



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

INFORMATIONAL LETTER

TRANSMITTAL: 07 OHIP/INF-2

DIVISION: Office of Health
Insurance Programs

TO: Local District Commissioners

DATE: March 15, 2007

SUBJECT: Clarification of PRUCOL Status for Purposes of Medicaid Eligibility

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		18 NYCRR §360-3.2(j)			

The purpose of this Informational Letter (INF) is to restate and clarify the Department's policy regarding Medicaid eligibility for aliens who are permanently residing in the United States under color of law ("PRUCOL").

PRUCOL aliens include those aliens who are living in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure such agency does not contemplate enforcing. An alien is considered as one whose departure the federal immigration agency does not contemplate enforcing if:

1. it is the agency's policy or practice not to enforce the departure of aliens in a particular category, and the alien falls within that category; or
2. based on all the facts and circumstances of the alien's case, it appears that the federal immigration agency is permitting the alien to reside in the United States indefinitely.

Some aliens are PRUCOL because the federal immigration agency has granted them a particular immigration status. The Department's administrative directive 04 OMM/ADM-7, pages 19 and 20, contains a list of many categories of aliens who are considered PRUCOL because they have been granted a certain immigration status. This list is not exhaustive. Examples include, but are not limited to, the following:

- Aliens paroled into the U.S. for less than one year; or
- Aliens residing in the U.S. pursuant to an order of supervision; or
- Aliens granted voluntary departure; or
- Aliens granted deferred action status.

Other aliens are PRUCOL because they have applied for a particular immigration status which has not yet been granted or denied. In the absence of contrary evidence, an alien who has filed the appropriate application form and paid the applicable fees (unless the federal immigration agency has granted a fee waiver) to the federal immigration agency for a particular status is considered PRUCOL for Medicaid purposes. This is true if the application for a particular status is in the process of being reviewed to determine whether to grant the requested status or if the alien's application remains pending with the United States Citizenship and Immigration Services (USCIS). Examples include, but are not limited to, the following:

- Applicants for adjustment of status to that of a lawful permanent resident; or
- Applicants for asylum; or
- Applicants for suspension of deportation or cancellation of removal; or
- Applicants for temporary protected status; or
- Applicants for any other status that permits the applicant to work in the United States.

This also applies to applications pending with the Executive Office for Immigration Review (EOIR) of the U.S. Department of Justice, including applications for the following:

- Suspension of deportation; or
- Cancellation of removal; or
- Deferred action.

Previous instructions issued in the Department's Administrative Directive, 04 OMM/ADM-7, page 30, told district workers they could verify an immigrant's status by filing a Document Verification Request Form G-845 with USCIS, requesting verification of the immigrant's status, when the district must use expired immigration documents in order to determine an immigrant's eligibility. This informational letter expands these instructions to district workers. Effective immediately, the eligibility worker must verify any and all immigration documents with USCIS if the worker has reason to suspect the status indicated by the documentation provided is questionable or the documentation does not clearly indicate a particular status.

For instance, an alien may have an I-797 Notice of Action received from the USCIS that indicates the alien's status. However, in the absence of an I-797 Notice of Action, when the alien, or the alien's representative, has submitted an application to USCIS for adjustment of status, asylum, temporary protected status or any other status that permits the applicant to work, the Medicaid worker must verify the current status of the application by sending a Document Verification Request form (G-845) to the USCIS. This request should include copies of all documentation that the alien has submitted to or received from USCIS, and request that the USCIS verify the alien's current status. If the alien has submitted an application for suspension of deportation or cancellation of removal or a request for deferred action to the EOIR, it is the Department's understanding that the G-845 may be sent to the USCIS to verify that the EOIR application has, in fact, been filed and its current status. (Refer to 04 OMM/ADM-7, page 30)

As described in the Department's 2004 administrative directive, 04 OMM/ADM-7, the alien, or the alien's representative, must present documentation to the social services district sufficient to show that the appropriate USCIS/EOIR application form has been filed with the applicable fees paid (unless the agency has granted a fee waiver). Additionally, the alien, or the alien's representative, must show that the application has been received by the USCIS, or with respect to applications for suspension of deportation, cancellation of removal or requests for deferred action that were filed with EOIR, were received by that entity. The district must then verify whether the application remains pending or whether the USCIS or EOIR has adjudicated the application by granting or denying the requested relief.

The Department considers that, in the absence of contrary evidence, the federal immigration agency is acquiescing in the alien's presence in the U.S. during the period of time that the alien's application for one or more of these statuses remains pending either with the USCIS or with EOIR.

If the alien's application remains pending with the USCIS or EOIR, the Medicaid worker must find the alien to be PRUCOL. However, if USCIS or EOIR has denied the alien's application or otherwise indicates that it is not permitting the alien to reside in the U.S. indefinitely, the Medicaid worker must find that the alien is **not** PRUCOL. In such cases, the alien, if otherwise eligible, may receive Medicaid only for care and services necessary to treat an emergency medical condition.

It is the Department's policy that PRUCOL status is **not** established when an undocumented alien, or such alien's representative, merely sends a letter to the federal immigration agency that purports to apply for an immigration status that would render the alien PRUCOL for Medicaid purposes when no such appropriate application has been submitted to the federal immigration agency pursuant to its procedures or when no such immigration status exists. An example of the latter is a request to the federal immigration agency for a "medical waiver of deportation," which is not a legitimate immigration status.

Nor is PRUCOL status established when an undocumented alien, or such alien's representative, merely sends a letter to the federal immigration agency informing it of the presence, medical condition and whereabouts of the undocumented alien and receives back from the agency a date-stamped copy of such letter. By date-stamping a copy of the letter, the federal immigration agency is doing no more than acknowledging its receipt. This is sufficient to establish that such agency has knowledge of the undocumented alien's presence in the U.S. However, it does not show that the federal immigration agency is permitting or acquiescing to the alien's residence in the country, or that it does not contemplate enforcing the alien's departure at some future time. Moreover, such letters do not represent a good-faith effort to apply for a legitimate immigration status.

Deborah Bachrach,
Deputy Commissioner
Office of Health Insurance Programs