

DISCRIMINATION AGAINST IMMIGRANTS IN ACCESS TO HEALTH CARE, INCLUDING SEXUAL AND REPRODUCTIVE HEALTH SERVICES AND INFORMATION

In the U.S., immigration status significantly affects one's ability to access health care. Non-citizens are three times as likely as U.S.-born citizens to lack private or public insurance because immigrants are more likely to work in low-wage jobs that do not offer employer-based insurance, and because they face discriminatory restrictions on eligibility for public insurance. **Immigrant women of reproductive age are approximately 70% more likely than U.S.-born women to lack health insurance.** Many go without necessary reproductive health care because they lack affordable health insurance; consequently, **immigrant women experience poorer reproductive health outcomes.**

Policy Barriers to Coverage

In 2010, the U.S. enacted the **Affordable Care Act (ACA)**, an important step towards universal healthcare and contains important provisions to improve access to women's preventive health care. However, large groups of non-citizens are unable to benefit from the ACA due to provisions that discriminate against them on the basis of their immigration status:

Qualified Immigrants (those lawfully present in the United States, including: lawful permanent residents, asylees, refugees, and others with temporary or conditional entry)

- *Non-citizens who are lawfully present in the U.S. must wait five years* before they are eligible to enroll in Medicaid, regardless of their poverty level and tax contribution.
- *Seven states do not recognize the waiting period.* For example, the state of Texas—with the third highest immigrant population in the U.S.—does not extend Medicaid coverage to lawfully present immigrants who arrived post-1996, no matter how long they have resided lawfully in the U.S. This effectively bars millions of low-income qualified immigrants from eligibility for health insurance.
- *Recent federal policy puts affordable coverage out of reach for more qualified immigrants.* The Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parental Accountability (DAPA) programs, both established by Executive Action, allow up to 4.4 million immigrant children and their parents to remain in the U.S. on a temporary basis but carves out new exceptions for these groups from eligibility for Medicaid or other ACA coverage benefits.

Undocumented Immigrants

- Federal law guarantees undocumented migrants emergency treatment regardless of citizenship or ability to pay, but it does not allow them to purchase private health insurance through the ACA's insurance marketplace, even with their own money.

1st Cycle, Universal Periodic Review

In the UPR Working Group's Report on the first cycle (January 2011), several states urged the U.S. to expand social protection, particularly access to health care, for migrants and other non-citizens.

- *Rec. 99*: Eliminate discrimination against migrants and religious and ethnic minorities and ensure equal opportunity for enjoyment of their economic, social and cultural rights.
 - U.S. response: “A migrant’s eligibility for full benefits under certain programs may depend on his/her lawful status.”
- *Rec. 195*: Ensure the realization of the rights to food and health of all who live in its territory.
 - U.S. response: “We are a non-party to the International Covenant on Economic, Social and Cultural Rights, and accordingly we understand the references to rights to food and health as references to rights in other human rights instruments that we have accepted. We also understand that these rights are to be realized progressively.”
- *Rec. 214*: Make greater efforts to guarantee the access of migrants to basic services, regardless of their migratory status.
 - U.S. response: “We support this recommendation understanding that ‘basic services’ refers to services such as primary education and emergency health services that are provided to migrants regardless of status.”

Concluding Observations by Human Rights Treaty Bodies

- *Human Rights Committee (March 2014)*: Expressed concern over the ACA’s exclusions of qualified immigrants and undocumented immigrants from eligibility for Medicaid and participation in the health care exchanges and urged the U.S. to “identify ways to facilitate access to adequate health care, including reproductive health-care services,” for these groups.
- *Committee on the Elimination of Racial Discrimination (August 2014)*: Echoed the HRC’s concerns over U.S. policies that “result in difficulties for immigrants in accessing adequate health care” and racial disparities in sexual and reproductive health; recommended the U.S. “take concrete measures to ensure that all individuals ... have effective access to affordable and adequate health-care services.”

Question for the U.S. government during the UPR

- 1) **What is the legal justification for the restrictions preventing immigrants from accessing affordable health insurance, which prevents access to preventive reproductive health care for millions of immigrant women?** Please comment on the following exclusions: (a) the five-year waiting period imposed on qualified immigrants for Medicaid eligibility, (b) the federal regulatory exception that prevents DACA and DAPA eligible individuals from accessing Medicaid or tax credits under the Affordable Care Act; and (c) the exclusion of undocumented immigrants from all forms of affordable health coverage, including Medicaid and tax credits to purchase insurance through the ACA?

Suggested Recommendations to the U.S. government for the 2nd Cycle

- 1) **Eliminate discriminatory policies that restrict immigrant women’s access to health insurance** on the basis of citizenship status and drive racial and gender disparities in health;
- 2) **Enact legislation to ensure full access to health care for immigrant women and their families**, such as the Health Equity and Access under the Law (HEAL) for Immigrant Women and Families Act, which would restore access to Medicaid for all qualified immigrants by eliminating the five year bar on eligibility.

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