

# Current Immigration Reform Proposals Fail to Ensure That Aspiring Citizens Will Have Access to Health and Nutrition Programs

## *Analysis of Access to Health Care and Nutrition Assistance in Current Immigration Reform Proposals*

JANUARY 25, 2013

In January 2013, the Obama administration and a bipartisan group of U.S. senators (known as the “Gang of Eight”) each released a blueprint of what they hope immigration reform legislation will include. On February 18, 2013, an incomplete draft of immigration reform legislation from the Obama administration was leaked. Based on the analysis below, all three “proposals” fail to adequately address how people who may potentially be granted a conditional status under an immigration reform bill would secure affordable health care coverage and enroll in nutrition programs. Because no immigration reform legislation has yet been introduced, more work by Congress and the administration is needed to ensure that immigration reform fully integrates newly legalized immigrants.

### SENATORS’ BIPARTISAN PROPOSAL

JANUARY 28, 2013

Current restrictions preventing non-immigrants from accessing federal public benefits will also apply to lawful probationary immigrants.

— *Bipartisan Framework for Comprehensive Immigration Reform*, p. 2<sup>1</sup>

### Analysis

The Senate proposal refers to the existing federal eligibility rules that prevent immigrants who are not listed as “qualified” under the 1996 welfare law (Personal Responsibility and Work Opportunity Reconciliation Act, or PRWORA) from receiving “federal public benefits,” a term of art that applies to a range of federal benefits, including Medicaid, the Children’s Health Insurance Program (CHIP), Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), the Supplemental Nutrition Assistance Program (SNAP), and others designated by federal agencies. The senators’ language (above) simply

<sup>1</sup> <http://s3.documentcloud.org/documents/562512/final-bipartisan-framework-for-immigration-reform.pdf>.

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reaffirms that individuals who obtain a lawful probationary status will not be considered “qualified” immigrants and will remain ineligible for these federal programs. Indeed, under existing laws, even if a person obtains a green card or lawful permanent resident (LPR) status after completing the probationary status period, he or she may have to wait five years or longer before becoming eligible for some of these programs.

The senators’ proposal is silent on whether newly legalized immigrants are eligible for Affordable Care Act (ACA) programs. Under the 2010 law, individuals who are U.S. citizens and “lawfully present” immigrants are eligible to buy private health insurance and receive premium tax credits (which help make the cost of health insurance more affordable) through the new insurance exchanges. The term “lawfully present” is broader than the specific group of “qualified” immigrants. It is assumed that when a person gains lawful status in a probationary immigration status, he or she will be considered lawfully present for immigration purposes as well as for purposes of eligibility under the ACA.

## WHITE HOUSE PROPOSAL

JANUARY 29, 2013

Consistent with current law, people with provisional legal status will not be eligible for welfare or other federal benefits, including subsidies or tax credits under the new health care law.

— *Fact Sheet: Fixing Our Broken Immigration System  
So Everyone Plays by the Rules*<sup>2</sup>

### Analysis

The administration’s proposal for eligibility (see the above quotation) is unclear because of two phrases it includes: “consistent with current law” and “welfare and other federal benefits.”

The phrase “consistent with current law” is intrinsically inaccurate, since there is nothing in existing law that would indicate that an individual in a provisional lawful status that has yet to be created would not be considered lawfully present for benefit purposes. For example, the most recent proposed rule from the U.S. Department of Health and Human Services (HHS) defining lawfully present under the ACA makes no mention of a provisional status or whether future categories of lawful status would be ineligible.

The reference to “current law” may be a reference to the August 2012 HHS interim final rule that excludes individuals granted deferred action under the 2012 Deferred Action for Childhood Arrivals (DACA) program from the definition of lawfully present for purposes of Medicaid, CHIP and the health insurance Exchange. Yet the rule maintained eligibility for individuals granted deferred action based on other circumstances. Advocates still argue that

<sup>2</sup> [www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules](http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules).

there is no statutory basis in the ACA or other federal law for HHS to have made this distinction or exclusion for deferred action grantees under DACA.

Yet even this interim rule does not provide guidance on eligibility for individuals granted lawful status under a provisional status that has yet to be created. For example, nothing in existing law automatically designates individuals granted some type of conditional status on their path to U.S. citizenship in immigration reform legislation as being the same as individuals granted DACA. In addition, while DACA grantees are in the U.S. lawfully, they do not have lawful status. It is assumed that any provisional status created in immigration reform would provide individuals lawful status, and thus make them clearly lawfully present. As a result, there is no “current law” that would directly apply to eligibility for individuals with a conditional status that has yet to be created.

Furthermore, unlike the Senate group’s reference to “federal public benefits,” which has an understood meaning, the term “welfare or other federal benefits” is vague and does not refer to any existing definitions. Nothing in existing law defines the health coverage provided by the ACA as either welfare benefits or “other federal benefits.” It is only the qualifying statement afterwards that clarifies that the administration intends this term to include benefits provided under the ACA.

## WHITE HOUSE DRAFT LEGISLATION

FEBRUARY 2013

IN GENERAL, the draft legislation proposes that legalization would allow undocumented people to apply for “lawful prospective immigrant” (LPI) status. People granted LPI status would be required to maintain that status for 6 to 8 years before they could apply for lawful permanent resident (LPR) status. They would be considered lawfully present during that 6 to 8-year period for all purposes, except for eligibility for ACA programs, which is discussed below.

Two provisions of the draft legislation (dated Feb. 12, 2013) specifically affect eligibility of aspiring citizens for affordable health care and nutrition assistance.

### Eligibility for Federal Means-tested Public Benefits

(e) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted under this section shall not be eligible for any federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

— *Draft bill, Title II: Legalization of Undocumented Individual, p. 31*<sup>3</sup>

<sup>3</sup> [www.nilc.org/document.html?id=854](http://www.nilc.org/document.html?id=854).

## Analysis

A person granted LPI status would not be eligible for “federal means-tested public benefits,” which includes Medicaid, CHIP, SNAP, TANF and SSI. After completing the required provisional period (of LPI status), and if granted LPR status, an individual would be considered a “qualified” non-U.S. citizen but generally would remain ineligible for federal means-tested programs for another five years under the existing 1996 welfare act. Therefore, most people granted LPI status would be ineligible for federal public benefits for at least 11 years. People granted LPI status would also be ineligible for Medicare and federal housing under existing eligibility rules. However, LPIs should be eligible for any public benefits that are currently available to lawfully present immigrants or to people regardless of status.

**Special rules for children.** Children who are granted LPI status would be ineligible for nutrition assistance through SNAP during the 6 to 8 years of provisional status, even though they would be considered lawfully present during that period of time. Fortunately, once children adjusted their status from LPI to LPR, they would be eligible for SNAP without an additional waiting period under existing eligibility rules.

In addition, children under age 21 and pregnant women who are granted LPI status could enroll in Medicaid or CHIP, if they were otherwise eligible, in the states that extend coverage to “lawfully residing” immigrant children and pregnant women under section 214 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA). This is because individuals in LPI status are to be considered lawfully present during the 6 to 8–year provisional period. Thus, at least low-income children and pregnant women who are LPIs would be immediately eligible for Medicaid and CHIP in about half of the states.

## Eligibility for the ACA

(a) IN GENERAL.— An individual granted Lawful Prospective Immigrant status under this title shall, while such individual remains in such status, be considered lawfully present for all purposes except—

(1) section 36B of the Internal Revenue Code of 1986 (concerning premium tax credits), as added by section 1401 of the Patient Protection and Affordable Care Act (Public Law 111– 148); and

(2) section 1402 of the Patient Protection and Affordable Care Act (concerning reduced cost sharing; 42 U.S.C. 18071).

— *Draft bill, Title II: Legalization of Undocumented Individual, pp. 24–25*<sup>4</sup>

## Analysis

Under existing ACA eligibility rules, U.S. citizens or lawfully present immigrants are able to purchase health insurance through the Exchange and apply for and obtain premium tax credits and cost-sharing reductions if their household income is below 400 percent FPL. These tax credits were created under the ACA to help make private health insurance affordable for all low- and middle-income families who do not have access to affordable

<sup>4</sup> [www.nilc.org/document.html?id=854](http://www.nilc.org/document.html?id=854).

employer-sponsored health insurance or Medicaid. The ACA also requires citizens and lawfully present immigrants to obtain health insurance or pay a tax penalty (commonly referred to as the “individual mandate”).

However, the White House’s draft language proposes to deny eligibility for the ACA’s premium health insurance tax credits and related cost-sharing reductions to LPIs by designating them as not lawfully present for the purpose of eligibility for only these two ACA provisions. This exclusion is consistent with the White House proposal released on Jan. 29.

Yet the draft language appears to indicate that LPIs would be considered lawfully present for purposes of other provisions of the ACA. As a result, individuals in LPI status would be eligible to buy health insurance through the Exchange, but at full cost.<sup>5</sup> LPIs would also be eligible to enroll in the Pre-Existing Conditions Insurance Plan (PCIP) (until available) and the Basic Health Program (if it’s adopted by the state where they reside). Most importantly, people granted LPI status would be subject to the ACA’s individual mandate.

Without access to the premium tax credits and cost-sharing reductions, many people granted LPI status will not be able to afford to purchase private health insurance through the exchange and will remain uninsured. Yet LPIs will be expected, unfairly, to meet the ACA’s requirement to have health insurance and will be required to either pay a tax penalty or request an exemption based on the lack of affordable coverage. The end result is that LPIs and their eligible family members are likely to remain uninsured for at least 6 to 8 years. During that time, however, they will be required to secure health insurance without having the same opportunities that everyone else will have to meet that responsibility. Most importantly, excluding LPIs from affordable health care options for the 6 to 8–year period will not prevent LPIs from falling ill or being injured during those 6 to 8 years, and will inevitably force them to delay or forgo treatment, resulting in higher costs for everyone down the line.

## TALKING POINTS & CONSIDERATIONS

- These proposals are only starting points for the discussion, not actual legislation.
- The president’s proposal runs contrary to the goals of the president’s signature legislature, the Affordable Care Act.
- The Senate bipartisan group’s proposal would deny eligibility to individuals granted a conditional status in proposed immigration reform legislation for traditional federal public benefits such as Medicaid, Medicare, and SNAP. However, the proposal is silent on whether those granted conditional status would be eligible for the ACA, including coverage in the health insurance Exchange with or without related tax credits.
- The White House’s proposals would deny eligibility to individuals granted a new conditional status for most federal public benefits. The White House’s proposals also

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<sup>5</sup> This is likely designed to help address the exclusion of 11 million undocumented individuals from eligibility for ACA programs. Yet any individual who remains without status under an immigration reform bill will also remain ineligible to purchase health insurance at full cost under the ACA’s existing rules.

specifically deny eligibility for the ACA's premium tax credits and cost-sharing reductions (which help make health insurance affordable) to those granted conditional status. It appears that the White House's proposal would allow those in conditional status to purchase health insurance at full cost through the Exchange and also require them to buy health insurance under the individual mandate. Without a way to be able to afford to buy health insurance, it is unclear how people granted conditional status could meet this requirement.

- Any child who is considered lawfully present in a provisional status should be eligible for nutrition assistance under SNAP during the provisional period. If this were not the case, a child in conditional status who is otherwise in need and eligible would be forced to wait at least 6 years for nutrition assistance. Denying nutrition assistance to a child for any length of time jeopardizes the health and future of that child. A child should not face a day of hunger in the U.S.; yet under existing rules, children in LPI status would be kept hungry for 6 years or more.
- Exclusion from health care runs contrary to the White House's stated goals of immigration reform: promoting responsibility within this newly legalized population and fully integrating and recognizing its contributions. To ensure immigrants are truly welcomed, brought out from the shadows, and fully integrated, aspiring citizens, like all of us, should have both the responsibilities as well as the rights that U.S. citizenship entail.
- Denying access to health care to these people doesn't just harm them, it harms all of us. Based on the evidence provided during health care reform, we need to move everyone from the emergency room for their regular health care to a primary doctor focused on preventing, not just treating, illnesses.
- The continued exclusion of immigrants from affordable health care coverage under the ACA will lead to unintended consequences, including higher health insurance costs for everyone. Cost-shifting from the uninsured to the insured will continue, and health system costs will continue to rise if preventive care is not easily available.
- Inclusion is required for the ACA to be successful. In order to meet the ACA's goals, every person who is eligible should be enrolled in affordable health care and be able to access preventive care. When every member of a family is eligible, the entire family is more likely to enroll. Yet if certain members remain excluded based on immigration status, eligible people in immigrant families, including U.S.-born citizens, are deterred from enrolling, despite targeted outreach and enrollment efforts.