SF HIV FOG
Open Enrollment Boot CAMP IV

Resource Guide Part V
Immigration

Getting the Health Care You Deserve

Your immigration information is safe, secure and confidential

It's important to have health coverage to keep you and your family healthy

Covered California is a place where you can compare and get health insurance plans, and get financial assistance to pay for your health coverage if you qualify. When you apply through Covered California, you can also determine if you are eligible for reduced premiums or Medi-Cal.

Most California residents who are U.S. citizens, U.S. nationals, or who are "lawfully present" can get health insurance with financial help through Covered California. Individuals with other immigration statuses may be eligible for health coverage through Medi-Cal, although the benefits may be limited.

If you are applying for health coverage for yourself or your family members, know that all of your information is safe and confidential.

Covered California, in partnership with the National Immigration Law Center, the Mexican American Legal Defense and Educational Fund, the National Association of Latino Elected and Appointed Officials Educational Fund, Asian Americans Advancing Justice – Los Angeles, the California Immigrant Policy Center and the Coalition for Humane Immigrant Rights of Los Angeles is encouraging everyone to apply for health coverage, without fear that their application will affect their immigration status or the status of their family members.

Your immigration information is protected

When you apply with Covered California or any of our partners – Certified Insurance Agents, Certified Enrollment Counselors and county eligibility workers – immigration status information is needed for the family members applying for coverage, but all of your information is kept private and secure.[1] It will not be used by any immigration agency to enforce immigration laws.[2] All information you submit is used only to determine your eligibility for health programs in Covered California or Medi-Cal.[3]

When you apply through Covered California, you may be asked to provide information about your immigration status or that is on your documents, like a number on your "Green Card" or information on an Employment Authorization Card. In some circumstances, you may need to mail or fax copies or upload them to your online application. Your immigration information and documents are always kept secure.

If you are applying for someone else, you do not need to provide information about your immigration status

If you are applying for health coverage for another person, like your child, and not for yourself, you do not need to provide any information about your own immigration status.[4] Covered California asks for a social security number (SSN) to help determine whether a family is eligible for financial assistance, but you are not required to have and input a SSN to apply for coverage.[5] If you do not have a SSN, you can still apply for coverage for your family members.

Dec. 16, 2014

Getting the Health Care You Deserve

Your immigration information is safe, secure and confidential

Immigrant and undocumented family members on your application are not at risk

The information you provide to Covered California will not be used for immigration enforcement purposes, even if members of your family are undocumented immigrants or immigrants with temporary status like Temporary Protected Status or deferred action. In 2013, the U.S. Immigration and Customs Enforcement (ICE) clarified that it "does not use information about [immigration] obtained for purposes of determining eligibility for such coverage as the basis for pursuing a civil immigration enforcement action."[6] This means that all information on your application is safe, secure, confidential, and will not be used for immigration enforcement purposes.

Applying for Covered California does not affect your immigration status

Getting health coverage from Covered California will not affect your immigration status, even if you receive financial assistance. In addition, you do not have to be afraid of being labeled a "public charge" and it will not make it harder for you to become a U.S. citizen or a lawful permanent resident.[7] There's one exception for certain people getting Medi-Cal: people receiving long-term care in an institution through Medi-Cal may face barriers getting a green card.

Remember: you or your family may be eligible for Medi-Cal

While undocumented Californians are not eligible for Covered California health plans, they may be eligible for specific, limited Medi-Cal programs. Any immigrant who meets the income requirements can receive Medi-Cal for emergency care, regardless of immigration status. It is important for all individuals and their families to apply and see what health coverage options are available to them.

If you qualify for deferred action for childhood arrivals (DACA)

People granted Deferred Action for Childhood Arrivals (DACA) are not eligible to purchase a health plan through Covered California.[8] However, depending on their income, they may be eligible for Medi-Cal.

Where to get help

To find more information about your coverage options, go to CoveredCA.com. On the website, click on the "Find Local Help" button to locate a Certified Insurance Agent, Certified Enrollment Counselor or county eligibility worker who can provide free and confidential help and answer any questions you may have. Or you can call Covered California at (800) 300-0516 (English), (800) 300-0213 (Spanish), (800) 300-1533 (Chinese), (800) 738-9116 (Korean) and (800) 652-9528 (Vietnamese).

A link to download this document can be found at: www.CoveredCA.com/news/PDFs/immigration-fact-sheet-ca.pdf

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[1] See, e.g., Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 1414 (2010); 45 C.F.R. 155.260(a)(1)(2014); Covered California Notice of Privacy Practices, available at http://www.coveredca.com/privacy; 42 U.S.C. § 1396a(a)(7)(2012); 26 U.S.C. § 6103(2012).

[2] Clarification of Existing Practices Related to Certain Health Care Information, U.S. Immigration and Customs Enforcement (Oct. 25, 2013), available at http://www.ice.gov/ doclib/ero-outreach/pdf/ice-aca-memo.pdf.

[3] 45 C.F.R. § 155.260(a)(1)(2014).

[4] 45 C.F.R. § 155.310(a)(2)(2014).

[5] 45 C.F.R. §§ 155.305(f)(6),155.310(a)(3)(ii)(2014).

[6] ICE Clarification of Existing Practices, supra.

[7] See, e.g., Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, Immigration and Naturalization Service, Department of Justice, 64 Fed. Reg. 28689, 28692 (May 26, 1999); Public Charge Fact Sheet, U.S. Citizenship and Immigration Services, Department of Homeland Security (revised Nov. 15, 2013), available at http:// www.uscis.gov/news/fact-sheets/public-charge-fact-sheet.

[8] Memorandum from Janet Napolitano, Exercising Prosecutorial Discretion with Respect to Persons Who Came to the United States as Children, Department of Homeland Security (June 15, 2012), available at: http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf; 45 CFR §§ 152.2, 155.20, 155.305(a)(1)(2014).

Immigration status and the Marketplace

People with the following immigration statuses qualify for Marketplace coverage.

Immigrants with the following statuses qualify to use the Marketplace:

- Lawful Permanent Resident (LPR/Green Card holder)
- Asylee
- Refugee
- Cuban/Haitian Entrant
- Paroled into the U.S.
- Conditional Entrant Granted before 1980
- Battered Spouse, Child and Parent
- Victim of Trafficking and his/her Spouse, Child, Sibling or Parent
- Granted Withholding of Deportation or Withholding of Removal, under the immigration laws or under the Convention against Torture (CAT)
- Individual with Non-immigrant Status, includes worker visas (such as H1, H-2A, H-2B), student visas, U-visa, T-visa, and other visas, and citizens of Micronesia, the Marshall Islands, and Palau
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (Exception: Deferred Action for Childhood Arrivals (DACA) is not an eligible immigration status for applying for health insurance)
- Lawful Temporary Resident
- Administrative order staying removal issued by the Department of Homeland Security
- Member of a federally-recognized Indian tribe or American Indian Born in Canada
- Resident of American Samoa

Applicants for any of these statuses qualify to use the Marketplace:

- Temporary Protected Status with Employment Authorization
- Special Immigrant Juvenile Status
- Victim of Trafficking Visa
- Adjustment to LPR Status
- Asylum (see note below)
- Withholding of Deportation, or Withholding of Removal, under the immigration laws or under the Convention against Torture (CAT) (see note below)

Applicants for asylum are eligible for Marketplace coverage only if they've been granted employment authorization or are under the age of 14 and have had an application pending for at least 180 days.

People with the following statuses and who have employment authorization qualify for the Marketplace:

- Registry Applicants
- Order of Supervision
- Applicant for Cancellation of Removal or Suspension of Deportation
- Applicant for Legalization under Immigration Reform and Control Act (IRCA)
- Legalization under the LIFE Act

Remember: Information about immigration status will be used **only** to determine eligibility for coverage and not for immigration enforcement.

Additional Resources:

- Health coverage for immigrants
- Coverage for U.S. citizens & U.S. nationals
- Coverage for lawfully present immigrants
- Immigration status and the Marketplace
- Immigration documentation types
- More information for immigrant families

Get details about what document numbers and other information you'll need to fill out a Marketplace application.

State of California—Health and Human Services Agency
Department of Health Care Services

Jennifer Kent
Director

EDMUND G. BROWN JR.
Governor

August 5, 2016

Medi-Cal Eligibility Division Information Letter No.: I 16-12

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS

SUBJECT: EMPLOYMENT AUTHORIZATION CATEGORY CODES AND SCOPE OF MEDI-CAL BENEFITS

The purpose of this Medi-Cal Eligibility Division Informational Letter (MEDIL) is to provide additional information on common Employment Authorization Document (EAD) categories and the associated Medi-Cal benefits for each category.

BACKGROUND

An EAD is a document issued by United States Citizenship and Immigration Services (USCIS) that authorizes a noncitizen to work in the United States. An EAD is issued for a specific period of time based on an individual's immigration status.

IMMIGRANT CATEGORY CODE

The category code included on the EAD indicates the individual's immigration status. The table below includes common EAD codes and the associated scope of Medi-Cal benefits. Please note this is not an exhaustive list of EAD codes and the applicant must meet all other Medi-Cal eligibility requirements to be eligible for any Medi-Cal benefits. Consistent with current policy, counties must verify immigration status through the Federal Data Services Hub (FDSH) or through the Systematic Alien Verification for Entitlements (SAVE) system for immigrants whose EAD indicates they are eligible for full scope Medi-Cal. In these cases, conditional full scope Medi-Cal must be granted during the immigration status verification process if the individual is otherwise eligible.

COMMON EMPLOYMENT AUTHORIZATION DOCUMENT (EAD) CATEGORY CODES AND SCOPE OF MEDI-CAL BENEFITS		
EAD Code	**Immigration Status**	**Eligible for (Full/Restricted Scope if all other requirements are met)**
A2	Lawful Temporary Resident	Restricted Scope
A3	Refugee	Full Scope
A4	Refugee/Paroled into the U.S.	Full Scope
A5	Asylee	Full Scope
A6	Nonimmigrant Fiancé(e) of US Citizen (K-1 visa) or minor child of fiancé(e) (K-2 visa)	Restricted Scope
A7	Nonimmigrant parent or minor child of a person granted Lawful Permanent Resident (LPR) status as a special immigrant under INA § 101(a)(27)(I)	Restricted Scope
A8	Citizen of Micronesia, the Marshall Islands, and Palau	Restricted Scope
A10	Granted Withholding of Deportation or Withholding or Removal/Granted Withholding of Deportation/Removal under the Convention Against Torture/"Qualified" Domestic Violence Survivor	Full Scope
A11	Granted Deferred Enforcement Departure (DED)	Full Scope
A12	Granted Temporary Protected Status (TPS)	Restricted Scope
A13	Family Unity	Restricted Scope
A14	Granted Family Unity under the LIFE Act	Restricted Scope
A15	Foreign national Spouse of LPR (V-1 visa), LPR's minor child (V-2 visa), or spouses minor child (V-3 visa)	Restricted Scope

COMMON EMPLOYMENT AUTHORIZATION DOCUMENT (EAD) CATEGORY CODES AND SCOPE OF MEDI-CAL BENEFITS		
EAD Code	**Immigration Status**	**Eligible for (Full/Restricted Scope if all other requirements are met)**
A16	Victim of Trafficking	Full Scope if Trafficking and Crime Victims Assistance Program (TCVAP) eligible (See ACWDL 15-25),or if they meet the requirements for Qualified Immigrant status or PRUCOL. Otherwise restricted scope.
A19	Victim of Crime Admitted with U-visa	Full Scope if TCVAP eligible. Otherwise restricted scope. See ACWDL 15-25.
A20	Derivative relatives of U visa holder)	Full Scope if TCVAP eligible. Otherwise restricted scope. See ACWDL 15-25.
B6	Foreign students in on-campus employment	Restricted Scope
B9	Temporary worker or trainee (H-1, H-2A, H-2B or H-3 visa)	Restricted Scope
B11	Exchange visitor (J-1 visa)	Restricted Scope
B16	Religious worker (R visa)	Restricted Scope
C1	Dependent of foreign government official (A-1 or A-2 visa)	Restricted Scope
C2	Spouse or minor child of an employee of the Coordination Council for North American Affairs (E-1 visa)	Restricted Scope

COMMON EMPLOYMENT AUTHORIZATION DOCUMENT (EAD) CATEGORY CODES AND SCOPE OF MEDI-CAL BENEFITS		
EAD Code	**Immigration Status**	**Eligible for (Full/Restricted Scope if all other requirements are met)**
C3	Foreign students (F-1 visa)	Restricted Scope
C4	Dependent of employee of international organization (G-1, G-3, and G-4 visa)	Restricted Scope
C5	Dependent of exchange visitor (J-2 visa)	Restricted Scope
C6	Foreign Student (M-1 visa)	Restricted Scope
C7	Dependent of NATO employee	Restricted Scope
C9	Applicant for Adjustment to LPR Status/Qualified Domestic Violence Survivor	Full Scope if Trafficking and Crime Victims Assistance Program eligible (See ACWDL 15-25), or if they meet the requirements for Qualified Immigrant status or PRUCOL. Otherwise restricted scope.
C11	Public Interest Parolee	Full Scope (PRUCOL or Qualified Immigrant depending on basis for parole)
C14	Granted Deferred Action	Full Scope
C16	Registry Applicant, with employment authorization (Note—This immigrant has applied for LPR status.	Full Scope
C17	Certain personal or domestic servants/employee of foreign airline (B-1 visa)	Restricted Scope
C18	Order of Supervision, with employment authorization	Full Scope

COMMON EMPLOYMENT AUTHORIZATION DOCUMENT (EAD) CATEGORY CODES AND SCOPE OF MEDI-CAL BENEFITS		
EAD Code	**Immigration Status**	**Eligible for (Full/Restricted Scope if all other requirements are met)**
C19	Applicant for TPS with employment authorization	Restricted Scope
C20	Applicant for Legalization under Immigration Reform and Control Act or the Legal Immigration Family Equity Act	Restricted Scope
C24	LIFE Legalization Applicant	Restricted Scope
C25	Derivative Beneficiary of Trafficking Survivor	Full Scope (Qualified Immigrant (Federally recognized Trafficking Victim with T Visa)
C31	Qualified Domestic Violence Survivor	Full Scope if TCVAP eligible (See ACWDL 15-25), or if they meet the requirements for Qualified Immigrant status or PRUCOL. Otherwise restricted scope.
C33	Deferred Action for Childhood Arrivals (DACA/Dream Act)	Full Scope

Documents Typically Used by Lawfully Present Immigrants

Last revised JULY 2016

STATUS	TYPICAL DOCUMENTS
Lawful Permanent Resident (LPR)	• "Green card" (Form I-551) or earlier versions: I-151, AR-2 and AR-3; • Reentry permit (I-327); • Foreign passport stamped to show temporary evidence of LPR or "I-551" status; • Receipt from USCIS (U.S. Citizenship and Immigration Services) indicating that an I-90 application to replace LPR card has been filed; • Memorandum of Creation of Lawful Permanent Residence with approval stamp (I-181); • I-94 or I-94A with stamp indicating admission for lawful permanent residence; • Order issued by the INS/DHS (Immigration and Naturalization Service/Dept. of Homeland Security), an immigration judge, the BIA (Board of Immigration Appeals), or a federal court granting registry, suspension of deportation, cancellation of removal, or adjustment of status; *or* • Any verification from the INS, DHS, or other authoritative document.
Amerasian LPR NOTE: The codes listed here pertain only to the particular Vietnamese Amerasians who qualify for the "Refugee Exemption."	• Any of the LPR documents listed above with one of the following codes: AM-1, AM-2, AM-3, AM-6, AM-7, or AM-8; *or* • Any verification from the INS, DHS, or other authoritative document.
Applicant for Adjustment to LPR Status	• Receipt or notice showing filing or pending status of Form I-485 Application to Register Permanent Residence or Adjust Status; • Form I-797 ASC Appointment Notice with Case Type "I-485 Application to Register Permanent Residence or Adjust Status"; • Form I-688B or I-766 employment authorization document (EAD) coded 274a.12(c)(9) or C9 or C9P; • I-797 receipt for Application for Employment Authorization based on C09; • I-512 authorization for parole, indicating applicant for adjustment of status; *or* • Any verification from the INS, DHS, or other authoritative document.

List of Abbreviations . . . . Page 5

This table lists the categories of non–U.S. citizens who are recognized as "lawfully present" in the United States for various purposes. For more information, contact Linton Joaquin, NILC general counsel, at joaquin@nilc.org.

LOS ANGELES (Headquarters)
3450 Wilshire Blvd. #108 – 62
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC
1121 14th Street, NW, Ste. 200
Washington, DC 20005
202 216-0261
202 216-0266 fax

STATUS	TYPICAL DOCUMENTS
Refugee	• Form I-94 or I-94A Arrival/Departure Record or passport stamped "refugee" or "§ 207"; • Form I-688B or I-766 EAD coded 274a.12(a)(3) or A3; or (a)(4) or "A4" (paroled as a refugee); • Refugee travel document (I-571); *or* • Any verification from the INS, DHS or other authoritative document. NOTE: If adjusted to LPR status, I-551 may be coded R8-6, RE-6, RE-7, RE-8, or RE-9.
Conditional Entrant	• Form I-94, I-94A, or other document indicating status as "conditional entrant," "Seventh Preference," § 203(a)(7), or P7; *or* • Any verification from the INS, DHS, or other authoritative document.
Asylee	• Form I-94, I-94A, or passport stamped "asylee" or "§ 208"; • Order granting asylum issued by the INS, DHS, an immigration judge, the BIA, or a federal court; • Form I-688B or I-766 EAD coded 274a.12(a)(5) or A5; • Refugee travel document (I-571); *or* • Any verification from the INS, DHS, or other authoritative document. NOTE: If adjusted to LPR status, I-551 may be coded AS-6, AS-7, or AS-8.
Granted Withholding of Deportation or Withholding of Removal	• Order granting withholding of deportation or removal issued by the INS, DHS, an immigration judge, the BIA, or a federal court; • Form I-688B or I-766 EAD coded 274a.12(a)(10) or A10; *or* • Any verification from the INS, DHS, or other authoritative document.
Granted Withholding of Deportation/Removal under the Convention Against Torture (CAT)	• Order granting withholding of deportation or removal under CAT, issued by an immigration judge, the BIA, or a federal court; • Form I-688B or I-766 EAD coded 274a.12(a)(10) or A10; *or* • Any verification from the INS, DHS, or other authoritative document
Applicant for Asylum or Withholding of Deportation/Removal, including Applicant for Withholding of Deportation/ Removal under CAT	• Receipt or notice showing filing or pending status of Form I-589 Application for Asylum and Withholding or CAT; • Form I-688B or I-766 EAD coded 274a.12(c)(8) or C8; *or* • Any verification from the INS, DHS, or other authoritative document.
Cuban or Haitian Entrant	• Form I-94 with a stamp indicating "Cuban/Haitian entrant" (this may be rare, as it has not been used since 1980) or any other notation indicating "parole," any documents indicating pending exclusion or deportation proceedings; • Any documents indicating a pending asylum application, including a receipt from an INS Asylum Office indicating filing of Form I-589 application for asylum; • Form I-688B or I-766 EAD coded 274a.12(c)(8) or C8, or 274a.12(c)(11) or C11; *or* • Any verification from the INS, DHS, or other authoritative document. NOTE: Individuals who have adjusted to LPR status may have I-551 cards or temporary I-551 stamps in foreign passports coded CAA66, CB1, CB2, CB6, CB7, CH6, CNP, CU6, CU7, CU8, CU9, CUO, CUP, NC6, NC7, NC8, NC9, HA6, HA7, HA8, HA9, HB6, HB7, HB8, HB9, HC6, HC7, HC8, HC9, HD6, HD7, HD8, HD9, HE6, HE7, HE8, HE9. In addition, Cubans or

STATUS	TYPICAL DOCUMENTS
	Haitians with the codes LB1, LB2, LB6, or LB7 may also qualify. These codes were used for individuals granted LPR status under any of the 1986 legalization provisions including Cuban/Haitian entrants.
Paroled into the U.S.	• Form I-94 or I-94A indicating "parole" or "PIP" or "212(d)(5)," or other language indicating parole status; • Form I-688B or I-766 EAD coded 274a.12(a)(4), 274a.12(c)(11), A4, or C11; *or* • Any verification from the INS, DHS, or other authoritative document. NOTE: If subsequently adjusted to LPR status, may have I-551 card (for Lautenberg parolees, these may be coded LA).
Granted Temporary Protected Status (TPS)	• Form I-688B or I-766 EAD coded 274a.12(a)(12) or A12; • Form I-797 Notice of Action showing grant of TPS status; *or* • Any verification from the INS, DHS, or other authoritative document.
Applicant for TPS	• Receipt or notice showing filing or pending status of Form I-821 (Application for Temporary Protected Status); • Form I-688B or I-766 EAD coded 274a.12(c)(19) or C19; *or* • Any verification from the INS, DHS, or other authoritative document.
Granted Deferred Enforced Departure (DED)	• Form I-688B or I-766 EAD coded 274a.12(a)(11) or A11; *or* • Any verification from the INS, DHS, or other authoritative document.
Granted Deferred Action	• Form I-797 Notice of Action or other form showing approval of deferred action status; • Form I-688B or I-766 EAD coded 274a.12(c)(14) or C14, (c)(33) or C33; *or* • Any verification from the INS, DHS, or other authoritative document.
Applicant for Special Immigrant Juvenile Status	• Form I-797 Notice of Action Special Immigrant Juvenile Receipt Notice; • Form I-797 Notice of Action Special Immigrant Juvenile Approval Notice; • Form I-797 Welcome Notice/Approval of I-485, "Other Basis of Adjustment SL6"; • I-551 coded "SL6"; or • Any verification from the INS, DHS, or other authoritative document.
"Qualified" Domestic Violence Survivor Must have a pending petition for an immigrant visa, either filed by a spouse or a self-petition under the Violence Against Women Act (VAWA), or an application for suspension of deportation or cancellation of removal. The petition or application must either be approved or, if not yet approved, must present a prima facie case.	• Receipt or other proof of filing I-130 (visa petition) under immediate relative (IR) or 2nd family preference (P-2) showing status as a spouse or child; • Form I-360 (application to qualify as abused spouse, child, or parent under the VAWA); • Form I-797 Notice of Action referencing pending I-130 or I-360 or finding establishment of a prima facie case; • Receipt or other proof of filing I-485Application for Adjustment of Status on basis of an immediate relative or family 2nd preference petition or VAWA application; • Any documents indicating a pending suspension of deportation or cancellation of removal case, including a receipt from an immigration court indicating filing of Form EOIR-40 (Application for Suspension of Deportation) or EOIR-42 (Application for Cancellation of Removal); • Form I-688B or I-766 EAD coded 274a.12(a)(10) or A10 (applicant for suspension of deportation) or 274a.12(c)(14) or C14 (individual granted deferred action status);

STATUS	TYPICAL DOCUMENTS
	• Form I-688B or I-766 EAD coded 274.a.12(c)(9) or C9 (applicant for adjustment) or 274a.12(c)(10) or C10 (applicant for suspension of deportation) or 274a.12(c)(14) or C14 (individual granted deferred action status) or C31 (individual with approved VAWA self-petition); *or* • Any verification from the INS, DHS, or other authoritative document.
Victim of Trafficking	• Certification from U.S. Dept. of Health and Human Services (HHS) Office of Refugee Resettlement (ORR); • ORR eligibility letter (if under 18); • Certification status verified through HHS Trafficking Verification Line 202-401-5510 or 866-401-5510 ; • I-914 (T status application); • I-766 coded (a)(16); • Form I-797 approval notice for "CP" (continued presence); • Form I-797 indicating approval of T-1 Status; • *Bona fide* case determination on a T status application; *or* • Form I-797 "Extension of T or U Nonimmigrant Status"; • I-512 authorization for parole, indicating T-1 status; • I-551 coded ST6; *or* • Any verification from HHS, INS, DHS, or other authoritative document.
Derivative Beneficiary of Trafficking Survivor	• Proof of approved I-914A petition (derivative T status); • I-94 or passport stamped T-2, T-3, T-4, or T-5; • Form I-797 Notice of Action indicating approval of T-2, T-3, T-4 or T-5 status; • I-766 EAD coded (c)(25) or C25; • Form I-797 "Extension of T or U Nonimmigrant Status"; • I-512 authorization for parole, indicating T-2, T-3, T-4 or T-5 status; • I-551 card coded ST7, ST8, ST9, or ST0; *or* • Any verification from HHS, INS, DHS, or other authoritative document.
Nonimmigrant	• Form I-94 or I-94A Arrival/Departure Record or passport indicating admission to U.S. with nonimmigrant visa; • Receipt for Form I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document; • I-797 approving application to extend/change nonimmigrant status; • I-797 approving application for S, T, U, or V nonimmigrant status; • Form I-688B or I-766 EAD or other INS/DHS document indicating nonimmigrant status; *or* • Any verification from the INS, DHS, or other authoritative document.
Citizen of Micronesia, the Marshall Islands, and Palau	• Form I-94 or passport noted as "CFA/RMI" or "CFA/FSM" or "CFA/PAL"; • Form I-688B or I-766 coded (a)(8) or A8; *or* • Any verification from the INS, DHS, or other authoritative document.
Lawful Temporary Resident	• Form I-688 Temporary Resident Card; • Form I-688A EAD; • Form I-688B or I-766 EAD coded 274a.12(a)(2) or A2; *or with other evidence indicating eligibility under INA §§210 or 245A* ; • Form I-698 Application to Adjust from Temporary to Permanent Residence under INA § 245A; *or* • Any verification from the INS, DHS, or other authoritative document.

STATUS	TYPICAL DOCUMENTS
Applicant for Legalization under IRCA or the LIFE Act	• Form I-688B or I-766 EAD coded 274a.12(c)(20), (c)(22), or (c)(24) or C20, C22 or C24; • Form I-687 Application for Temporary Residence under INA § 245A; • Passport, with stamp or writing by INS/DHS officer, indicating pending §245 application; *or* • Any verification from the INS, DHS, or other authoritative document.
Family Unity	• Form I-797 Notice of Action showing approval of I-817 Application for Family Unity; • Form I-688B or I-766 EAD coded 274a.12(a)(13) or A13; *or* • Any verification from the INS, DHS, or other authoritative document.
Applicant for Cancellation of Removal or Suspension of Deportation	• Receipt or notice showing filing Form EOIR-40 (Application for Suspension of Deportation), EOIR-42 (Application for Cancellation of Removal), or I-881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal); • I-256A (former suspension application); • Form I-688B or I-766 EAD coded 274a.12(c)(10) or C10; *or* • Any verification from the INS, DHS, or other authoritative document.
Order of Supervision	• Notice or form showing release under order of supervision; • Form I-688B or I-766 EAD coded 274a.12(c)(18) or C18; *or* • Any verification from the INS, DHS, or other authoritative document.
Registry Applicant	• Receipt or notice showing filing Form I-485 Application to Register Permanent Resident or Adjust Status; • Form I-688B or I-766 EAD coded 274a.12(c)(16) or C16; *or* • Any verification from the INS, DHS or other authoritative document.
Stay of Removal	• Administrative or court order granting stay of removal issued by the Department of Homeland Security, an immigration judge, the Board of Immigration Appeals, or a court. • Any verification from the INS, DHS, or other authoritative document.

FOR MORE INFORMATION, CONTACT

Linton Joaquin, NILC General Counsel, joaquin@nilc.org

Abbreviations

BIA - Board of Immigration Appeals **CAT** - Convention Against Torture

CMS - Centers for Medicare and Medicaid Services

CP – continued presence **DHS** - U.S. Dept. of Homeland Security **EAD** - employment authorization document **EOIR** - Executive Office for Immigration Review

HHS - U.S. Dept. of Health and Human Services

INS - Immigration and Naturalization Service **IR** - immediate relative

LPR - lawful permanent resident **ORR** - Office of Refugee Resettlement **USCIS** - U.S. Citizenship and Immigration Services

VAWA - Violence Against Women Act

Overview of Immigrant Eligibility for Federal Programs

By Tanya Broder, Avideh Moussavian, *and* Jonathan Blazer *DECEMBER 2015*

The major federal public benefits programs have always left some non–U.S. citizens out of eligibility for assistance from the pro-grams. Since their inception, programs such as the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program), nonemergency Medicaid, Supplemental Security Income (SSI), and Temporary Assistance for Needy Fam-ilies (TANF) and its precursor, Aid to Families with Dependent Children (AFDC), have been inaccessible to undocumented immigrants and people in the United States on temporary visas.

However, the 1996 federal welfare and immigra-tion laws introduced an unprecedented new era of re-strictionism.[1] Prior to these laws' enactment, lawful permanent residents of the U.S. generally were eligible for assistance in a manner similar to U.S. citizens. After these laws' enactment, most lawfully residing immigrants were barred from receiving assistance under the major federal benefits programs for five years or longer. Even where eligibility for immigrants was preserved by the 1996 laws or restored by subsequent legislation, many immigrant families hesitate to enroll in critical health-care, job-training, nutrition, and cash-assistance programs due to fear and confusion caused by the laws' chilling effects. As a result, the participation of immigrants in public benefits programs decreased sharply after passage of the 1996 laws, causing severe hardship for many low-income families who lacked the support available to other low-income families.[2]

This article focuses on eligibility and other rules governing immigrants' access to federal public benefits programs. Many states have attempted to fill some of the gaps in noncitizen coverage resulting from the 1996 laws, either by electing federal options to cover more eligible noncitizens or by spending state funds to cover at least some of the immigrants who are ineligi-ble for federally funded services. Many state-funded programs, however, have been reduced or eliminated in state budget battles. Some of these cuts have been challenged in court.[3]

[9] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter "welfare law"), Pub. L. No. 104– 193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter "IIRIRA"), enacted as Division C of the Defense Department Appropriations Act, 1997, Pub. L. No. 104–208, 110 Stat. 3008 (Sept. 30, 1996).

[2] Michael Fix and Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions* (Discussion Paper No. 02-03) (The Urban Institute, Jan. 2002), www.urban.org/publications/410412.html.

[3] A state's denial of benefits to lawfully present immigrants may be unconstitutional, even if apparently authorized by the 1996 welfare law. See, e.g., *Aliessa v. Novello*, 96 N.Y.2d 418 (N.Y. 2001) (New York's denial of health coverage to lawfully residing immigrants violated federal and state Equal Protection clauses, as well as state constitutional obligation to care for the needy); *Ehrlich v. Perez*, 394 MD. 691 (Md. 2006) (enjoining Maryland's termination of health coverage to lawfully residing children and pregnant women); *Finch v. Commonwealth Health Ins. Connector Auth.*, 461 Mass. 232 (Mass. 2012) (striking Massachusetts law that denied state health care coverage to certain lawfully present immigrants). But see *Pham v. Starkowsky*, 300 Conn. 412 (Conn. 2011) (Connecticut's termination of health coverage to lawfully residing immigrants did not constitute discrimination on the basis of alienage); *Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004); *Pimentel v. Dreyfus*, 670 F.3d 1096 (9th Cir. 2012) (upholding Washington's denial of state SNAP benefits to certain lawful immigrants); *Bruns v. Mayhew*, 750 F.3d 61 (1st Cir. 2014) (Maine's termination of state medical assistance for those not eligible for Medicaid did not violate Equal Protection). Even where the courts failed to find an Equal Protection violation, however, some states decided to preserve or restore access to benefits. For example, the Colorado legislature chose to

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LOS ANGELES (Headquarters)
3450 Wilshire Blvd. #108 – 62
Los Angeles, CA 90010

WASHINGTON, DC
1121 14th Street, NW, Ste. 200
Washington, DC 20005

NATIONAL IMMIGRATION LAW CENTER

213 639-3900
213 639-3911 fax

202 216-0261
202 216-0266 fax

In determining an immigrant's eligibility for bene-fits, it is necessary to understand the federal rules as well as the rules of the state in which an immigrant resides. Updates on federal and state rules are availa-ble on NILC's website.[4]

Immigrant Eligibility Restrictions

Categories of Immigrants: "Qualified" and "Not Qualified"

The 1996 welfare law created two categories of immigrants for benefits eligibility purposes: "quali-fied" and "not qualified." Contrary to what these names suggest, the law excluded most people in *both* groups from eligibility for many benefits, with a few exceptions. The "qualified" immigrant category in-cludes:

- lawful permanent residents, or LPRs (people with green cards)
- refugees, people granted asylum or withholding of deportation/removal, and conditional entrants
- people granted parole by the U.S. Department of Homeland Security (DHS) for a period of at least one year
- Cuban and Haitian entrants
- certain abused immigrants, their children, and/or their parents [5]
- certain survivors of trafficking [6]

All other immigrants, including undocumented immigrants, as well as many people who are lawfully present in the U.S., are considered "not qualified."[7] In the years since the initial definition became law, there have been a few expansions of access to benefits beyond the qualified immigrant categories. In 2000, Congress established a new category of noncitizens— survivors of trafficking—who are eligible for federal public benefits to the same extent as refugees, regard-less of whether they have a qualified immigrant sta-tus.[8] In 2003, Congress clarified that "derivative bene-ficiaries" listed on trafficking victims' visa applications (spouses and children of adult trafficking survivors;

restore Medicaid eligibility before any individual's coverage was terminated; Hawaii similarly restored health coverage for certain noncitizens; and Washington continued to provide nutritional assistance to immigrants ineligible for federal SNAP, albeit at a lower benefit level.

4 *Guide to Immigrant Eligibility for Federal Programs* update page, www.nilc.org/issues/economic-support/updatepage/.

5 To be considered a "qualified" immigrant under the battered spouse or child category, the immigrant must have an approved visa petition filed by a spouse or parent, a self-petition under the Violence Against Women Act (VAWA) that has been approved or sets forth a prima facie case for relief, or an approved application for cancellation of removal under VAWA. The spouse or child must have been battered or subjected to extreme cruelty in the U.S. by a family member with whom the immigrant resided, or the immigrant's parent or child must have been subjected to such treatment. The immigrant must also demonstrate a "substantial connection" between the domestic violence and the need for the benefit being sought. And the battered immigrant, parent, or child must not be living with the abuser. While many U visa–holders are domestic violence survivors, U visa–holders are not considered qualified battered immigrants under this definition.

6 Survivors of trafficking and their derivative beneficiaries who obtain a T visa or whose application for a T visa sets forth a prima facie case are considered "qualified" immigrants. This group was added to the definition of "qualified" by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110–457, § 211 (Dec. 23, 2008), http://tinyurl.com/23otojy.

7 Throughout the remainder of this article, *qualified* will be understood to have this particular meaning, as will *not-qualified*; they will not be enclosed in quotation marks. Before 1996, some of these immigrants were served by benefit programs under an eligibility category called "permanently residing in the U.S. under color of law" (PRUCOL). PRUCOL is not an immigration status, but a benefit eligibility category that has been interpreted differently depending on the benefit program and the region. Generally, it means that the Dept. of Homeland Security (DHS) is aware of a person's presence in the U.S. but has no plans to deport or remove him or her from the country. A few states, including California and New York, continue to provide services to immigrants meeting this definition using state or local funds.

8 The Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386, § 107 (Oct. 28, 2000). Federal agencies are required to provide benefits and services to individuals who have been subjected to a "severe form of trafficking in persons" to the same extent as refugees, without regard to their immigration status. To receive these benefits, the survivor must be either under 18 years of age or certified by the U.S. Dept. of Health and Human Services (HHS) as willing to assist in the investigation and prosecution of severe forms of trafficking in persons. In the certification, HHS confirms that the person either (a) has made a bona fide application for a T visa that has not been denied, or (b) is a person whose continued presence in the U.S. is being ensured by the attorney general in order to prosecute traffickers in persons.

spouses, children, parents, and minor siblings of child survivors) also may secure federal benefits.[9]

Federal Public Benefits Generally Denied to "Not Qualified" Immigrants

With some important exceptions detailed below, the law prohibits not-qualified immigrants from enrol-ling in most federal public benefit programs.[10] Federal public benefits include a variety of safety-net services paid for by federal funds.[11] But the welfare law's definition does not specify which particular programs are covered by the term, leaving that clarification to each federal benefit–granting agency. In 1998, the U.S. Department of Health and Human Services (HHS) published a notice clarifying which of its programs fall under the definition.[12] The list of 31 HHS programs includes Medicaid, the Children's Health Insurance Program (CHIP), Medicare, TANF, Foster Care, Adoption Assistance, the Child Care and Development Fund, and the Low-Income Home Energy Assistance Program. Any new programs must be designated as federal public benefits in order to trigger the associated eligibility restrictions and, until they are designated as such, should remain open to broader groups of immigrants. The HHS notice clarifies that not every benefit or service provided within these programs is a federal public benefit. For example, in some cases not all of a program's benefits or services are provided to an individual or household; they may extend, instead, to a community of people—as in the weatherization of an entire apartment building.[13]

The welfare law also attempted to force states to pass additional laws, after August 22, 1996, if they choose to provide state public benefits to certain immigrants.[14] Such micromanagement of state affairs by the federal government is potentially unconstitutional under the Tenth Amendment.[15]

Exceptions to the Restrictions

The law includes important exceptions for certain types of services. Regardless of their status, not-qualified immigrants are eligible for emergency Medicaid[16] if they are otherwise eligible for their state's Medicaid program.[17] The law does not restrict access to public health programs that provide immunizations and/or treatment of communicable disease symptoms (whether or not those symptoms are caused by such a disease). School breakfast and lunch programs remain open to all children regardless of immigration status, and every state has opted to provide access to the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).[18]

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[9] Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108–193, § 4(a)(2) (Dec. 19, 2003).

[10] Welfare law § 401 (8 U.S.C. § 1611).

[11] "Federal public benefit" is described in the 1996 federal welfare law as (a) any grant, contract, loan, professional license, or commercial license provided by an agency of the U.S. or by appropriated funds of the U.S., and (b) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment, benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the U.S. or appropriated funds of the U.S.

[12] HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), "Interpretation of 'Federal Public Benefit,'" 63 FR 41658–61 (Aug. 4, 1998). The HHS notice clarifies that not every benefit or service provided within these programs is a federal public benefit.

[13] HHS, Division of Energy Assistance, Office of Community Services, Memorandum from Janet M. Fox, Director, to Low Income Home Energy Assistance Program (LIHEAP) Grantees and Other Interested Parties, re. Revision-Guidance on the Interpretation of "Federal Public Benefits" Under the Welfare Reform Law (June 15, 1999).

[14] Welfare law § 411 (8 U.S.C. § 1621).

[15] See, e.g., *Matter of Application of Cesar Adrian Vargas for Admission to the Bar of the State of New York* (2015 NY Slip Op 04657; decided on June 3, 2015, Appellate Division, Second Department Per Curiam) (holding that the requirement under 8 U.S.C. § 1621(d) that states must pass legislation in order to opt-out of the federal prohibition on issuing professional licenses — in this case, admission to the New York State bar — to undocumented immigrants infringes on New York State's 10th amendment rights)

[16] Emergency Medicaid covers the treatment of an emergency medical condition, which is defined as "a medical condition (including emergency labor and delivery) 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 patient's health in serious jeopardy, (B) serious impairment to bodily functions: or (C) serious dysfunction of any bodily organ or part." 42 U.S.C. § 1396b(v).

[17] Welfare law § 401(b)(1)(A) (8 U.S.C. § 1611(b)(1)(A)).

[18] Welfare law § 742 (8 U.S.C. § 1615).

Short-term noncash emergency disaster assistance remains available without regard to immigration status. Also exempted from the restrictions are other in-kind services necessary to protect life or safety, as long as no individual or household income qualification is required. In 2001, the U.S. attorney general published a final order specifying the types of benefits that meet these criteria. The attorney general's list includes child and adult protective services; programs addressing weather emergencies and homelessness; shelters, soup kitchens, and meals-on-wheels; medical, public health, and mental health services necessary to protect life or safety; disability or substance abuse services necessary to protect life or safety; and programs to protect the life or safety of workers, children and youths, or community residents.[19]

Verification Rules

When a federal agency designates a program as a federal public benefit foreclosed to not-qualified immigrants, the law requires the state or local agency to verify the immigration and citizenship status of all program applicants. However, many federal agencies have not specified which of their programs provide federal public benefits. Until they do so, state and local agencies that administer the programs are not obligated to verify the immigration status of people who apply for them.

And under an important exception contained in the 1996 immigration law, nonprofit charitable organizations are not required to "determine, verify, or otherwise require proof of eligibility of any applicant for such benefits." This exception relates specifically to the immigrant benefits restrictions in the 1996 welfare and immigration laws.[20]

Eligibility for Major Federal Benefit Programs

Congress restricted eligibility even for many quali-fied immigrants by arbitrarily distinguishing between those who entered the U.S. before or "on or after" the date the law was enacted, August 22, 1996. The law barred most immigrants who entered the U.S. on or after that date from "federal means-tested public bene-fits" during the five years after they secure qualified immigrant status.[21] Federal agencies clarified that "federal means-tested public benefits" are Medicaid (except for emergency care), CHIP, TANF, SNAP, and SSI.[22]

TANF, Medicaid, and CHIP

States can receive federal funding for TANF, Medicaid, and CHIP to serve qualified immigrants who have completed the federal five-year bar.[23] Refugees, people granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, certain Amerasian immigrants,[24] Iraqi and Afghan Special Immigrants,[25] and

[19] U.S. Dept. of Justice (DOJ), "Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation," A.G. Order No. 2353– 2001, published in 66 FR 3613–16 (Jan. 16, 2001).

[20] IIRIRA § 508 (8 U.S.C. § 1642(d)).

[21] Welfare law § 403 (8 U.S.C. § 1613).

[22] HHS, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), "Interpretation of 'Federal Means-Tested Public Benefit,'" 62 FR 45256 (Aug. 26, 1997); U.S. Dept. of Agriculture (USDA), "Federal Means Tested Public Benefits," 63 FR 36653 (July 7, 1998). The CHIP program, created after the passage of the 1996 welfare law, was later designated as a federal means-tested public benefit program. See Health Care Financing Administration, "The Administration's Response to Questions about the State Child Health Insurance Program," Question 19(a) (Sept. 11, 1997).

[23] States were also given an option to provide or deny federal TANF and Medicaid to most qualified immigrants who were in the U.S. before Aug. 22, 1996, and to those who enter the U.S. on or after that date, once they have completed the federal five-year bar. Welfare law § 402 (8 U.S.C. § 1612). Only one state, Wyoming, denies Medicaid to immigrants who were in the country when the welfare law passed. Colorado's proposed termination of Medicaid to these immigrants was reversed by the state legislature in 2005 and never took effect. In addition to Wyoming, five states (Alabama, Mississippi, North Dakota, Texas, and Virginia) do not provide Medicaid to all qualified immigrants who complete the federal five-year ban. Texas and Virginia, however, provide health coverage to lawfully residing children, regardless of their date of entry into the U.S. Five states (Indiana, Mississippi, Ohio, South Carolina, and Texas) fail to provide TANF to all qualified immigrants who complete the federal five-year waiting period.

[24] For purposes of the exemptions described in this article, the term *Amerasians* applies only to individuals granted lawful permanent residence under a special statute enacted in 1988 for Vietnamese Amerasians. See § 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in § 101(c) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operations, Export

survivors of trafficking are exempt from the five-year bar, as are qualified immigrant veterans, active duty military, and their spouses and children. In addition, children who receive federal foster care are exempt from the five-year bar for Medicaid.

Over half of the states have used state funds to provide TANF, Medicaid, and/or CHIP to some or all of the immigrants who are subject to the five-year bar on federally funded services, or to a broader group of immigrants.[26] Several states or counties provide health coverage to children or pregnant women, regardless of their immigration status.

In 2009, when Congress first reauthorized the CHIP program, states were granted an option to pro-vide federally funded Medicaid and CHIP to "lawfully residing" children and pregnant women, regardless of their date of entry into the U.S.[27] Twenty-nine states plus the District of Columbia (as of September 2015) have opted to take advantage of this federal funding for immigrant health care coverage, [28] which became available on April 1, 2009.

CHIP was reauthorized in April 2015 for an additional two years without any changes to immigrant coverage.

Sixteen states plus the District of Columbia use federal funds to provide prenatal care to women regardless of immigration status, under the CHIP program's option enabling states to enroll fetuses in CHIP. Thus the pregnant woman's fetus, rather than the woman herself, is technically the recipient of CHIP-funded services. This approach potentially limits the scope of services available to the pregnant woman to those directly related to the fetus's health.

The District of Columbia and New York provide prenatal care to women regardless of immigration sta-tus, using state or local funds.

Although the federal health care reform law, known as the Affordable Care Act (ACA),[29] did not al-ter immigrant eligibility for Medicaid or CHIP, it provided new pathways for lawfully present immigrants to obtain health insurance. Coverage purchased in the ACA's health insurance marketplaces is available to lawfully present noncitizens who are ineligible for Medicaid.[30]

SNAP

Although the 1996 law severely restricted immi-grant eligibility for the Supplemental Nutrition Assis-tance Program (SNAP, formerly known as the Food Stamp Program), subsequent legislation restored ac-cess for many immigrants. Qualified immigrant chil-dren, refugees, people granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, certain Amerasian immigrants, Iraqi and Afghan special immigrants, survivors of trafficking, qualified immigrant veterans, active duty military, and their spouses and children, lawful permanent residents with credit for 40 quarters of work history, certain Native Americans, lawfully residing Hmong and Laotian tribe members, and immigrants receiving disability-related assistance are eligible regardless of their date of entry into the U.S.[31] Qualified immigrant seniors who were born

Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

[25] Iraqis and Afghans granted Special Immigrant Visas under § 1244(g) of the Refugee Crisis in Iraq Act of 2007 (subtitle C of title XII of division A of Public Law 110-181; 122 Stat. 398) or § 602(b)(8) of the Afghan Allies Protection Act of 2009 (title VI of division F of Public Law 111- 8; 123 Stat. 809) are now eligible for benefits to the same extent as refugees. Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, §8120 (Dec. 19, 2009).

26 See *Guide to Immigrant Eligibility for Federal Programs*, 4th ed. (National Immigration Law Center, 2002), and updated tables at www.nilc.org/issues/economic-support/updatepage/.

[27] Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (H.R.2), Public Law 111-3 (Feb. 4, 2009).

28 Post-partum care is not covered by these federal funds unless a state normally pays for this care as part of a bundled payment or global fee method. HHS Letter to State Health Officials (Nov. 12, 2002). See also *Medical Assistance Programs for Immigrants in Various States* (National Immigration Law Center, Sep. 2015), www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states-2015-09.pdf.

29 Pub. Law No. 111-148, as amended by the Health Care and Education Act of 2010, Pub. Law No. 111-152. For more information about immigrant eligibility for coverage under the Affordable Care Act, see *Immigrants and the Affordable Care Act (ACA)* (NILC, Jan. 2014), www.nilc.org/issues/health-care/immigrantshcr/.

30 For more information on the ACA, please see NILC's fact sheets at www.nilc.org/issues/health-care/acafacts/.

[31] For the purpose of "immigrants receiving disability-related assistance," disability-related programs include SSI, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran's disability, disability-

before August 22, 1931, may be eligible if they were lawfully residing in the U.S. on August 22, 1996. Other qualified immigrant adults, however, must wait until they have been in qualified status for five years before they can secure critical nutrition assistance.

Five states—California, Connecticut, Maine, Minnesota, and Washington—continue to provide state-funded nutrition assistance to some or all of the immigrants who were rendered ineligible for the federal SNAP program.[32]

Supplemental Security Income (SSI)

Congress imposed its harshest restrictions on immigrant seniors and immigrants with disabilities who seek assistance under the SSI program.[33] Although advocacy efforts in the two years following the welfare law's passage achieved a partial restoration of these benefits, significant gaps in eligibility remain. SSI, for example, continues to exclude not-qualified immigrants who were not already receiving the benefits, as well as most qualified immigrants who entered the country after the welfare law passed and seniors without disabilities who were in the U.S. before that date.[34] "Humanitarian" immigrants (including refugees, people granted asylum or withholding of deporta-tion/removal, Amerasian immigrants, Cuban and Hai-tian entrants, Iraqi and Afghan Special Immigrants, and survivors of trafficking) can receive SSI, but only during the first seven years after having obtained the relevant status. The main rationale for the seven-year time limit was that it was intended to provide a suffi-cient opportunity for humanitarian immigrant seniors and those with disabilities to naturalize and retain their eligibility for SSI as U.S. citizens. However, a combination of factors, including immigration back-logs, processing delays, former statutory caps on the number of asylees who can adjust their status, lan-guage barriers, and other obstacles, made it impossible for many of these individuals to naturalize within sev-en years. Recognizing these barriers, in 2008 Congress enacted an extension of eligibility for refugees who faced a loss of benefits due to the seven-year time lim-it. However, that extension expired in 2011.[35] Subse-quent attempts to reauthorize this extension were unsuccessful, and the termination from SSI of thousands of seniors and people with disabilities continues.

Five states—California, Hawaii, Illinois, Maine, and New Hampshire—provide cash assistance to immigrant seniors and people with disabilities who were rendered ineligible for SSI; some others provide much smaller general assistance grants to these immigrants.

The Impact of Sponsorship on Eligibility

Under the 1996 welfare and immigration laws, family members and some employers eligible to file a petition to help a person immigrate must become financial sponsors of the immigrant by signing a contract with the government (an affidavit of support). Under the enforceable affidavit (Form I-864), the sponsor promises to support the immigrant and to re-pay certain benefits that the immigrant may use. Congress imposed additional eligibility restrictions on immigrants whose sponsors sign an enforceable affidavit of support. When an agency is determining a lawful permanent resident's financial eligibility for TANF, SNAP, SSI, nonemergency Medicaid, or CHIP,[36] in some cases the law requires the agency to "deem" the income of the immigrant's sponsor or the sponsor's spouse as available to the immigrant. The sponsor's income and resources are added to the im-migrant's, which often disqualifies the immigrant as over-income for the program. The 1996 laws imposed deeming rules in certain programs until the immigrant becomes a citizen or secures credit for 40 quarters (approximately 10 years) of work history in the U.S.

Domestic violence survivors and immigrants who would go hungry or homeless without assistance ("in-digent" immigrants) are exempt from sponsor deem-

based Medicaid, and disability-related General Assistance, if the disability determination uses criteria as stringent as those used for SSI.

32 See NILC's updated tables on state-funded services at www.nilc.org/issues/economic-support/updatepage/.

33 Welfare law § 402(a) (8 U.S.C. § 1612(a)).

34 Most new entrants cannot receive SSI until they become citizens or secure credit for 40 quarters of work history (including work performed by a spouse during marriage, persons "holding out to the community" as spouses, and by parents before the immigrant was 18 years old).

35 The SSI Extension for Elderly and Disabled Refugees Act, Pub. Law. 110-328 (Sept. 30, 2008).

36 Welfare law § 421 (8 U.S.C. § 1631).

ing for at least 12 months.[37] Some programs apply additional exemptions from the sponsor-deeming rules.[38] The U.S. Department of Agriculture (USDA) has issued helpful guidance on the indigence exemption and oth-er deeming and liability issues.[39]

Beyond Eligibility: Overview of Barriers That Impede Access to Benefits for Immigrants

Confusion about Eligibility

Confusion about eligibility rules pervades benefit agencies and immigrant communities. The confusion stems from the complex interaction of the immigration and welfare laws, differences in eligibility criteria for various state and federal programs, and a lack of ade-quate training on the rules as clarified by federal agen-cies. Consequently, many eligible immigrants have assumed that they should not seek services, and eligi-bility workers have turned away eligible immigrants mistakenly.

Fear of Being Considered a Public Charge

The immigration laws allow officials to deny an application for lawful permanent residence or to deny an immigrant entry into the U.S. if the authorities determine that he or she is "likely to become a public charge."[40] In deciding whether an immigrant is likely to become a public charge, immigration or consular officials review the "totality of the circumstances," including an immigrant's health, age, income, education and skills, employment, family circumstances, and, most importantly, the affidavits of support. The misapplication of this public charge ground of inadmissibility immediately after the welfare law passed contributed significantly to the chilling effect on immigrants' access to services. The law on public charge did not change in 1996, and people's use of programs such as Medicaid or SNAP had never weighed heavily in determining whether they were inadmissible under the public charge ground. Confusion and fear about these rules, however, became widespread.[41] Immigrants' rights advocates, health care providers, and state and local governments organized to persuade federal agencies to clarify the limits of the rules. In 1999, the Immigration and Naturalization Service (INS, whose functions were later assumed by the Department of Homeland Security) issued helpful guidance and a proposed regulation on the public charge doctrine.[42] The guidance clarifies that receipt of health care and other noncash benefits will not jeopardize the immigration status of recipients or their family members by putting them at risk of be-ing considered a public charge.[43] Nevertheless, sixteen years after this guidance was issued, widespread con-fusion and concern about the public charge rules re-main, deterring many eligible immigrants from seek-ing critical services.

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[37] IIRIRA § 552 (8 U.S.C. § 1631(e) and (f)).

[38] Children, for example, are exempt from deeming in the Supplemental Nutrition Assistance Program. In states that choose to provide Medicaid and CHIP to lawfully residing children and pregnant women, regardless of their date of entry, deeming and other sponsor-related barriers do not apply to these groups.

[39] 7 C.F.R. § 274.3(c). See also *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* (USDA, June 2011), www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf. See also *Deeming of Sponsor's Income and Resources to a Non-Citizen* (HHS, TANF-ACF-PI-2003–03, Apr. 17, 2003), www.acf.hhs.gov/programs/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0.

[40] INA § 212(a)(4).

[41] Claudia Schlosberg and Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care* (National Health Law Program and NILC, May 22, 1998).

[42] DOJ, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 FR 28689–93 (May 26, 1999); see also DOJ, "Inadmissibility and Deportability on Public Charge Grounds," 64 FR 28676–88 (May 26, 1999); U.S. Dept. of State, INA 212(A)(4) Public Charge: Policy Guidance, 9 FAM 40.41.

[43] The use of all health care programs, except for long-term institutionalization (e.g., Medicaid payment for nursing home care), was declared to be irrelevant to public charge determinations. Programs providing cash assistance for income maintenance purposes are the only other programs that are relevant in the public charge determination. The determination is based on the "totality of a person's circumstances," and therefore even the past use of cash assistance can be weighed against other favorable factors, such as a person's current income or skills or the contract signed by a sponsor promising to support the intending immigrant.

Requirement of Affidavits of Support

The 1996 laws enacted rules that make it more difficult to immigrate to the U.S. to reunite with family members. Effective December 19, 1997, relatives (and some employers) who sponsor an immigrant have been required to meet strict income requirements and to sign a long-term contract, or affidavit of support (USCIS Form I-864), promising to maintain the immigrant at 125 percent of the federal poverty level and to repay any means-tested public benefits the immigrant may receive.[44]

The specific federal benefits for which sponsors may be liable have been defined to be TANF, SSI, SNAP, nonemergency Medicaid, and CHIP. Federal agencies have issued little guidance on sponsor liabil-ity, however. Regulations on the affidavits of support issued in 2006 make clear that states are not obligated to seek reimbursement from sponsors and that states cannot collect reimbursement for services used prior to issuance of public notification that the services are considered means-tested public benefits for which sponsors will be liable.[45]

Most states have not designated which programs would give rise to sponsor liability, and, for various reasons, agencies generally have not attempted to seek reimbursement from sponsors. However, the specter of making their sponsors liable financially has deterred eligible immigrants from applying for critical services.

Language Policies

Many immigrants face significant linguistic and cultural barriers to obtaining benefits. As of 2013, ap-proximately 21 percent of the U.S. population (5 years of age and older) speaks a language other than English at home.[46] Although 97 percent of long-term immi-grants to the U.S. eventually learn to speak English well,[47] many are in the process of learning the language, and around 8.5 percent of people living in the U.S. speak English less than very well.[48] These limited–English proficient (LEP) residents cannot effectively apply for benefits or meaningfully communicate with a health care provider without language assis-tance.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from discriminating on the basis of national origin. Benefit agencies, health care providers, and other entities that receive federal financial assistance are required to take "reasonable steps" to assure that LEP individuals have "meaningful access" to federally funded programs, but compliance with this law varies widely, and language access remains a challenge.[49]

Verification

Rules that require benefit agencies to verify applicants' immigration or citizenship status have been misinterpreted by some agencies, leading some to demand immigration documents or Social Security num-bers (SSNs) in situations when applicants are not re-quired to submit such information.

In 1997, the U.S. Department of Justice (DOJ), the department primarily responsible for implementing and enforcing immigration laws prior to the creation of DHS in 2002, issued interim guidance for federal benefit providers to use in verifying immigration status.[50] The guidance, which remains in effect, directs benefit

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44 Welfare law § 423, amended by IIRIRA § 551 (8 U.S.C. § 1183a).

45 U.S. Dept. of Homeland Security, "Affidavits of Support on Behalf of Immigrants," 71 FR 35732, 35742–43 (June 21, 2006).

46 *Percent of People 5 Years and Over Who Speak a Language Other Than English at Home* (American Community Survey table, 2013), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_GCT1601.US01PR&prodType=table (hereinafter "American Community Survey").

47 James P. Smith and Barry Edmonston, eds., *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, DC: National Academy Press, 1997), www.nap.edu/catalog.php?record_id=5779#toc, p. 377.

48 American Community Survey, *supra* note 46.

49 See the federal interagency language access website, www.lep.gov, for a variety of materials, including guidance from the U.S. Dept. of Justice and federal benefit agencies.

50 DOJ, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 FR 61344–416 (Nov. 17, 1997). In Aug. 1998, the agency issued proposed regulations that draw heavily on the interim guidance and the Systematic Alien Verification for Entitlements (SAVE) program. See DOJ, "Verification of Eligibility for Public Benefits," 63 FR 41662–86 (Aug. 4, 1998). Final regulations have not yet been issued. Once the regulations become final, states will have two years to implement a conforming system for the federal programs they administer.

agencies already using the computerized Systematic Alien Verification for Entitlements (SAVE) program to continue to do so.[51] Previously, the use of SAVE in the SNAP program was an option that could be exercised by each state, but the 2014 Farm Bill mandated that SAVE be used in SNAP nationwide.[52]

However, important protections for immigrants subject to verification remain in place. Applicants for most benefits are guaranteed a "reasonable opportunity" to provide requested immigration documents, including, in some cases, receipts confirming that the person has applied for replacement of lost documents. In the federal programs that are required by law to use SAVE, applicants who declare that they have a satisfactory status and who provide documents within the reasonable opportunity period should remain eligible for assistance while verification of their status is pending. And information submitted to the SAVE system may not be used for civil immigration enforcement purposes.

The 1997 guidance recommends that agencies make financial and other eligibility decisions before asking the applicant for information about his or her immigration status.

Questions on Application Forms

Federal agencies have worked to reduce the chilling effect of immigration status–related questions on benefits applications. In 2000, HHS and USDA issued a "Tri-Agency Guidance" document, recommending that states delete from benefits application forms questions that are unnecessary and that may chill participation by immigrant families.[53] The guidance confirms that only the immigration status of the applicant for benefits is relevant. It encourages states to allow family or household members who are not seeking benefits to be designated as nonapplicants early in the application process. Similarly, under Medicaid, TANF, and SNAP, only the applicant must provide a Social Security number. SSNs are not required for people seeking only emergency Medicaid. In 2001, HHS said that states providing CHIP through separate programs (rather than through Med-icaid expansions) are authorized, but not obligated, to require SSNs on their CHIP applications.[54] In 2011, the USDA issued a memo instructing states to apply these principles in their online application procedures.[55]

Reporting to the Dept. of Homeland Security

Another common source of fear in immigrant communities stems from a 1996 provision that requires benefits-administering agencies to report to DHS people who the agencies *know* are not lawfully present in the U.S. But this requirement is, in fact, quite narrow in scope.[56] It applies only to three programs: SSI, certain federal housing programs, and TANF.[57]

In 2000, federal agencies outlined the limited circumstances under which the reporting requirement is

[51] SAVE is currently used by DHS to verify eligibility for several major benefit programs. See 42 U.S.C.§ 1320b-7. DHS verifies an applicant's immigration status through a computer database and/or through a manual search of its records. This information is used only to verify eligibility for benefits and may not be used to initiate deportation or removal proceedings (with exceptions for criminal violations). See the Immigration Reform and Control Act of 1986, 99 Pub. L. 603, § 121 (Nov. 6, 1986); DOJ, "Verification of Eligibility for Public Benefits," 63 FR 41662, 41672, and 41684 (Aug. 4, 1998).

[52] 113 Pub. L. 79, § 4015 (Feb. 7, 2014).

[53] Letter and accompanying materials from HHS and USDA to State Health and Welfare Officials: "Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits" (Sept. 21, 2000).

[54] HHS, Health Care Financing Administration, Interim Final Rule, "Revisions to the Regulations Implementing the State Children's Health Insurance Program," 66 FR 33810, 33823 (June 25, 2001). The proposed rule on Medicaid and CHIP eligibility under the Affordable Care Act of 2010 codifies the Tri-Agency Guidance, restricting the information that may be required from nonapplicants, but proposes to make SSNs mandatory for CHIP applicants. 76 FR 51148, 51191-2, 51197 (Aug. 17, 2011).

[55] *Conforming to the Tri-Agency Guidance through Online Applications* (USDA, Feb. 2011), www.fns.usda.gov/sites/default/files/Tri-Agency_Guidance_Memo-021811.pdf.

[56] Welfare law § 404, amended by BBA §§ 5564 and 5581(a) (42 U.S.C. §§ 608(g), 611a, 1383(e), 1437y).

[57] *Id.* See also H.R. Rep. 104–725, 104th Cong. 2d Sess. 382 (July 30, 1996). The Food Stamp Program (now called the Supplemental Nutrition Assistance Program, or SNAP) had a reporting requirement that preexisted the 1996 law.

triggered.[58] Only people who are actually seeking benefits (not relatives or household members applying on their behalf) are subject to the reporting requirement. Agencies are not required to report such applicants unless there has been a formal determination, subject to administrative review, on a claim for SSI, public housing, or TANF. The conclusion that the person is unlawfully present also must be supported by a determination by the immigration authorities, "such as a Final Order of Deportation."[59] Findings that do not meet these criteria (e.g., a DHS response to a SAVE computer inquiry indicating an immigrant's status, an oral or written admission by an applicant, or suspicions of agency workers) are insufficient to trigger the reporting requirement. Finally, the guidance stresses that agencies are not required to make immigration status determinations that are not necessary to confirm eligibility for benefits. Agencies are not required to submit reports to DHS unless they have knowledge that meets the above requirements.

There is no federal reporting requirement in health programs. To address the concerns of eligible citizens and immigrants in mixed–immigration status households, the DHS issued a memo in 2013 confirming that information submitted by applicants or family members seeking Medicaid, CHIP, or health care coverage under the Affordable Care Act would not be used for civil immigration enforcement purposes.[60]

Looking Ahead

The 1996 welfare law produced sharp decreases in public benefits participation by immigrants. Proponents of welfare "reform" see that fact as evidence of the law's success, noting that a reduction of welfare use, particularly among immigrants, was precisely what the legislation intended. Critics of the restrictions question, among other things, the fairness of excluding immigrants from programs that are supported by the taxes they pay.

These debates rage on at the federal, state, and lo-cal levels.

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[58] Social Security Administration, HHS, U.S. Dept. of Labor, U.S. Dept. of Housing and Urban Development, and DOJ – Immigration and Naturalization Service, "Responsibility of Certain Entities to Notify the Immigration and Naturalization Service of Any Alien Who the Entity 'Knows' Is Not Lawfully Present in the United States," 65 FR 58301 (Sept. 28, 2000). USDA similarly has clarified that "State agencies must conform to the reporting requirements of the Interagency Notice." See *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* (USDA, June 2011), www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf, pp. 48-52. See also 7 C.F.R. § 273.4(b)(1).

[59] *Id.*

[60] *Clarification of Existing Practices Related to Certain Health Care Information* (DHS, Oct. 25, 2013), www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf.