

## **UNDERSTANDING IMMIGRATION STATUS UNDER THE ACA**

This document and the accompanying table provide a brief overview of the rules governing eligibility for coverage through Maryland Health Connection for a variety of non-U.S. citizens.

### **Eligibility for Qualified Health Plans (QHP)**

Under the Affordable Care Act (ACA), lawfully present immigrants at any income level up to 400% FPL who are ineligible for Medicaid are eligible for advance premium tax credits (APTC) and, for those with income up to 250% FPL, cost-sharing reductions (CSR) to reduce the cost of coverage through a QHP. To qualify, such individuals must be lawfully present and meet all of the other APTC and CSR eligibility criteria (e.g., enrollment in a QHP, intention to file taxes).

### **Eligibility for Medicaid**

#### **Qualified Aliens and the 5-Year Bar**

In most cases, a non-U.S. citizen must be a “qualified” alien *and* meet the other eligibility criteria (e.g., income) in order to receive Medicaid coverage. Most qualified aliens must be lawfully present for 5 years (“the 5-year bar”) before they can be found eligible for Medicaid. For purposes of meeting the 5-year bar, immigrants cannot count any time when they were undocumented or otherwise not in a “qualified” status. Qualified aliens who do not meet the 5-year bar are eligible for emergency medical services. A limited number of groups of qualified aliens are exempt from the 5-year bar, primarily for humanitarian reasons. For example, refugees and asylees are not subject to the 5-year bar. Certain other groups of immigrants specified below and in the table on page 3 are also exempt from the 5-year bar.

#### **Non-Qualified Aliens**

Most non-qualified aliens are only eligible for emergency medical services unless and until their status changes to make them qualified aliens and they meet the 5-year bar.

#### **Exceptions for Coverage of Lawfully Residing Pregnant Women and Children**

Lawfully residing pregnant women and children, both qualified and non-qualified aliens, are eligible for Medicaid and are not subject to the 5-year bar under CHIPRA § 214. Note that the definition of “lawfully residing” is different from the definition of a “qualified alien” and includes additional groups of non-citizens.

### **Undocumented Immigrants**

Individuals who are not legally in the United States are not eligible for Medicaid, APTC, or CSR. They cannot purchase a QHP through Maryland Health Connection even if they are willing to pay the full cost. Individuals who do not meet the immigration requirements for Medicaid, but who meet all other eligibility requirements, are eligible for emergency medical services (as under pre-ACA law), including labor and delivery services for pregnant women.

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### **Deferred Action for Childhood Arrivals (DACA)**

For ACA purposes, individuals with DACA status are not “lawfully present.” They are not eligible for Medicaid, APTC, or CSR. They cannot purchase a QHP through Maryland Health Connection even if they are willing to pay the full cost. Individuals who do not meet the immigration requirements for Medicaid, but who meet all other eligibility requirements, are eligible for emergency medical services (as under pre-ACA law), including labor and delivery services for pregnant women.

### **Application of 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. People who are not eligible for health insurance under the ACA, including undocumented immigrants and DACA, are eligible for the exemption for “exempt non-citizens.” 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. This means exempt non-citizen parents could be assessed a tax penalty if their citizen or lawfully present children are uninsured, even if the parents are personally exempt.

### **A note about Social Security Numbers (SSNs)**

People without an SSN can reconcile their APTC with an Individual Taxpayer Identification Number (ITIN). The fact that a person does or does not have an SSN or ITIN is not dispositive of their immigration status. Mixed immigration status families should mark the undocumented members as not applying for coverage. Choose a documented adult as primary, where possible, but note that undocumented parents may apply on behalf of their documented children. Undocumented members do not count toward total household size for QHP purposes so APTC may need to be adjusted. It is helpful, but not required, for a consumer applying for coverage to have an SSN or other ITIN. It is important for consumers to be told, however, that without an SSN or ITIN for all household members applying for coverage, it will not be possible to reconcile APTC when they file their tax return.

## IMMIGRATION STATUS AND COVERAGE ELIGIBILITY

Lawfully present consumers with an immigration status listed in any of the three columns below are eligible to apply for QHP coverage through Maryland Health Connection. Special rules governing Medicaid eligibility are noted in each column heading. Undocumented individuals who are not legally in the United States and those with DACA status are only eligible for emergency medical services; these cases must be processed in CARES.

<b>Qualified Aliens Subject to 5-Year Bar Before Becoming Eligible for Medicaid</b>	<b>Lawfully Residing Non-Qualified Aliens (Eligible for EMS only except as noted in 5-Year Bar Exemptions.)</b>	<b>Immigrants Exempt from 5-Year Bar (Eligible for Medicaid)</b>
<ul style="list-style-type: none"> <li>• Lawful Permanent Resident (LPR/Green Card holder) who                             <ul style="list-style-type: none"> <li>○ LPRs who entered the US before August 22, 1996 or who have been in a qualified status for 5+ years are considered to have met the 5-year bar</li> </ul> </li> <li>• Alien paroled into the U.S. for at least 1 year</li> <li>• Battered Spouse, Child, or Parent</li> </ul>	<ul style="list-style-type: none"> <li>• Non-citizen with valid nonimmigrant status, such as individuals with student or work visas</li> <li>• Paroled into the U.S. for less than 1 year pursuant to § 212(d)(5) of INA, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings</li> <li>• Granted temporary resident status pursuant to § 210 or 245A of the INA</li> <li>• Alien under Temporary Protected Status (TPS) and pending applicant for TPS who has been granted employment authorization</li> <li>• Granted employment authorization under 8 CFR 2741.12(c)(9), (10), (16), (18), (20), (22), or (24)</li> <li>• Family Unity beneficiary</li> <li>• Under Deferred Enforced Departure by presidential decision</li> <li>• Granted Deferred Action status</li> <li>• Granted an administrative stay of removal under 8 CFR § 241</li> <li>• Individual with approved visa petition and pending application for adjustment of status</li> <li>• Individual with pending application for asylum under 8 U.S.C. § 1158 or withholding of removal under 8 U.S.C. § 1231 or Convention against Torture who has been granted employment authorization or who is under age 14 and has had an application pending for 180 days</li> <li>• Child with pending application for Special Immigrant Juvenile Status</li> <li>• Individual lawfully present in American Samoa under its immigration laws</li> </ul>	<ul style="list-style-type: none"> <li>• A lawfully residing child under age 21 <i>(both qualified and non-qualified aliens)</i></li> <li>• A lawfully residing pregnant woman <i>(both qualified and non-qualified aliens)</i></li> <li>• Asylee</li> <li>• Refugee</li> <li>• Cuban/Haitian entrant</li> <li>• Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War</li> <li>• Victim of trafficking (and his/her spouse, child, sibling or parent)</li> <li>• Individual with Iraqi or Afghan special immigrant status</li> <li>• Veteran, active duty military and their spouses, un-remarried surviving spouses or children</li> <li>• Member of a federally recognized Indian tribe or American Indian born in Canada</li> <li>• Alien granted Withholding of Deportation or Withholding of Removal under 243(h) or 241(b)(3) of INA (unsafe to return to country)</li> <li>• Conditional Entrant granted before 1980</li> </ul>