



Health Insurance and Public Charge

By Ilissa Mira

Under new Department of Homeland Security (DHS) and Department of State (DOS) regulations, having health insurance is a positive factor in determining whether an adjustment of status or immigrant visa applicant is likely to become a public charge. Health insurance is viewed as directly related to an intending immigrant's assets, resources and financial status and whether he or she can cover the costs of reasonably foreseeable medical expenses. This resource reviews the types of health insurance that may be available to intending immigrants, how each type of insurance is viewed by DHS and DOS, and the types of documentation that must be submitted to show enrollment or future enrollment in a health insurance policy.

Overview of Agency Guidance Regarding Health Insurance

Both DHS and DOS view private insurance as a heavily weighted positive factor, however the term "private insurance" is not defined by either agency. USCIS views other "non-private" types of insurance as positive factors rather than heavily weighted positive factors, while DOS is silent on whether anything apart from private insurance carries positive weight. The weight that USCIS has assigned to insurance programs lacks internal consistency and the agency does not clarify its reasoning. Rather than attempt to explain the agency's classifications, they are simply provided below. USCIS assigns the following weight to these types of insurance policies:

Heavily weighted positive factor:

- Private health insurance provided by an employer;
- Private health insurance purchased outside the Health Insurance Marketplace and Affordable Care Act (ACA);
- Private insurance purchased through the ACA that is not subsidized;
- State-only subsidized health insurance, including state-based exchange;¹
- Foreign subsidized health insurance;² and
- Medicare.³

¹ It is unclear why state-subsidized health insurance would be a heavily weighted positive factor when ACA-subsidized insurance or Medicaid within the exceptions is only a positive factor.

² The agency does not explain what type of foreign subsidized health insurance would be acceptable or why it would be considered as a heavily weighted positive factor.

³ USCIS Policy Manual, Vol. 8, Part G, ch. 9(A)(4).

Positive factor:

- Medicaid for children under 21, pregnant women (including 60 days after delivery), or the disabled;⁴
- Child Health Insurance Program (CHIP);⁵ and
- Insurance purchased through the ACA that is subsidized.⁶

Volume 8, Part G, ch. 9 of the USCIS Policy Manual provides guidance on how USCIS implements the final public charge rule. The guidance notes that not all health insurance plans provide for adequate coverage and instructs officers to “generally consider whether a plan meets the requirements under the Affordable Care Act in limiting cost-sharing, including deductible, copayments, and out of pocket maximum amounts.”⁷ According to USCIS, a health insurance plan with a high deductible would carry less positive weight in the totality of the circumstances.

Under the Policy Manual guidance, plans that “only provide for vision and dental care; specific diseases or conditions; and discounts on medical services are generally not considered adequate coverage, and would likely carry little positive weight.”⁸ Other plans that are not considered “minimal essential coverage” under the ACA include discount plans, limited-benefit plans, critical illness plans, and accident supplements.⁹

The DOS guidance at 9 FAM 302.8 is less detailed and does not instruct officers to consider whether an insurance plan is ACA compliant. Form DS-5540, Public Charge Questionnaire, asks applicants who are consular processing to indicate whether they will have health insurance coverage within 30 days of entry into the United States. This question corresponds to the Presidential Proclamation Requiring Immigrants to Have Health Insurance,¹⁰ which is currently enjoined.¹¹

Employment-Based Health Insurance

⁴ *Id.* This is listed as both a heavily weighted positive factor and a mere positive factor.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 26 CFR § 1.36B-2(5)(c); see *Minimum Essential Health Coverage*, healthcare.gov/fees/plans-that-count-as-coverage/

¹⁰ Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (Oct. 4, 2019), whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/.

¹¹ Order denying government’s request for a stay pending appeal of the district court’s preliminary injunction, *Doe v. Trump*, No. 19-36020 (9th Cir. May 4, 2020), cdn.ca9.uscourts.gov/datastore/opinions/2020/05/04/19-36020.pdf.

Employment-based health insurance is considered a heavily weighted positive factor by both DHS and DOS. Employment-based insurance may be available regardless of immigration status. However, undocumented immigrants often work in industries where employment-based insurance is not offered or is unaffordable.¹² New employees who hope to purchase insurance through their employer often have to complete a probationary period before they may enroll in health insurance. This means that intending immigrants who have never lived in the United States may have difficulty obtaining insurance through a new employer within 30 days of their entry into the country. Those without access through their own employer may be eligible through a parent or spouse's employer, if they are included on the plan as a dependent.¹³ A child can remain a dependent on their parent's health insurance plan until the age of 26.

Private Health Insurance Purchased Outside the Exchange

Both USCIS and DOS view private health insurance purchased outside the exchange as a heavily weighted positive factor. Individuals may purchase private health insurance coverage directly from an insurance provider regardless of immigration status. Proof of lawful immigration status is not required for enrollment. However, the high cost of these plans may make this option inaccessible to many.¹⁴

Note that insurance coverage can only be purchased for someone who resides in the United States, and an insurance provider may be unwilling to guarantee a date of coverage before the insurance plan is purchased. Those who reside abroad and will consular process could obtain an online quote from an insurance provider to help demonstrate their ability to obtain coverage within 30 days of their entry. To compare available plans and obtain a quote directly from an insurance provider, one would visit the provider's website and enter information regarding the zip code of the city where the applicant intends to reside, his or her age, whether the coverage will include other family members, and the applicant's household income.

Private Health Insurance Purchased Within the Exchange

¹² Samantha Artiga & Maria Diaz, Kaiser Family Foundation, *Health Coverage and Care of Undocumented Immigrants*, (July 15, 2019), kff.org/disparities-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/.

¹³ U.S. Department of Labor, *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Businesses and Families*, dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/young-adult-and-aca.

¹⁴ *Id.*

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