

DSS-4357EL  
WGIUPD

**GENERAL INFORMATION SYSTEM**  
**DIVISION:** Office of Medicaid Management

07/16/01  
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**GIS 01 MA/026**

**TO:** Local District Commissioners  
Medicaid Directors

**FROM:** Kathryn Kuhmerker, Deputy Commissioner  
Office of Medicaid Management

**SUBJECT:** Aliessa, et al. v. Novello

**EFFECTIVE DATE:** June 1, 2001

**CONTACT PERSON:** Local District Support Unit (518)474-9130 (Upstate)  
(212)268-6855 (Downstate)

THIS GIS MUST BE DISTRIBUTED TO ALL MEDICAID ELIGIBILITY WORKERS AND  
SUPERVISORS

GIS 01-MA-015 advised districts of the New York Court of Appeals decision regarding alien status and eligibility for Medicaid. Pursuant to this decision full State and local Medicaid coverage cannot be denied if an otherwise eligible alien is permanently residing in the United States under color of law (PRUCOL) or is a lawfully admitted permanent resident.

Therefore, effective June 1, 2001, State and local Medicaid eligibility, for otherwise eligible aliens, is no longer dependent on whether the alien is a qualified or non-qualified alien and the date on which the alien entered the United States.

Aliens who are qualified aliens as defined on pages 2 through 4 of 00 OMM/ADM-9, "Citizenship and Alien Status Requirements for Medicaid" and who meet certain conditions as specified on pages 5 and 10 of that directive will continue to be eligible for full Medicaid benefits with Federal Financial Participation (FFP).

Otherwise eligible qualified aliens who entered the United States on or after August 22, 1996 and are subject to the five year ban can be eligible for full Medicaid benefits with State and local funds. In addition, otherwise eligible Medicaid non-qualified aliens who are PRUCOL can be eligible for full Medicaid benefits with State and local funds. Non-qualified aliens who are not PRUCOL continue to be limited to Medicaid coverage for care and services necessary for the treatment of an emergency medical condition.

Districts must accept and process new and pending Medicaid applications submitted by or on behalf of PRUCOL aliens or qualified aliens who are subject to the five year ban. These Medicaid applications must be processed within the time frames specified in 18 NYCRR 360-2.4, which requires the social services district to make a Medicaid eligibility determination within 30, 45 or 90 days depending upon the applicant's eligibility category, and Section 365-a(6) of the Social Services Law, which directs the district to provide prenatal care assistance program Medicaid benefits presumptively to eligible pregnant women.

The alien/citizenship Indicator Code N and the Individual Categorical Code 37, defined as FNP Alien, must be used to identify State Medicaid eligible PRUCOL aliens and qualified aliens who enter the United States on or after August 22, 1996, and who do not meet the conditions for FFP specified on pages 5 and 10 of 00 OMM/ADM-9. These codes are needed to ensure appropriate claiming. Districts must keep a list of these aliens, in order to identify and appropriately code them when system support is available.

Pending the development and programming of appropriate language into the Client Notices System to support the New York State Court of Appeals decision, districts must use manual notices DSS-3622 (Rev. 3/98) "Notice of Decision of your Medical Assistance Application" and the revised DSS-3622(A)(6/01) "Notice of Eligibility for Coverage for the Treatment of an Emergency Medical Condition".

Attached to a copy of this GIS, which will be sent to all local department of social services commissioners, will be those pages of 00 OMM/ADM-9 referenced in this GIS, a listing of PRUCOL categories, and the first page of the revised DSS-3622(A)(6/01). The DSS-3622(A)(6/01) must be locally produced without modification until it is available from New York State Office of Temporary and Disability Assistance, Document Services.

Additional information will be forthcoming when it is available.

## ATTACHMENT A

Date: December 12, 2000

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### **I. PURPOSE**

This Office of Medicaid Management Administrative Directive (OMM/ADM) outlines the citizenship requirements for individuals in the Medicaid program, and provides instructions to social services districts for determining the appropriate Medicaid coverage to be provided, based on an individual's citizenship status.

### **II. BACKGROUND**

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), Illegal Immigration and Immigrant Responsibility Act of 1996 (P.L. 104-208), and the Balanced Budget Act (P.L. 105-33) include significant provisions affecting non-citizens entitlement to Medicaid.

Prior to passage of this legislation, non-citizens were entitled to receive Medicaid benefits if they were determined to be lawfully admitted for permanent residence, or otherwise permanently residing in the United States under color of law (PRUCOL). Non-citizens who did not meet the PRUCOL criteria, but who were otherwise eligible for Medicaid, were provided Medicaid benefits only for care and services necessary for the treatment of an emergency medical condition, as defined in section 1903(v) of the federal Social Security Act.

The new legislation restricts the provision of Medicaid to individuals who are qualified aliens. Certain qualified aliens must receive full Medicaid benefits, if otherwise eligible. Other qualified aliens may receive full Medicaid benefits, depending on their date of entry into the United States. Aliens who are not qualified may be provided Medicaid coverage only when care and services are necessary for the treatment of an emergency medical condition.

The new legislation also contains provisions requiring that the income and resources of a sponsor of an alien, and the income and resources of the sponsor's spouse, must be deemed available to the alien for purposes of determining the eligibility of the alien for Medicaid, other than Medicaid provided for care and services necessary for the treatment of an emergency medical condition. Previously, when determining the eligibility of a sponsored alien, only the amount of income and/or resources actually available to the alien from his or her sponsor was budgeted.

The New York State Legislature, in Chapter 436 of the Laws of 1997, added a new requirement.

### **III. PROGRAM IMPLICATIONS**

Section 122 of the SSL requires that, in order to be considered eligible for all care and services available under the Medicaid program, individuals must be citizens or aliens duly naturalized as citizens. It further provides that aliens who are "qualified aliens" (as defined in section IV. of this directive) and who meet certain conditions may receive full Medicaid benefits. Qualified aliens who do not meet these conditions and aliens who are not qualified may only receive Medicaid coverage for care and services necessary for the treatment of an emergency medical condition.

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Special exceptions are provided for two groups of aliens who are not qualified: 1.) aliens who, on August 4, 1997, were residing in certain residential facilities and receiving Medicaid based on a determination that they were PRUCOL; and 2.) aliens who, on August 4, 1997, had been diagnosed with AIDS, as defined in Section 2780(1) of the Public Health Law, and were receiving Medicaid based on a determination that they were PRUCOL. Such aliens will continue to receive full Medicaid benefits, to the extent they are otherwise eligible.

Section 122 also provides that, under certain circumstances, the earned and unearned income and the resources of a sponsor of an alien, and the income and resources of the sponsor's spouse must be deemed available to the sponsored alien for purposes of determining the eligibility of the alien for Medicaid, other than Medicaid provided for care and services necessary for the treatment of an emergency medical condition. To the extent Medicaid other than for treatment of an emergency medical condition is provided to the sponsored alien, the social services district must request reimbursement from the sponsor and may take legal action to recover Medicaid expenditures when the sponsor does not cooperate.

**NOTE:** The provisions of this directive do not apply to pregnant women. A woman with a medically verified pregnancy is not required to document citizenship or alien status for the duration of her pregnancy, through the last day of the month in which the 60 day postpartum period ends.

**IV. REQUIRED ACTION**

**A. DEFINITIONS**

1. **UNITED STATES CITIZEN:** For purposes of qualifying as a United States citizen, the United States includes the 50 states, the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island are also regarded as United States citizens for purposes of Medicaid eligibility.
2. **QUALIFIED ALIEN:** The term qualified alien means an alien:
  - who has been lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
  - who has been granted asylum under section 208 of the INA;
  - who has been admitted to the United States as a refugee under section 207 of the INA (including Amerasian immigrants admitted under the provisions of Public Law 100-202);
  - who has been paroled into the United States under section 212(d)(5) of the INA for a period of at least one year;
  - whose deportation has been withheld under section 243(h) or 241(b)(3) of the INA;
  - who is a Cuban and Haitian entrant (as defined in section 501 (e) of the Refugee Education Assistance Act of 1980);
  - who has been granted conditional entry pursuant to section 203(a)(7) of the INA; or
  - who has been determined by the social services district to be in need of Medicaid as a result of being battered or subject to extreme cruelty in the United States by a spouse,

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parent, or by a member of the spouse or parent's family residing in the same household as the alien (see section IV.C.4. of this directive).

3. **AMERICAN INDIAN BORN IN CANADA:** An American Indian born in Canada may freely enter and reside in the United States and is considered to be lawfully admitted for permanent residence if he or she is of at least one-half American Indian blood. As such, he or she is a qualified alien. This does not include a non-citizen spouse or child of such Indian or a non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is at least 50 percent Indian blood.
4. **EMERGENCY MEDICAL CONDITION:** The term emergency medical condition means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:
  - placing the person's health in serious jeopardy;
  - serious impairment to bodily functions; or
  - serious dysfunction of any bodily organ or part.

Further, provided for treatment of emergency medical conditions does not include care and services related to an organ transplant procedure.
5. **NON-INMIGRANT:** A non-immigrant is an alien who has been allowed to enter the United States for a specific purpose and for a limited period of time. Examples include tourists, students, and visitors on business.
6. **UNDOCUMENTED ALIEN:** Undocumented aliens do not have the permission of the Immigration and Naturalization Service (INS) to remain in the United States. They may have entered the United States legally but have violated the terms of their status, e.g., over-stayed a visa, or they may have entered without documents.

**B. DOCUMENTATION REQUIREMENTS**

Citizens, nationals and qualified alien applicants for Medicaid must provide appropriate documentation of their citizenship or immigration status. Such individuals must also sign a declaration, under penalty of perjury, that they are citizens, nationals or qualified aliens and must provide, or apply for, a Social Security Number.

Pregnant women are not required to document their immigration status, complete the citizenship declaration, or provide a Social Security Number. In the month following the month in which the 60 day postpartum period ends, the woman must meet these and all other applicable requirements in order to remain Medicaid eligible.

Attachment I provides examples of acceptable documents which establish citizenship and immigration status. Many elderly individuals born in rural areas of the United States have



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particular difficulty in documenting their place of birth. Districts must provide assistance to such persons in exploring all possible sources of primary and secondary verification before denying such individuals on the basis of citizenship status.

**C. ELIGIBILITY OF ALIENS FOR BENEFITS**

**1. QUALIFIED ALIENS**

**a. Entry Prior to August 22, 1996**

A qualified alien who entered the United States prior to August 22, 1996, may receive all care and services available under the Medicaid program, provided he or she is determined to be otherwise eligible. This provision includes individuals who attained qualified alien status subsequent to August 22, 1996, and who can demonstrate to the district's satisfaction that they continuously resided in the United States until attaining qualified alien status.

**b. Entry On or After August 22, 1996**

The following qualified aliens who enter the United States on or after August 22, 1996, may receive all care and services available under the Medicaid program, provided they are determined to be otherwise eligible:

- refugees under section 207 of the INA (including Amerasian immigrants admitted under the provisions of Public Law 100-202);
- aliens who have been granted asylum under section 208 of the INA;
- aliens for whom deportation has been withheld under section 243(h) or 241(b)(3) of the INA;
- aliens who are Cuban and Haitian entrants (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);
- qualified aliens lawfully residing in the State who are on active duty in the armed forces, or who have received an honorable discharge from the armed forces and their spouses and unmarried dependent children, who are also qualified aliens. (See section IV.C.5. of this directive for further requirements regarding the veteran/active duty exception.)

Qualified aliens who do not meet these requirements are not eligible to receive medical care or services under the Medicaid program beginning on the date the alien enters the United States and continuing for a period ending five years after the date status as a qualified alien is granted, unless the alien is otherwise eligible and is pregnant, or requires treatment of an emergency medical condition.

**c. Eligibility Following the Five Year Ban**

At the time a qualified alien has resided in the United States for a period of five years with a qualified alien status, the alien may be eligible to receive full Medicaid coverage in the appropriate federal or non-federal category of assistance.

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- the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with the alien or his child, and to care for resulting children; or
- medical coverage and/or health care services are needed to replace medical coverage of health care services the alien had when living with the abuser.

**5. VETERAN AND ACTIVE DUTY EXCEPTIONS**

**a. Veterans**

The exception from the five year ban for aliens entering the United States on or after August 22, 1996, applies to qualified aliens who are veterans of the United States Armed Forces. The veteran's discharge must have been characterized as honorable, and not on account of his or her alien status. This exception is also provided to the veteran's qualified alien spouse, including his or her unremarried surviving spouse if the veteran is deceased, and any unmarried dependent children of the veteran who are qualified aliens.

**NOTE: The Balanced Budget Act of 1997 provided that Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and have been lawfully admitted to the United States for permanent residence are to be considered veterans for the purpose of this provision.**

**b. Active Military Duty**

The exception from the five year ban for aliens entering the United States on or after August 22, 1996, also applies to qualified aliens who are on active duty in the United States Armed Forces. The alien must be on full-time duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard. Active duty for training and full-time National Guard duty are not included in this exception.

This exception is also provided to the alien's qualified alien spouse and unmarried dependent children who are qualified aliens.

See Attachment I for acceptable documentation of honorable discharge or active duty status.

**D. DEEMING THE SPONSOR'S INCOME AND RESOURCES**

Section 122 of the SSL requires that the income and resources of a sponsor of an alien, who has signed an affidavit of support pursuant to the sponsor's spouse, will be deemed available to the alien in determining his or her eligibility for Medicaid, except for Medicaid coverage provided for the treatment of emergency medical conditions.

## ATTACHMENT B

### 1. GENERAL POLICY PRINCIPLES OF PRUCOL FOR MEDICAID APPLICANTS/RECIPIENTS

Aliens who are PRUCOL for Medicaid eligibility purposes and who may be eligible for Medicaid are any aliens who are residing in the United States with the knowledge and permission of the Immigration and Naturalization Services (INS) and whose departure from the United States the INS does not contemplate enforcing. An alien will be considered as one whose departure the INS does not contemplate enforcing if:

- a. based on all the facts and circumstances in that particular case, it appears that INS is otherwise permitting the alien to reside in the United States indefinitely; or
- b. it is the policy or practice of the INS not to enforce the departure of aliens in a particular category.

When a Medicaid applicant/recipient presents a document which indicates that INS is allowing the individual to remain in the United States indefinitely, or an INS document with an expiration date one year from the date of issuance, local districts may conclude, in the absence of evidence to the contrary, that INS does not contemplate enforcing the departure of the individual. When a Medicaid applicant/recipient presents an expired INS document or an INS document with an expiration date of less than one year from the date of issuance, local districts should not conclude that INS does not contemplate enforcing the departure of the individual, unless there is evidence to the contrary. In the case of aliens who may be PRUCOL under categories e, f, g, h, or k, in addition to the documents required by these categories, the local district must verify with INS or obtain documents from the alien sufficient to show that INS does not contemplate enforcing departure. For aliens who may be PRUCOL under category l, the local district must attempt to verify with the INS that the alien is living in the U.S. with the knowledge of the INS and with the permission or acquiescence of the INS. Medicaid eligibility shall be processed for an otherwise eligible alien, pending the receipt of the INS verification.

**NOTE:** There are national and locally developed letters which are used in lieu of or in conjunction with other INS forms to identify various alien statuses. It will be necessary to verify the status of the alien if the letter is the only document provided. If there is any question, contact the local INS office for assistance.



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(continued)

### **2. CATEGORIES**

a. Aliens paroled into the United States pursuant to section 212(d)(5) of the INA showing status for less one year, except for Cuban/Haitian entrants.

- (1) Aliens in this category are admitted to the United States for similar reasons as a refugee, i.e., humanitarian. However, this category, unlike refugee status, does not grant legal residence status.
- (2) Parole status allows the alien temporary status until an INS determination of his/her admissibility has been made, at which time another status may be granted.
- (3) Aliens in this category will have a Form I-94 indicating that the bearer has been paroled pursuant to section 212(d)(5) of the INA. Possession of a properly annotated Form I-94 constitutes evidence of permanent residence in the U.S. under color of law, regardless of the date the Form I-94 is annotated.

b. Aliens residing in the United States pursuant to an Order of Supervision.

- (1) Aliens in this category have been found deportable; however, certain factors exist which make it unlikely that INS would be able to remove the alien. Such factors include age, physical condition, humanitarian concerns, and the availability of a country to accept the deportee.
- (2) Aliens in this category are required to report to INS periodically; if the factors preventing deportation are eliminated, INS will initiate action to remove the alien.
- (3) Aliens in this category will have an INS Form I-94 or I-220B.

c. Deportable aliens residing in the United States pursuant to an indefinite stay of deportation.

- (1) Aliens in this category have been found to be deportable, but INS may defer deportation indefinitely due to humanitarian reasons.

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(continued)

- (2) Aliens in this category will have a letter and/or a Form I-94 showing that the alien has been granted an indefinite stay of deportation.
- d. Aliens residing in the United States pursuant to an indefinite voluntary departure. Aliens in this category will have a letter and/or a Form I-94 indicating that the alien has been granted voluntary departure for an indefinite time period.
- e. Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure and whose departure INS does not contemplate enforcing.

NOTE: An immediate relative for INS purposes is: husband, wife, father, mother, or child (unmarried and under 21).

- (1) Aliens in this category are the immediate relatives of an American citizen and have had filed on their behalf a Form I-130 petition for issuance of an immigration visa.
- (2) If this petition has been approved, a visa will be prepared, which will allow the alien to remain in the United States permanently.
- (3) Aliens in this category may have a Form I-94 and/or I-210 letter. These documents, or others, indicate that the alien is to depart on a specified date (usually 3 months from date of issue), however, INS expects the alien's visa to be available within this time. If it is not, extensions may be granted until the visa is ready.
- f. Aliens who have filed applications for adjustment of status pursuant to section 245 of the INA that INS has accepted as "properly filed" or has granted and whose departure the INS does not contemplate enforcing.
  - (1) Aliens in this category have filed for lawful permanent resident status.
  - (2) Aliens in this category may have Form I-94 or Form I-181 or their passports will be stamped with either of the following: "adjustment application" or "employment authorized during status as adjustment applicant."

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(continued)

- g. Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of INS pursuant to section 243 of the INA whose departure INS does not contemplate enforcing.
  - (1) Aliens in this category have been found to be deportable, but INS may defer deportation for a specified period of time due to humanitarian reasons.
  - (2) Aliens in this category will have a letter or a copy of the court order and/or a Form I-94.
- h. Aliens granted voluntary departure pursuant to section 242(b) of the INA whose departure INS does not contemplate enforcing.
  - (1) Aliens in this category are awaiting a visa.
  - (2) Such aliens are provided Forms I-94 and/or I-210 which indicate a departure within 60 days. This may be extended if the visa is not ready within the time allotted.
- i. Aliens granted deferred action status pursuant to INS operating instructions. Aliens in this category will have a Form I-210 or a letter indicating that the alien's departure has been deferred.
- j. Aliens who entered and have continuously resided in the United States since before January 1, 1972. Aliens in this category are presumed by INS to meet certain criteria for lawful permanent residence. Obtain any documentary proof establishing entry and continuous residence.
- k. Aliens granted suspension of deportation pursuant to section 244 of the INA whose departure the INS does not contemplate enforcing.
  - (1) Aliens in this category have been found deportable, have met a period of continuous residence and have filed an application for INS to suspend deportation, which has been granted.
  - (2) Aliens in this category will have a letter/order from an immigration judge and a Form I-94 showing suspension of deportation granted. After lawful permanent residence is granted, the alien will have a Form I-551.

**ATTACHMENT B**  
(continued)

I. Any other aliens living in the U.S. with the knowledge and permission or acquiescence of the INS and whose departure that agency does not contemplate enforcing.

- (1) Aliens in this category may be in a status not listed above, but based on a determination by INS or documentation supplied by the alien or his or her representative that indicates the alien is present in the U.S. with the knowledge of the INS and with the permission or acquiescence of the INS, local districts may find them to be PRUCOL.
- (2) Examples include, but are not limited to: permanent nonimmigrants, pursuant to P.L. 99-239, applicants for deferred action or voluntary departure status, and aliens granted extended voluntary departure for a specified time due to conditions in their home countries.

# **NOTICE OF ELIGIBILITY FOR COVERAGE FOR THE TREATMENT OF AN EMERGENCY MEDICAL CONDITION**

CASE NAME	CASE NUMBER	DATE
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The applicant(s) indicated on the attached DSS-3622 has been determined to be eligible for Medical Assistance for coverage for emergency medical care and services only, for the reason indicated below:

- ☐ The applicant is not a citizen, qualified alien, or permanently residing in the United States under color of law (PRUCOL). Persons who are not citizens, qualified aliens or PRUCOL may receive Medical Assistance coverage only for the treatment of emergency medical conditions or for medical services provided to pregnant women, if they are otherwise eligible.

Qualified aliens include:

- Persons lawfully admitted for permanent residence;
- persons admitted as refugees;
- persons granted asylum;
- persons granted status as Cuban and Haitian Entrants;
- persons with deportation withheld;
- persons admitted as Amerasian immigrants;
- persons paroled into the United States for at least one year;
- persons granted conditional entry; or
- persons determined to be battered or subject to extreme cruelty in the United States by a family member.

PRUCOL aliens include:

- Persons paroled into the United States for less than one year;
- persons residing in the United States pursuant to an Order of Supervision;
- persons residing in the United States pursuant to an indefinite stay of deportation;
- persons residing in the United States pursuant to an indefinite voluntary departure;
- persons on whose behalf an immediate relative petition has been approved and their families covered by the petition;
- persons who have filed applications for adjustment of status that INS has accepted as "properly filed" or has granted;
- persons granted stays of deportation;
- persons granted voluntary departure;
- persons granted deferred action status;
- persons who entered and continuously resided in the United States before January 1, 1972;
- persons granted suspension of deportation; or
- other persons living in the United States with the knowledge and permission or acquiescence of the INS and whose departure the INS does not contemplate enforcing. (Examples include, but are not limited to: permanent nonimmigrants, pursuant to P.L. 99-239, applicants for deferred action or voluntary departure status, and aliens granted extended voluntary departure for a specified time due to conditions in their home countries.)

The care/services provided to (name(s)) \_\_\_\_\_  
on \_\_\_\_\_ by \_\_\_\_\_ has been  
determined for the treatment of an emergency medical condition. Therefore, coverage will be provided for  
this treatment as follows:

- ☐ Full coverage
- ☐ Coverage with a SPENDDOWN requirement:

Gross monthly income	\$ _____
Total monthly deductions	\$ _____
Net monthly income	\$ _____
- Allowable income standard	\$ _____
Monthly excess income (spenddown)	\$ _____

Based on these calculations, the liability toward the cost of care for the period of treatment is  
\$ \_\_\_\_\_. (See the enclosed "Explanation of the Excess Income Program" for information  
on how this liability may be met.)

The provider(s) of medical care/services has been notified of your eligibility for Medical Assistance  
coverage.

**REGULATIONS REQUIRE THAT YOU IMMEDIATELY NOTIFY THIS DEPARTMENT  
OF ANY CHANGES IN NEEDS, RESOURCES, LIVING ARRANGEMENTS OR ADDRESS  
BE SURE TO READ THE ATTACHED NOTICE ON HOW TO APPEAL THIS DECISION**