

Medicaid for Immigrants who are Not Permanent Residents (Do Not have "Green Cards")-- PRUCOL and Temporary Non-Immigrant Eligibility

News update - Starting JAN.. 1, 2024 - Immigrants age 65+ can get FULL MEDICAID even if they do not qualify for PRUCOL status, discussed below. See this official Fact Sheet that explains how immigrants age 65+ can access full Medicaid - [New Health Insurance Option for Undocumented Immigrants Over 65 Fact Sheet](#) (Dec. 18, 2023 -NYS of Health). See more in [this article](#).

NEWS UPDATE March 9, 2021 - The Trump [Public Charge rule](#) has been vacated after the Biden administration withdrew its appeal to the Supreme Court of an injunction issued by the Second Circuit and also withdrew appeal of a Seventh Circuit lawsuit. See more about this news and public charge [here](#). See [here about how Public Charge affects older persons age 65+](#) who are undocumented and need Medicaid to cover **nursing home care**.

Current Medicaid Rules For People who are Not Lawful Permanent Residents (Do Not Have "Green Cards")

Introduction

Federal law, since 1996, limits Medicaid eligibility to US citizens and "Qualified Aliens," which include:

1. Lawful Permanent Residents (LPR or "green card") - under federal law, all but pregnant women & children have a 5 year waiting period. AND
2. Humanitarian immigrants - Refugees & Asylees, battered persons & trafficking victims, people in armed services, people granted withholding of deportation, and immigrants from certain countries granted relief at different times, like Haitians, Cuban entrants, etc.

See Empire Justice Center & NY Immigration Coalition's [Immigrant Eligibility for Public Benefits in NYS](#) (Nov-2021)

New York State, fortunately, is more liberal. Many people mistakenly think an immigrant must have a "green card" (formally called a "lawful permanent resident") or be a refugee, in order to be eligible for Medicaid. This is not true, at least not in New York State. Thanks to the New York State Constitution and a 2001 decision of New York's highest court in a case called [Aliessa v. Novello](#), many ([but not all](#)) immigrants who do not have "green cards" are eligible for Medicaid in New York State. Their Medicaid is paid for by the State exclusively, without any federal contribution -- but that does not affect the immigrant. The

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Medicaid they have is the same.

New York grants Medicaid eligibility to three broad categories of immigrants who are not lawful permanent residents or humanitarian immigrants, described below.

I. Permanently Residing Under Color Of Law (PRUCOL)

II. Temporary non-immigrants who are lawfully present" in the U.S. and residents of New York State.

III. Immigrants Age 65 + Who are Undocumented - Not eligible for PRUCOL

I. IMMIGRANTS PERMANENTLY RESIDING UNDER COLOR OF LAW (PRUCOL)

Immigrants who do not have a green card (permanent resident alien formally known as the "qualified alien category") but who are **permanently residing under color of law (PRUCOL)** are eligible for full Medicaid in New York State. (see also

Immigrant Eligibility for Public Benefits in NYS (Nov-2021)

Current NYS DOH policy defining the PRUCOL category can be found at:

- 21 INF-01 - Clarification of PRUCOL Status for the Purposes of Medicaid Eligibility
- 08 MA 009 - Revised Desk Guide: "Documentation Guide to Citizenship and Immigrant Eligibility for Health Coverage in New York State" ;
http://www.health.ny.gov/health_care/medicaid/publications/docs/gis/08ma009att.pdf
 - ◆ GIS 19 MA/02 - Revised Desk Guide: "Documentation Guide to Citizenship and Immigrant Eligibility for Health Coverage in New York State" - This GIS revised replaces PAGE 12 of the 2008 MA-009 Desk Guide. Clarifies that the I-797 "Notice of Action" alone does not determine immigration status.
 - ◆ Attachment - new PAGE 12 to substitute in 2008 Desk Guide
- 08 INF-04 - Clarification of PRUCOL Status for the Purposes of Medicaid Eligibility
"Clarification of PRUCOL status for the Purposes of Medicaid Eligibility" -- Affirms Department policy previously discussed in:
 - ◆ 04ADM-07 - Citizenship and Alien Status Requirements for the Medicaid Program (attachments at
http://www.health.state.ny.us/health_care/medicaid/publications/pub2004adm.htm
and
 - ◆ 07INF-02 - Clarification of PRUCOL Status for Purposes of Medicaid Eligibility
- 08 INF-02 - Social Security Numbers for Immigrants

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- ◆ Attachment I (Form letter from LDSS to SSA requesting SSN number) (replaces attachment to 04 ADM-07)
- ◆ Attachment II (Same form letter but for immigrants only eligible for "State" medicaid.. presumably since the ACA this form is no longer in use.. just use Attachment 1)
- GIS 13 MA/011 Children's Health Insurance Program Reauthorization Act (CHIPRA) Expanded Coverage for Certain Qualified and PRUCOL Aliens (May 7, 2013)

Immigrants should be classified as PRUCOL by the social services district if :

1. They can provide evidence that the USCIS or ICE (the main federal immigration agencies within the Dept. of Homeland Security) knows that they are here (see more below on what evidence is needed) and
2. The immigration agencies are not contemplating enforcing their departure. This is indicated *either* because:
 - ◆ the immigration agency has given them explicit permission to be here **or**,
 - ◆ because of the immigration agency's inaction, can be considered to be acquiescing in their continued presence.

These factors are described more below.

1. What is evidence that Immigration agencies know that the client is here in the U.S.?

- An **official application** filed with USCIS for adjustment of status to lawful permanent alien (get a green card), for asylum, temporary protected status, or suspension of deportation. If an official written application was filed, and
 - ◆ **Proof of mailing** by certified receipt iOR a receipt from the immigration service (called an I-797 Notice of Action) is provided, this is enough.

The client is PRUCOL as long as the application is pending, and in some circumstances PRUCOL status may continue after the application is denied. For example, a notice denying a deferred action application states, "Denial of a request for deferred action does not necessarily mean that USCIS intends affirmatively to pursue your client's removal." Some Fair Hearing decisions state that while the application may have been denied, the facts and circumstances of the case indicate that the federal government does not intend to affirmatively enforce the person's removal. See, e.g. Fair Hearing No. 6805696N (NYC 10/17/14), Fair Hearing No. 6901593N (NYC 3/24/15), and Fair Hearing No. 6417893Q (Dutchess Co. 1/17/2014).

- The immigrant or his/her representative has made a **request by letter to the immigration agency requesting a particular recognized type of relief**, such as *deferred action* or *voluntary departure*, with proof of receipt by certified mail. These requests are usually based on humanitarian or medical grounds.

2. WHAT PROOF IS NEEDED THAT AN IMMIGRATION AGENCY IS NOT ENFORCING THEIR DEPARTURE?

Either A or B:

A. USCIS (or ICE) has expressly given them permission to remain in the U.S. , by granting:

- 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.
- DACA or Deferred Action for Childhood Arrivals Status -- See NYS GIS 13-MA-011 (May 7, 2013)

B. The Immigration agency has not acted on an application or a letter, of the types described in #1 above.

1. FORMAL APPLICATION to adjust status, etc. - if Immigration service has not acted

on a FORMAL APPLICATION, applicant is PRUCOL as long as the application is pending, no matter how long, until it is actually DENIED or there is some other indication that his/her departure is being enforced.

2. **REQUEST BY LETTER FOR RELIEF from deportation** -- Merely showing proof that the letter was sent is not enough. The immigration agency must have been afforded "reasonable time" to consider the request, which the State Dept. of Health has said is **six months** from mailing the initial letter. See 08 OHIP/INF-4 p. 6. But the immigrant must ALSO show that the request was made in good faith by showing that s/he or her representative made at least one follow-up inquiry about the status of the request with the Immigration agency during that six months.

- ◆ So - you must wait six months before filing a Medicaid application based on PRUCOL status, if the PRUCOL status is based on a letter, rather than a formal application to adjust status, and you must enclose proof that both the letter AND a follow-up letter were mailed to the immigration agency.

3. **Requests for Deferred Action for Childhood Arrivals (DACA)** (began 8/2012). The Dept. of Homeland Security (DHS) has decided to focus its attention on the removal of individuals who pose a danger to national security or a risk to public safety, including aliens convicted of crimes, with emphasis on violent criminals, felons and repeat offenders. The DHS will exercise prosecutorial discretion to ensure that enforcement resources are not expended on low priority cases, such as individuals who were brought to this country through no fault of their own as children. To be eligible for DACA, these individuals cannot have been convicted of a felony offense, a significant misdemeanor or multiple misdemeanor offenses. ***In New York State, these individuals will be PRUCOL, but are not eligible for FFP.*** See NYS GIS 13-MA-011 (May 7, 2013)

WHO IS NOT ELIGIBLE for PRUCOL status?

- A person who entered the U.S. legally by a temporary visa, such as a tourist or student visa, but that visa expired, and they never again filed for any permanent immigrant status or any other relief, as described above
- A person who entered the U.S. illegally, without any documentation at all, and never again filed for any of the statuses or relief described above

II. Temporary Non-immigrants who are "lawfully present" in the U.S. and residents of New York State

Temporary non-immigrants are individuals who are allowed to enter the United States temporarily for a specific purpose and for a specific period of time. They are commonly referred to as **short-term visa holders**. There are more than two dozen temporary non-immigrant categories. A few of the more common temporary non-immigrant categories are tourists, students and visitors for business. See list at Temporary Non-Immigrant Document Types and Visa Codes, which is Attachment II of GIS 16 MA/002 - Changes in Medicaid Coverage for Temporary Non-Immigrants. This list also includes examples of

the types of documentation that temporary non-immigrants will typically possess. Under the GIS, the individual must not have violated the terms of the status under which he or she was admitted to the U.S. (i.e., the individual must not have overstayed his or her visa.

Before this GIS was issued in 2016, temporary non-immigrants were only eligible for Emergency Medicaid, unless they were pregnant women or children. NYS is exercising an option afforded to states to cover all temporary non-immigrants if they are "lawfully present" in the U.S., are state residents, and meet all other Medicaid eligibility requirements. This option is granted under the Children's Health Insurance Program Reauthorization Act of 2009, as interpreted in guidance issued by CMS in 2010. See GIS.

To determine if they are state residents, the "Residency Review Worksheet" (Spanish version) must be given to all temporary non-immigrants applying for Medicaid. The applicant must answer YES to one of the questions to qualify as a resident. See the GIS for more information. If they do not qualify as a resident, they are only eligible for Emergency Medicaid -- again, unless they are pregnant women or children.

The GIS and all of its attachments can be found here

III. Undocumented Immigrants Age 65+ eligible for FULL MEDICAID - starting Jan. 1, 2024

See here.

WARNING: IMMIGRATION RULES ARE VERY COMPLICATED.

- Do not send a letter to any Immigration agency without consulting an immigration expert. You can find one serving your client's area by using <http://lawhelp.org/NY> and clicking on IMMIGRATION, or at the Urban Justice Center International Refugee Assistance Project or list of network of legal services providers in NYS.

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