

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?

“Mixed-status family” refers to a household made up of individuals with different citizenship or immigration statuses, such as a family with an undocumented mom, a “lawfully present” dad, an adolescent granted deferred action through the Deferred Action for Childhood Arrivals (DACA) program, and a child who is a U.S. citizen because he or she was born in the U.S. The number of families that fall under this category is growing: As of 2010, nearly one in four children younger than eight years old had at least one immigrant parent.¹

2. Who is eligible for coverage in the health insurance marketplaces created by the Affordable Care Act (ACA)?

Each member of a mixed-status family may be eligible for a different health insurance program, and some members may not be eligible for any health insurance program.

Eligibility for private health insurance and the subsidies that make insurance more affordable (also called “premium tax credits,” “premium assistance,” and “cost-sharing reductions”) through the ACA’s health insurance “marketplaces” is available only to U.S. citizens and people who are “lawfully present” in the U.S.² Undocumented immigrants and

¹ Ajay Chaudry and Karina Fortuny, *Children of Immigrants: Family and Parental Characteristics* (Urban Institute, May 2010), www.urban.org/UploadedPDF/412132-children-of-immigrants.pdf, p. 1.

² The ACA’s health insurance marketplaces are also sometimes referred to as health insurance “exchanges” or, when considered collectively, as “the exchange.” In this FAQ we call them “marketplaces” or “the marketplace.”

In July 2012, the U.S. Dept. of Health and Human Services (HHS) defined “lawfully present” for purposes of eligibility for the ACA’s Pre-Existing Condition Insurance Plans (PCIP). 75 FR 45014 (July 30, 2010), *codified at* 45 C.F.R. § 155.2. See also 77 FR 52614 (Aug. 30, 2012). HHS and the U.S. Internal Revenue Service (IRS) adopted the PCIP definition in their final rules on eligibility to enroll in the health insurance marketplaces, apply for premium tax credits and cost-sharing reductions, and the individual mandate. 77 FR 18445 (Mar. 27, 2012), *codified at* 45 C.F.R. § 155.20; 77 FR 30387 (May 23, 2012), *codified at* 26 C.F.R. § 1.36B-1(g); 78 FR 53659 (Aug. 30, 2013) *codified at* 26 C.F.R. § 1.5000A-3(c)(2)(ii)(B).

For a brief overview about eligibility for coverage, see NILC’s *Immigrants and the Affordable Care Act*, www.nilc.org/immigrantshcr.html. For more information, see NILC’s “Lawfully Present” Individuals Eligible under the Affordable Care Act, www.nilc.org/document.html?id=809. And see HHS’s *What Do*

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DACA recipients are excluded from the ACA programs³ but may be eligible for emergency Medicaid or state-funded programs.

3. Who is eligible for Medicaid or the Children’s Health Insurance Program (CHIP)?

Immigrants’ eligibility for Medicaid and CHIP varies by state⁴ but is generally limited to a subset of lawfully present immigrants, called “qualified” immigrants, many of whom must wait five years before becoming eligible for Medicaid or CHIP.⁵ About half of the states cover a broader group of lawfully residing children and/or pregnant women, regardless of the date they entered the U.S.⁶

4. Can an eligible member of a mixed-status family apply for Medicaid, CHIP, or private health insurance in the health insurance marketplace?

Yes. Eligible family members may apply for coverage in the marketplace, or for Medicaid or CHIP. A person who is not eligible, such as an undocumented parent, may apply on behalf of eligible family members, including when the ineligible person is the head of household and the household’s primary tax return filer. Immigrants in general, and mixed-status families in particular, often do not know what they may be eligible for and are worried about applying. They often need reassurance—reassurance that addresses their *specific* concerns—from eligibility workers, ACA program “navigators,”⁷ and other experts from whom they seek help.

Key points to remember about mixed-status families:

- An ineligible family member (e.g., an undocumented parent) may complete an application for an eligible family member (e.g., a U.S. citizen child).
- By law, individuals who are not applying for themselves (“nonapplicants”) are not required to provide information about their citizenship or immigration status and are not required to provide a Social Security number (SSN) if one was not issued to them.

Immigrant Families Need to Know About the Marketplace?, <https://www.healthcare.gov/what-do-immigrant-families-need-to-know/>.

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

⁴ For more information about immigrant eligibility differences in Medicaid and CHIP in the states, see NILC’s *Medical Assistance Programs for Immigrants in Various States*, www.nilc.org/document.html?id=159.

⁵ For a description of “qualified” immigrants, see the “Key Terms Used in Table” section (p. 4) of NILC’s *Overview of Immigrant Eligibility for Federal Programs*, www.nilc.org/document.html?id=108.

⁶ See NILC’s *Health Coverage for Immigrant Children*, www.nilc.org/healthcoveragemaps.html#children, and *Health Coverage for Pregnant Women*, www.nilc.org/healthcoveragemaps.html#women.

⁷ “The Affordable Care Act . . . created a critical Navigator function to help people who get health insurance through their state Exchange learn about their options and assist with enrollment.” *Navigators: Guiding People Through the Exchange* (Community Catalyst, June 2011), www.communitycatalyst.org/doc_store/publications/Navigators_June_2011.pdf, p. 1.

- Applicants and nonapplicants will be asked for their SSN, but they do not have to provide one if one was not issued to them. (People’s SSNs are requested so that their income can be verified with the Internal Revenue Service (IRS).)
- Individuals who are not eligible for an SSN may include lawfully present immigrants as well as undocumented immigrants. These people may file income tax returns using an Individual Taxpayer Identification Number (ITIN), which the IRS issues exclusively for tax purposes. Individuals do not need to provide an ITIN on the health insurance application, as the IRS will not verify income for people with ITINs. If a member of a mixed-status family is eligible for a subsidy in the marketplace, the household *must* file a tax return for the year the person has coverage, and may do so with an ITIN.
- By law, information about applicants and nonapplicants may be used *only* to determine eligibility for health insurance. This requirement extends to “navigators,” brokers, agents, and other people or entities involved in the application, eligibility, and enrollment process.
- Information about applicants or members of their households obtained in order to determine their eligibility for health insurance will *not* be used by U.S. Immigration and Customs Enforcement (ICE), the enforcement arm of the U.S. Department of Homeland Security (DHS), for immigration enforcement purposes. ICE issued a clarification of this policy on October 25, 2013.⁸

5. Who is an “applicant,” and what information must be provided about this person on an application for health insurance?

An *applicant* is the person who will use the health insurance—who may not be the same person who fills out the application forms. To be eligible for health insurance in the marketplace, an applicant must either be a U.S. citizen or be lawfully present in the U.S. and be a resident of the state in which he or she is applying. To be eligible for the premium tax credit, the applicant also must not have another affordable health insurance option (such as through an employer, or a family member’s employer), and the household’s income must be at or below 400 percent of the federal poverty level (FPL).⁹

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

An applicant’s citizenship or immigration status will be verified using government databases. The verification’s purpose is to determine the applicant’s eligibility for health insurance, not for immigration enforcement.

Applicants who are U.S. citizens will have their citizenship verified with the Social Security Administration (SSA) using their SSN. For naturalized citizens, in the event that

⁸ *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.

⁹ Applicants who are lawfully present immigrants are eligible for premium tax credits and cost-sharing reductions if their household’s income is under 100 percent FPL and they are not eligible for Medicaid. See 77 FR 30387 (May 23, 2012), *codified at* 26 C.F.R § 1.36B-2(b)(5); and 77 FR 18453 (Mar. 27, 2012), *codified at* 45 C.F.R. §§ 155.305(f)(2) and 155.305(g)(2)(i). See also HHS’s *What Do Immigrant Families Need to Know About the Marketplace?*, <https://www.healthcare.gov/what-do-immigrant-families-need-to-know/>.

SSA's information is not up-to-date, citizenship will be verified by U.S. Citizenship and Immigration Services (USCIS), DHS's nonenforcement arm. USCIS will use the Systematic Alien Verification for Entitlements (SAVE) system, which is already used by many public benefits agencies, including state Medicaid agencies.¹⁰

USCIS also will use SAVE to verify whether immigrant applicants are "lawfully present." In general, to facilitate the verification process the application will request a number, such as the "A-number," from the applicant's immigration document.¹¹ A variety of documents may be used to prove that a person is lawfully present in the U.S.¹²

7. What if an applicant is lawfully present but does not have an SSN?

An applicant must provide an SSN only if he or she has one.¹³ In addition to its role in verifying citizenship status with SSA, the SSN is used to verify income in order to determine program eligibility and the amount of the subsidy.¹⁴ The income verification process can be done in real time, electronically, but there are alternative methods of proving income as well. If an applicant is lawfully present 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.

8. What are ITINs?

ITINs (Individual Taxpayer Identification Numbers) are issued by IRS to people who are ineligible for SSNs but who need to file tax returns. This includes some people who are "qualified" for purposes of Medicaid or CHIP, including certain battered immigrants and certain Cuban or Haitian entrants. Other lawfully present immigrants who are ineligible for or who may not have an SSN include people in "nonimmigrant" categories whose visas do not permit them to work, some children under 14 years old whose application for asylum or withholding of deportation/removal has been pending for 180 days, and some children who have applied for Special Immigrant Juvenile status.

9. Who is a nonapplicant?

A nonapplicant is someone who is *not* applying for health insurance, but who is in an applicant's household. This may include a member (e.g., an undocumented parent) of the eligible person's (e.g., a U.S. citizen child's) family who is filling out the application on behalf of the applicant. By law, the information required from a nonapplicant is limited, because only "information strictly necessary" to determine an applicant's eligibility may be required.¹⁵

¹⁰ 77 FR 18455 (Mar. 27, 2012), *codified at* 45 C.F.R. § 155.315(c).

¹¹ *Id.*

¹² See NILC's *Documents Typically Used by Lawfully Present Immigrants*, www.nilc.org/document.html?id=35.

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

¹⁴ 45 CFR § 155.320(c). See also 42 C.F.R § 435.948(c).

¹⁵ Pub. L. 111-148, § 1411(g), 124 Stat. 119, 230 (2010) (hereinafter "ACA"); 45 C.F.R. § 155.315(i). See also 42 C.F.R § 435.907(e).

10. Is a nonapplicant required to tell his or her citizenship or immigration status?

No. Nonapplicants should *not* be asked for their citizenship or immigration status in order for an eligible family member to obtain health insurance. Nonapplicants should be able to indicate that they are not applying (for themselves) without disclosing their immigration status. For instance, they may say, “I am not applying for myself; I am applying only for my child.”

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 require unnecessary information from nonapplicants, because these inquiries deter eligible people from securing benefits for which they may be eligible.¹⁶ According to ACA regulations, applications “may not request citizenship status, status as a national, or immigration status from an individual who is not seeking coverage for himself or herself on any application or supplemental form.”¹⁷

11. Does a nonapplicant need to provide an SSN or income information?

All members of an applicant’s household, including nonapplicants, need to provide information about their income—if the household is applying for help with the costs of insurance for the applicant (including Medicaid, CHIP, and the marketplace subsidies). The electronic income verification system will verify the household’s income with IRS using SSNs. Therefore, nonapplicants will be asked for their SSN, but they do *not* have to provide one if they do not have one.¹⁸ A person should provide only an SSN that has been issued to him or her by SSA.

Since the IRS will verify income only for households that have filed taxes with an SSN, many mixed-status families will need to provide other proof of income.¹⁹

12. Do mixed-status families have to file tax returns because of the ACA?

If a member of a mixed-status household is eligible for a premium tax credit to make health insurance more affordable under the ACA and enrolls in health insurance, the household *must* file tax returns for the year in which the eligible person has health insurance.²⁰ A tax return must be filed in order to “reconcile” the amount of the tax credit and so the applicant can be eligible for a premium tax credit when he or she renews his or her

¹⁶ *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children’s Health Insurance Program (SCHIP), 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 for Civil Rights, U.S. Dept. of Justice, www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/triagencyletter.html. See also discussion at 77 FR 17164 (Mar. 23, 2012).

¹⁷ 45 C.F.R. § 155.310(a)(2).

¹⁸ 45 C.F.R. §§ 155.305(f)(6), 155.310(a)(3)(ii). See also 42 C.F.R. §§ 435.907(e)(3) and 437.340(b).

¹⁹ See discussion at 77 FR 18355 (Mar. 27, 2012).

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

coverage for the following year. If the household's primary tax-filer is not eligible for an SSN, the household must file tax returns using an ITIN.

Example: Mom, who is undocumented, applies for health insurance for her U.S. citizen son. The marketplace determines that the boy is eligible for a premium tax credit, and he is enrolled in health insurance for 2014. Since the boy is eligible for a premium tax credit, Mom must use an ITIN to file an income tax return for the 2014 tax year by the April 15, 2015, tax filing deadline.

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

Starting in 2014, in general, all individuals are required to have “minimum essential coverage” under the ACA’s “individual mandate” and are subject to a tax penalty if they do not have health insurance, *unless they are eligible for an exemption*. There are several exemptions from the requirement to have health insurance.²¹ Importantly, immigrants who are not eligible for health insurance under the ACA, including undocumented people and DACA recipients, are eligible for the exemption for “exempt noncitizens” and are not subject to the tax penalty if they do not have health insurance.²² U.S. citizens and lawfully present individuals in mixed-status families who are eligible for health insurance under the ACA are required to have insurance unless they are eligible for another exemption.

14. 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 IRS through the income tax return filing process. In order to avoid the tax penalty, each member of a tax-filer’s household, including each member of a household in which the tax-filer uses an ITIN, will have to provide information about his or her health insurance *or* indicate that he or she is eligible for an exemption.

The individual mandate begins in 2014, so exempt noncitizens will claim their exemption on the household’s income tax return for 2014, which must be filed by April 15, 2015. It is unclear what the 2014 income tax return form will look like,²³ but an exempt noncitizen should be able to claim the exemption without disclosing his or her immigration status.

²¹ 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.

²² ACA § 1501, *codified at* 26 U.S.C. § 5000A-3(c); 78 FR 169, 53,659 (Aug. 30, 2013), *to be finalized at* 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.

²³ According to the IRS final rule on the individual mandate, details on exemptions claimed on the income tax return form will be provided in later publications. 78 FR 53652 (Aug. 30, 2013).

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

Under existing law, there are strong restrictions on the use of personally identifiable information,²⁴ and the ACA statute and implementing regulations extend the restrictions to ACA programs, including insurance offered through the marketplace.²⁵ The ACA provides that information supplied on an application may be used only for determining eligibility and subsidy amounts. “Non-exchange” (i.e., nonmarketplace) entities, such as the health plans, “navigators,” agents, brokers, and other people who may help with the process and who have access to personally identifiable information also are bound by the ACA’s privacy and security provisions.²⁶ Finally, a 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 \$25,000.²⁷

16. May USCIS consider a person’s participation in ACA programs when determining if he or she is likely to become a “public charge,” when the person applies for lawful permanent resident (LPR) status?

No. Buying health coverage through the new health insurance marketplaces and obtaining premium tax credits or cost-sharing reductions that make this coverage more 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 cause a public charge problem, unless Medicaid is used to pay for long-term care.²⁸

A publication titled “What Do Immigrant Families Need to Know about the Marketplace?” that’s posted on the federal government’s health insurance marketplace website, HealthCare.gov, says, “Applying for Medicaid or CHIP, or getting help with health insurance costs in the Marketplace, does not make someone a ‘public charge.’”²⁹

²⁴ Social Security Act § 1131(a)(5) (restricting use of personally identifiable information from public benefits applications); 26 U.S.C § 6103 (protecting the confidentiality and disclosure of tax returns and return information).

²⁵ ACA § 1414; 45 C.F.R. §§ 155.260, 155.270.

²⁶ 45 C.F.R. § 155.260(b).

²⁷ 45 C.F.R. § 155.260(g).

²⁸ *Public Charge Fact Sheet* (USCIS webpage, last updated May 3, 2011), www.uscis.gov/news/fact-sheets/public-chargefact-sheet. See also NILC’s *Federal Guidance on Public Charge: When Is it Safe to Use Public Benefits?*, www.nilc.org/document.html?id=164.

²⁹ See HHS’s *What Do Immigrant Families Need to Know about the Marketplace?*, <https://www.healthcare.gov/what-do-immigrant-families-need-to-know/> (see the paragraph immediately before the heading “Mixed status families’ options for care and coverage”).