



# Department of Health

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**INFORMATIONAL LETTER**

**TRANSMITTAL:** 21 OHIP/INF-1

**DIVISION:** Office of Health Insurance Programs

**TO:** Local District Commissioners

**DATE:** 6/30/21

**SUBJECT:** Clarification of PRUCOL Status for the Purposes of Medicaid Eligibility

**SUGGESTED DISTRIBUTION:** Local District Commissioners, Medicaid Directors

**CONTACT PERSON:** Local District Liaison  
Upstate: (518) 474-8887  
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**ATTACHMENTS:** None

### FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
04 OMM/ADM-7		18 NYCRR 360-3.2 (j)			
07 OHIP/INF-2					
08 OHIP/INF-4					

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The purpose of this Informational Letter (INF) is to clarify Department of Health (DOH) policy regarding Medicaid eligibility for non-citizens who are permanently residing under color of law (PRUCOL). This message clarifies DOH policy previously discussed in 04 OMM/ADM-7, 07 OHIP/INF-2 and 08 OHIP/INF-4 regarding determining the PRUCOL status of a non-citizens and provides instructions for handling situations where there is evidence the non-citizen has been placed in removal proceedings by the federal immigration agency.

The term federal immigration agency is used when referring to any of the following three federal entities that oversee and implement federal immigration laws:

- United States Citizenship and Immigration Services (USCIS).
- Immigration and Customs Enforcement (ICE); and
- Executive Office for Immigration Review (EOIR).

The USCIS and ICE exist within the U.S. Department of Homeland Security (DHS). The EOIR is an office within the U.S. Department of Justice.

Each of these entities plays a role in carrying out the immigration laws of the United States (U.S.). The USCIS makes determinations on applications for various immigration statuses or other forms of relief. ICE apprehends and removes (deports) non-citizens who violate immigration laws and may also grant various forms of relief from removal. The EOIR issues judgements on removal cases ICE is prosecuting. In certain cases, EOIR also makes determinations on applications seeking relief from removal.

A federal immigration agency does not determine whether a non-citizen is PRUCOL and does not grant PRUCOL status. This is because PRUCOL is not a federal immigration status. Rather, PRUCOL is a public benefits eligibility status. 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)].

The categories of non-citizens whose departure is typically not enforced include:

- non-citizens paroled into the United States pursuant to section 212(d)(5) of the Immigration and Nationality Act for less than one year;
- non-citizens residing in the United States pursuant to an Order of Supervision;
- deportable non-citizens residing in the United States pursuant to an indefinite stay of deportation;
- non-citizens residing in the United States pursuant to an indefinite voluntary departure;

- non-citizens on whose behalf an immediate relative petition has been approved, and members of their families covered by the petition, who are entitled to voluntary departure and whose departure the federal immigration agency does not contemplate enforcing;
- non-citizens who have filed an application for adjustment to lawful permanent resident status pursuant to section 245 of the Immigration and Nationality Act, whose application the federal immigration agency has accepted as properly filed or has granted, and whose departure the federal immigration agency does not contemplate enforcing;
- non-citizens granted stays of deportation by court order, statute or regulation or by individual determination of the federal immigration agency pursuant to section 243 of the Immigration and Nationality Act, whose departure the federal immigration agency does not contemplate enforcing;
- non-citizens granted voluntary departure status pursuant to section 242(b) of the Immigration and Nationality Act whose departure the federal immigration agency does not contemplate enforcing;
- non-citizens granted deferred action status;
- non-citizens who entered and have continuously resided in the United States since before January 1, 1972;
- non-citizens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act whose departure the federal immigration agency does not contemplate enforcing; and
- any other non-citizen living in the United States with the knowledge and permission or acquiescence of the federal immigration agency and whose departure such agency does not contemplate enforcing.

To consider a non-citizen PRUCOL, the non-citizen either needs to be residing with the knowledge and permission or knowledge and acquiescence of the federal immigration agency **and**, based on facts and circumstances in a particular case, the agency is not contemplating enforcing the non-citizen's departure, and is otherwise allowing the non-citizen to reside in the U.S. indefinitely. **Both** conditions must be met for the non-citizen to be considered PRUCOL.

### **Knowledge and Permission**

Some non-citizens are considered PRUCOL because the federal immigration agency has granted them a particular immigration status or relief. The particular immigration statuses are described on pages 19 and 20 in 04 OMM/ADM-7 (issued October 26, 2004). These non-citizens are permanently residing in the U.S. with the knowledge and permission of the federal agency. Examples include, but are not limited to, non-citizens paroled (admitted) into the U.S. for less than one-year, non-citizens residing in the U.S. under an order of supervision, and non-citizens granted voluntary departure, deferred action status or temporary protected status. Non-citizens who are residing with the knowledge and permission of the federal agency have a form of valid documentation, issued by the agency, to verify the non-citizen has been granted a particular status or relief.

**Knowledge and Acquiescence**

As described in 08 OHIP/INF-4 (issued August 4, 2008), some non-citizens may be considered PRUCOL because they have applied for or otherwise requested an allowable immigration status or relief from removal and are awaiting the federal immigration agency's decision. These non-citizens have documentation showing the federal immigration agency has received their application or request for relief. Until their application or request for relief has been adjudicated, these non-citizens are residing in the U.S. with the knowledge and acquiescence of the federal immigration agency.

**Agency Not Contemplating Enforcement**

As described in 08 OHIP/INF-4, in addition to determining "permission or acquiescence" the Medicaid worker must also determine that there is no evidence that the federal immigration agency is contemplating enforcing the non-citizen's departure. A non-citizen 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 non-citizen to reside in the U.S. indefinitely or the non-citizen falls into one of groups specified on page 2 of this directive.

As described in 08 OHIP/INF-4, page 4, the Medicaid worker should find the non-citizen to be PRUCOL if the non-citizen's application remains pending with the federal immigration agency, not having yet been approved or denied, unless contradictory evidence indicates the federal immigration agency is contemplating enforcing the non-citizen's departure from the U.S. Non-citizens who are in removal proceedings are be considered to have evidence indicating the federal immigration agency's contemplation of enforcing their departure from the U.S.

However, all the facts and circumstances of a case need to be reviewed prior to determining whether the non-citizen can be considered PRUCOL. Therefore, if the non-citizen provides documentation indicating contemplation of removal, the Medicaid worker must reach out to their Local District Support Liaison. The Local District Support Liaison will request the immigration documents from the Medicaid worker and provide them to DOH staff for review. DOH staff will review all the facts and circumstances of the case and inform the Local District Support Liaison whether the non-citizen can be considered PRUCOL.

Please direct any questions to your Local District Support Liaison.



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Donna Frescatore, Medicaid Director  
Office of Health Insurance Programs