

LKR Alert

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Littman Krooks & Roth P.C.

Elder Law and Estate Planning

Aliessa v. Novello Ruled Unconstitutional

New York State Court of Appeals holds 5-year ban on Medicaid eligibility for aliens unconstitutional.

In 1999, *Aliessa v. Whalen* (694 N.Y.S.2d 308 (N.Y. Sup.Ct., N.Y. Co., May 17, 1999)) addressed the constitutionality of the 5-year ban on Medicaid eligibility of certain qualified aliens and individuals previously referred to as PRUCOL immigrants. In *Aliessa v. Whalen*, the Court held that § 122 of the Social Services Law violates Article XVII, § 1 of the New York State Constitution in that it denies assistance to needy persons based upon immigration criteria having nothing to do with need. Thus, under *Aliessa v. Whalen*, the State was required to provide Medicaid benefits to all lawful immigrants who would otherwise be eligible for medical assistance, including PRUCOL immigrants and "qualified" aliens temporarily disqualified for five (5) years under § 122.

Aliessa v. Whalen was subsequently appealed to the Appellate Division, First Department, by the New York State Department of Health. On appeal, *Aliessa v. Novello* (712 N.Y.S.2d 96 (App.Div., 1st Dep't, July 27, 2000) reversed *Aliessa v. Whalen*, declaring that Social Services Law § 122 does not violate Article XVII, § 1 of the New York State Constitution (i.e., the Appellate Division upheld the 5-year ban).

On March 29, 2001, the New York State Court of Appeals, New York State's highest court, heard oral arguments regarding the constitutionality of the 5-year ban. On June 5, 2001, the Court of Appeals struck down on state and federal constitutional grounds the New York law that bars most Medicaid coverage for tens of thousands of legal immigrants suffering from life-threatening illnesses. Governor Pataki indicated that the State will not appeal the decision to the U.S. Supreme Court, as the Court of Appeals ruled on both state and federal constitutional grounds and its holding on the New York Constitution is not subject to review by the U.S. Supreme Court.

Thus, following the June 5, 2001 decision, New York MUST provide Medicaid coverage to both lawful immigrants and U.S. citizens who meet the program's eligibility requirements.

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