

Implementing the ACA for Immigrant Families: Considerations and Challenges

By Dinah Wiley

How does the Affordable Care Act benefit immigrant children and families?¹

Many innovations of the health reform law, the Patient Protection and Affordable Care Act (ACA), benefit children and families in America whether they are immigrant or native born. Examples include expanded Medicaid eligibility to all individuals with income under 133 percent² of the federal poverty level (FPL), coverage of dependents up to age 26, availability of child-only policies and affordability credits, and streamlined enrollment for health care coverage.

Other ACA reforms benefit immigrant families specifically, such as:

- Immigrant eligibility expansions: The ACA uses the term “lawfully present” to describe non-citizens eligible for Exchange access and subsidies. Regulations define this term to embrace more immigration status categories than those included in the definition of “qualified” immigrants. Under health reform, non-citizens who are “lawfully present” will be eligible to purchase coverage in a Qualified Health Plan (QHP), Basic Health Plan (BHP), or the Pre-Existing Condition Insurance Plan (PCIP). Low-income lawfully present immigrants will be eligible for the ACA’s advance premium tax credits and cost-sharing.
- Privacy protections: Limitations on the collection, use, and disclosure of personal information help to protect the privacy of ineligible members of mixed-status immigrant families and thus encourage the participation of their eligible spouses and children.

- Civil rights protections:
 - Individuals, including immigrants, enjoy legal protections against discrimination based on national origin, in the implementation of health reform benefits and services;
 - Parents not lawfully present who are ineligible for an Exchange-administered QHP are not subject to the individual mandate provision and cannot be penalized for lack of health insurance coverage; and
 - Entities administering health reform benefits and services are prohibited from requiring unnecessary information from non-applicant family members.

What are challenges of the Affordable Care Act for immigrant children and families?

When the ACA goes into effect many families will need to navigate multiple sources of coverage. For example, the Urban Institute estimates that 75 percent of parents who qualify for subsidized Exchange coverage will have children who qualify for Medicaid or CHIP.³ For mixed-status immigrant families, navigating coverage will be even more complex. The exclusion of ineligible members of immigrant families from access to a QHP or subsidy presents challenges to the structural design of health reform implementation as well as to efforts to inform and encourage participation of vulnerable mixed-status families.

- Application barriers for immigrant families. Parents who are not lawfully present are ineligible for

coverage or subsidies, yet must provide information to the Exchange to enroll their eligible children or spouses.

- Confidentiality concerns are paramount – families are afraid that information about the immigration status of ineligible members, or their lack of a Social Security number (SSN), will be used for immigration enforcement.
- Other challenges include lack of language access and program knowledge, fears that an immigration status application could be denied based on a determination that the applicant could become overly reliant on public benefits (called “public charge” determinations), potential for encountering hostility in government offices.
- Inconsistent Medicaid and CHIP rules. The ACA did not end waiting periods for lawfully present immigrants in public programs including Medicaid and CHIP. But the 2009 Children’s Health Insurance Program Reauthorization Act (CHIPRA) created a state option to remove the five-year waiting period for children and pregnant women. In addition, some states take up a CHIP option to provide prenatal care regardless of immigration status. Thus, states will administer complexities like the following:
 - In some states, children and pregnant women in newcomer families will be eligible for Medicaid or CHIP with no five-year waiting period, though other adults in the same family will be ineligible.
 - For children and parents restricted from Medicaid or CHIP during their first five years in the U.S., the Exchange must re-determine eligibility for these programs upon an individual’s fulfillment of the five year bar.
 - In some states, pregnant women who are not lawfully present will be eligible for prenatal care through CHIP, though not eligible for Medicaid or a QHP.
 - Newly-arrived immigrants ineligible for full-scope Medicaid and CHIP for five years because of the waiting period, but whose income qualifies them for Medicaid, will still be eligible for emergency Medicaid. If their

immigration status fits within the definition of “lawfully present,” they will be eligible for a QHP or BHP.

Implementation Considerations

As the federal and state governments implement the ACA, enhancing the access to health care for mixed-status immigrant families will require thoughtful approaches to a number of issues. The definition of “lawfully present,” the need to communicate with limited-English proficient families, and the application of rules for determining tax credit amounts for mixed-status households are just a few of the questions that will need to be addressed with regard to enrollment and access. Three specific issues of particular interest to child advocates are highlighted below.

The single streamlined application should encourage participation.

The planned simplified application form, to be written in plain language and accessible to those with low health literacy, aims to benefit all administrators and consumers. Federal regulations facilitate access of immigrant families by prohibiting the use of unnecessary questions on application forms. Yet federal and state decision-makers can further encourage participation of mixed-status immigrant families by adding messages that lengthen the application form or features that will interrupt the flow. Therefore, making changes to facilitate enrollment of mixed-status families could seemingly be in conflict with the intention for the application process to be simple and easy to use. For example:

- Immigrant families need unique welcoming and reassuring messages that directly address their concern for confidentiality regarding family members who lack eligible immigration status or SSNs. Messaging should also explain that under federal public charge policy, use of health care should not prevent anyone from obtaining Lawful Permanent Residence.
- Effective placement of clarifying or reassuring information is critical to allow skeptical application filers to continue moving through the process to completion, rather than choosing to abandon the application because of a threatening question. For example, a request for a SSN should be accompanied by information clarifying whether, as to applicant and non-applicant family member(s), the SSN is required as a condition of eligibility or

is optional, the authority for the request, and how the SSN will be used.

- The Exchange must issue certificates of exemption from the individual mandate through a process that does not require family members to declare immigration status.

Electronic verification must ensure opportunities to demonstrate eligibility. The goal of verifying information electronically rather than requiring applicants to submit documentation generally benefits all families. HHS plans to verify citizenship and immigration status information federally, rather than through the state Exchanges, lends integrity and consistency to the verification process that can enhance participation of mixed-status immigrant families. Verification design may account for challenges unique to these families. For example:

- Immigrant applicants will have an opportunity to provide an Alien Number (A#) if they have one, as the quickest route to verification of lawful presence.
- Immigrants without A#,s, and immigrants whose status cannot be verified electronically will have the opportunity to submit documents verifying their lawful presence.
- The proposed process for resolving inconsistencies in an applicant's eligibility information was designed for citizens whose eligibility is verified through the Social Security Administration. The process will be adapted to also support the unique needs of immigrants whose eligibility is verified through the Department of Homeland Security; in particular, regulations reinforce the longstanding prohibition from delaying or denying services while immigration status is being verified.

The SHOP and individual market exchanges should separate verification functions. The immigration status restrictions enacted by the ACA apply only to the individual market Exchange. In the Small Business Health Options (SHOP) exchange, the "qualified employers" who may participate should have already verified, upon hire, the immigration status of their "qualified employees" who enroll in coverage. Re-verification of immigration status by the SHOP is prohibited, and the SHOP must comply with all privacy rules.

- SHOP and individual market Exchanges will be merged in some states to promote simplification and streamlining, but those states will need to separate the verification functions to protect immigrant workers and their dependents.
- The SHOP will verify qualified employers and provide coordination between the employers and the QHPs, and will collect the names and Taxpayer Identification Numbers (including SSNs) of qualified employees for disclosure to the IRS; the SHOP is prohibited from disclosing to the employer any information about a spouse or other dependents included on the application except name, address, and birthdate.

Immigrant Eligibility Terms: “Qualified,” “Lawfully Residing” & “Lawfully Present”

“**Lawfully present**” is the term of art used by the ACA to describe eligible immigrants. The meaning of the term— that is, which immigration law categories it will cover after 2013— is defined by regulation.⁴ It is a more expansive term than the use of “qualified” immigrant by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, or welfare law).

“Qualified”

- The “qualified” immigrant categories of the welfare law include lawful permanent residents (LPRs, or “green card” holders), who are estimated to represent almost 90 percent of all lawfully present immigrants. PRWORA restricts LPRs and some other qualified immigrants from eligibility for public benefits programs during their first five years in the U.S. They will be eligible to apply for subsidized coverage through the Exchange in 2014.
- Qualified immigrants include, in addition to LPRs: refugees, asylees, persons granted withholding of deportation, certain victims of domestic violence and trafficking in humans, certain Cuban and Haitian entrants, and persons paroled into the U.S. for one year or more.⁵

“Lawfully Residing”

- CHIPRA provided an option for states to cover “lawfully residing” children and pregnant women with no five year waiting period. To be “lawfully residing” the immigrant must prove the lawful immigration status plus show residency in the State (Medicaid and CHIP already require state residency). Almost half the states have taken advantage of the CHIPRA option.
- “Lawfully residing” is defined to include all “qualified” immigrants plus the following: certain applicants for LPR status, asylum or withholding of removal; persons paroled into the U.S. for less than one year; additional categories of humanitarian immigrants such as those with Temporary Protected Status or Deferred Enforced Departure; an additional crime victim category – the U-visa holders; persons with valid “non-immigrant” (short-term) status; and categories applicable to very longtime residents of the U.S.⁶

“Lawfully Present”

- Under the ACA, “lawfully present” immigrants are eligible for Exchange-administered QHPs, PCIPs, BHPs, and advance tax credits and cost-sharing; immigrants who are not lawfully present are excluded from coverage.
- “Lawfully present” is defined by ACA proposed regulations (and the PCIP regulations) the same as “lawfully residing.” Advocates have proposed adding the following immigration categories to the definition in future rule-making: non-citizens who are authorized to work in the U.S., those lawfully present in the Northern Mariana Islands and American Samoa, immigrants granted a stay of removal, and certain applicants for asylum and victims of human trafficking.⁷

Endnotes

1. For a helpful background resource, see Jessica Stephens and Samantha Artiga, Kaiser Family Foundation’s Commission on Medicaid and the Uninsured: “Key Facts on Health Coverage for Low-Income Immigrants Today and Under Health Reform,” February 2012, <http://www.kff.org/uninsured/upload/8279.pdf>.
2. To standardize eligibility levels across states and programs, the ACA included a five percent disregard that, in effect, raises the eligibility threshold to 138 percent of the federal poverty line.
3. Estimates by the Urban Institute.
4. 45 CFR §155.20, making reference to the definition for the Pre-Existing Condition Insurance Plan (PCIP) at 45 CFR §152.2.
5. For a more detailed description, see National Immigration Law Center, Table: Overview of Immigrant Eligibility for Federal Programs, “Key Terms Used in Table,” http://www.nilc.org/table_ovrw_fedprogs.html.
6. For a complete description, see Centers for Medicare and Medicaid Services, Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women, <http://www.cms.gov/smdl/downloads/SHO10006.pdf>.
7. See e.g., CCF: “Addendum to Comments on Proposed Rule on Health Insurance Premium Tax Credit (IRS REG-131491-10), Pertaining to Immigrant Children and Families,” October 31, 2010.

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