



## **Q&A ON ICHIA: THE LEGAL IMMIGRANT CHILDREN'S HEALTH IMPROVEMENT ACT**

By: Mara Youdelman<sup>1</sup>  
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### **1. WHAT IS ICHIA?**

ICHIA is the Legal Immigrant Children's Health Improvement Act, S. 764 (2007). It was initially sponsored by Senators Clinton and Snowe and 10 other Senators. The House companion, H.R. 1308 (2007), was sponsored by Representatives Solis and Diaz-Balart as well as 15 other Representatives. Ultimately included in the 2009 reauthorization of the Children's Health Insurance Program (CHIPRA), it restored eligibility for Medicaid and CHIP to lawfully residing immigrant children and pregnant women who were arbitrarily cut off from eligibility in 1996.<sup>2</sup>

The National Governors' Association and the CHIP Directors supported passage of ICHIA along with over 600 local, state and national organizations.

### **2. WHAT DOES ICHIA DO?**

ICHIA provides states an option to enroll lawfully residing immigrant children and pregnant women in Medicaid and CHIP. It is not a requirement for states, but an option. States would have to receive approval from CMS to use the option.

### **3. WERE LAWFULLY RESIDING IMMIGRANT CHILDREN AND PREGNANT WOMEN EVER ELIGIBLE FOR MEDICAID?**

Yes. Prior to 1996, lawfully residing immigrants – both those holding green cards and those defined as “permanently residing under color of law” – were eligible for Medicaid.

ICHIA offers a restoration of eligibility for only some of these immigrants – those children and pregnant women who are in the country lawfully, who intend to remain in the U.S., and who meet all other Medicaid and CHIP eligibility requirements.

### **4. WHY WERE THESE RESTRICTIONS INITIATED IN 1996?**

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<sup>1</sup> Special thanks to Dinah Wiley of the Georgetown University Health Policy Institute's Center for Children and Families for her input.

<sup>2</sup> CHIPRA § 214, Public Law No. 111-3 (2009).

As part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress implemented new restrictions that prohibit most lawfully residing immigrants from receiving major federal public benefits, such as Medicaid, during their first five years in the U.S. This same prohibition automatically applied to CHIP when it was enacted in 1997.

This was an arbitrary bar placed on lawfully residing immigrants to save money for other programs. The five years is unrelated to their immigration status. After the five years, federal funding is available to serve these immigrants.

## **5. ARE UNDOCUMENTED IMMIGRANTS ELIGIBLE FOR MEDICAID OR CHIP UNDER ICHIA?**

No. Undocumented immigrants have never been eligible for full-scope Medicaid or CHIP, and ICHIA continues to prohibit states from enrolling undocumented immigrants in federally-funded Medicaid or CHIP.<sup>3</sup> ICHIA only allows states to enroll *lawfully residing* immigrant children and pregnant women in Medicaid and CHIP.

## **6. WHO CAN STATES ENROLL?**

States can opt to enroll only immigrant children and pregnant women who are “lawfully residing” in the U.S. as defined in HHS regulations.<sup>4</sup> This includes “qualified” immigrants listed in 8 U.S.C. § 1641, as well as several other categories of non-U.S. citizens who have permission to live and/or work in the U.S. This includes, for example, immigrants with lawful permanent resident status (i.e. “green card” holders), persons admitted into the U.S. for humanitarian reasons, “qualified” battered spouses and children, and the spouses and children of U.S. citizens whose immigration visa petition has been approved and who have already filed their application for a “green card.” It does not include persons who are in the U.S. on a temporary basis.<sup>5</sup> HHS also excluded DACA-eligible immigrants from the definition of lawfully residing.<sup>6</sup>

## **7. BUT WHAT ABOUT OTHER MEDICAID AND CHIP ENROLLMENT REQUIREMENTS?**

If a state chooses the option under ICHIA, lawfully residing immigrant children and pregnant women would still be required to meet other CHIP and Medicaid eligibility requirements such as income eligibility and documentation.

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<sup>3</sup> Any immigrant (documented or undocumented) ineligible for full-scope Medicaid because of immigration status but who meets other Medicaid eligibility requirements can receive limited coverage for health care provided in an emergency.

<sup>4</sup> 42 C.F.R. § 435.403.

<sup>5</sup> For more information on the definition of lawfully residing, see National Immigration Law Center, *Lawfully Residing” Children and Pregnant Women Eligible for Medicaid and CHIP*, <http://www.nilc.org/lawfullyresiding.html>.

<sup>6</sup> See, e.g., 45 C.F.R. § 152.2 (defining eligibility for the Pre-Existing Condition Insurance Pool) and SHO #12-002, *Individuals with Deferred Action for Childhood Arrivals*, [www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf](http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-12-002.pdf).

**8. HAVE OTHER BENEFIT RESTORATIONS BEEN ENACTED SINCE 1996?**

Yes. For example, Congress has twice enacted food stamp eligibility restorations and eliminated the same five-year waiting period for important subsets of the legal immigrant population, such as children. These restorations have occurred with broad bi-partisan support, including support from the Administration.

**9. HOW ARE LAWFULLY RESIDING IMMIGRANT CHILDREN AND PREGNANT WOMEN RECEIVING HEALTH CARE NOW?**

All states must provide emergency Medicaid to immigrants who meet the other eligibility criteria. While immigrants generally use emergency rooms less than U.S. citizens, ICHIA could further reduce this by giving states the option of enrolling lawfully residing immigrant children and pregnant women in Medicaid or CHIP. Medicaid and CHIP offer access to primary and preventive care, which can reduce emergency room visits and allow for cost-effective well-baby/child exams and pre-natal care that can prevent costly exacerbation of treatable conditions. For example, studies have shown that spending \$1 in pre-natal care can save over \$3 in post-natal care. And providing children access to primary care will ensure timely vaccinations and improve public health.

Recognizing the cost-effectiveness and efficiency of providing access to primary and preventive care, about half of the states use their own funds to pay for some health coverage for lawfully residing immigrant children or pregnant women during the five years while they are ineligible for federal Medicaid/CHIP. With ICHIA, these states can secure federal matching funds for these payments, freeing up state funds to cover additional uninsured children.

**10. WHAT STATES CURRENTLY USE THE ICHIA OPTION TO PROVIDE MEDICAID AND CHIP TO LAWFULLY RESIDING PREGNANT WOMEN AND CHILDREN?**

States currently providing Medicaid or CHIP to lawfully residing children and pregnant women include: California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Virginia, Washington, Wisconsin and the District of Columbia.<sup>7</sup>

**11. WHY SHOULDN'T LAWFULLY RESIDING IMMIGRANT CHILDREN WAIT YEARS FOR ELIGIBILITY?**

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<sup>7</sup> CMS, *Medicaid and CHIP Coverage of Lawfully Residing Children and Pregnant Women States Providing Medicaid or CHIP Coverage to Lawfully Residing Children and Pregnant Women*, available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Outreach-and-Enrollment/Lawfully-Residing.html>.

A child's development in the early years can have a significant impact on the child's health, well-being, educational attainment, and overall ability to grow into a productive member of society. Investments in young children can have big payoffs for families, government, and society. These investments can reduce the need for more costly measures later in life and lead to increased productivity. Waiting five years could cause a long-term health impact or developmental delays. Health does not wait five years.

Coverage of pregnant women is equally important. In 2004, about 1 in 9 infants (11.2% of live births) was born to a woman receiving inadequate prenatal care in the United States. Since these future children will be U.S. citizens – and thus eligible for Medicaid or CHIP upon birth (as long as other income and eligibility requirements are met) – it is less costly to provide pre-natal care than to wait until the child is born with complications requiring more costly care.

## **12. HOW LONG DOES ICHIA COVERAGE LAST?**

Pregnant women – pregnant women would be eligible during pregnancy and up to 60 days post-partum.

Children – as long as the enrollee remained eligible for Medicaid or CHIP under other eligibility requirements, a child could continue receiving Medicaid or CHIP until age 21 (depending on state eligibility rules).

## **13. WHY SHOULD DACA AND RPI ELIGIBLE INDIVIDUALS BE INCLUDED IN ICHIA?**

As explained above, it is critical for children and pregnant women to get primary and preventive care immediately, before simple problems become costly emergencies or public health problems. Neither children nor pregnancies can wait for ten to fifteen years. To protect public health, it is important to remove barriers that prevent children and pregnant women from securing this care. With that goal, DACA (Deferred Action for Childhood Arrival) individuals and RPIs (Registered Provisional Immigrants) should be included in the definition of "lawfully residing" for the purposes of ICHIA to eliminate barriers for these immigrants.