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Noncitizens and Public Benefits

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Noncitizens and Public Benefits

Immigrants are an important share of our population. The circumstances under which those who are not, or not yet, citizens can receive federal means-tested public benefits and so need a supplemental needs trust to protect those benefits vary.

4.5 million Texans are recent immigrants, comprising 16% of our population and 22% of our labor force.[1] Roughly 2/3rds entered this country legally.[2] The majority are citizens or qualified immigrants or have a family member who is a citizen or a qualified immigrant (The Social Security Administration uses the term "qualified alien").[3] About 1.7 million are citizens while close to 1 million more are eligible to become citizens.[4] Over half of these 1 million are lawful permanent residents who have been here less than five years.[5] Others have been here five years or more, a potentially significant distinction.[6] Over 100,000 are undocumented young people brought here as children. Others are refugees, asylees and people in special categories such as Cuban entrants.[7] 2,353,000 Texas children, including 1 million children born in the United States (2016), live with at least one parent who is an undocumented immigrant.[8] Families of mixed immigration status and nationality are normal, leading to questions both about eligibility for federal means-tested public benefits and about deeming and distributions from supplemental needs trusts.

I. Current Law

The Immigration Act of 1965 ended country of origin quotas in favor of employer- and family-sponsored immigration in the same year that Medicare and Medicaid were added to the Social Security Act. In 1996 eligibility for federal means-tested public benefits and, with it, the need to protect that eligibility with a supplemental needs trust changed. It may be changing further.

A. Universal Benefit Eligibility

All people present in the United States are eligible for immunizations and treatment of communicable diseases; for Federal Emergency Management Agency ("FEMA") non-cash disaster relief; for children's health care and nutrition programs, such as school breakfasts and lunches; and for emergency Medicaid.[9]

1. Emergency Medicaid

Emergency Medicaid coverage is available to non-immigrants, otherwise non-qualified, and qualified immigrants who have an emergency medical condition and who, except for alien status, would

[1] MAPS OF IMMIGRANTS IN THE UNITED STATES, http://www.migrationpolicy.org/programs/data-hub/maps-foreign-born-united-states (last visited Jan. 8, 2020).
[2] *Id.*
[3] IMMIGRANTS IN TEXAS, http://americanimmigrationcouncil.org>research>immigrants-in-Texas; https://www,kff.org/disparities-policy/issue-brief-nearly-20-million (last visited Jan. 8, 2020).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] 8 U.S.C. 1611, sec 401.

be Medicaid eligible. The Texas Works Handbook defines an Emergency Medical Condition as

> "a medical condition (including emergency labor and delivery [but not a condition related to an organ transplant] manifesting itself by acute symptoms of sufficient severity (including severe pain) [such] that the absence of emergency medical treatment could reasonably have been expected to result in placing the patient's health in serious jeopardy; seriously impairing the patient's bodily functions; or causing serious dysfunction of any bodily organ or part."[10]

2. Other Universal Benefits

People in the United States are also entitled to be fed in a soup kitchen, to receive crisis counseling and intervention, and to stay in short-term shelters designated by the Attorney General.[11] Public primary and secondary education with school breakfast and lunch are available to all.[12]

B. Federal Means-Tested Public Benefits

The 1996 welfare reform law does not specify federal means-tested public benefits. It describes them as

> "any grant, contract, loan, professional license provided by [a government] agency…by appropriated funds….; and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household or family eligibility unit by [a government] agency…or by appropriated funds."[13]

The conference report contained a definition:

> "a public benefit (including cash, medicine, housing and food assistance and social services) of the Federal Government in which the eligibility of an individual, household or family unit eligible for benefits, or the amount of benefits, or both, are determined on the basis of income, resources, or financial need of the individual, household, or unit."[14]

This language was struck. It gave way to the narrower interpretation of the Department of Health and Human Services and, in commenting on the Department's proposed regulations, the Office of General Counsel, Department of Justice.[15] This interpretation ignored non-cash benefits. While the limitation to cash benefits never became a regulation, in current practice "federal means-tested public

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[10] TEXAS WORKS HANDBOOK, Pp. 1267, https://hhs.texas.gov/sites/default/files/documents/laws-regulations/handbooks/twh/archives/TWH-17-3.pdf (last visited Jan. 8, 2020).
[11] Subtitle E of the Illegal Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. 104-208, 110 State. 3008-547. April 1, 1996; 8 U.S.C. 1116; Housing Act of 1940, Title V or the Consolidated Farm and Rural Development Act, Section 306(c)
[12] *Plyler v. Doe,* (457 U.S. 202 (1982), *rehearing den'd* 458 U.S. 1131 (1982).
[13] 8 U.S.C. 1611(c)(1).
[14] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 Conference Report, pages 381-382, H.R. 3734, H.R. Report 104-725, 104th Congress, 2nd Session, July 30, 1996.
[15] 99 Fed. R. 13202, http://www.justice.gov/olc/meanstst1-/latu .

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