



## Immigrants Eligibility for Benefits and Public Charge Updates

- Kate Woomer-Deters
- North Carolina Justice Center
- Updated January 2023



## What Barriers Impact Immigrants' Receipt of Public Benefits?

- **Eligibility Barriers**: Most new immigrants are ineligible for “Federal means-tested public benefits,” including Medicaid, NC Health Choice, TANF, Food Stamps
- **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.<sup>1</sup>*
- - 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.<sup>2</sup>
- - New study data (2023) from UNC and the Carolina Demography Center shows that only 67% of foreign-born adults are insured in NC, and 65% of foreign born children (much lower percentages than U.S. born residents)

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 Perreira, K., "Implementing Health Reform in North Carolina: Reaching and Enrolling Immigrants and Refugees," 2014, available at: [BARRIERS to Immigrant Access to Health and Human Services \(unc.edu\)](#)

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)

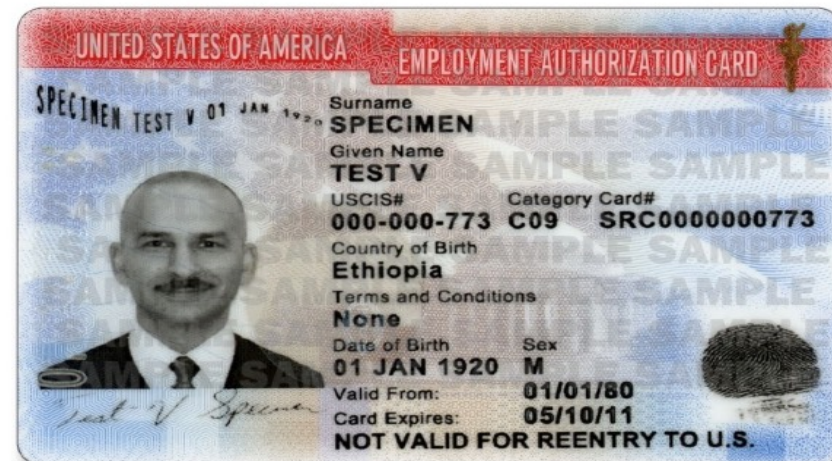
## I-797 Approval Notice

- 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](http://uscis.gov) 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"> <li>• 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</li> <li>• Any verification from the INS, DHS or other authoritative document.</li> </ul>	<p>Evaluate for full Medicaid</p> <p>If not eligible for Medicaid or CHIP-the individual may be eligible for Marketplace subsidies.</p>
<p><b>Applicants for Adjustment to LPR Status with Approved Visa Petitions</b></p>	<ul style="list-style-type: none"> <li>• Receipt or notice showing filing or pending status of Form I-485 Application to Register Permanent Residence or Adjust Status</li> <li>• Form I-797 ASC Appointment Notice with Case Type “I-485 Application to Register Permanent Residence or Adjust Status”</li> <li>• Form I-688B or I-766 employment authorization document (EAD) coded 274a.12(c)(9) or C9 or C9P</li> <li>• I-797 receipt for Application for Employment Authorization based on C09</li> <li>• I-512 authorization for parole, indicating applicant for adjustment of status</li> <li>• Any verification from the INS, DHS, or other authoritative document</li> </ul>	<p><b>Evaluate for:</b></p> <ul style="list-style-type: none"> <li>• Full Medicaid for Pregnant Women and Children under 19</li> <li>• All others- Emergency Services</li> </ul> <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 (very small category)
- 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
- SCHIP (NC Health Choice for children)
- 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 who arrived after August 1996 are barred for 5 years after receiving their legal status from receiving “*Federal means-tested public benefits*”

## Exemptions from the 5 Year Bar

- - The following immigrants are exempt from the five-year bar on federal means-tested public benefits, and may start collecting benefits as soon as they receive legal status:
  - \* Refugees, persons granted asylum or withholding of deportation, Amerasian immigrants, Cuban/Haitian entrants
  - \* Veterans, active duty military, spouse, unremarried surviving spouse, or child of veteran/active duty military
  - \* Victims of trafficking
    - Note: All still exempt if they later get a green card (LPR).
- - Food stamps (SNAP) only: Qualified alien children under age 18 do not have to wait 5 years.
- - Medicaid only: Pregnant Women and children under the age of 19 (state option) do not have to wait 5 years
  - Pregnant women then revert to the 5-year bar once their pregnancy is over; if they have not yet been in qualified immigrant status for 5 years.

# 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

Categories include:

- U visa
- Temporary Protected Status (TPS)
- Non-immigrant status (ex: student visa, temporary work visa, etc.)
- Deferred Action
- Special Immigrant Juvenile Status
- Applicants for withholding of removal/ deportation
- AND MORE....

ONLY lawfully residing group that is not eligible are people with DACA status

# 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”
  - **42 CFR §435.403(h)**
  - DMA Admin Letter 01-14
- Child residency may be established separately from parent
  - **42 CFR §435.403(h)**
  - SPA 13-0016-MM5
- *For non-immigrants, declaration of residency may be a factor if immigrant tries to adjust status in the future.*

# Enumeration Requirements: SSN

## Old rule:

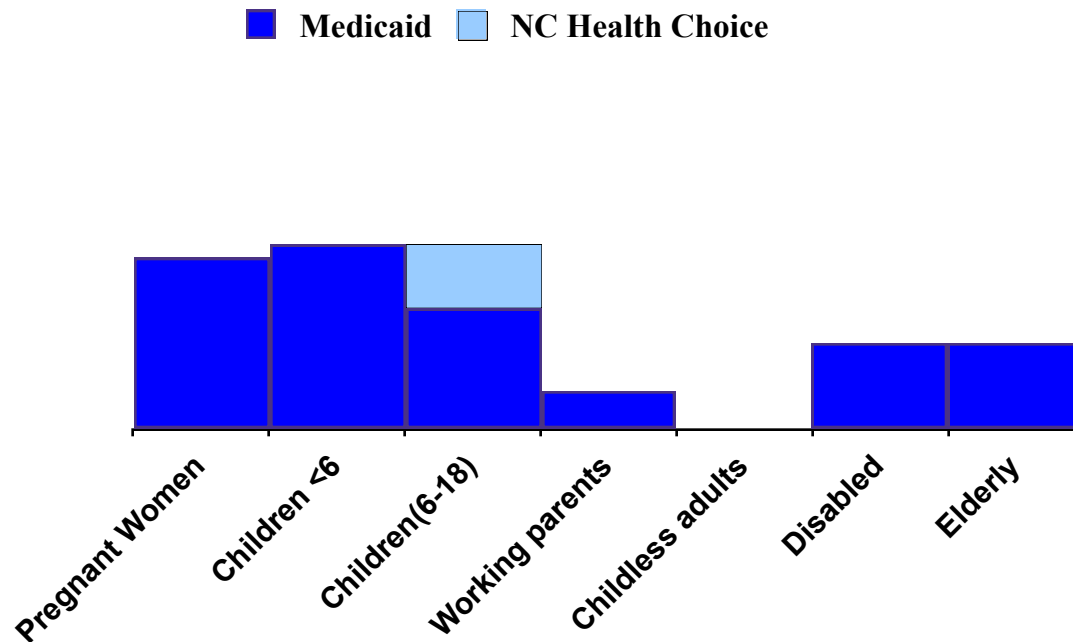
- To qualify for Medicaid, recipients must either have a social security number or prove that they have applied for a social security number

## New rule, after 2014:

- 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)



• Limited groups of immigrants (“Qualified Aliens”) are eligible for Medicaid/CHIP if they meet all other eligibility criteria

Slide Created by Pam Silberman, UNC School of Public Health. Source: CMS. State Medicaid and CHIP Income Eligibility Standards Effective Calculations for parents based on a family of three. Note: 100% of the federal poverty levels (FPL) (2021) = \$12,880/yr. (1 person), \$17,420 (2 people), \$21,960 (3 people), \$26,500 (4 people).



## Immigrant Eligibility: The Affordable Care Act

<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>	<p>Are eligible for all the same benefits under the ACA as U.S. citizens:</p> <ul style="list-style-type: none"> <li>· <i>May participate in</i> health insurance exchanges</li> <li>· <i>May receive subsidies for</i> health insurance coverage, and</li> <li>· <i>Are eligible for</i> expanded income-eligibility for Medicaid (not in NC)</li> </ul>
<p><b>“Lawfully residing” immigrants (with any length of legal presence in the U.S.)</b></p>	<ul style="list-style-type: none"> <li>· <i>May</i> participate in the exchanges</li> <li>· <i>May</i> receive subsidies for health insurance coverage</li> <li>· <i>Not</i> eligible for Medicaid.</li> </ul>
<p><b>Undocumented immigrants &amp; immigrant youth with “Deferred Action for Childhood Arrivals”</b></p>	<ul style="list-style-type: none"> <li>· <i>Not</i> eligible for any of the benefits of the ACA, including participation in the health insurance exchanges, receipt of subsidized insurance coverage, or the expanded Medicaid access.</li> </ul>

- Naturalized citizens
- Lawful Permanent Residents (LPR/ Green Card holder)
- Asylees
- Refugees
- Cuban/Haitian Entrants
- Paroled into the U.S.
- Battered Spouses, Children and Parents (VAWA)
- Victims of Trafficking and their Spouses, Children, Siblings or Parents
- Granted Withholding of Deportation or Withholding of Removal
- Individuals with non-immigrant Status. Includes:
  - worker visas (including H-2A, H-2B, H-1B, etc.)
  - student visas
  - tourist visas
  - U visas/victim of crime visa
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (but *not* DACA holders)
- Administrative order staying removal issued by the Department of Homeland Security
- *Applicants* for asylum, Special Immigrant Juvenile Status, trafficking visas, adjustment to LPR after an approved I-130, or withholding of removal.
- Anyone with *work authorization* who: is a registry applicant, has an order of supervision, has applied for cancellation of removal, or is an applicant for legalization under IRCA or the LIFE Act

“LAWFULLY  
RESIDING  
IMMIGRANTS”  
IS A BROAD  
CATEGORY  
UNDER ACA

# More on ACA and Immigrants



**Subsidy Level:** 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. This is true regardless of whether or not a state expands Medicaid eligibility under the Affordable Care Act.

# 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



# BACKGROUND: PUBLIC CHARGE

“**Public Charge**” is a term used in immigration law to refer to a person who is likely to become dependent on the government for support. Law in place since 1882.

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), *NOT when applying to become a U.S. citizen*



# The Rule Has Always Considered A List of Factors About a Person to Determine if She Will be a “Public Charge” or Not

- USCIS (Immigration Service) is supposed to look at all these factors in assessing “public charge”:
  - Age
  - Health
  - Family status
  - Financial status
  - Education and skills
  - Affidavit of support
- USCIS is supposed to weigh positive factors (ability to work, income, etc.) and negative factors (including past use of benefits).
  - "totality of the circumstances" test

# 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

# 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 cash assistance programs such as TANF or SSI, nor are they eligible for non-emergency Medicaid
- Neither are short-term immigrants such as short-term visa holders, DACA , or TPS

# 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

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.

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

Most important benefit programs are excluded from public charge consideration.

Public charge test considers totality of the circumstances.

- -- Families need to make *individual determinations* based on their situation.
- -- Using health care and nutrition benefits can help you be stronger, healthier and more likely to achieve economic security

## PUBLIC CHARGE RESOURCES :

[www.ncjustice.org/  
public-charge](http://www.ncjustice.org/public-charge)

*NOTE: Some of these will  
be updated as new rule  
was just finalized on  
9-8-22.*

### Public Charge: The Law Has Changed (updated September 2022)

English: [here](#)

Spanish: [here](#)

Also available [here](#) in Vietnamese, Chinese, and French (Arabic coming soon)

\* French, Vietnamese, Chinese not yet updated for 2022, but are nearly 100% accurate based on 2021 information

### Short Animated Videos on Public Charge (updated June 2021)

English [short video](#)

Spanish [short video](#)

### Immigrant Access to Health and Nutrition Programs (updated May 2021)

Includes phone numbers for questions about benefits eligibility

Spanish [here](#)

English [here](#)

### Flyer on Immigrants and the Vaccine (Including Public Charge):

English, Spanish, French, Vietnamese, Chinese, Burmese and Arabic [here](#)

### Flyers Specifically Relevant to Public Charge and Coronavirus:

Available [here](#) in six languages (English, Spanish, Chinese, Arabic, Vietnamese and French) (*made under prior rule, need to be updated*)

- Another great source of flyers in many languages:
  - [www.protectingimmigrantfamilies.org/know-your-rights](http://www.protectingimmigrantfamilies.org/know-your-rights)



Concern: “If I go to the government office to get help for my child, will they deport me or my husband?”



Concern: “If my status or my family’s status is checked in federal systems to apply for benefits, will that get reported to immigration?”



Agency threats of ICE reporting - frighten immigrants, discourage participation

# Barriers: Fear of ICE Reporting

# Benefits Agencies Maintain Applicants' Info As Confidential

- With extremely limited exceptions, most or all health and benefit programs CANNOT and DO NOT report any applicants or their family members to ICE
- Exceptions would be things like: receiving a subpoena from a law enforcement agency, being shown an Order of Deportation by an applicant for only certain programs (public housing, food stamps, and a few others)
- **Medicaid, WIC, and Health Care Marketplace agencies under no duty to “report” at all**
  - Medicaid and ACA agencies only share info with Immigration for purposes of checking people's benefit eligibility, they cannot use the info for any other purpose, including reporting to law enforcement
- Family members who are not applying for a health benefit for themselves do NOT have to provide info about their OWN 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](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](mailto:kate@ncjustice.org)