

# An Overview of Immigrant Eligibility for Public Health Insurance in Tennessee

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# PRWORA of 1996

- Personal Responsibility and Work Opportunity Reconciliation Act passed by Congress in 1996
- Created 2 categories of immigrants for federal benefits eligibility purposes:
  1. Qualified
  2. Not-qualified



Part I:

# TennCare and CoverKids Eligibility for Qualified Immigrants

# Citations

<b>Health Care Finance and Administration</b>	<b>Section: Non-Financial Eligibility Requirements</b>
Policy Manual Number: 005.015	Chapter: Qualified Non-Citizens

<http://tn.gov/assets/entities/tenncare/attachments/QualifiedNon-Citizens.pdf>

<b>Health Care Finance &amp; Administration</b>	<b>Section: Non-Financial Eligibility Requirements</b>
Policy Manual Number: 005.010	Chapter: Citizenship & Immigration

<http://tn.gov/assets/entities/tenncare/attachments/CitizenshipAndImmigration.pdf>

## Qualified:

Can receive federal benefits, but many are barred from receiving federal benefits until they have had a qualified status for 5 years.

# Qualified Immigrants

- LPR: Lawful Permanent Residents (green card)
- Refugees
- Asylees
- Aliens paroled in the U.S.
- Aliens whose deportation is being withheld
- Battered immigrants and children
- Cuban/Haitian entrants
- Aliens granted conditional entry
- Victims of a severe form of trafficking, e.g. human trafficking

# Treated like “Qualified Aliens” for TennCare & CoverKids Eligibility:

- Amerasian Immigrants
- Aliens who are members of a Federally-recognized Indian tribe
- American Indians born in Canada
- Aliens who are honorably discharged veterans or active duty members of the U.S. Armed Forces, plus their spouse and dependent children
- Afghani and Iraqi aliens granted Special Immigrant Status
- Aliens who are victims of a severe form of trafficking

# Eligibility

- Potentially eligible for TennCare, CoverKids, and other public benefit programs, such as TANF (Families First) and SNAP (food stamps)
- Certain categories of qualified immigrants are subject to time-related requirements
  - *Only* applies to those “qualified” immigrants who entered the U.S. on or after 8/22/1996



# Time-Related Requirements

- **5-year bar:** period of ineligibility for all federally-funded benefits, including full TennCare and CoverKids
  - *Only* applies to certain groups of qualified immigrants
- **7-year period:** period of eligibility granted to qualified aliens with a specific humanitarian status and who are exempt from the 5-year bar

# 5-Year Bar

# Exempt from the 5-Year Bar

- *LPRs (admitted before 8/22/1996)*
- *LPRs who first entered the country under another exempt category (i.e. as a refugee) and who later converted to LPR status*
- *Victims of a severe form of trafficking*
- *Refugees, asylees, and other humanitarian immigrants*
- *Aliens who are discharged veterans*
- *Aliens who are on active duty in the U.S. military*
- *Aliens who are the spouse or unmarried dependent child of an veteran or active member of the U.S. military*
- *Members of a Federally-recognized Indian tribe*
- *American Indians born in Canada*

# Exemptions from the 5-Year Bar

- Qualified aliens exempt from the 5-year bar **must** meet all categorical and financial requirements for an open TennCare program.
- Refugees, asylees and other humanitarian groups of immigrants, veterans, active duty military and their spouses and children, and certain other immigrants *can* get CoverKids **without a 5-year waiting period.**
  - **Must** meet all other eligibility standards

## Included in the 5-Year Bar

- *Legal Permanent Residents (LPR) admitted on or after 8/22/96*
  - *I-551 with various codes*
- *Aliens paroled for at least 1 year*
  - *I-94 with code 212(d)(5) or other language indicating parole status*
- *Battered immigrants and children*
  - *Petition for:*
    - *Immediate relative status;*
    - *Classification to immigrant status based on relationship to a lawful permanent resident alien; or*
    - *Suspension of deportation and adjustment to lawful permanent resident status.*

# Accessing TennCare & CoverKids *during the 5-Year Bar*

- Eligible for Emergency TennCare, if meets categorical and financial requirements for an open TennCare program
- Pregnant women can get maternity benefits through CoverKids
  - Must follow CoverKids eligibility guidelines
  - Unborn child counts in the mother's household
  - Access limited to prenatal, delivery, and 60 days postpartum

# Accessing TennCare *after* the 5-Year Bar

- Expires on the 5-year anniversary of the date the individual received “qualified alien” status
- Once expired, the individual “may apply for Medicaid benefits as if he/she was a U.S. citizen.” (5a)
- Must meet categorical and financial requirements for an open TennCare program
  - Eligible to receive coverage from date of application, if meets program requirements

# Accessing CoverKids *after* the 5-Year Bar

- Eligible for CoverKids, if:
  - 18 or younger *or* pregnant
  - A Tennessee resident
  - Within 250% FPL
  - Ineligible for TennCare
  - Uninsured *or* insured w/o maternity benefits
  - If child, **must** have held a “qualified” status for at least 5 years
  - If pregnant, do **not** have to hold a qualified status for *any* amount of time



# 7-Year Period

## 7-Year Period

- Qualified aliens are potentially eligible for TennCare for the first 7 years after refugee, asylee, or other \*humanitarian status is granted.

\*As defined by the following:

- §101(a)(27), 207, 208, 243(h), 241(b)(3) of the Immigration and Nationality Act (INA)
- §501(e) of the Refugee Education Assistance Act of 1980
- §548 of the Foreign Operation, Export, Financing and Related Programs Appropriations Act of 1988

# Excluded from the 7-Year Period

- *Veterans*
- *Active duty members of the Armed Forces of the U.S.*
- *Spouses and children of veterans or active duty military personnel*

# Included in the 7-Year Period

- *Refugees*
- *Asylees*
- *Cuban and Haitian entrants*
- *Aliens whose deportation is being withheld*
- *Aliens admitted as an Amerasian immigrant*
- *Afghani and Iraqi aliens granted Special Immigrant Status*

# Accessing TennCare *during* the 7-Year Period

- Must meet categorical and financial requirements of an open TennCare program

# Accessing TennCare *after* the 7-Year Period

A qualified alien who is subject to the 7-year limit can remain eligible beyond the 7-year period if at the time of filing or at any time *during or after* the 7-year period, the USCIS determines that the alien continues to be a qualified alien and that they are one of the following:

- Lawfully residing in the U.S. and was receiving TennCare Medicaid benefits on August 22, 1996; or
- Blind or disabled and was lawfully residing in the U.S. on August 22, 1996; or
- LPR with 40 qualifying quarters (QQ); or
- A veteran, or an active duty member of the Armed Forces of the U.S., or a spouse...or a child of the veteran or person in active duty in the U.S. armed forces.

# Adjustment to LPR Status *within* the 7-Year Period

- Can adjust status to LPR within the 7-year period.

**If adjust to LPR status within the 7-year period:**

- **not subject to the 5-year bar**

**AND**

- **remain potentially eligible for Medicaid beyond the 7-year period of eligibility.**

## What does this mean?

- DHS interpreted this to mean that all qualified aliens who were excluded from the 5-year bar, included in the 7-year period, and had not changed to LPR status were cut-off TennCare on the first month after the 7-year anniversary date of entrance to the U.S.
- Unclear how the TennCare Bureau will interpret the provision.



# TJC's Interpretation

- Federal Medicaid matching funds are available to cover qualified immigrants who were in the U.S. prior to 8/22/96, as well as those who entered the U.S. on or after 8/22/96 and have had *any* “qualified” status for 5 years.
- Federal Medicaid matching funds are available to refugees and other humanitarian immigrants without a waiting period. Once they have had a qualified status for 5 years, they become eligible for Medicaid under the provision described above.
  - There is no requirement that they adjust to another qualified status (e.g. LPR status) during that time period (5 years)

# TJC's Interpretation

- States that opt to deny federal Medicaid to qualified immigrants after the 5-year bar must take **affirmative action** (in a state plan).
- If a state *takes* affirmative action, certain groups must nevertheless remain covered (e.g. LPRs with 40 quarters of work history, veterans, and refugee groups during the first 7 years after they obtained the humanitarian status).
- Only a handful of states have taken up the option (in a state plan) to deny Medicaid to individuals who have held a qualified immigrant status for 5 years. It doesn't appear that Tennessee is one of them.
  - Alabama, Mississippi, North Dakota, Texas, Virginia, and Wyoming have state plans that are stricter than general federal rules

## TJC's Interpretation

- If a state *has decided to provide* Medicaid to qualified immigrants who complete the 5-year waiting period, the 7-year time limit for the humanitarian groups becomes irrelevant as a practical matter.
- After 5-years of *any* qualified status, individuals can access Medicaid as if they are U.S. citizens, including individuals who first entered the country under an exempt category (e.g. refugee).
  - There is no requirement that a qualified immigrant adjusts to another qualified status (e.g. LPR status) during the 5-year bar.

# Advocacy Tips

- If you have a client whose TennCare was terminated because of the 7-year period: Appeal!!!
- Ask for continuation of benefits (COB) on the basis that the applicant is eligible for an open category of TennCare.
- Send in valid factual dispute:
  - Federal Regulation: 42 CFR 435.406
  - TennCare Rule 1240-03-03-.02(5)
    - Chapter 2: Technical Eligibility Requirements, “Alien Eligibility,” pages 43-52
  - HCFA Policy on Qualified Non-Citizens
  - Copies of immigration documents (See HCFA Policy on Citizenship & Immigration)
  - Proof of income
  - Statement explaining that the applicant has a qualified status. He/She has had it for 5 years or more. He/She is financially and categorically eligible through the \_\_\_\_\_ program. His/her TennCare is being wrongfully terminated.
- Advise the applicant to fill out a new TennCare application.
- Reasonable Opportunity Period (ROP)

Part II:

# **TennCare and CoverKids Eligibility for Not-Qualified Immigrants**

# Not-Qualified

Anyone who is not a citizen or “qualified” immigrant, including those who are lawfully present and those who are undocumented.

# Not-Qualified

- Individuals who enter and reside in the U.S. without notification or proper permission from the U.S. government
  - Undocumented
- Individuals admitted for a temporary purpose, for example:
  - Foreign students
  - Visitors
  - Foreign government representatives
  - Temporary workers
  - Members of the foreign press

# Not-Qualified Immigrant Eligibility

- **Not** eligible to receive *full* TennCare benefits
- **May be** eligible for *limited* emergency medical services:
  - Do **not** have to be documented
  - **Must** be otherwise eligible for TennCare except for immigration status
  - Hospitals are required to give emergency care to everyone in crisis
  - Hospitals cannot report people to ICE



# Emergency Medicaid Services (EMS)

- As part of the TennCare waiver, emergency coverage is **not** retroactive and will **not** begin prior to date of application.
- Apply for Emergency TennCare **on the day of admission to ER.**
- TennCare recommends faxing the streamlined application to Tennessee Health Connections.
- Can apply through the federal Marketplace, too.

# EMS for Not-Qualified Pregnant Women

- Some pregnant women without a qualified immigration status can get Emergency TennCare.
- This will *only* pay for **labor** and **delivery** at the hospital.
- Follow Emergency TennCare application procedure (previous slide).
- The baby could get TennCare, if the family is income eligible.
  - Report birth to THC at 1-855-315-0669
  - Eligible for 1 year from date of birth

# CoverKids

- Some pregnant women without a qualified status can get CoverKids, under the federal fetus option.
- Apply for CoverKids at local health department, paper application (<http://www.tn.gov/coverkids/topic/coverkids-application>), or on healthcare.gov.

# CoverKids Coverage

- CoverKids will pay for **prenatal care, labor and delivery, and post partum care**
- Coverage ends 60 days after date of delivery
- The baby will receive 1 year of coverage from *the date the mother was enrolled in CoverKids*
  - Report birth to CoverKids at 866-620-8864

Part III:

# Immigrant Eligibility Scenarios

# Scenario 1:

## Nadif, Fatima and Amina

- Nadif and Fatima are married and have a daughter, Amina.
- Nadif and Fatima:
  - Entered the U.S. as refugees 4 years ago.
  - Became LPRs 1 year ago.
- Amina is a citizen.
- Nadif earns \$18,800 a year.
- Nadif and Fatima file taxes jointly and claim Amina as a dependent.



Nadif, 27, Fatima, 27, Amina, 4

## Eligibility Based only on Citizenship / Immigration Status Rules

**Fatima**



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - Refugee
  - LPR
- Qualified immigrant
  - Yes
- Subject to the 5-year bar
  - No

MAY BE ELIGIBLE FOR:  
✓ TennCare

**Nadif**



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - Refugee
  - LPR
- Qualified immigrant
  - Yes
- Subject to the 5-year bar
  - No

MAY BE ELIGIBLE FOR:  
✓ TennCare

**Amina**



- Applying for coverage
  - Yes
- Citizen
  - Yes

MAY BE ELIGIBLE FOR:  
✓ TennCare  
✓ CoverKids

# Eligibility for TennCare & CoverKids

	TennCare/CoverKids			
	Eligible?	HH	Income	FPL
Fatima	Yes	3	\$18,800	94%
Nadif	Yes	3	\$18,800	94%
Amina	Yes	3	\$18,800	94%

- Fatima and Nadif are eligible for TennCare as parents/caretaker relatives.
- They are not subject to the 5-year bar because they entered the U.S. as refugees.
- Amina is eligible for TennCare as a child.





## Scenario 2:

# Rashid, Miriam and Leila

- Rashid and Miriam are married and live in Tennessee.
- Rashid became a citizen last year.
- Miriam is applying to become a lawful permanent resident. Rashid submitted a visa petition for Miriam last year which was approved in February.
- Leila was born in Tennessee in February.
- Family income: \$17,811
- Rashid and Miriam file taxes jointly and claim Leila as a dependent.



## Eligibility Based only on Citizenship / Immigration Status Rules

Rashid



- Applying for coverage
  - Yes
- Citizen
  - Yes

MAY BE ELIGIBLE FOR:  
✓ TennCare

Miriam



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - Applying for LPR; approved visa petition
- Qualified immigrant
  - No

MAY BE ELIGIBLE FOR:  
✓ Limited TennCare (EMS)  
✓ CoverKids (only during pregnancy)

Leila



- Applying for coverage
  - Yes
- Citizen
  - Yes

MAY BE ELIGIBLE FOR:  
✓ TennCare  
✓ CoverKids

# Eligibility for TennCare & CoverKids

	TennCare/CoverKids			
	Eligible?	HH	Income	FPL
Rashid	Yes	3	\$17,811	89%
Miriam	No	3	\$17,811	89%
Leila	Yes	3	\$17,811	89%

- Rashid and Leila are eligible for TennCare. They are U.S. citizens, and their income is below the income limit for TennCare.
- Miriam does not have a qualified status.
- Miriam could be eligible for EMS or CoverKids.



## Scenario 3:

# Ricky, Eva and Karina

- Ricky and Eva are not married but live together with their daughter, Karina
- Karina was born in Tennessee and is a U.S. citizen.
- Ricky has a student visa and plans to complete his program of study at MTSU in 2017.
  - He has no income
- Eva has Deferred Action for Childhood Arrivals (DACA) and she:
  - earns \$37,601 a year
  - plans to file federal taxes and will claim Ricky and Karina as dependents



Ricky, 24, Eva, 24, Karina, 1

## Eligibility Based only on Citizenship / Immigration Status Rules

**Ricky**



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - F-1 visa holder (student)
- Qualified immigrant
  - No

**MAY BE ELIGIBLE FOR:**  
 ✓ Limited TennCare (EMS)

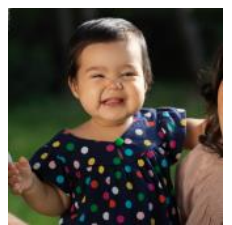
**Eva**



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - DACA
- Qualified immigrant
  - No

**MAY BE ELIGIBLE FOR:**  
 ✓ Limited TennCare (EMS)

**Karina**



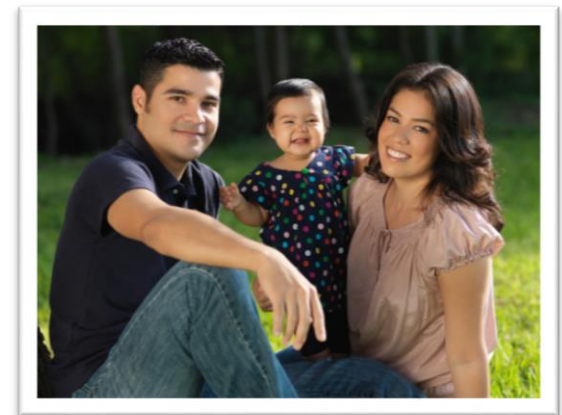
- Applying for coverage
  - Yes
- Citizen
  - Yes

**MAY BE ELIGIBLE FOR:**  
 ✓ TennCare  
 ✓ CoverKids

# Eligibility for TennCare & CoverKids

	TennCare/CoverKids			
	Eligible?	HH	Income	FPL
Ricky	No	2	\$0	0%
Eva	No	3	\$37,601	187%
Karina	Yes	3	\$37,601	187%

- Ricky & Eva do not have qualified statuses.
- Ricky & Eva could be eligible for EMS.
- Karina is eligible for CoverKids.





## Scenario 4:

# Mei, Sarah and Lin

- Mei lives with her daughter, Sarah, and father, Lin, in Tennessee.
- She has been a lawful permanent resident (LPR) for 6 years.
- Sarah is a citizen.
- Lin has been a LPR for 2 years.
  - He has not worked the 40 quarters and is not eligible for Medicare
  - He is Mei's tax dependent
- Mei earns \$17,811 a year.



## Eligibility Based only on Citizenship / Immigration Status Rules

Mei



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - LPR
- Qualified immigrant
  - Yes
- Subject to the 5-year bar
  - Yes
- Satisfied the 5-year bar
  - Yes

MAY BE ELIGIBLE FOR:  
✓ TennCare

Lin



- Applying for coverage
  - Yes
- Citizen
  - No
- Immigration status
  - LPR
- Qualified immigrant
  - Yes
- Subject to the 5-year bar
  - Yes
- Satisfied the 5-year bar
  - No

MAY BE ELIGIBLE FOR:  
✓ Limited TennCare  
(EMS)

Sarah



- Applying for coverage
  - Yes
- Citizen
  - Yes

MAY BE ELIGIBLE FOR:  
✓ TennCare  
✓ CoverKids



# Eligibility for TennCare & CoverKids

	TennCare/CoverKids			
	Eligible?	HH	Income	FPL
Mei	Yes	3	\$17,811	89%
Lin	No	1	\$0	-
Sarah	Yes	3	\$17,811	89%

- Mei is eligible for TennCare as a parent/caretaker-relative.
- Lin is not eligible for TennCare because he is in the 5-year bar.
- Lin could be eligible for EMS.
- Sarah is eligible for TennCare as a child.



Part V:

# Resources

# Information on ACA & Immigrants

HHS & U.S. Immigration and Customs Enforcement Resources

- *Citizenship and Immigration Status Questions* - <https://www.healthcare.gov/help/citizenship-and-immigration-status-questions/>
- *Immigration Status and the Marketplace* - <https://www.healthcare.gov/immigration-status-and-the-marketplace/>
- *Immigration Document Types* - <https://www.healthcare.gov/help/immigration-document-types/>
- *Immigrant Families and the Marketplace* - <https://www.healthcare.gov/what-do-immigrant-families-need-to-know/>

California Coverage and Health Initiatives Resource

- *Visual Glossary of Immigration Documents Commonly Used by Lawfully Present Immigrants Eligible for Coverage under the ACA* - <http://cchi4families.org/wp-content/uploads/2014/05/Immigration-ID-visual-glossary-from-Legal-Aid.pdf>

# Information on ACA & Immigrants

## NILC Resources

- **Immigrants and the Affordable Care Act** - <http://nilc.org/immigrantsshr.html> and in Spanish - <http://nilc.org/immigrantsshrsp.html>
- **Frequently Asked Questions – The Affordable Care Act & Mixed Status Families** - [http://nilc.org/aca\\_mixedstatusfams.html](http://nilc.org/aca_mixedstatusfams.html)
- **Sponsored Immigrants & Benefits** - <http://www.nilc.org/document.html?id=166>
- **“Lawfully Present” Individuals Eligible under the Affordable Care Act** - <http://www.nilc.org/document.html?id=809>
- **Frequently Asked Questions – Exclusion of Youth Granted “Deferred Action for Childhood Arrivals” from Affordable Health Care** - <http://www.nilc.org/document.html?id=802>
- **A Quick Guide to Immigrant Eligibility for ACA and Key Federal Means-tested Programs** - <http://www.nilc.org/document.html?id=844>
- **Typical Documents Used by Lawfully Present Immigrants** - <http://www.nilc.org/document.html?id=35>
- **Federal Guidance on Public Charge – When Is it Safe to Use Public Benefits?** - <http://www.nilc.org/document.html?id=164>
- **Overview of Immigrant Eligibility for Federal Programs** – see page 4 for a list of “qualified” immigrants. <http://www.nilc.org/document.html?id=108>
- **Maps of Health Coverage for Immigrant Children and Health Coverage for Pregnant Women** - <http://www.nilc.org/healthcoveragemaps.html>
- **Medical Assistance Programs for Immigrants in Various States** - <http://nilc.org/document.html?id=159>

# Thank you for joining us today!

“Of all the forms of inequality, injustice in health care is the most shocking and inhumane.”

-Martin Luther King, Jr.



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