

# State Health Reform Assistance Network

## Charting the Road to Coverage

ISSUE BRIEF  
February 2014

## Consumer Assistance Resource Guide: Immigrant Eligibility

Prepared by **Manatt Health Solutions**

Early evidence from across the nation suggests that consumer assisters are playing a vital role in helping people enroll in the new coverage options made possible by the Affordable Care Act. The State Health Reform Assistance Network has engaged with a number of states to develop easy to understand materials to educate consumer assisters about various issues that may confuse consumers and the assisters trying to help them during the eligibility determination and enrollment process. The following resource guide on Immigrant Eligibility is part of a [series](#) developed to help consumer assisters answer some of the most common eligibility and enrollment questions.

### Immigrant Eligibility

To be eligible for health insurance coverage through the Marketplace or Medicaid, an applicant must be a citizen or meet certain immigration status requirements. This guide provides an overview of the complex rules governing immigration eligibility for insurance affordability programs. The guide explains the types of immigrants eligible for the Marketplace and Medicaid, the process by which immigration status is verified and the eligibility requirements applicable to families where some family members are lawfully present and others are undocumented immigrants. The guide also explains the eligibility requirements for individuals who are lawfully present but do not have a Social Security Number; are waiting for asylum; have a student visa; or are sponsored by another individual.

#### ABOUT STATE NETWORK

State Health Reform Assistance Network, a program of the Robert Wood Johnson Foundation, provides in-depth technical support to states to maximize coverage gains as they implement key provisions of the Affordable Care Act. The program is managed by the Woodrow Wilson School of Public and International Affairs at Princeton University. For more information, visit [www.statenetwork.org](http://www.statenetwork.org).

#### ABOUT MANATT HEALTH SOLUTIONS

Manatt Health Solutions (MHS) is an interdisciplinary policy and business advisory division of Manatt, Phelps & Phillips, LLP, one of the nation's premier law and consulting firms. MHS helps clients develop and implement strategies to address their greatest challenges, improve performance and position themselves for long-term sustainability and growth. For more information visit [www.manatt.com/manatthealthsolutions.aspx](http://www.manatt.com/manatthealthsolutions.aspx).

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# Consumer Assistance Resource Guide

## Immigrant Eligibility



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# The 101 on Immigrant Rules

To be eligible for coverage through the Marketplace, including Qualified Health Plan coverage and related financial assistance programs or Medicaid, applicants must be a citizen, naturalized citizen or meet immigration status requirements. The rules governing immigration status requirements can be quite complex and vary somewhat among coverage programs.

To help ensure that immigrant families feel comfortable applying for coverage on behalf of eligible family members, federal rules only require individuals who are seeking coverage to provide information on citizenship or immigration status. Family members who are not seeking coverage for themselves are not obligated to provide information about their immigration status.

By law, applicants' information can only be used to determine eligibility for health insurance. It may not be used for any other purpose, and in particular, cannot be used for immigration enforcement.

## The Immigrant Rules Explained

### Which immigrants are eligible for health coverage?

In general, immigrants must be lawfully present in order to be eligible for health coverage, and even then, their eligibility depends on program-specific rules.

- **For Qualified Health Plan eligibility:** Consumers must be lawfully present to be eligible for Marketplace Qualified Health Plans, premium tax credits and Cost-Sharing Reductions. For more information, see page 3.
- **For Medicaid Eligibility:** The rules for Medicaid are more complex because of a federal law that bans most lawfully present immigrants from receiving Medicaid unless they fall into a “qualified” immigration category. Most “qualified” immigrants who entered the U.S. after August 22, 1996 must wait five years before being eligible for Medicaid unless they meet certain exemptions. These exemptions, explained in detail on page 5, include children, pregnant women, refugees, asylees and other groups. Some state Medicaid programs cover immigrants who have been in the U.S. for less than five years.

Unauthorized (or “undocumented”) immigrants are not eligible for health coverage offered through the Marketplace. The only exception is that these individuals may be eligible for emergency services or prenatal services through Medicaid in some states if they meet other eligibility requirements, such as income standards.

# The Immigrant Rules Explained

Which immigrants are considered “lawfully present” for purposes of Qualified Health Plan eligibility and related insurance affordability programs?

- To be considered “lawfully present,” an individual must have an acceptable immigration status. The list of acceptable immigration statuses is in Appendix A.
- The list includes lawful permanent residents (or “green card holders”), refugees and asylees, as well as many other smaller groups. For example, the list includes immigrants who are in the U.S. because they are fleeing torture or trafficking or who are facing domestic violence.

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## Which immigrants qualify for Medicaid?

**For Medicaid Eligibility:** In general, to qualify for Medicaid, a legal immigrant must be a “qualified non-citizen.”

The qualified non-citizen category includes lawful permanent residents (green card holders) who: 1) entered the U.S. before August 22, 1996; or 2) have been in qualified status for five years or more. For purposes of the five year bar, immigrants cannot count any time when they were undocumented or otherwise not in a “qualified” status. However, the following groups of immigrants are exempt from this “five year bar”:

- Individuals granted asylum or refugee status or withholding of deportation/removal
- Cuban/Haitian entrants
- Amerasians
- Victims of trafficking
- Individuals with Iraqi or Afghan special immigrant status
- Veterans, active duty military and their spouses, un-remarried surviving spouses or children
- Individuals receiving foster care
- Lawfully present children under age 21
- Pregnant women

Some state Medicaid programs cover immigrants who have been in the U.S. for less than five years.

# The Immigrant Rules Explained

## How is immigration status verified?

The Marketplace or state Medicaid agency verifies immigration status by checking the information provided in the application against information in the federal data services hub.

- If the data received by the Marketplace does not match the information on the application, the applicant is required to provide documentation of his or her immigration status (for example, by providing copies of immigration papers).
- **For Qualified Health Plan Eligibility:** If the information provided on the application does not match the information in the federal data services hub, applicants have 90 days to provide documentation. Applicants may receive coverage during this 90-day period.
- **For Medicaid Eligibility:** If the information does not match, applicants have 95 days to provide documentation. Applicants may receive coverage during this period.
- The citizenship or immigration status of family members not applying for coverage is not verified (and should not be requested).

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## What documentation may an individual use to show immigration status?

- Permanent Resident Card, “Green Card” (I-551)
- Re-entry Permit (I-327)
- Refugee Travel Document (I-571)
- Employment Authorization Card (I-766)
- Machine Readable Immigrant Visa (with temporary I-551 language)
- Temporary I-551 Stamp (on passport or I-94/I-94A)
- Arrival/Departure Record (I-94/I-94A)
- Arrival/Departure Record in foreign passport (I-94)
- Foreign Passport
- Certificate of Eligibility for Non-immigrant Student Status (I-20)
- Certificate of Eligibility for Exchange Visitor Status (DS2019)
- Notice of Action (I-797)
- Document indicating membership in a federally recognized Indian tribe or American Indian born in Canada
- Certification from U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR)
- Office of Refugee Resettlement (ORR) eligibility letter (if under 18)
- Document indicating withholding of removal
- Administrative order staying removal issued by the Department of Homeland Security (DHS)
- Alien number or I-94 number

# The Immigrant Rules Explained

What happens in mixed-status families in which some family members are lawfully present, and some family members are undocumented immigrants?

- **Applying for Coverage:** The Affordable Care Act is designed to encourage all citizens and lawfully present immigrants to secure coverage and, as a result, there are protections aimed at making it easier for mixed-status families to apply for coverage.
  - For example, a mother in a family can fill out the application on behalf of her children, even if she is not applying for coverage for herself because of her immigration status.
  - She will need to include some other basic information about herself on the application, including her income, so that the Marketplace can determine the size and income of the family, and place the children in the appropriate coverage program.
  - She cannot be required to provide her immigration status or a Social Security Number (SSN). However, the one exception is that she will need to provide her SSN (if she has one) in order to obtain a premium tax credit for other family members.
- **Determining Household Size:** In determining the household size for lawfully present applicants, undocumented family members are included in the applicant's household size, and their taxable income counts in calculating the applicant's household income.
  - **For Premium Tax Credits:** If a member of the family qualifies for a premium tax credit, the household must file a tax return for the year the consumer receives coverage, and may do so using an Individual Taxpayer Identification Number (ITIN).
  - **For All Programs:** The children of undocumented immigrants are eligible for health coverage programs on the same terms as the children of U.S. citizens, as long as they meet citizenship or immigration requirements.

# Addressing the More Complicated Issues

## Is eligibility affected if an applicant is sponsored by a family member or another individual?

- Immigrants may be financially sponsored by another person who helps them become a lawful permanent resident. Sponsors sign an affidavit of support to show that the immigrant applying for a green card is not likely to become dependent on the government, or a “public charge.” The income of the sponsor may be taken into account in determining an individual’s eligibility for certain federal programs. This is known as “sponsor deeming.”
  - **For Qualified Health Plan Eligibility:** Sponsor deeming rules do not apply. The income of a sponsor does not count in determining the consumer’s income for determining eligibility.
  - **For Medicaid Eligibility:** Sponsor deeming rules apply to most legal immigrants when determining Medicaid eligibility. There are exceptions for legal immigrants who are victims of domestic violence or who would go hungry or homeless without assistance. Sponsor deeming rules do not apply to pregnant women and children. For all other consumers, the sponsor’s income counts in determining Medicaid eligibility.
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## **Lawfully Present and No SSN: What if an applicant seeking coverage is lawfully present but does not have a Social Security Number (SSN)?**

- In general, people seeking coverage for themselves must provide an SSN. This is because SSNs are used to verify income and other eligibility information for health coverage programs.
- However, there are some exceptions to this requirement:
  - Under Medicaid rules, people seeking coverage for themselves are not obligated to provide an SSN if they are not eligible to receive an SSN, are only eligible to receive an SSN for a valid non-work reason or have well-established religious objections to an SSN.
  - In these situations, alternative methods are used to verify the income of the applicants, such as paper documentation.
- On the other hand, if an individual is applying on behalf of a family member, they are generally not obligated to provide an SSN, and can leave the SSN field blank.
  - The one exception is that people applying for a premium tax credit on behalf of other family members must provide an SSN if they have one.

# Addressing the More Complicated Issues

## **Waiting for Asylum: Are consumers who are waiting to receive asylum eligible for health coverage?**

- Yes, consumers who have applied for asylum are eligible for health coverage if they have been granted employment authorization, or are under the age of 14 and have had an application pending for at least 180 days.

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## **Student Visas: Are consumers with a student visa eligible for a Qualified Health Plan and related financial assistance? Are these consumers required to have health insurance or pay a penalty?**

- Consumers with student visas are considered lawfully present and therefore may qualify for a Qualified Health Plan and related financial assistance if they meet other eligibility requirements.
- Students with an F, J, M or Q visa are among those groups that are not required to have health insurance or pay a penalty.

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## **Eligibility for Emergency Services: Are immigrants eligible to receive emergency health care services?**

- Undocumented immigrants are eligible for emergency medical services if they meet other financial eligibility criteria, including labor and delivery for a pregnant woman. Pregnant women may also receive prenatal care, regardless of their immigration status. These individuals may apply for emergency or prenatal services and are not required to provide citizenship or immigration status information.

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## **Public Charge: Will receiving Medicaid or Advance Premium Tax Credits/Cost-Sharing Reductions lead to a “public charge” determination and jeopardize an individual’s ability to obtain a green card or naturalize?**

- No, consumers who receive coverage through these programs are not considered a public charge unless they rely on Medicaid for institutional long-term care services.



# Addressing the More Complicated Issues

## **Individual Mandate: Are legal immigrants subject to a penalty if they do not have health insurance?**

- Yes. Legal immigrants face the same obligation as citizens to secure coverage or pay a penalty. They also can qualify for the same exemptions from the mandate penalty as citizens (e.g., they lack affordable coverage or face a hardship).
- The Internal Revenue Service (IRS) is charged with deciding which legal immigrants face the penalty. The IRS has decided that permanent residents and all foreign nationals who are in the U.S. long enough during a calendar year to qualify as “resident aliens” for tax purposes are obligated to have insurance or pay the individual shared responsibility payment. Note that this means that foreign nationals who live in the U.S. for a short enough period that they are not resident aliens for tax purposes are exempt from the mandate.
- As with U.S. citizens, adults in mixed-status families are responsible for ensuring that their lawfully present and citizen children have coverage. If they fail to do so, they may need to pay a penalty unless their children are eligible for an exemption.
- Undocumented immigrants and children age 16 to 31 who came to the U.S. as children and have been granted Deferred Action for Childhood Arrivals (DACA) are not required to have health insurance or pay a penalty, since they are not eligible for the coverage programs (except for emergency or prenatal services). These individuals are exempt from the individual mandate.

# Appendix A

## What immigration statuses qualify a consumer for a Qualified Health Plan through the Marketplace and related insurance affordability programs?

### Eligible Immigration Statuses

- Lawful Permanent Resident (LPR/Green Card holder)
- Asylee
- Refugee
- Cuban/Haitian Entrant
- Paroled into the U.S.
- Conditional Entrant Granted before 1980
- Battered Spouse, Child and Parent
- Victim of Trafficking and his/her Spouse, Child, Sibling or Parent
- Granted Withholding of Deportation or Withholding of Removal, under the immigration laws or under the Convention against Torture (CAT)
- Individual with Non-immigrant Status (includes worker visas, student visas, and citizens of Micronesia, the Marshall Islands and Palau)
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (Deferred Action for Childhood Arrivals (DACA) is not an eligible immigration status for applying for health insurance)
- Lawful Temporary Resident
- Administrative order staying removal issued by the Department of Homeland Security
- Member of a federally recognized Indian tribe or American Indian Born in Canada
- Resident of American Samoa

### Eligible Immigration Statuses Based on Application for Status

- Temporary Protected Status with Employment Authorization
- Special Immigrant Juvenile Status
- Victim of Trafficking Visa
- Adjustment to LPR Status
- Asylum (Only those who have been granted employment authorization or are under the age of 14 and have had an application pending for at least 180 days are eligible)
- Withholding of Deportation or Withholding of Removal, under the immigration laws or under the Convention against Torture (CAT)

### Eligible Immigration Statuses With Employment Authorization

- Registry Applicants
- Order of Supervision
- Applicant for Cancellation of Removal or Suspension of Deportation
- Applicant for Legalization under IRCA
- Legalization under the LIFE Act