

# HEALTH REFORM ISSUE BRIEF

## IMMIGRANTS AND THE AFFORDABLE CARE ACT

### Overview

This issue brief will focus on the Affordable Care Act (ACA) and its impact on immigrant populations, with an emphasis on implications for HIV/AIDS and viral hepatitis programs and services. The ACA (and most federal programs) makes a distinction between “lawfully present” immigrants and those “not lawfully present,” and eligibility rules are different for these two groups. Lawfully present immigrants include legal permanent residents, asylees, refugees, and temporary workers. Not lawfully present immigrants are undocumented individuals and do not qualify for access to public or private health insurance under the ACA. State and local health departments, public hospitals, community health centers, and other low-income health care providers will continue to serve as a safety net for immigrant communities, particularly those left out of reform. This issue brief will discuss ACA coverage opportunities and eligibility rules for both lawfully present and not lawfully present immigrants as well as action steps for health departments as they prepare systems and programs to maximize access to care for these populations. For questions on immigrants and the ACA, contact [Amy Killelea](#).

### ACTION STEPS

As state HIV/AIDS and viral hepatitis programs prepare for ACA transition for immigrant populations, there are three things to keep in mind:

- 1. Ensure that case managers and other enrollment staff are aware of eligibility and application rules for immigrants and their families, including protections for undocumented individuals.**
- 2. Ensure that case managers, enrollment staff, and clients are aware of safety net services and programs – including community health centers, emergency services through Medicaid, off-Marketplace health plans and Ryan White Program/ADAP.**
- 3. Consider aligning household definitions with modified adjusted gross income (MAGI) and IRS rules to ensure mixed status families are able to access programs and services.**

### Lawfully Present Immigrant/ Qualified Non-Citizen\*

- Lawful Permanent Residents (LPR/Green Card Holder)
- Asylees
- Refugees
- Cuban/Haitian entrants
- Paroled into the U.S. for at least one year
- Conditional entrant granted before 1980
- Battered non-citizens, spouses, children, or parents
- Victims of trafficking and his or her spouse, child, sibling, or parent or individuals with a pending application for a victim of trafficking visa
- Granted withholding of deportation
- Member of a federally recognized Indian tribe or American Indian born in Canada

### Not Lawfully Present\*\*

- Undocumented immigrants

\* *Qualified immigrants who entered the U.S. on or after August 22, 1996 must wait at least five years to become eligible for Medicaid.*

\*\* *Unqualified non-citizens, such as students and temporary workers who are nonimmigrant visa holders, are not eligible for Medicaid, but may be eligible for Marketplace coverage.*

Data and statistics on immigrant communities and access to health care tell a powerful story about the opportunity to increase access to care for these populations through the ACA:

- Recent lawfully present immigrants are at generally lower income levels than other immigrants. 49.9% are below 138% of the Federal Poverty Level (FPL), compared to 41.9% of immigrants with more than five years residency and 27.4% of U.S.-born citizens.<sup>1</sup> Many of these individuals may be eligible for public and private insurance through the ACA.
- Prior to the ACA, immigrants were three times more likely than U.S.-born citizens to be uninsured.<sup>2</sup> Around 48 million people were uninsured in 2011, 20% of whom were immigrants.<sup>3</sup>
- Immigrants are less likely than citizens to have a usual source of care (64 vs. 87%) or receive preventive services (71 vs. 87%).
- The Hispanic/Latino community, which is disproportionately affected by HIV, accounted for 20% of new HIV infections in the U.S. in 2009. In 2011, approximately 11,032 Hispanic/Latino adults and adolescents in the U.S. were diagnosed with HIV. Of those, 6,780 (61%) were born outside the U.S.<sup>4</sup>
- As many as 5.3 million people are living with hepatitis B or C in the U.S., and approximately 54,000 people with chronic hepatitis B immigrate to the U.S. annually.<sup>5</sup>

## ACA Provisions Affecting Immigrants

Several major ACA provisions will have a significant impact on immigrant populations:

### *Coverage Opportunities for Immigrants*

#### **MEDICAID**

- Starting in 2014, in states that opt to expand Medicaid, U.S. citizens and lawfully present immigrants residing in the U.S. for more than five years will be eligible for Medicaid if they are at or below 138% of the FPL.
- Most lawfully present immigrants residing in the U.S. for five years or less will not be eligible for Medicaid, regardless of income level, due to existing rules under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

However, refugees and asylees can be enrolled in Medicaid immediately.<sup>6</sup>

- Undocumented immigrants continue to be ineligible for the Medicaid program (with the exception of emergency services) and will not be eligible for the program's expansion.

#### **MARKETPLACE COVERAGE**

- Starting in 2014, citizens and lawfully present immigrants may purchase a Qualified Health Plan (QHP) in a Marketplace and are subject to the individual mandate requiring people to have minimum essential coverage.
- Lawfully present immigrants with income 400% of the FPL and below are eligible for premium tax credits to help offset the cost of QHP coverage. Individuals with income 250% of the FPL and below are eligible for cost-sharing reductions. Access to QHPs and subsidies are available even to lawfully present immigrants within the five-year Medicaid ban.
  - NOTE: Lawfully present immigrants who are ineligible for Medicaid because of their immigration status (i.e., because they are within the five-year Medicaid ban) with income *below* 100% FPL are treated differently than citizens for the purposes of federal subsidies. Unlike U.S. citizens with income below 100% FPL who are not eligible for federal subsidies to purchase QHPs, these lawfully present immigrants will be eligible for premium tax credits and cost-sharing reductions.

For more details on the ACA's tax credit and cost-sharing provisions, see [NASTAD's issue brief](#).

- Undocumented immigrants will not be eligible for any Marketplace coverage or the accompanying tax credits and cost-sharing reductions. Undocumented immigrants will also not be subject to the monetary penalty for not having health insurance.

#### **OTHER COVERAGE OPTIONS**

- Community health centers and public health programs (including the Ryan White Program) will remain an essential source of safety net prevention, care, and treatment for immigrant populations ineligible for federal programs. Many states also have state and locally funded

programs that are available without regard to immigration/citizenship status. In addition, federal law requires hospitals to provide emergency care to all individuals, regardless of immigration/citizenship status or ability to pay.

- In many states, insurance plans are available for purchase outside of the Marketplace, and may be an option for individuals who are ineligible for Marketplace coverage.

### Summary of ACA Provision Eligibility by Immigration Status

	Medicaid Expansion	Insurance Marketplace		Individual Mandate	
	<i>If state opts to expand</i>	<i>Premium tax credit</i>	<i>Cost-sharing subsidy</i>		
<b>Immigration</b>	U.S. Citizen	Eligible (up to 138% FPL)	Eligible* (if 100 - 400% FPL)	Eligible* (if 100-250% FPL)	Applies**
	Lawfully present	Eligible (except for individuals still within five-year ban)	Eligible* (up to 400% of the FPL; including under 100% FPL if not eligible for Medicaid because of immigration status)	Eligible* (up to 250% FPL; including under 100% FPL if not eligible for Medicaid because of immigration status)	Applies**
	Deferred Action for Childhood Arrivals (DACA) Eligible Youth <sup>7</sup>	Not eligible	Not eligible	Not eligible	Does not apply
	Undocumented	Not eligible	Not eligible	Not eligible	Does not apply

\* If not eligible for Medicaid

\*\* With exceptions based on income, hardship, and other specified factors

### Application and Enrollment

In order to determine eligibility for the Marketplace and Medicaid, all applicants must provide information with regard to their state of residence and citizenship/immigration status.<sup>8</sup> Programs may encounter the following questions from outreach and enrollment staff as well as consumers about the information required and how will it be used:

- **What documentation will the Marketplace use to verify immigration status?**

In most instances, citizenship will be verified by the Social Security Administration using the applicant's SSN. However, applicants may also attest to lawful immigration status and will be asked to choose from a list of documentation to verify status (see dropdown menu screenshot). Immigration status is verified using the Department of Homeland Security (DHS) SAVE system.

- **What documentation will the Marketplace use to verify identity?**

In most cases, SSNs will be used to verify identity. However, if the Marketplace cannot verify identity with a SSN, applicants may provide other forms of identification (e.g., driver's license, school ID, voter registration card, U.S. military card, Tribal card, or ID card issued by federal, state, or local government).

If this person's immigration status isn't listed here, he or she may still be able to get help paying for emergency services, including for labor and delivery if they have a baby. In some states, pregnant women may also be able to get health care coverage.

Document type (Select one)  
Learn more about document types

- ✓ Select...
- Permanent Resident Card ("Green Card", I-551)
- Temporary I-551 Stamp (on passport or I-94, I-94A)
- Machine Readable Immigrant Visa (with temporary I-551 language)
- Employment Authorization Card (EAD, I-766)
- Arrival/Departure Record (I-94, I-94A)
- Arrival/Departure Record in foreign passport (I-94)
- Foreign passport
- Reentry Permit (I-327)
- Refugee Travel Document (I-571)
- Certificate of Eligibility for Nonimmigrant (F-1) Student Status (I-20)
- Certificate of Eligibility for Exchange Visitor (J-1) Status (DS2019)
- Notice of Action (I-797)
- Other documents or status types

CONTINUE

- **Will ineligible family members need to provide citizenship/immigration status information?**

Only family members applying for coverage will need to provide immigration status information.

- **Will ineligible family members need to provide income information?**

Even if only one member of a mixed-status household is applying for subsidized coverage, information about total household income of the tax filing unit must be provided. In addition, the household must file tax returns for the year in which the eligible person has health insurance.

- **Can application information be used to commence deportation proceedings?**

NO. The ACA has strong protections for application information. Application

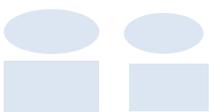
information will only be used for the purposes of determining eligibility for relevant health care programs. The Immigration and Customs Enforcement Agency (ICE) [released guidance with regard to use of ACA application information](#). ICE has clarified that it will not use application information provided to Marketplaces as a basis for pursuing civil immigration enforcement actions against individual applicants or members of their family.

All plans participating in the Marketplaces must have “culturally and linguistically appropriate” information available for enrollees to explain their coverage, rights, and responsibilities.<sup>9</sup> In addition, enrollment agencies must provide meaningful access for limited-English proficient individuals to all programs receiving federal assistance, including free oral interpretation services and translation of key documents into the most prevalent languages in the community. The call center also includes access to interpretation services.

### Case Study: Mixed-Status Family under the ACA

Families with some members who are citizens, some who are legally present immigrants, and/or some who are undocumented may find it especially difficult to navigate ACA eligibility rules. Consider a hypothetical family in a non-Medicaid expansion state:

**Ramos Family (non-Medicaid expansion state)**

<p><b>Robert, age 35</b></p> <ul style="list-style-type: none"> <li>- Lawfully present immigrant, six years of residence</li> <li>- <i>Living with HIV</i></li> <li>- <b>Eligible</b> for Marketplace tax credits and cost-sharing reductions</li> </ul>		<p><b>Maria, age 32</b></p> <ul style="list-style-type: none"> <li>• Undocumented immigrant</li> <li>• <i>Living with HIV</i></li> <li>• <b>Not eligible</b> for Medicaid, or Marketplace coverage</li> </ul>
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- Robert, 35, is a lawfully present resident living with HIV who has been in the U.S. for six years. One year ago, his wife Maria, 32 came to the U.S. unlawfully. Maria is also living with HIV. Robert earns \$25,000 annually and Maria earns \$10,000 annually. Robert’s employer does not offer health coverage, but because of his income, he is newly eligible for QHP coverage through the Marketplace and accompanying tax credits and cost-sharing reductions. However Maria is not eligible because she is not lawfully present.

- Robert’s income eligibility for federal subsidies to purchase a QHP will be based on the income threshold for a family of one, and the family’s total reported household income (Robert and Maria’s income) will then be reduced by a fixed amount using an IRS-specified formula. Maria may be eligible for ADAP and other Ryan White Program services (depending on how each program defines “household” for purposes of income eligibility).

## **Opportunities for HIV and Viral Hepatitis Programs to Ensure that the ACA Works for Immigrant Populations**

To ensure that immigrants and their families have access to the HIV and viral hepatitis care and treatment they need to stay healthy, programs are considering the following:

- ***Prepare case managers and enrollment staff to provide specific guidance and information to immigrants about their coverage options***

A significant portion of uninsured and underinsured clients currently utilizing safety net services may qualify for the Medicaid expansion and Marketplace coverage. However, many individuals may be deterred from seeking coverage because of the immigration status of family members and misconceptions about the Marketplace application process. HIV and viral hepatitis programs are utilizing ACA education and outreach resources (including from the [National Immigration Law Center](#)) to ensure that clients are aware of their options and rights and are able to access public and private insurance.

- ***Prepare systems and programs to continue to provide a vital public health safety net for individuals left out of reform***

Client education must also include coverage options for those left out of reform – including information about community health centers, emergency Medicaid services, and Ryan White Program/ADAP coverage. In many states, individuals who are ineligible for Marketplace coverage may be able to purchase insurance plans outside of the Marketplace.

- ***Align income eligibility criteria and household definitions with federal definitions***

As ADAPs adapt systems and policies to align with the ACA, many are considering coordinating ADAP income criteria with ACA income criteria (MAGI), including definition of household. To assess the impact of using MAGI and federal household definitions instead of current income criteria, ADAPs are taking a sample of clients and using the new [MAGI methodology](#) to determine impact (if any) on ADAP income eligibility for individuals and families.

## **Resources on ACA Provisions Affecting Immigrants**

- [National Immigration Law Center \(NILC\)](#) is a non-profit organization whose mission is to defend and advance the rights of low-income immigrants and their families and provides several informational resources on various provisions of the ACA and impact on immigrant populations.
- [Center on Budget and Policy Priorities](#), includes issue briefs and presentations providing detailed information about ACA concerns specific to immigrants and their families.
- HealthCare.gov Resources
  - [HealthCare.gov, What Immigrant Families Need to Know](#), includes information for immigrants and their families about ACA eligibility and application processes.
  - [HealthCare.gov, Spanish Website](#), includes ACA information translated in Spanish

## **NASTAD Resources on Health Reform**

- [NASTAD Health Reform Website](#) houses NASTAD's presentations, issue briefs, fact sheets, and other resources on health reform.
- [NASTAD Blog](#) provides timely updates and breaking news with regard to federal and state health reform implementation.

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- <sup>1</sup> Affordable Care Act: Coverage Implications and Issues for Immigrant Families, Department of Health and Human Services Assistant Secretary for Planning and Evaluation (ASPE), 3 (Apr. 2012), available at <http://Aspe.Hhs.Gov/Hsp/11/Immigrantaccess/Coverage/Ib.Shtml>.
- <sup>2</sup> Kaiser Family Foundation, Key Facts on Health Coverage for Low-Income Immigrants Today and under the Affordable Care Act (March 2013), available at <http://Kaiserfamilyfoundation.Files.Wordpress.Com/2013/03/8279-02.Pdf>.
- <sup>3</sup> U.S. Census, Income, Poverty, and Health Insurance Coverage in the United States: 2011 (2012), available at <Http://Www.Census.Gov/Prod/2012pubs/P60-243.Pdf>.
- <sup>4</sup> Centers for Disease Control and Prevention, HIV among Latinos, available at <http://Www.Cdc.Gov/Hiv/Latinos/Index.Htm>.
- <sup>5</sup> Department of Health and Human Services, Combating the Silent Epidemic of Viral Hepatitis: Action Plan for the Prevention, Care & Treatment of Viral Hepatitis, 1-3 (2011), available at [Http://Www.Hhs.Gov/Ash/Initiatives/Hepatitis/Actionplan\\_Viralhepatitis2011.Pdf](Http://Www.Hhs.Gov/Ash/Initiatives/Hepatitis/Actionplan_Viralhepatitis2011.Pdf).
- <sup>6</sup> <Http://Aspe.Hhs.Gov/Hsp/Immigration/Restrictions-Sum.Shtml>
- <sup>7</sup> Letter from Cindy Mann, Director of Center for Medicaid And CHIP Services, Centers for Medicare & Medicaid Services, to State Health Officials and State Medicaid Directors (Aug. 28, 2012), available at <http://Www.Medicaid.Gov/Federal-Policy-Guidance/Downloads/SHO-12-002.Pdf>.
- <sup>8</sup> Affordable Care Act, § 1411(A)(1). See Also Immigrants and the Affordable Care Act, National Immigration Law Center (March 2013), available at <http://Nilc.Org/Immigrantshcr.Html> (clarifying that verification requirements are in place for Medicaid and CHIP along with the Marketplaces).
- <sup>9</sup> Affordable Care Act, § 1001.