

Immigrants Eligibility for Benefits and Public Charge

- Kate Woomer-Deters
- North Carolina Justice Center
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What Barriers Impact Immigrants' Receipt of Public Benefits?

- **Eligibility Barriers:** Reasons why immigrants may not be *eligible* to enroll in benefits programs
 - Migration Policy Institute: "Based on 2019 [census] data,...9.5 million non-elderly foreign-born adults had incomes that met state eligibility thresholds, but 45 percent of them (4.3 million adults) did not qualify for Medicaid due to immigration-status restrictions."
 - North Carolina – only 43% of income eligible foreign-born adults were eligible for Medicaid based on 2019 data
- **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

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.¹
- 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.²
- Data from Urban Institute (2023) shows that 46.7% of noncitizens in NC lack health insurance compared to 12.4% of foreign-born naturalized citizens, and 8.7% of native-born citizens.³

¹ U.S. GAO. "Medicaid: Demographics of Non-Enrolled Children Suggest Outreach Strategies," March 20, 1998, available at: [Government Accountability Office | Government Accountability Office | Medicaid: Demographics of Nonenrolled Children Suggest State Outreach Strategies \(oversight.garden\)](#)

² Blewett and Johnson, Immigrant Children's access to Health Care: Differences by global region of Birth, *J Health Care Poor Underserved*. 2010 May; 21(2 Suppl): 13–31, available at: [Immigrant Children's access to Health Care: Differences by global region of Birth \(nih.gov\)](#)

³ Urban Institute, Supporting North Carolina's Immigrant Families, available at: <https://www.urban.org/projects/immigrants-safety-net-access>

**IMMIGRANT
ELIGIBILITY FOR
PUBLIC BENEFITS
AND HEALTH
PROGRAMS**

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...

What are Some Common Categories of Legally-Present Immigrants?

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

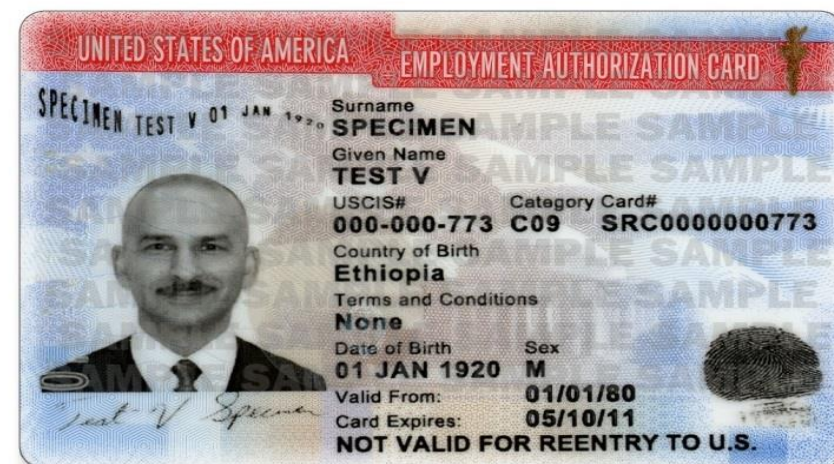
I-797 Approval Notice

- 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 [USCIS website](#) to see which status each code indicates.



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

	<ul style="list-style-type: none"> • I-551, Foreign passport or I-94 stamped with one of the following codes: AM-1, AM-2, AM-3, AM-6, AM-7, or AM-8 • Any verification from the INS, DHS or other authoritative document. 	<p>Evaluate for full Medicaid</p> <p>If not eligible for Medicaid or CHIP-the individual may be eligible for Marketplace subsidies.</p>
<p>Applicants for Adjustment to LPR Status with Approved Visa Petitions</p>	<ul style="list-style-type: none"> • Receipt or notice showing filing or pending status of Form I-485 Application to Register Permanent Residence or Adjust Status • Form I-797 ASC Appointment Notice with Case Type “I-485 Application to Register Permanent Residence or Adjust Status” • Form I-688B or I-766 employment authorization document (EAD) coded 274a.12(c)(9) or C9 or C9P • I-797 receipt for Application for Employment Authorization based on C09 • I-512 authorization for parole, indicating applicant for adjustment of status • Any verification from the INS, DHS, or other authoritative document 	<p>Evaluate for:</p> <ul style="list-style-type: none"> • Full Medicaid for Pregnant Women and Children under 19 • All others- Emergency Services <p>If not eligible for Medicaid or CHIP-the individual may be eligible for Marketplace subsidies</p>

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 (see more on parole later)
- 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.”

What are Federal Means-Tested Public Benefits?

- Medicaid
- 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\(justice.gov\)](#).

Note: there is no statutory definition of "federal means-tested public benefits."

Immigrant Eligibility: The “Five Year Bar”

Most “qualified” legal immigrants cannot receive Medicaid for the first 5 years after receiving their legal status**

**And some other federal programs as well, such as SNAP, TANF, and SSI.*



Exemptions from the 5 Year Bar

- The following immigrants are exempt from the five-year bar for Medicaid. They may start receiving benefits as soon as they receive legal status:
 - **Refugees**
 - *Includes recently arrived Afghans and Ukrainians with parole (2021-2023). Most of the recently paroled Venezuelans do NOT fall under this and must wait 5 years for Medicaid.*
 - Persons granted **asylum** or withholding of deportation
 - **Amerasian** immigrants
 - **Cuban/Haitian entrants**
 - **Victims of trafficking/T visa/prima facie approved T**

 - *AND all....*

 - *** Veterans, active duty military, spouse, unremarried surviving spouse, or child of veteran/active duty military**

 - Note: All of the above are still exempt if they later get a green card (LPR)

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: Anyone with any permission from the U.S. government to live in the U.S. The ONLY lawfully residing group that is not eligible are people with DACA status* (*as of 11-14-23)

There is NO five-year bar - lawfully present pregnant women or children can use Medicaid benefits immediately with no waiting period

New Parole Programs for Specific Nationalities

- Many parole programs have been created recently for immigrants fleeing certain countries
- Remember: Anyone granted parole for at least 1 year is a “qualified” immigrant, eligible for "federal means tested public benefits," but they must generally wait 5 years
 - The [2022 "Cuban, Haitian, Nicaraguan, Venezuelan" program](#) is paroling certain people of those nationalities in for 2 years
 - Cubans and Haitians in this group count as "Cuban-Haitian entrants" and do not have to wait 5 years for means tested benefits. Nicaraguans and Venezuelans in this program would be eligible, but [have to wait 5 years](#)
- **Afghans and Ukrainians** in recent parole programs will be eligible for all the same benefits as refugees, including having *no 5-year waiting period*. They have to have arrived within certain time periods:
 - Afghans granted humanitarian parole between July 31, 2021, and September 30, 2023
 - Ukrainians paroled into the U.S. between February 24, 2022, and September 30, 2023
 - Also spouses, children, parents, guardians of unaccompanied children of Afghans and Ukrainians paroled in during the correct periods are also eligible for the same benefits, even if they are paroled in after the end of the time period

New Issue 2023: Medicaid Unwinding

- During COVID, people who had been qualified once for Medicaid just remained qualified during the whole COVID period
- In 2023, Medicaid started checking eligibility again, meaning that many people who are no longer eligible for Medicaid will now lose coverage.
- **Who's most impacted?**
 - People who used to be pregnant and no longer are
 - People who used to be children and no longer are
 - People whose incomes have risen
- Many will be eligible for ACA and should explore coverage there
 - Information and social media resources here: [CCU Unwinding Toolkit | NC Medicaid \(ncdhhs.gov\)](#)

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:

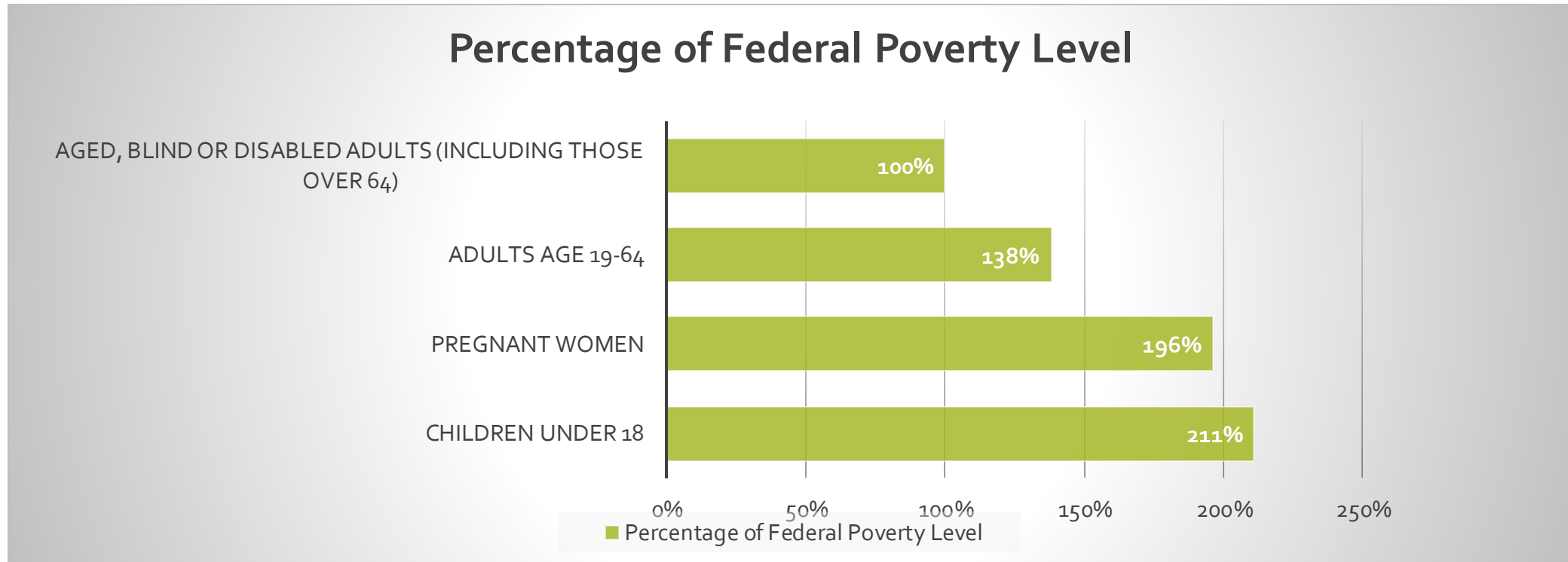
- Residency = "intent to reside"
- Child residency may be established separately from parent
- *For non-immigrants, declaration of residency may be a factor if immigrant tries to adjust status in the future.*

SSN is not required for all Medicaid applicants

- 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

NC Medicaid Income Eligibility

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



Note: 100% of the federal poverty levels (FPL) (2023) = \$14,580/yr. (1 person), \$19,720 (2 people), \$24,860 (3 people), \$30,000 (4 people).

Immigrant Eligibility: The Affordable Care Act

Purchasing Insurance on the Health Care Marketplace

<p>“Qualified” immigrants (with <i>more</i> than 5 years presence in the U.S., or in categories exempt from the 5-year bar such as refugees and asylees)</p>	<ul style="list-style-type: none"> · <i>May participate in</i> health insurance exchanges · <i>May receive subsidies for</i> health insurance coverage
<p>“Lawfully residing” immigrants (with any length of legal presence in the U.S.)</p>	<ul style="list-style-type: none"> · <i>May</i> participate in the exchanges · <i>May</i> receive subsidies for health insurance coverage
<p>Undocumented immigrants & immigrants with DACA (Deferred Action for Childhood Arrivals)*</p> <p>*current law as of 11-14-23</p>	<ul style="list-style-type: none"> · <i>Not</i> eligible for any of the benefits of the ACA. · May not purchase insurance from the exchange or receive tax credits/subsidies for insurance

More on ACA and Immigrants



"Lawfully residing immigrants" for purposes of ACA is a VERY BROAD CATEGORY and includes ALL lawfully present immigrants of ANY type except for DACA*

*law current as of 11-14-23



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.

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

Emergency Medicaid
and other emergency
medical services

Immunizations

Testing and treatment of
communicable diseases
(whether or not
symptoms caused by
such disease)

Women, Infants and
Children nutrition
program (WIC) (state
option)

Rental Relief
Programs during COVID
(HOPE, etc.)

Child Tax Credits (As Long
as Children Have SSN)

Programs delivered at the
community level that:

- Do not condition assistance on income or resources and
- Are necessary to protect life or safety

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*, 1/16/01, 66 Fed. Reg. 3613

**ACCESS
BARRIER:
PUBLIC CHARGE**

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?

UNC-Asheville Study: Chilling Effect of Public Charge Rules (winter 2021)

- **66.2%** of respondents reported having heard about the Public Charge Rule
- **27.9%: avoided** applying 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%: 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%: decided NOT to visit a doctor** when needed because of worry that it would disqualify them or a relative from getting a green card.

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."

BACKGROUND: PUBLIC CHARGE

“Public Charge” law has existed since 1882.

In this law, the government considers whether or not a person is "likely to become dependent on the government for support."

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)

IT IS NOT evaluated when one is applying to become a U.S. citizen.

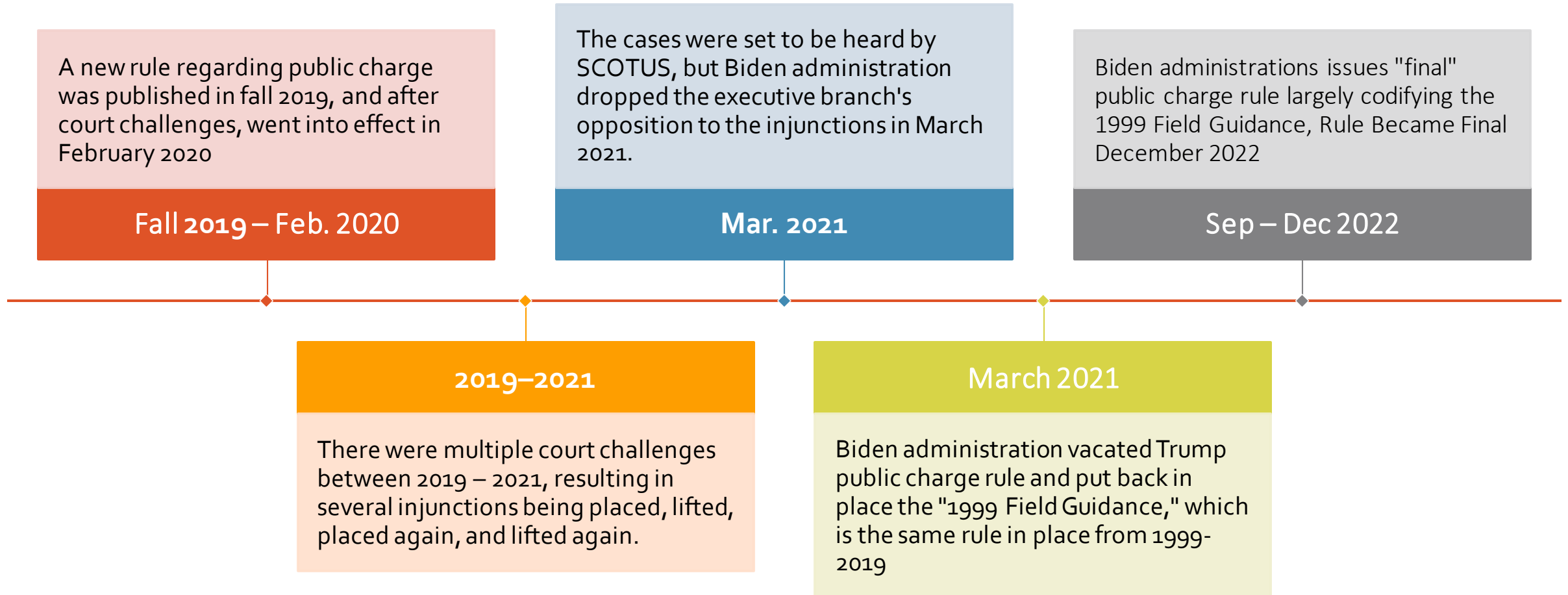
Many factors
are considered...

- Immigration is supposed to look at all these factors in assessing “public charge”:
 - Age
 - Health
 - Family status
 - Financial status
 - Education and skills
 - Affidavit of support
- Public Benefits are only *one factor* looked at (as part of "financial status")

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

What's happening now: New Rule Finalized in December 2022



New Public Charge Final Rule

Finalized, Dec. 2022

- “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.”
- Receipt of cash assistance can also be overcome by positive factors, such as current employment, or short period of time on cash assistance

Definition of "cash assistance"

- "Cash assistance" includes only the following:
 - Supplemental Security Income **(SSI)**
 - Temporary Assistance for Needy Families **(TANF)**
 - "**General Assistance**" programs
 - *We don't have "General Assistance" in NC*
- **NOT INCLUDED in the definition:** "special purpose" cash assistance – cash assistance for a "special purpose" is not considered negatively under 1999 Field Guidance
 - Example: Emergency rental assistance under recent COVID relief bills, heating/energy assistance, etc.

Remember Our Previous Slides!

- Undocumented immigrants are NOT ELIGIBLE for TANF, SSI, or non-emergency Medicaid
- Neither are short-term immigrants such as short-term visa holders, DACA , or TPS
- So....there really very few immigrants who currently use these programs AND will go through the "public charge test" in the future*
- * Only exception, LPRs who want to leave the U.S. for more than 6 months and return

Benefits used by Family Members Are Not Considered

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

Benefits used by family members are not counted EVEN IF:

- They live in same household
- The immigrant assists the family member (such as a child) with the application
- Or the immigrant's name is on the application as a parent or household member, but not as an applicant

**Immigrants AND
their Family
Members Can Use
ALL of these
Programs Without
Concern, If Eligible!**

Health Programs:

- Emergency AND Non-Emergency Medicaid
- ACA/Health Care Marketplace)
- CHIP (NC Health Choice)
- Sliding scale/federally-funded health services (FQHCs)
- Vaccines (COVID and others)
- Medicare

Nutrition Programs:

- SNAP (food stamps)
- WIC (Women, Infant and Children's nutrition assistance program)
- School lunch/breakfast programs

"Earned" Cash Assistance:*

- "Earned" benefit programs such as unemployment, SSDI
- EITC (Earned Income Tax Credit) and all tax credit programs
- *Only these programs, not the cash assistance programs outlined on previous slides*

Other:

- Head Start
- FEMA or any disaster relief
- State local or tribal programs (except cash for income maintenance)
- LIHEAP/energy assistance
- Emergency services: DV shelters, food banks, child protective services
- Any other benefits not for income maintenance

Messaging for Families

Most important benefit programs can be used with **NO IMPACT** on your immigration application.

ALL benefits used by U.S. citizen children and other family members will not be counted against the immigrant in her green card application.

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.

Use of benefit programs can keep you and your family members healthy and strong.

PUBLIC CHARGE RESOURCES AND ELIGIBILITY RESOURCES :

www.ncjustice.org/public-charge

- **Public Charge: The Law Has Changed (updated September 2022)**
 - **English:** [here](#)
 - Spanish: [here](#)
 - Also available [here](#) in Vietnamese, Chinese, French, Pashto, and Dari
 - * French, Vietnamese, Chinese not yet updated for 2022, but are nearly 100% accurate. Pashto and Dari are new as of 2023.
- **Short Animated Videos on Public Charge (updated 2023)**
 - Spanish: [here](#)
 - English: [here](#)

NC Health Insurance Eligibility for Immigrants (updated Dec. 2023)

- Spanish: [here](#)
- English: [here](#)
- **Immigrant Access to Health and Nutrition Programs (updated 2021)**
 - Includes phone numbers for questions about benefits eligibility
 - Spanish [here](#)
 - English: [here](#)
- **Immigrants and the COVID Vaccine (Including Public Charge):**
 - **English, Spanish, French, Vietnamese, Chinese, Burmese and Arabic:** [here](#)



More resources

- Another great source of flyers in many languages:
 - www.protectingimmigrantfamilies.org/know-your-rights

ACCESS BARRIER: FEAR OF ICE REPORTING

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 the ACA have **NO** duty to report ANYTHING about ANYONE's immigration status to law enforcement.
- Some programs (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
- The SAVE program checks immigrant eligibility for benefits, but **CANNOT** be used for immigration enforcement

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

- **Generally NO.**
- **These programs contain confidentiality provisions limiting how they can share applicants' (or family members') information:**
 - **Medicaid**
 - **SNAP**
 - **WIC**
 - **TANF**
 - **And many other benefit programs**
- The confidentiality rules generally say that agencies can only share information with:
 - Any person who the applicant **CONSENTS** to share info with
 - Other entities directly administering the benefits
 - Law enforcement – a subpoena or court order exists
- Except in very limited circumstances (court order, etc.) a benefits agency **CANNOT** share information with immigration authorities.

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

- **NO.**
- Federal guidance says that when people are applying for Medicaid, CHIP, TANF, Food Stamps, the agencies should ***not*** ask about the citizenship, immigration status or social security numbers of *non-applicants* in the household
- States ***may not deny*** benefits because a **non-applicant** in the family or household has not provided information on citizenship, immigration status, or SSN.

References

- **Legal Services of Southern Piedmont and North Carolina Justice Center: Flyer on Immigrant Eligibility for Medicaid and ACA:** <http://www.ncjustice.org/sites/default/files/Immigrant%20Eligibility%20Insurance%20Brochure%20-%20LSSP%20%20NCJC.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://library.niwap.org/wp-content/uploads/2015/pdf/12_CH4.2-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

References

- *Guidance On State Applications, Citizenship, Immigration Status & SSN*, 9/21/00 (HHS, USDA)
- <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/sho092100.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/lep>

References: Public Charge

- Biden Administration, Final Rule on Public Charge Grounds of Inadmissibility, Sep, 2022, found here: [2022-18867.pdf \(federalregister.gov\)](#)
- Protecting Immigrant Families Campaign: Public Charge – What Advocates Need to Know
 - Updated September 2022
- Resources available at: protectingimmigrantfamilies.org

Contact Information

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