

GMS Flash Alert

Immigration Edition

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United States - Green Card Access Limited for Medically Uninsured

On October 4, 2019, the White House published a presidential proclamation announcing the U.S. Administration's intent to restrict the issuance of immigrant visas (i.e., green cards) for applicants who are unable to provide proof of medical insurance or the means to pay "foreseeable medical costs."¹

The new rule is set to take effect November 3, 2019, requiring all consular officers to consider an immigrant's ability to obtain medical insurance or pay for medical costs as additional factors in approving green cards for applicants abroad.

WHY THIS MATTERS

The rule effectively creates a health insurance "mandate" for immigrants seeking entry into the United States. Individuals unable to provide evidence of approved medical coverage within a certain time period, or the financial means to pay for medical costs in the U.S., will be denied their green card. The new rule limiting green cards in respect of the medically uninsured follows a series of moves from the U.S. Administration that appear aimed at limiting immigration to the United States.

Further, the president's proclamation comes on the heels of the Administration's implementation of a new "public charge" rule, slated to come into effect October 15, 2019, and aimed at restricting green cards and U.S. citizenship in respect of foreign nationals who receive one or more designated public benefits. For prior coverage on the "public charge" rule, see our earlier report in GMS [Flash Alert 2019-131](#).

More on the Presidential Proclamation

Invoking the same legal authority used to decree the travel ban impacting foreign nationals from Muslim majority countries,² the proclamation allows the president to side-step the normal congressional legislative process to implement policies impacting inbound U.S. immigration.

In his announcement, President Trump states his proclamation is aimed at ensuring “immigrants do not financially burden our health-care system.”³ To emphasize his point, the president claimed that immigrants are three times as likely as American citizens to lack health insurance, making them a burden on hospitals and U.S. taxpayers.

Proof of Health Insurance or Sufficient Financial Resources

Under the new rule, immigrants seeking to enter the U.S. will be required to demonstrate they will be covered by approved health insurance within 30 days of entering the country, or possess sufficient financial resources to pay for any foreseeable medical costs accrued in the United States. Green card applicants will be required to meet these standards before being issued the necessary visa by the consular unit.

The proclamation lists the following plans or programs as qualifying approved health insurance:

- (i) an employer-sponsored plan, including a retiree plan, association health plan, and coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1985;
- (ii) an unsubsidized health plan offered in the individual market within a state;
- (iii) a short-term limited duration health policy effective for a minimum of 364 days – or until the beginning of planned, extended travel outside the United States;
- (iv) a catastrophic plan;
- (v) a family member’s plan;
- (vi) a medical plan under chapter 55 of title 10, United States Code, including coverage under the TRICARE program;
- (vii) a visitor health insurance plan that provides adequate coverage for medical care for a minimum of 364 days – or until the beginning of planned, extended travel outside the United States;
- (viii) a medical plan under the Medicare program; or
- (ix) any other health plan that provides adequate coverage for medical care as determined by the secretary of health and human services or his designee.

However, an individual will not meet the approved health insurance mandate if coverage is provided under Medicaid or through the use of Affordable Care Act (ACA) subsidies when purchasing insurance since ACA subsidies are funded by the federal government.

Who Is Impacted by the New Rule?

The new rule applies to foreign nationals seeking immigrant visas from abroad issued by consular officers stationed at U.S. Embassies and Consulates. The rule does not impact those already in the United States. Further, the proclamation provides a number of exceptions and will not apply to children of U.S. citizens, lawful permanent residents, asylum applicants, refugees, and applicants for "special immigrant visas" for Iraqi and Afghan nationals who worked with the U.S. government, including their families.

Additionally, individuals who were issued valid immigrant visas prior to the proclamation's effective date are also exempt.

As most employer-sponsored green-card applicants will receive health insurance coverage through employment, these individuals are unlikely to be impacted. The president’s proclamation is mostly likely to impact beneficiaries of family-based green cards, namely the immediate relatives of U.S. citizens waiting overseas for immigrant visas to join family members residing in the U.S., including parents, spouses, and siblings of U.S. citizens.

Approximately 500,000 immigrant visas are issued by consular officers at foreign service posts (U.S. Embassies and Consulates) annually.⁴ From this population, an estimated 40 percent of the immigrant visas issued are applicants of family-based sponsored immigration and will be subject to this new rule. Aimed to make sure that foreign nationals seeking to enter and remain in the U.S. are self-sufficient, the new health-insurance requirement will create, potentially, an additional hurdle for foreign nationals, principally those without financial means, to immigrate to the United States.

KPMG NOTE

Looking Forward

It is possible that the new rule will face legal challenges in federal court. In particular, the standards in the proclamation are not clearly defined. The rule does not provide numerical thresholds in assessing “foreseeable medical cost” nor parameters on how to assess whether an individual has the means to pay such medical costs. It is also unclear what procedural steps and supplemental forms consular officers will employ to implement the new rule.

The president has further required the secretary of state, in consultation with the secretary of health and human services, the secretary of homeland security, and the heads of other appropriate agencies to submit reports within 180 days of November 3, 2019, highlighting other measures that may be warranted to protect the integrity of the U.S. health-care system and provide related policy recommendations.

Our office is tracking these matters closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 For the full text of the October 4, 2019 Proclamation, [click here](#).
- 2 For prior coverage, see *GMS Flash Alert 2018-091* (June 29, 2018).
- 3 To read the White House Fact Sheet related to the presidential proclamation, [click here](#).
- 4 For statistics on immigrant visas issued by the Department of State, [click here](#).

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Contact us

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