



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower      The Governor Nelson A. Rockefeller Empire State Plaza      Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

<b>INFORMATIONAL LETTER</b>
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**TRANSMITTAL:** 06 OMM INF-5

**TO:** Local District Commissioners

**DIVISION:** Office of Medicaid Management

**DATE:** December 6, 2006

**SUBJECT:** Eligibility for "Federal Medicaid" Based on Immigration Status and Required Documentation

**SUGGESTED**

**DISTRIBUTION:** Medical Assistance Directors  
Temporary Assistance Directors  
Staff Development Coordinators  
Legal Staff  
Fair Hearing Staff

**CONTACT PERSON:** Upstate: Local District Liaison (518) 474-8887  
NYC: (212) 417-4500

**ATTACHMENTS:** None

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs	Soc. Serv. Law & Other Legal Ref.	Manual Ref	Misc.Ref
04 OMM/ADM-7			August 29, 2006, order issued in <u>M.K.B. et al. v. Eggleston, Doar and Novello</u>  P.L. 104-193 8 U.S.C. sections 1601 et seq.)		

**I. INTRODUCTION**

By order dated August 29, 2006, issued in M.K.B. et al. v. Eggleston, Doar and Novello, U.S. District Judge Jed S. Rakoff directed that the State "revise its training materials so that they accurately and comprehensively explain which immigrants are eligible for federal Medicaid." Although the court found no defect in the New York State Department of Health's ("the Department's") prior directives or training materials, the Department is issuing this Informational Letter (INF) to comply with the court's order. This INF explains which aliens are eligible for "federal Medicaid" based on their immigration status and the types of documentation that these aliens will typically possess. This INF supplements 04 OMM/ADM-7, issued October 26, 2004. Districts should assure that appropriate caseworkers are familiar with the materials in this INF and use this INF in district training.

For purposes of this INF, the term "federal Medicaid" means federally-funded Medicaid; that is, Medicaid services for which federal financial participation ("FFP") is available. Depending on an alien's immigration status, the alien may be eligible for federal Medicaid coverage of all medically necessary care and services or only of services necessary to treat an emergency medical condition. This INF discusses aliens who are eligible for full Medicaid coverage as well as those who are eligible only for emergency coverage.

With limited exceptions, this INF does not discuss aliens who are eligible for so-called "State Medicaid"; that is, Medicaid services funded solely by the State and local governments. In particular, this INF does not discuss aliens who are eligible for "State Medicaid" because they are "permanently residing in the United States under color of law" (PRUCOL). The Department anticipates issuing guidance clarifying PRUCOL status. Until such time, social services districts should continue to refer to the PRUCOL discussion contained in 04 OMM/ADM-7.

To be eligible for federal Medicaid, aliens not only must have a satisfactory immigration status, as described in this INF, but also must meet the program's financial and other non-financial eligibility requirements. Section III, herein, discusses one such non-financial eligibility requirement that aliens, with limited exceptions, must provide or apply for a social security number.

**II. ALIENS ELIGIBLE FOR FEDERAL MEDICAID: SUMMARY**

**A. Qualified Aliens**

**1. Definition**

Only aliens who are "qualified aliens"<sup>1</sup>, or who are treated as qualified aliens for federal Medicaid purposes, are eligible for federal Medicaid coverage of all medically necessary care and services, if financially and otherwise eligible. The following aliens are qualified aliens or are treated as qualified aliens for federal Medicaid eligibility purposes:

- Lawful permanent residents;
- Aliens granted asylum under Section 208 of the Immigration and Nationality Act;
- Refugees admitted to the U.S. under Section 207 of the INA;
- Aliens paroled into the U.S. for at least one year under Section 212(d)(5) of the INA;
- Aliens granted withholding of deportation or removal under Section 243(h) of the INA, as in effect before April 1, 1997, or Section 241(b)(3) of the INA;
- Aliens granted conditional entry under Section 203(a)(7) of the INA;
- Cuban/Haitian entrants, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (P.L. 96-422);
- Aliens who have been battered or subjected to extreme cruelty in the U.S.;
- Aliens admitted to the U.S. as Amerasian immigrants (Vietnamese);
- Veterans of the U.S. Armed Forces with honorable discharges and their immediate family members;
- Aliens on active duty in the U.S. Armed Forces and their immediate family members;
- Native Americans born in Canada;
- Members of a federally recognized Native American tribe born outside of the U.S.; and
- Victims of a severe form of human trafficking.

**2. Significance of Qualified Alien's Date of Entry into U.S.**

Whether a qualified alien is eligible for federal Medicaid depends initially on whether the alien entered the United States before August 22, 1996.<sup>2</sup> Most aliens legally present in the U.S. will possess an immigration document that will contain the date the alien entered the U.S. The Medicaid worker can generally rely upon the date found on the alien's immigration document to establish the date of entry.<sup>3</sup> The alien may also possess other documentation, such as a high school diploma, that can be satisfactory evidence that the alien had entered the U.S. before August 22, 1996.

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<sup>1</sup> "Qualified aliens" are also often referred to as "qualified immigrants." The two terms have the same meaning.

<sup>2</sup> This date, August 22, 1996, is the effective date of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), commonly referred to as federal welfare reform.

<sup>3</sup> The types of immigration documentation that qualified aliens will possess are described in detail at Section III(A) of this INF.

**Entry before August 22, 1996**

The following groups of aliens who entered the U.S. before August 22, 1996, are eligible for federal Medicaid with no waiting period, provided they meet the program's financial and other eligibility requirements:

- All aliens who entered the U.S. before August 22, 1996, and were qualified aliens when they entered the U.S.;
- All aliens who lawfully entered the U.S. before August 22, 1996, and who attained qualified alien status on or after such date; provided, however, that they remained "continuously present" in the U.S. until attaining qualified alien status. Any single absence from the U.S. of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence" in the U.S.; and
- All aliens who entered the U.S. before August 22, 1996, without proper documentation (i.e. undocumented aliens) as well as aliens who overstayed their visas and who attained qualified alien status on or after August 22, 1996; provided, however, that they remained "continuously present" in the U.S. until attaining qualified alien status. Again, any single absence from the U.S. of more than 30 days, or a total aggregate of absences of more than 90 days, is considered to interrupt "continuous presence".

Aliens who (1) entered the U.S. before August 22, 1996, and (2) attained qualified alien status on or after such date but (3) did not remain continuously present in the U.S. from their last date of entry into the country prior to August 22, 1996, until they became a qualified alien, are not considered as having entered the U.S. prior to August 22, 1996.

**Entry on or after August 22, 1996**

Many groups of qualified aliens who entered the U.S. on or after August 22, 1996, may also receive federal Medicaid with no waiting period, assuming they meet the program's financial and other eligibility requirements. These qualified aliens include the following:

- Refugees;
- Asylees;
- Cuban/Haitian entrants;
- Amerasian immigrants (Vietnamese);
- Aliens granted withholding of deportation or removal;
- Veterans with honorable discharges and their immediate family members;
- Aliens on active duty in the U.S. Armed Forces and their immediate family members;
- Victims of a severe form of human trafficking;

- Native Americans born in Canada; and
- Members of a federally recognized Native American tribe born outside of the U.S.

Refer to Section III(A)(1) of this INF for a discussion of the types of immigration documentation that these aliens will typically possess.

**Entry on or after August 22, 1996 and subject to five year waiting period**

Certain other qualified aliens who entered the U.S. on or after August 22, 1996, are ineligible for federal Medicaid until they have resided in the United States as qualified aliens for five years. These qualified aliens are commonly referred to as being subject to the federal five year waiting period or the "federal five year ban."

Qualified aliens who are subject to the federal five year ban include the following:

- Lawful permanent residents;
- Aliens paroled into the U.S. for at least one year;
- Aliens granted conditional entry; and
- Aliens who are battered or subjected to extreme cruelty in the U.S.

The federal five year ban period begins on the date that the alien first becomes a qualified alien in one of these four categories. After five years as a qualified alien in one or more of these categories, the alien is eligible for federal Medicaid. During the five year waiting period, these qualified aliens, although not eligible for federally funded Medicaid, are eligible for State Medicaid coverage of all medically necessary care and services if they meet the financial and other eligibility requirements.

The particular qualified alien status that the alien holds may change during the federal five year ban period from one qualified alien status to another qualified alien status. However, it is the date on which the alien *first became* a qualified alien in one of these four categories - lawful permanent resident, parolee, conditional entrant or battered alien - that controls when the five year ban will expire. In other words, the "five year clock" begins to run on the date that the alien first becomes a qualified alien. The "five year clock" does not reset to zero if the alien's qualified alien status subsequently changes within the five year period from one qualified alien status to another qualified alien status.

An example using battered qualified aliens and lawful permanent residents illustrates this point. Assume that the Medicaid worker has determined that an alien who entered the U.S. after August 22, 1996, had established her status as a battered qualified alien effective January 1, 2002. She then applied to adjust her status to that of a lawful permanent resident. Lawful permanent resident status is granted effective January 1, 2006. In this example, this qualified alien becomes eligible for federal Medicaid effective January 1, 2007, which

is five years after the date she first obtained status as a qualified alien. This is true even though her immigration status has changed during the federal five year ban period from one qualified alien status - battered qualified alien - to another qualified alien status - lawful permanent resident. In this example, the federal five year ban period is thus measured from the date this alien first became a battered qualified alien and **not** from the date she became a lawful permanent resident. Until the five year ban period expires on January 1, 2007, this qualified alien may receive State funded Medicaid coverage of all medically necessary care and services, if financially and otherwise eligible.

Refer to Section III(A)(2) of this INF for a discussion of the types of immigration documentation that qualified aliens subject to the federal five year ban will typically possess.

#### **B. Temporary Non-Immigrants**

A temporary non-immigrant is an alien who is allowed to enter the U.S. for a specific purpose and for a limited time period. They are commonly referred to as short-term visa holders. There are more than two dozen temporary non-immigrant categories, each of which has specific requirements concerning the purpose of the alien's stay in the U.S. A few of the more common temporary non-immigrant categories are tourists, students and visitors on business.

Temporary non-immigrants are not eligible for federal Medicaid coverage of all medically necessary care and services. They are eligible only for federal Medicaid coverage of services necessary to treat an emergency medical condition, if they meet the program's financial and other eligibility requirements. Temporary non-immigrants are eligible for federal Medicaid coverage of emergency medical services regardless of the date the non-immigrant entered the U.S.

An emergency medical condition 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:

- placing the alien's health in serious jeopardy;
- serious impairment to bodily functions; or
- serious dysfunction of any bodily organ or part.

These services do not include care and services related to an organ transplant procedure.

Refer to Section III(B) of this INF for a discussion of the documentation that temporary non-immigrants will possess.

### C. Undocumented Aliens

Undocumented aliens are aliens other than qualified aliens, PRUCOL aliens or temporary non-immigrants. They are unable to provide documentation of a satisfactory immigration status. Like temporary non-immigrants, undocumented aliens are eligible only for federal Medicaid coverage of services necessary to treat an emergency medical condition, provided they are financially and otherwise eligible. Districts must code undocumented aliens on WMS with ACI code "E."

## III. DOCUMENTATION REQUIREMENTS

### A. Qualified Alien Documentation Requirements

Set forth below are documentation requirements for qualified aliens. The documents listed under each qualified alien category are examples of immigration documents that aliens in that particular category will typically possess. The alien must possess at least one of the documents preceded by the bullet<sup>4</sup>. The alien is not required to possess all such documentation.

#### 1. Qualified Aliens who are Eligible for Federal Medicaid Regardless of Date of Entry

The qualified aliens listed in paragraphs a. through j., below, are eligible for federal Medicaid regardless of whether they entered the U.S. before August 22, 1996, or on or after such date. These qualified aliens are thus exempt from the federal five year ban. Also included are aliens who entered the U.S. before August 22, 1996, and who attained one of these qualified alien statuses on or after August 22, 1996, provided that they can demonstrate that they continuously resided in the U.S. until attaining such qualified alien status.

##### a. Refugees

A refugee is any person who is outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution based on the person's race, religion, nationality, membership in a particular social group or political opinion.

A refugee will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record or foreign passport stamped "Admitted under Section 207 of the INA," "Section 207," "refugee," "RE1," "RE2," "RE3" or "RE4"; **or**
- I-551 Permanent Resident Card coded "R8-6," "RE6," "RE7," "RE8" or "RE9"; **or**
- I-571 Refugee Travel Document; **or**

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<sup>4</sup> An exception applies to pregnant women. Pregnant women are not required to document their immigration status for the duration of the pregnancy or for the sixty-day period that begins on the last day of the pregnancy including, but not exceeding, the last day of the month in which the sixty-day post-partum period ends.

- I-688B Employment Authorization Card coded "274a.12(a)(3)"; **or**
- I-766 Employment Authorization Document coded "A3."

Districts must code refugees on WMS with the ACI code "R."

**b. Asylees**

An asylee is an alien in the U.S. or at a port of entry who is found to be unable or unwilling to return to his or her country of nationality or to seek the protection of that country because of persecution or a well-founded fear of persecution.

An asylee will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record or foreign passport stamped "Granted asylum under Section 208 of the INA," "Section 208" or "asylee"; **or**
- I-551 Permanent Resident Card coded "AS1," "AS2," "AS3," "AS6," "AS7" or "AS8"; **or**
- I-571 Refugee Travel Document; **or**
- I-688B Employment Authorization Card coded "274a.12(a)(5)"; **or**
- I-766 Employment Authorization Document coded "A5"; **or**
- an order granting asylum issued by the United States Citizenship and Immigration Services (USCIS) or its predecessor agency, the INS, or by an immigration judge, the Board of Immigration Appeals or a federal court.

Districts must code asylees on WMS with the ACI code "A."

**c. Cuban/Haitian entrants**

Qualified aliens include "Cuban/Haitian entrants" as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422). This statute defines "Cuban/Haitian entrants" to include (1) any individual granted parole status as a Cuban/Haitian entrant (status pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti; and (2) any other national of Cuba or Haiti who was paroled (admitted) into the United States, is the subject of exclusion or deportation proceedings, or has an application for asylum pending and with respect to whom a final, non-appealable and legally enforceable order of deportation or exclusion has not been entered.



Cuban/Haitian entrants will typically have one or more of the following documents:

- I-94 Arrival/Departure Record stamped "Cuban/Haitian entrant," "CU-6" or "CU-7"; **or**
- I-94 Arrival/Departure Record stamped "Section 212(d)(5) of the INA," or any other notation indicating parole under Section 212(d)(5) of the INA or parole in the U.S. on or after October 10, 1980, and satisfactory evidence that the parolee has been a citizen of Cuba or Haiti; **or**
- I-551 Permanent Resident Card coded "CU-6," "CU-7," "CH-6", "CN-P", "LB-2," "LB-6" or "LB-7"; **or**
- Temporary I-551 stamp coded "CU-6" or "CU-7" in a foreign passport; **or**
- I-688B Employment Authorization Card coded "274a.12(c)(8)" and satisfactory evidence that the person has been citizen of Cuba or Haiti; **or**
- I-766 Employment Authorization Document coded "C8" and satisfactory evidence that the person has been a citizen of Cuba or Haiti; **or**
- I-862, Notice to Appear, or I-221S, Order to Show Cause, indicating pending removal or deportation proceedings and satisfactory evidence that the person has been a citizen of Cuba or Haiti; **or**
- Any USCIS document showing a filed I-589, Application for Asylum, and satisfactory evidence that the person has been a citizen of Cuba or Haiti.

Districts must code Cuban/Haitian entrants on WMS with the ACI code "H."

**d. Aliens granted withholding of deportation or removal**

These aliens have had their deportation or removal withheld based on a finding that their life or freedom is threatened in the country of deportation based on race, religion, nationality, membership in a particular social group or political opinion.

These aliens will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record or foreign passport stamped "Section 243(h)" or "Section 241(b)(3)"; **or**
- I-766 Employment Authorization Document coded "A10"; **or**

- Order issued by an immigration judge, the Board of Immigration Appeals or a federal court showing the date that deportation was withheld under Section 243(h) of the INA, as in effect prior to April 1, 1997, or the date that removal was withheld under Section 241(b)(3) of the INA.

Districts must code these aliens on WMS with the ACI code "J."

**e. Amerasians (Vietnamese)**

This category includes aliens who were born in Vietnam after January 1, 1962, and before January 1, 1976, and whose fathers were U.S. citizens and such aliens' spouses and minor children. They are eligible for Medicaid to the same extent as refugees. [Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988, (as contained in Section 101(e) of Public Law 100-202)]

Amerasians will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record or Vietnamese passport or exit visa stamped "AM1," "AM2," "AM3," "AM6," "AM7" or "AM8"; **or**
- I-551 Permanent Resident Card coded "AM1," "AM2," "AM3," "AM6," "AM7" or "AM8"; **or**
- Temporary I-551 stamp in Vietnamese passport coded "AM1," "AM2," "AM3," "AM6," "AM7," or "AM8"; **or**
- I-571 Refugee Travel Document.

Districts must code Amerasians on WMS with the ACI code "R."

**f. Victims of a severe form of human trafficking**

Victims of a severe form of human trafficking are eligible for federal Medicaid to the same extent as refugees. (Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, § 107)

There are two kinds of trafficking victims: adults (18 years of age or older) who are certified by the Office of Refugee Resettlement (ORR) of the federal Department of Health and Human Services and children younger than 18 years of age. Children do not have to be certified but are issued a letter by the ORR stating that they are eligible for benefits as victims of a severe form of trafficking. The ORR certification or letter is proof of the alien's immigration status but the Medicaid worker must call the Trafficking Verification Line at 1-866-401-5510 to verify the letter.

Trafficking victims will typically possess one or more of the following documents:

- Certification letter (for adults) or eligibility letter (for children younger than 18) issued by the Office of Refugee Resettlement. The worker must call the Trafficking Verification Line at 1-866-401-5510 to verify the letter; **or**
- I-94 Arrival/Departure Record coded "T1," "T2," "T3," "T4," or "T5" stating admission under Section 212(d)(5) of the INA if status is granted for at least one year; **or**
- I-797 Notice of Action acknowledging receipt of an I-914, Application for T Nonimmigrant Status.

Upstate districts must code victims of human trafficking on WMS with the ACI code "D." New York City must code these aliens with the ACI code "R."

**g. Native Americans born in Canada**

Native Americans born in Canada will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record coded "S1-3"; **or**
- I-551 Permanent Resident Card coded "S1-3"; **or**
- Temporary I-551 stamp coded "S1-3" in a Canadian passport; **or**
- Tribal document certifying at least 50% American Indian blood as required by Section 289 of the INA or documented member of a federally recognized tribe *and* satisfactory evidence of birth in Canada, such as a birth or baptismal certificate issued on a reservation, a letter from the Canadian Department of Indian Affairs or school records.

Districts must code these Native Americans on WMS with the ACI code "C."

**h. Members of a federally recognized Native American tribe born outside of the U.S.**

These Native Americans will typically possess the following documents:

- A membership card or other tribal document demonstrating membership in a federally recognized Indian tribe under Section 4(e) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. §450b(e)] and satisfactory evidence of birth outside the U.S.

Districts must code these Native Americans on WMS with the ACI code "C."

**i. Veterans**

This category includes veterans with an honorable discharge from a branch of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps or Coast Guard) and who fulfilled the minimum active-duty service requirements of 38 U.S.C. § 5303A(d). The discharge must not be based on immigration status or alienage. This category also includes the veteran's spouse, unremarried surviving spouse and unmarried dependent children. Such immediate family members must document their relationship to the veteran.

Veterans or their immediate family members will typically possess one or more of the following documents:

- Form DD-214, Discharge Certificate, showing "Honorable" discharge and not on account of immigration status and not a character of discharge "Under Honorable Conditions"; **or**
- Original or notarized copy of the veteran's discharge papers.

Districts must code these aliens on WMS with the ACI code "V."

**j. Active military**

This category includes aliens who are on current, full-time active duty (other than active duty for training) in a branch of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps or Coast Guard). Also included are the alien's spouse, unremarried surviving spouse and unmarried dependent children. Immediate family members must document their relationship to the alien on active duty.

Aliens in this category will typically possess one or more of the following documents:

- Military Identification Card [DD Form 2 (active)] listing an expiration date of more than one year from the date of determination; **or**
- Original or notarized copy of current military orders.

Districts must code these aliens on WMS with the ACI code "M."

**2. Qualified Aliens who are Eligible for State Medicaid until becoming Eligible for Federal Medicaid after a Five Year Waiting Period**

Qualified aliens listed in paragraphs a. through d., below, who entered the U.S. before August 22, 1996, are eligible for federal Medicaid, if otherwise eligible. However, qualified aliens in these four categories who entered the U.S. on or after August 22, 1996, are subject to the federal five year ban. This means that they are not eligible for federally funded Medicaid until they have resided in the U.S. for five years in a qualified alien status. Until becoming eligible for federally funded Medicaid, these qualified aliens are

eligible for State funded Medicaid coverage of all medically necessary care and services, if they meet the program's other eligibility requirements. Districts must enter the appropriate State/federal charge codes to assure proper claiming of federal and State shares. (See 04 OMM/ADM-7, pps. 34-35.)

**a. Lawful permanent residents**

Lawful permanent residents are non-citizens who reside in the U.S. under legally recognized and lawfully recorded permanent residence. They are also known as permanent resident aliens, resident alien permit holders or green card holders.

Lawful permanent residents will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record or foreign passport stamped I-551; **or**
- I-551 Permanent Resident Card; **or**
- I-327 Permit to Reenter the U.S.; **or**
- I-181 Memorandum of Creation of Record of Lawful Permanent Residence with approval stamp.

Lawful permanent residents are not required to present documentation of their work history to be eligible for Medicaid. However, if the Medicaid worker determines that the lawful permanent resident has 40 or more qualifying quarters of work history, the worker must code such alien on WMS with ACI code "S." If the worker determines that the lawful permanent resident does not have 40 or more qualifying quarters of work history, the worker must code such alien on WMS with ACI code "K."

**b. Parolees admitted into the U.S. for at least one year**

A parolee is an alien who is allowed to come into the U.S. for humanitarian or public interest reasons.

Parolees who have been admitted to the U.S. for at least one year will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record stamped "Paroled pursuant to Section 212(d)(5)," or "parole" or "PIP" or "public interest" with the date of entry and date of expiration indicating at least one year; **or**
- I-688B Employment Authorization Card coded "274a.12(a)(4)" or "274a.12(c)(11)"; **or**
- I-766 Employment Authorization Document coded "A4" or "C11."

Districts must code these aliens on WMS with the ACI code "G."

**c. Conditional entrants**

This is a status formerly granted to certain nationals of communist countries or of countries in the Middle East. This classification has not been used since 1980.

Conditional entrants will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record stamped "Section 203(a)(7)" or otherwise indicating status as a conditional entrant; **or**
- I-688B Employment Authorization Card coded "274a.12(a)(3)"; **or**
- I-766 Employment Authorization Document coded "A3."

Districts must code these aliens on WMS with the ACI code "F."

**d. Aliens who have been battered or subject to extreme cruelty in the U.S.**

This category of qualified aliens includes certain aliens described at 8 U.S.C. § 1641(c) who have been battered or subjected to extreme cruelty in the U.S. by a family member with whom they reside. Battered qualified aliens include the following:

- an alien who has been battered or subjected to extreme cruelty ("abused") in the U.S. by a spouse or parent or by a member of the spouse's or parent's family residing in the same household as the alien; **or**
- the parent of a battered or abused child; **or**
- the child of a battered or abused parent.

Battered or abused aliens will typically possess one or more of the following documents:

- I-797 Notice of Action indicating that the alien has an approved I-360<sup>5</sup> self-petition under the Violence Against Women Act (VAWA) to obtain lawful permanent resident status as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident [Do not refer to the domestic violence liaison (DVL); see below]; **or**
- I-797 Notice of Action indicating that the alien has a pending I-360 self-petition under VAWA that has established the alien's prima facie eligibility for obtaining lawful permanent resident status as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident (Do not refer to the DVL; see below); **or**

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<sup>5</sup> Form I-360 is entitled "Petition for American, Widow(er) or Special Alien."

- Order from the Executive Office for Immigration Review ("EOIR order") granting, or finding a prima facie case for granting, suspension of deportation or cancellation of removal based on battery or abuse by a U.S. citizen or lawful permanent resident spouse or parent (Do not refer to the DVL; see below); **or**
- I-797 Notice of Action indicating that the alien has a pending I-360 self-petition under VAWA to establish lawful permanent resident status as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below); **or**
- I-797 Notice of Action indicating that the alien is the beneficiary of a pending or approved I-130 Petition for Alien Relative as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below); **or**
- I-94 Arrival/Departure Record stamped "K3," "K4," "V1," "V2" or "V3 **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below); **or**
- Any other USCIS document indicating that the alien has a "K" or "V" visa and a pending or approved I-130 Petition for Alien Relative **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below); **or**
- I-94 Arrival/Departure Record or foreign passport stamped "CR-1," "CR-2," "CR-6," or "CR-7" **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below); **or**
- I-688B Employment Authorization Card coded "274a.12(a)(9)," "274a.12(a)(15)" or "274a.12(c)(10)" **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below); **or**
- I-766 Employment Authorization Document coded "A9," "A15" or "C10" **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL; see below).

In addition to having the appropriate immigration documentation, as described above, there are three additional requirements for obtaining battered qualified alien status: (1) the applicant must have been battered or subjected to extreme cruelty (abuse) in the U.S. by a spouse, parent or by a member of the spouse's or parent's family residing in the same household; (2) there must be a substantial connection between the battery or abuse and the applicant's need for Medicaid; and (3) the applicant must no longer be living with the abuser.

(1) Requirement that the applicant be battered or abused

With certain exceptions, the district's domestic violence liaison ("DVL") determines whether aliens have been battered or abused. These three exceptions are aliens with either an approved I-360 VAWA self-petition, a pending I-360 VAWA self-petition that establishes a prima facie case or an EOIR order. In these three cases, the federal immigration agency has already determined that the alien has been battered or abused and there is thus no need to refer the case to the DVL.

All other aliens who have evidence of battery or abuse and the immigration documentation noted above must be referred, if they consent to the referral, to the district's DVL solely for a determination whether the alien has been battered or abused. The DVL determines only whether the applicant has been battered or abused; the DVL does not determine whether the applicant is a battered qualified alien. Determining whether the applicant is a battered qualified alien is the Medicaid worker's responsibility. The Medicaid worker must explain that the referral to the DVL is solely to determine whether the alien has been battered or abused but that the alien's refusal to consent to the referral will not affect his or her eligibility for Medicaid. If the alien does not consent to the referral; the alien will not be eligible for Medicaid as a battered qualified alien. However, aliens who do not consent to be referred to the DVL can receive State Medicaid as a PRUCOL alien if financially and otherwise eligible.

(2) Substantial connection requirement

For a battered alien to be considered "qualified," there must be a substantial connection between the battery or abuse and the need for Medicaid. The Medicaid worker is responsible for determining whether this connection exists. A substantial connection between the battery or abuse and the need for Medicaid exists when, but is not limited to, the following:

- Medicaid coverage is needed to replace medical coverage or health care services that the applicant, the applicant's child, or (in the case of an alien child) the alien's parent had when living with the abuser; or
- Medicaid coverage is needed because the applicant, the applicant's child or (in the case of an alien child) the applicant's parent requires medical attention or mental health counseling or has become disabled as the result of the battery or abuse.

Refer to 04 OMM/ADM-7, pps. 15-16 for additional circumstances in which the Medicaid worker may find that a substantial connection between the battery or abuse and the need for Medicaid exists.



(3) Requirement that battered applicant no longer reside with batterer

For a battered alien to be considered "qualified," the battered alien must no longer be living in the same household as the abuser. The Medicaid worker is responsible for verifying the applicant's residence.

Districts must code battered qualified aliens on WMS with the ACI code "B."

**B. Temporary Non-Immigrant Documentation Requirements**

Temporary non-immigrants include aliens who have been lawfully admitted to the U.S. for a specific purpose and for a limited time period. Temporary non-immigrants are eligible for federal Medicaid only for services necessary to treat an emergency medical condition.

Set forth below is a list of temporary non-immigrant categories and the non-immigrant codes applicable to that category:

<u>Non-immigrant</u>	<u>Code</u>
Foreign government officials, dependents and employees	A-1, A-2, A-3
Visitors for business	B-1
Visitors for pleasure (tourist)	B-2
Aliens in transit	C-1, C-2, C-3
Crewmember of ship or aircraft	D-1, D-2
Treaty trader and investor and dependents	E-1, E-2
Foreign student and dependents	F-1, F-2
Representative of international organization, dependents, employees	G-1 through G-5
Nurse	H-1A
Alien in specialty occupation	H-1B
Temporary agricultural worker	-2A
Temporary worker	H-2B
Trainee	H-3
Spouse or child of "H" worker or trainee	H-4
Foreign information media representatives and dependents	I
Exchange visitor and dependents	J-1, J-2
Intracompany transferee and dependents	L-1, L-2
Vocational/nonacademic student and dependents	M-1, M-2
Parent of special immigrant and children	N-8, N-9
Representatives of NATO, dependents and employees	NATO 1 through 7
Persons with extraordinary ability in the sciences, arts, education, business, athletics and performers	O-1, O-2, O-3
Artists, entertainers and athletes who are performing, teaching or on an exchange program	P-1, P-2, P-3, P-4
Cultural exchange	Q

Religious workers and dependents	R-1, R-2
Transit without a visa	TWOV
Canadian citizen seeking temporary entry pursuant to Free Trade Agreement	TC
NAFTA professionals and dependents	TN, TD
Visitor for admitted under visa waiver pilot program	WB, WT

Temporary non-immigrants will typically possess one or more of the following documents:

- I-94 Arrival/Departure Record or foreign passport stamped with a non-immigrant code; **or**
- I-688B Employment Authorization Card stamped with a non-immigrant code; **or**
- I-766 Employment Authorization Document stamped with a non-immigrant code; **or**
- B-1 or B-2 visa (issued to Mexican or Canadian citizens); **or**
- I-185 Canadian Border Crossing Card; **or**
- I-586 Mexican Border Crossing Card (issued prior to B-1 or B-2 visas); **or**
- I-444 Mexican Border Visitor's Permit; **or**
- I-95A Crewmen's Landing Permit; **or**
- Any verification from USCIS or other authoritative document.

Districts must code all temporary non-immigrants on WMS with the ACI code "E."

### III. SOCIAL SECURITY NUMBERS

Qualified aliens must provide a social security number. If they do not have a SSN, they must apply for one. An exception applies to pregnant women. Pregnant women are not required to provide or apply for a SSN for the duration of the pregnancy and the sixty-day period that begins on the last day of the pregnancy and including, but not exceeding, the last day of the month in which the sixty-day post-partum period ends.

If a qualified alien applies for a SSN, but is denied a SSN based on immigration status, the alien is not required to reapply for a SSN until his or her immigration status changes.

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If a qualified alien applies for a SSN, but is denied a SSN based on immigration status, the alien is not eligible for federal Medicaid. If financially eligible, the alien may receive State-funded Medicaid coverage of all medically necessary care and services.

Temporary non-immigrants and undocumented aliens are not required to provide or apply for a SSN.

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Brian J. Wing  
Deputy Commissioner  
Office of Medicaid Management