

Immigrant Access to Health Care: Medicaid and the Affordable Care Act

- North Carolina Justice Center
- September 2014



Immigrant Families in America Today

- Immigrant families: “mixed status”
 - Most immigrant families (85%) include at least one citizen, usually a child.
- Immigrant families with children experience greater poverty
 - 50% have incomes below 200% FPL (compared with 35% of citizen families)

Impact of Access Barriers On Immigrants: Medicaid Program

- Nationwide, 36 % of all children who are eligible for Medicaid but not enrolled in the program live in immigrant families
 - Vast majority (9 out of 10) of these children are U.S. citizens.
- The likelihood of being uninsured is almost double for N.C. immigrants as for citizens.



What Barriers Impact Immigrants' Receipt of Public Benefits, Including Medicaid and ACA?

1. Eligibility Barriers: Most new immigrants are ineligible for “Federal means-tested public benefits,” including Medicaid, NC Health Choice, TANF, Food Stamps.
2. BUT, immigrant eligibility for ACA tax credits is much broader!

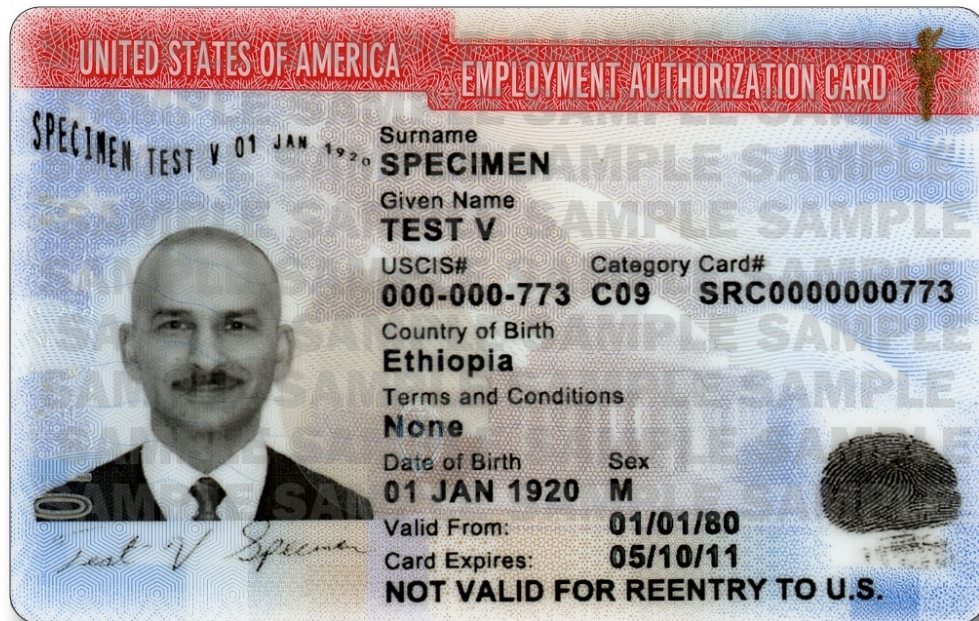
What Barriers Impact Receipt of Benefits? (cont'd)

2. Access Barriers: Even eligible immigrants or family members discouraged from applying
 - Fear of being labeled a “public charge” resulting in denial of “green card”
 - Fear that agency will report undocumented family or household members to ICE
 - Confusion about eligibility rules
 - Language Barriers

What are Some Common Categories of Legally-Present Immigrants?

- Legal Permanent Resident (LPR or “Green Card” holder)
- U Visa (victims of crime)
- T Visa Holders (victims of trafficking)
- Approved VAWA recipient (“battered immigrant”) – “Deferred Action”
- Temporary Protected Status (TPS)
- Asylee
- Refugee
- V-Visa holder
- H-2A and H-2B visa (temporary farm and seasonal workers)
- Other short term visas such as student and visitor visas (B-1, F-1, J-1)
- Deferred Action for Childhood Arrivals (DACA)
- And more...

How Can You Tell What Kind of Immigration Status A Person Has?



- Some may have an I-797 “Approval Notice” with the type of status listed on it.
 - This doc is a one-page sheet of paper with USCIS logo.
- Some may have a work permit (← See image).
- The “Category” code on the work permit tells you what kind of status the person has, and you can look on USCIS website to see which status each code indicates:
<http://www.uscis.gov/working-united-states/information-employers-employees/employer-information/employment-authorization>
 - Note: DACA is code c(33)

Limited Immigrant Eligibility for Medicaid and Other Public Benefits

- **1996 Welfare Reform Act limited eligibility for Medicaid (and other means-tested federal public benefits) to “qualified” immigrants, defined as:**
 - Legal Permanent Residents (LPR)
 - Refugees, Asylees, & Persons Granted Withholding of Deportation/Removal
 - Cuban and Haitian Entrants
 - Paroled into U.S. for at least 1 Year (very small category)
 - Battered spouses and children (“VAWA”) with deferred action
- **Not Qualified: everyone else**
 - Even if they have work authorization and are lawfully present in the United States, they are NOT eligible for “federal means tested public benefits.”

Immigrant Eligibility: The “Five Year Bar”

- Most “qualified” legal immigrants who arrived after August 1996 are barred for 5 years after receiving their legal status from receiving “*Federal means-tested public benefits*”
- Those benefits are defined as: Medicaid, SCHIP, TANF, Food Stamps, SSI

Exemptions from the 5 Year Bar

- The following immigrants are exempt from the five-year bar on federal means-tested public benefits, and may start collecting benefits as soon as they receive legal status:
 - Refugees, persons granted asylum or withholding of deportation, Amerasian immigrants, Cuban/Haitian entrants
 - Veterans, active duty military, spouse, unremarried surviving spouse, or child of veteran/active duty military
 - Victims of trafficking
 - Note: All still exempt if they later get a green card (LPR).
 - Pregnant Women and children under the age of 19 (as of 2010).
 - Pregnant women then revert to the 5-year bar once their pregnancy is over, if they have not yet been in qualified immigrant status for 5 years.

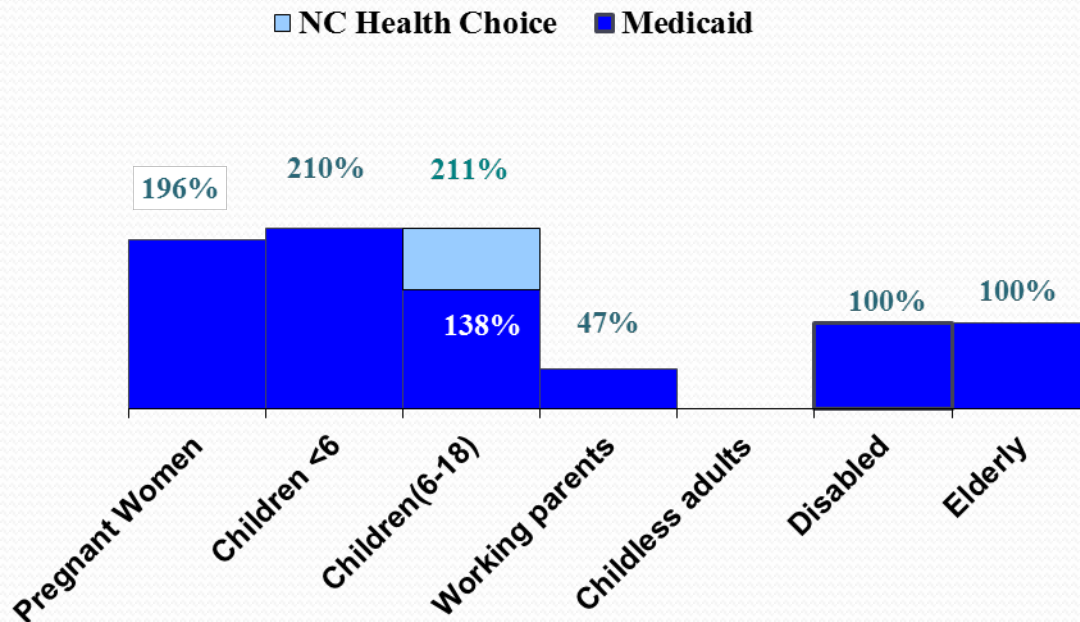
Pregnant Women and Children under CHIPRA

- A new provision in 2010 made Medicaid available to **pregnant women and children** (under age 19) in a variety of lawful immigrant categories, including:
 - Legal permanent residents
 - VAWA prima facie determination or approved petitions
 - Temporary Protected Status (TPS)
 - Family Unity beneficiaries
 - Temporary resident status under 210 or 245 of the Immigration and Nationality Act
 - Deferred Enforced Departure
 - Spouses or children of U.S. citizens whose visa petitions are approved and who have pending applications for adjustment of status
 - Victims of crime (“U” visa holders)* (*It is not yet clear whether this applies to all U visa holders or only those who are DV victims)
 - Fiancées of citizens (K visa)
 - Religious workers (R visa)
 - Individuals assisting in criminal prosecutions (S visa)
 - Individuals with a pending petition for 3 years or more (V visa)
 - Parents or children of individuals with special immigrant status (N visa)

NC Medicaid Income

Eligibility (2014)

(Percent of Federal Poverty Level, based on new MAGI income levels)



• Limited groups of immigrants (“Qualified Aliens”) are eligible for Medicaid/CHIP if they meet all other eligibility criteria

Slide Created by Pam Silberman, UNC School of Public Health. Source: CMS. State Medicaid and CHIP Income Eligibility Standards Effective January 1, 2014. Calculations for parents based on a family of three. Note: 100% of the federal poverty levels (FPL) (2014) = \$11,670/yr. (1 person), \$15,730 (2 people), \$19,790 (3 people), \$23,850 (4 people)

Immigrant Eligibility: The Affordable Care Act

<p>“Qualified” immigrants (with <i>more</i> than 5 years presence in the U.S., or in categories exempt from the 5-year bar such as refugees and asylees)</p>	<p>Are eligible for all the same benefits under the ACA as U.S. citizens:</p> <ul style="list-style-type: none"> • <i>May participate in</i> health insurance exchanges • <i>May receive subsidies for</i> health insurance coverage, and • <i>Are eligible for</i> expanded income-eligibility for Medicaid (not in NC)
<p>“Lawfully residing” immigrants (with any length of legal presence in the U.S.)</p>	<ul style="list-style-type: none"> • <i>May</i> participate in the exchanges • <i>May</i> receive subsidies for health insurance coverage • <i>Not</i> eligible for Medicaid.
<p>Undocumented immigrants & immigrant youth with “Deferred Action for Childhood Arrivals”</p>	<ul style="list-style-type: none"> • <i>Not</i> eligible for any of the benefits of the ACA, including participation in the health insurance exchanges, receipt of subsidized insurance coverage, or the expanded Medicaid access.

“Lawfully Residing Immigrants” Is a Broad Category Under ACA

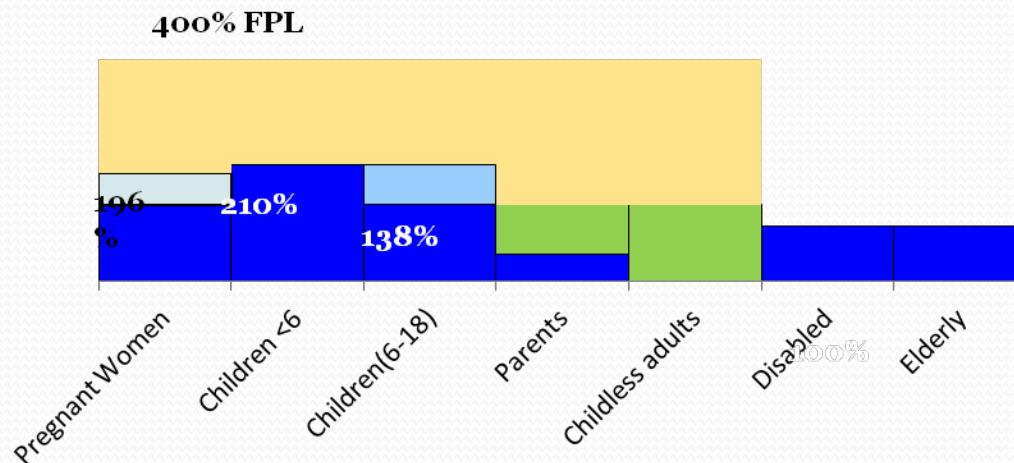
- Naturalized citizens
- Lawful Permanent Residents (LPR/Green Card holder)
- Asylees
- Refugees
- Cuban/Haitian Entrants
- Paroled into the U.S.
- Battered Spouses, Children and Parents (VAWA)
- Victims of Trafficking and their Spouses, Children, Siblings or Parents
- Granted Withholding of Deportation or Withholding of Removal
- Individuals with non-immigrant Status. Includes:
 - worker visas (including H-2A, H-2B, H-1B, etc.)
 - student visas
 - tourist visas
 - U visas/victim of crime visa
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (but *not* DACA holders)
- Administrative order staying removal issued by the Department of Homeland Security
- *Applicants* for asylum, Special Immigrant Juvenile Status, trafficking visas, adjustment to LPR after an approved I-130, or withholding of removal.
- Anyone with *work authorization* who: is a registry applicant, has an order of supervision, has applied for cancellation of removal, or is an applicant for legalization under IRCA or the LIFE Act

More on ACA and Immigrants

- Penalty: Undocumented and DACA immigrants will not be subject to the penalty for not applying for health coverage, but they will have to apply for an exemption based on their immigration status when they file 2014 taxes (in early 2015).
- Subsidy Level: Unlike citizens, lawfully present immigrants who do not qualify for Medicaid may get premium tax credits even if they earn less than 100 percent of federal poverty level. This is true regardless of whether or not a state expands Medicaid eligibility under the Affordable Care Act.

NC Medicaid Income Eligibility if Expanded (2014)

■ Existing Medicaid Eligibles
 ■ Newly Medicaid Eligibles
 ■ Existing NCHC
■ Optional Coverage
 ■ Subsidies in Exchange



- Approximately 560,000 uninsured adults would be income eligible for Medicaid expansion in 2014, if the state chose to expand Medicaid.

- The ACA did not change Medicaid eligibility rules for immigrants.

Slide created by Pam Silberman, UNC School of Public Health. Note: 138% FPL (2014)= \$16,105/yr (1 person), \$21,707 (2 people), \$27,310 (3 people), \$32,913 (4 people).

Taxes and the ACA

- Immigrants did not have to have filed taxes prior to 2014 to be qualify for an ACA subsidy, but in 2014 could prove income in other ways (pay stubs, etc.)
- Immigrants will have to file taxes in the *future* (for tax year 2014 and beyond) to remain eligible for subsidies, as tax returns are required to prove income in future years
- Lawful immigrants who do not remain in the U.S. long enough to be considered “resident aliens” for tax purposes will not be subject to the individual mandate requiring them to apply for health insurance.
 - Example: a tourist on a short stay in the U.S. of a month will likely not qualify as a “resident alien” and thus will not be required to apply for insurance during her brief stay.



Taxes and Mixed-Status Households

- ACA subsidies and proof of income are based on the income your entire tax-filing household, including the income of ACA-ineligible undocumented family members
- Therefore, many undocumented adults will have to file tax returns if they are seeking ACA subsidies for lawfully-residing household members

Youth with Deferred Action for Childhood Arrivals...

- “DACA”: The new program for immigrant youth between ages 15 and 30 who can show they are in school, graduated from school, received a GED, or honorably discharged from the military and do not present a risk to national security or public safety
- Will not be eligible to purchase health insurance through the exchanges set up by the ACA
 - (interim rule, proposed August 30, 2012, 77 Fed. Reg. 52614).
- They also will not be eligible for Medicaid under the ‘CHIPRA’ program
 - (<http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf>)
- No regulations have come out yet regarding the new “DAPA” program for immigrant parents, but we expect them to be excluded from the ACA as well

Eligibility Barrier:

Sponsor Deeming

- Some categories of family immigrants are required to have U.S. citizen or resident “sponsor” them, and the sponsor’s income is “deemed” available to the immigrant herself
- Deeming applies to Medicaid and SCHIP, as well as food stamps, SSI, TANF (cash welfare).
- Note: there is **no** “Sponsor Deeming” when calculating an immigrant’s income eligibility for subsidies under the ACA!
- Deeming applies until citizenship or immigrant has 40 quarters of earnings
 - Exemption: if person would go hungry or homeless without the benefits or if a domestic violence victim.

Access Barrier: Fear of Public Charge

- Concerns: If my family participates in a health or nutrition program, can I:
 - Be deported?
 - Get a green card in the future?
 - Become a citizen in the future?
 - Sponsor a relative in the future?
- “Public charge”: A determination by ICE that someone is likely to become dependent on the government for their subsistence

Does Use of Federal Health Programs & Subsidies Make You a “Public Charge?” Or Affect Your Chances of Getting a Green Card?

- Answer: NO
 - When determining who is a “public charge”...
 - USCIS may not consider use of health and nutritional support (ACA, Medicaid, SCHIP, food stamps)
 - Exception: receipt of long-term care
 - ICE may only consider use of means-tested *cash* assistance for purpose of income maintenance (SSI, TANF) as evidence of public charge.
- EXEMPT: refugees, asylees, citizenship applicants

Barriers: Fear of ICE Reporting

- Concern: “If I go to the government office to get help for my child, will they deport me or my husband?”
- Agency threats of ICE reporting - frighten immigrants, discourage participation

Barriers: ICE Reporting General Rules

- Immigration enforcement is the responsibility of Immigration and Customs Enforcement/DHS
- Benefits agencies are not responsible for enforcing immigration laws, with limited exceptions
 - Certain government entities (SSI, TANF, FS, public housing) are only required to notify ICE of any immigrant the entity “knows” is not lawfully present in the U.S.
 - And the definition of “know” is very strict
 - Medicaid & SCHIP agencies *under no duty to “report”*

Federal Guidance on Immigration Inquiries

- US HHS and USDA issued policy guidance stating that states should not make inquiries into citizenship, immigration status and social security numbers of *non-applicants* in the household when people apply for Medicaid, SCHIP, TANF and Food Stamps
- States *may not deny* benefits because a non-applicant in the family or household has not provided information on citizenship, immigration status, or SSN.
- Guidance exists to encourage mixed-status families to apply for health coverage

Immigration Enforcement and the ACA

- ICE put out a memorandum in October 2013 clarifying:

“ICE does not use information about such individuals or members of their household **that is obtained for purposes of determining eligibility for [ACA] coverage as the basis for pursuing a civil immigration enforcement action** against such individuals or members of their household, whether that information is provided by a federal agency to [DHS] for purposes of verifying immigration status information or whether the information is provided to ICE by another source.”

Health Programs That Can Be Provided to All Immigrants

Certain federally funded programs can be provided to all immigrants, regardless of status:

- Emergency Medicaid and other emergency medical services
- Immunizations
- Testing and treatment of communicable diseases (whether or not symptoms caused by such disease)
- WIC (state option)
- Programs delivered at the community level that:
 - Do not condition assistance on income or resources and
 - Are necessary to protect life or safety

Programs “Necessary to Protect Life or Safety”

- Mental illness or substance abuse treatment
- Medical & public health services & mental health, disability or substance abuse services necessary to protect life or safety
- Child and adult protective services
- Violence and abuse prevention, including domestic violence
- Short-term shelter, housing assistance (e.g., battered women’s shelters)
- Soup kitchens, food banks, other nutritional assistance programs
- Other services necessary for the protection of life or safety

References

- ***Interpretation of “Federal Public Benefit,”*** (HHS) 8/4/98, 63 Fed. Reg. 41658
- ***Final Specification of Community Programs Necessary for the Protection of Life and Safety,*** 1/16/01, 66 Fed. Reg. 3613
- ***Interim Guidance on Verification,*** 11/17/97 (INS) 62 Fed. Reg. 61415
- ***Domestic Violence Fact Sheet,*** 1/30/01 (HHS-OCR)
<http://hhs.gov/ocr/immigration>
- ***Information on Violence Against Women Act,***
www.bcis.gov/graphics/howdoi/battered.htm
- ***NHeLP Immigrant Health website for advocates***
<http://www.healthlaw.org/immigrant.shtml>
- ***Eligibility/Access Guide on Immigrant Health***
http://www.accessproject.org/downloads/Immigrant_Access2002.pdf

References

- **Food Stamp Regulations on Deeming**, 11/21/00
(USDA-FNS) 65 Fed. Reg. 70134
- **Public Charge: Gov't Agency Guidance in Different Languages** (info at bottom of page)
<http://www.nilc.org/ce/ceindex.htm>
- **Q & A on 5 year bar:** www.cms.gov/immigrants
- **NCIOM Report on Latino Health Access 2003:**
<http://www.nciom.org/pubs/latinohealth.html>
- **Immigrants and Affordable Care Act:** <http://www.nilc.org/immigrantshcr.html>; see also 75 Fed Reg 45030; 45 CFR 152.2

References

- **Guidance On State Applications, Citizenship, Immigration Status & SSN**, 9/21/00 (HHS, USDA)
<http://www.hhs.gov/ocr/immigration/triagency.html>

<http://www.hhs.gov/ocr/immigration/finalqa.html>
- <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/origin/policyguidanceregardinginquiriesintocitizenshipimmigrationstatus.html>
- Memorandum of Agreement between the Department of Homeland Security, U.S. Citizenship and Immigration Services, and the North Carolina Department of Health and Human Services, signed June 2010
- **SCHIP Interim Final Rule**, 6/25/01 (HHS) 66 Fed. Reg. 33,823
- **Mandatory Reporting Notice**, 9/28/00 (HHS, SSA, DOL, HUD) 65 Fed. Reg. 58301
- **Language Access Guidance**, 8/30/00 (HHS-OCR)
<http://hhs.gov/ocr/lep>

References

ACA and Immigrants

- **Immigrants and Affordable Care Act:** <http://www.nilc.org/immigrantshcr.html>
- **Regulations:** 75 Fed Reg 45030; 45 CFR 152.2
- **ICE Memorandum on not using information gained through ACA applications for ICE Enforcement, October 2013:**
<http://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf>
- **“Health Insurance for Immigrant Families” – Georgetown Center on Children and Families/National Immigration Law Center:**
<http://ccf.georgetown.edu/ccf-resources/health-insurance-for-immigrant-families/>
- **Information regarding “Resident Alien” Status for purposes of being subject to individual mandate under the ACA:**
<http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision> (Question 11)



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