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An update on state and federal action from

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THE BALANCED BUDGET ACT OF 1997: IMMIGRANT POLICY PROVISIONS

On August 5, the President signed into law the federal budget reconciliation act for FFY 1998, officially titled the Balanced Budget Act of 1997. The Act includes a wide variety of important provisions; this *Policy Page* describes in a summary way important changes in immigrants' eligibility for public benefits.

IMMIGRANT POLICY PROVISIONS: SSI ELIGIBILITY PRESERVED FOR IMMIGRANTS PRESENT IN U.S. ON 8/22/96

Some of the best news in the Balanced Budget Act (BBA) was the preservation of Supplemental Security Income (SSI) eligibility for many poor legal immigrants who are elderly or have disabilities. Congress adopted the Senate's more generous proposal, which continues eligibility for old age and disability poverty benefits for those immigrants enrolled in SSI as of 8/22/96 AND for those legally present in the U.S. on that date, but who become disabled after that date. (*Note: the latter group will not be able to access SSI based on poverty income and old age alone; they must meet disability standards. It is estimated that at least 2/3 of the over-65 population can meet a disability standard, and "very few" persons age 75 or older will fail to meet disability standards.*) This provision will avert a major crisis in basic subsistence for tens of thousands of Texas residents. The Social Security Administration had estimated that 38,450 of the over 60,000 total legal immigrants receiving SSI in Texas in July 1996 would lose their cash assistance in 1997.

Certain Immigrants Still May Lose SSI. Now, the only legal immigrants enrolled in SSI who remain at risk of losing those benefits due to their citizenship status are those who may be found to fall into the "unqualified" legal immigrant category; the Act extended their SSI eligibility through the end of September 1998. Nationally it is estimated that there are about 24,000 such SSI recipients, but reliable estimates of the number of such persons in Texas are not yet available. **Advocates for immigrants should note that many of these persons may be able to adjust their immigration status to "qualified" status before the 9/30/98 deadline, so it is important that assistance be available for elders**

and immigrants with disabilities who need help negotiating that process.

Impact on Texas Medicaid for Immigrants. We reported in *PP#52 (7/9/97)* that the Texas Legislature authorized the creation of a new Texas Medicaid eligibility category into which legal immigrants losing SSI could be transferred. [This action was needed to allow Texas to fully exercise its state option under the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA, the federal Welfare Act) to continue Medicaid to "qualified" legal immigrants present in the U.S. prior to the 8/22/96 signing date of the Act.] In light of the Congressional changes described above, it is likely that the state will not move to create the new category unless there is significant demand from voters and legislators to do so. Those immigrants who can access SSI will also get the Medicaid coverage which SSI eligibility confers. There is a group of "qualified" legal immigrants who will **not** get Medicaid unless the new category is created: those who were legally present in the U.S. on 8/22/96, but who turned 65 after that date and cannot meet a disability test (and have income below about 74% of the federal poverty income level). **If readers are aware of elder legal immigrants legally present in the U.S. 8/22/96 who cannot access SSI due to their relative good health, but who are experiencing hardship because they cannot get Medicaid coverage, the Center would like to hear from you. It will be important to inform Texas Legislators about the stories of these individuals and the potential benefit of creating the new Medicaid category.**

Eligibility Period for Medicaid and SSI Lengthened for Refugees, Asylees, and Persons Granted

Withholding of Deportation. This group of immigrants will be allowed to receive Medicaid and SSI for 7 years after being granted their status. Other federal means-tested public benefits (i.e., TANF and Food Stamps) are still subject to the original provision which allows eligibility for only 5 years. This will make it at least theoretically possible for these persons to naturalize before the end of their eligibility “window” for Medicaid and SSI, as immigrants are not eligible for citizenship for 5 years and must then wait 9 to 18 months (or more in some areas) due to INS backlogs.

The “After” Group Is Still Out in the Cold. Legal immigrants who either entered the U.S. after 8/22/96, or who were not **lawfully** present on that date, are still essentially banned from SSI eligibility unless they gain 40 quarters work history or become citizens.

No Restoration of Food Stamp Eligibility or Other Federal Benefits for Immigrants. As good as the news is regarding SSI, it is important to recall that the ban on Food Stamps for legal immigrants remains unchanged. Texas had over **168,500** legal immigrants on our Food Stamp rolls as of July 1996. Readers may recall that TDHS was to apply the new law at the first regular re-determination after April 1, 1997, and the bulk of re-determinations were to be performed in June, July and August. **As of August 31, 1997, the non-citizen enrollment had dropped to just over 47,500, or a reduction of over 120,000 legal immigrants since last summer.**

By February 1997 — **long before** any eligibility re-determinations had begun by the state — the number of immigrants in the caseload had dropped to over 142,000. This suggests that many immigrants simply gave up on Food Stamp eligibility without ever being formally denied those benefits. There is no way to know how many of these individuals might have actually remained eligible had they pursued continued eligibility. Among immigrants in Texas, there continues to be a high level of misinformation and misunderstanding surrounding the changes in immigrant eligibility. In particular, many immigrants are not aware that they can get credit for work quarters of spouses, etc. (see *PP #52*, p. 6). Also, many immigrant parents, both legally present and undocumented, are misinformed or confused about the relationship between their own immigration status and the use of benefits by themselves or their children. Some undocumented parents with citizen children reportedly believe (incorrectly) that their children are no longer entitled to Food Stamps, while others fear that they risk deportation if they apply for the benefits to which their children are entitled as citizens. Some legally present immigrants are afraid that use of Food Stamps will negatively affect their

applications for citizenship.¹ In short, there is an ongoing need for outreach and education about these issues.

Other Immigrant-Related Provisions. A number of other more technical provisions are listed below:

- Cuban-Haitian entrants will be treated like refugees with respect to eligibility for federal benefits,
- Amerasians (children fathered by U.S. citizens during Southeast Asian conflicts in the 1960s and 1970s) treated as refugees **and** granted ability to immigrate to U.S.,
- Certain North American Indians born in Canada will have access to Medicaid and SSI restored (tribes with long-established rights to enter and re-enter U.S.),
- Filipino war veterans who fought under U.S. command in WW II, and Hmong and Highland Lao veterans who fought on behalf of U.S. forces during Vietnam war, will be treated as U.S. military veterans (i.e., exempt from bans on federal benefits),
- A parent of a battered child (presumably not a perpetrating parent) may also receive assistance along with the child; agencies providing benefits to battered spouses and children permitted to make certain determinations that the individuals are eligible to be treated as qualified aliens for purposes of federal benefit eligibility, and
- All the provisions mentioned are effective as though included at enactment, meaning persons in these categories who have been terminated from or denied benefits may now obtain assistance retroactive to 8/22/96.

¹ See *PP #52*, p 7. Also, though not explicitly authorized by federal law to do so, a number of U.S. consulates in Mexico have begun demanding that legal immigrants seeking re-entry into the U.S. first repay the value of any federal public benefits they have received. This policy is based ostensibly on the grounds that this is a legitimate pre-condition for being deemed not likely to become a “public charge.”

More Immigrant Benefit Policy News: 5-Year Ban for “Qualified” Immigrants Arriving On/After 8/22/96 Applies Only to TANF, SSI, Food Stamps, Medicaid, New Child Health Block Grant. On August 26, the U.S. Department of Health and Human Services and the Social Security Administration published guidance forming the basis for a definition of “federal means-tested public benefits” (see *PP#40a* 2/18/97 p.6, and *PP#52* 7/9/97 p. 6). Under the 1996 Welfare Act, “qualified” legal immigrants arriving in the U.S. on or after 8/22/96² were to be subject to a 5-year exclusion from those benefits, but the Act did not include a definition of the term or a listing of affected programs. Accordingly, it was not clear if the ban would apply to non-entitlement federal funding streams, such as Maternal And Child Health Block Grant (Title V) and other public health block grants, child care block grants, etc. Under the proposed guidance, the 5-year exclusion of “qualified” legal immigrants will apply only to programs that are **both** “mandatory” federal spending (as contrasted with “discretionary” spending) **and** means-tested, i.e., only TANF, SSI, Food Stamps, and Medicaid. Federal guidance released 9/12/97 on the new child health block grant specifies that programs funded under that grant will also to be subject to the 5-year freeze-out. Of course, the ban is also **not** applied to programs specified as exempt by the 1996 Welfare Act, such as Head Start and Foster Care.

This interpretation is positive from several perspectives. First, it would ease somewhat the hardship for safety net service providers by not making them responsible for screening out legal immigrants (though guidance regarding whether and how non-entitlement federal programs must screen for “unqualified” legal and undocumented immigrants has not yet been released). Also, it would reduce the potential cost-shift from the federal budget to state and local government budgets that will result from the 5-year “freeze-out,” though it will certainly not eliminate it because of the dominant role that the entitlement programs play in the safety net. While the guidance is effective immediately, changes could be made in response to input received during the 60-day comment period. It is expected that anti-immigrant activists, such as Texas Rep. Lamar Smith, will comment negatively and attempt to impose a broader ban via new legislation. Readers who wish to read and comment on the guidance may find details in the 8/26/97 Federal Register at 62 Fed Reg 15,284 and 45,256.

Thanks to the National Immigration Law Center for source material for this Policy Page.

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²Oddly, the BBA actually changed the effective date of the 5 year ban for SSI purposes to those arriving AFTER 8/22/96, but for Food Stamps, Medicaid and TANF the ban still applies to those arriving ON OR AFTER that date.