

FREQUENTLY ASKED QUESTIONS

The Affordable Care Act & Mixed-Status Families

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All National Immigration Law Center resources on immigrants and the Affordable Care Act are available from www.nilc.org/ACAfacts.html.



1. What is a mixed-status family?

A “mixed-status family” is a family whose members include people with different citizenship or immigration statuses. One example of a mixed-status family is one in which the parents are undocumented and the children are U.S.-born citizens. The number of mixed-status families is growing. As of 2012, more than a quarter of young children in the United States were children of immigrants, and over 90 percent of these children were U.S. citizens.¹

2. What health care programs are available to members of mixed-status families?

Each member of a mixed-status family may be eligible for a different health care program, and some members may not be eligible for comprehensive health care coverage. In general, citizens and “lawfully present” immigrants are eligible to buy health insurance and get tax-credit subsidies in the health care marketplaces created under the Affordable Care Act (ACA).²

However, people who have Deferred Action for Childhood Arrivals (DACA) or Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) are excluded from the marketplaces.³ Undocumented immigrants also are not eligible to buy health insurance and receive subsidies from the ACA marketplaces.

States have different rules about immigrants’ eligibility for Medicaid and the Children’s Health Insurance Program (CHIP), but eligibility is generally limited to a subset of lawfully present immigrants called “qualified” immigrants.⁴

3. Can a person who is not eligible use the ACA marketplace to apply for Medicaid, CHIP, or private health insurance for an eligible family member?

Yes. A person, such as an undocumented parent, who is not eligible to obtain health care coverage from the ACA marketplace may use the marketplace to get health coverage for his or her eligible family members. The marketplace calls the person who is filling out the application but not seeking coverage for herself a *nonapplicant*. The people who will be covered by the insurance are *applicants*. By law, a nonapplicant can be required to provide only the “information strictly necessary” to determine an *applicant’s* eligibility.⁵

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4. Are nonapplicants required to report their citizenship or immigration status?

No. Nonapplicants do *not* need to provide their citizenship or immigration status when applying to get health insurance for their eligible family members. The ACA regulations do not allow health coverage applications to request “citizenship status, status as a national, or immigration status from an individual who is not seeking coverage for himself or herself.”⁶

5. Does a nonapplicant need to provide income information or a Social Security number (SSN)?

If an applicant’s household is applying for help paying the costs of insurance for the applicant (including Medicaid, CHIP, and the marketplace subsidies), all members of the household need to provide information about their income. The income will be verified electronically with the Internal Revenue Service (IRS) if the person who is submitting the application filed taxes using an SSN. Both applicants and nonapplicants will be asked to provide an SSN to be used for income verification, but a person does *not* need to have an SSN to submit the application.⁷ Individuals who do not have an SSN will need to provide other proof of income, such as paystubs.⁸

People should provide only SSNs that were issued to them by the Social Security Administration (SSA). An Individual Taxpayer Identification Numbers (ITIN) should *not* be provided in response to a request for an SSN. The IRS does not use ITINs to electronically verify income. Some state-based marketplaces, however, may request ITINs to verify information against state databases.⁹

6. What if an applicant is lawfully present but does not have a Social Security number?

If an applicant is lawfully present in the U.S. for purposes of the ACA but does not have an SSN, the person should leave the SSN field blank, even if he or she has an ITIN.¹⁰

7. How is an applicant’s citizenship or immigration status verified?

An applicant’s citizenship or immigration status will be verified using government databases. The purpose of the verification is to determine the applicant’s eligibility for health insurance. Information provided to the health care marketplaces will not be used for immigration enforcement.¹¹

For immigrants, the application will generally request one or more numbers, such as the “A-number,” from the applicant’s immigration documents.¹² The documents will be verified electronically by U.S. Citizenship and Immigration Services (USCIS) using the Systematic Alien Verification for Entitlements (SAVE) system. The SAVE system is used by many public benefits agencies, including state Medicaid agencies.¹³ Technical problems sometimes interfere with the electronic verification process. If verification cannot be completed electronically, the applicants will need to upload or mail copies of their documents to the health care marketplace.

Applicants who are U.S. citizens will generally have their citizenship verified by the SSA using their SSN. However, the SSA’s information on naturalized citizens is often outdated. As a result, naturalized citizens may need to provide information from their certificates of naturalization or citizenship. This information will be verified against the SAVE database.

8. Are mixed-status families required to file income tax returns in order to buy health insurance under the ACA?

If a member of a mixed-status household receives a tax credit to make his or her health insurance more affordable, the household *must* file income tax returns for the year in which the eligible person has health insurance.¹⁴ A tax return must be filed in order to reconcile the amount of the tax credit the person received with their household's actual income. If the household's primary tax-filer is not eligible for an SSN, the household must file tax returns using an ITIN.

9. Are mixed-status families subject to the "individual mandate"?

All U.S. residents are required to have health coverage under the ACA's "individual mandate," *unless they are eligible for an exemption*.¹⁵ Importantly, people who are not eligible for health insurance under the ACA, including undocumented immigrants and DACA/DAPA recipients, are eligible for the exemption for "exempt noncitizens." They may also be eligible for additional exemptions, including an exemption for people whose household income is below the threshold that would require them to pay taxes.¹⁶

If a person is subject to the individual mandate and does not have health care coverage, a tax penalty will be assessed against his or her household. Accordingly, exempt noncitizen parents could be assessed a tax penalty if their citizen or lawfully present children are uninsured, even if they are personally exempt.

10. How will an undocumented member of a mixed-status family claim the exemption?

Since the penalty for not having health insurance is a *tax* penalty, the individual mandate will be enforced by the IRS through the income tax return filing process. In order to avoid the tax penalty, each member of a tax-filer's household must provide information about his or her health insurance *or* indicate that he or she is eligible for an exemption.

Exempt noncitizens will claim their exemption by filing IRS Form 8965 with the household's income tax return. Individuals will indicate that they belong to one of several categories of exempt noncitizens, and will not be required to disclose their immigration status.

11. How does the ACA protect the confidentiality of information provided on health insurance applications?

Federal law restricts the use of personally identifiable information provided to the ACA marketplace.¹⁷ The ACA prohibits the use of information provided by applicants for any purpose other than determining eligibility and subsidy amounts. People who are authorized to help with the application process, including certified enrollment counselors, "navigators," and insurance agents, also are bound by the ACA's privacy and security provisions.¹⁸ Any person who "knowingly and willfully" uses or discloses information in violation of the ACA's privacy and security protections is subject to a civil penalty of up to \$25,000.¹⁹

12. Will getting health coverage under the ACA be considered in the “public charge” determination when I apply for lawful permanent resident (LPR) status?

No. Buying insurance through the health care marketplaces and obtaining tax credits or cost-sharing reductions to make health insurance affordable will not be considered in the public charge decision when a person adjusts to LPR status. Use of Medicaid, CHIP, or other health services similarly does not raise public charge issues, with the exception of long-term care services received under Medicaid.²⁰

¹ Maki Park and Margie Mc Hugh, *Immigrant Parents and Early Childhood Programs: Addressing Barriers of Literacy, Culture and Systems Knowledge* (Migration Policy Institute, 2014), www.migrationpolicy.org/research/immigrant-parents-early-childhood-programs-barriers.

² See “Lawfully Present” Individuals Eligible under the Affordable Care Act (NILC, Sept. 2012), www.nilc.org/lawfullypresent.html.

³ See *Frequently Asked Questions: Exclusion of People Granted “Deferred Action for Childhood Arrivals” from Affordable Health Care* (NILC, Sept. 25, 2013), www.nilc.org/acadacafaq.html. See also *Health Care for DACA Grantees* (NILC, Sept. 2013), www.nilc.org/document.html?id=837.

⁴ For more information about immigrant eligibility differences in Medicaid and CHIP in the states, see *Medical Assistance Programs for Immigrants in Various States* (NILC, Feb. 2014), www.nilc.org/document.html?id=159. For a description of “qualified” immigrants, see the “Key Terms Used in Table” section (p. 4) of *Overview of Immigrant Eligibility for Federal Programs* (NILC, Oct. 2011), www.nilc.org/document.html?id=108.

⁵ 42 USC 18081(g), 45 C.F.R. § 155.315(i). See also 42 C.F.R § 435.907(e).

⁶ 45 C.F.R. § 155.310(a)(2). The ACA codifies longstanding federal guidance, known as the Tri-Agency Guidance, which was issued by the U.S. Departments of Health and Human Services (HHS) and Agriculture to ensure that applications do not ask non-applicants for unnecessary information, because these inquiries deter people from securing benefits for their eligible family members. *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (CHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, a tri-agency letter to state health and welfare officials from Olivia Golden, Assistant Secretary, Administration for Children and Families; Nancy-Ann Min DeParle, Administrator, Health Care Financing Administration; Shirley R. Watkins, Under Secretary, Food, Nutrition, and Consumer Services; and Thomas Perez, Director, Office of Civil Rights, U.S. Dept. of Justice, www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/triagencyletter.html. See also discussion at 77 Fed. Reg. 17164 (Mar. 23, 2012).

⁷ 45 C.F.R §§ 155.305(f)(6), 155.310(a)(3)(ii). See also 42 C.F.R §§ 435.907(e)(3) and 457.340(b).

⁸ See discussion at 77 Fed. Reg. 18355 (Mar. 27, 2012).

⁹ www.nilc.org/ACAfacts.html.

¹⁰ 45 C.F.R § 155.310(a)(3)(i). See also 42 C.F.R § 435.910.

¹¹ *Clarification of Existing Practices Related to Certain Health Care Information* (U.S. Immigration and Customs Enforcement, Oct. 25, 2013), www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf.

¹² See *Documents Typically Used by Lawfully Present Immigrants* (NILC, Oct. 2013), www.nilc.org/document.html?id=35.

¹³ 45 C.F.R. § 155.315(c).

¹⁴ 45 C.F.R § 155.305(f)(4) and 26 C.F.R. § 1.6011-8.

¹⁵ Exempt individuals include members of recognized religious sects, members of health care sharing ministries, exempt noncitizens, incarcerated individuals, individuals with no affordable coverage, individuals

with a household income below the filing threshold, members of Indian tribes, individuals with hardship exemption certification, and individuals with certain short coverage gaps. See 26 U.S.C. § 1.5000A-3.

¹⁶ 26 U.S.C. § 5000A-3(c); 26 C.F.R. § 1.5000A-3(c). The category of “exempt noncitizens” also includes individuals who are “nonresident aliens” for tax purposes. “Nonresident alien” is a tax designation and is not an immigration status. For more information about nonresident aliens, see *Taxation of Nonresident Aliens* (U.S. Internal Revenue Service webpage, updated Apr. 17, 2013), www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Nonresident-Aliens.

¹⁷ 26 USC 6103(1)(21); 45 C.F.R. §§ 155.260, 155.270; see also Social Security Act § 1131(a)(5) (restricting use of personally identifiable information from public benefits applications).

¹⁸ 45 C.F.R. § 155.260(b).

¹⁹ 45 C.F.R. § 155.260(g).

²⁰ *Public Charge Fact Sheet* (USCIS webpage, last updated Nov. 15, 2013), www.uscis.gov/news/fact-sheets/public-chargefact-sheet. See also *Federal Guidance on Public Charge: When Is it Safe to Use Public Benefits?* (NILC, Aug. 2014), www.nilc.org/document.html?id=164.