



# GOVERNMENT BENEFITS FOR NONCITIZENS



October 15, 2019



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## 1. WELFARE REFORM



### 1996 changes:



- ❖ Congress passed welfare reform legislation and President Clinton signed it into law on 8/22/96. PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (PRWORA), PUB. L. 104-193.
- ❖ The welfare reform law defined some noncitizens as “qualified” for federal benefit eligibility and made others ineligible for SSI and Food Stamps. It also gave refugees, asylees, and people granted withholding of deportation a 5-year window in which they could get SSI and Food Stamps. It “barred” some noncitizens from getting federally-funded benefits during their 1<sup>st</sup> 5 years in the U.S. 8 U.S.C. §§ 1611, 1612, 1613.
- ❖ Welfare reform required certain agencies to file quarterly reports with Immigration on people the agencies “knew” to be “unlawfully” in U.S. 8 U.S.C. § 1644; 42 U.S.C. §§ 611a, 1383(e)(9), 1437y. See also ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 (IIRIRA), PUB. L. 104-208 (9/30/96), 8 U.S.C. § 1373.



### Post-Welfare Reform federal law changes:

#### **Immigration Reform Act 1996 (IIRIRA); Balanced Budget Act 1997 (BBA); Agriculture (Ag) Bill 1998; Farm Bill 2002; SSI Extension Act 2008**

- In September 1996, **IIRIRA** amended the definition of a “qualified” noncitizen (see p. 3) to include a “battered” non-citizen. 8 U.S.C. § 1182(a)(4).
- The **BBA of 1997** made noncitizens eligible for SSI *if* they were lawfully residing in the U.S. on 8/22/96 and subsequently became disabled. The BBA also extended the window of SSI (but not Food Stamp) benefit eligibility for refugees and asylees from 5 to 7 years. It expanded the group of “qualified” noncitizens to include Amerasian noncitizens from the Vietnam War era (who, it said, should be treated as refugees). And it carved out an exception to SSI and Medicaid ineligibility for “certain Indians” born in Canada (although it did not define them as “qualified” under federal law). BALANCED BUDGET ACT OF 1997, PUB. L. 105-33 (8/5/97); 8 U.S.C. §§ 1612, 1613, 1641.
- The **Ag Bill of 1998** restored Food Stamp eligibility to certain groups of lawfully-residing noncitizens: people receiving SSI or SSDI, people who were at least 65 on 8/22/96, children under 18, and Hmong and Laotian noncitizens who had helped the U.S. during the Vietnam War. The bill also extended the Food Stamp window for refugees and asylees from 5 to 7 years. PUB. L. 105-185, AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM ACT OF 1998, 6/23/98; 8 U.S.C. § 1612(a)(2).
- The **Farm Bill of 2002** broadened eligibility for Food Stamps to all “qualified alien children” and to people certified disabled, *if* they had been lawfully residing in the U.S. on 8/22/96. The Farm Bill made other “qualified” noncitizens eligible for Food Stamps after they had lived in the U.S. for at least 5 years in qualified status. PUB. L. 107-171, FARM SECURITY AND RURAL INVESTMENT ACT OF 2002, 5/13/02, Title IV, Subtitle D, § 4401, “PARTIAL RESTORATION OF BENEFITS TO LEGAL IMMIGRANTS.”
- The **2008 SSI Extension Act** temporarily extended the window in which certain elderly and disabled noncitizens, primarily refugees and asylees, could get SSI. (The extension ended in 2011). SSI EXTENSION FOR ELDERLY AND DISABLED REFUGEES ACT, PUB. L. 110-328 (9/30/08).
- **Subsequent laws** have added categories of noncitizens, such as Afghan and Iraqi Special Immigrants, to the definition of “refugee.” DEPT. OF DEFENSE APPROPRIATIONS ACT OF 2010, PUB. L. 111-118, § 8120, 12/19/09; 8 U.S.C. § 1101(a)(27).





## 2. DEFINITIONS

### “Qualified” noncitizens

You are a “Qualified” noncitizen if you have been:

- lawfully admitted for permanent residence under the Immigration and Nationality Act (INA). 8 U.S.C. § 1641 (b)(1), *ref. to 8 U.S.C. §§ 1101 et seq.*
- granted “refugee” status (this includes Haitian, Cuban, and Amerasian noncitizens, as well as Iraqi and Afghan Special Immigrants). 8 U.S.C. § 1641(b)(3), *ref. to 8 U.S.C. §§ 1157, 1612(a)(2)(A)(iv), 1612(a)(2)(A)(v), 1613(b)(1)(D), & 1641(b)(7).* See also DEPARTMENT OF DEFENSE APPROPRIATION ACT OF 2010, Pub. L. 111-118 (12/19/09), § 8120; 8 U.S.C. § 1101(a)(27).
- granted asylum. 8 U.S.C. § 1641(b)(2), *ref. to 8 U.S.C. § 1158.*
- paroled into U.S. for at least one year. 8 U.S.C. § 1641(b)(4), *ref. to 8 U.S.C. § 1182(d)(5).*
- granted conditional entry before 4/1/80. 8 U.S.C. § 1641(b)(6), *ref. to 8 U.S.C. § 1153(a)(7).*
- granted withholding of deportation or cancellation of removal. 8 U.S.C. § 1641(b)(5), *ref. to 8 U.S.C. §§ 1253 (as in effect before 4/1/97) & 1231(b)(3) (as amended by § 305(a) of PUB. L. 104-208, Div. C).*
- granted a T-Visa (for victims of severe trafficking). 8 U.S.C. § 1641(c)(4), *ref. to 8 U.S.C. § 1101(a)(15)(T).*
- given the status of “battered immigrant” (*see below*).

### “Unqualified” noncitizens

You are an “unqualified” noncitizen if you:

- × have no documentation,
- × have expired documentation,
- × came to the U.S. with a “fiancé (“K” or “K-1”) visa,
- × have applied for (but have not yet been granted) suspension of deportation or cancellation of removal,
- × have applications pending for adjustment or asylum,
- × are a lawful temporary resident under an amnesty program,
- × are a non-immigrant with temporary protected status [TPS], or with a student, visitor, or temporary worker, or
- × have been granted Deferred Action for Childhood Arrivals (DACA).



**“Battered immigrants”**

- To qualify for benefits, you have to have been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or Lawful Permanent Resident (LPR) parent, spouse, or relative who lived in your household, **AND**
- you must no longer live with the abuser, **AND**
- your need for benefits must be “substantially connected” to the abuse,



**AND**

you must either be:



- ➔ the spouse or child of a U.S. citizen **AND** have petitioned for adjustment of status under the Violence Against Women Act (VAWA); **OR**
- ➔ the spouse or child of a U.S. citizen **OR** LPR **AND** have petitioned for cancellation of removal under the INA.

8 U.S.C. §§ 1101(a)(15)(U), 1154(a)(1)(A)(iii) or (iv), 1229b(b)(2), 1641(c); 62 FR 39874 (7/24/97), 62 FR 60769 (11/13/97), 62 FR 65285 (12/11/97). Inclusion of battered noncitizens as “qualified noncitizens” for state-funded MFIP is found at MINN. STAT. § 256J.08, subd. 73(8) and (9).

**3. SPONSOR-DEEMING:**

**Attribution of income from sponsor to sponsored noncitizen**



- ➔ The 1996 welfare reform law included a requirement that income be attributed from your sponsor to you. This practice is known as “sponsor-deeming.” PRWORA, Pub. L. 104-193, Title IV, Subtitle C, “ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT,” §§ 421-423 (1996); 8 U.S.C. § 1183a. See also 8 U.S.C. §§ 1631(a)(1) & (2), (b); 1632(a); 8 C.F.R. § 213a.2; MINN. STAT. §§ 256B.06, subd. 5; 256D.05, subd. 8(a); and 256J.37, subd. 2.
- ➔ Deeming began on 12/19/97 with the introduction of the **I-864** Affidavit of Support. 62 F.R. 54346, Vol. 62, No. 202, 10/20/97.
- ➔ Deeming applies to you only if you are a family-based immigrant (who arrived through a petition from a family member, which is the most common method of immigrating to the U.S.), or if you are an employment-based immigrant (coming to work in a relative’s business). 8 U.S.C. § 1183a.

OMB No. 1615-0075, Expires 09/30/2012

**I-864, Affidavit of Support  
Under Section 213A of the Act**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**Part 1. Basis for filing Affidavit of Support.**

I, Mark Allen, am the sponsor submitting this affidavit of support because (Check only one box):

a.  I am the petitioner. I filed or am filing for the immigration of my relative.

b.  I filed an alien worker petition on behalf of the intending immigrant, who is related to me as my \_\_\_\_\_.

c.  I have an ownership interest of at least 5 percent in \_\_\_\_\_ which filed an alien worker petition on behalf of the intending immigrant, who is related to me as my \_\_\_\_\_.

d.  I am the only joint sponsor.

e.  I am the  first  second of two joint sponsors. (Check appropriate box.)

f.  The original petitioner is deceased. I am the substitute sponsor. I am the intending immigrant's \_\_\_\_\_.

For Government Use Only	
This I-864 is from:	
<input type="checkbox"/>	the Petitioner
<input type="checkbox"/>	a Joint Sponsor # _____
<input type="checkbox"/>	the Substitute Sponsor
<input type="checkbox"/>	5% Owner
This I-864:	
<input type="checkbox"/>	does not meet the requirements of section 213A



- Welfare Reform required that income from sponsors be “deemed” to sponsored noncitizens in programs considered “**federal means-tested public benefits.**” Title IV, Subtitle C (ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT), § 421, FEDERAL ATTRIBUTION OF SPONSOR’S INCOME AND RESOURCES TO ALIEN). 8 U.S.C. § 1631. “Federal means-tested public benefits” are not defined in law, although the welfare reform law contains a partial list of benefits that are **not** considered “federal means-tested public benefits.” *Id.* at Subtitle A, § 403.

- Benefits that are **not** “federal means-tested public benefits” include:

Emergency Medical Assistance (**EMA**); short-term, non-cash, in-kind emergency disaster relief; school breakfasts and lunches; immunizations, and testing for and treatment of communicable diseases, at Public Health; foster care and adoption assistance payments, so long as the foster or adoptive parent is a “qualified” noncitizen per 8 U.S.C. § 1641; non-governmental social services programs and services from soup kitchens and short-term shelters; benefits through Head Start; and benefits under the Job Training Partnership Act. 8 U.S.C. §§ 1611(b), 1613(c), 1621(b).



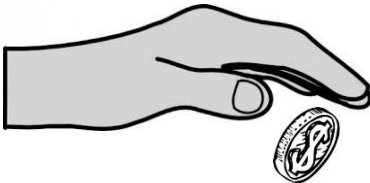
- Benefits considered “**federal means-tested public benefits**” include those provided through TANF. Minnesota’s TANF-funded programs are **MFIP** (Minnesota Family Investment Program) and **DWP** (Diversionary Work Program). Also considered “federal means-tested public benefits” are Food Stamps (now known as **SNAP**, or Supplemental Nutrition Assistance Program benefits); **MA** (Minnesota’s Medicaid program); **CHIP** (the Children’s Health Insurance Program); and **SSI** (Supplemental Security Income).



- Welfare Reform also gave states the authority to attribute sponsor income to noncitizens in **state-funded** programs. PRWORA, Title IV, Subtitle B (ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS), § 412 (STATE AUTHORITY TO LIMIT ELIGIBILITY OF QUALIFIED ALIENS FOR STATE PUBLIC BENEFITS). 8 U.S.C. §§ 1621, 1622, 1624. State-funded programs in Minnesota include **GA** (General Assistance), **Housing Support** (formerly GRH, or Group Residential Housing), **FSS** (Family Stabilization Services), and **MFAP** (Minnesota Food Assistance Program).

# STATE

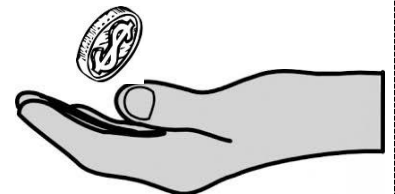
## How deeming works



- In general, 100% of the income *and* assets of your sponsor **AND** your sponsor’s spouse are **considered fully available** to you, whether or not they are actually available.

**NOTE:** Deeming is applied a little more favorably for **SNAP** benefits. Your sponsor’s family size and other obligations will affect how much, if any, income is deemed. 7 U.S.C. § 2014(i)(2)(A); MINNESOTA DEPT. OF HUMAN SERVICES (DHS) COMBINED MANUAL (CM), § 16.21.03 (03/15).<sup>1</sup> For **MA**, income and assets are deemed only to you, the sponsored noncitizen, not to your children or other dependents. **MFIP** uses a household concept, so even if you are a U.S. citizen, you could be affected by deeming. For example, income attributed to you, the noncitizen parent, will be considered 100% available to your U.S. citizen child.

- Your sponsor’s family size and fixed debts are irrelevant for all programs but **SNAP**.
- The burden of proving your sponsor has little income is generally on you, the noncitizen who is applying for assistance.



<sup>1</sup> **NOTE:** All sections of the CM and MINNESOTA HEALTH CARE PROGRAMS ELIGIBILITY POLICY MANUAL (MHCP), as well as DHS fact sheets and “eDocs,” are found at [www.dhs.state.mn.us](http://www.dhs.state.mn.us) under “publications.”



- Your sponsor's income and assets are deemed until you:
  - ▶ become a U.S. citizen
  - ▶ work 10 years (40 work quarters) at Social Security-covered work
  - ▶ permanently leave the U.S. or
  - ▶ die.

Deeming will also end when your sponsor dies.

- Divorce (from your sponsor or a relative of your sponsor) will have no effect on deeming.
- The I-864 Affidavit of Support your sponsor signed is a legally-binding contract between the government and your sponsor, **and** between you and your sponsor. The government can sue your sponsor for benefits it provides you under either exception described below, and you can sue your sponsor for non-support.

8 U.S.C. §§ 1183a, 1631, 1632; 8 C.F.R. § 213a.2(e)(2)(i); also CM, § 16.21.03 (03/15).

- The U.S. Dept. of Health & Human Services (HHS) issued **program instructions** on deeming in 2003: "DEEMING OF A SPONSOR'S INCOME AND RESOURCES TO A NON-CITIZEN." TANF-ACF-PI-2003-03, 4/17/03. <http://www.acf.hhs.gov/programs/ofa/resource/policy/pi-ofa/2003/pi2003-2htm-0>. The publication uses a Q & A format to discuss how deeming works in TANF programs, and it answers questions such as how to deem in mixed households. The U.S. Dept. of Agriculture (USDA) also issued **guidance** on deeming for SNAP: [https://www.fns.usda.gov/sites/default/files/Non-Citizen\\_Guidance\\_063011.pdf](https://www.fns.usda.gov/sites/default/files/Non-Citizen_Guidance_063011.pdf), pp. 30-42.

## Exceptions to Deeming

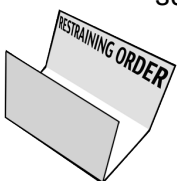


### A. INDIGENCE

- ☹ Sponsor-deeming will **NOT** apply if the welfare agency determines that, as a result of your sponsor's failure to provide support, you are without food and shelter.
- ☹ Benefits can be provided under this exception for 12 months, with the possibility of additional 12-month renewals. 8 U.S.C. § 1631(e); CM § 16.21.03 (03/15).

### B. BATTERED SPOUSE OR CHILD

- ☹ Sponsor-deeming will **NOT** apply for 12 months if you provide a statement or document that you have (or your child has) been battered or subjected to extreme cruelty by your spouse or parent, you are no longer living with your batterer, **AND** the battery or cruelty you were subjected to is substantially connected to your need for assistance.
- ☹ After 12 months, the exception will end unless the batterer was your sponsor, you still need benefits because of the battery or cruelty, **AND** the battery or cruelty has been recognized in a court order (such as an Order for Protection) or in an Immigration determination.
- ☹ The county may require you to provide a statement or documentation to support allegations of abuse. 8 U.S.C. § 1631(f); CM § 16.21.03 (03/15).
- ☹ **Note:** State policy allows the county to **not** deem for 12 months for cash and food programs **and** also for **MA**, if you have been battered *and* there is a substantial connection between your need for health care coverage and the battery you experienced. MHCP § 2.2.3.2.1 (6/1/16), SPONSOR DEEMING.



## Benefits subject to sponsor-deeming

Deeming applies to you if your sponsor signed an I-864 for these programs:

✓ **Federally-funded TANF family cash assistance:**

- ★ MFIP (MINN. STAT. § 256J.37, subd. 2)
- ★ DWP (MINN. STAT. §256J.95, subd. 9)



✓ **State-funded family cash assistance:**

- ★ FSS (MINN. STAT. § 256J.575)



✓ **State-funded non-family cash or housing assistance:**

- ★ GA (MINN. STAT. § 256D.05, subd. 8(a))
- ★ Housing Support (GRH) (MINN. STAT. § 256I.04, subd. 1(b))



✓ **Federally-funded cash assistance if you are disabled or at least 65 years old:**

- ★ SSI (8 U.S.C. § 1631(a))



✓ **Federally-funded food benefits:**

- ★ SNAP (7 U.S.C. § 2014)



**NOTE: Deeming does NOT apply to children younger than 18 for SNAP.**

7 U.S.C. § 2014(i)(2)(E); 8 U.S.C. §§ 1612(a)(2)(J), 1631(d)(3).

✓ **State-funded food benefits:**

- ★ MFAP (MINN. STAT. § 256D.053, subd. 3(b))



✓ **Federally-funded health care benefits:**

- ★ MA (MINN. STAT. § 256B.06, subd. 5)



**NOTE: Deeming does NOT apply to you if you are a pregnant woman or a child for MA benefits.**

MINN. STAT. § 256B.06, subd. 5.



## Benefits to which deeming does NOT apply

### ☒ Cash benefits:



- ▶ RSDI (Retirement, Survivors, Disability Insurance) from Social Security
- ▶ UI (Unemployment Insurance) ▶ VA (Veterans Administration) benefits
- ▶ RCA (Refugee Cash Assistance)

### ☒ Food benefits:

- ▶ SNAP for children under 18 ▶ WIC (Women, Infants and Children) benefits
- ▶ School breakfast and school lunch benefits

### ☒ Healthcare benefits:

- ▶ MA for pregnant women and children ▶ MA in “safety net” situations<sup>2</sup>
- ▶ MNCare (MinnesotaCare) ▶ EMA (Emergency Medical Assistance)
- ▶ Medicare ▶ Public health immunizations & testing for and treatment of communicable diseases

### ☒ Housing assistance:

- ▶ All federal public and subsidized housing programs

### ☒ Education assistance:

- ▶ All education assistance

### ☒ Child care assistance:

- ▶ Basic sliding fee child care

7 U.S.C. § 2014(i)(2)(E); 8 U.S.C. §§ 1612(a)(2)(J), 1631(d)(3), 1632(b)(1) (*referring to* 8 U.S.C. § 1621(b)(1)); MINN. STAT. § 256B.06, subd. 5; CM §§ 15.48.03 (03/15), WHOSE ASSETS TO CONSIDER – SPONSORS WITH I-864; 16.21.03 (03/15); and MHCP §§ 2.3.3.3.2.1.2 (6/1/16), SPONSOR INCOME DEEMING; and 2.5.2.3 (6/1/16), MA-CVT FINANCIAL ELIGIBILITY.



### Special 3-year deeming, only in family cash programs

- Deeming as described above (under the I-864) applies to you **only** if you came to the U.S. through a relative’s petition or to work in a relative’s business.
- However, state law allows a different form of limited (3-year) income deeming in MFIP, DWP, and FSS only. This deeming is for you if you arrived through means *other than* a relative petition (such as a diversity visa). This deeming does **NOT** apply to refugees or asylees. The indigence and domestic violence exceptions to deeming listed above don’t apply, but this deeming scheme takes into account your sponsor’s family size and outside support obligations.

42 U.S.C. § 608(f); MINN. STAT. § 256J.37, subd. 2(c); CM § 16.21 (12/14), INCOME OF SPONSORS OF IMMIGRANTS WITH I-134.

<sup>2</sup> Sponsor income is especially problematic because MA counts your sponsor’s income but MinnesotaCare does not. You may be **over-income** for MA due to the counting of your sponsor’s income, but you may be **under-income** for MinnesotaCare because sponsor income doesn’t count. (To get MinnesotaCare if you are “otherwise lawfully residing” in the U.S., your income generally has to be between 133%-200% of federal poverty guidelines [FPG]). To fix the problem, the State created a “**safety net**” policy. If your projected annual income is under 100% FPG without considering sponsor income, you can get MA; if it is from 101%-132% FPG without considering sponsor income, you can get MinnesotaCare. MHCP § 2.2.3.3 (12/1/18), INCOME LIMIT: SAFETY NET PROVISION.





## 4. "SAVE": SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS

SAVE is a program that allows state and federal agencies to share information.



- ☑ It is used to verify your immigration status for public assistance, public housing, and health care programs.
- ☑ It is **not** used to report your immigration status to Immigration.

8 U.S.C. § 1642; Minn. Stat. § 256.01, subd. 18; CM § 10.18.11.03 (1/18), SYSTEMATIC ALIEN VERIFICATION (SAVE). See also DHS Bulletin #17-21-07 (6/1/17), DHS CLARIFIES USE OF SAVE FOR MINNESOTA HEALTH CARE PROGRAMS.

## 5. REPORTING TO IMMIGRATION



### Who Must Report?

- Agencies that receive TANF funds (i.e., counties administering MFIP and DWP). 42 U.S.C. § 611a.
- Social Security, because it administers the SSI program. 42 U.S.C. § 1383(e)(9).
- Public Housing Agencies (PHAs) that contract with the Department of Housing and Urban Development (HUD). 42 U.S.C. § 1437y.
- Agencies that administer SNAP (i.e., county agencies). 7 U.S.C. § 2020(e)(15).

### What Must Be Reported?

The names, addresses, and other "identifying information" on anyone "known" to be unlawfully in the U.S.

### Reporting in Minnesota

Minnesota DHS first issued a reporting policy for county agencies on 4/1/99. It later issued a clarifying bulletin, and then manual provisions, restating the policy. The policy narrowly interprets the federal requirements. CM § 11.03.27.03 (12/14), PROTOCOLS FOR REPORTING UNDOCUMENTED PEOPLE.

#### **Under state policy, county agencies must:**



Shhhhh!

- ✓ report to MN DHS, not to Immigration. MN DHS may report to Immigration, but **only** after 1<sup>st</sup> ensuring that your civil rights are not being violated;
- ✓ not verify immigration status if that status is not relevant to your benefit eligibility. Examples include pregnant women applying for EMA, or parents who are ineligible for themselves but are applying for benefits for their U.S. citizen children;
- ✓ stop asking about your immigration status when you declare that you are not willing or not able to verify that status;
- ✓ interpret "knowledge" of your "unlawful presence" very narrowly;
- ✓ comply strictly with data privacy laws when disclosing immigration information. You must sign a special release to authorize the county agency to contact Immigration.)

**It is believed that MN DHS has not reported anyone to Immigration since the policy was first published in April 1999.**



## 5. PUBLIC CHARGE



On **August 14, 2019**, the Government published a **FINAL RULE** for public comment. The **new PUBLIC CHARGE RULE** was scheduled to take effect on **10/15/19**. Implementation has been **DELAYED** by federal courts in New York, Washington, and California in response to lawsuits filed by 20 states and a number of organizations opposing the rule.

**Q: Who or what is “public charge”?** **A:** “Public charge” relates to a **test** used by Immigration officials to decide whether you can **enter** the U.S., **adjust** to lawful permanent resident (**LPR**) status (i.e., get a green card), or change or **extend** a visa. The phrase is an immigration term that used to refer to **someone who was likely to become primarily dependent on the government** for support. Under the new **RULE**, it will refer to a person who **“receives”** 1 or more types of public benefits for more than 12 months in a 36-month period. The test is used to decide if you are likely to be able to support yourself when you come to live in the U.S.

**Q: To whom will “public charge” apply under the new RULE?** **A:** This new **RULE** is an **admissibility** test - it applies to you if you are seeking **admission** to the U.S. (even if you are an LPR reentering the country after you’re been away for > 6 months); **applying for a green card**; or trying to change or **extend a visa**. **It cannot be used to deport you**, even if you use or rely on government benefits!

**Q: To whom will “public charge” NOT apply under the new RULE?** **A:** It will **NOT** apply to you when you are seeking to become a **U.S. citizen OR renewing your green card or DACA status**.

“Public charge” **also will NOT apply** if you fall in specific immigration categories: if you are OR are applying to become a **refugee; asylee; VAWA** self-petitioner; **U or T visa** holder due to **surviving** domestic violence, trafficking, or other serious crimes; or **SIJ** (Special Immigrant Juvenile). Also if you are a **parolee** (in most cases); or recipient of **TPS** (Temporary Protected Status) or **DACA**. If you have TPS or DACA, you do not have a direct pathway to LPR status. So you *may* be subject to a public charge test when you apply for a green card.

**Q: How is the Rule different from current policy?** (Public charge applies differently at consulates abroad) \*\*:

		Current policy	New RULE
<b>public charge definition</b>		Person <b>“likely to become primarily dependent on the government for subsistence”</b>	Person who <b>“receives</b> one or more public benefit[s]”
<b>what benefits are considered</b>	<b>Cash:</b>	<ul style="list-style-type: none"> <li>• MFIP</li> <li>• GA</li> <li>• SSI</li> </ul>	<ul style="list-style-type: none"> <li>• MFIP</li> <li>• GA</li> <li>• SSI</li> </ul>
	<b>Health care:</b>	• MA, but <b>only</b> for nursing home care	• <b>MA</b> ( <i>except for</i> children under 21, women during pregnancy & for 60 days after birth, services from the Center for Victims of Torture, and emergencies (Emergency MA))
	<b>Food:</b>		• <b>SNAP</b> (Food Stamps)
	<b>Housing:</b>		<ul style="list-style-type: none"> <li>• <b>Section 8 Housing Choice Voucher</b></li> <li>• <b>Section 8 rental assistance</b></li> <li>• <b>Public Housing</b></li> </ul>
<b>how benefits are counted</b>			<ul style="list-style-type: none"> <li>• Immigration looks at benefits received <b>at least 12 months</b> in the aggregate <b>within 36-month period</b>.</li> <li>• Each month a particular benefit is received counts as 1 month of benefits.</li> <li>• This means receipt of 2 benefits in a single month (such as SNAP &amp; MA), counts as 2 months of benefits; receipt of 3 benefits in a single month (SNAP, MA, &amp; public housing) counts as 3 months; etc.</li> </ul>
<b>Test</b>			Forward-looking, <b>no retroactivity</b> . Clock starts to run <u>10/15/19</u> .
<b>benefits for children or dependents</b>			Benefits received by dependents <b>are NOT considered</b>

\*\* **Consulates abroad** use the Foreign Affairs Manual (FAM) to determine admissibility. FAM was amended in **January 2018** and lets consulate officers making public charge decisions look at a broader range of benefits and even consider benefits used by your children. The government is planning to amend the FAM based on the new **RULE**.

- **Q: What will Immigration examine?** **A:** All of your circumstances: income, employment, health, education/skills, family size/situation, and family or sponsor income. Immigration will also consider whether you have used certain public benefit programs. The U.S. now prefers immigrants who are healthy, educated, of working age, and English-speaking, especially if you have income or assets  $\geq$  250% of FPG.
- **Q: If I am eligible for benefits, how might I be directly affected by the new RULE?** **A:** You may be directly affected if you are: ● a returning LPR who has been outside the US for at least 6 months; ● an LPR who has lost your status and has to readjust; ● a parolee, in certain circumstances; or ● an otherwise exempt noncitizen who decides to adjust through a family relationship instead of through an exempt pathway.
- **Q: If I am eligible for benefits, how might I be indirectly affected by the new RULE?** **A:** You could be indirectly affected if, in the future, you hope to: ● adjust your status or ● extend your visa.

**NOTE:** You will **NOT** be deported for using **any** government benefits under this **RULE!**

- **Q: What benefits are 100% safe to get, even if the new RULE applies to me?** **A:**

▶ **CASH:**

- Social Security Disability Insurance or Retirement benefits
- Foster Care or Adoption Assistance
- Unemployment Insurance, VA benefits or Workers Compensation

▶ **FOOD:**

- WIC (Women, Infants & Children)
- School breakfast/school lunch
- food from a food shelf



▶ **HEALTH CARE:**

- MinnesotaCare
- Medicare
- Emergency MA
- MA for children under 21 and MA for women during pregnancy and for 60 days after birth
- MA for services from the Center for Victims of Torture
- Immunizations and testing for/treatment of communicable diseases at Public Health

▶ **OTHER:**

- Energy Assistance (LIHEAP – Low Income Home Energy Assistance Program)
- EITC (Earned Income Tax Credit)
- Child Care assistance, Head Start, school loans or grants, etc.

- **Q: Is it 100% safe to get benefits for my CHILDREN or other dependent relatives?** **A: YES!**

## 7. FIVE-YEAR BAR (waiting period)



Welfare reform prevents many noncitizens from getting access to federally-funded benefits (SSI, SNAP, MFIP or DWP, or MA) **during the first 5 years they are in “qualified” status.**

The 5-year bar does **not** apply to you if you are a refugee, asylee, or granted withholding of deportation; or if you are a U.S. veteran, on active duty with the U.S. armed forces, or the spouse or minor dependent of a veteran or military member. Note: you can use Emergency Medical Assistance (EMA) even if you’re “barred.”

8 U.S.C. §§ 1613, “FIVE YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS FOR FEDERAL MEANS-TESTED PUBLIC BENEFITS,” 1611(b)(1)(A).

## 8. FEDERAL CASH & FOOD BENEFITS

### a. **Supplemental Security Income (SSI):** (Benefits for low-income people who are disabled or at least 65)

To qualify for SSI, you must:



- be defined as a “**qualified**” noncitizen under federal law, **OR**
- meet a **federal exception** (i.e., be an American Indian born in Canada (8 U.S.C. § 1612(a)(2) (G)) or be a noncitizen receiving SSI on the basis of a “very old” application (8 U.S.C. § 1612(a)(2)(H)); **AND**
- meet certain **residency requirements**.

#### SSI residency issues:

#### ●● Noncitizens lawfully and permanently here before welfare reform (8/22/96) ●●

- If you were in the U.S. on **8/22/96** and you were receiving SSI at the time, you can keep getting SSI for as long as you remain elderly or disabled. 8 U.S.C. § 1611(b)(5), (*referring to* 8 U.S.C. § 1612(a)(3)(A)); Pub. L. 105-306 (10/28/98) (NONCITIZEN BENEFIT CLARIFICATION AND OTHER TECHNICAL AMENDMENTS ACT).
- If you were **not** on SSI on **8/22/96**, you can get SSI now **only** if you are a “qualified” noncitizen **AND** you are disabled. 8 U.S.C. § 1612(a)(2)(F).
- Benefits based on age (at least 65) are **not available** to you.



#### ●● Noncitizens arriving or adjusting to LPR status after welfare reform (8/22/96) ●●

- You cannot get SSI if you are an “unqualified” noncitizen. 8 U.S.C. § 1611(a).
- Even if you are a “qualified” noncitizen, you probably **cannot get SSI**.

#### 3 exceptions to ineligibility for SSI if you arrived or adjusted after 8/22/96:

1. If you were granted **refugee, asylee, or withholding** status, you may get SSI for **7 years** after you got that status. 8 U.S.C. §§ 1612(a)(2)(A), 1613(b)(1).
2. If you are a **U.S. veteran** or **active-duty member** of the U.S. armed forces (or the dependent of one), you can get SSI **without time limits** and you are not subject to the 5-year bar. (If you are a Hmong soldier who fought with the CIA during the Vietnam War, you are not a “U.S. veteran,” despite a declaration of Congressional intent to the contrary in the BBA.) Pub. L. 105-33, Title V, Subtitle F, Ch. 4, Subch. A, § 5566 (1997)). 8 U.S.C. §§ 1612(a)(2)(C), 1613 (b)(2).
3. If you have **worked** (or are credited with) **40 work quarters** at Social Security-covered work (work where FICA taxes have been deducted), you can get SSI **without time limits**, but you **are** subject to the 5-year bar. 8 U.S.C. § 1612(a)(2)(B).



**NOTE:** SSI applies **sponsor-deeming** because SSI is a needs-based program. Usually, however, you won't be eligible for SSI anyway, unless you are a veteran or you have worked 40 quarters at Social Security-covered work. In the case of the 40 quarters, you may qualify for SSDI instead of SSI; SSDI does not deem sponsor income.

## Note about “40 work quarters” exception



- ⊛ Only work where FICA taxes have been withheld from pay counts.
- ⊛ Quarters can be attributed from your spouse to you and from you to your minor child. Minor children who are credited with their parents’ quarters can carry them into adulthood.
- ⊛ Any quarters worked after 12/31/96 in which your household received federal “need-based” benefits (AFDC, MFIP, SNAP, SSI, or MA) **cannot be counted** toward the 40 quarters.

8 U.S.C. §§ 1612(a)(2)(B)(ii), 1645.



### **b. SNAP (Supplemental Nutritional Assistance Program, f/k/a Food Stamps)**

Unless sponsor-deeming applies, you can get SNAP **5 years after** gaining permanent legal status if you are “qualified” noncitizen. 8 U.S.C. § 1612(a)(2)(L).

#### **You can get SNAP immediately (with no 5-year waiting period) if you are:**



- ❖ a lawfully present noncitizen who has been in the U.S. since before 8/22/96, and you have been certified disabled by the State Medical Review Team (SMRT) or by Social Security. 8 U.S.C. § 1612(a)(2)(F), 7 U.S.C. § 2012(j)(2).

- ❖ a lawfully-present noncitizen under 18. 8 U.S.C. § 1612(a)(2)(J).



- ❖ a refugee, asylee, or have had your deportation withheld. 8 U.S.C. § 1612(a)(2)(A).



- ❖ a U.S. veteran or active-duty member of the U.S. armed forces, the spouse or surviving un-remarried spouse of a veteran or member, or an unmarried dependent child of a veteran or member. 8 U.S.C. §§ 1612(a)(2)(C), 1613(b)(2).

- ❖ elderly and were “lawfully residing” in the U.S. on 8/22/96 **AND** were 65 or older **on that date**. 8 U.S.C. § 1612(a)(2)(I).



- ❖ Hmong or Highland Laotian. 8 U.S.C. § 1612(a)(2)(K); CM §§ 11.03.06 (12/14), NON-CITIZENS – MFIP FOOD PORTION; and 11.03.09 (2/16), NON-CITIZENS –SNAP/MSA/GA/GRH.

**NOTE:** SNAP benefits are subject to **sponsor-deeming**, but not for minor children.

## 9. STATE AND FEDERAL/STATE BENEFITS



### General requirement: “steps” toward citizenship

- If you are getting state-funded cash or food assistance (including GA, MSA, MFAP, FSS, or state-funded MFIP or DWP), you must take “steps” toward obtaining citizenship.
- You **don’t** have to take such steps if you:



- ➔ have lived in the U.S. lawfully for < 4 years;
- ➔ are ≥ 70; **OR**
- ➔ are living in a nursing home, group home, or similar type of facility.





➤ “Steps” include:



- ✓ Taking citizenship, literacy, or ESL classes, or being on a wait list for ESL or literacy classes;
- ✓ Failing the citizenship test once or twice, or not being able to understand the rights or responsibilities of citizenship; or
- ✓ Filing a citizenship application and waiting for a test or swearing-in date or applying for a test waiver.

MINN. STAT. §§ 256D.05, subd. 8(b); 256J.11, subd. 3. Also CM § 11.03.03 (08/19), NON-CITIZENS – MFIP/DWP CASH.

**“Lawfully residing people”**

Even if you don’t have Lawful Permanent Resident (LPR) status, you may qualify for certain **state-funded** benefits. You are a lawfully residing person if you are one of these or in a similar category:

- a Lawful Temporary Resident or have Temporary Protected Status (TPS);
- an applicant for asylum with employment authorization;
- a U-visa recipient;
- the spouse or child of a U.S. citizen with an approved visa petition and a pending application for adjustment to LPR status;
- someone granted humanitarian Parole;
- in another discretionary classification, like Deferred Enforced Departure (DED), deferred action, stay of deportation, etc.



CM § 11.03.24 (8/19), NON-CITIZENS – LAWFULLY RESIDING PEOPLE. See also MHCP §§ 2.1.2.2.2 (6/1/19), IMMIGRATION STATUS; Appendix H (6/1/17), LAWFULLY PRESENT NONCITIZENS.

**Note about lawfully residing people:**

- 1) **T-Visas:** If you are a victim of trafficking with a T-visa, you are “qualified” and “eligible for benefits to the same extent as a refugee.” CM § 11.03.30 (01/19), NON-CITIZENS – TRAFFICKING VICTIMS.
- 2) **U-Visas:** In the past, if you had a U-visa, you were eligible only for MinnesotaCare. Now, the state Combined Manual has been modified to clarify that you are considered “otherwise lawfully residing” and are eligible for state-funded benefits, including state-funded MFIP or DWP. CM § 11.03.24 (08/19), NON-CITIZENS – LAWFULLY RESIDING PEOPLE.
- 3) **DACA:** If you have Deferred Action for Childhood Arrivals status, you are **not** considered “lawfully residing” and are not currently eligible for cash or food benefits. You **are**, however, eligible for MinnesotaCare. DHS Bulletin #16-21-12 (12/27/16), DHS ANNOUNCES MINNESOTACARE ELIGIBILITY FOR DEFERRED ACTION FOR CHILDHOOD ARRIVALS GRANTEEES. HCPM § 3.2.1.2 (6/1/19), LAWFUL PRESENCE AND DACA.

**a. CASH AND FOOD ASSISTANCE: TANF and Other Programs**

**(i) Minnesota Family Investment Program (MFIP)**



- ✘ MFIP is Minnesota’s TANF (Temporary Assistance for Needy Families) main family cash assistance program. Most noncitizens residing lawfully and permanently in the U.S. who meet criteria are eligible for MFIP, whether you are “qualified” or not. You will probably have to work or look for work in order to get benefits. MINN. STAT. §§ 256J.08, subd. 73; 256J.11, subd. 1(c).
- ✘ If you are not a refugee or asylee and you have some other status (such as a battered immigrant or a diversity visa), you arrived or got your status **after** 8/22/96, and you are not subject to sponsor-deeming, you will have to have your MFIP paid for with state funds, because you are not eligible for federally-funded MFIP during your first 5 years in the U.S. because of the federal “bar.” MINN. STAT. § 256J.11, subd. 3. Then you must take “steps” toward citizenship (see above). *Id.*



## (ii) Diversionary Work Program (DWP)

DWP is a 4-month TANF-funded program you have to participate in instead of MFIP if you are a **new** MFIP applicant or a **former** MFIP recipient and are reapplying after having been off MFIP for at least 12 months. MINN. STAT. § 256J.95, subs. 1, 3. After 4 months of DWP, you will be transferred to MFIP. *Id.* at subd. 12.

## (iii) Family Stabilization Services (FSS)

FSS is a non-TANF, state-funded program providing cash, food, and services to low-income families through a case management model as an alternative to MFIP and DWP. FSS is designed for people who are not making, or are not expected to make, significant progress in MFIP due to barriers to employment. MINN. STAT. § 256J.575, subd. 1.



If you have been in the U.S. < 12 months, you will automatically be placed into FSS instead of MFIP. *Id.* at subd. 3(a)(3). You will also qualify for FSS if you are applying for SSI or SSDI, have an MFIP hardship extension, **or** are ≥ 60. *Id.* at subd. 3(a)(1), (2), and (4). If you have been in the U.S. < 1 year, you must be given ESL opportunities and skills training through FSS for up to 12 months. Then, a case manager will help determine whether you should continue participating in FSS or should switch to MFIP. *Id.* at subd. 3(b).

## MFIP & DWP work plans and ESL



- Most MFIP and DWP recipients have to work.
- Counties may allow you to include ESL in your job search and work plan **if** your spoken language proficiency is low enough, based on standardized testing.
- State law no longer limits the amount of ESL you may receive as an MFIP or DWP recipient.



MINN. STAT. §§ 256J.531, subd. 2; 256J.49, subd. 13(a)(5); 256J.95, subd. 15(c).

**NOTE:** If you came to the U.S. through a family-based petition or to work in a family business, **sponsor-deeming** may affect your eligibility for any one of the 3 family cash programs. MINN. STAT. § 256J.37, subd. 2.

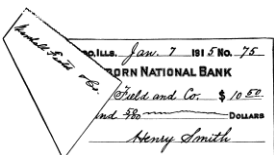
### b. CASH ASSISTANCE: General Assistance (GA)

- \* GA is mostly for adults without dependents who have barriers to work. If you are lawfully living in the U.S. on a permanent basis, or you have a pending application for adjustment, you may get GA if you meet other eligibility criteria.
- \* One eligibility category authorizes GA if you are 18 or older, your primary language is not English, and you are attending high school at least half time.
- \* If you are < 70, in the U.S. ≥ 4 years, and are not living in a facility, you must take “steps” toward citizenship.



MINN. STAT. § 256D.05, subs. 1(a)(12), 8.

### c. CASH ASSISTANCE: Minnesota Supplemental Aid (MSA)



MSA provides a state supplement if you get SSI or would be getting SSI if your income were not so high. If you live in a “shared household,” you are probably not eligible. Immigration rules are the same as those for the SSI program, which means they are very restrictive. If you are not eligible for SSI based on your immigration status, you also are not eligible for MSA.

MINN. STAT. § 256D.425, subd. 1; CM § 20.21 (03/19), MSA ASSISTANCE STANDARDS.



d. **EMERGENCY CASH ASSISTANCE:**  
**Emergency Assistance (EA) and Emergency General Assistance (EGA)**

If you lawfully and permanently live in the U.S., you are eligible for EA and EGA to the same extent (and subject to the same limitations) as U.S. citizens.

**NOTE:** Sponsor-deeming may make you ineligible, but you may qualify for benefits anyway because of the indigence exception. MINN. STAT. §§ 256D.06, subd. 2; 256J.626, subd. 3; CM §§ 15.48.03 (03/15), 16.21.03 (03/15).

e. **CASH – non-need-based: Unemployment Insurance (UI)**

State law says that wage credits for UI benefits are not available unless you were:

- ✓ Lawfully admitted for permanent residence at the time of your employment,
- ✓ Lawfully present for purposes of your employment, **OR**
- ✓ Permanently residing in the U.S. “under color of law” at the time of your employment.



Work you did before you gained legal status does not count toward the UI earnings requirements.

**NOTE:** Because UI is not need-based, **sponsor-deeming** does **not** apply.

MINN. STAT. § 268.085, subd. 12.

f. **FOOD: Minnesota Food Assistance Program (MFAP)**

If you are lawfully residing in the U.S. on a permanent basis, are not on MFIP, and are not eligible for federally-funded SNAP, you may qualify for food benefits through the state-funded MFAP program if you are ≥ **50** years old. MFAP follows federal SNAP regulations, which means sponsor-deeming of income could affect your eligibility. You must take “steps” toward citizenship.



MINN. STAT. § 256D.053.

g. **HEALTH CARE:**

(i) **Medical Assistance (MA)**

MA is potentially available to you if you are a “qualified” noncitizen who:

- is low-income; **AND**
- meets an MA “basis of eligibility” by being:
  - ☞ pregnant;
  - ☞ part of an MFIP household or living with minor children;
  - ☞ < 21;
  - ☞ certified disabled by the State Medical Review Team (SMRT) or Social Security;
  - ☞ ≥ 65; **OR**
  - ☞ ≥ 21, without dependents, and living ≤ 133% of federal poverty guidelines.



**NOTE:** Sponsor-deeming may affect your eligibility, but **NOT** if you are a pregnant woman or a child. See FN 2 for information about the State’s “safety net” policy.”

MINN. STAT. §§ 256B.055, 256B.06, subds. 4, 5; MHCP § 2.2.3.2.1 (6/1/16), SAFETY NET PROVISION.

## Otherwise lawfully residing

If you do not meet the federal definition of “qualified” (see p. 3), you generally are **not eligible** for MA. You specifically are not eligible if you have:



- ☹ a pending application for asylum, withholding, or removal;
- ☹ Deferred Enforced Departure (DED) status;
- ☹ a pending immigration status;
- ☹ Temporary Protected Status (TPS); or
- ☹ a U-Visa.



Wait Time

## Subject to 5-year bar

If you are subject to the “5-year bar” on federal benefits, you cannot get **state-funded MA** during your waiting period, because Minnesota no longer has state-funded MA program, except through the Center for Victims of Torture (see below). However, if you are a **pregnant woman or child**, you can get coverage through CHIP (see below). You are affected by the 5-year waiting period if you are the recipient of a diversity visas (a winner of the immigration “lottery”), or if you came to the U.S. through a family-based petition and your sponsor income is low enough not to make you financially ineligible for the benefit.

**NOTE:** If you are not eligible for MA and your income is low enough, you should be eligible for MinnesotaCare, **unless** you receive **Medicare**.

### MA exception for children and pregnant women:



**Children** who are **lawfully present** in the U.S. (including those who have been paroled into the U.S., have temporary resident status, are under Temporary Protected Status, are Family Unity beneficiaries, have received Deferred Enforced Departure, have applied for asylum, have a U-Visa, or are the spouse or child of a U.S. citizen and have a pending application for adjustment to LPR status) **are eligible for MA**.

**Pregnant women** are eligible for MA benefits during pregnancy and for 60 days after giving birth, **regardless of your immigration status**. Benefits are funded through **CHIP**.

MINN. STAT. § 256B.06, subd. 4(d).

### State-funded MA exception for torture survivors:

Even if you are not eligible for MA, State law allows you to get coverage for “care and rehabilitation” services from a center for victims of torture through a special state-funded MA program. There are no immigration-related requirements for this program; there are also no income or asset limits!

MINN. STAT. § 256B.06, subd. 4(j); MHCP § 2.5.2 (6/1/16), MEDICAL ASSISTANCE FOR PEOPLE RECEIVING SERVICES AT THE CENTER FOR VICTIMS OF TORTURE.



## **(ii) Emergency Medical Assistance (EMA)**

EMA is available to you if you have **an MA basis of eligibility** -- i.e., you are living in a household with minor children; you are pregnant; you are elderly; you have been certified disabled; you are < 21; **OR** you are ≥ 21, live in a household without minor dependents, and have income ≤ 133% FPG.



MINN. STAT. §§ 256B.055, 256B.06.



## EMA is for “Emergency Medical Services”

Federal law defines “emergency medical services” as services required for medical conditions that have acute symptoms of such severity (including severe pain) that the lack of immediate medical attention could reasonably be expected to result in:

- ⊗ placement of your health in serious jeopardy,
- ⊗ serious impairment to your bodily functions, **OR**
- ⊗ serious dysfunction of any of your bodily organs or parts.



8 U.S.C. § 1369(d); 42 U.S.C. § 1396b(v)(3); 42 C.F.R. § 440.255. (NOTE: Federal regulation includes phrase “sudden onset,” which is not included in federal law). See also MHCP § 2.5.3.2 (12/22/16), EMA MEDICAL EMERGENCY.

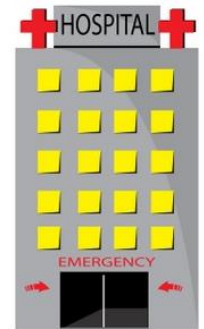


EMA does **not cover** most chronic conditions and home-based services. The EMA law significantly limits services, as well as sites where services are provided. You will be covered for chemotherapy and kidney dialysis. But you may not be covered for insulin, personal care assistant (PCA) services, home health care, mental health care or medications, and certain other services and treatments.



The EMA statute says that EMA is only for services:

- delivered **in an emergency room or ambulance** that are “directly related” to treatment of your emergency medical condition;
- delivered on an **in-patient basis in a hospital** following your admission from the emergency room for an acute emergency condition; or
- for **follow-up and “directly related” to the original services** that were provided to treat your emergency medical condition.



MINN. STAT. § 256B.06, subd. 4(f)-(h).



DHS allows “**limited exceptions**” for some care and treatment provided in other settings, “without which [your] **cardiovascular or respiratory condition**” would be affected (i.e., damage would reasonably be expected to occur to your health, bodily functions, or bodily organs or parts). EMA **will cover** services for you if you:

- had an emergency medical condition covered by EMA and were discharged to a nursing facility or home/community setting **directly from the ER** or an in-patient hospitalization;
- need **continuing treatment** for an emergency medical condition requiring your placement in a nursing facility or home/community setting; **OR**
- need treatment and services from a nursing facility or home/community setting that are to directly prevent your **cardiovascular or respiratory** condition from becoming an emergency medical condition **within 48 hours**.



DHS MHCP Provider Manual, EMA Section, rev. 09/06/2018.

**NOTE:** DHS has issued some sample EMA coverage scenarios. They are available at:

[http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&DocName=dhs16\\_168776#](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&DocName=dhs16_168776#).





### (iii) MinnesotaCare (MNCare)

MinnesotaCare is available to you if you meet income guidelines and:

- ✧ are a “qualified” noncitizen, **OR**
- ✧ are otherwise residing lawfully in the U.S. on a permanent basis.

MINN. STAT. § 256L.04, subd. 10.



**NOTE:** If you are a **DACA** recipient, you are eligible. Minn. DHS Bulletin # 16-21-12 (12/27/16), DHS ANNOUNCES MINNESOTA CARE ELIGIBILITY FOR DEFERRED ACTION FOR CHILDHOOD ARRIVALS GRANTEEES.

**NOTE:** **Sponsor income is not deemed to you for MNCare.** MINN. SESSION LAW 2013, Ch. 108, Art 1, § 68, repealing MINN. STAT. § 256L.04, subd. 10a.

**NOTE:** If you are subject to sponsor-deeming, you may qualify for a special safety net program. You might normally be ineligible for MA because the income of your sponsor counts and is too high. At the same time, you may be ineligible for MNCare because your countable income is too low (under 133% FPG), since MNCare does **not** count your sponsor’s income. In such a case, you should qualify for either MA or MNCare, depending on your income. See FN 2; MHCP §§ 2.2.3.2.1 (6/1/16), 2.2.3.3 (12/1/18).

## 10. OTHER BENEFITS

Some benefits are available without regard to your immigration status. These include:

- ❖ **Women, Infants and Children (WIC) benefits.** States receive federal grants through WIC to provide supplemental foods, health care referrals, and nutritional education to you if you are pregnant or in your post-partum period. WIC also provides the same food and services to your infant and children ≤ 5 when they are at nutritional risk. Your income must be ≤ 185% FPG. Funding is discretionary. Benefits are first-come, first-served.

42 U.S.C. § 1786, SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

- ❖ **School breakfast and lunch program benefits.** 8 U.S.C. § 1615(a).
- ❖ **Head Start program benefits.** 42 U.S.C. § 9840.



- ❖ **K-12 free public education.** PLYLER V. DOE, 457 U.S. 202 (1982). (By a 5-4 vote, the U.S. Supreme Court struck down a Texas law authorizing school districts to deny admission to children not “legally admitted” into the U.S. because it violated the Equal Protection Clause of the 4<sup>th</sup> Amendment).

- ❖ **Public health immunizations; testing for and treatment of symptoms of communicable diseases at public health.** 8 U.S.C. § 1611(b)(1)(C).

- ❖ **Services from soup kitchens, crisis counseling and intervention programs, or short-term shelter.** 8 U.S.C. § 1611(b)(1)(D).



- ❖ **Basic Sliding Fee Child Care assistance for your U.S. citizen children.** MDHS CHILD CARE ASSISTANCE PROGRAM POLICY MANUAL, § 4.15 (10/18) says, “The child is the beneficiary of child care assistance benefits. \* \* \*. [T]he county must verify only the citizenship and immigration status of the child for whom child care assistance is sought.”

## 11. CONSIDERATIONS FOR MIXED-STATUS HOUSEHOLDS

If you are unauthorized or have overstayed a visa, or you are the LPR or U.S. citizen spouse of a person without documentation, you may (understandably) be leery of applying for benefits for your U.S. citizen children or family members. Protections are in place to keep you from being reported to Immigration.

- **DO** tell the agency you are not eligible for benefits yourself because of your immigration status. Tell the agency you are applying for benefits only for your eligible household members. (The County should stop asking about your immigration status at that point).
- **DO NOT** provide details about your own immigration status to the County.
- **DO NOT** provide your own Social Security number, **unless** it is to verify your income for a benefit for which household income is relevant.
- **DO** provide proof of your income, even if you have used a fake Social Security number or someone else's Social Security number to work. The County is not supposed to look beyond the income information.
- **DO** verify your pregnancy, if you are seeking prenatal care or medical care for labor and delivery.

dos  
&  
don'ts



## 12. CONSIDERATIONS IF YOU HOPE SOME DAY TO ADJUST YOUR STATUS, EXTEND A VISA, OR HELP A RELATIVE IMMIGRATE TO THE U.S.

- ▶ **CONTACT YOUR LOCAL LEGAL AID OFFICE** for information or advice on which benefits are likely to be considered in the admissibility process (i.e., which benefits are “safe” to receive).

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