.ny.us/diseases/aids/resources/adap/eligibility.htm.

A cautionary note: immigrants receiving benefits under one of the AIDS assistance programs who plan to apply for adjustment of status should consult an immigration attorney before filing with immigration.

ELDERLY PHARMACEUTICAL INSURANCE COVERAGE (EPIC)

EPIC is a New York State program that helps elderly people pay for their prescription drugs. EPIC also helps members pay for Medicare Part D premiums. To be eligible for EPIC, the individual must be a New York resident aged 65 or older. Annual income cannot exceed $35,000 a year for a single person and $50,000 a year for a couple. There are two components to EPIC. Individuals with lower incomes pay a low quarterly fee and participate in the Fee Plan. Those with higher incomes must meet an annual deductible and participate in the deductible plan. Those who pay a fee or who have met their deductible, pay a co-payment at the pharmacy when purchasing a prescription. EPIC has no immigration status requirements nor does the program require a Social Security Number (SSN). A member must only provide evidence of income and New York State residence. More information about EPIC is available at the DOH website at http://www.health.state.ny.us/health_care/epic/index.htm.

FAMILY PLANNING EXTENSION PROGRAM

The Family Planning Extension Program (FPEP) extends Medicaid family planning benefits to women who lose eligibility after the end of their pregnancy and who have no other health insurance coverage. FPEP provides women with up to 24 months of family planning services. To be eligible, the applicant must have been pregnant within the past two years and have had full PCAP coverage when the pregnancy ended (no matter how it ended).

In contrast to New York's Family Planning Benefit Program (FPBP), for which only U.S. citizens and lawfully residing immigrants are eligible, women and adolescents are eligible for FPEP regardless of their immigration status. It does not cover abortions. For a description of FPEP, and a list of the local programs that provide services, see http://www.health.state.ny.us/community/pregnancy/familyplanning/index.htm.

HEALTHY NEW YORK

Healthy New York is a reduced health insurance program for uninsured workers whose income is above the limits in the Medicaid or FHPlus programs. The program is provided throughout New York State through HMOs. Gross household income must be at or below 250% of FPL. Beneficiaries must be New York residents. There are no citizenship requirements. Not all services are covered. Those services that are covered are subject to a co-pay. To find out which HMOs are available in a particular area and their premium rates, call (866) 432-5849 or visit http://www.ins.state.ny.us/website2/hny/english/hny.htm. Applications are submitted directly to a health plan and must be accompanied by proof of residence, household income and employment status.

MEDICAID CANCER TREATMENT PROGRAM

Eligibility for this program is established through cancer screenings by agencies participating in the New York State Cancer Services Program. A list of local organizations that perform the required screening can be found at http://www.nyhealth.gov/nysdoh/cancer/center/cancerhome.htm . The program is for the treatment of breast and cervical cancer as well as colorectal and prostate cancer.

To be eligible for the Medicaid Treatment Program, an applicant's income cannot exceed 250% of FPL. Participants in the program must be uninsured and ineligible for Medicaid under any other category. In addition, he or she must be a New York State resident and a U.S. citizen or non-citizen with a satisfactory immigration status. To be eligible for the treatment of breast or cervical cancer, the applicant must be at least 18 years old. For the treatment of colorectal or prostate cancer, the applicant must be under 65. (For immigrants without status who have been diagnosed with cancer, application should be made for coverage through the Emergency Medicaid program.)

II. A GLIMPSE INTO THE WORLD OF IMMIGRATION

It is difficult to make sense of the rules that govern the eligibility of immigrants for various benefit programs without understanding at least a little about the immigration process itself. Immigration is one of the more complex areas of the law. It is governed entirely by federal statute, called the Immigration and Nationality Act.[4]

The federal agency in charge of immigration now is the Department of Homeland Security (DHS). Under its umbrella are three agencies that are responsible for the functions that its predecessor agency, the Immigration and Naturalization Service (INS), used to perform. The agency that handles applications and petitions for immigration status or other benefits is the United States Citizenship and Immigration Service (USCIS). The immigration enforcement agency responsible for the apprehension, detention and removal of immigrants who have been determined to be not lawfully in the country is United States Immigration and Customs Enforcement (ICE). The agency responsible for the control of U.S. borders and for the admission of non-citizens to the United States is Customs and Border Protection (CBP).

Because this manual is about the connection between immigration status and benefits eligibility, state law will also come into play. However, states, unlike the federal government, are forbidden under the Equal Protection Clause of the U.S. Constitution to discriminate in the provision of benefits between citizens and lawfully residing non-citizens. Thus, while the courts have historically allowed the federal government to make distinctions between citizens and legal immigrants and even among and between groups of lawfully residing non-citizens, the states' rules governing the eligibility of lawfully residing immigrants for state and local benefits must be even-handed. [5]

The Difference Between "Immigrants" and "Nonimmigrants"

Federal immigration law refers to all people who are not United States citizens or nationals[6] as "aliens". *Immigrants* are non-citizens who are admitted to the United States as permanent residents. *Non-immigrants* refers to people who enter the U.S., usually with a visa, who are allowed to remain in this country temporarily and only under certain conditions.

Paths to Permanent Residence (a Green Card)

In most cases, permanent residence is obtained in one of the following ways: having a family member who is a citizen or permanent resident who is willing to petition for you; having an employer willing to petition for you; winning the visa lottery, or by coming to the U.S. as a refugee or by being granted asylum.

By far the most common way is through the petitions of family members residing in the U.S. Citizens of the U.S. can petition for spouses and children (of any age and marital status). They can petition for parents and siblings as long as they are at least 21 years old. Because the U.S. has annual limits on how many family-based

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[4] The law can be found at Title 8 of the U.S. Code, beginning with Section 1101.

[5] For example Aliessa v. Novello, 96 N.Y.2d 418 (2001), a case decided by the New York Court of Appeals in 2001, held that New York must provide state funded Medicaid benefits to all immigrants lawfully residing in the country even though the federal rules allowed only certain classifications of lawful immigrants to have access to the federally funded Medicaid program.

[6] Currently, the only nationals who are not also citizens of the United States are persons from American Samoa, Swains Island and certain citizens of the Northern Mariana Islands.

immigrants can come into the U.S. in any given year, only the parents, the spouse and the minor, unmarried children of U.S. citizens can get permanent status right away. Siblings, married children and children over 21 years old will have to wait, often for many years, before they can become permanent residents of the U.S.

A permanent resident of the U.S. can also petition for family members, but only for a spouse or for unmarried minor or adult children. The spouses and children of lawful permanent residents often have long waits before they can get their green cards.

Another way to obtain permanent resident status is through employment. This avenue is closed to most people unless they have special talents and their employer can show that there are no citizens or permanent residents already in the United States who can do that particular work.[7]

A third way to gain permanent resident status is through the diversity visa lottery. The "lottery" is designed to provide the citizens of countries who don't have a lot of people immigrating to the U.S. a chance to come here without having a relative or employer sponsor them. Citizens of countries from which many people are already waiting to come to the U.S. to join their families, for example, the citizens of Mexico or the Philippines, are not eligible for the diversity visa lottery.

Permission to stay in the country for humanitarian considerations can also lead to permanent resident status. Refugees and asylees can petition for permanent resident status after one year of residence. Victims of trafficking with "T" visas and victims of crimes who have been granted "U" visas can also apply for permanent residence after they have resided in the U.S. for a certain number of years. The battered spouses and children of U.S. citizens or lawful permanent residents can also petition for permanent resident status on their own behalf.

Finally, there are special immigrant procedures for dependent children in foster care who have been abandoned or abused by their parents and for widows or widowers of U.S. citizens. Statutes have also been enacted from time to time to allow nationals of certain countries, for example Cubans and Haitians, to apply for permanent residence without having family or employers petition for them.

The website of the U.S. Citizenship and Immigration Services (USCIS) can answer many questions about immigration policies and rules and can be accessed at http://www.uscis.gov/portal/site/uscis .

[7] This should be distinguished from people who come here on work visas like the "H" visas. Work visas do not by themselves lead to permanent residence.

III. NEW YORK'S PUBLIC HEALTH INSURANCE RELATED IMMIGRATION CLASSIFICATIONS

The welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), P.L. 104-193 (104th Congress), requires that, to be eligible for assistance under any *federal benefit program,* an applicant must be either a U.S. citizen or national or an immigrant in a "qualified alien" status. The term "qualified alien" does not refer to a particular immigration status but rather to a benefits-related classification established by Congress in the 1996 federal welfare reform legislation. The classification is comprised of a number of immigration statuses, including permanent resident, asylee and refugee status.

Some states, including New York, also use a benefits-related immigration classification that was eliminated as a federal eligibility category by PRWORA. This category is comprised of non-citizens who are considered to be "permanently residing under color of law," commonly referred to by its acronym, PRUCOL. Thus in New York State, both immigrants in a "qualified alien" status and PRUCOL immigrants are eligible for New York's state funded medical assistance programs. Like the category "qualified alien", the PRUCOL category is not an immigration status but rather a benefits-related classification. It describes non-citizens who, though not lawful permanent residents, are considered to be residing in the country "under color of law." Before the 1996 welfare reform law, PRUCOL was also a federal immigrant eligibility category. Now only certain states utilize this category, New York among them.[8]

New York's Medical Assistance Programs

As described in the previous section, New York's main publicly subsidized health insurance programs are Medicaid, Emergency Medicaid, Family Health Plus, Child Health Plus, the Prenatal Care Assistance Program (PCAP), the Family Planning Benefit Program (FPBP), the Family Planning Extension Program (FPEP), and the AIDS Drug Assistance Program (ADAP).

Immigrants in a "Qualified Alien" Status

Immigrants with an immigration status that fits into the "qualified alien" classification include:

- Lawful permanent residents (green card holders);
- Humanitarian based immigrants[9], including:
  - Refugees and asylees;
  - Persons granted "withholding of deportation" (people who were in process of being deported but who made a case that they would face persecution or torture if returned to their home country);
  - Cuban/Haitian entrants;
  - Amerasians, and
  - Victims of Trafficking (persons who have been found by the government to have been brought into the country by fraud or force for the purpose of forced sex or involuntary servitude).
- Cross Border Native Americans (at least 50% Native American blood)
- Persons paroled into the U.S. for one year or more for humanitarian reasons or in the public interest;

[8] In 1997, when N.Y. first enacted PRWORA's immigrant restrictions into state law, the State excluded PRUCOL immigrants from access to its state funded medical assistance program. The denial of medical assistance to PRUCOL immigrants in the State's Medicaid program was held to be unconstitutional by the N.Y. Court of Appeals in 2001 in a case called *Aliessa v. Novello.*
[9] For a more detailed discussion of these classifications, please refer to the Glossary at the end of the manual.

- Lawfully residing [10] members of the armed forces or honorably discharged veterans and their dependents, and
- Battered spouses and children of U.S. citizens or lawful permanent residents who have an application or petition pending before the USCIS and who are no longer living with their abuser.

Immigrants "Permanently Residing Under Color of Law"

Immigrants who do not meet the requirements of the qualified alien category but who are permanently residing under color of law (PRUCOL) are not eligible for federal Medicaid but are eligible for all of the State's medical assistance programs, including Medicaid. As a practical matter, it will make no difference to the recipient whether he or she receives assistance through the state or the federal program.

Current NYS DOH policy defining the PRUCOL category can be found at http://onlineresources.wnylc.net/pb/docs/08inf-4.pdf (Informational Letter 08 OHIP/INF 4) and http://onlineresources.wnylc.net/pb/docs/08ma009.pdf, (General Information System message 08 MA/009).

These policy directives mandate that immigrants should be classified as PRUCOL by the social services district if they can provide evidence that the USCIS or ICE (the main federal immigration agencies) knows that they are here and have either given them permission to be here or, because of the immigration agency's inaction, can be considered to be acquiescing in their continued presence.

People who are considered PRUCOL because USCIS (or ICE) has given them permission to remain in the U.S. or is not contemplating their removal include those who have been granted:

- Deferred Action – which indicates that USCIS has no immediate intention of deporting the individual out of humanitarian reasons or because the person may have an opportunity to get permanent status;
- An Order of Supervision – granted by ICE to someone who was ordered deported but because of humanitarian considerations, or because there is no country to which the person may be deported, is permitted to remain in the U.S. but usually with the condition that he or she regularly report to ICE;
- Parole of less than 1 year – which may be granted to a person for humanitarian reasons until a determination of admissibility can be made (Cubans or Haitians paroled into the U.S. are considered entrants and are in the "qualified alien" category);
- A "K3" or "K4" [11] visa – which may be granted to spouses and children of US citizens to allow them to live and work in the U.S. while they wait for the processing of their applications for permanent residence;
- A "V" visa – which may be granted to the spouses and children of lawful permanent residents (LPR) who are waiting for the processing of their immigration applications based on petitions filed before December of 2000;
- A "U" visa – which may be granted to people who have been victims of serious crimes and who are willing to cooperate with law enforcement to prosecute the perpetrator, and
- Temporary Protected Status (TPS) – a temporary, non-immigrant status which is sometimes granted by the U.S. to persons coming from a particular country that is going through civil strife or has had a natural disaster.

[10] "Lawfully residing" is a more inclusive term than "qualified alien" and includes not only those immigrants with a qualified alien status but, in general, all immigrants who are residing in the U.S. with the permission of USCIS and who have not violated the conditions of their admission or visa.

[11] Although the K3/K4, T, U and V visas are non-immigrant visas and non-immigrants are not generally eligible for medical assistance, these particular visas all have the potential to lead to permanent residence and therefore are treated differently than, for example, student or tourist visas.

DOH policy also defines as PRUCOL individuals who have applied for any one of the classifications listed above, or for any other immigration benefit, and whose application is pending before the USCIS. So, for example, an applicant for asylum or for adjustment of status to permanent residence or for a "U" or "T" visa is considered PRUCOL. In addition, someone on whose behalf an immediate relative petition has been approved is also considered PRUCOL. (An immediate relative petition is a petition filed by a U.S. citizen on behalf of his or her spouse, parents or minor, unmarried child.)

Lastly, someone who provides evidence that he or she has continuously resided in the U.S. since before January 1, 1972 will be considered PRUCOL. A person in these circumstances is called a registry alien and has a right under Section 249 of the Immigration and Nationality Act to file for permanent residence based solely on their length of residence. However, a person who qualifies for medical assistance as a registry alien does not actually have to file an application for permanent residence to be considered eligible for medical assistance as a PRUCOL immigrant. Providing evidence to the local social services district of the individual's continued residence since before January 1, 1972 is sufficient to establish eligibility.

Undocumented Immigrants

Undocumented immigrants are immigrants who do not have authorization to reside in the United States nor any claim to "residence under the color of law." They may have come into the U.S. ("entered") without being inspected and admitted [12] by a border and customs official or they may have come into the country with a non-immigrant visa and failed to leave when their period of authorized stay ended ("overstay"). Although they are ineligible for Medicaid and Family Health Plus, they are eligible for the Prenatal Care Assistance Program (PCAP), the Family Planning Extension Program (FPEP) and the AIDS Drug Assistance Program (ADAP). Children without immigration status are eligible for CHP.

Undocumented immigrants are also eligible for Emergency Medicaid.

Non-immigrant Visa Holders

Non-immigrants are people who are here temporarily and for a specific purpose. Generally they are not eligible to adjust to permanent resident status. However, like undocumented immigrants, if they can prove that they are residing in New York State and did not come here just to obtain medical services, they are eligible for Emergency Medicaid. They are also eligible for PCAP, the prenatal care assistance program, and ADAP, drug assistance for persons with HIV/AIDS.

In some cases children residing in New York in a non-immigrant status, for example the children of foreign students, may be eligible for CHP in spite of their non-immigrant status. The State Child Health Plus program will review the applications of such children to determine whether they meet the residency requirements of the program. The State has already made an administrative determination that the children of temporary workers with an H visa can be assumed by local social services district and facilitated enrollers to be residing in the U.S. and therefore eligible for CHP unless their parents express an intent to return to their home country. (For a copy of this policy, see Appendix 1, CHP ADM 52.)

A Word about U.S. Citizenship

People who are U.S. citizens are of course eligible for all of New York's health insurance programs but just who is a U.S. citizen? There are actually four ways of establishing United States citizenship – by birth, through naturalization, by derivation and by acquisition. The first and most obvious way of obtaining citizenship

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[12] "Inspection and admission" is the procedure at the border through which a noncitizens seeking entry to the United States must go. It involves demonstrating to the customs agents that they have obtained permission to come to the US (for example they have a student or tourist visa). Nevertheless, the final decision about admission is left to the customs agent.

is of course *through birth*, not only in one of the states of the United States but also in Puerto Rico, Guam, the Virgin Islands and the Northern Mariana Islands.

People can also become U.S. citizens through naturalization. To naturalize, an immigrant, in addition to meeting certain other conditions, must have resided in the U.S. as a lawful permanent resident, usually for a period of five years (three years if he or she is married to a U.S. citizen). Children who are under the age of 18 and who are residing in the U.S. in lawful permanent resident status when their parent(s) naturalize obtain citizenship automatically, by derivation. If the parents are separated and only one has naturalized, the child must be living in the custody of the parent who naturalizes.

Lastly, someone can be a citizen even though born in another country if she has at least one parent who was a U.S. citizen at the time of her birth who lived in the U.S. for a certain number of years after the age of 14. This is called acquired citizenship and it is automatic. If acquired citizenship can be established, in contrast to derived citizenship, it does not matter that the individual may never have had legal status in the U.S.

Both the citizenship acquisition and derivation rules are complicated and the advice of an immigration practitioner should be obtained.

IV. COMMON IMMIGRATION DOCUMENTS VERIFYING ELIGIBLE STATUS

One of the biggest challenges is establishing that an applicant for New York's medical assistance program has the requisite immigration status to qualify for benefits. In order to verify eligibility for medical assistance, a local social services district or a facilitated enroller must verify that the applicant is a citizen, an immigrant in a "qualified alien" category or is permanently residing under color of law (PRUCOL). To establish a qualifying status, the applicant must provide immigration documents that contain evidence of the individual's status. The most common immigration forms that tell something about the individual's immigration status are:

- the I-94 Arrival/Departure record,
- the employment authorization card (EAD) and
- the I-797 Notice of Action.

The I-94 (Arrival/Departure Record) is a card that is usually found stapled in the person's foreign passport and states the length of authorized stay and has a code that shows the legal basis on which he or she has been allowed to enter the country. This is a sample of the I-94:

Departure Number

742831632 01

U.S. IMMIGRATION
250 WAS 177

Immigration and
Naturalization Service

SEP 13 1991

I-94
Departure Record

ADMITTED B-2
UNTIL MARCH 12, 1992

14. Family Name
POE

15. First (Given) Name
JOHN

16. Birth Date (Day/Mo/Yr)
01/01/91

17. Country of Citizenship
ENGLAND

See Other Side

STAPLE HERE

Warning - A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important - Retain this permit in your possession; ***you must surrender it when you leave the U.S.*** Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from immigration authorities, is a violation of the law.

Surrender this permit when you leave the U.S.:
- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 **prior to surrendering this permit.**

Record of Changes

Port:

Departure Record

Date:

Carrier:

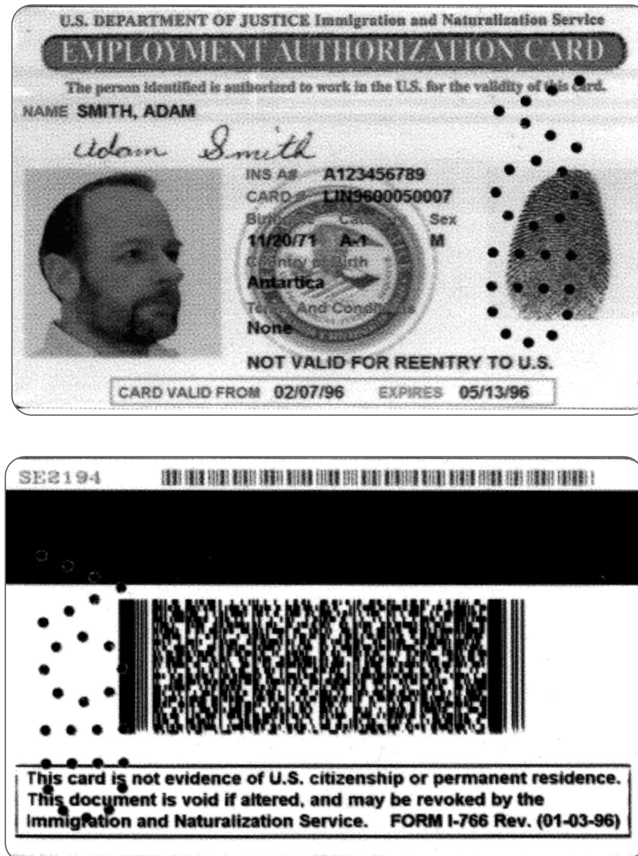
Flight #/Ship Name:

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Form I-94

The category in which Mr. Doe entered the country shown in the sample is “B-2”, which indicates that he came as a tourist. This sample I-94 also indicates that Mr. Doe arrived on September 13, 1991 and is authorized to stay in the U.S. until March 12, 1992. The most common codes found on an I-94 are contained in a chart prepared by the National Immigration Law Center (NILC), which is attached as Appendix 2.

The **Employment Authorization Document (EAD) or card**, in addition to containing the individual’s name and date of birth and the period of work authorization, also contains a code which indicates the individual’s status and the basis on which the person has been granted the authorization to work. Here is a sample of an employment authorization card taken from a 1990’s INS publication:



Form I-766 (January 1997)

This sample card indicates that Mr. Smith is authorized to work for three months. His immigration category is “A-1”. This code means that Mr. Smith’s employment authorization is based on his permanent resident status. The A-1 category is not one advocates are likely to encounter very often because the permanent resident card itself is evidence of the authorization to work. A chart containing the most common codes on the EAD is to be found at Appendix 3.

A lawful permanent resident card not only provides evidence of the person’s status and his or her right to work, it also contains information about the basis on which the person was granted permanent residence.

In addition, the card indicates the date on which the person first became a lawful permanent resident. It also has an expiration date. However, even though the card has an expiration date, the permanent residence status does not expire. Even an expired permanent resident card is evidence of permanent status and the social services district cannot require that the applicant for medical benefits renew the card, although the district can check with the USCIS to make sure that the status was not revoked or terminated. The state's policy in this regard is attached as Appendix 4.

As discussed in an earlier chapter, there are several ways an individual can become a permanent resident, for example through a family petition or by entering as a refugee. The permanent resident card will contain a code that indicates the legal basis on which the individual was able to adjust to permanent status. Here is a sample of a card, also taken from the same INS publication:

PHOTO SIDE

REVERSE

Right next to the date of birth in this sample is a code which gives the basis for Mr. Crittenden's ability to adjust status to permanent resident. The code is "P26". Reference to the guide in Appendix 5 shows that "P26" (or "P-26" as it is listed) means that the individual obtained resident status on the basis of marriage to a permanent resident.

The last document for which a sample is provided here is the I-797 “Notice of Action”. This is the form document that is used by USCIS for most of its communications with people who have filed applications or petitions seeking immigration benefits. For example, when an individual files an application for employment authorization or files a petition on behalf of a relative, USCIS will send an I-797 notice indicating that it has received the application.[13] An I-797 will also be sent if the application or petition is approved or denied. Here is a sample of an I-797:

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Actior

THE UNITED STATES OF AMERICA

Receipt Number EAC0		**Case Type:** I-360 PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT
Receipt Date December 15, 2000	**Priority Date**	**Petitioner**
Notice Date December 22, 2000	**Page** 1	**A-File Number** A

C/O LEGAL AID FDN OF LOS ANGELES
5228 E WHITTIER BLVD
LOS ANGELES CA 90022

Section: Self-Petitioning Spouse of U.S.C. or L.P.R.

ESTABLISHMENT OF PRIMA FACIE CASE

The above petition has been reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act.

THIS NOTICE MAY BE USED TO ASSIST YOU IN RECEIVING PUBLIC BENEFITS.

THIS PRIMA FACIE DETERMINATION IS VALID FOR A PERIOD OF 150 DAYS FROM THE NOTICE DATE SHOWN ABOVE, AND EXPIRES ON THE DATE INDICATED AT THE BOTTOM OF THE PAGE.

We will send you a written notice as soon as we make a decision on this case. It is expected that a final decision will be made in this case before the end of 150 days. In a few cases, the adjudication may not be completed in this time frame. If this period is coming to a close and you need an extension of this prima facie determination in order to continue receiving public benefits, please submit a written request for extension at least 15 days prior to expiration.

A COPY OF THIS NOTICE MUST ACCOMPANY ANY REQUEST FOR AN EXTENSION OF THIS DETERMINATION.

PLEASE NOTE: ESTABLISHING A PRIMA FACIE CASE FOR CLASSIFICATION UNDER THE SELF-PETITIONING PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT DOES NOT NECESSARILY MEAN THAT YOUR PETITION WILL BE APPROVED.

****
EXPIRATION DATE: May 22, 2001
****

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

IMMIGRATION AND NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
ST. ALBANS, VT 05479-0001

I-797 – Notice of Action (finding establishment of prima facie case)

This I-797 shows that USCIS had determined that the applicant, who has filed a self-petition under the Violence Against Women Act (VAWA), has established a prima facie (facially sufficient) case for status as a battered spouse of a U.S. citizen or lawful permanent resident. If she applies for medical assistance, she has the documents necessary to establish that she has a qualified alien status.

[13] A notice acknowledging receipt by USCIS can take some time to arrive. Therefore it advisable to send an application or any form of communication to USCIS “return receipt requested.” The local district must accept the return receipt as proof of filing with USCIS.

Verifying U.S. Citizenship

Although this manual is primarily concerned with verifying the eligible status of immigrants, a word should be said about the new Medicaid rules imposed by the federal government that require both the verification of citizenship and of identity in order to establish eligibility for Medicaid. Although a birth certificate can establish citizenship, it is not sufficient to provide proof of identity. Unless a U.S. citizen has a passport, a Certificate of Citizenship or a Certificate of Naturalization, she must present both a picture document verifying identity AND a document verifying birth in the US. A list of documents that can be used to establish both citizenship and identity is in 08 OHIP/INF-1, accessible at http://onlineresources.wnylc.net/pb/docs/08inf-1.pdf.

Pregnant women, SSI recipients, Medicare recipients and children in foster care are exempt from the citizenship documentation requirements. See http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/07ma004.pdf for a copy of this policy.

V. SOCIAL SECURITY NUMBER REQUIREMENT

The DOH policy about the submission of a Social Security Number by immigrants is contained in Informational Letter 08 OHIP/INF-2 and can be accessed at http://onlineresources.wnylc.net/pb/docs/08inf-2.pdf .

In general, each member of a household who is applying for Medicaid or Family Health Plus must provide, or apply for, a Social Security number ("SSN"). Exceptions to this requirement include:

- Pregnant women (for the duration of the pregnancy until 60 days after the birth of the child or the pregnancy terminates);
- Undocumented immigrants and temporary non-immigrants who are only eligible for the treatment of an emergency condition (Emergency Medicaid) and
- For the first year, a child born to a mother in receipt of Medicaid.

All other immigrants either have to furnish an SSN or apply for one if they don't have it. Not all immigrants who are lawfully residing in the U.S. and who would be eligible for Medicaid are eligible for an SSN. The Social Security Administration (SSA) will not provide an SSN to anyone who does not have work authorization. Nevertheless, Medicaid eligible immigrants must go to SSA to apply for an SSN when they apply for Medicaid. The local social services district must provide the applicant with a letter addressed to the SSA, informing SSA that the applicant is eligible for Medicaid (specifying whether it is federal or state Medicaid) and is being required to apply for an SSN. If the application for an SSN is denied by SSA (which it is likely to be for immigrants who do not have work authorization) the immigrant must bring back proof of the denial to the local social services district.

Medicaid benefits cannot be delayed or denied while the application for an SSN is pending. If an immigrant's application for an SSN is denied because she doesn't have work authorization or her immigration status makes her otherwise ineligible for an SSN (e.g. certain PRUCOL categories), Medicaid benefits must be provided under the State's program. The immigrant cannot be required to apply for an SSN again after having been denied once unless her immigration status changes.

VI. APPLICANT AND RECIPIENT RIGHTS

As important as the eligibility rules for the medical assistance programs are, it is also critical to know the rights of people to apply for assistance, to have their application processed in a timely way, to receive written notice of the agency's decision regarding their application and of their right to challenge the agency's determination at a hearing.

If someone is denied eligibility for Medicaid or is not provided with a particular benefit or service in the Medicaid program, he or she has the right to request a fair hearing. (New York Social Services Law Section 22.) Fair hearings are held by the state and are presided over by an Administrative Law Judge (ALJ). The notice denying the benefit must have the information telling the applicant or recipient how to ask for a fair hearing. The NYS Department of Health also has provided information on-line about how to ask for a hearing, including by:

- Calling: 800-342-3334
- Faxing a request: 518-473-6735
- Filing online: http://www.otda.state.ny.us/oah/forms.asp or
- Sending the request to the Fair Hearing Section, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York 12201.

An applicant or recipient has 60 days to ask for a fair hearing. If a Medicaid recipient whose benefits are being reduced or terminated asks for a hearing within 10 days of the date the notice was issued informing him or her of the reduction or termination of benefits, she can get aid continuing. This means the benefits will continue unchanged until the State holds the hearing and decides whether or not the local district's action was proper.

Applicants or recipients who have requested a fair hearing have the right to see their case record. They also have a right to see the particular documents the local district will rely on at a fair hearing to support the decision the district made. To get copies of those documents before the hearing, the local social services district should be contacted. In most cases, the local district has a fair hearing office or representative who handles such requests and represents the district at the hearing. Requests for documents should be made as soon as possible so that the documents will be mailed well before the hearing date. If the request is made less than 5 days before the hearing date, the district is not required to mail the documents but can wait to provide them at the hearing.

After the hearing, a decision is made by the ALJ on behalf of the Commissioner of the Department of Health. That decision can be challenged in court in a proceeding called an Article 78. This is not a proceeding that an unrepresented individual can easily do on his or her own. Local legal services programs can be contacted to see if an attorney would be available to take the case to court. Contact information for legal services programs in your area is available at http://www.lawhelp.org/Ny/.

These fair hearing rights apply to recipients of Family Health Plus as well as to children receiving Medicaid. Children receiving assistance through CHP, including children without lawful status, do not have fair hearing rights. These children only have the right to file internal plan grievances and/or request utilization reviews from their plans as described below.

Not only Family Health Plus and CHP recipients but now most Medicaid recipients will also have to join a managed care plan. This means that they can only see the doctors and other health care providers in their network. In addition, they will be assigned to a primary care provider. All referrals to specialty care or to the hospital must go through this primary provider.

Managed care participants have certain rights under the law to challenge decisions made by the managed care program in which they are enrolled. First, there is a requirement that the managed care provider fully disclose what it covers and how it operates. Second, all managed care plans must let enrollees in the plan file grievances when they are not happy about their plan or the care they are receiving. Third, enrollees are also entitled to a "utilization review" appeal whenever a program denies medical care as not medically necessary. Utilization reviews require the plan to utilize outside experts to review plan denials. The rights of enrollees in managed care plans are set out at section 4408 of the New York Public Health Law.

VII. NON-CITIZEN ELIGIBILITY FOR MEDICARE

Medicare is a federal health insurance program for elderly and disabled people. The federal agency responsible for administration of the program is the Center for Medicare and Medicaid Services (CMS), an agency of the Department of Health and Human Services. However, it is the Social Security Administration (SSA) that is responsible for the initial determination of eligibility.

Medicare is comprised of three parts: Part A, Part B and Part D. Part A is the program's hospital insurance which covers not only inpatient care but also care in a skilled nursing facility and home health care. Part B, Medicare's supplemental insurance, helps pay for outpatient treatment, medical supplies and medical equipment. In some cases, people over the age of 65 who are otherwise not eligible for Medicare may be able to "buy in" to both Parts A and B. Part D is the prescription drug benefit program. (Medicare does have a Part C which is simply an alternative way of receiving Part A and Part B covered services, through a private health insurance plan.)

Like Social Security disability and retirement benefits, Medicare Part A is financed primarily through federal payroll taxes paid by current employees and employers. Part B is financed through monthly premiums paid by the beneficiary in addition to co-payments and deductibles.

Eligibility Criteria

Individuals who are 65 or older who are entitled to a monthly Social Security or Railroad Retirement benefit either on their own work record or that of a spouse or parent are considered in "insured status" and are eligible for Medicare. Someone who is under 65 and has been entitled to a monthly Social Security Disability Insurance or Railroad Retirement Disability benefit for a period of at least 24 months, either on his or her own work record or that of parent or deceased spouse, is also eligible for Medicare. (The 24 month waiting period is waived for individuals with ALS, also known as "Lou Gehrig's disease.") A person of any age who has end stage renal disease and is in need of dialysis or who has had a kidney transplant and who is in an insured status, or is the dependent spouse or child of someone who is in an insured status, is eligible for Medicare.

People who are not entitled to Social Security or Railroad Retirement Benefits are not in an insured status and are therefore not automatically eligible for Medicare. However, they may be able to purchase Parts A and B coverage beginning at the age of 65 if they are U.S. citizens or lawful permanent residents who have continuously resided in the U.S. for at least five years.

Enrollment in Part A or Part B confers eligibility for Part D prescription drug coverage, which is an optional benefit. Part D prescription drug coverage is delivered through private health insurance plans. Enrollment generally occurs at the health plan level, not through SSA or CMS. Individuals who receive help paying for Part D-related costs through the Low Income Subsidy (LIS) will be automatically enrolled into a Part D plan by CMS if they don't choose one on their own.

There are several programs to help low-income beneficiaries pay for Medicare related costs. The Medicare Savings Programs (MSPs), administered by the local Medicaid office, pay the Part B premium for Medicare beneficiaries with income below 135% FPL. One of the MSPs, the Qualified Medicare Beneficiary

program (QMB) is available to Medicare recipients with incomes below 100% FPL and covers both Parts A and B premiums and all other cost sharing requirements, for example deductibles and co-pays. Individuals whose income is at or below 150% FPL can also get help with the costs of the Part D program through the LIS, which is administered by SSA. Beneficiaries getting Medicaid or an MSP are automatically enrolled in LIS.

Immigration Status Requirement

Immigrants who are lawfully present in the United States and are in an insured status, i.e. entitled to receive Social Security or Railroad Retirement or Disability benefits based on a work record, are eligible for Medicare Parts A and B. Non-citizens in the following classifications are considered to be "lawfully present":

- A "qualified immigrant" (see Chapter 3 for a complete listing);
- An applicant for asylum or withholding of removal who has been granted employment authorization;
- A person who has been "inspected and admitted" (in an immigrant or non-immigrant category) who has not violated the terms of his or her admission;
- An individual who has been paroled into the U.S. for humanitarian reasons;
- Immigrants with Temporary Protected Status (TPS);
- Cuban/Haitian entrants;
- Family Unity beneficiaries (a category related to the 1980's legalization program);
- Immigrants granted Deferred Enforced Departure (this classification is analogous to TPS and is granted by the President in specific instances to nationals of certain countries experiencing civil strife or other catastrophes), and
- Immediate relatives of a U.S. citizen (minor unmarried children, spouse or parent) with an approved family petition who have an application for adjustment of status to permanent residence pending.

An immigrant who is not eligible for Medicare based on his or her insured status is eligible for the Medicare "buy in" program but only if he or she is at least 65 years old and is a lawful permanent resident who has lived in the U.S. for a continuous period of at least five years. The individual does not have to have been a permanent resident for those five years. He or she only needs to show continuous residence in the U.S. during the five years immediately prior to application.

In the case of Medicare benefits for end stage renal disease, there is no prohibition against providing benefits to an individual who is without legal immigration status. However, the "insured status" requirement must be met and therefore someone with end stage renal disease who is not legally residing in the U.S. must either be a dependent child or a spouse of someone who is fully insured or who is actually receiving Social Security or Railroad Retirement benefits.

The Medicare Rights Center is a non-profit organization established to provide information about Medicare and is available to answer questions. Their website is at http://www.medicarerights.org.

VIII. REFUGEE MEDICAL ASSISTANCE

Refugee Medical Assistance ("RMA") is a short term, federally funded program designed to ensure that refugees and other humanitarian based immigrants receive the medical care they need. It is however a program of last resort, after a determination is made that the refugee or other humanitarian-based immigrant is not eligible for the regular Medicaid program.

Eligibility for RMA is limited to eight months after the date of entry. "Entry" is a technical immigration term and has different meanings depending on the individual's particular immigration status. What follows is a list of the different categories of humanitarian based immigrants who are eligible for RMA and the date on which their 8 month period of eligibility begins:

Refugee	Date of entry to the U.S.
Asylee	Date asylum granted
Amerasian Immigrants	Date of entry to the U.S.
Cuban/Haitian Entrant	Date of first entry into C/H entrant status[14]
Victim of Trafficking[15]	Date of ORR certification or T visa approval

When a refugee or other humanitarian based immigrant initially applies for medical assistance, the local social services district must first determine whether the applicant is eligible for regular Medicaid, including the medically needy program for elderly or disabled individuals or families with children. If the applicant is eligible for Medicaid, then that is the program under which assistance must be granted.

Applicants who are ineligible for Medicaid but whose income is at or below New York's medically needy level are eligible for Refugee Medical Assistance. Like the medically needy program, RMA also provides for a spend-down so that applicants whose income is above the medically needy level must be allowed to "spend down" their excess income by incurring medical costs in the amount that their income exceeds the medically needy level.

If a recipient of RMA receives increased earnings from employment during their eight month period of eligibility, the increased earnings do not affect their continued eligibility for RMA benefits.

[14] For a detailed description of the Cuban/Haitian entrant status, see the Glossary.

[15] Certain immediate relatives of a victim of trafficking who has been granted a T visa may be eligible for a "derivative" T visas based on their relationship to the victim (primarily the minor children and spouses of the victim). The date of entry of these family members would be either the date they entered the U.S. with a derivative T visa or, if they are already in the U.S., the date on the I-797 notice approving the application of the principal T visa holder.

IX. ACCESS TO HEALTH CARE FOR UNINSURED PEOPLE

Public hospitals and community health centers often provide discounted or free medical care for uninsured individuals who have little or no income or resources. This includes immigrants without status who are generally ineligible for most public insurance programs. Since January of 2007, private hospitals have been required by law to provide care to uninsured people who cannot afford to pay their hospital bills. Again, this includes everyone, regardless of immigration status.

The patient financial assistance section in New York's Charity Care law establishes a sliding fee scale rate for all patients who are New York State residents living at or below 300% of the federal poverty line (FPL). Under the charity care law, hospitals cannot charge patients whose income is at or below the FPL more than $150 for inpatient care and $15 for emergency room or clinic visits. For patients whose income is up to 300% of the FPL, the hospital cannot charge more than the Medicaid rate for the services receives. These provisions are in the New York Public Health Law, in section 2807-k(9-a).

In addition to limiting charges:

- Hospitals must inform patients on signs and on bills of the existence of the hospital's financial assistance policy;
- Hospitals must provide notice of the financial assistance policy in all the languages spoken during more than 5% of the hospital's visits or by non-English speaking individuals making up more than 1% of the population in the hospital's service area;
- Patients must be provided with financial assistance applications upon request within 90 days of the date of service or discharge (failure of the hospital to provide proper notice of the availability of the financial assistance program should waive the "within 90 days" request requirement);
- The patient must be provided with 20 days to complete the application and decisions made by the hospital in response to the request must be made within 30 days;
- Applicants for financial assistance must be advised of their appeal rights;
- Hospitals cannot begin to take action to collect on medical bills while the application for financial assistance is being processed; and
- Provision of an installment payment plan by the hospital is required and the installments cannot be more than 10% of the patient's gross monthly income.

A patient's home, car, retirement or college savings accounts cannot be considered as an available asset in determining the ability of the patient to pay his or her bills.

To register a complaint about a hospital's failure to follow the law, call the State Attorney General's Hotline at 800-428-9071.

X. LANGUAGE ACCESS

Federal and state law prohibits discrimination based on a person's race, color, national origin or disability. These requirements have been interpreted to include equal access to government benefits by people whose language is other than English. In the context of health care, the providers of care, including hospitals and clinics, must provide such care in the language the patient speaks. For limited English proficient patients from language groups that make up at least one percent of the catchment area of the hospital, interpreters must be made available.

Health care providers should not ask patients to use family members or friends to translate except as a last resort and only with their informed consent. A patient's minor child should never be used as an interpreter and the use of phone interpreters should be limited.

Since September of 2006, private and public hospitals must:

- Have a Language Assistance Program which designates a coordinator responsible for maintaining language assistance services;
- Provide training to all staff about how to access these services when providing care to a limited English proficient patient;
- Provide materials to patients in the languages of the community the hospital serves, informing them about the hospital's free language assistance services;
- Make these language services available in an inpatient or outpatient setting within 20 minutes of the patient's request and within 10 minutes to patients in emergency room settings, and
- Not use a patient's family or friends as interpreters unless free interpreter services have been offered and the patient has refused to agree to use these services.

These rules are contained in Title 10 of the New York Rules and Regulations in sections 405.7 and 751.9. The regulations can be accessed at: http://www.health.state.ny.us/nysdoh/phforum/nycrr10.htm . New York Social Services Law section 364-j(3) provides that a limited English speaking Medicaid recipient cannot be required to enroll in a Medicaid managed care plan that cannot serve them because of a language barrier.

Patients whose rights to interpreter services are violated can file a complaint with the federal Office of Civil Rights of Health and Human Services or the New York State Department of Health. The forms are available at http://www.health.state.ny.us/nysdoh/hospital/docs/hospital_complaint_form.pdf for complaints to DOH or, for complaints to the federal Office of Civil Rights, at http://www.hhs.gov/ocr/discrimhowtofile.html.

Like hospitals and other health care providers, local social services districts also have a duty to provide access to limited English speaking applicants for medical assistance.

For more information about language access requirements, go to the Office of Civil Rights of the Department of Health and Human Services website at http://www.hhs.gov/ocr/lep/.

XI. IMMIGRANT CONCERNS ABOUT USING PUBLICLY FUNDED CARE

Particularly in the years since the 1996 welfare reform changes, which restricted immigrant eligibility for public benefit programs, as well as the more recent anti-immigrant climate stirred up in the political struggle over comprehensive immigration reform, immigrants are understandably concerned about the consequences of applying for, or receiving, public benefits, whether on their own or their children's behalf. These concerns generally revolve around three questions:

1. If I apply for benefits or seek medical care, whether for myself or a family member, will the U.S. Citizenship and Immigration Services (USCIS) or Immigration and Customs Enforcement (ICE) be contacted, putting myself or another family member at risk?

2. If I or a member of my immediate family receive medical assistance or care, will I be labeled a "public charge" and be ineligible for permanent residence or citizenship or be deported?

3. If I have a sponsor who signed an affidavit of support and receive medical assistance, will my sponsor be held liable to repay Medicaid for the care I have received?

These concerns are understandable but, at least in New York state, largely unfounded. Federal and state law protects immigrants seeking medical assistance or care from adverse immigration related consequences.

Reporting Immigrants to USCIS or ICE

There are very solid privacy and confidentiality protections for people who apply for medical assistance from a benefits agency or receive medical care from a health care provider against disclosure of any kind of information, including immigration status, to a third party without the permission of the individual seeking help or care.

The law protecting against the unauthorized disclosure of personal information is the Administrative Simplification of the Health Insurance Portability and Accountability Act of 1996, or "HIPAA" as it is commonly known. The law is in Title 42 of the United States Code, from section 1320d on. Regulations implementing HIPAA are in Part 60 of Title 45 of the Code of Federal Regulations.

In addition to HIPAA, applicants for, and recipients of, Medicaid are also protected under the federal Medicaid law, which requires that a state's Medicaid plan "...provide safeguards that restrict the use and disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan." (Section 1902(a)(7) of the Social Security Act.) New York's Social Services Law, section 369(4), incorporates these federal requirements into state law.

The Office of Medicaid Management has emphasized that "...the State Medicaid Office and the local social services district are not permitted to provide information about the receipt of benefits or the dollar amount of these benefits to the United States Citizenship and Immigration Services (USCIS), the State Department or immigration judges unless that information is directly related to the administration of the Medicaid program." (General Information System Memo (GIS) 04 MA/014, issued July 22, 2004, available at http://www.health.state.ny.us/ health_care/medicaid/publications/docs/gis/04ma014.pdf.) Because enforcement of the immigration law is clearly not related to the administration of the Medicaid program, it is New York's

policy that the local districts "...should never report an applicant to USCIS."[16](GIS 04 MA/014, p.2.)

HIPAA applies to both health care providers and agencies administering health care benefits and prohibits the disclosure of "individually identifiable health information" unless the individual authorizes the disclosure. HIPAA is violated when information is disclosed without the individual's authorization. The law imposes both civil and criminal penalties for the unauthorized disclosure of personally identifying information. Information that is protected includes any and all information that can identify the individual, including immigration status.

There are exceptions to this blanket prohibition but none would authorize either a health care provider or a local social service district to contact USCIS or ICE to report that an immigrant without evidence of legal immigration status has applied for, or has received, health care assistance.

The primary exception to HIPAA's general prohibition against providing information to an outside party is when a request for information is made by a law enforcement agency pursuant to criminal investigation. Federal regulations allows the disclosure of identifying information by health care providers only "...in response to law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness or missing person...." The regulation is in Title 45 of the Coder of Federal Regulations, section 164.512(f)(1). [17]

These privacy and confidentiality provision make clear that on the very rare, law enforcement-connected, occasions where disclosure of confidential health related information is authorized, such disclosure may only be made in response to a request by law enforcement or to a court order, subpoena or warrant. Nothing, other than the social districts' authority to confirm the authenticity of immigration documentation supplied by the applicant, permits the local services district, in its administration of medical assistance benefits, or a health care provider, in its rendering of health care services, to initiate contact with USCIS or ICE to report the identity or immigration status of a particular individual.

However, the state and local Medicaid offices do have the authority, in fact the obligation, to confirm the immigration status of any and all household members applying for Medicaid and other benefits by submitting the immigration documentation supplied by the applicant in support of their eligibility for benefits to the USCIS for authentication.

In fact, this disclosure is authorized by the applicant at the point the application is signed. When an applicant for medical assistance signs the application, he or she expressly consents to the verification of such information by third parties. Thus, an applicant for assistance should NEVER provide information known to the applicant to be false, like a fake Social Security Number (SSN) or a counterfeit immigration document. By the mere fact of signing the application, the individual consents to the agency's confirmation of the truth of the information supplied. Thus, notwithstanding privacy protections, if an applicant provides an SSN or an immigration document in support of his or her application, the agency has the right to confirm the authenticity of the SSN or of the immigration document with the issuing agency.

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[16] Although the GIS provides an exception to this prohibition against reporting if the agency is presented by the applicant with a final Order of Deportation, this is a misstatement of the law. Federal law has no exceptions, even in this case. With respect to the public assistance and food stamp programs, where the name and address of an applicant who presents an Order of Deportation is to be provided to USCIS, local districts are instructed to provide the information only to the Office of Temporary and Disability Assistance, not to USCIS or ICE directly. This policy is set out at 99 INF-17, available at http://www.otda.state.ny.us/main/directives/1999/INF/99_INF-17.pdf.

[17] For additional information on privacy protections under HIPAA, see http://www.hhs.gov/hipaafaq/permitted/law/505.html.

Public Charge Concerns

Under the immigration law, an immigrant who is determined to be, or likely to become, a "public charge" can be denied permanent resident status. This only applies to immigrants who are seeking status based on a family petition. Because of this concern, some immigrants are reluctant to apply for medical assistance, afraid that any government help will have a negative effect on their immigration status. However, the INS (the precursor to the USCIS) published clarification about public charge in May of 1999 which explained:

- Only if the individual receives cash welfare assistance, SSI or long term institutional care funded by Medicaid is there a risk that he or she may be considered a public charge;
- The receipt of regular Medicaid or benefits under other publicly funded health care programs does not make someone a public charge, and
- Public charge concerns are only raised when a family sponsored immigrant applies for a visa or a green card; these concerns do not apply when an immigrant applies for citizenship.

There have been some instances where immigration adjustment officers have misapplied the public charge rules in individual cases and have denied permanent resident status to someone based on their use of Medicaid or other public health benefits. This is in clear violation of federal policy. The USCIS policy about what makes someone a public charge is attached as Appendix 6. If such cases are brought to your attention, contact the Empire Justice Center or the New York Immigration Coalition, who have been successful in past cases where the public charge rules were misapplied by local immigration officers.[20]

Sponsor Liability

Since December of 1997, U.S. citizens or lawful permanent residents who have applied for their non-citizen relatives to immigrate have had to sign enforceable affidavits of support. These affidavits promise to support the immigrant family member at least at 125% of the federal poverty level and also acknowledge that if the sponsored immigrant receives any means tested benefit, the sponsor can be asked to repay the benefit agency providing the benefits.

Although the law establishing sponsor liability is federal, it is the state and local agencies that decide whether to pursue a particular sponsor. In New York State, the Department of Health has stated that, until regulations issue, the state or the local Social Services districts will not seek repayment for medical assistance provided to a sponsored immigrant. Local social services districts may sometimes ask whether an immigrant applicant for benefits has a sponsor and seek financial information about that sponsor. However, under no circumstances can the local district attribute (deem) the income of the sponsor to the immigrant for the purpose of determining eligibility for assistance. Only income that is actually provided by the sponsor counts. The fact that an immigrant has a sponsor does not make the individual ineligible for medical assistance.

[20] At Empire Justice, contact Barbara Weiner at 518-462-6831, ex. 104 or e-mail her at bweiner@empirejustice.org. At the New York Immigration Coalition, contact Tom Shea, at 212-627-2227, ex. 226 or at tshea@thenyic.org.

IMMIGRATION TERMS GLOSSARY

Adjustment of status. Adjustment of status is the process of becoming a lawful permanent resident (LPR or "green card holder") of the United States for immigrants who are residing in the US when they apply. (Those who are living abroad when they apply for permanent residence do so through processing at the U.S. consulate in their home country.)

Alien. A person who is neither a citizen nor a national of the United States is an alien. INA §101(a)(3); 8 U.S.C. 1101(a)(3).

Amerasian. Amerasians are persons born in Cambodia, Korea, Laos, Kampuchea, Thailand, or Vietnam after December 31, 1950, and before October 22, 1982 who were fathered by a U.S. citizen. Amerasians may become legal permanent residents of the United States. INA §204(f); 8 U.S.C. 1154(f). Spouses, children, and parents or guardians may accompany Amerasians to the United States. However, in the context of benefits eligibility, the special status accorded to Amerasians refers only to those born of Vietnamese mothers and U.S citizen fathers.

Amnesty. In 1986, the government authorized two amnesty programs for non citizens who entered the U.S. prior to 1982 and remained here without authorization. INA §245A; 8 U.S.C. §1255a. Some non citizens who should have been included in the amnesty programs, but were not, filed lawsuits, and these amnesty applicants are sometimes referred to as CSS, LULAC or Zambrano plaintiffs (after the lawsuits filed on their behalf).

Asylee. An asylee is a non citizen whom the government allows to remain in the U.S. because s/he is unable or unwilling to return to their country of nationality due to a "well founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion. INA §208, 8 U.S.C. §1158; Sec. 604 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104 208, 110 Stat. 3009. (Unlike refugees who obtain authorization to enter the U.S. while outside the country, asylees are granted authorization to remain in the U.S. after they have already entered the country in some other status or even without status.)

Citizen (United States Citizen or USC). A person is a United States Citizen if s/he: was born in the United States (INA §301), Puerto Rico (INA §304), the U.S. Virgin Islands (INA §306), or Guam (INA §307); was born outside of the United States to U.S. Citizen parent(s) (INA §301[c,d,g,h]); naturalized (obtained United States Citizenship through an application process after having been granted lawful permanent resident status) (8 CFR §316.2); or obtained derivative citizenship as a minor through naturalization of parent(s) (8 CFR §322.2). See also, generally, INA §101(a)(38); 45 C.F.R. §1626.2(a).

Conditional Lawful Permanent Resident (or Conditional LPR). To deter marriage fraud, a spouse of a U.S. citizen who adjusts status to permanent residence before she has been married a full two years will only get "conditional" permanent resident status. During the conditional 2 year period, she will be treated in every respect as a permanent resident. 8 C.F.R. §216.1. Approximately 90 days before the conditional status is set to expire, she and her U.S. citizen spouse must file a joint petition to remove the condition in order for her to obtain permanent residence. INA §216; 8 U.S.C. §1186a. Failure to do so will result in her falling out of status. INA §216(c)(2). A waiver of the joint filing requirement is available in cases of domestic violence, divorce or extreme hardship for the immigrant spouse, as long as there is evidence that the marriage was bona fide.

Cuban Haitian Entrant. Nationals of Cuba or Haiti who were paroled into the U.S. or given other special status. The law defining who is a Cuban/Haitian entrant is the Refugee Education Assistance Act of 1980, Pub. L. 96 422 §501(e)(1), §501(e)(2)(A) (October 10, 1980). The term Cuban/Haitian entrant includes a national of Cuba or Haiti who:

- was classified as "Cuban/Hatian Entrant (status pending)" under the INA on or after 4/21/1980, regardless of any subsequent change in the individual's status, including being subject to an order of deportation or removal; or

- was paroled into the U.S. on or after 10/10/1980 (unless parole was for the purpose of criminal prosecution or to be a witness), again regardless of any subsequent change in status, including being subject to an order of deportation or removal; or
- is in parole status and has not acquired any other status under the INA and is not subject to a final, non-appealable and legally enforceable order of removal or deportation; or
- is the subject of removal proceedings but is not under a final, non-appealable and legally enforceable order of removal or deportation; or
- has an application for asylum pending before the USCIS, or
- has adjusted to LPR status under the Nicaraguan and Central American Relief Act or the Haitian Refugee Immigration Fairness Act.

(Taken from https://secure.ssa.gov/apps10/poms.nsf/lnx/0500502115#E9.)

Family sponsorship. A citizen or LPR may petition to bring a non citizen spouse or unmarried child into the U.S. Citizens may also petition for their parents, siblings or married children. The spouses, minor children and parents of U.S. citizens are considered "immediate relatives" and may file for permanent residence (if in the U.S.) or a visa (if abroad) right away. The spouses and children of LPRs and the siblings, adult and married children of U.S. citizens are subject to annual immigration caps. They are grouped into "preference categories," some of which are currently backlogged by many years. For rules on family sponsorship, see INA §203(a), 204(a); 8 U.S.C. §1153(a), 1154(a).

Federal Poverty Line. A national measure of poverty often used for the determination of eligibility for benefits. Households whose income falls below the line are considered "poor." The income level varies with household size and, with the exception of Alaska and Hawaii, is uniform across the country. For current levels, go to http://aspe.hhs.gov/poverty/08Poverty.shtml.

Green card. This term is commonly used to describe an I-551, previously known as an "alien registration card," now known officially as a "permanent resident card." It is evidence of lawful permanent resident status. Although the card carries an expiration date of ten years, the resident status itself does not expire. For benefits purposes, an expired card is acceptable evidence of lawful permanent residence status. (Note that if a card has a two year expiration date, it is a conditional resident card and the status will expire when the card does unless a petition to remove the condition is filed.)

Haitian Refugee Immigration Fairness Act (HRIFA). This 1998 law allowed certain Haitian nationals who were residing in the U.S. to adjust status and become legal permanent residents. 8 C.F.R. 245.15. The deadline to apply for lawful permanent residency under HRIFA was 3/31/00.

Immigrant / non immigrant. An immigrant is a non citizen who is admitted to the United States for lawful permanent residence. A non immigrant is someone who has been given permission to come to the U.S., temporarily for a specific purpose, such as to visit (for business or pleasure), to "transit through the United States," to study, or to undertake any other authorized activities. INA §101(a)(15); 8 USC §1101(a)(15); 8 C.F.R. §214.
Note: the term immigrant is broadly used (frequently incorrectly) to refer to any non citizen in the United States, regardless of lawfulness or residency status.

Labor certification. A non citizen may enter the United States as a lawful permanent resident if s/he is the beneficiary of a "labor certification." In the case of a labor certification, the government authorizes a non citizen's entry into the U.S. as a legal permanent resident after an employer has demonstrated to the U.S. Department of Labor that there are no qualified US workers available to do the job. USCIS keeps a list of jobs for which citizens are in short supply; the current list includes (but is not limited to) registered nurses, physical therapists, and certain skilled chefs. INA §212(a)(5)(A); 8 U.S.C. 1182(a)(5)(A).

Lawful Permanent Resident ("LPR"). A person who is a lawful permanent resident has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." INA §101(a)(20); 8 USC § 1101(a)(20). A non citizen may obtain lawful permanent residency through family sponsorship, labor certification, investment, adjustment as an asylee or refugee, the diversity lottery, international adoption, the Violence Against Women Act (VAWA), or through various laws such as the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), and others. A person may lose lawful permanent resident status by staying out of the country for extended periods or by committing certain crimes.

National. A national of the United States is a person who is either a citizen or, though not a citizen, nonetheless owes permanent allegiance to the United States. Currently, the only nationals who are not also citizens of the United States are persons from American Samoa and Swains Island. See INA §101(a)(22); INA § 101(a)(29); 8 USC §1101(a)(29).

Naturalization. This is the process of becoming a U.S. citizen. To naturalize, a person must have resided in the U.S. for at least five years as a lawful permanent resident (three years if married to a U.S. citizen), pass a history and English test, and demonstrate "good moral character." 8 CFR §316.2. (For derivative naturalization of children, see 8 C.F.R. §322.2.)

Nicaraguan Adjustment and Central American Relief Act (NACARA). Pub. L. 105 100; Pub. L. 105 139. This law allowed certain Nicaraguan and Cuban refugees who had been physically but unlawfully present in the U.S. continuously since December 1, 1995, to apply to adjust status by March 31, 2000.

Non-immigrant. Non-immigrant refers to someone who is authorized to be in the U.S. for a temporary period of time and for a specific purpose. They must leave the country prior to the expiration of the visa. Visas are grouped into "classifications," each of which has various restrictions consistent with the visa-holder's declared intentions at the U.S. Embassy abroad when he or she applied for the visa. The most common non-immigrant visa is the visitor's (B1/B2) visa for visitors for business or tourism. Non-immigrant visa holders are generally not authorized to work unless they were admitted as temporary workers. Non-immigrant visa holders are generally not entitled to government benefits.

Parole. Parole is temporary admission into the United States. Parole is granted for "urgent humanitarian" reasons, or when admission is deemed to be for "significant public benefit." INA §212(d)(5); 8 U.S.C. §1182(d)(5). Parole is a temporary status only, and for most people, parole is granted for less than one year. Examples of reasons why parole might be granted include attendance at a funeral, to receive medical treatment (not at public cost) or for other humanitarian reasons. It is sometimes granted to a person seeking asylum to enable them to pursue their application without being held in detention. 8 C.F.R. §212.5(b).

PRUCOL (Permanently Residing Under Color Of Law). "PRUCOL" is not an immigration status; it is a term used to describe non citizens who will be treated as eligible for benefits because ICE or USCIS has been made aware of their presence and has granted them permission to remain in the U.S. or is acquiescing in their continued residence. In New York State, PRUCOLs are entitled to certain government benefits, including Safety Net Assistance and Medicaid.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Commonly known as "welfare reform," this legislation severely curtailed the eligibility of immigrants for many public benefits, including cash assistance, food stamps, Medicaid, and SSI. Its provisions went into effect on 8/22/96. Pub. L. 104 193 (1996).

Public charge. Public charge refers to persons who rely on certain government benefits, primarily cash assistance or long term institutional care, for support. If USCIS determines that a person is likely to become a public charge, an application for lawful permanent residence can be denied. Public charge considerations do not apply

to applications for citizenship. Long standing policy guidance issued by INS in 1999 clarifies that it is only the receipt of welfare, Supplemental Security Income (SSI) or long term institutional care funded by Medicaid that carries the risk of having an application for permanent residence denied on public charge grounds. The receipt of other public benefits such as Medicaid, free health clinic services, food stamps, WIC, public housing, foster care services, Head Start, emergency disaster relief, and other in kind, non cash assistance should not affect an individual's eligibility to adjust status.

Qualified Alien. Federal law uses the term "Qualified Alien" to describe those non citizens who are eligible for federal government benefits. "Qualified Alien" is defined at PRWORA §431; 8 U.S.C.§1641, as amended.

Registry. Non citizens who can demonstrate continuous residence in the United States since before January 1, 1972 may be eligible to adjust to lawful permanent residence through registry. INA §249; 8 U.S.C. §1259. An application for permanent residence is not necessary in order to be considered PRUCOL-eligible for benefits. Proof of continuous residency since before January 1, 1972 can be supplied to the benefits agency to verify registry status.

Refugee. A refugee is a person living outside his or her country of nationality, who is granted admission to the United States because s/he is unable or unwilling to return to the country of nationality due to a "well founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion. INA §207; 8 U.S.C. §1157.

Sponsor deeming. All family sponsors must file a legally enforceable affidavit of support as part of an application to bring a qualifying non citizen relative into the United States. The affidavit of support obligates the sponsoring (U.S.) relative to support the beneficiary. Federal law provides that if a beneficiary later applies for public benefits, the benefits agency can "deem" the sponsor's income to the beneficiary in determining the beneficiary's level of need, even if the sponsor is providing no support. New York cannot deem sponsor income in its state benefit programs.

Trafficking Victim. Individuals determined to have been brought to the U.S. by force or fraud and then kept essentially captive and forced to provide labor, for example as prostitutes or in sweatshops or as domestic or agricultural workers. If trafficking victims are willing to cooperate in the prosecution of their trafficker, they may be eligible for a T visa. A certified victim of trafficking must be treated like a refugee for the purpose of benefit eligibility.

U Visa. Crime victims, including victims of the crime of domestic violence, may be eligible for a U Visa, which is a special visa granted to crime victims who assist in the prosecution of a crime. A U Visa holder is considered PRUCOL for state and local benefit purposes.

Undocumented Immigrant. Also referred to as "illegal immigrant" or "illegal alien," these terms refer to persons who lack authorization to be in the United States. It includes people who crossed the border without inspection by customs or border patrol or who stayed beyond their period of authorized stay.

VAWA Self-Petitioner (a remedy under the Violence Against Women Act). In 1994, Congress passed the Violence Against Women Act (VAWA I), and two years later, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). In 2000, Congress also passed the Battered Immigrant Women Protection Act of 2000 (usually referred to as "VAWA II"). This collection of laws promotes independence from an abusive relationship with a U.S. citizen or LPR by allowing certain abused spouses and children to obtain permanent residence without the knowledge or assistance of the abuser. Persons filing immigration applications pursuant to VAWA may be considered "qualified immigrants" for public benefit purposes.

Withholding of Removal or Deportation. Persons in immigration proceedings who are denied asylum but who can show that their "life or freedom would be threatened" in the country of nationality because of race, religion, nationality, membership in a particular social group, or political opinion may be granted withholding of removal (deportation). INA § 241(b)(3), 8 U.S.C. §1231(b)(3). Unlike refugees and asylees, persons granted withholding of removal/deportation cannot adjust to permanent residence and cannot bring family members into the country.

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 11, 2006

Dear Health Plan:

Enclosed is New York State Child Health Plus Advisory Memorandum (ADM) Number A-52 regarding Child Health Plus B eligibility for non-immigrant children who Have H visas or whose parents have H visas. The effective date of this ADM is December 1, 2006

If you have any questions or require further clarification regarding this ADM, Please do not hesitate to contact your contract manager at (518) 473-0566. Thank you for Your continued participation in the Child Health Plus Program.

Sincerely,

Judith Arnold
Deputy Commissioner
Division of Planning, Policy
And Resource Development

Enclosure

SUBJECT: Residency **CHPlus ADM 52**
TITLE: Residency Status for Nonimmigrant Children with H Visas

To: CHPlus B Insurers
From: CHPlus

DATE OF ISSUE: October 11, 2006
EFFECTIVE DATE: December 1, 2006

X Prospective __ Retrospective

SDOH Contact Person: Gabrielle Armenia
Contact Telephone: 518-473-0566

PURPOSE:

The purpose of this ADM is to notify health plans that they may enroll an otherwise eligible child in CHPlus B who lives in New York and has an H visa or lives with a parent who has an H visa, unless the family indicates they intend to return to their home country in the future.

CHECK IF: __ NEW DIRECTIVE __ CLARIFICATION __SUPERSEDES OTHER ADM OR CONTRACT PROVISION

BACKGROUND/GENERAL INFORMATION:

Most non-immigrants who enter the United States attest to the United States Citizenship and Immigration Services (USCIS) that they will return to live in their home country. Since a person has only one domicile or permanent residence, for the purposes of CHPlus eligibility determinations, it is presumed that a non-immigrant resides in the home country unless there is evidence which demonstrates the person's intent to make the United States; and specifically, New York State, his or her fixed and permanent home.

On February 6, 2003, DOH required plans to forward applications of children to DOH for a case by case review to determine if there was any evidence that the child or the child's family intended to remain in New York State. If DOH determined that otherwise eligible non-immigrant children provided evidence that they were residents of New York State, the plan was approved to enroll the children in CHPlus B. Plans were not permitted to make residency determinations independently.

As a result of these reviews, DOH has determined that almost 100% of children with H visas or with parents that had H visas could provide evidence that he/she intended to remain in this country and was therefore, a New York State resident for the purposes of determining CHPlus eligibility.

<u>Specific Instructions:</u>

Effective December 1, 2006, health plans shall enroll a child with an H visa or with a parent with an H visa in CHPlus B if they are otherwise eligible and comply with the following:

A health plan shall not enroll such a child if it receives information or evidence which contradicts the presumption that the child or child's family is making the United States his or her fixed and permanent home (e.g., being informed by the family that they will return to their home country in the future to live or work).

If a health plans receives a completed application, including all documentation except proof of the child's or the parent's H visa, the plan shall not enroll that child presumptively. Such child cannot be enrolled until documentation of the child's or parent's H visa is collected. If the health plan has documentation of the H visa status but is missing age, income or residency documentation, the child may be enrolled presumptively. The reason that we are treating the immigration documentation differently than the other items, is that a health plan will likely only know a person is on an H visa if they present documentation showing the status. This information is not collected on the application. A health plan shall not be penalized for enrolling a child presumptively if, at the time of application, they were unaware of the H visa status.

All information, including copies of the immigration documentation collected, must be maintained in the child's case file along with the standard residency, age and income documentation. This information must be available for review during an audit.

Until further notice, enrollees with an H visa or living with a parent with an H visa shall be coded as a non-qualified, non-citizen ("N") in the Immigration Category field in the Knowledge, Information and Data System (KIDS).

In accordance with the procedures outlined in a CHPlus letter dated February 6, 2003, health plans shall continue to forward other non-immigrant cases to the Department for a residency review. These cases shall be sent to:

Lori Brown
New York State Department of Health
Child Health Plus Program
Empire State Plaza
Corning Tower, Room 1619
Albany, NY 12237-0004

<u>Impact of ADM on Plan Operations:</u> For Plan Use:

___Billing File	___Provider Relation
___Eligibility	___Reports
___Marketing Procedures	___Subscriber Contact

APPENDIX 2: EXPLANATION OF IMMIGRATION CODES ON THE I-94

I-94 ARRIVAL/DEPARTURE RECORD

The I-94 is a 3"x 5" card which is issued to almost all noncitizens upon entry to the U.S. It is also issued to individuals who entered the country without inspection and subsequently have contact with the INS. The card is stamped or handwritten with a notation that indicates the individual's immigration category or the section of the law under which the person is granted admission or parole. The words "Employment Authorized" may also be stamped onto the card. Noncitizens with I-94s include LPRs, persons fleeing persecution, persons with permission to remain in the U.S. based on a pending application, persons in deportation or removal proceedings, nonimmigrants, and undocumented persons whose period of admission or parole has expired.

I-94 Arrival/Departure Record

KEY TO I-94

Codes on the I-94 indicate the provision of law related to the individual's status. What follows is a list of codes most commonly found on the I-94.

PERSONS FLEEING PERSECUTION

CODE	MEANING
203(a)(7)	Conditional entrant
207 or REFUG	Refugee
208	Asylum
243(h) or 241(b)(3)	Withholding of deportation or removal
AM 1, 2, 3	Amerasian

PERSONS GRANTED PERMISSION TO REMAIN IN THE U.S.

CODE	MEANING
106	Granted indefinite stay of deportation
242(b)	Granted voluntary departure
212(d)(5)	Parolee

KEY TO I-94 (Continued)

NONIMMIGRANTS

CODE	MEANING
A-1, -2, -3	Foreign government official, dependents, and employees
B-1	Visitor for business
B-2	Visitor for pleasure (tourist)
C-1, -2, -3	Aliens in transit
D	Crewmember of ship or aircraft
E-1, -2	Treaty trader and investor and dependents
F-1, -2	Foreign student and dependents
G-1, -2, -3, -4, -5	Representative of international organization, dependents, and employees
H-1A	Registered nurse
H-1B	Alien in specialty occupation
H-2A	Temporary agricultural worker
H-2B	Temporary worker
H-3	Trainee
H-4	Spouse or child of "H" worker (see categories above) or trainee
I	Foreign information media representative and dependents
J-1, -2	Exchange visitor and dependents
K-1, -2	Fiancé(e) of U.S. citizen and children
L-1, -2	Intracompany transferee and dependents
M-1, -2	Vocational/nonacademic student and dependents
N-8, -9	Parent of special immigrant and children
NATO-1 through -7	Representatives of NATO, dependents, and employees
O-1, -2, -3, -4	Persons with extraordinary ability in the sciences, arts, education, business, and athletics, and dependents
P-1, -2, -3	Artists, entertainers, and athletes who are performing, teaching, or on an exchange program
Q	Cultural exchange
R-1, -2	Religious workers and dependents
S5, -6, -7	Alien supplying information relating to crime or terrorism, and qualified family members
TWOV	Transit without a visa
TC	Canadian citizen seeking temporary entry pursuant to Free Trade Agreement
TN, -D	NAFTA professional and dependents
WB	Visitor for business admitted under visa waiver pilot program
WT	Visitor admitted under visa waiver pilot program

APPENDIX 3: EXPLANATION OF IMMIGRATION CODES ON THE EAD

Key to Employment Authorization Documents

The chart below contains the most common entries on the front of the EAD card for "category" or "provision of law" and indicates the basis on which the person was granted work authorization. The codes correspond to the work authorization provisions of 8 C.F.R. § 274.12. The following list is not exhaustive. For this reason and because new categories are established from time to time, reference to the regulation itself is advisable to determine the meaning of codes not on the following list. The "(a)" category are non-citizens whose authority to work is inherent in their status; the "(b)" category are non-citizens authorized to work for a particular employer and the "(c)" category are those non-citizens who must apply for work authorization. (Updated 3/6/2008 by Barbara Weiner, the Empire Justice Center, New York: bweiner@empirejustice.org.)

CODE	MEANING
(a)(3)	Refugee
(a)(4)	Paroled as refugee
(a)(5)	Granted asylum
(a)(6)	Fiancé(e) of U.S. citizen or dependent of fiancé(e)
(a)(8)	Citizen of Federated States of Micronesia or Marshall Islands
(a)(9)	Spouse of USC admitted with K3 visa (and K-4 dependent)
(a)(10)	Granted withholding of removal
(a)(11)	Granted Extended Voluntary or Deferred Enforced Departure
(a)(12)	Granted TPS (temporary protected status)
(a)(13)	Granted voluntary departure under Family Unity (IMM Act 1990)
(a)(14)	Granted Family Unity under LIFE Act
(a)(15)	Spouse/child of LPR granted V non-immigrant status
(a)(16)	Person admitted as victim of trafficking (T status)
(a)(19)	Victim of crime admitted with U visa
(a)(20)	Derivative relatives of U visa holder (U2-U5 status)
(b)(6)	Foreign students in on-campus employment
(b)(9)	Temporary worker or trainee (H-1, H-2A, H-2B or H-3 status)
(b)(11)	Exchange visitor (J-1 status)
(b)(16)	Religious worker (R status)
(c)(3)(i)-(iii)	Foreign Student (F-1) permitted to work under certain conditions
(c)(5)	Non-citizen spouse or minor child of exchange visitor (J-2 status)
(c)(6)	Foreign student seeking employment for practical training (M-1 status)
(c)(8)	Applicant for asylum (150 days after filing of completed application)
(c)(9)	Applicant for adjustment to permanent status
(c)(10)	Applicant for suspension of deportation or cancellation of removal
(c)(11)	Non-citizen paroled into U.S. for emergent or public interest reason
(c)(14)	Non-citizen granted deferred action
(c)(16)	Registry applicant (resided in U.S. since before 1/1/1972)
(c)(17)(i)-(iii)	Certain domestic workers and airline employees_(B-1 status)
(c)(18)	Person under Order of Supervision
(c)(19)	Applicant for Temporary Protected Status
(c)(24)	Applicant for legalization under the LIFE Act Legalization Program
(c)(25)	Immediate family members of T visa holder (T-2 through T-4 visa)
(c)(31)	VAWA self-petitioners

APPENDIX 4: STATE POLICY ON EXPIRED GREEN CARDS

George E. Pataki
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

Brian J. Wing
Commissioner

Informational Letter

Section 1

Transmittal:	03 INF 19
To:	Local District Commissioners
Issuing Division/Office:	Division of Temporary Assistance
Date:	April 28, 2003
Subject:	Expired or Lost Immigration Documents
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Medical Assistance Directors HEAP Directors Staff Development
Contact Person(s):	Contact the Central Team at 1-800-343-8859, extension 4-9344
Attachments:	BCIS INS Fee Waiver Guidance 99-LCM-23 LDSS-4579

Attachment Available On – Line: ☒

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
00 INF - 13 00 INF - 13 Errata 99 LCM - 23 99 INF - 11 97 ADM - 25 97 ADM -23		349.3	PRWORA WRA	PASB Section XXIII - C- 1 All FSSB Section V-B-3.1-B-3.30	

Section 2

I. Purpose

This release explains how local districts determine program eligibility for aliens who have lost their immigration documentation or whose documentation has expired.

II. Background

The Federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 restricted the availability of federally supported assistance to certain "qualified aliens." Only aliens Lawfully Admitted for Permanent Residence (LPR) before August 22, 1996, or aliens admitted because of a certain immigration status e.g., Refugees, Asylees are eligible for federal supported assistance.

The New York State Welfare Reform Act of 1997 (WRA) mandated that Safety Net Assistance (SNA) be available to aliens considered Persons Residing Under the Color of Law (PRUCOL).

Aliens' eligibility for benefits is based on the immigration status they receive from the Department of Homeland Security's Bureau of Citizenship and Immigration Services (BCIS). Aliens are required by law to carry immigration documents as evidence of their status.

Districts are uncertain how to make an eligibility determination when an alien has expired BCIS documentation or has lost his/her immigration documentation.

III. Program Implications

Federal law precludes local districts from delaying, denying, reducing or terminating an applicant's eligibility for benefits under a program on the basis of the applicant's citizenship or nationality during the period of time it takes to verify his or her status. When an alien applicant has only expired BCIS documentation or claims a lawful immigration status, but has lost his/her alien documentation local districts should follow the appropriate procedure outlined below for the type of immigration documentation the alien has.

A. Lost Immigration Documentation

Aliens claiming a lawful immigration status and who have lost their immigration documentation should be referred to the BCIS for replacement documentation. Local districts need some verification from BCIS of an alien's lawful presence in order to make a determination of the alien's eligibility for benefits.

B. Expired Immigration Documentation

1. Permanent Resident Card

The most common BCIS document used to prove lawful permanent resident status (LPR) is the Permanent Resident Card (I-551). Commonly called the "Green Card", an I-551 expires after 10 years. BCIS began implementing a 10-year expiration period in 1989 to allow the agency to update photo identification and implement new card technologies that will increase the card's resistance to counterfeiting and tampering. Aliens do not lose permanent resident status because their Green Card has expired. However, they are required by law to carry evidence of their immigration status, such as a valid Green Card or some other temporary proof of status provided by BCIS while a Green Card renewal is being processed.

If the only immigration document an alien has is an expired Green Card, local districts can use it to determine the alien's eligibility for benefits. The immigration status on the expired Green Card should be compared against the BCIS immigration statuses on the LDSS-4579 (Alien Eligibility Desk Aid) to determine the specific programs for which the alien may be eligible.

Many aliens do not renew their Green Cards because of the $110 processing fee. A fee is imposed because federal guidelines require the processing of immigration benefits to be self-supported by filing fees.

BCIS does have discretion to waive any fee, if the applicant establishes that he/she is unable to pay the fee. Information on how an applicant can apply for a fee waiver is found on the BCIS Web site at:

http://www.immigration.gov/graphics/publicaffairs/factsheets/waiverfs.htm

Local districts have no obligation to pay an alien applicant or recipient's Green Card renewal fee. The provisions of 18 NYCRR 351.5 are not applicable to the Green Card renewal fee, because an expired Green Card is an acceptable document for districts to use for making an eligibility determination.

2. Foreign Passport with a Form I-551 Stamp

It often takes many months for aliens to actually receive their Green Cards. While they are waiting for their card, BCIS can provide temporary evidence of permanent residence by stamping an alien's passport with an I-551 stamp. Alien passports can also have an I-551 stamp for Green Card renewals. If the I-551 stamp has expired and the alien has no other immigration documents, districts can use the expired I-551 stamp to determine an alien's eligibility for benefits.

3. Form I-94 Arrival/Departure Record

An I-94 record is created by BCIS when an alien is inspected upon arrival in the United States. The I-94 is a 3" X 5" card that the inspector endorses with the date, place of arrival and the class of admission. The card is stamped or handwritten with a notation that indicates the immigration category or the section of immigration law under which the person is granted admission. The words "Employment Authorized" may also be stamped on the card. Only aliens with an I-94 that have specific qualified alien status notations would be eligible for benefits. Districts need to carefully note the admitting status on the I-94 and use the LDSS 4579 to determine an alien's benefit eligibility.

4. Form I-668B or I-766 Employment Authorization Documents (EAD)

These documents indicate that an alien is authorized to work in the U. S. Many qualified aliens are not automatically authorized to work in the U. S. by virtue of their immigration status. Both these forms indicate an alien's immigration status. If the only documentation an alien has is an expired EAD, districts may use it to determine the alien's eligibility for benefits. EADs are also issued to temporary residents who are non-immigrants and are ineligible for temporary assistance benefits. The alien's immigration status on the EAD must be checked against BCIS immigration statuses on the LDSS-4579 to determine benefits for which the alien may be eligible.
Any time a district must use expired immigration documents for a determination of an alien's eligibility the district needs to:

- Verify the alien's status by sending a G-845 (Documentation Verification Request) to BCIS following the procedures in 1999-LCM-23 (Implementation of the Systematic Alien Verification for Entitlements (SAVE) – Interim Process). http://sdssnet5/otda/directives/1999/LCM/99_LCM-23.pdf
- Advise the alien that he/she needs to go to BCIS to renew his/her Green Card or other immigration documentation.
- Use the immigration status on the expired immigration documentation as the basis for the alien's eligibility. Districts should refer to LDSS-4579 (Alien Eligibility Desk Aid) http://sdssnet5/otda/ldss_eforms/eforms/4579.pdf for information on program eligibility based on eligibility status.

Issued By
Name: Patricia A. Stevens
Title: Deputy Commissioner
Division/Office: Temporary Assistance

APPENDIX 5: EXPLANATION OF GREEN CARD CODES

KEY TO I-551 AND I-151 CARDS ("GREEN CARDS")

The codes on a green card indicate how an LPR immigrated to the U.S. This information can be useful, for example, in determining whether an individual immigrated through a family member, as a refugee, or through some other means. As noted below, the code also often indicates whether the immigrant became an LPR through processing at a consulate abroad or through adjustment of status in the U.S. NOTE: This list is not comprehensive, even as to codes currently in use, and many codes that were used in the past are not included here. Anyone with a green card is an LPR, and a "qualified" immigrant, regardless of the particular code on the card.

IMMEDIATE RELATIVE CODES

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
	CF-1, CF-2	Spouse and minor step-child of U.S. citizen who was admitted as a fiance(e), and is subject to 2-year conditional residency
CR-1, CR-2	CR-6, CR-7	Spouse and step-child of a U.S. citizen subject to 2-year conditional residency
	IF-1, IF-2	Spouse and minor step-child of a U.S. citizen who was admitted as a fiance(e)
IR-1	IR-6	Spouse of a U.S. citizen
IR-2	IR-7	Child of a U.S. citizen
IR-3, IR-4	IR-8, IR-9	Orphan adopted or to be adopted by a U.S. citizen
IR-5	IR-0	Parent of a U.S. citizen
IW-1, IW-2	IW-6, IW-7	Widow or widower and child of a U.S. citizen
	MR-0, MR-6, MR-7	Parent, spouse, or child of a U.S. citizen, presumed to be LPR, from the Northern Marianas
	Z4-3	Immediate relative of a U.S. citizen or special immigrant granted LPR status through private bill

FAMILY-BASED IMMIGRANTS – 1ST FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
F1-1	F1-6	Unmarried son or daughter of a U.S. citizen
F1-2	F1-7	Child of F1-1 or F1-6
P1-1	P1-6	Unmarried son or daughter of a U.S. citizen (pre-1991)
P1-2	P1-7	Child of P1-1 or P1-6

FAMILY-BASED IMMIGRANTS – 2ND FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
C2-1, C2-2	C2-6, C2-7	Spouse and step-child of an LPR subject to 2-year conditional residency
C2-3	C2-8	Child of C2-1, 2, 6, or 7
C2-4	C2-9	Unmarried son or daughter who is step-child of an LPR and subject to 2-year conditional residency
C2-5	C2-0 Child of C2-4 or C2-9	
CX-1, CX-2	CX-6, CX-7	Spouse and step-child of an LPR subject to 2-year conditional residency
CX-3	CX-8	Child of CX-1, 2, 6, or 7
F2-1	F2-6	Spouse of LPR
F2-2	F2-7	Child of LPR
F2-3	F2-8	Child of F2-1 or F2-6
F2-4	F2-9	Unmarried son or daughter of LPR

FAMILY-BASED IMMIGRANTS – 2ND FAMILY PREFERENCE (CONTINUED)

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
F2-5	F2-0	Child of F2-4 or F2-9
FX-1	FX-6	Spouse of LPR
FX-2	FX-7	Child of LPR
FX-3	FX-8	Child of FX-1, 2, 6, or 7
P2-1	P2-6	Spouse of LPR (pre-1991)
P2-2	P2-7	Child of LPR
P2-3	P2-8	Child of P2-1, 2, 6, or 7

FAMILY-BASED IMMIGRANTS – 3RD FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
C3-1	C3-6	Married son or daughter of U.S. citizen subject to 2-year conditional residency
C3-2, C3-3	C3-7, C3-8	Spouse or child of C3-1 or C3-6 subject to 2-year conditional residency
F3-1	F3-6	Married son or daughter of U.S. citizen
F3-2, F3-3	F3-7, F3-8	Spouse or child of F3-1 or F3-6
P4-1	P4-6	Married son or daughter of U.S. citizen
P4-2, P4-3	P4-7, P4-8	Spouse or child of P4-1 or P4-6

FAMILY-BASED IMMIGRANTS – 4TH FAMILY PREFERENCE

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
F4-1	F4-6	Brother or sister of U.S. citizen
F4-2, F4-3	F4-7, F4-8	Spouse or child of F4-1 or F4-2
P5-1	P5-6	Brother or sister of U.S. citizen (pre-1991)
P5-2, P5-3	P5-7, P5-8	Spouse or child of P5-1 or P5-2

VAWA SELF-PETITIONERS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
B1-1	B1-6	Self-petition unmarried son or daughter of a U.S. citizen
B1-2	B1-7	Child of B1-1 or B1-6
B2-1	B2-6	Self-petition spouse of an LPR
B2-3	B2-8	Child of B2-1 or B2-6
B2-4	B2-9	Self-petition unmarried son or daughter of an LPR
B2-5	B2-0	Child of B2-4 or B2-9
B3-1	B3-6	Self-petition married son or daughter of a U.S. citizen
B3-2, B3-3	B3-3, B3-8	Spouse or child of B3-1 or B3-6
BX-1	BX-6	Self-petition spouse of an LPR
BX-2	BX-7	Self-petition child of an LPR
BX-3	B2-8	Child of BX-1, 2, 6, or 7
IB-1	IB-6	Self-petition spouse of a U.S. citizen
IB-2	IB-7	Self-petition child of a U.S. citizen
IB-3	IB-8	Child of IB-1 or IB-6

LEGALIZATION IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
CB-1, CB-2	CB-6, CB-7	Spouse or child of LPR legalized under INA §§ 210, 245A, or the Cuban/Haitian Adj. Act
LB-1, LB-2	LB-6, LB-7	Spouse or child of LPR legalized under INA §§ 210, 245A, or the Cuban/Haitian Adj. Act
	S1-6, S2-6	Special agricultural workers (SAWs)
	W1-6, W2-6, W3-6	Legalized under INA § 245A

EMPLOYMENT-BASED IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
C5-1, C5-2, C5-3	C5-6, C5-7, C5-8	Investors in U.S. business and dependents
E1-1, E1-2, E1-3, E1-4, E1-5	E1-6, E1-7, E1-8, E1-9, E1-0	Priority workers with outstanding or extraordinary abilities, and dependents
E2-1, E2-2, E2-3	E2-6, E2-7, E2-8	Professionals with advanced degrees or exceptional abilities, and dependents
E3-1, E3-2, E3-3, E3-5	E3-6, E3-7, E3-8, E3-9, E3-0	Professionals/skilled workers and dependents
E5-1, E5-2, E5-3	E5-6, E5-7, E5-8	Employment creation immigrants and dependents
EW-3, EW-4, EW-5	EW-8, EW-9, EW-0	Other (nonskilled workers and dependents)
	NP-8, NP-9	Investor and dependent, pre-June 1, 1978
I5-1, I5-2, I5-3	I5-6, I5-7, I5-8	Investor pilot program principals and dependents, conditional
P3-1, P3-2, P3-3	P3-6, P3-7, P3-8	Professional/skilled worker and dependents, pre-1991
P6-1, P6-2, P6-3	P6-6, P6-7, P6-8	Unskilled workers and dependents, pre-1991
R5-1, R5-2, R5-3	R5-6, R5-7, R5-8	Investor pilot program principals and dependents, nontargeted (conditional)
T5-1, T5-2, T5-3	T5-6, T5-7, T5-8	Investors in targeted areas and dependents (conditional)

SPECIAL IMMIGRANTS

PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
SA-1, SA-2, SA-3	SA-6, SA-7, SA-8	Western Hemisphere immigrants (discontinued)
SC-1, SC-2	SC-6, SC-7	Former U.S. citizens
SD-1, SD-2, SD-3	SD-6, SD-7, SD-8	Minister and dependents
SE-1, SE-2, SE-3	SE-6, SE-7, SE-8	Employees or former employees and dependents of U.S. government abroad
SF-1, SF-2, SG-1, SG-2, SH-1, SH-2	SF-6, SF-7 SG-6, SG-7 SH-6, SH-7	Employees or former employees and dependents of the Panama Canal Co., Canal Zone Government, or U.S. government in Panama Canal Zone
SK-1, SK-2, SK-3, SK-4	SK-6, SK-7, SK-8, SK-9	Employees or former employees and dependents or surviving spouses who worked for international organizations
SL-1	SL-6	Juvenile court dependent
SM-1, SM-2, SM-3, SM-4, SM-5	SM-6, SM-7, SM-8, SM-9, SM-0	Immigrants and their dependents recruited or enlisted to serve in U.S. armed forces
SF-1, SR-2, SR-3	SR-6, SR-7, SR-8	Religious workers and dependents

OTHER IMMIGRANTS PROCESSING ABROAD	ADJUSTMENT IN U.S.	MEANING
AA-1, AA-2, AA-3	AA-6, AA-7, AA-8	Diversity visa lottery winners and dependents, 1991-1994
A1-1, A1-2, A3-1, A3-2, A3-3	A1-6, A1-7, A3-6, A3-7, A3-8	Amerasians and family members from Cambodia, Korea, Laos, Thailand, or Vietnam
AM-1, AM-2, AM-3	AM-6, AM-7, AM-8	Vietnamese Amerasians and family members
AR-1	AR-6	Amerasian child of U.S. citizen born in Cambodia, Korea, Laos, Thailand, or Vietnam
	AS-6, AS-7, AS-8	Asylee principal, spouse, and child
	CH-6, CN-P, CU-6, CU-7	Cuban/Haitian entrant; Cuban Adjustment Act
	DS-1	Individual born under diplomatic status in U.S.
DT-1, DT-2, DT-3	DT-6, DT-7, DT-8	Displaced Tibetans and dependents
DV-1, DV-2, DV-3	DV-6, DV-7, DV-8	Diversity visa lottery winners and dependents
	EC-6, EC-7, EC-8	Adjustment under Chinese Student Protection Act
ES-1	ES-6	Soviet scientist
HK-1, HK-2, HK-3	HK-6, HK-7, HK-8	Employees and dependents of certain U.S. businesses operating in Hong Kong
	IC-6, IC-7	Indochinese refugee
	LA-6	Certain parolees from the Soviet Union, Cambodia, Laos, or Vietnam who were denied refugee status and paroled – Lautenberg adjustment
NA-3		Child born during temporary visit abroad of a mother who is an LPR or national of the U.S.
	NC-6, NC-7, NC-8, NC-9	Persons granted adjustment under Nicaraguan Adjustment and Central American Relief Act, spouses, children under 21, and unmarried sons and daughters 21 and over
	R8-6	Refugee paroled into U.S. prior to Apr. 1, 1980
	RE-6, RE-7, RE-8, RE-9	Refugees and their dependents
	RN-6, RN-7	Former H-1 nurses and dependents
S1-3		American Indian born in Canada
SE-H	SE-K	Employee of U.S. Mission in Hong Kong
SJ-2	SJ-6, SJ-7	Foreign medical school graduate and dependents
	XB-3	Presumed to have been admitted as LPR under 8 C.F.R. § 101.1
XE-3, XF-3, XN-3, XR-3		Child born subsequent to issuance of visa to LPR parent.
	Y6-4	Refugee (prior to July 1, 1953)
	Z0-3, Z3-3, Z6-6	Adjusted to LPR status through registry
	Z1-3, Z5-6	Granted suspension of deportation
	Z-2	Generic code for adjustment
	Z4-3	Beneficiary of a private bill
	Z8-3	Foreign official immediate relative of U.S. citizen or special immigrant

Press Office
U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Fact Sheet

May 25, 1999

PUBLIC CHARGE

In an effort to protect the public health and help people become self-sufficient, the Clinton Administration is publishing a proposed rule in the *Federal Register* on May 26 that clarifies the circumstances under which a non-citizen can receive public benefits without becoming a "public charge" for purposes of admission into the United States, adjustment of status to legal permanent resident, and deportation.

The new regulations, for the first time, define "public charge" and state which benefits a non-citizen may receive without concern for negative immigration consequences. The regulation describes the various issues that must be considered in making a public charge determination. This information will help non-citizens and their families make informed choices about whether to apply for certain benefits. The regulation also enhances the administration of the nation's immigration laws by promoting fair and consistent decision-making.

Background

"Public charge" has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry. Instances of deportation on public charge grounds have been very rare.

Recent immigration and welfare reform laws have generated considerable public confusion and concern about whether a non-citizen who is eligible to receive certain Federal, State, or local public benefits may face adverse immigration consequences as a public charge for having received public benefits.

This concern has prompted some non-citizens and their families to deny themselves public benefits for which they are eligible -- including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs -- potentially causing considerable harm to themselves and the general public. This impact undermines the government's policies of increasing access to health insurance and health care and helping people to become self-sufficient by drawing temporarily on public support during a transition period.

Definition of Public Charge

The proposed rule, which was drafted after an extensive interagency process with benefit-granting agencies, defines "public charge" to mean **an alien who has become (for deportation purposes) or is likely to become (for admission or adjustment of status purposes) "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense." This definition alone, however, cannot be used to determine if an alien is a public charge -- other issues must be considered, as specified below.**

The Immigration and Naturalization Service (INS) is implementing this definition of public charge immediately through field guidance discussing the definition and standards for public charge determinations. The field guidance will be published along with the proposed rule in the *Federal Register*. In addition, the United States Department of State (DOS) will send a cable to U.S. consulates abroad providing guidance on public charge determinations for admission purposes. By making this guidance effective immediately, INS and DOS are helping to relieve public concerns about receiving health care and other important services, as well as providing field personnel with the tools needed to enforce immigration law in a clear and consistent manner.

At the same time, INS is seeking public comment on this approach. The proposed rule includes a 60-day public comment period.

Benefits Subject to Public Charge Consideration

The proposed rule specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called "General Assistance" programs. Acceptance of these forms of public cash assistance could make a non-citizen a public charge, if all other criteria are met (as described below in the section "Criteria for Public Charge Determinations.")

In addition, public assistance, including Medicaid, that is used for supporting aliens who reside in an institution for long-term care -- such as a nursing home or mental health institution -- will also be considered by INS and DOS officials as part of the public charge analysis. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

- Medicaid,
- Children's Health Insurance Program (CHIP),
- Food Stamps,
- the Special Supplemental Nutrition Program for Women, Infants and Children (WIC),
- immunizations,
- prenatal care,
- testing and treatment of communicable diseases,
- emergency medical assistance,
- emergency disaster relief,
- nutrition programs,
- housing assistance,
- energy assistance,
- child care services,
- foster care and adoption assistance,
- transportation vouchers,
- educational assistance,
- job training programs,
- and non-cash benefits funded under the TANF program.

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided in cash under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF.
Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.

Criteria for Public Charge Determinations

The proposed rule states that an alien's mere receipt of cash assistance for income maintenance, or being institutionalized for long-term care, does not automatically make him or her inadmissible, ineligible to adjust status to legal permanent resident, or deportable on public charge grounds. The law requires that INS and DOS officials consider several additional issues as well. Each determination is made on a case-by-case basis.

Admission and Adjustment of Status

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, a number of factors must be considered by INS and DOS, including: the alien's age, health, family status, assets, resources, financial status, education and skills. No single factor -- other than the lack of an Affidavit of Support, if required -- will determine whether an alien is a public charge, including past or current receipt of public cash benefits for income maintenance.

Deportation

The INS can deport an alien on public charge grounds only if the alien has failed to meet the benefit-granting agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care. INS may initiate removal proceedings only if the benefit-granting agency has the legal authority to demand repayment and has:

- chosen to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

Even if these conditions are met, the alien is not deportable on public charge grounds if the alien can show that he or she received public cash benefits for income maintenance or was institutionalized for long-term care for causes that arose after entry into the United States.

Other Public Charge Clarifications

There is no public charge test for naturalization.

Public charge is not a factor in whether a non-citizen can sponsor a relative to come to the United States.

Benefits received by one member of a family are not attributed to other family members for public charge purposes, unless the cash benefits amount to the sole support of the family.

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INDEX OF ABBREVIATIONS AND ACRONYMS

ADAP.......................AIDS Drug Assistance Program

ADM ....Administrative Directives

CHP.........................Child Health Plus

CFR ....Code of Federal Regulations

DOH ....Department of Health (New York State)

FHPlus.....................Family Health Plus

FPBP ....Family Planning Benefits Program

FPEP ....Family Planning Extension Program

GIS ....General Information Systems Messages

ICE ....Immigration and Customs Enforcement

INA ....Immigration and Nationality Act

INF...........................Informational Letter

OTDA ....Office of Temporary and Disability Assistance (New York State)

PCAP.......................Prenatal Care Assistance Program

USC.........................United States Codes

USCIS ....United States Citizenship and Immigration Services

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HELPFUL WEBSITES

NYS DOH: *www.health.state.ny.us*

Medicaid Resource Guide (MRG):
www.health.state.ny.us/health_care/medicaid/reference/mrg

Empire Justice Center Health Resource Page: *www.empirejustice.org*

New York Immigration Coalition: *www.thenyic.org*

USCIS: *http://www.uscis.gov/portal/site/uscis*

Immigrant
ELIGIBILITY + COVERAGE
WORKGROUP

119 Washington Avenue, Albany, NY 12210
(518) 462-6831 | www.empirejustice.org

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