

### Immigrants Eligibility for Benefits and Public Charge Updates

- Kate Woomer-Deters
- North Carolina Justice Center
- Updated February 18, 2022



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### What Barriers Impact Immigrants' Receipt of Public Benefits?

- **Eligibility Barriers:** Most new immigrants are ineligible for "federal means-tested public benefits," including Medicaid, NC Health Choice, TANF, Food Stamps
- **Access Barriers:** When even eligible immigrants or family members are discouraged from applying
  - Fear of being labeled a "public charge" resulting in denial of "green card"
  - Fear that agency will report undocumented family or household members to ICE
  - Confusion about eligibility rules
  - Language Barriers

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### Impact of Access Barriers On Immigrant Families

- Nationwide, 36 % of all children who are eligible for Medicaid but not enrolled in the program live in immigrant families
  - *Over two-thirds of these children in immigrant families are themselves U.S. citizens.<sup>1</sup>*
- Young low-income children of immigrants remain twice as likely to be uninsured as those of natives (22% versus 11%), and disparities exist even when those children are citizens.<sup>2</sup>
- UNC study from 2014 (pre-ACA) showed 61% of non-citizens are uninsured, compared to 14% of native-born residents of NC.<sup>3</sup>

<sup>1</sup> U.S. GAO, "National: Demographics of Non-Enrolled Children Suggest Outreach Strategies," March 20, 2008, available at: [Government Accountability Office | Medicaid: Demographics of Non-enrolled Children Suggest State Outreach Strategies](#)

<sup>2</sup> Bennett and Johnson, "Immigrant Children's Access to Health Care: Differences by Global Region of Birth," [Health Care for Immigrants](#), 2010 May; 20(2 Suppl): 13-11, available at: [Immigrant Children's Access to Health Care: Differences by Global Region of Birth \(pdf\)](#)

<sup>3</sup> Bennett, K., "Improving Health Behaviors in North Carolina: Reaching and Enrolling Immigrants and Refugees," 2014, available at: [BARRECS: Immigrant Access to Health and Justice Services \(pdf\)](#)

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# Immigrant Eligibility for Public Benefits and Health Programs



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## What are Some Common Categories of Legally-Present Immigrants?

Legal Permanent Resident (LPR or "Green Card" holder)	U Visa (victims of crime)	T Visa Holders (victims of trafficking)	Approved VAWA recipient ("battered immigrant") – "Deferred Action"
Temporary Protected Status (TPS)	Asylee	Refugee	V-Visa holder
H-2A and H-2B visa (temporary farm and seasonal workers) ("non-immigrants")	Other "Non-Immigrant" visas such as student and visitor visas (B-1, F-1, J-1)	Deferred Action for Childhood Arrivals (DACA)	And more...

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## How Can You Tell What Kind of Immigration Status A Person Has? (PART 1)

### I-797 Approval Notice

- These are given by DHS for many different types of status.
- The type of status approved will be noted on this 8.5 x 11 piece of paper.



### Employment Authorization Document ("EAD", or work permit)

- Referred to as "I-688" or "I-766" in the Medicaid Manual
- The "Category" code on the work permit tells you what kind of status the person has, and you can look on the [I-797 Manual](#) to see which status each code indicates.



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### How Can You Tell What Kind of Immigration Status A Person Has? (PART 2)

Legal Permanent Resident Card (I-551 or "green card")	U.S. Visa in a Passport ("Non-Immigrant Visa")
<ul style="list-style-type: none"> <li>• "Resident since" line will tell you how long the person has had status for purpose of 5-year bar.</li> <li>• Category code will tell you how the person received LPR status</li> </ul>	<ul style="list-style-type: none"> <li>• Visa "type/class" will be listed on the right side and will tell you what sort of visa it is.</li> <li>• The types of non-immigrant visas and their eligibility for Medicaid are listed on Page 27 of the Family/Children's Medicaid Manual, Sec. MA-3330.</li> </ul>

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### Use the NC Medicaid Manual as a Resource!

- Section MA-3330 of the Family and Children's Medicaid Manual Contains a Chart listing every type of immigration status and whether the person might be Medicaid eligible.
- Adult Medicaid Manual: Section MA-2504
- Available on NC DHHS website

<p>Applicants for Adjustment to LPR Status will Expedited Visa Residency</p> <ul style="list-style-type: none"> <li>• Except as noted, deriving from or pending status of Form I-485 Application to Register Permanent Residence or Adjust Status</li> <li>• Form I-565 (Ade. Appointments) Status and Class: TPR - 6000</li> <li>• Application to Register Permanent Residence or Adjust Status</li> <li>• Form I-601B (or I-758) employment authorization document (EAD), or</li> <li>• I-567 receipt for Application for Employment Authorization based on I-590</li> </ul>	<p>6. ADJ - or ADJ-B</p> <ul style="list-style-type: none"> <li>• Date verification from the DHS, I-567 or other authoritative document</li> </ul>	<p>Eligible for Medicaid or CHIP for individual may be eligible for individual public benefits</p> <ul style="list-style-type: none"> <li>• Full Medicaid for: Veterans and</li> <li>• Children under 18</li> <li>• All children (Emergency Services)</li> </ul>
<p>Applicants for Adjustment to LPR Status will Expedited Visa Residency</p> <ul style="list-style-type: none"> <li>• Full Medicaid for: Veterans and</li> <li>• Children under 18</li> <li>• All children (Emergency Services)</li> </ul>	<p>If not eligible for Medicaid or CHIP for individual may be eligible for</p>	

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### Limited Immigrant Eligibility for Means-Tested Public Benefits

#### "Qualified" immigrants are eligible, defined as

- Legal Permanent Residents (LPR)
- Refugees, Asylees, & Persons Granted Withholding of Deportation/Removal
- Cuban and Haitian Entrants
- Paroled into U.S. for at least 1 Year (very small category)
- Battered spouses and children ("VAWA") with deferred action
- Victims of trafficking – those granted "T" visas or who have pending applications and have had a prima facie case approved

#### Not Qualified: everyone else

- Even if they have work authorization and are lawfully present in the United States, they are NOT eligible for "federal means tested public benefits."

Sources: 8 U.S.C. §1612, 8 U.S.C. §1641

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## What are Federal Means-Tested Public Benefits?

- Medicaid
- SCHIP (NC Health Choice for children)
- SNAP (food stamps)
- TANF (Temporary Assistance for Needy families/cash assistance)
- SSI (Supplemental Security Income, for disabled persons)

Source: U.S. DOJ, Proposed Agency Interpretation of "Federal Means-Tested Public Benefit[s]" Under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 1997, available at: [download justice.gov](https://www.justice.gov/dhs/foia/docs/20120801.pdf).  
 Note: there is no statutory definition of "federal means-tested public benefits."

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## Immigrant Eligibility: The "Five Year Bar"

- Most "qualified" legal immigrants who arrived after August 1996 are **barred for 5 years** after receiving their legal status from receiving "Federal means-tested public benefits"

Source: 8 U.S.C. §1613

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## Exemptions from the 5 Year Bar

- The following immigrant may obtain benefits as soon as they receive legal status (NO 5 year bar):
  - Refugees, persons granted asylum or withholding of deportation, Amerasian immigrants, Cuban/Haitian entrants
  - Veterans, active duty military, spouse, unmarried surviving spouse, or child of veteran/active duty military
  - Victims of trafficking
    - NOTE! Victims of trafficking can get assistance very quickly! More information from HHS [here](#) about how DSS staff can submit a "Request for Assistance" to the federal gov't to obtain benefits/services for a trafficking victim as soon as they are encountered.
- Food stamps (SNAP) only: Qualified alien children under age 18 do not have to wait 5 years.
- Medicaid only: Pregnant Women and children under the age of 19 (state option) do not have to wait 5 years
  - Pregnant women then revert to the 5-year bar once their pregnancy is over, if they have not yet been in qualified immigrant status for 5 years.

Source: 8 U.S.C. §1613, 8 U.S.C. §1612, 42 U.S.C. 1397f

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### Pregnant Women and Children under CHIPRA: Greater Access to Medicaid

- Medicaid is available to ALL pregnant women and children (under age 19) who are "lawfully residing" in NC
- Lawfully residing = lawful presence + residency
- Lawful presence is VERY BROAD
- Categories include:
  - U visa
  - Temporary Protected Status (TPS)
  - Non-immigrant status (ex: student visa, temporary work visa, etc.)
  - Deferred Action
  - Special Immigrant Juvenile Status
  - Applicants for withholding of removal/ deportation
  - AND MORE...
- ONLY lawfully residing group that is NOT eligible are people with DACA status

Source: 42 U.S.C. 1397ff, NC Medicaid State Plan, amendments 5-25-2010.

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### Residency

You must be a "resident" of NC to qualify for Medicaid or a North Carolina-based ACA plan

#### Old Rule:

- Residency = "intent to remain indefinitely"
- Child residency = residency of parent/ caretaker

#### New Rule, after 2014:

- Residency = "intent to reside"
- 42 CFR §435.403(h)
- DMA Admin Letter 01-14
- Child residency may be established separately from parent
- 42 CFR §435.403(h)
- SPA 13-0016-MMS
- For non-immigrants, declaration of residency may be a factor if immigrant tries to adjust status in the future.

Slide from Madison Harlow, formerly with Legal Services of Southern Piedmont

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### Enumeration Requirements: SSN

#### Old rule:

- To qualify for Medicaid, recipients must either have a social security number or prove that they have applied for a social security number

#### New rule, after 2014:

- DSS may not require an SSN and may give a Medicaid identification number for individuals who do not have a SSN because they either:
  - Are not eligible to receive an SSN or
  - May only be issued an SSN for a valid non-work reason

Slide from Madison Harlow, formerly with Legal Services of Southern Piedmont

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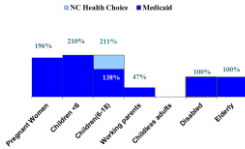
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# NC Medicaid Income Eligibility

(Percent of Federal Poverty Level, based on MAGI income levels)



-Limited groups of immigrants ("Qualified Aliens") are eligible for Medicaid/CHIP if they meet all other eligibility criteria

Slide Created by Pam Silberman, UNC School of Public Health. Source: CMS. State Medicaid and CHIP Income Eligibility Standards Effective Calculations for parents based on a family of three. Note: 100% of the federal poverty levels (FPL) (2021) = \$12,880/yr. (1 person), \$17,420 (2 people), \$21,960 (3 people), \$26,500 (4 people).

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## Immigrant Eligibility: The Affordable Care Act

<p><b>"Qualified" immigrants</b> (with more than 5 years presence in the U.S., or in categories exempt from the 5-year bar such as refugees and asylees)</p>	<p>Are eligible for all the same benefits under the ACA as U.S. citizens.</p> <ul style="list-style-type: none"> <li>May participate in health insurance exchanges.</li> <li>May receive subsidies for health insurance coverage, and</li> <li>Are eligible for expanded income-eligibility for Medicaid (not in NC)</li> </ul>
<p><b>"Lawfully residing" immigrants</b> (with any length of legal presence in the U.S.)</p>	<ul style="list-style-type: none"> <li>May participate in the exchanges.</li> <li>May receive subsidies for health insurance coverage.</li> <li>Not eligible for Medicaid.</li> </ul>
<p><b>Undocumented immigrants &amp; immigrant youth with "Deferred Action for Childhood Arrivals"</b></p>	<ul style="list-style-type: none"> <li>Not eligible for any of the benefits of the ACA, including participation in the health insurance exchanges, receipt of subsidized insurance coverage, or the expanded Medicaid access.</li> </ul>

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- Naturalized citizens
- Lawful Permanent Residents (LPR/Green Card holder)
- Asylees
- Refugees
- Cuban/Haitian Entrants
- Paroled into the U.S.
- Battered Spouses, Children and Parents (VAWA)
- Victims of Trafficking and their Spouses, Children, Siblings or Parents
- Granted Withholding of Deportation or Withholding of Removal
- Individuals with non-immigrant Status. Includes:
  - worker visas (including H-2A, H-2B, H-2C, etc.)
  - student visas
  - tourist visas
  - U visas/victim of crime visa
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (but not DACA holders)
- Administrative order staying removal issued by the Department of Homeland Security
- Applicants for asylum, Special Immigrant Juvenile Status, trafficking visa, adjustment to LPR after an approved I-130, or withholding of removal.
- Anyone with work authorization who: is a registry applicant, has an order of supervision, has applied for cancellation of removal, or is an applicant for legalization under IRCA or the LIFE Act

## "Lawfully Residing Immigrants" Is a Broad Category Under ACA

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## More on ACA and Immigrants



**Subsidy Level:** Unlike citizens, lawfully present immigrants who do not qualify for Medicaid may get premium tax credits even if they earn less than 100 percent of federal poverty level. This is true regardless of whether or not a state expands Medicaid eligibility under the Affordable Care Act.

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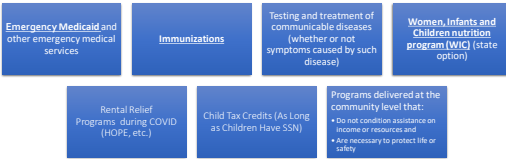
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## Benefit Programs That Can Be Provided to All Immigrants Regardless of Status or With No Status At All:



Source: 8 U.S.C. §1611.

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## Programs "Necessary to Protect Life or Safety"

- Mental illness or substance abuse treatment
- Medical & public health services & mental health, disability or substance abuse services necessary to protect life or safety
- **Child and adult protective services**
- Violence and abuse prevention, including domestic violence
- Short-term shelter, housing assistance (e.g., battered women's shelters)
- Soup kitchens, food banks, other nutritional assistance programs
- Other services necessary for the protection of life or safety

• Source: Final Specification of Community Programs Necessary for the Protection of Life and Safety, 1/14/01, 66 Fed. Reg. 3613

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- The words "protective services" ...**shall consist** of evaluation of the need for service and **mobilization of essential services** on behalf of the disabled adult." (N.C. GS. § 108A-101)
- "The words "essential services" shall refer to those **social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual**." (N.C.G.S. § 108A-101)
- USC 1621: States/localities cannot provide "state and local" public benefits to immigrants who are not either "qualified aliens" or "non-immigrants"
  - **HOWEVER**, state and local benefits **CAN** be provided when they are: "Programs, services, or assistance ...specified by the Attorney General...which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety;" (§ USC 1621(b)(4))
  - **Per Attorney General guidance** (66 Fed. Reg. 3613), such services include **"child and adult protective services."**
- Thus, state/counties have statutory mandate to provide these services, and nothing in federal statute or guidance prohibits provision of services "necessary to protect life and safety" by states/counties

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### Child Tax Credit

- Parents qualify for 2021 Child Tax Credit even if neither parent has an SSN (parents must have ITIN to file taxes)
- Qualifying children must have an SSN
- \$3600 for each child 0-5 yrs old
- \$3000 for each child 6-17 yrs old
- More info and video in Spanish available [here](#)




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- Concern: "If I go to the government office to get help for my child, will they deport me or my husband?"
- Concern: "If my status or my family's status is checked in federal systems to apply for benefits, will that get reported to immigration?"
- Agency threats of ICE reporting - frighten immigrants, discourage participation

## Access Barrier: Fear of ICE Reporting

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### Must A Benefits Agency Report An Undocumented Immigrant to Immigration Authorities?

- Generally **NO**.
- Benefits agencies are not responsible for enforcing immigration laws, with limited exceptions
  - Medicaid, WIC, and Health Care Marketplace agencies *under no duty to "report" at all*
  - Certain government entities (SSI, TANF, FS, public housing) are only required to notify ICE of any immigrant the entity *"knows"* is not lawfully present in the U.S.
    - And the definition of "know" is *very* strict
- **Applicants** for public benefits programs must have their immigration status checked for eligibility through the federal SAVE database. That database cannot be used for immigration enforcement purposes.

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### May A Benefits Agency Share Applicant or Family Information with Outside Agencies Voluntarily?

**Generally NO.**

All of the benefits programs (Medicaid, WIC, SNAP, TANF, etc.) have confidentiality language in their statutes and in the state plans or manuals implementing those programs. While the confidentiality requirements vary slightly across programs, most of them limit sharing of information to:

- Other entities directly involved in administration of the benefit.
- Limited law enforcement reasons—such as when there is a subpoena or court order, or
- Information released with the consent of the program applicant/participant.

Except in certain very limited circumstances that might involve a court order, benefits agencies would be prohibited from sharing client information with immigration authorities.

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### Can a Benefits Agency Require Non-Applicants to Provide Immigration Status Information or an SSN?

- **NO.**
- US HHS and USDA issued policy guidance stating that states should not make inquiries into citizenship, immigration status and social security numbers of non-applicants in the household when people apply for Medicaid, SCHIP, TANF and Food Stamps
- States may not deny benefits because a non-applicant in the family or household has not provided information on citizenship, immigration status, or SSN.
- Guidance exists to encourage mixed-status families to apply for health coverage

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## Regulations on Benefits Agencies, Immigration Status Checks, and Privacy of Applicant Information

Agency	Regulation	Effective Date	Key Points
Department of Health and Human Services (HHS)	45 CFR 162.103	2013	Privacy of applicant information
Department of Justice (DOJ)	28 CFR 16.103	2013	Privacy of applicant information
Department of Education (DOE)	34 CFR 101.113	2013	Privacy of applicant information
Department of Labor (DOL)	29 CFR 162.103	2013	Privacy of applicant information
Department of Housing and Urban Development (HUD)	24 CFR 162.103	2013	Privacy of applicant information
Department of Agriculture (USDA)	7 CFR 162.103	2013	Privacy of applicant information
Department of Veterans Affairs (VA)	38 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	42 CFR 162.103	2013	Privacy of applicant information
Department of Social and Health Services (DSHS)	47 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	48 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	49 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	50 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	51 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	52 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	53 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	54 CFR 162.103	2013	Privacy of applicant information
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Department of Social Services (DSS)	62 CFR 162.103	2013	Privacy of applicant information
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Department of Social Services (DSS)	67 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	68 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	69 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	70 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	71 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	72 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	73 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	74 CFR 162.103	2013	Privacy of applicant information
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Department of Social Services (DSS)	81 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	82 CFR 162.103	2013	Privacy of applicant information
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Department of Social Services (DSS)	95 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	96 CFR 162.103	2013	Privacy of applicant information
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Department of Social Services (DSS)	98 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	99 CFR 162.103	2013	Privacy of applicant information
Department of Social Services (DSS)	100 CFR 162.103	2013	Privacy of applicant information

• Spreadsheet with statutory/regulatory citations available if you want details on privacy regulations applying to benefits-granting agencies. Contact me for copy!

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## Access Barrier: Public Charge



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## BACKGROUND: PUBLIC CHARGE

**"Public Charge"** is a term used in immigration law to refer to a person who is likely to become dependent on the government for support. Law in place since 1882.

A public charge assessment is made:

- When a person **applies to enter** the U.S. or
- **Applies to adjust status** to become a Lawful Permanent Resident (LPR).

*DOES NOT APPLY* when a person is applying to become a U.S. citizen



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### Fear of "Public Charge"

Concerns: If my family participates in a health or nutrition program, can I:

- Be deported?
- Get a green card in the future?
- Become a citizen in the future?
- Sponsor a relative in the future?

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### UNC-Asheville Study: Chilling Effect of Public Charge Rules

- 66.2% of respondents reported having heard about the Public Charge Rule
- 27.9% of respondents reported that there was a time in the past 12 months when they or a family member **decided NOT to apply for or stopped participating in Medicaid or another health insurance program** because of worry that it would disqualify them or a relative from getting a green card.
- 35% of respondents reported that there was a time in the past 12 months when they or a family member **decided NOT to apply for or stopped participating in SNAP (food assistance), housing assistance, or child care assistance** because of worry that it would disqualify them or a relative from getting a green card.
- 27.9% of respondents reported that they or a family member had **decided NOT to visit a doctor** when needed because of worry that it would disqualify them or a relative from getting a green card

UNC-Asheville Department of Sociology, Applied Social Research Workshop. Survey conducted November 2020 - January 2021.

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### Three More Studies Indicating Impact of Previous Public Charge Rule

- **Food Research and Action Network report** (May 2021)
  - Study shows 22.5% reduction in food stamp usage among U.S. citizen children with at least one immigrant in the home from 2018 to 2019 (after announcement of the previous public charge rule)
- **Urban Institute report** (May 2021)
  - "Despite facing hardships [during the COVID pandemic], more than 1 in 4 adults in low-income immigrant families (27.5 percent) reported they or a family member avoided noncash benefits or other help with basic needs because of green card or other immigration concerns in 2020."
- **Kaiser Family Foundation report** (May 2021)
  - "One third [of Hispanic adults surveyed] (rising to 63% of the potentially undocumented) are concerned that getting the [COVID] vaccine may negatively affect their own or a family member's immigration status."

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The Rule Has Always Considered A List of Factors About a Person to Determine if She Will be a "Public Charge" or Not

- USCIS (Immigration Service) is supposed to look at all these factors in assessing "public charge":
  - Age
  - Health
  - Family status
  - Financial status
  - Education and skills
  - Affidavit of support
- No single factor determines whether a person is likely to become a public charge.
- The determination is based on assessment of all relevant factors.
- The decision is **forward-looking** and can't be based only on what happened in the past.

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Exempt Immigrants

- Certain immigrants are **not** subject to the "public charge" test at all:
  - Green card holders who are now applying for U.S. citizenship
  - Refugees
  - Asylees
  - Applicants for "T" visas – victims of trafficking
  - Applicants for "U" visas or VAWA - victims of domestic violence and other serious crimes
  - And several other categories

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Public Charge Timeline – 2019 - 2022




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### Current Status of the Rule

- The public charge statute is **still on the books**, as it has been for many decades
- It's just the REGULATION from previous administration that has been enjoined
- Biden administration has reinstated the "1999 Field Guidance" on Public Charge, and will be applying that in immigration cases going forward
  - More explanation of 1999 Field Guidance coming up...
- **A new draft public charge rule has just been released on February 17, 2022.** It has not yet been published in federal register as of 2-17-22.

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### Current Rule: The 1999 Field Guidance

**NOTE: This same definition is included in the new draft regulation, just released 2-17-22.**

- "Public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes):
  - "primarily dependent on the government for subsistence, as demonstrated by either
    - (i) the receipt of **public cash assistance for income maintenance** or
    - (ii) **institutionalization for long-term care** at government expense."
  - Institutionalization for short periods of rehabilitation does not constitute such primary dependence"
- Guidance also notes that receipt of cash assistance is not a automatic disqualifying factor, and should only be "one factor" in the consideration
- Receipt of cash assistance can also be overcome by positive factors, such as current employment, or short period of time on cash assistance

Source: INS, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28689, 1999, available at: [99-13202.pdf@www.federalregister.gov](https://www.federalregister.gov/documents/1999/05/13/99-13202.pdf)

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- Under 1999 Field Guidance, "cash assistance" includes only the following:
  - Supplemental Security Income (SSI)
  - Temporary Assistance for Needy Families (TANF)
  - State and local cash assistance programs that provide benefits for income maintenance (often called "General Assistance" programs)
    - We don't have "General Assistance" in NC
  - Medicaid supporting people who are **institutionalized for long-term care**
- **NOT INCLUDED in the definition:** "special purpose" cash assistance – cash assistance for a "special purpose" is not considered negatively under 1999 Field Guidance
  - Examples: Emergency rental assistance, LIHEAP energy assistance

### Definition of "cash assistance"

**NOTE: This same definition is included in the new draft regulation, just released 2-17-22.**

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Remember Our Previous Slides!

- Undocumented immigrants are **NOT ELIGIBLE** for cash assistance programs such as TANF or SSI, nor are they eligible for non-emergency Medicaid
- Neither are short-term immigrants such as short-term visa holders, DACA , or TPS

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More from 1999 Field Guidance

*Current rule as of 2-17-22*

- "[Immigration] officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds."

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More from the 1999 Field Guidance

*Current rule as of 2-17-22*

- "Some specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present."
- "A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge..."

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# Benefits Used by Family Members

**1999 Rule:** The receipt of public benefits by U.S. citizen children or any other family members in the household will **NOT** be attributed to their parents or other family members, **UNLESS** the family is SOLELY reliant on a child's CASH benefits as their SOLE means of economic support. (Cash = SSI or TANF).

**New Draft Rule (Feb. 2022):** NO BENEFITS used by ANY family member are considered in the public charge analysis.  
Quote: "The receipt of public benefits solely by another individual, even if the alien assists with the application process, does NOT constitute receipt for such alien." (emphasis added)

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## Immigrants AND their Family Members Can Use These Programs Without Concern, If Eligible

Current as of 2-17-22

- Emergency AND Non-Emergency Medicaid
- ACA (Affordable Care Act/Health Care Marketplace)
- SNAP (food stamps)
- WIC (Women, Infant and Children's nutrition assistance program)
- **All** tax credit programs including EITC and Child Tax Credit
- Head Start
- School lunch/breakfast programs
- FEMA (or any disaster relief benefits)
- CHIP (Children's Health Insurance Program/NC Health Choice)
- Sliding scale/federally-funded health services (FQHCs, etc.)
- State local or tribal programs (except cash for income maintenance)
- LIHEAP/energy assistance
- Emergency services: DV shelters, soup kitchens, child protective services
- "Earned" benefit programs such as unemployment, SSDI, Medicare
- Any other non-cash benefits or cash benefits not for income maintenance
- **COVID-related programs, including:**
  - COVID-related stimulus checks
  - Pandemic EBT (food benefits for families with children)
  - Emergency rental assistance (such as HOPE program, House Wake, ERAP)
  - COVID testing, treatment, and vaccines

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## Joint USDA – USCIS Letter on Public Charge



Head Start SNAP Transitions and Community Partners  
The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) and the U.S. Citizenship and Immigration Services (USCIS) of the U.S. Department of Homeland Security want to make sure that everyone who qualifies for nutrition assistance gets the help.

Applying for or receiving SNAP does **not** make you a public charge and will not be considered in a public charge determination. Applying for or receiving SNAP will not affect your ability to:

- Remain in the United States,
- Get a Green Card/Permanent Legal Resident Status,
- Keep a Green Card/Permanent Legal Resident Status, or
- Become a U.S. Citizen.

• Letter released January 2022, available at: <https://www.fns.usda.gov/snap/joint-letter-public-charge>

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### Messaging for Families

<p>Many immigrants are not subject to public charge: refugees, asylees, victims of trafficking, victims of DV and more are still not subject to public charge rules.</p>	<p>The vast majority of benefits used by U.S. citizen children and other family members will <b>not</b> be counted against the immigrant in her green card applications (3egg Rule) <i>(Under new draft rule, NO benefits used by family are considered)</i></p>
<p>Most important benefit programs are <b>excluded</b> from public charge consideration.</p>	<p>Public charge test considers <b>totality of the circumstances</b>.</p> <ul style="list-style-type: none"> <li>Families need to make individual determinations based on their situation.</li> <li>Using health care and nutrition benefits can help you be stronger, healthier and more likely to achieve economic security.</li> </ul>

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**PUBLIC CHARGE RESOURCES:**  
[www.njjustice.org/public-charge](http://www.njjustice.org/public-charge)

*NOTE: The law is still changing, updated versions will be available at the above link.*

- **Public Charge: The Law Has Changed (updated June 2021)**
  - Available [here](#) in English, Spanish, French, Vietnamese and Chinese
- **Short Animated Videos on Public Charge (updated June 2021)**
  - English [short video](#)
  - Spanish [short video](#)
- **Immigrant Access to Health and Nutrition Programs (updated May 2021)**
  - Includes phone numbers clients can call with questions about benefits eligibility
  - Spanish [here](#)
  - English [here](#)
- **Flyer on Immigrants and the Vaccine (Including Public Charge):**
  - English, Spanish, French, Vietnamese, Chinese, Burmese and Arabic [here](#).
- **Flyers Specifically Relevant to Public Charge and Coronavirus:**
  - Available [here](#) in six languages (English, Spanish, Chinese, Arabic, Vietnamese and French) *(made under prior rule, needs slight updates)*

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### More resources

- Another great source of flyers in many languages:
  - [www.protectingimmigrantfamilies.org/know-your-rights](http://www.protectingimmigrantfamilies.org/know-your-rights)

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- Legal Services of Southern Piedmont and North Carolina Justice Center: Flyer on Immigrant Eligibility for Medicaid and ACA: <http://www.ncjustice.org/2018/06/24/files/immigrant%20eligibility%20oursure.pdf>
- Interpretation of "Federal Public Benefit," (HHS) 8/4/98, 63 Fed. Reg. 41658
- Final Specification of Community Programs Necessary for the Protection of Life and Safety, 1/16/01, 66 Fed. Reg. 3613
- Interim Guidance on Verification, 11/17/97 (INS) 62 Fed. Reg. 61415
- Domestic Violence Fact Sheet, 1/30/01 (HHS-OCR): <https://www.hhs.gov/civil-rights/for-individuals/special-topics/national-origin/domestic-violence/>
- "Public Benefits Access for Battered Immigrant Women and Children," <http://www.hhs.gov/hop/content/uploads/2013/06/FY12-2014-2-BB-Public-Benefits-for-Immigrant-Women-and-Children-2-17-14-1.pdf>
- Food Stamp Regulations on Deeming, 11/21/00
  - (USDA-FNS) 65 Fed. Reg. 70134

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- Guidance On State Applications, Citizenship, Immigration Status & SSN, 9/21/00 (HHS, USDA)
- <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/hcp092100.pdf>
- DHHS and USDA: <https://www.hhs.gov/civil-rights/for-individuals/special-topics/national-origin/tri-agency/index.html>
- Memorandum of Agreement between the Department of Homeland Security, U.S. Citizenship and Immigration Services, and the North Carolina Department of Health and Human Services, signed June 2010
- SCHIP Interim Final Rule, 6/25/01 (HHS) 66 Fed. Reg. 33,823
- Mandatory Reporting Notice, 9/28/00 (HHS, SSA, DOL, HUD) 65 Fed. Reg. 58301
- Language Access Guidance, 8/30/00 (HHS-OCR)
- <http://hhs.gov/ocr/lsa>

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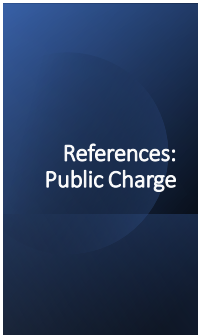
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- **NEW DRAFT RULE on public charge, just released 2-17-22:** <https://www.dhs.gov/sites/default/files/2022-02/22-0214-9211-epim-public-charge.pdf>
- INS, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28689, 1999, available at: [99-13202.pdf \(govinfo.gov\)](#)
  - **In effect as of March 2021**
- Protecting Immigrant Families Campaign: Changes to Public Charge: Analysis and Frequently Asked Questions, available at: [Public Charge: What Advocates Need to Know Now - Google Docs](#)
  - **Updated May 2021**
- Biden Administration Order on Public Charge (Feb. 2021): [Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans](#), The White House
- Resources available at: [protectingimmigrantfamilies.org](http://protectingimmigrantfamilies.org)

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- Kate Woomer-Deters, Senior Attorney
- North Carolina Justice Center
- (919) 861-2072
- [kate@ncjustice.org](mailto:kate@ncjustice.org)

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