

## **Frequently Asked Questions (FAQ)**

### **How is eligibility determined for alien foster children for federal, state or local funding under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law (P.L.) 104-193?**

An All County Letter (ACL) Number 98-34 dated May 26, 1998, provided counties with information regarding alien foster children and federal, state and county funding. In the ACL, aliens are classified as either “qualified” or “non-qualified” for public benefits.

Qualified aliens are generally defined by the PRWORA as:

- Aliens lawfully admitted for permanent residence;
- Aliens granted asylum (asylees);
- Aliens admitted as refugees;
- Aliens paroled into the United States for at least one year;
- Aliens whose deportation is being withheld;
- Aliens granted conditional entry;
- Certain Aliens who have been subjected to battery or extreme cruelty.

Non-qualified aliens are any aliens not listed above, and usually include, but not limited to, undocumented aliens and aliens lawfully permitted temporary residence with student or work visas.

In addition to this list, the Policy Interpretation Question (PIQ) 99-01 identifies aliens who are of Cuban, Haitian and Amerasians as defined in section 501(e) of the Refugee Education Assistance of 1980 as an alien who is qualified to receive federal foster care benefits.

Effective August 22, 1996, the date PRWORA became law; new cases involving non-qualified alien foster children were no longer eligible for federal foster care benefits. The bill specified that existing non-qualified alien foster children remained eligible for federal foster care benefits until January 1, 1997. Prior to January 1, 1997, the non-qualified alien foster children were eligible to receive Federal IV-E foster care benefits through permanent residence under color of law (PRUCOL). With the passage of (PRWORA), the Federal Government made their own exemption list for alien foster children eligible for Federal IV-E funding. Cases that are prior to July 1, 1996, and were eligible for Federal funding through PRUCOL, but are no longer eligible for Federal IV-E funding, are eligible for state funding.

Effective August 22, 1996, new cases involving qualified alien foster children who reside with non-qualified alien providers are ineligible for foster care benefits for a period of five

years from the date of entry into the United States. If at any time during the five-year time requirement the child is placed with a citizen or “qualified” alien provider and meets all eligibility requirements, the child may be eligible for federal foster care benefits. If the child is subsequently placed with a non-qualified alien provider within the five-year time requirement, federal eligibility ceases and so on until the passage of five years from the date of entry. As a matter of general policy, the California Department of Social Services (CDSS) would not support the placement of foster children with non-qualified alien providers due to the possible instability of such placements; i.e., it may become necessary for such providers to leave the county on a short notice. Nevertheless, new cases involving qualified alien foster children placed with non-qualified alien providers, while ineligible for federal foster care benefits for five-years as described above, remain as otherwise eligible for state and county funded foster care benefits.

### **Other Exemptions:**

In addition, 8 USC 1641© and AG Order #2097-97 specify that battered children, children of a battered parent, or such children or parents who have subjected to extreme cruelty may be considered “qualified” aliens and eligible for federal, state, or local benefits if a petition or application for permanent residence has been filed with the Immigration and Naturalization Services or the Executive Office for Immigration Review; the application or petition has been granted or it has been found that a pending application sets forth a prima facie case; and the individual is a spouse or child of an individual who has already been granted lawful permanent residence. Such exemption further requires:

The federal, State or county benefits sought by the alien or on behalf of the alien child are needed to escape the abuse.

It has been demonstrated there is substantial connection between the battery or extreme cruelty suffered by the alien (or alien child) and the need for the public benefits.

The alien parent did not actively participate in the battery or extreme cruelty of the alien child.

The battered alien or alien child no longer live in the same household as the abuser.

<b>CalWORKs</b>	<b>Foster Care</b>
<p><b>Qualified alien and entered before August 22, 1996:</b></p> <p>Federally Eligible</p>	<p>Federally Eligible</p>
<p><b>Qualified alien and entered on or after August 22, 1996:</b></p> <p>If not meeting exception criteria, non-federally eligible for five years from the date of entry. State funded individual if otherwise eligible.</p>	<p>(a) Federally eligible if resides with a citizen provider or a qualified alien provider.</p> <p>(b) Non-federally eligible for five years if residing with a non-qualified alien provider.</p>
<p><b>PRUCOL status and entered before August 22, 1996:</b></p> <p>Non-federally eligible if not meeting the definition of “qualified” alien. State funded individual if otherwise eligible.</p>	<p>If receiving federal foster care benefits on or before August 22, 1996 and have PRUCOL status, remained federally eligible until January 1, 1997.</p>
<p><b>PRUCOL status and entered on or after August 22, 1996.</b></p> <p>Non-federally eligible. State funded individual if otherwise eligible.</p>	<p>(a) Non-federally eligible.</p> <p>(b) State funds may be claimed if otherwise eligible.</p>
<p><b>Certain battered aliens as defined in PRWORA, Title IV, Section 431:</b></p> <p>Federally eligible after five years.</p>	<p>(a) Federally eligible if residing with citizen provider or qualified alien provider.</p> <p>(b) No federal funding available if residing with a non-qualified alien provider.</p>
<p><b>Aliens not within the definition of qualified alien:</b></p> <p>Non-federally eligible but state funded if otherwise eligible.</p>	<p>If the child has PRUCOL status, can be state eligible case. If the county feels that foster care is necessary for non-federal or non-state eligible case, the case may be funded with county only funds.</p>

## **Can Undocumented Aliens be used as Resource Parents?**

Counties who are actively recruiting resource parents may encounter immigrant families who are undocumented aliens. Potential undocumented aliens seeking to become resource families pose a special challenge to child welfare staff. Many undocumented aliens are without resident status, may not have a driver's license, a social security card or work permit. They may be fearful of any government involvement, which may compromise or expose their immigration status or lead to deportation.

## **Has California State looked at this issue?**

**Yes.** There is an ALL COUNTY LETTER (ACL) No. 98-34, dated May 26, 1998, that addressed this issue. As a matter of general policy, the California Department of Social Services (CDSS) does not support the placement of foster children with non-qualified alien providers due to the possible instability of such placements; i.e., it may be necessary for such providers to leave the country on short notice. Nevertheless, new cases involving qualified alien foster children placed with non-qualified alien providers, while ineligible for federal foster care benefits for five years, remain eligible for state and county funded foster care benefits.

From an adoption standpoint, relative and licensing approval prospective, immigration status is not considered. In summary, there are no current regulations regarding immigration status.

There is a bill in legislature, AB 2576, which requires secure and verifiable ID documents to receive public social services. This bill is not currently active, but could change in the future. Most recently, perceptions and fears about the Uniting and Strengthening America by Providing Appropriate Tools required to Intercept and Obstruct Terrorism Act of 2001 (i.e., the USA PATRIOT Act) has led many immigrants and refugees to feel more harshly scrutinized than before.

From a Community Care Licensing (CCL) standpoint, CCL does not consider immigration status as a requirement of licensure. Fingerprints are processed the same way whether the person is a citizen or non-citizen.

## **Does Community Care Licensing Track This Information?**

No. According to Community Care Licensing, they do not currently track this information.

## **Is the Information Counties Received from the Clearance Comprehensive, or is the County at risk of Placing Without Adequate Information?**

In regards to clearances, if a person is convicted of a crime in California, regardless of whether they are a citizen or a non-citizen, they will not be cleared. However, if another state does not report the crime to the FBI, the person would be cleared in California. This is true of all cases when a conviction is not properly reported.

Fingerprints are still submitted for a review of criminal records and Child Abuse Central Index (CACI). The social security number of a prospective resource parent is optional when submitting fingerprints. Per CCL, the fingerprints of an undocumented alien would most likely return with no hits stating this person has had no previous fingerprints submitted. If the fingerprints return with no hits then the county would proceed accordingly. Currently there are many undocumented relative caregivers.

Additionally, per CCL, a driver's license is not required unless the parent will be transporting the child. If a prospective resource parent states they will be utilizing a taxi for transportation then a driver's license is not required.

## **Does Community Care Licensing Report Undocumented Families to Immigration?**

Community Care Licensing stated that they do not currently report undocumented families to immigration.

### **Other Resources that might be helpful.**

- Family Violence Prevention Fund – International & Immigration Division, PH: 415.252.8900, FAX: 415.252.8991, 383 Rhode Island St., Ste. 304, San Francisco, CA 94103-513
- Immigration and Refugee Services of America, PH: 202.797.2105, 1717 Massachusetts Ave, NW, Ste 200, Washington, DC 20036.
- Immigrant Legal Resource Center , PH: 415.255.9499, FAX: 415.255.99792, 1663 Mission Street, Suite 602, San Francisco, CA 94103
- Lutheran Immigrant Refugee Services (LIRS) - Bridging Refugee Youth and Children's Services (BRYCS), PH: 410.230.2731, FAX: 510.230.2723, 700 Light St, Baltimore, Maryland 21230.

- National Immigration Law Center, PH: 213.639.3900, 3435 Wilshire Blvd., Ste. 2850, Los Angeles, CA 90010.
- Public Counsel Immigration Project, PH:213.385.2977, PO Box76900, Los Angeles, CA 90076
- Western Center for Law and Poverty, PH: 213.476.7211, Western Center on Law & Poverty. 3701 Wilshire Blvd., Suite 208, Los Angeles, CA 90010  
[www.wclp.org](http://www.wclp.org)
- Youth Law Center, PH: 415.543.3379, FAX: 415.956.9022, 417 Montgomery St, Ste 900, San Francisco, CA 94104

Eligibility and payment questions should be addressed to Linda Shill, Manager , Rates Policy Unit. Community Care Licensing questions should be addressed to your Regional Community Care Licensing Office.