

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

New York State Medicaid covers many immigrants not covered by federal law. Since 1996, federal Medicaid limits Medicaid eligibility to US citizens and "Qualified Aliens," which include:

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

See Empire Justice Center & NY Immigration Coalition's Immigrant Eligibility for Public Benefits in NYS (Jan-2025). Documentation of the above "Qualified Non-Citizen" categories listed in OHIP-0046 - Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State (6/2024). pp. 7-14.

New York State, fortunately, is more liberal.

- NYS has no 5-year bar for Medicaid for Lawful Permanent Residents (who have a green card).
- **New York grants Medicaid eligibility to three broad categories of immigrants who are not lawful permanent residents or humanitarian immigrants, including those Permanently Residing Under Color of Law (PRUCOL).** The 3 categories are described below.

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IN THIS ARTICLE:

I. What is Permanently Residing Under Color Of Law (PRUCOL)?

- **NYS DIRECTIVES ABOUT PRUCOL AND IMMIGRANT ELIGIBILITY**
- How do you show that Immigration agencies **know** that the client is here in the U.S.?
- What proof is needed that the government is not enforcing the individual's departure?

1. Immigration agency has given express permission to remain in US?
2. Agency has not acted on the request
3. Revised procedure to determine PRUCOL status where USCIS has denied an application per GIS 24 MA/06

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

III. Immigrants Age 65 + Who are Undocumented - Eligible for Full Medicaid through Managed Care Starting Jan. 1, 2024

Public Charge - How Will Receipt of Medicaid affect Immigration Status?

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

Immigrants who do not have a green card (permanent resident alien or in another federally "qualified alien category" described above) but who are **permanently residing under color of law (PRUCOL)** are eligible for full Medicaid in New York State. (see also Immigrant Eligibility for Public Benefits in NYS (Jan -2025). This is â â â â â thanks to the New York State Constitution and a 2001 decision of New York's highest court in a case called Aliessa v. Novello, many (but not all) immigrants are eligible for Medicaid in New York State. Their Medicaid is paid for by the State exclusively, without any federal contribution -- but that does not affect the immigrant. The Medicaid they have is the same.

State regulation definition of PRUCOL at 18 NYCRR Â§360-3.2(j)(1)(ii).

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

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

These factors are described more below.

STATE POLICY DIRECTIVES defining the PRUCOL category:

- GIS 24 MA/06 - PRUCOL Categorization and **Revised Documentation Guide for Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State Update**

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- ◆ GIS 24 MA/06 - OHIP-0046 - Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State (6/2024). The previous Documentation Guide, which was an attachment to GIS 21 MA/014, is discontinued and replaced with this new guide.

Per the GIS, the updates include:

- the addition of several types of documents seen with increasing frequency over the last several years (I-385 Alien Booking Record, with and without a parole stamp, I-862 Notice to Appear, and I-220-A Order of Release on Recognizance);
- an update on Deferred Action Childhood Arrival (DACA) eligibility for coverage through Essential Plan (EP), that started August 1, 2024, achieved through a federal 1332 waiver;
- eligibility for undocumented consumers, aged 65 and older for coverage through Mainstream Medicaid Managed Care (MMC) plans as described in 23 OHIP/INF-2 and here.
- GIS 23 MA/16 - Clarification of PRUCOL when Requesting Relief on Non-Official Forms
 - ◆ updated OHIP-0046 "Documentation Guide for Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State" page 28 - but since replaced by OHIP-0046 (6/2024) attachment to GIS 24 MA.06, which references back to this 2023 GIS.
- GIS 21 MA/14 - Revised Documentation Guide for Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State and Related Reference Documents (This guide OHIP-0046 has been updated and replaced by attachment to GIS 24 MA/06 - OHIP-0046 (6/2024)).
- 21 INF-01 - Clarification of PRUCOL Status for the Purposes of Medicaid Eligibility - this is referenced as a current source of info in GIS 24 MA/06
- 08 MA 009 - Revised Desk Guide: "Documentation Guide to Citizenship and Immigrant Eligibility for Health Coverage in New York State" - THIS HAS SINCE BEEN REPLACED BY attachment to GIS 24 MA/06 - OHIP-0046 (6/2024).
- 08 INF-04 - Clarification of PRUCOL Status for the Purposes of Medicaid Eligibility "Clarification of PRUCOL status for the Purposes of Medicaid Eligibility" -- Affirms Department policy previously discussed in:
 - ◆ 04ADM-07 - Citizenship and Alien Status Requirements for the Medicaid Program (attachments at http://www.health.state.ny.us/health_care/medicaid/publications/pub2004adm.htm and
 - ◆ 07INF-02 - Clarification of PRUCOL Status for Purposes of Medicaid Eligibility
- 08 INF-02 - Social Security Numbers for Immigrants
 - ◆ Attachment I (Form letter from LDSS to SSA requesting SSN number) (replaces attachment to 04 ADM-07)
 - ◆ Attachment II (Same form letter but for immigrants only eligible for "State" medicaid.. presumably since the ACA this form is no longer in use.. just use

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Attachment 1)

- GIS 13 MA/011 Children's Health Insurance Program Reauthorization Act (CHIPRA) Expanded Coverage for Certain Qualified and PRUCOL Aliens (May 7, 2013)

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

- An **official application** filed with USCIS for adjustment of status to lawful permanent alien (to get a green card), for asylum, temporary protected status, cancellation of removal, suspension of deportation, or requesting deferred action. Documentation required is different depending on whether the applicant has or does not have an employment authorization. See OHIP-0046 - Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State (6/2024) pp. 27-28, which also refers to GIS 23 MA/16.
 - ♦ If an official written application was filed, and **proof of mailing** by certified receipt OR a receipt from the immigration service (called an I-797 Notice of Action) is provided, this is enough.

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

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

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

GIS 24 MA/06 states, "An alien will be considered as one whose departure the Federal Immigration Agency does not contemplate enforcing if, based on all the facts and circumstances in a particular case, it appears that the Federal Immigration Agency is otherwise permitting the alien to reside in the United States indefinitely or it is the policy or practice of such agency not to enforce the departure of aliens in a particular category. The interpretation of the PRUCOL designation is meant to be fluid, to allow for adaptation as needed. For example, changes and patterns seen in immigration agencies at the federal level may require re-interpretation of PRUCOL by the state. Changes made to the policy on PRUCOL designation over the last two decades reflects this adaptation...".

Either A or B or C:

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

- Deferred Action - which indicates that USCIS has no immediate intention of deporting the individual out of humanitarian reasons or because the person may have an opportunity to get permanent status;
- Granted Suspension of Deportation per Section 244
- An Order of Supervision - granted by ICE to someone who was ordered deported but because of humanitarian considerations, or because there is no country to which the person may be deported, is permitted to remain in the U.S. but usually with the condition that he or she regularly report to ICE;
- Parole of less than 1 year - which may be granted to a person for humanitarian reasons until a determination of admissibility can be made (Cubans or Haitians paroled into the U.S. are considered entrants and are in the "qualified alien" category);
- A "K3" or "K4" 11 visa - which may be granted to spouses and children of US citizens to allow them to live and work in the U.S. while they wait for the processing of their applications for permanent residence;
- A "V" visa - which may be granted to the spouses and children of lawful permanent residents (LPR) who are waiting for the processing of their immigration applications based on petitions filed before December of 2000;
- A "U" visa - which may be granted to people who have been victims of serious crimes and who are willing to cooperate with law enforcement to prosecute the perpetrator, and
- Temporary Protected Status (TPS) - a temporary, non-immigrant status which is sometimes granted by the U.S. to persons coming from a particular country that is going through civil strife or has had a natural disaster.
- DACA or Deferred Action for Childhood Arrivals Status -- Eligibility for coverage through Essential Plan (EP), started August 1, 2024, achieved through a federal 1332 waiver. This updates previous guidance NYS GIS 13-MA-011 (May 7, 2013)

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

1. **FORMAL APPLICATION** to adjust status, etc. - if Immigration service has not acted on a FORMAL APPLICATION, applicant is PRUCOL as long as the application is pending, no matter how long, until it is actually DENIED or there is some other indication that his her departure is being enforced.

2. **REQUEST BY LETTER FOR RELIEF from deportation** -- Merely showing proof that the letter was sent is not enough. The immigration agency must have been afforded "reasonable time" to consider the request, which the State Dept. of Health has said is 15 days from mailing the initial letter. See GIS 23 MA/16. The non-citizen must provide proof the request was sent to and received by the federal immigration agency, such as return receipt from the U.S. Postal Service or a private carrier.
3. **Requests for Deferred Action for Childhood Arrivals (DACA)** (began 8/2012). The Dept. of Homeland Security (DHS) has decided to focus its attention on the removal of individuals who pose a danger to national security or a risk to public safety, including aliens convicted of crimes, with emphasis on violent criminals, felons and repeat offenders. The DHS will exercise prosecutorial discretion to ensure that enforcement resources are not expended on low priority cases, such as individuals who were brought to this country through no fault of their own as children. To be eligible for DACA, these individuals cannot have been convicted of a felony offense, a significant misdemeanor or multiple misdemeanor offenses. ***In New York State, these individuals will be PRUCOL, but are not eligible for FFP.*** See NYS GIS 13-MA-011 (May 7, 2013)

C. The Immigration agency denied the non-citizen's request for adjustment or relief, but has taken no action to enforce the individual's departure.

1. In cases where a federal immigration agency has DENIED an application or request for immigration relief, this alone is not enough to deny PRUCOL status. GIS 24 MA/06 sets forth the following procedure:

- LDSS staff must search the EOIR automated case info system (Executive Office for Immigration Review) to determine if the non-citizen has been placed in removal proceedings.
- If at least 15 business days from the denial have passed and the EOIR case status indicates that there is no pending case for removal proceedings of the non-citizen, the non-citizen should be considered PRUCOL. A screenshot of the EOIR case status page should be saved in the case record.
- If the non-citizen is in removal proceedings, the LDSS staff must still take all the facts and circumstances into consideration (e.g., pending request for immigration status or current federal immigration agencies' policies and procedures) to identify PRUCOL status.

2. In cases where an individual has had an encounter with federal immigration agencies but has not been placed in removal proceedings GIS 24 MA/06 sets forth the following procedure:

- In order to determine whether the individual has been placed in removal proceedings, LDSS staff must not rely on the Notice to Appear alone to indicate that a removal proceeding is underway but must instead confirm through a search in the Executive Office for Immigration Review's (EOIR)

- Note: If the non-citizen is in removal proceedings, the LDSS staff must still take all the facts and circumstances (i.e., a pending application for asylum) into consideration before designating the individual as PRUCOL or not.

WHO IS NOT ELIGIBLE for PRUCOL status?

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

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

Temporary non-immigrants are individuals who are allowed to enter the United States temporarily for a specific purpose and for a specific period of time. They are commonly referred to as **short-term visa holders**. There are more than two dozen temporary non-immigrant categories. A few of the more common temporary non-immigrant categories are tourists, students and visitors for business. See list at Temporary Non-Immigrant Document Types and Visa Codes, which is page 30 of **OHIP-0046 - Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State (6/2024)**. This list also includes examples of the types of documentation that temporary non-immigrants will typically possess.

A 2016 GIS extended eligibility to this category: GIS 16 MA/002 - Changes in Medicaid Coverage for Temporary Non-Immigrants (PDF)

- Residency Review Worksheet (English) (Spanish version)
- Documentation Guide replaced by **OHIP-0046 - Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State (6/2024)**. See p. 30

Under the 2016 GIS, the individual must not have violated the terms of the status under which he or she was admitted to the U.S. (i.e., the individual must not have overstayed his or her visa.

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

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

The 2016 GIS and all of its attachments can be found [here](#)

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

See [here](#).

WARNING: Public Charge --and IMMIGRATION RULES ARE VERY COMPLICATED.

- **NEWS UPDATE March 9, 2021** - The Trump [Public Charge](#) rule has been vacated, reinstating the old Public Charge policy. See [here about how Public Charge affects older persons age 65+](#) who are undocumented and need Medicaid to cover **nursing home care**.
- Do not send a letter to any Immigration agency without consulting an immigration expert. You can find one serving your client's area by using <http://lawhelp.org/NY> and clicking on IMMIGRATION, or at the Urban Justice Center [International Refugee Assistance Project](#) or list of [network of legal services providers in NYS](#).

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