



HUMAN SERVICES
DEPARTMENT

Susana Martinez, Governor
Sidonie Squier, Secretary
Marilyn Martinez, Acting Director

Interim Policy & Procedure Memorandum

ISD-IPP 14-03

TO: ISD Employees
FROM: *MM* Marilyn Martinez, Acting Director, Income Support Division
RE: Guidance for Immigrant Eligibility
DATE: February 28, 2014

This Interim Policy and Procedure Memorandum (IPP) provides supplemental policy guidance regarding Non-Citizen Eligibility requirements for SNAP, TANF, General Assistance, LIHEAP and Medicaid. For most programs, non-citizens must have a qualified immigrant status and meet certain conditions of eligibility.

This IPP introduces the "Guide to Immigrant Eligibility" chart. This chart identifies non-citizens who meet qualified immigrant statuses for the purposes of determining eligibility for SNAP, TANF, Stated Funded Cash Assistance (General Assistance, Education Works, State Funded Legal Alien, etc), LIHEAP and Medicaid, assuming they meet all the other requirements of the program.

The chart is set up with each column labeled with the category of eligibility and three rows identified as "Qualified Immigrants who entered the U.S. before Aug. 22, 1996," "Qualified Immigrants who entered the U.S. on or after Aug. 22, 1996," and " (not of "qualified" status)."

To use the attached chart, please follow the steps below:

STEP #1: Determine if the person is a "qualified immigrant" (defined by federal law).
"Qualified" immigrants are:

- (1) Lawful permanent residents (LPRs);
- (2) Refugees and asylees;
- (3) Persons granted withholding of deportation/removal, conditional entrants (in effect prior to Apr. 1, 1980), and persons paroled into the U.S. for at least one year;
- (4) Cuban/Haitian entrants; and

(5) Battered spouses and children with a pending or approved self-petition/immigrant visa, or application for cancellation of removal/ suspension of deportation, and whose need for benefits has a substantial connection to the battery or cruelty. Parents and children of battered children/spouses are also “qualified.”

STEP #2: Look at the following table to see if they can receive benefits. If the person is “qualified,” look at the first two rows. **If the person is not qualified**, look at the last row for “Other Immigrants (not of qualified status)” to see if the person can still receive benefits. For example, victims of trafficking are not considered “qualified” immigrants, but they are eligible for benefits.

STEP #3: Look at the columns for the category of eligibility to identify if additional criteria must be met to be eligible for program.

For questions regarding this IPP or the attachments please contact Vida Tapia-Sanchez, ISD Deputy Director at 505-827-1300 or via email at vida.tapia-sanchez@state.nm.us.

Enclosure: MAD IPP 12-01
"Guide to Immigrant Eligibility" Chart
Question and Answer: Guide to Non-Citizen Eligibility

Question and Answer: Guide to Non-Citizen Eligibility

Q1. Can a non-citizen be eligible for benefits even if they don't have a SSN or other qualified immigrant status?

A1. Yes, like people with visas, who are lawfully residing children and pregnant women who meet other eligibility factors can receive Medicaid. "Lawfully Residing" includes temporary visas, work visas, student visas and many more. Attached is MAD IPP 12-01 that provides more information regarding the various immigrant statuses that qualify as "lawfully residing" (8.200.410.11B(3) NMAC. Many other people may not have a SSN and their benefits should not be delayed. Please use the current practices for assisting people in applying for a Social Security Number, when the SSN is required for them to continue to receive benefits.

Q2. Can undocumented Immigrants qualify for any programs?

A2. Yes, they qualify to be considered for eligibility for Emergency Medical Services for Aliens (EMSA) and for cash assistance for victims of human trafficking. EMSA is for applicants that do not have an eligible immigration status but meet all other eligibility standards.

Q3. Can a lawfully residing non-citizen with a temporary visa be considered to not meet the residency requirement for Medicaid because their visa is only temporary?

A3. No, the individual's immigration status is not a valid verification of residency. Residence is established by living in the state and carrying out the types of activities associated with day-to-day living, such as occupying a home, enrolling a child in school or getting a state driver's license. An applicant or recipient who is homeless is considered to have met the residence requirements if he or she intends to remain in the state. Types of proof that can be used to verify the residency requirements are outlined at 8.100.130.17 NMAC. The fact that someone is on a temporary visa has no impact on their residency status.

Q4. Can I request citizenship/immigration status for a non-applicant that has listed themselves as fitting one of the qualified immigrant statuses?

A4. No, you cannot request this information from non-applicants.

Overview of Immigrant Eligibility for Public Benefits Administered by HSD

	Supplemental Nutrition Assistance Program (SNAP)	State Funded Cash Assistance (General Assistance; Education Works; Adult Residential Care; Burial Assistance)	New Mexico Works (TANF)	Refugee Cash and Medical Assistance	Medicaid ¹ and Affordable Care	Emergency Medicaid (EMSA)	LIHEAP
“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Were 65 or older and were lawfully residing in the U.S. on 9/22/96 or • Are under age 18, or • Have been in “qualified” immigrant status for at least five years or • Lawful Permanent Residents who have worked or can be credited with 40 hours of qualifying quarters, or • Granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, or • Are receiving disability-related assistance ⁴ or • Veteran, active duty military; spouse, unremarried surviving spouse, or child, or • Member of Hmong or Loatian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member. or • Certain American Indians born abroad. 	Eligible	<p>Eligible if:</p> <ul style="list-style-type: none"> • Entered the US before 8/22/96 and currently “Permanently Residing under Color of Law,” defined as a non-citizen who is “permanently residing in the US, the individual’s presence in the US is known to DHS, and DHS does not intend to remove or deport the individual.” or • Victims of trafficking and their derivative beneficiaries 	Eligible	<p>Eligible if</p> <ul style="list-style-type: none"> • Remained continuously present in US until obtained qualified alien status (ie. no absence from U.S. for more than 30 days, or total aggregate absence of more than 90 days) 	Eligible (if not eligible for full-scope Medicaid coverage due to immigration status)	<p>Eligible if:</p> <ul style="list-style-type: none"> • Entered the US before 8/22/96 and currently “Permanently Residing under Color of Law,” defined as a non-citizen who is “permanently residing in the US, the individual’s presence in the US is known to DHS, and DHS does not intend to remove or deport the individual.” or • Victims of trafficking and their derivative beneficiaries
“QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996	<p>Eligible only if:</p> <ul style="list-style-type: none"> • Are under age 18, or • Have been in “qualified” immigrant status for at least five years, or • Lawful Permanent Residents who have worked or can be credited with 40 hours of qualifying quarters, or • Granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, or Iraqi or Afghan special immigrant status, or • Are receiving disability-related assistance or • Veteran, active duty military; spouse, unremarried surviving spouse, or child, or • Member of Hmong or Loatian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member, or • Certain American Indians born abroad. 	Eligible	Eligible		<p>Eligible only if:</p> <ul style="list-style-type: none"> • Have been in “qualified” status for at least 5 years, or • Children under 21, or • Pregnant women, or • Were granted refugee or asylum status or withholding of deportation/removal, or • Cuban/Haitian entrant, or Amerasian, or Iraqi or Afghan special immigrant status, or • Battered spouses and children, or • Lawfully residing veteran or active duty in the armed forces; including spouses and unmarried children. 	Eligible (if not eligible for full-scope Medicaid coverage due to immigration status)	Eligible

OTHER IMMIGRANTS (NOT OF “QUALIFIED” STATUS)	Eligible only if: <ul style="list-style-type: none"> • Lawfully present member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S., spouse, surviving spouse or child of tribe member. or • Certain American Indians born in Canada, or • Victims of trafficking and their derivative beneficiaries. 	Eligible if: <ul style="list-style-type: none"> • Entered the US before 8/22/96 and currently “Permanently Residing under Color of Law,” defined as a non-citizen who is “permanently residing in the US, the individual’s presence in the US is known to DHS, and DHS does not intend to remove or deport the individual.” or • Victims of trafficking and their derivative beneficiaries 	Eligible only if: <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries 		Eligible if: <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries, or • Member of federally recognized Indian tribe, or • Certain American Indians born in Canada, or • Were receiving SSI on Aug. 22, 1996, or • Lawfully residing children under 21, or • Lawfully residing pregnant women, or • Entered the US before 8/22/96 and permanently residing in the US under color of law (ie. “living in the US with the knowledge and permission of the immigration and naturalization service and whose departure the agency does not contemplate enforcing.”). 	Eligible (if not eligible for full-scope Medicaid coverage due to immigration status)	Eligible only if: <ul style="list-style-type: none"> • Victims of trafficking and their derivative beneficiaries
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Overview of Immigrant Eligibility for Public Benefits Administered by HSD (Instructions)

This table provides an overview of whether immigrants can receive various public benefits programs in New Mexico, assuming they meet all the other requirements of the program. There are two steps to this process:

STEP #1: Determine if the person is a “qualified immigrant” (defined by federal law). “**Qualified**” immigrants are:

- (1) Lawful permanent residents (LPRs);
- (2) Refugees and asylees;
- (3) Persons granted withholding of deportation/removal, conditional entrants (in effect prior to Apr. 1, 1980), and persons paroled into the U.S. for at least one year;
- (4) Cuban/Haitian entrants; and
- (5) Battered spouses and children with a pending or approved self-petition/immigrant visa, or application for cancellation of removal/ suspension of deportation, and whose need for benefits has a substantial connection to the battery or cruelty. Parents and children of battered children/spouses are also “qualified.”

STEP #2: Look at the following table to see if they can receive benefits. If the person is “qualified,” look at the first two columns. **If the person is not qualified**, look at the last column for “Other Immigrants (not of qualified status)” to see if the person can still receive benefits. For example, victims of trafficking are not considered “qualified” immigrants, but they are eligible for benefits.

INTERDEPARTMENTAL MEMORANDUM
MAD IPP: 12-01
DATE: December 18, 2012

TO: ISD AND MAD STAFF

FROM: Julie B. Weinberg, MAD Director
Ted Roth, ISD Director

THROUGH: Roy Burt, Bureau Chief, Member Services Bureau

BY: Lori Peña, Program Administrator, Member Services Bureau

RE: Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women

The Medical Assistance Division is updating its policy with respect to exemption of the five year bar for children and pregnant women. The policy currently refers to the five year bar exemption for “lawfully residing immigrant children and pregnant women.” The proposed regulation will clarify that the five year bar exemption is for “lawfully residing children and pregnant women” removing the word “immigrant.” The proposed policy identifies children and pregnant women who are considered “lawfully residing” which includes certain individuals who are in nonimmigrant status. Residency requirements must still be met. The revised policy is the following:

8.200.410.11(B)(3)

Children and pregnant women exempt from the five year bar: As authorized by CHIPRA 2009 legislation, New Mexico medicaid allows lawfully residing children and pregnant women, if otherwise eligible, to obtain medicaid coverage. Lawfully residing children and pregnant women must meet the residency requirement as defined 8.200.410.12 NMAC. A child or pregnant woman is considered lawfully present if he or she is:

- (a) A qualified alien as defined in section 431 of PRWORA (8 U.S.C. §1641);
- (b) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission (e.g. nonimmigrant visa holders, citizens of Micronesia, the Marshall Islands, and Palau, lawful temporary residents and applicants for legalization under IRCA, legalization under the LIFE Act, Family Unity, applicants for cancellation of removal or suspension of deportation, order of supervision, and registry applicants;
- (c) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings;

- (d) An alien who belongs to one of the following classes:
 - (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
 - (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
 - (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
 - (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
 - (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
 - (vi) Aliens currently in deferred action status; or
 - (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;
- (e) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;
- (f) An alien who has been granted withholding of removal under the Convention Against Torture;
- (g) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));
- (h) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or
- (i) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

The following is a more detailed description from the National Immigration Law Center of the valid nonimmigrant status groups:

Persons with Valid Nonimmigrant Status

Nonimmigrant Visa Holders

Nonimmigrant visa holders include tourists, students, and visitors on business, as well as individuals who are permitted to live and work in the U.S. indefinitely. Non-immigrants may have a status granted under 8 U.S.C. section 1101(a)(15)(A) through (V) or by a treaty such as the one described below. Some categories of nonimmigrant statuses allow the status holder to work and eventually to adjust to lawful permanent residence. Non-immigrants who violate the terms of their status — for example, by overstaying a tourist visa or working without permission — may lose their nonimmigrant status and be considered undocumented. Non-immigrants who have not violated the terms of their status are considered “lawfully present.” To be considered “lawfully residing,” each individual must also show that he or she lives in a state and intends to remain there.

Citizens of Micronesia, the Marshall Islands, and Palau

Citizens of the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau have special rights under Compacts of Free Association signed by the U.S. They are non-immigrants who are allowed to enter, reside and work in the U.S. indefinitely, and are “lawfully present” in the U.S.

Longtime Residents

The “lawfully present” category also includes individuals who have been in the U.S. for a long period of time and who are completing the process of securing lawful permanent residence or who cannot be returned to their home country and are therefore likely to remain in the U.S.

Lawful Temporary Residents and Applicants for Legalization under IRCA

Under the Immigration Reform and Immigrant Control Act of 1986 (IRCA), two categories of noncitizens were allowed to legalize their status: (1) “General amnesty” or legalization immigrants, who had resided unlawfully in the U.S. since prior to January 1, 1982, and (2) “special agricultural workers” (SAWs) or “section 210” immigrants, who had performed agricultural work for a specified period prior to IRCA’s enactment. Legalization under IRCA was a two-stage process under which applicants first applied for and obtained lawful temporary resident (LTR) status. After obtaining LTR status, general amnesty immigrants were required to apply for lawful permanent resident status. SAW applicants, on the other hand, automatically became LPRs after having LTR status for a certain period of time. Lawful temporary residents are “lawfully present.” Applicants for legalization who are granted work authorization are also “lawfully present.”

Legalization under the LIFE Act

The Legal Immigration and Family Equity (LIFE) Act, enacted in 2000, provides for the adjustment of status of individuals who filed written claims for class membership in one of three class action lawsuits that challenged the former Immigration and Naturalization Service’s implementation of the 1986 (IRCA) legalization program: *Catholic Social Services, Inc. v Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993); *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. (1993), or *Zambrano v. INS, vacated sub nom. Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993). To adjust under LIFE, individuals must show, among other things, that they were continuously physically present in the U.S. during the period between November 6, 1986, and May 4, 1988, and that they applied for class membership before October 1, 2000. Applicants for adjustment under LIFE who have been granted employment authorization are “lawfully present.”

Family Unity

Family Unity status provides protection from deportation/removal and eligibility for employment authorization to the spouses and children of noncitizens who legalized under IRCA. To qualify for Family Unity, a person must have been the spouse or child of an amnesty immigrant as of May 5, 1988, and must have been residing in the U.S. since that date. In December 2000, the LIFE Act also extended Family Unity status to the spouses and unmarried minor children of individuals eligible to become permanent residents through the “late amnesty” legalization program of that law. To qualify for LIFE Act Family Unity, individuals must have been present and residing in the U.S. on December 1, 1988, and must currently be the spouse or minor child of

an individual who is eligible for adjustment under LIFE. All persons granted Family Unity status are “lawfully present.”

Applicants for Cancellation of Removal or Suspension of Deportation

Individuals in removal proceedings who establish that they have been continuously present in the U.S. for at least ten years, that they have good moral character, and that their removal would cause “exceptional and extremely unusual hardship” to a U.S. citizen or LPR parent, spouse, or child may apply for the discretionary relief of cancellation of removal. For individuals in deportation rather than removal proceedings, suspension of deportation is available. Applicants for suspension must establish that they have seven years of continuous physical presence in the U.S. and good moral character, and demonstrate that their deportation would cause extreme hardship to themselves, or to a parent, spouse, or child. Applicants for cancellation of removal and suspension of deportation who are granted employment authorization are “lawfully present.”

Order of Supervision

Individuals with final orders of deportation or removal whom the immigration authorities are unable to remove may be released under an order of supervision. Individuals under an order of supervision are eligible for employment authorization. Persons under an order of supervision who have employment authorization are “lawfully present.”

Registry Applicants

Individuals who have resided continuously in the U.S. since January 1, 1972, and who meet the requirements of LPR status may adjust their status by applying for “registry.” Applicants for registry who have been granted employment authorization on this basis are “lawfully present.”

If you have any questions regarding this IPP please contact Lori Peña at 505-827-1336 or via email at lori.pena@state.nm.us