



GOVERNMENT BENEFITS FOR NONCITIZENS



June 2024



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1. WELFARE REFORM



Welfare Reform changes (1996):



- ❖ **Before Welfare Reform**, most people were eligible for government benefits if they were permanently residing in the U.S. “under color of law,” meaning the government knew they were here and was not taking steps to deport them.
- ❖ **Welfare Reform** changed that. The law, enacted on **8/22/96**, created all sorts of **complicated categories for noncitizens**, defining some noncitizens as “qualified” for federal benefits and making others ineligible for SSI and Food Stamps. It also gave refugees, asylees, and people granted withholding of deportation a 5-year window to get SSI and Food Stamps. It gave some noncitizens a 5-year waiting period (called a “bar”) before they could get federally-funded benefits. PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (**PRWORA**), PUB. L. 104-193; 8 U.S.C. §§1611, 1612, 1613.
- ❖ **Welfare Reform** also required certain agencies to file quarterly reports with Immigration on people they “knew” to be “unlawfully” in the 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 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, the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA) added “battered noncitizen” to the list of “qualified” noncitizens (see p. 4). 8 U.S.C. §1182(a)(4).
- The Balanced Budget Act of 1997 (**BBA**) 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) eligibility for refugees and asylees from 5 to 7 years; expanded the group of “qualified” noncitizens; and carved out an exception to SSI and Medicaid ineligibility for “certain Indians” born in Canada. 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 Stamps to certain groups of lawfully-residing noncitizens. It 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 immediate eligibility for Food Stamps to all “qualified” children and to people certified disabled who had been lawfully residing in the U.S. on 8/22/96. It made other “qualified” noncitizens eligible for Food Stamps after they had lived in “qualified” status at least 5 years, effectively eliminating the 7-year “window” of Food Stamp eligibility. 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 broadened the list of “qualified” noncitizens. *See, e.g.*, DEPT. OF DEFENSE APPROPRIATIONS ACT OF 2010, PUB. L. 111-118, §8120, 12/19/09; 8 U.S.C. §1101(a)(27); PUB. L. 118-42, Tit II, §29(f)(1)(a) (3/9/24).



2. DEFINITIONS

“QUALIFIED” noncitizens



You are a “Qualified” noncitizen if you are someone:

- **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.* See also Minn. DHS Combined Manual §31.09, LAWFUL PERMANENT RESIDENTS, 05/2024.¹
- **granted “refugee”** status. 8 U.S.C. §§1641(b)(3), *ref. to* 8 U.S.C. §§1157; 1613(b)(1)(A); Minn. DHS CM §31.01.24, REFUGEES, 05/2024.
- **treated as a refugee because you:**
 - ▶ are a **Cuban or Haitian entrant**. See, e.g., 8 U.S.C. §§1612(a)(2)(A)(iv), 1613(b)(1)(D); https://www.acf.hhs.gov/sites/default/files/documents/orr/orr_fact_sheet_cuban_haitian_entrant.pdf; Minn. DHS CM §31.01.12 (CUBAN ENTRANTS, 05/2024), 31.01.15 (HAITIAN ENTRANTS, 05/2024).
 - ▶ are **Amerasian** from the Vietnam War era. 8 U.S.C. §§1612(a)(2)(A)(v); 1613(b)(1)(E); 1641(b)(7); Minn. DHS CM §31.01.06, AMERASIANS, 05/2024.
 - ▶ are an **Iraqi or Afghan Special Immigrant**. DEPARTMENT OF DEFENSE APPROPRIATION ACT OF 2010, Pub. L. 111-118 (12/19/09), §8120(a); 8 U.S.C. §1101(a)(27); Minn. DHS CM §§31.01.18, IRAQI SPECIAL IMMIGRANT VISA HOLDERS, 05/2024; 31.01.03, AFGHAN SPECIAL IMMIGRANT VISA HOLDERS, 05/2024
 - ▶ were **evacuated from Afghanistan** by the U.S. military between 7/31/21 and 9/30/23 and granted humanitarian parole (until your parole ends). AFGHANISTAN SUPPLEMENTAL APPROPRIATIONS ACT, Pub. L. 117-103, Tit. V, §2502(a)(1)(A); Minn. DHS CM §31.01.01, AFGHAN HUMANITARIAN PAROLEES, 05/2024.
 - ▶ are the **immediate relative of an evacuee from Afghanistan**, described above, and paroled after 9/30/22. AFGHANISTAN SUPPLEMENTAL APPROPRIATIONS ACT, Pub. L. 117-103, Tit. V, §2502(a)(1)(B); Minn. DHS CM §31.01.01, AFGHAN HUMANITARIAN PAROLEES, 05/2024.
 - ▶ were **paroled from Ukraine** between 2/24/22 and 9/30/23 or are the immediate relative of such a person. ADDITIONAL UKRAINIAN SUPPLEMENTAL APPROPRIATIONS ACT, Pub. L. 117-128, Tit. IV, Sec. 401(b)(1); Minn. DHS CM §31.01.27, UKRAINIAN HUMANITARIAN PAROLEES, 05/2024.
 - ▶ are a **citizen of the Compact of Free Association (COFA)** (i.e., **from Palau, Micronesia, or the Marshall Islands**). Pub. L. 116-260, Div. CC, Tit. II, §208(c), 12/27/2020, amending 8 U.S.C. §1641(b)(8), making COFA members eligible for MA; and Pub. L. 118-42, Tit. II, § 209(f)(1), 3/9/2024, amending 8 U.S.C. §§1612, 1613(b)(3), and 1641(b)(8), applying “Qualified Noncitizen” to COFA members for *all* federal public benefits.²
 - ▶ were **granted a T-Visa** (for severe trafficking). 8 U.S.C. §1641(c)(4), *ref. to* 8 U.S.C. §1101(a)(15)(T); Minn. DHS CM §31.01.21, TRAFFICKING VICTIMS, 05/2024.
 - ▶ were **born in Canada** and are a member of a **federally-recognized American Indian Tribe**. DHS CM §31.15, AMERICAN INDIANS BORN IN CANADA WHO ARE MEMBERS OF A FEDERALLY-RECOGNIZED AMERICAN INDIAN TRIBE, 05/2024.
- **granted asylum**. 8 U.S.C. §§1641(b)(2), *ref. to* 8 U.S.C. §1158; 1613(b)(1)(B); Minn. DHS CM §31.1.09, ASYLEES, 05/2024.

¹ **NOTE:** All sections of the DHS Combined Manual (CM) and MINNESOTA HEALTH CARE PROGRAMS ELIGIBILITY POLICY MANUAL (MHCP), as well as DHS fact sheets, bulletins, and “eDocs,” are found at www.dhs.state.mn.us

² The Minnesota DHS Combined Manual will be updated soon to reflect the legal changes affecting members of COFA. The current CM provision, §31.06.01, CITIZENS OF MICRONESIA, THE MARSHALL ISLANDS, OR PALAU, 05/2024, does not accurately reflect the current law.

- **paroled** into the U.S. for at least one year. 8 U.S.C. §1641(b)(4), *ref. to* 8 U.S.C. §1182(d)(5); Minn. DHS CM §31.21, PAROLED INTO THE UNITED STATES FOR ONE YEAR OR MORE, 05/2024.
- **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 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*); Minn. DHS CM §31.12, WITHHOLDING OF REMOVAL/DEPORTATION WITHHELD, 05/2024.
- **granted “battered immigrant”** status (*see below*). Minn. DHS CM §31.18, BATTERED SPOUSES, CHILDREN, AND PARENTS OF BATTERED CHILDREN, 05/2024.

“UNQUALIFIED” noncitizens

You are an “unqualified” noncitizen if you:



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

Minn. DHS CM §§31.27 (PEOPLE WHO ARE UNDOCUMENTED, 05/2024); 31.03.12 (APPLICANTS FOR LAWFUL PERMANENT RESIDENT STATUS, 05/2024); 31.03.01 (ASYLUM APPLICANTS, 05/2024), 31.03.03 (DEFERRED ACTION, 05/2024); 31.03.06 (DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), 05/2024); 31.03.09 (DEFERRED ENFORCED DEPARTURE (DED), 05/2024); 31.03.12, APPLICANTS FOR LAWFUL PERMANENT RESIDENCE, 05/2024); 31.03.15, PAROLED INTO THE UNITED STATES FOR LESS THAN ONE YEAR, 05/2024); 31.03.18 (SPECIAL IMMIGRANT JUVENILE STATUS, 05/2024), 31.03.21 (TEMPORARY PROTECTED STATUS, 05/2024); 31.06 (NON-IMMIGRANTS, 05/2024); 31.27.01 (STAY OF DEPORTATION/ORDERS OF SUPERVISION, 05/2024).

“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, have **petitioned for adjustment of status under the Violence Against Women Act (VAWA)**, **AND** have received a *prima facie* notice of relief under VAWA; **OR**

→ have been ordered removed from the U.S., be 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). See MINN. STAT. §256J.08, subd. 73(8), (9), inclusion of battered noncitizens as “qualified noncitizens” for state-funded MFIP; Minn. DHS CM §31.18, BATTERED SPOUSES, CHILDREN, AND PARENTS OF BATTERED CHILDREN, 05/2024.

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 has been in place since the day after the **I-864 Affidavit of Support** was introduced on 12/19/97. 62 F.R. 54346, Vol. 62, No. 202, 10/20/97.
- Deeming applies **ONLY** if you are a family-based immigrant (who arrived through a petition from a family member, the most common way people immigrate to the U.S.), **OR** if you are coming to work in business owned by your relative. 8 U.S.C. §1183a; Minn. DHS CM §31.33, SPONSOR DEEMING, 05/2024.
- Since welfare reform, income from sponsors must be “deemed” to sponsored noncitizens in programs where “**federal means-tested public benefits**” are issued. 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, but Welfare Reform lists some benefits that are **not** considered “federal means-tested public benefits.” *Id.* at Subtitle A, §403.
- “**Federal means-tested public benefits**” include family cash assistance provided through Temporary Assistance for Needy Families (TANF), which in Minnesota includes **MFIP** (Minnesota Family Investment Program) and **DWP** (Diversionary Work Program); 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).
- **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**; Public Health **immunizations** and testing for and treatment of communicable diseases; **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).



OMB No. 1615-0075; Expires 09/30/2012
Department of Homeland Security
U.S. Citizenship and Immigration Services
I-864, Affidavit of Support
Under Section 213A of the Act

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:

the Petitioner

a Joint Sponsor 2

the Substitute Sponsor

5% Owner

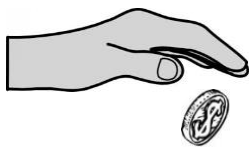
This I-864:

does not meet the requirements of section 213A



- 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. Sponsor income is deemed in state-funded programs including **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); Minn. DHS CM §31.33, SPONSOR DEEMING, 05/2024. For **MA**, income and assets are deemed only to you, the sponsored noncitizen, not to your children or other dependents. But **MFIP** uses a household concept, so even U.S. citizens could be affected by deeming. For example, income attributed to you, the noncitizen parent, will be considered 100% available to your U.S. citizen spouse and child.

- Your sponsor's family size and fixed debts are irrelevant for all programs but **SNAP**.
- You generally have the burden of proving your sponsor has little income.
- 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. (Or your sponsor dies.)



- Divorce (from your sponsor or a relative of your sponsor) has 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 your sponsor and you. The government can sue your sponsor if it gives you benefits, and you can sue your sponsor for not supporting you. 8 U.S.C. §§1183a, 1631, 1632; 8 C.F.R. §213a.2(e)(2)(i); also DHS CM, §31.33, SPONSOR DEEMING, 05/2024.
- 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 in mixed households.

EXCEPTIONS to Deeming

A. INDIGENCE

- ⊗ Sponsor-deeming will **NOT** apply to food or cash benefits if the welfare agency determines that, because of your sponsor's failure to support you, you are without food and shelter. See USDA-FNS EO Guidance Document # FNS-GD-2009-0021 (3/6/09), SNAP – WHETHER VERIFICATION OF SPONSOR'S INCOME IS REQUIRED TO DETERMINE INDIGENCE; MINN. DHS CM §31.33, SPONSOR DEEMING, 05/2024.
- ⊗ Sponsor-deeming will **NOT** apply to MA if you need to be in a facility, if the placement is jeopardized by your sponsor's failure or inability to provide support, or by your inability to locate your sponsor. MHCP §2.3.3.3.2.1.2, SPONSOR INCOME DEEMING, 9/1/22.
- ⊗ Agencies can provide benefits under this exception for 12 months, with the possibility of additional 12-month renewals. 8 U.S.C. §1631(e); DHS CM §31.33, SPONSOR DEEMING, 05/24.



B. BATTERED SPOUSE OR CHILD

- ⊗ Sponsor-deeming will **NOT** apply to cash or food benefits for 12 months if you provide a statement or document that 1) you have (or your child has) been battered or subjected to

extreme cruelty by your spouse or parent, 2) you are no longer living with your batterer, **AND** 3) the battery or cruelty you experienced is substantially connected to your need for benefits.



⊖ After 12 months, the exception will end unless 1) the batterer was your sponsor, 2) you still need benefits because of the battery or cruelty, **AND** 3) the battery or cruelty has been recognized in a court order (like an Order for Protection) or in an Immigration document.

⊖ The county may require you to provide a statement or documentation to support allegations of abuse. 8 U.S.C. §1631(f); DHS CM §31.33, SPONSOR DEEMING, 05/2024.

Note: Sponsor-deeming **does not apply** to people whose sponsorship has been “deferred” by USCIS when their immigration status is changed to Battered Noncitizen. MHCP §2.2.3.2.1, SPONSOR DEEMING, 9/1/22.

BENEFITS subject to sponsor-deeming:

If your sponsor signed an I-864, deeming applies to you for these programs:

✓ **TANF family cash assistance:**

- ★ **MFIP** (MINN. STAT. §256J.37, subd. 2)
- ★ **DWP** (MINN. STAT. §256J.95, subd. 9)
- ★ **FSS** (MINN. STAT. §256J.575)



✓ **Non-family cash or housing assistance:**

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



✓ **Cash assistance if you are disabled or at least 65 years old:**

- ★ **SSI** (8 U.S.C. §1631(a))



✓ **Food benefits:**

- ★ **SNAP** (7 U.S.C. §2014)
- ★ **MFAP** (MINN. STAT. §256D.053, subd. 3(b))



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).



✓ **Health care benefits:**

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



NOTE: Deeming does NOT apply to you for MA if you are pregnant or a child under 21.

MINN. STAT. §256B.06, subd. 5.





Sponsor-deeming does NOT apply to these benefits:

☒ **Cash:**

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

☒ **Food:**

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

☒ **Healthcare:**

- ▶ **MA** for pregnant noncitizens and children under 21; **MA** for noncitizens who need placement in a facility, where placement is jeopardized by the sponsor’s failure to provide support or where the sponsor cannot be located;³ **MA** in “safety net” situations⁴
- ▶ **MNCare** (MinnesotaCare) ▶ **EMA** (Emergency Medical Assistance)
- ▶ **Medicare** ▶ Public health **immunizations** & testing for and treatment of communicable diseases

☒ **Housing:**

- ▶ All federal public and subsidized **housing** programs

☒ **Education:**

- ▶ All **education** assistance

☒ **Child care:**

- ▶ **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; DHS CM § 31.33, SPONSOR DEEMING, 05/2024; MHCP §§ 2.2.3.2.1, SPONSOR DEEMING, 9/1/22; and 2.5.2.3, MA-CVT FINANCIAL ELIGIBILITY, 6/1/16.



In family cash programs, there is special 3-year deeming:

- Deeming as described above (under the I-864) applies **only** if you came to the U.S. through a relative’s petition or to work in a relative’s business.
- BUT, state law allows a *different* form of limited (3-year) deeming in MFIP, DWP, and FSS. It applies only if you came to the U.S. through means *other than* a relative petition (such as a diversity visa). It does **NOT** apply to refugees or asylees. There are no exceptions for indigence or domestic violence, but this deeming 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); DHS CM §31.33, SPONSOR DEEMING, 05/2024.

³ MHCP § 2.3.3.3.2.1.2, MA-ABD SPONSOR INCOME DEEMING, 9/1/22.

⁴ Sponsor income is problematic because MA counts your sponsor’s income but MinnesotaCare doesn’t. You may be **over-income** for MA due to the counting of your sponsor’s income but **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 remedy the problem, the State created a “**safety net**” policy. If your projected annual income (PAI) is under 100% FPG without considering sponsor income, you get MA; if your PAI is 101%-132% FPG without considering sponsor income, you get MinnesotaCare. MHCP §2.2.3.3, INCOME LIMIT: SAFETY NET PROVISION, 12/1/18.



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; DHS CM §§31.30.01 (VERIFICATIONS – WHEN TO RUN SAVE, 05/2024), 31.30.03 (VERIFICATIONS – HOW TO RUN SAVE, 05/2024).



5. REPORTING TO IMMIGRATION

Who Must Report?

- Agencies that receive TANF funds (i.e., counties administering MFIP and DWP). 42 U.S.C. §611a.
- Agencies that administer SNAP (i.e., county welfare agencies). 7 U.S.C. §2020(e)(15).
- 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.

What Must Be Reported?

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

Reporting in Minnesota

After reporting was included in Welfare Reform, Minnesota DHS first issued a reporting policy for county agencies on 4/1/99. It later issued a clarifying bulletin, and then incorporated the protocols in the State manual. The reporting protocols narrowly interpret federal requirements.⁵

The reporting protocols have required county agencies to:



Shhhhh!

- ✓ report to MN DHS, **not to Immigration**. MN DHS may report to Immigration, but **only** after 1st 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 individuals applying for prenatal care, or parents who are ineligible themselves but are applying for benefits for their U.S. citizen children.
- ✓ stop asking about your immigration status when you declare you are not willing or not able to verify your status.
- ✓ interpret "knowledge" of your "unlawful presence" very narrowly. This means the county agency can't "know" you're here unlawfully unless it sees a valid order for deportation/removal **or** you sign a form specifically authorizing the agency to contact USCIS to verify your status.
- ✓ comply strictly with data privacy laws when disclosing immigration information. You must sign a special release to authorize the county agency to contact Immigration.

We believe MN DHS has not reported anyone to Immigration since the policy was first published in April 1999.



⁵ The protocols previously were in the Combined Manual at §11.03.27.03, PROTOCOLS FOR REPORTING UNDOCUMENTED PEOPLE, 12/14. DHS recently archived that provision after creating Chapter 31 as the noncitizen section in May 2024. DHS has since indicated that a new version of the reporting protocols will be added to Chapter 31 of the CM in coming months.

PUBLIC CHARGE



A “public charge” is someone the Government believes is a burden on society. USCIS uses a **test** to decide if you are likely to depend on government benefits and not be self-sufficient (i.e., you will be a “public charge”).

“Public charge” has been part of immigration law for over 100 years. The test is used **only** to determine who may enter the U.S., reenter the U.S., get a green card, or extend or change a visa. It is **not** used to determine whether you may become a citizen or renew a green card or TPS or DACA status. And it is **not** generally used to determine if someone should be deported.

Between 2018 and 2022, a lot happened after the Trump Administration put a rule in place that seemed to have broad implications for noncitizens and their ability to come to the U.S. That rule is now **gone**. What is in place instead is a new rule, which took effect **12/23/22**.

BASICS OF PUBLIC CHARGE:



- ✓ You may be subject to public charge scrutiny *only* when you are seeking:
 - **admission** to the U.S. (or you reenter the U.S. after having been away at least 6 months); or
 - **adjustment to LPR** status (i.e., applying for a green card).
- ✓ Public charge is **not** an issue when you apply for citizenship or to renew a green card, DACA, or TPS.
- ✓ USCIS can determine you are a public charge if you are “**primarily depending**” on **cash assistance (MFIP, GA or SSI)** for your “**income maintenance**,” **OR** if you receive MA for **long-term nursing home care**. Benefits like regular MA, food assistance, and housing assistance are **not** considered.
- ✓ Reliance on cash assistance for subsistence, or reliance on MA for long-term nursing home care, are just **factors** in deciding if you are a public charge. Immigration will look at the “totality” of your circumstances. Often, you can overcome a public charge determination with an Affidavit of Support (I-864).
- ✓ Benefits you receive for your dependents **are not considered** in determining if **you** are a public charge.
- ✓ Benefits you received while you were in an **exempt status** also do not count. There are **29 categories of exempt statuses under the new rule!** Exempt statuses included **refugees and asylees**.
- ✓ There are a many other benefits that **are not considered** for public charge. In general, **most non-citizens who qualify for public assistance are not going to be subject to public charge scrutiny**.

“FIELD GUIDANCE ON DEPORTABILITY AND INADMISSIBILITY ON PUBLIC CHARGE GROUNDS,” F.R. 64, No. 101, 28689-28693 (3/26/99) (in effect until 12/23/22); and 87 FR No. 174 (9/9/22), 55472-55639 (in effect since 12/23/22). See also DHS CM §31.42, PUBLIC CHARGE, 05/2024.

7. FIVE-YEAR BAR (waiting period)



The Welfare Reform law passed almost 30 years ago 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 if you are a refugee, asylee, or citizen of COFA; if you are 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 child of a veteran or military member. Note: you can use Emergency Medical Assistance (EMA) or MinnesotaCare during this 5-year waiting period.

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. Refugee Cash Assistance

- You can get RCA, a federal benefit, if you are a refugee or asylee (or treated like a refugee asylee) and you are not eligible for SSI or MFIP. RCA is available for up to 12 months after you receive your grant of asylum or refuge. Assistance units consist of single adults or married couples without minor children. DHS CM §30.03.03, RCA ASSISTANCE UNITS, [9/2022](#). Grant standards are much higher than for GA; they are the same as MFIP-plus-the-Housing Assistance Grant (i.e., \$515 for 1 and \$721 for 2). DHS CM §30.03.06, RCA ASSISTANCE STANDARDS, [10/2023](#).
- Local resettlement agencies generally administer RCA in the metro area and in Olmsted county. If you live in another county, or you don't have a connection to those agencies, you can apply at your county welfare agency. DHS CM §30.03.01, PROCESSING RCA APPLICATIONS, [05/2024](#).
- To continue getting RCA, you must accept all offers of "suitable" employment and you can't attend school full-time, quit a job considered "suitable," or be enrolled in the "Matching Grant" program.⁶ DHS CM §30.03, REFUGEE CASH ASSISTANCE, [05/2024](#). In general, RCA functions much like MFIP does. DHS CM §§30.03.09, DETERMINING RCA GROSS INCOME, [10/2023](#); 30.03.12, RCA ASSET LIMITS, [01/2017](#); 30.03.15, RCA BUDGETING, [12/2016](#); 30.03.18, RCA OVERPAYMENTS AND UNDERPAYMENTS, [08/2020](#); 30.24, RCA/RES APPEALS ([09/2022](#)).

b. 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. §612(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 in the U.S. on **8/22/96** and **not** on SSI then, 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).

**BUT – EVEN IF YOU'RE A "QUALIFIED" NONCITIZEN,
YOU PROBABLY CAN'T GET SSI!**

⁶ Matching Grant (MG) is a federal program funded through the Office of Refugee Resettlement (ORR) and administered by local resettlement agencies. It is available within 8 months of arrival in the U.S. You are not eligible for any other cash assistance programs while enrolled in MG but you can get SNAP and MA. DHS CM §29.39, THE MATCHING GRANT PROGRAM, [10/2023](#).

FOUR 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 citizen of **COFA** (from Palau, the Marshall Islands, or the Federated States of Micronesia), you can get SSI **without time limits** and you are **not** subject to the 5-year bar. Pub. L. 118-42, Tit. II, §29(f)(1)(a).
3. If you are a **U.S. VETERAN** or on **ACTIVE DUTY** with the U.S. armed forces (or you are a dependent of someone in that category), 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 Balanced Budget Act of 1997). 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).
4. If you are a **WORKER** or the spouse or child of a worker credited with **40 work quarters** at Social Security-covered work (where FICA taxes have been deducted), you can get SSI **without time limits**, but you **are** subject to the 5-year waiting period. 8 U.S.C. §1612(a)(2)(B).



NOTE: The SSI program **deems sponsor income** because SSI is a needs-based program. However, if you're otherwise subject to deeming, you probably wouldn't be eligible for SSI anyway, unless you are a veteran or have worked 40 quarters at Social Security-covered work. In the case of the 40 quarters, you may qualify for Social Security Disability Insurance (SSDI), which is not need-based and 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 (without having to wait 5 years) if you:

- ✓ are an American Indian born in Canada. 8 U.S.C. §1612 (G). **OR**
- ✓ are a “**qualified**” noncitizen **AND** you:



❖ have been in the U.S. since before 8/22/96 and are 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).

❖ are **< 18**. 8 U.S.C. §1612(a)(2)(J).



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





- ❖ are 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).
- ❖ are a citizen of **COFA** (from Palau, the Marshall Islands, or the Federated States of Micronesia). P.L. 118-142, Tit. II, §29(f)(1)(a).



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



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 a lawful permanent resident (LPR) and 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.
- ✓ Having failed the citizenship test twice, or being unable to understand citizenship rights/responsibilities.
- ✓ Filing a citizenship application or test waiver, or waiting for a testing- or swearing-in date.

MINN. STAT. §§ 256D.05, subd. 8(b); 256J.11, subd. 3. Also DHS CM §31.09, LAWFUL PERMANENT RESIDENTS (05/2024).

“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)**. Minn. DHS CM §31.03.21, TEMPORARY PROTECTED STATUS (TPS), (05/2024).
- An **applicant for asylum** (you no longer need a work permit to get cash or food benefits). Minn. DHS CM §31.03.01, ASYLUM APPLICANTS, 05/24.
- A **U-visa recipient** **or** someone **granted humanitarian parole**. Minn. DHS CM §§11.03.27.06, U-VISA HOLDERS, 03/2024; 31.01.01, AFGHAN HUMANITARIAN PAROLEES, 05/2024; 31.01.27, UKRAINIAN HUMANITARIAN PAROLEES, 05/2024; 31.03.15, PAROLED INTO THE UNITED STATES FOR LESS THAN ONE YEAR, 05/2024; 31.21, PAROLED INTO THE UNITED STATES FOR ONE YEAR OR MORE, 05/2024.
- The **spouse or child of a U.S. citizen** with an approved visa petition and a **pending application** for adjustment to LPR status. Minn. DHS CM §31.03.12, APPLICANTS FOR LAWFUL PERMANENT RESIDENT STATUS, 05/2024.
- A recipient of Deferred Action for Childhood Arrivals (**DACA**). Minn. DHS CM §31.03.06, DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), 05/2024.
- In another discretionary classification, such as **Deferred Enforced Departure (DED)**, deferred action, **stay of deportation**, etc. Minn. DHS CM §§31.03.09, DEFERRED ENFORCED DEPARTURE (DED), 05/2024; 31.27.01, STAY OF DEPORTATION/ORDERS OF SUPERVISION, 05/2024.
- Someone with **Special Immigrant Juvenile Status**. Minn. DHS CM §31.03.18, SPECIAL IMMIGRANT JUVENILE STATUS, 05/2024.



[More about lawfully residing people:](#)

- 1) **T-Visas:** If you are a victim of severe trafficking with a T-visa, you are qualified and eligible for benefits to the same extent as a refugee. 8 U.S.C. §1641(c)(4); DHS CM §31.09, LAWFUL PERMANENT RESIDENTS, [05/2024](#).
- 2) **U-Visas:** Although “otherwise lawfully residing,” U-Visa recipients were not eligible for state-funded cash or food benefits (such as MFIP, DWP, FSS, and GA) in the past because they are considered to be “nonimmigrants,” and there was a provision in state law making nonimmigrants ineligible for MFIP and GA. **THAT CHANGED MARCH 1, 2024. U-VISA RECIPIENTS ARE NOW ELIGIBLE FOR STATE-FUNDED CASH BENEFITS!** LAWS 2023, c. 70, Art. 10, §44, amending MINN. STAT. §256J.11, subd. 1(d).⁷ U-Visa recipients remain eligible for MNCare. HCPM Appendix H, LAWFULLY PRESENT NONCITIZENS, [3/1/2023](#).
- 3) **DACA:** If you have Deferred Action for Childhood Arrivals status, you are eligible for cash benefits (MFIP, DWP, FSS, GA). DHS CM §31.03.06, DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), [05/2024](#). You are also eligible for MinnesotaCare. HCPM §3.2.1.2, LAWFUL PRESENCE AND DACA, [9/1/22](#). If you are on MFIP, you can get MFIP food benefits. BUT, since stand-alone food benefits (MFAP) are only available to those 50 or older, DACA recipients who aren't on MFIP generally will not qualify.

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) primary 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** but within the last 5 years, and you are not subject to sponsor-deeming, you will have to have your MFIP paid for with state funds. 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. You will have to take “steps” toward citizenship (see above). *Id.*



(ii) Diversionary Work Program (DWP)

DWP is a 4-month TANF-funded program most people have to participate in instead of MFIP. (It is for **new** MFIP applicants and **former** MFIP recipients who are reapplying after having been off MFIP at least 12 months.) MINN. STAT. §256J.95, subds. 1, 3. After 4 months, you will be eligible to transfer to MFIP. *Id.* at subd. 12. **NOTE: The DWP program will no END 3/1/26.** LAWS 2023, c. 70, ART. 10, §98(c).

(iii) Family Stabilization Services (FSS)



FSS is a state-funded non-TANF program providing cash, food, and services to low-income families through a case management model as an alternative to MFIP/DWP. It is 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 should automatically be placed into FSS instead of MFIP. *Id.* at subd. 3(a)(3). You can also get FSS if you are applying for SSI or SSDI, qualify for 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

⁷ The current DHS CM reference regarding U-Visa holders is DHS CM §11.03.27.06, U-VISA HOLDERS, [03/2024](#). Later this summer, the U-Visa section of the Manual will be updated and moved to Chapter 31.

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.



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 of the need-based 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 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 an LPR who is < 70, in the U.S. ≥ 4 years, and not living in a facility, you must take “steps” toward citizenship.

MINN. STAT. §256D.05, subds. 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 for the SSI program, which means they are **very restrictive**. If you are not eligible for SSI based on your immigration status, you will not be eligible for MSA either.

MINN. STAT. §256D.425, subd. 1; DHS CM §20.21 (04/24), 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: While sponsor-deeming could make you ineligible, most counties look only at what funds are actually and immediately available to you when determining your eligibility for emergency aid. MINN. STAT. §§256D.06, subd. 2; 256J.626, subd. 3; DHS CM §§15.48.03, WHOSE ASSETS TO CONSIDER, 05/2024; 31.33, SPONSOR DEEMING, 05/2024.

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 lawfully reside in the U.S. permanently, 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. If you are an LPR, 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:

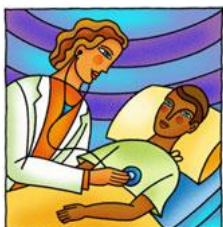
- is low-income; **AND**
- meets an MA “basis of eligibility” by being:
 - ☞ pregnant.
 - ☞ part of an MFIP household or living with minor children.
 - ☞ < 21.
 - ☞ certified disabled by the State Medical Review Team (SMRT) or Social Security.
 - ☞ ≥ 65.
 - ☞ ≥ 21, without dependents, and living ≤ 133%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



NOTE: Sponsor-deeming may affect your eligibility, but **NOT** if you are pregnant or a child under 21. See FN 4 for information about the State’s “safety net” policy.” MINN. STAT. §§256B.055, 256B.06, subds. 4, 5; MHCP §2.2.3.2.1 (9/1/22), SPONSOR DEEMING - SAFETY NET PROVISION.

Otherwise lawfully residing = not usually eligible for MA

If you do not meet the federal definition of “qualified” (see p. 3), you generally are **not eligible** for MA unless you are pregnant or a child under 21. Adults are **not eligible** if they have:



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



Wait Time

Subject to 5-year bar

If the “5-year bar” on federal benefits applies, you cannot get **MA** during your waiting period, except through the Center for Victims of Torture (see below). However, if you are **pregnant or a child**, you can get coverage through CHIP (see below). The 5-year waiting period applies if you received a diversity visa (you won the immigration “lottery”), 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 **MA**, or you are a “battered immigrant.”

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 noncitizens who are pregnant:



Children under 21 who are **lawfully present** in the U.S. (you were paroled into the U.S., have temporary resident status, are under Temporary Protected Status, are a Family Unity beneficiary, have received Deferred Enforced Departure, have applied for asylum with an application pending \geq 180 days, 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, etc.) **are eligible for MA**.

If you are pregnant, you are eligible for MA benefits during your pregnancy and for **12 months** after giving birth, **regardless of your immigration status**. Benefits are funded through **CHIP**.

MINN. STAT. §§256B.055, subd. 6; 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 MA through a special state-funded program if you are receiving “care and rehabilitation” services from a center for victims of torture. There are no immigration-related requirements for this program; there are also no income or asset limits! You are eligible for full MA coverage through the program, except you cannot qualify for services that are covered only by federally-funded Medicaid, such as “waivered” services, adult daycare, and other Home and Community Based Services (HCBS).



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 $\leq 133\%$ 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, EMA MEDICAL EMERGENCY, [12/22/16](#).

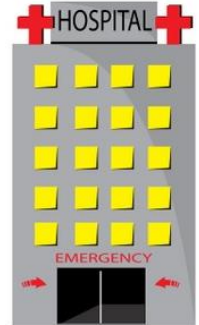


EMA does **not cover** most chronic conditions and home-based services. The EMA law significantly limits services, as well as sites where services are provided. You will be covered for chemotherapy and kidney dialysis. But you may not be covered for insulin, personal care assistant (PCA) services, home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

The state 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 if you:

- had an emergency medical condition covered by EMA and were discharged to a nursing facility 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 or indirectly prevent your **cardiovascular or respiratory** condition from becoming an emergency medical condition **within 48 hours**.



EMA may also be available for **elderly waived services** coverage.

MINN. STAT. §256B.06, subd. 4(l); DHS MHCP Provider Manual, EMA Section, rev. 4/17/19.



(iii) MinnesotaCare (MNCare)

MinnesotaCare (MNCare) is available if you meet income guidelines, are not on Medicare, and:

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

MINN. STAT. §256L.04, subd. 10. See also 8 C.F.R. §103.12.

NOTE: If you are an **applicant for asylum**, you must wait until you receive work authorization. (If you are under 14, your asylum application has to be pending at least 180 days before you qualify.) MINN. STAT. §256L.04, subd. 10; 8 CFR §103.12(a)(5).



NOTE: **DACA** recipients are eligible. MHCP §3.2.1.2, **LAWFUL PRESENCE AND DACA**, 9/1/22.

NOTE: **Sponsor income is not deemed to you for MNCare.**

NOTE: If you are subject to sponsor-deeming for MA, you may qualify for a special **safety net program** to get either MA or MNCare. You might be ineligible for MA because the income of your sponsor counts and is too high; but you might also be ineligible for MNCare because your countable income is too low (< 133% FPG), since MNCare does **not** count your sponsor’s income. In such cases, you should qualify for either MA or MNCare, depending on your income. MHCP §§2.2.3.2.1 (9/1/22), 2.2.3.3 (12/1/18). See FN4.

NOTE:



BEGINNING JANUARY 1, 2025, MINNESOTACARE WILL BE AVAILABLE WITHOUT REGARD TO IMMIGRATION STATUS. EVEN PEOPLE WITHOUT DOCUMENTATION WILL BE POTENTIALLY ELIGIBLE FOR MNCARE.

LAWS 2023, c. 70, art. 16, §15, amending MINN. STAT. §256L.04, subd. 10.

MinnesotaCare covers most of the same services and equipment that MA covers. **BUT** - it does **not cover** home health care, nonemergency medical transportation, mental health case management, or housing stabilization services.

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 food, health care referrals, and nutritional education to people who are pregnant or in their post-partum period. WIC also provides the same food and services to your infants 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 4th 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 (8/22) says, “**The child is the beneficiary** of child care assistance benefits. * * *. [T]he [child care assistance program] must verify **ONLY** the citizenship and immigration status of the **child** for whom child care assistance is sought” (1st emphasis in original; 2nd added).



11. CONSIDERATIONS FOR MIXED-STATUS HOUSEHOLDS

If you don't have papers, you 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 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.



**12. WHAT TO DO IF YOU HOPE SOMEDAY
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.

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