

GIS 24 MA/06

TO: Local District Commissioners, Medicaid Directors

FROM: Gabrielle Armenia, Director
Division of Eligibility and Marketplace Integration

SUBJECT: PRUCOL Categorization and Revised Documentation Guide for Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State Updates

ATTACHMENT: OHIP-0046 "Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State"

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Support Unit
Rest of State (ROS) (518) 474-8887
NYC (212) 417-4500

The purpose of this General Information System (GIS) message is to update guidance on how to apply the Department of Health's (Department) policy regarding determining a non-citizen's categorization as Permanently Residing Under Color of Law (PRUCOL) when the individual's request has been denied by the federal immigration agency, but the individual is not in removal proceedings, or the individual has had an encounter with federal immigration agencies but has not been placed in removal proceedings. Also included is an updated OHIP-0046 "Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State."

Applying PRUCOL Policy

Background

The term PRUCOL is used to describe a non-citizen's eligibility for public benefits and is not a federally designated immigration status. The current regulatory definition of PRUCOL, found at 18 NYCRR §360-3.2(j)(1)(ii), is: *an alien who is residing in the United States with the knowledge and permission or acquiescence of the Federal Immigration Agency and whose departure from the U.S. such agency does not contemplate enforcing. An alien will be considered as one whose departure the Federal Immigration Agency does not contemplate enforcing if, based on all the facts and circumstances in a particular case, it appears that the Federal Immigration Agency is otherwise permitting the alien to reside in the United States indefinitely or it is the policy or practice of such agency not to enforce the departure of aliens in a particular category.*

The interpretation of the PRUCOL designation is meant to be fluid, to allow for adaptation as needed. For example, changes and patterns seen in immigration agencies at the federal level may require re-interpretation of PRUCOL by the state. Changes made to the policy on PRUCOL designation over the last two decades reflects this adaptation.

The definition allows the PRUCOL category to encompass many scenarios related to an individual's involvement or lack of involvement with the federal immigration agencies, and requires local districts to consider whether the federal agency is contemplating enforcement of the non-citizen's departure or allowing the non-citizen to reside indefinitely:

“...and whose departure from the U.S. such agency does not contemplate enforcing. An alien will be considered as one whose departure the Federal Immigration Agency does not contemplate enforcing if, based on all the facts and circumstances in a particular case, it appears that the Federal Immigration Agency is otherwise permitting the alien to reside in the United States indefinitely...”

Generally, the Department relies on the individual's documentation from federal immigration agencies to provide insight as to the nature of an individual's current involvement with any of the federal immigration agencies, however, documentation is not the only acceptable evidence of “facts and circumstances in a particular case”. For instance, recently, there has been an increase in the number of cases brought to the Department's attention where a non-citizen's request for adjustment or relief has been denied but evidence shows that the federal agency has taken no action to enforce the individual's departure. Many of these individuals have been present for several years after a denial and in some instances, several decades. In these cases, despite a denial for adjustment or relief of status, an assessment of all the facts and circumstances of the particular case would conclude that the federal immigration agency is otherwise permitting the alien to reside in the United States indefinitely.

Procedure Change

In cases where an individual has received a denial from a federal immigration agency in response to an application or request for immigration relief:

To provide a more objective way to determine, based on all of the facts and circumstances of the individual case, if it appears the federal immigration agency is contemplating enforcing the non-citizen's departure, the Local Department of Social Services (LDSS) staff must search the Executive Office for Immigration Review's (EOIR) automated case information system to determine if the non-citizen has been placed in removal proceedings, after receiving a denial from the federal immigration agency. The EOIR automated case information system website is: <https://acis.eoir.justice.gov/en/>. This automated case information system requires entry of the non-citizen's “A-number” or “alien number” to search for case information.

If, after at least 15 business days from the denial, the EOIR case status indicates there is no pending case for removal proceedings of the non-citizen, the non-citizen should be considered PRUCOL, despite having a denial of their most recent request for status or other relief. A screen shot of the EOIR case status page showing whether there is a case pending or not should be saved in the case record. If the non-citizen is in removal proceedings, the LDSS staff must still take all the facts and circumstances (e.g., a pending request for immigration relief) into consideration before designating the individual as PRUCOL or not. The facts and circumstances of each case must always be considered. If, after consultation with previous directives on the matter, LDSS staff have questions about documents or information provided through EOIR's automated case information system, they should reach out to their local district liaison for assistance.

In cases where an individual has had an encounter with federal immigration agencies but has not been placed in removal proceedings:

Similarly, in order to determine whether a federal immigration agency is contemplating enforcing the non-citizen's departure, LDSS staff must determine whether an individual who has had an encounter with federal immigration agencies has been placed in removal proceedings. As described in Category 3 of the updated OHIP-0046 “Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State,” LDSS staff must consider a

PRUCOL designation for an individual who has received a Form I-220A (Order of Release on Recognizance), Form I-385 (Alien Booking Record) issued without a parole stamp, or Form I-862 (Notice to Appear), provided the individual has not been placed in removal proceedings since receiving such a document.

In order to determine whether the individual has been placed in removal proceedings, LDSS staff must not rely on the Notice to Appear alone to indicate that a removal proceeding is underway but must instead confirm through a search in the Executive Office for Immigration Review's (EOIR) automated case information system, at <https://acis.eoir.justice.gov/en/>, using the individual's "A-number," as described above. Note: If the non-citizen is in removal proceedings, the LDSS staff must still take all the facts and circumstances (i.e., a pending application for asylum) into consideration before designating the individual as PRUCOL or not. The facts and circumstances of each case must always be considered. If, after consultation with previous directives on the matter, LDSS staff have questions about documents or information provided through EOIR's automated case information system, they should reach out to their local district liaison for assistance.

If a consumer applies for coverage after the effective date of this directive and is determined to be PRUCOL based on this guidance, this guidance can also be applied in three-month retroactive period, if retroactive coverage is being sought.

For example, an individual was denied relief from the federal immigration agency on March 27, 2024 and, after 15 business days, has no case pending with EOIR. This consumer is applying for Medicaid in August 2024. They could be considered PRUCOL from April 1st. Therefore, if retroactive coverage is sought for May, June, and July 2024, this individual could be considered PRUCOL for all three months in the retroactive period. However, if this person was denied relief on June 14, 2024 and, after 15 business days, has no case pending with EOIR, they could not be considered PRUCOL for May.

Reminder: Individuals who are PRUCOL are entitled to full Medicaid, including admission to sub-acute rehabilitation, long term support services in the community and/or nursing home care, if they meet all other eligibility criteria.

Documentation Guide to Citizen and Non-Citizen Eligibility Updates

The documentation guide outlines the acceptable documents that various categories of citizens and non-citizens may provide to verify their citizenship or immigration status and identity. Requirements for providing a Social Security Number (SSN) are included along with the Welfare Management System (WMS) Alien Citizenship Indicator (ACI) code that must be used for appropriate claiming purposes.

The updates include:

- the addition of several types of documents seen with increasing frequency over the last several years (I-385 with and without a parole stamp, I-862, and I-220-A);
- an update on Deferred Action Childhood Arrival (DACA) eligibility for coverage through Essential Plan (EP) achieved through a federal 1332 waiver;
- reflecting eligibility for undocumented consumers, aged 65 and older for coverage through Mainstream Medicaid Managed Care (MMC) plans as described in 23 OHIP/INF-2

“Medicaid Mainstream Managed Care for Undocumented Non-Citizens Aged 65 and Over.”

The previous version of the Documentation Guide must be discontinued and substituted as follows:

- replace attachment to GIS 21 MA/014 with OHIP-0046 (3/24), “Documentation Guide to Citizen and Non-Citizen Eligibility for Health Insurance Coverage in New York State;”

Please direct any questions to your Local District Support Liaison.