

TO: Local District Commissioners, Medicaid Directors

FROM: Lisa Sbrana, Director
Division of Eligibility and Marketplace Integration

SUBJECT: Clarification of Permanently Residing Under Color of Law (PRUCOL) when Requesting Relief on Non-Official Forms

ATTACHMENT: OHIP-0046 "Documentation Guide for Citizen and Non-Citizen Eligibility for Health Insurance Converge in New York State," page 28

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Support Unit
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The purpose of this General Information System (GIS) message is to advise local departments of social services about a revision to State Department of Health (DOH) policy regarding determining a non-citizen to be permanently residing under color of law (PRUCOL), specifically when the non-citizen is residing with the knowledge and acquiescence of the federal immigration agency due to a request for relief made on non-official forms. This directive revises DOH policy previously discussed in 04 OMM/ADM-7, 07 OHIP/INF-2, 08 OHIP/INF-4 and 21 OHIP/INF-1 as they pertain to the timing to consider a consumer PRUCOL when the request for relief is made on non-official forms, (e.g. a letter).

As a reminder, the Codes, Rules and Regulations of the State of New York define PRUCOL as: *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.* [18 NYCRR §360-3.2(j)(1)(ii)].

Previous guidance required the non-citizen requesting relief on non-official forms to contact the federal immigration agency at least twice in a six-month period. The reasonable period afforded to the federal immigration agency at the time of the directives was six months. This process is discussed in detail in 08 OHIP/INF-4.

Effective immediately, a non-citizen making a request for relief on non-official forms will be considered PRUCOL 15 business days after sending the request to the federal immigration agency. Fifteen business days is determined to be a reasonable period of time since it provides sufficient time for the request to arrive at the federal immigration agency and for a response to

be returned to the non-citizen making the request. If the non-citizen making the request does not receive a response from the federal immigration agency 15 business days after the initial request was sent, the non-citizen is considered PRUCOL at the end of the 15 business day period. The non-citizen will still need to provide proof the request was sent to and received by the federal immigration agency, such as return receipt from the U.S. Postal Service or a private carrier.

It is still important for the non-citizen to provide any correspondence received from the federal immigration agency regarding the request for relief. If the status requested by the non-citizen is granted, the individual's status should be noted in the case record and their eligibility determination adjusted accordingly. If the federal immigration agency denied the non-citizen's application or request or otherwise indicates it is not permitting the non-citizen to reside in the U.S. indefinitely, the non-citizen cannot be considered PRUCOL. In such cases, the non-citizen, if otherwise eligible, may receive Medicaid coverage for the treatment of an emergency medical condition only.

Please see pages 20 through 29 of Attachment I to GIS 21 MA/14 "Documentation Guide for Citizen and Non-Citizen Eligibility for Health Insurance Converge in New York State" for specific information about the various types of documents non-citizens who can be considered PRUCOL might have. Pages 20 through 27 describes PRUCOL when there is "knowledge and permission," while pages 28 and 29 describes PRUCOL when there is "knowledge and acquiescence" of the federal immigration agency. Page 28 contains a revised notation referencing this directive.

Please direct any questions to your local district support liaison.