

TO: Local District Commissioners, Medicaid Directors

FROM: Kathryn Kuhmerker, Deputy Commissioner
Office of Medicaid Management

SUBJECT: Clarification of Nonimmigrant Visa Status

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Support Unit
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The purpose of this GIS message is to clarify nonimmigrant visa status. This GIS message supersedes GIS 03 MA/005 issued 02/24/03. As explained below, nonimmigrants who hold a K, S, U or V visa are to be considered as "permanently residing in the United States under color of law" (PRUCOL) and, if otherwise eligible, may receive Medicaid, Family Health Plus (FHPlus) and Child Health Plus A (CHPlus A). However, holders of other nonimmigrant visas that are issued to persons in the United States on a temporary basis only are eligible for Medicaid only for the treatment of an emergency medical condition.

There have been several new visa categories issued by the United States Citizenship and Immigration Services (USCIS) [formerly the Immigration and Naturalization Services (INS) and the Bureau of Citizenship and Immigration Services (BCIS)] over the past several years.

Some categories of nonimmigrant status allow the status (visa) holder to work and eventually adjust to Lawful Permanent Residence (LPR). These categories allow the individual to apply for adjustment to LPR status after he or she has had the nonimmigrant status for a period of time.

Such statuses include, for example:

- K status:** For the spouse, child, or fiancé (e) of a U.S. citizen.
- S status:** For informants providing evidence for a criminal investigation.
Also known as the "Snitch Visa."
- T status:** For victims of trafficking*.
- U status:** For victims or witnesses of specified crimes who have suffered substantial physical or mental abuse and agree to cooperate with the government.
- V status:** For spouses and children of LPR's whose visa petitions have been pending for at least three years.

[Law found at 8 U.S.C. Section 1101 (a)(15)(K), (S), (T), (U), and (V).]

*Victims of trafficking receive benefits to the same extent as refugees (GIS 02 MA/022).

The K and V Visa Status

Nonimmigrant visas V and K are two new categories of nonimmigrant visas that were created by the Legal Immigration and Family Equity Act (LIFE Act) and are issued to persons intending to live permanently in the United States. The V visa may be issued to alien spouses and minor children of lawful permanent residents whose family petitions (the I-130) have been pending for some time. The V visa is intended to permit family reunification while the immigration cases of the lawful permanent resident's spouse and children are pending. The K visa allows alien spouses and minor children of United States citizens to enter the United States legally and obtain work authorization. Individuals issued any of these visas may enter the United States as nonimmigrants to complete the immigration process.

There are two basic methods for obtaining one of these visas: 1) through family relationship with a U.S. citizen or Lawful Permanent Resident (LPR) (by filing the CIS I-130, Petition for Alien Relative), or 2) through employment (by filing the CIS I-140, Immigrant Petition For Alien Worker).

NOTE: For the purposes of Medicaid/FHPlus/CHPlus eligibility, nonimmigrants in the V (V-1, V-2, V-3) and K (K-3, K-4) visa categories are to be considered PRUCOL. (See GIS 01 MA/026). They are included in the category defined as: "Other persons living in the U.S. with the knowledge and permission or acquiescence of USCIS and whose departure USCIS does not contemplate enforcing." If otherwise eligible, an individual with a visa category of K or V should be authorized for Medicaid, FHPlus and CHPlus A as PRUCOL. The individual applicant may or may not provide documentary evidence of the filing of the USCIS I-130 or I-140; but we have been advised by USCIS that the V or K status cannot be obtained without the filing of the I-130 or I-140 petitions with USCIS.

Districts are advised not to withhold, delay or deny Medicaid, FHPlus and CHPlus A applications for individuals with Visa Status V or K coded V1, V2, V3, K3 or K4.

The S and U Visa Status

As explained below, holders of the S or U visas are to be considered PRUCOL and, if otherwise eligible, may receive Medicaid, FHPlus or CHPlus A.

In October 2000, Congress passed the Victims of Trafficking and Violence Protection Act (VTVPA). The VTVPA created the T and the U nonimmigrant status, two new classifications for victims of severe forms of trafficking (T visa) and other crimes (U visa). The S visa which has been in existence for some time, resembles the U and T visa in that it was created to enhance law enforcement activities while protecting the noncitizen witness or victim of crime.

With respect to the U visa status, the USCIS has directed that individuals who satisfactorily demonstrate to USCIS that they are eligible for a U visa are to be granted Deferred Action status. As such, holders of U visas are to be considered PRUCOL and, if otherwise eligible, may receive Medicaid, FHPlus or CHPlus A.

The S visa status is given to aliens who assist US law enforcement to investigate and prosecute crimes and terrorist activities. S visa holders are allowed to adjust status to permanent resident under Section 245(j) of the Immigration and Nationality Act.

NOTE: For the purposes of Medicaid/FHPlus/CHPlus eligibility, nonimmigrants in the S (S-5, S-6, S-7) and U (U-1, U-2, U-3, U-4) visa categories are to be considered PRUCOL (See GIS 01 MA/026). They are included in the category defined as: "Other persons living in the U.S. with the knowledge and permission or acquiescence of USCIS and whose departure USCIS does not contemplate enforcing." If otherwise eligible, an individual with a visa category of S or U should be authorized for Medicaid, FHPlus or CHPlus A as PRUCOL.

The T visa Status

NOTE: For the purposes of Medicaid/FHPlus/CHPlus A eligibility victims of Trafficking (T-1, T-2, T-3, T-4) receive Medicaid benefits to the same extent as refugees (See GIS 02 MA/022).

Districts are advised not to withhold, delay or deny Medicaid, FHPlus and CHPlus A applications for individuals with Visa Status T, S and/or U visas coded:

T-1, T-2, T-3, T-4, S-5, S-6, S-7, U-1, U-2, U-3, U-4.

Temporary Visa Status

Another type of nonimmigrant visa is the visa issued to persons with permanent residence outside the U.S. but who are in the U.S on a temporary basis, for example: tourism, medical treatment, business, temporary work or study. Districts are reminded because of the temporary nature of their admission status, these nonimmigrants, although lawfully admitted to the United States, are eligible for Medical Assistance care and services only for the treatment of an emergency medical condition.

The following list includes some examples of temporary visa categories. However, the list is not all-inclusive. If an applicant presents documentation with a visa category that is not listed, the worker may contact the local office of the United States Citizenship and Immigration Services (USCIS) or contact their Local District Support Staff for clarification of the visa status code.

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| A Visa: | Foreign government officials |
| B-1, B-2 Visa: | Temporary Business/pleasure Visitors |
| C Visa: | Aliens in transit through the United States |
| D-1 Visa: | Crewmen |
| E-1, E-2 Visa: | Treaty Traders and Investors |
| F Visa: | Students (including spouses and children)* |
| G Visa: | International Representatives |
| H-1B Visa: | Skilled Professionals, Temporary Workers |
| I Visa: | Representatives of foreign information media |
| J-1 Visa: | Practical Trainees, Exchange Visitors |
| L Visa: | Intra-company Transferees |

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| NATO Visa: | NATO officials |
| TN Visa-Canada: | Canadian Professionals and Consultants |
| TN Visa-Mexico: | Mexican Professionals and Consultants |
| O Visa: | Temporary Workers with Extraordinary Abilities |
| P Visa: | Athletes, artists and entertainers (including spouses and children) |
| Q Visa: | Participants in international cultural exchange programs |
| R-1, R-2 Visa: | Temporary workers performing work in religious occupations (including spouses and children) |

*Most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.

NOTE: THE ABOVE USCIS VISA CATEGORIES ARE NOT TO BE CONFUSED WITH WMS ALIEN CITIZENSHIP INDICATOR CODES (ACI CODES).

This GIS message replaces GIS 03 MA/005 issued 02/24/03.