

# Update on Access to Health Care for Immigrants and Their Families

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**I**n this difficult time, we want to provide some reminders about access to health care for immigrants and their family members, including new funding that Congress recently made available for coronavirus testing.

- The Families First Coronavirus Response (Families First) Act, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the Paycheck Protection Program and Health Care Enhancement (Paycheck Protection) Act provided funds to health care providers that expanded the availability of free testing for COVID-19. The funding pays for testing at community health centers, outpatient clinics, doctors' offices, and hospitals. The CARES Act also extended general funding for community health centers and made available funds to reimburse eligible health care providers for expenses and lost revenue related to COVID-19.
- Immigrants can continue to access health care services at community health centers, regardless of their immigration status, and at a reduced cost or free of charge depending on their income. However, people should call first to ask about the availability of COVID-19 screening and testing. Health centers may assess patients over the phone or through telehealth.
- Eligibility for Medicaid, the Children's Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplaces has not changed.
- States have flexibility to cover testing, treatment, and vaccines (when available) for COVID-19 as emergency Medicaid. Since the enactment of the Families First, CARES, and Paycheck Protection Acts, several states have determined that testing, diagnosis, and treatment of COVID-19 would be covered under emergency Medicaid.
- U.S. Citizenship and Immigration Services (USCIS) **posted an alert** clarifying that it will not consider testing, treatment, or preventive care (including vaccines if a vaccine becomes available) related to COVID-19 in a public charge inadmissibility determination, even if the health care services are covered by Medicaid.<sup>1</sup>

More details are provided below.

<sup>1</sup> <https://www.uscis.gov/greencard/public-charge>.

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## The Families First, CARES, and Paycheck Protection Acts

The House and Senate have now passed, and the president has signed, the Families First Coronavirus Response (Families First) Act,<sup>2</sup> the Coronavirus Aid, Relief, and Economic Security (CARES) Act,<sup>3</sup> and the Paycheck Protection Program and Health Care Enhancement (Paycheck Protection) Act.<sup>4</sup>

**The Families First Act provided a \$1 billion health care fund to reimburse providers for COVID-19 “testing” of the uninsured through the National Disaster Medical System, and the CARES Act and Paycheck Protection Act dramatically expanded this fund.**

- Anyone who is uninsured and not covered by Medicaid, the Children’s Health Insurance Program (CHIP), the Affordable Care Act (ACA) marketplace, or any other individual or group health plan is eligible for testing that can be paid for by this fund.
- Receipt of testing or other health care services through the disaster medical system will *not* be considered a negative factor in a “public charge” determination.
- The CARES Act clarified that the definition of *uninsured individuals* includes people who are enrolled in a Medicaid program or health plan that does not provide the **minimum essential coverage** defined by the Affordable Care Act,<sup>5</sup> as well as low-income adults in states that opted not to expand their Medicaid programs. However, the act does not cover the costs of treatment directly.
- The CARES Act also built on a **provision of the Families First Coronavirus Response Act** by providing a \$100 billion provider fund for expenses and lost revenue related to COVID-19. An unspecified portion of this fund administered by the Health Resources and Services Administration (HRSA) will be used to cover testing and treatment for the uninsured.<sup>6</sup> Eligible providers include for-profit as well as public and nonprofit providers that offer testing, diagnosis, or care for people with actual or suspected cases of COVID-19.
- The Paycheck Protection Act provided an additional \$75 billion to the provider fund for lost revenue or to cover testing and treatment for the uninsured.

<sup>2</sup> Families First Coronavirus Response Act, Public Law No. 116-127 (Mar. 18, 2020).

<sup>3</sup> Coronavirus Aid, Relief and Economic Security Act, Public Law No. 116-136 (Mar. 27, 2020).

<sup>4</sup> Paycheck Protection Program and Health Care Enhancement Act, Public Law No. 116-139 (Apr. 24, 2020).

<sup>5</sup> Types of health insurance that count as coverage: <https://www.healthcare.gov/fees/plans-that-count-as-coverage/>.

<sup>6</sup> <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>; “Recent COVID-19 Stimulus Legislation and Guidance: Opportunities and Considerations for States” (webinar hosted by State Health & Value Strategies, May 1, 2020), <https://www.shvs.org/recent-covid-19-stimulus-legislation-and-guidance-opportunities-and-considerations-for-states/>.

**The optional state Medicaid program (for testing only) created in the Families First Act did *not* provide for COVID-19 testing for immigrants who are ineligible for federal nonemergency Medicaid.**

- The act creates an optional state Medicaid program that provides COVID-19 testing (and *testing only*) that will be funded with 100 percent federal Medicaid funds.
- However, this will be available only to uninsured people who meet federal Medicaid's immigrant eligibility requirements.
- Federal Medicaid is available only to certain immigrants who have had a “qualified” immigration status for five years,<sup>7</sup> “humanitarian” immigrants, military/veterans and their families ([eligibility details here](#)),<sup>8</sup> and, in some states, lawfully residing children and/or pregnant women ([state maps available here](#)).<sup>9</sup>
- In states that elect this new optional testing program, eligible people can apply at Disproportionate Share Hospitals (DSHs) and federally qualified health centers (FQHCs). There will be no cost-sharing or other fees for people tested under this option.
- Receipt of Medicaid for emergency services, or by children under age 21 or pregnant women (including women who are 60 days postpartum), will not be considered a negative factor in a public charge determination.

**The Families First Act also provided full coverage for COVID-19 testing for those who are already insured.**

- The act requires coverage and eliminates cost-sharing (including copays and deductibles) for those who are covered by Medicaid, Medicare, Medicare Advantage, and private health insurance.

**The CARES Act increased and extended Affordable Care Act funding for Community Health Centers (CHCs), augmenting their FY 20 funding by \$1.3 billion and providing over \$668 million for part of FY 21.**

- As institutions that provide primary and preventive health care to anyone regardless of their immigration status or ability to pay, CHCs are essential providers for immigrant communities.

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<sup>7</sup> “Qualified” immigrants are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/suspension of deportation, whose need for benefits has a substantial connection to the battery or cruelty (parent/child of such battered child/ spouse are also “qualified”); and (5) victims of trafficking and their derivative beneficiaries who have obtained a T visa or whose application for a T visa sets forth a prima facie case. (A broader group of trafficking victims who are certified by or receive an eligibility letter from the Office of Refugee Resettlement are eligible for benefits funded or administered by federal agencies, without regard to their immigration status.)

<sup>8</sup> [https://www.nilc.org/issues/economic-support/table\\_ovrw\\_fedprogs/](https://www.nilc.org/issues/economic-support/table_ovrw_fedprogs/).

<sup>9</sup> <https://www.nilc.org/issues/health-care/healthcoveragemaps/>.

**The CARES Act also delayed cuts in Disproportionate Share Hospital funding to hospitals that serve a substantial number of indigent patients and provided additional funding for the National Health Service Corps.**

- The National Health Service Corps is a program that places health care providers in underserved areas.

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### **The Affordable Care Act's Health Care Marketplaces**

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- Immigrants who are lawfully present may be eligible to buy health insurance in the marketplaces (“lawfully present” defined here).<sup>10</sup>
- However, in between open enrollment periods, people can enroll only if they have a special life change that makes them eligible for a special enrollment period, such as losing health coverage or gaining lawful presence or U.S. citizenship (special enrollment period details here: <http://www.healthreformbeyondthebasics.org/sep-reference-chart>).

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### **Other Health Care Services Available**

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- Immigrants and their families can continue to seek services at community health centers, regardless of their immigration status, and at a reduced cost or free of charge, depending on their income.
- To find the nearest health center, go to <https://findahealthcenter.hrsa.gov/>.
- Call your nearest health center first to find out the availability of COVID-19 screening and testing. Health centers can assess whether a patient needs further testing, which may be done over the phone or using telehealth.
- Some states and localities provide state- or locally-funded health coverage programs for immigrants ([table of state programs available here](#)).<sup>11</sup>

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### **Medicaid for Emergency Services, or “Emergency Medicaid”**

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#### **Eligibility**

Emergency Medicaid is available to individuals who are otherwise eligible for Medicaid, except for their immigration status. Some lawfully present individuals are ineligible for Medicaid based on immigration status (such as some people with temporary protected status (TPS), Deferred Action for Childhood Arrivals (DACA), or people with lawful permanent resident status who have had that status for less than five years), and undocumented people who are ineligible for Medicaid based on their immigration status.

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<sup>10</sup> <https://www.nilc.org/issues/health-care/lawfullypresent/>.

<sup>11</sup> <https://www.nilc.org/issues/health-care/medical-assistance-various-states/>.

Note that the individual must also meet the income and other categorical eligibility requirements for Medicaid. For example, in a state that has not expanded Medicaid to cover adults without children, these adults (including U.S. citizens) would not be eligible for services.

## Services Provided

Emergency Medicaid covers “a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient’s health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.” Social Security Act section 1903(v)(3).

“[Payment shall be made only if] such care and services are not related to an organ transplant procedure.” Social Security Act section 1903(v)(2)(c).

States have flexibility to cover testing, treatment, and vaccines (when available) for COVID-19 as emergency Medicaid. Since the enactment of the Families First and CARES Acts, several states have determined that testing, diagnosis and treatment of COVID-19 would be covered under emergency Medicaid.<sup>12</sup> While this does not negate the need for Congress to act to secure a national policy, it is an important step that states can take.

If an individual receives Medicaid for emergency services only, it won’t count as a negative factor in a public charge determination about that person.

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## Emergency Medical Treatment and Labor Act

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There is also a separate federal law called the Emergency Medical Treatment and Labor Act (EMTALA) that requires that anyone arriving at an emergency room/department be stabilized and treated regardless of insurance status or ability to pay. However, EMTALA does not provide any payment for these services. Therefore, individuals who are uninsured — and not eligible for emergency Medicaid — may be billed for this treatment. (Some hospitals have charity care or other ways to reduce a bill, but this is not always available and cannot always meet the need.)

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## Public Charge

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USCIS has [posted an alert](#) clarifying that it will not consider testing, treatment, or preventive care (including vaccines if a vaccine becomes available) related to COVID-19 in a

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<sup>12</sup> As of May 27, 2020, California, Colorado, Connecticut, Delaware, Massachusetts, Michigan, New York, Oregon, Pennsylvania, and Washington have written policies that recognize that COVID-19 services qualify as emergency Medicaid. Each state policy is slightly different — some states allow treatment in any outpatient setting, and some states include follow-up visits and medications as well. For updates, see the table titled “SPA and Other Administrative Actions to Address COVID-19” in the Kaiser Family Foundation’s “Medicaid Emergency Authority Tracker,” <https://www.kff.org/medicaid/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/> (in the table’s “BENEFITS” section, find the row that begins with “Cover COVID-related testing or treatment through Emergency Medicaid”).

public charge inadmissibility determination, even if the health care services are provided by Medicaid.<sup>13</sup>

USCIS also specified that individuals who live in a jurisdiction where quarantine or social distancing are taking place and individuals who work for an employer or attend a school or university that shuts down to prevent the spread of COVID-19 can submit a statement with their immigration application about how these policies have affected factors considered in the public charge determination.

Medicare, CHIP, state-funded health programs, the health care marketplaces and private insurance are not considered “public benefits” under the public charge regulations and may be weighed positively as a source of health care coverage. Medicaid for emergency services, services provided to children under 21 years old, or pregnant women (including 60 days of postpartum services) are not weighed negatively in a public charge determination.

The U.S. State Department’s public charge regulations specifically exempt health services for immunizations and for testing and treatment of communicable diseases, as well as emergency services and services for children and pregnant women (including 60 days of postpartum services) in the public charge determinations made by consular officials abroad.

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<sup>13</sup> <https://www.uscis.gov/greencard/public-charge>.