

FACTS ABOUT Federal Funding for States to Provide Health Coverage to Immigrant Children and Pregnant Women

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The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA)¹ provides states with an opportunity to provide affordable health coverage with federal funding to "lawfully residing" immigrant children and pregnant women through the Medicaid and Children's Health Insurance Program (CHIP).² Through this federal option, states can reduce the number of uninsured immigrant as well as citizen children in their state and can help reduce inequities and disparities in our health care system. This fact sheet highlights the key elements of this new coverage available for children and pregnant women.

■ What does the CHIPRA option do?

Section 214 of CHIPRA allows states to use federal funding to cover lawfully residing immigrant children and pregnant women in nonemergency Medicaid and CHIP without a five-year waiting period. It also eliminates sponsor-related barriers for these children and women in states that elect the option.

Congress, in 1996, had imposed an arbitrary restriction that required most lawfully residing immigrants to wait five years before they could be eligible for federally funded Medicaid. This same restriction was applied to CHIP after the program was created in 1997. Nevertheless, many states continued to provide Medicaid and CHIP coverage to lawfully residing immigrants with state funds, as an investment in the health of their residents and as a strategy for reducing inefficient and expensive emergency medical costs.

In 2009, Congress recognized the importance of preventive health care for children and the harm caused by these restrictions, and removed the mandatory federal five-year waiting period for immigrant children and pregnant women in Medicaid and CHIP. States now can receive federal funding to provide nonemergency coverage to these populations without a waiting period.³

¹ Public Law No. 111-3, 2009.

² Section 214 of CHIPRA permits states to cover certain children and pregnant women in both Medicaid and the Children's Health Insurance Program (CHIP) who are "lawfully residing in the United States" as described in sections 1903(v)(4) and 2107(e)(1)(J) of the Social Security Act. The option was available for election by states as of April 1, 2009.

³ Unfortunately, neither CHIPRA nor the Affordable Care Act (Public Law No. 111-148) eliminated the five-year waiting period for federal Medicaid for otherwise eligible, lawfully residing immigrant adults. States may continue to use state funds to provide nonemergency Medicaid to these otherwise eligible, lawfully residing adults who are the parents, caretakers, or grandparents of eligible children who also need access to affordable health coverage.



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■ Does this CHIPRA option provide benefits to undocumented immigrants?

No. Undocumented immigrants remain ineligible for federally funded nonemergency Medicaid and CHIP.⁴ The new CHIPRA option did not change eligibility rules for undocumented immigrants.⁵

Remember, however, that eligibility rules apply only to individuals seeking benefits, not to the entire household. Thus if a lawfully residing child is eligible for Medicaid or CHIP as a result of this CHIPRA option, the child's parents may apply for Medicaid or CHIP for their child, regardless of their own immigration status.

Noncitizens whose immigration status renders them ineligible for nonemergency Medicaid are still eligible for emergency Medicaid.⁶ Thus, low-income, lawfully residing children and pregnant women may be eligible only for emergency Medicaid unless a state elects this CHIPRA option to provide them cost-effective, preventative coverage.

■ Who is covered under the CHIPRA option?

CHIPRA provides federal funding for lawfully residing immigrant children under age 21 and/or pregnant women (eligible during pregnancy and up to 60 days post-partum). A state may cover children in CHIP up to age 19 or in Medicaid up to age 21, and/or pregnant women in Medicaid and/or CHIP. Under this option, a state can elect to cover both or only one of these groups. Other state Medicaid and CHIP eligibility criteria (such as income and resources limits) also apply to this newly covered group.

■ Which categories of immigrants are considered “lawfully residing” under the CHIPRA option?

To be “lawfully residing” an individual must be both “lawfully present” *and* meet the state residency requirement, which generally means that she lives in the state with the intent to remain.⁷ “Lawfully residing” immigrants include lawful permanent residents (green card-holders) as well as other “qualified” immigrants⁸ and several other categories of immigrants who have permission to live or work in the U.S.

Lawfully Present. The first step in determining whether an immigrant is lawfully residing for Medicaid and CHIP is to determine if the person has an immigration status that makes her or him

⁴ Section 403 of Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Public Law No. 104-193). CHIPRA § 605 confirms that undocumented immigrants remain ineligible for nonemergency Medicaid and CHIP.

⁵ Nothing in CHIPRA changes existing eligibility for emergency Medicaid or the CHIP “fetus option.” Emergency Medicaid provides for limited coverage where the absence of immediate medical attention could reasonably be expected to result in placing an individual’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. 42 U.S.C. § 1396b (v)(3). In states that elect CHIP’s “fetus option,” prenatal care is available to women regardless of their immigration status.

⁶ 8 U.S.C § 1611(b). Individuals who may be eligible for emergency Medicaid due to their immigration status must also meet all other state Medicaid eligibility requirements.

⁷ The term “lawfully residing” in the U.S. has been used in other federal programs. The Social Security Administration (SSA), for purposes of Title II benefits, defines a person “lawfully residing in the U.S.,” in SSA regulations and program instructions, as an individual who is “lawfully present” as defined by 8 CFR § 103.12(a) and is a resident of the U.S. In addition, in its regulations at 7 CFR § 273.4(a)(7), the U.S. Dept. of Agriculture’s Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program) defines “lawfully residing in the U.S.” as an individual who is lawfully present as defined by 8 CFR § 103.12(a).

⁸ “Qualified” immigrant as defined in PRWORA § 431 (8 U.S.C. § 1641).

“lawfully present” in the U.S. Key categories of immigrants who are considered “lawfully present” under this option include:

- Lawful permanent residents (LPRs) or green card-holders
- Refugees
- Asylees
- Persons granted withholding of deportation/removal
- Persons paroled into the U.S.
- Cuban and Haitian entrants
- Certain battered spouses and children
- Victims of trafficking
- Citizens of the Compact of Freely Associated States (Micronesia, Palau, and the Marshall Islands)
- Victims of serious crimes who have been granted a U visa
- Persons with a valid nonimmigrant status
- Persons granted temporary protected status (TPS), or TPS applicants who have a work permit
- Persons granted deferred action status
- Children who have applied for special immigrant juvenile status
- Certain work-authorized immigrants
- Certain applicants for lawful permanent resident status
- Certain applicants for asylum or other humanitarian relief

For the complete list of immigration categories that are considered “lawfully present” under this CHIPRA option, see federal guidance recently issued by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services.⁹ By electing this CHIPRA option, a state agrees to cover all categories of “lawfully residing” immigrants as determined by CMS.

State residency. The second step in determining whether an individual is “lawfully residing” for Medicaid or CHIP is to determine if the individual is a state resident under a state’s existing Medicaid and CHIP eligibility rules. Once an individual’s immigration status is determined to be “lawfully present,” the individual should be given the same opportunity as a citizen to establish that he or she lives in the state and intends to remain there.

Under Medicaid, an individual is a state resident if he or she is living in a state with the intent to remain permanently or for an indefinite period.¹⁰ A child’s state residency is generally based on the parent’s or guardian’s residency.¹¹

⁹ See “Medicaid and CHIP Coverage of ‘Lawfully Residing’ Children and Pregnant Women,” July 1, 2010, SHO # 10-006, CHIPRA #17, available at <https://www.cms.gov/smdl/downloads/SHO10006.pdf>. See also “Table: Medical Assistance Programs for Immigrants in Various States” (NILC, July 2010), www.nilc.org/pubs/guideupdates/med-services-for-imms-in-states-2010-07-28.pdf (last visited Aug. 6, 2010), p. 4. (This table is periodically updated; its most up-to-date edition is available from www.nilc.org/pubs/Guide_update.htm.)

¹⁰ 42 CFR § 435.403. An individual can also establish state residency where he or she is living and entered the state with a job commitment or to seek employment, “whether or not currently employed.” 42 CFR § 435.403(i)(ii).

■ What verification is required?

Noncitizens always have been required to provide proof of immigration status when applying for nonemergency Medicaid and CHIP. The new CHIPRA option keeps existing verification requirements for noncitizen applicants intact. A state that elects the option should continue to follow existing Medicaid and CHIP procedures to determine a lawfully residing child or pregnant woman's eligibility.¹² Once immigration status is verified for lawfully residing applicants, a state can reverify immigration status under existing Medicaid and CHIP reverification procedures; specifically, a state must refer to existing documentation or information to verify continued eligibility before requiring additional documentation from an individual. It is important to note that, unlike other Medicaid and CHIP eligibility criteria, immigration status often remains consistent and unchanged year to year.

■ Do immigrants with sponsors need to worry about this new CHIPRA option?

No. Some lawfully residing immigrants who are eligible under this CHIPRA option do not have immigration sponsors due to their particular immigration status. Other lawfully residing children or pregnant women with sponsors can apply for Medicaid and CHIP without concern for their sponsor under this CHIPRA option. When a lawfully residing immigrant child or pregnant woman applies for Medicaid or CHIP under this option, the state will not consider a sponsor's income and resources in making the eligibility determination, and the sponsor will not incur any liability for services received by the sponsored immigrant.

■ How does a state elect this option?

This option is available to all 50 states, Guam, Puerto Rico, and the U.S. Virgin Islands. Under this new option, a state can receive additional federal funding to provide more affordable health coverage to its residents. Because the new coverage is a state option and thus not mandatory, a state must affirmatively elect this CHIPRA option to receive the additional federal funding.

States must notify CMS that they are electing the option by submitting a state plan amendment (SPA) to CMS. As part of the state plan amendment, a state must choose whether to provide coverage:

- To lawfully residing children, or pregnant women, or both.
- Through Medicaid only, or through Medicaid and CHIP. A state cannot choose to provide coverage only through its CHIP program.

If a state elects to provide coverage through both its Medicaid and CHIP programs, the state must submit one SPA for Medicaid and another for CHIP.¹³

¹¹ 42 CFR § 435.403.

¹² 42 U.S.C § 1320b-7. As with applicants whose citizenship status must be verified, lawfully residing immigrant children and pregnant women applicants for Medicaid and CHIP should be given a "reasonable opportunity period" to provide documentation for verification of immigration status. States also "may not delay, deny, reduce, or terminate" benefits on the basis of the individual's citizenship or immigration status. *Id.*

¹³ Sample state plan amendments for this CHIPRA option are included in the recently issued CMS guidance, "Medicaid and CHIP Coverage of 'Lawfully Residing' Children and Pregnant Women," *supra* note 9.

■ Is a new state law required to elect the CHIPRA option?

Depends on your state. There is no federal requirement that states enact a new law in order to elect the CHIPRA option to cover lawfully residing children and pregnant women. Most states will be able to elect this option through an administrative rather than legislative process. Other states may require statutory changes to be able to take advantage of this new option.

■ Why should a state elect this CHIPRA option?

By electing this option, a state will be able to provide affordable coverage to more eligible, lawfully residing children and pregnant women. These currently uninsured children need health care now and instead are being forced to delay or forgo a visit to the family doctor.

A state also can enroll more eligible citizen family members by electing this option. Many citizen children have siblings who are lawfully here but do not have their citizenship yet. By allowing parents to enroll their citizen and lawfully residing immigrant children together in Medicaid and CHIP, parents will not have to choose which child gets to see a doctor.

Finally, a state can receive critical federal funding to cover more of its uninsured children. A state will receive the “enhanced” CHIP federal matching rate (rather than the Medicaid rate) to cover lawfully residing immigrant children, whether the child is enrolled in Medicaid or CHIP.¹⁴ A state will receive the Medicaid match rate for lawfully residing pregnant women and children who are 19-21 enrolled in Medicaid.

Remember, a state that does not provide affordable coverage to its residents does not avoid costs to its health care system, economy, or families. Electing this option now, with additional federal resources, can help a state give its children an opportunity to be healthy and productive. It is also a sound investment in the short and long term health and economy of the state.

FOR MORE INFORMATION, CONTACT

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¹⁴ See “Medicaid and CHIP Coverage of ‘Lawfully Residing’ Children and Pregnant Women,” *supra* note 9; see also “Table: Medical Assistance Programs for Immigrants in Various States,” *supra* note 9. The federal minimum CHIP match rate is 65 percent. For federal match rates for CHIP and Medicaid by state, see two tables available on the Kaiser Family Foundation State Health Facts website, www.statehealthfacts.org: “Federal Matching Rate (FMAP) for CHIP,” www.statehealthfacts.org/comparetable.jsp?ind=239&cat=4, and “Federal Matching Assistance Percentage (FMAP) for Medicaid with American Recovery and Reinvestment Act (ARRA) Adjustments,” www.statehealthfacts.org/comparemaptable.jsp?ind=695&cat=4.