



## Immigrant Eligibility for Medicaid and Marketplace Coverage A Guide for Nebraska Advocates

### General Overview of Medicaid Eligibility

*To be eligible for Medicaid in Nebraska, individuals must generally<sup>1</sup>:*

- Have a low-income and resources
- Have an immigration status that allows them to be eligible for Medicaid
- Be a Nebraska resident, and
- Fit into one of the following categories:
  - Children
  - Seniors – 65 or older
  - Blind or disabled
  - Pregnant women
  - Very low income parents

The amount of money a person’s household can earn (income eligibility levels) and be eligible for Medicaid depends on into which of the categories above the person fits.<sup>2</sup> Current Nebraska income levels are as follows:

| Eligibility Category      | Maximum Income<br>(Federal Poverty Level) | Maximum Income<br>(Dollars) <sup>3</sup> |
|---------------------------|---|--|
| Children                  | 213% FPL                                  | \$3,578/month                            |
| Pregnant Women            | 194% FPL                                  | \$3,259/month                            |
| Parents                   | 57% FPL                                   | \$974/month                              |
| Seniors                   | 100% FPL                                  | \$1,680/month                            |
| Persons with Disabilities | 100-250% FPL                              | \$1,680/month <sup>4</sup>               |

To be a Nebraska resident, a person must be living in Nebraska and have the intent to remain permanently for an indefinite period.<sup>5</sup> Each applicant should have the opportunity to establish that he or she is a state resident.<sup>6</sup>

<sup>1</sup> Nebraska Dept. of Health and Human Services, Nebraska Medicaid Program: Nebraska Medicaid Reform, “Medicaid Eligibility,” Apr. 29, 2015, [http://dhhs.ne.gov/medicaid/Pages/med\\_reform\\_eligibility.aspx](http://dhhs.ne.gov/medicaid/Pages/med_reform_eligibility.aspx). The full list of Nebraska Medicaid eligibility requirements can be found at 477 NAC 2-001

<sup>2</sup> United States Dept. of Health and Human Services, Centers for Medicaid and Medicare Services, “State Medicaid and CHIP Profiles: Nebraska,” 2015, <http://www.medicare.gov/medicaid-chip-program-information/by-state/nebraska.html>

<sup>3</sup> These amounts are for a family of 3.

<sup>4</sup> This is a general estimate of the maximum income for a person with a disability in a household of three. Note that the rules around disability and income are very complicated, so the income could vary depending on a person’s circumstance (as reflected in the 100-250% FPL range shown above).

<sup>5</sup> 42 C.F.R 435.403. *See also* 477 NAC 6-001.

## Immigrants and Medicaid Eligibility: General Rule

In general, to be eligible for Medicaid a person must be a “qualified alien”/“qualified noncitizen.”<sup>7</sup> A person’s immigration status will determine whether he or she is a qualified alien/qualified non-citizen. Qualified aliens/qualified noncitizens must also meet Nebraska’s state Medicaid requirements like income and residency (discussed above).

*Qualified aliens/qualified noncitizens includes*<sup>8</sup>:

- Lawful permanent residents (LPRs/green card holders)
- Refugees and asylees
- Persons granted withholding of deportation or removal
- Conditional entrants
- Persons paroled into the U.S. by INS for a period of at least 1 year
- Cuban/Haitian entrants
- Certain abused immigrants, their children, and/or their parents

**NOTE:** Trafficking victims are not qualified immigrants but are eligible for benefits regardless of their immigration status; thus, they are treated similarly to qualified immigrants.<sup>9</sup>

Immigrants are considered *not qualified* (ineligible) if they do not fall into one of the statuses listed above. This includes both undocumented immigrants and many immigrants without green cards but who are lawfully present in the U.S.

### Five-Year Bar

Some qualified immigrants who entered the U.S. after 1996 must wait for a period of five years before they are eligible for Medicaid; this is known as “the five-year bar.”<sup>10</sup> Except as discussed below, qualified immigrants must wait five years after receiving a qualified immigration status before they are eligible for Medicaid and CHIP coverage.

*Example: Alex enters the U.S. on a U-Visa in 2011. Alex gets a green card in 2012. Because of the five-year bar, he is restricted from receiving benefits until 2017.*

There are exceptions to the five-year bar.<sup>11</sup> These include:

- 1) Refugees, asylees, and LPRs who used to be refugees or asylees; veterans, active duty military, and their families
- 2) Certain trafficking victims
- 3) “Lawfully residing” pregnant women and children (*see ICHIA below*)

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<sup>6</sup> Evidence of immigration status alone cannot be used to determine residency. *See* 42 C.F.R. 435.956.

<sup>7</sup> National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs*, 4<sup>th</sup> Ed., 2002, pp. 4-5.

<sup>8</sup> 8 U.S.C. § 1641; *Guide to Immigrant Eligibility for Federal Programs*, pp. 4-5. *See also* 477 NAC 5-001 (list of Nebraska Medicaid-eligible statuses).

<sup>9</sup> Tanya Broder and Jonathan Blazer, “Overview of Immigrant Eligibility for Federal Programs,” National Immigration Law Center, Oct. 2011, p. 2, available at <https://www.nilc.org/overview-immeligfedprograms.html>.

<sup>10</sup> *Id.* at p. 6.

<sup>11</sup> *Id. at*, pp. 7-8.

## Special Coverage Categories: ICHIA and 599 CHIP

### *Legal Immigrant Children's Health Improvement Act (ICHIA)*

Lawfully residing pregnant women and children are exempt from the five-year bar if they meet the following eligibility requirements. Applicants must<sup>12</sup>:

- Be immigrant children or pregnant women;
- Otherwise meet state Medicaid and CHIP eligibility requirements (i.e., income, etc);
- Be “lawfully present” in the U.S. This includes “qualified immigrants” (discussed above<sup>13</sup>) and a number of additional lawfully present categories listed in 8 C.F.R. 103.12(a)<sup>14</sup>; and
- Be a Nebraska resident.<sup>15</sup>

DACA-eligible immigrants and undocumented immigrants *cannot* be enrolled in Medicaid or CHIP through ICHIA.

### Duration of Coverage Through ICHIA

Through ICHIA, pregnant women can obtain Medicaid coverage during pregnancy and up to 60 days post-partum. For child children, as long as the child remains eligible for Medicaid or CHIP under other eligibility requirements (i.e., income, residency, etc.), he or she could continue receiving Medicaid or CHIP until age 19.

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<sup>12</sup> See 477 NAC 5-002

<sup>13</sup> See 8 U.S.C. § 1641 (“qualified alien” definition).

<sup>14</sup> See United States Dept. of Health and Human Services, Center for Medicare and Medicaid Services, State Health Official Letter #10-006, “Re: Medicaid and CHIP Coverage of “Lawfully Residing” Children and Pregnant Women, July 1, 2010, available at <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/sho10006.pdf>. Lawfully present categories for purposes of ICHIA are as follows: (1) A qualified alien as defined in 8 U.S.C. § 1641; (2) An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission; (3) An alien who has been paroled into the United States pursuant to § 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings; (4) An alien who belongs to one of the following classes: An alien who belongs to one of the following classes: (i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively); (ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization; (iii) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24); (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended; (v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President; (vi) Aliens currently in deferred action status; or (vii) Aliens whose visa petition has been approved and who have a pending application for adjustment of status;

(5) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(6) An alien who has been granted withholding of removal under the Convention Against Torture

(7) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));

(8) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or

(9) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa/

<sup>15</sup> See 42 CFR 435.403; 477 NAC 6-001

General Overview of 599 CHIP

A pregnant woman ineligible for Medicaid because of her immigration status may apply for coverage for her unborn child under the 599 CHIP program. The coverage is viewed as going to the child, not the mother.<sup>16</sup> The unborn child’s immigration status is considered independent from the mother’s status. Therefore, unlike through ICHIA, an undocumented mother could get prenatal care for her unborn child through 599 CHIP.

Eligibility Requirements

- The mother must apply and be denied typical Medicaid coverage before 599 CHIP eligibility is determined.
- The mother must have an income below 194% FPL.
- The mother must be a Nebraska resident.<sup>17</sup>
- Citizenship of the mother is *not* required.

Coverage Under 599 CHIP

Eligibility is determined for the unborn child from conception through birth; therefore, 599 CHIP covers prenatal care, labor and delivery, and the baby’s hospital costs. 599 CHIP *does not* cover postpartum care for the mother.<sup>18</sup> Also, there is no presumptive or retroactive coverage under 599 CHIP. There is only coverage back to the first day of the month of application for the unborn child.<sup>19</sup>

After birth, coverage for the baby is not automatic, so it is necessary to submit a Medicaid application for him or her as soon as possible.

| Comparing Eligibility and Coverage in ICHIA and 599 CHIP |   |   |
|--|---|---|
|  | ICHIA   | 599 CHIP  |
| <b>Eligibility</b>                                       | <ul style="list-style-type: none"> <li>• Otherwise eligible for Medicaid</li> <li>• Lawfully present pregnant women and immigrant children</li> <li>• Qualified statuses</li> <li>• Groups that cannot be enrolled through ICHIA: undocumented immigrants; immigrants temporarily in U.S. (except TPS); DACA</li> </ul> | <ul style="list-style-type: none"> <li>• Otherwise eligible for Medicaid BUT ineligible because of status</li> <li>• Do not have to have qualified immigrant status</li> <li>• Can be undocumented</li> </ul>   |
| <b>Coverage</b>  | <ul style="list-style-type: none"> <li>• Pregnant women: duration of pregnancy and up to 6 days postpartum</li> <li>• Child – could remain continuously eligible up to age 19</li> </ul>  | <ul style="list-style-type: none"> <li>• Coverage for unborn child, not mother</li> <li>• Covers services from conception to birth-prenatal, labor and delivery, child’s hospital costs</li> <li>• Submit Medicaid application for child (now a U.S. citizen) ASAP after birth</li> </ul> |

<sup>16</sup> See 477 NAC 18-004

<sup>17</sup> This isn’t an explicit requirement under state regulations; however, in practice, this is the result. Under state regulations (477 NAC 18-004.02) the residency of the unborn child follows the residency of the pregnant woman <sup>17</sup> Therefore, if the mother is not considered a Nebraska resident, then the child will also not be considered a Nebraska resident.

<sup>18</sup> The mother may apply for Emergency Medicaid for postpartum complications. However, she may not be found eligible for Emergency Medicaid if she does not meet the state residency requirement.

<sup>19</sup> See 477 NAC 18-004.06.

## Emergency Medicaid (Emergency Medical Services for Aliens - EMSA)

Emergency Medicaid coverage is available for undocumented and ineligible aliens who have an emergency medical condition and are otherwise eligible for Medicaid (meet income, residency, and other standards). Emergency Medicaid does *not* provide continuous coverage or ongoing eligibility for Medicaid –only coverage for the specific dates of the emergency, as determined by Nebraska DHHS.

*Emergency conditions generally covered* include labor and delivery; hospitalizations and ER visits (but not regular doctor's office visits); and things like strokes, sepsis, and traumatic brain injuries. *Conditions generally not covered* include acute rehabilitation, chemotherapy, and dialysis.<sup>20</sup>

It is important to note that the length of Emergency Medicaid coverage is not necessarily the same as the length of a hospital stay. For example, if the applicant is hospitalized for 10 days, but her medical records demonstrate that she was stabilized on day 8, she may only receive 8 days of Medicaid coverage, since she no longer had an emergency medical condition for days 9 and 10.

### Process for Determining Emergency Medicaid Eligibility

1. *Applicant must meet all state Medicaid eligibility criteria (i.e., low income, qualifying category, residency) but does not have an eligible immigration status.*

- A DHHS caseworker determines what eligibility category the applicant would fit into if not for his/her immigration status (i.e. child, senior, person with disabilities, etc.)

2. *Applicant must have emergency medical condition.*<sup>21</sup>

- The applicant must submit documentation (medical records) of the emergency medical condition.

3. *State Review Team (SRT) Determines Whether Emergency Medical Condition Exists and Amount of Coverage*

- If SRT determines that emergency medical condition exists, Medicaid is approved only for a specific number of days set by SRT to treat that particular condition.

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<sup>20</sup>Even though chemotherapy and dialysis are life saving, they are considered treatment for a chronic condition and not emergency treatment. Therefore, they are not covered under Emergency Medicaid.

<sup>21</sup> See 477 NAC 24-007.01; An emergency medical condition is a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) where the absence of immediate medical attention could reasonably result in: a) serious jeopardy to the patient's health; b) Serious impairment to bodily functions; or Serious dysfunction of any bodily organ or part.

# HEALTH INSURANCE MARKETPLACE

## *Eligibility for Marketplace Coverage*

Most U.S. citizens and lawfully present immigrants are eligible for Marketplace coverage. Eligibility for Marketplace coverage is broader than eligibility for Medicaid.

*People with the following statuses are eligible to enroll in coverage through the Marketplace<sup>22</sup>:*

- Lawful Permanent Resident (LPR/green card holder)
- Asylee or Refugee
- Cuban/Haitian Entrant
- Paroled into the U.S.
- Conditional Entrant Granted before 1980
- Battered Spouse, Child, and Parent
- Trafficking victim; trafficking victim's spouse, child, sibling, or parent
- Granted withholding of Deportation or Withholding of Removal, under immigration laws or under Convention against Torture (CAT)
- Certain non-immigrant statuses, including people with work visas (including H1, H-2A, H-2B); student visas; U-visas; T-visas; citizens of Marshall Islands, Palau, and Micronesia
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (EXCEPTION: DACA is not an eligible status)
- Lawful Temporary Resident
- Person who received administrative order staying removal issued by Department of Homeland Security
- Member of a federally-recognized Indian tribe or American Indian Born in Canada

*Applicants for these statuses may enroll in coverage through the Marketplace:*

- Temporary Protected Status (TPS) with Employment Authorization
- Special Immigrant Juvenile Status
- Victim of Trafficking Visa
- Adjustment to LPR Status
- Asylum
  - **NOTE:** Asylum applicants are only eligible for Marketplace coverage if they have been granted employment authorization or are under age 14 and have had an application pending for at least 180 days.
- Withholding of Deportation, Withholding of Removal under immigration laws or CAT

*People with the following statuses and employment authorization may enroll in coverage through the Marketplace:*

- Registry Applicants
- Order of Supervision
- Applicant for Cancellation of Removal or Suspension of Deportation
- Applicant for Legalization under Immigration Reform and Control Act (IRCA)
- Legalization under the LIFE Act

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<sup>22</sup>See Healthcare.gov "Immigration status and the Marketplace," <https://www.healthcare.gov/immigrants/immigration-status/>

## Lawfully Present Immigrants and Subsidies

Marketplace subsidies are generally available to individuals with annual household incomes between 100 – 400% FPL. However, a lawfully present immigrant in Nebraska with an income below 100% FPL who is ineligible for Medicaid based on immigration status is eligible for tax credits. For example, an LPR subject to the five year bar and therefore ineligible for Medicaid could be eligible for tax credits if his or her income is below 100% FPL.<sup>23</sup>

**NOTE:** In states like Nebraska that have not expanded Medicaid eligibility under the ACA, lawfully present immigrants who are eligible for Medicaid based on immigration status, but who fall into the Medicaid coverage gap (low income parents between 57%-100% FPL and childless adults below 100%) are not eligible for Medicaid or Marketplace subsidies.

## Undocumented Immigrants and Mixed Status Families

Undocumented immigrants are not eligible to buy health coverage through the Marketplace or for premium subsidies. However, undocumented immigrants may apply coverage for eligible family members or be part of a household that includes eligible members.

*Example: Alex is undocumented. His daughter, Sophia, was born in Nebraska and is a United States citizen. Alex can apply for health insurance for Sophia through the Marketplace. He can also apply for subsidies to make the insurance more affordable.*

Family members who are not applying for health coverage (such as Alex in the example above) will not be asked if they have an eligible immigration status. The Marketplace *cannot* make an applicant provide information about the citizenship or immigration status of anyone in the family/household who is not applying for coverage. Also, information provided on a Marketplace application will not be used for immigration enforcement purposes.<sup>24</sup>

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<sup>23</sup> See Center on Budget and Policy Priorities, Health Reform: Beyond the Basics, “Key Facts: Immigrant Eligibility for Health Insurance Affordability Programs,” Nov. 14, 2014, available at <http://www.healthreformbeyondthebasics.org/key-facts-immigrant-eligibility-for-coverage-programs/>.

<sup>24</sup> See Healthcare.gov “More Information for Immigrant Families,” <https://www.healthcare.gov/immigrants/immigrant-families/>



**For more information, contact Enroll Nebraska.**



