

SUMMARY

President's Proclamation Requiring Immigrants to Have Health Insurance

Last revised OCTOBER 10, 2019

On October 4, 2019, President Trump issued a **proclamation** that, beginning November 3, 2019, would restrict immigration to the United States by people who are uninsured and cannot pay the costs of their health care.¹ This restriction, which would operate independently of the “**public charge**” determination,² represents the latest move by the Trump administration to curtail immigration by people who cannot pass a wealth test.

To whom does the proclamation apply?

The proclamation would deny entry into the U.S. to people seeking family-based immigrant visas (and some others) if they are unable to show that they will be covered by certain insurance products within 30 days after entering the country or have the financial resources to pay out-of-pocket for “reasonably foreseeable medical expenses.”

The proclamation would apply to people seeking immigrant visas abroad, including: spouses of U.S. citizens and lawful permanent residents (LPRs);* children of LPRs who are 18-21 years old; children under 18 if travelling with a parent who is also immigrating; adult sons and daughters of U.S. citizens and LPRs; people with diversity visas or employment-based immigrant visas; and some religious workers. It would also apply to parents of U.S. citizens who cannot show that their health care will not impose a substantial burden on the U.S. health care system.

Which forms of health insurance are “approved” under the proclamation?

“Approved” health insurance under the proclamation includes:

- employer-sponsored health plans
- unsubsidized plans purchased on the individual market
- non–Affordable Care Act (ACA)–compliant **short-term health plans** authorized by the Trump administration³
- catastrophic plans
- family members’ plans

¹ *Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System* (Oct. 4, 2019), <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/>.

² Information about “public charge” is available at www.nilc.org/pubcharge/.

³ See <https://www.commonwealthfund.org/trending/non-aca-compliant-health-plans>.

* The preceding phrase was revised on Oct. 10, 2019. The original edition said “spouses and fiancé(e)s of U.S. citizens and lawful permanent residents (LPRs).”

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- **TRICARE** plans or other coverage for military members and veterans⁴
- visitor health insurance plans
- Medicare plans
- other health plans as determined by the U.S. Dept. of Health and Human Services

Medicaid is acceptable for children age 18 and younger, but subsidized ACA plans are not acceptable for either adults or children.

Who is exempt from the proclamation's requirements?

Certain categories of immigrants are exempt from the proclamation's requirements, including:

- anyone issued a visa prior to the effective date (Nov. 3, 2019)
- LPRs returning after a long absence
- unmarried children and adoptees of U.S. citizens
- people seeking Iraq/Afghani Special Immigrant visas
- children under age 18, unless accompanying parents subject to the proclamation
- parents of adult U.S. citizens, *if* they can demonstrate to the satisfaction of the consular officer that their health care will not impose a substantial burden on the U.S. health care system
- people whose entry would advance law enforcement objectives or would be in the national interest

The proclamation further states that it should not be construed to affect any individual's eligibility for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture.

What legal authority does the president cite as a basis for this proclamation?

The claimed authority for the proclamation includes section 212(f) of the Immigration and Nationality Act (8 USC §1182(f)), which authorizes the president to suspend the entry into the U.S. of any class of migrants if the president finds that their entry would be detrimental to the interests of the U.S. Here the proclamation recites a litany of harms caused by the presence of uninsured people or those who use public health care—coverage programs. The proclamation penalizes intending immigrants for gaps in the U.S. health care system and ignores the fact that the vast majority of uninsured people in the U.S. are U.S. citizens. It also undermines the goals of the Affordable Care Act, which is intended to ensure that everyone who is lawfully present in the U.S. has access to affordable health care coverage.

The proclamation directs the secretaries of State, Health and Human Services, and Homeland Security to report to the president on the “financial burdens imposed by immigrants on the health care system,” an inquiry that could lay bare the pretense of this justification.

THE U.S. DEPT. OF HOMELAND SECURITY'S RECENTLY-FINALIZED PUBLIC CHARGE REGULATIONS, which apply to decisions made by immigration officials in the U.S., also consider whether an immigrant applying for a green card has health care coverage, as part of a totality-of-circumstances analysis under which no single factor can make a person inadmissible. This proclamation introduces an additional barrier for people seeking immigrant visas at consular offices abroad. We will continue to analyze this issue and will post updates as they become available.

⁴ See <https://www.tricare.mil/About>.