

## Immigration-Related Provisions of Senate and House Health Reform Bills

By James R. Edwards, Jr., Ph.D.

**H**ealth reform legislation in both the U.S. House of Representatives and the U.S. Senate will give illegal aliens access to taxpayer-funded health care well beyond emergency medical treatment. (That is already a mandate that can put hospitals and other providers on the hook for much more than addressing an individual's actual emergency.)

The Senate's Patient Protection and Affordable Care Act, substituted into HR 3590, and the House-passed Affordable Health Care for America Act, HR 3962, each contain provisions that purport to bar illegal aliens from benefiting from certain health programs. But neither bill would satisfactorily or effectively keep unlawful U.S. residents from obtaining new health benefits — thus forcing American taxpayers to subsidize health care for illegal aliens and certain unscrupulous employers.

Key findings include:

- HR 3962 ensures illegal alien access to the exchange and public option. HR 3590 states illegal immigrants are excluded from these.
- Both bills ostensibly bar illegal aliens from receiving the premium subsidy, and both bills use some form of eligibility verification for the subsidy.
- Both bills expand Medicaid eligibility. Both bills lack verification requirements based on citizenship or immigrant status. Both contain serious loopholes to enroll illegal aliens easily into Medicaid. HR 3962 automatically covers anchor babies.
- The eligibility verification process in each bill falls woefully short of protecting taxpayer liability to cover or subsidize people living unlawfully in the United States. Both the House and Senate bills' verification processes will encourage large-scale fraud and abuse.
- The Senate bill exempts illegal aliens from the mandate that everyone have health insurance or else face a tax penalty. This perverse exemption unfairly treats illegal aliens better than the bill treats American citizens.

### Health Insurance “Exchange” and the “Public Option”

Title III of the House bill establishes a federal “exchange” in which individuals and certain employers will obtain health coverage. Those already enrolled in another health program, such as Medicaid or veterans' health care, may not enroll in health insurance through the exchange.

HR 3962 omits anything that would bar participation by illegal immigrants. Thus, the exchange will by default allow illegal aliens to purchase insurance through this government entity. This omission was reportedly a concession to the Congressional Hispanic Caucus in order to secure that bloc of votes, which was needed for HR 3962's passage.<sup>1</sup>

Title III, Subtitle B establishes a government insurance program, the “public option,” to be offered to individuals and eligible employers through the exchange. Nothing in HR 3962 prohibits illegal aliens from enrolling in the government health insurance plan.

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The Senate substitute language in HR 3590 requires states to create “American Health Benefit Exchanges.” These state exchanges must provide individuals and small businesses an insurance market, as well as include a public health insurance option, though states may opt out of the public option. Section 1312 of the Senate bill limits access to the exchanges, and thus to a public option, to “lawful residents.”

## “Affordability Credits”

### Premium Subsidy

The House-passed health legislation ostensibly disqualifies illegal aliens from so-called “affordability credits.” These are tax subsidies on a graduated scale that supplement individuals and households earning between 150 percent and 400 percent (about \$88,000 for a family) of the official poverty level. They are advanceable, refundable tax credits, making them tantamount to income for those who have no tax liability, much like the Earned Income Tax Credit.<sup>2</sup> Sections 341(b)(4) and 347 state that only people who are “lawfully present” are supposed to receive affordability credits. (See “Verification of Eligibility,” below, for why this does not adequately safeguard taxpayers.)

The Senate bill contains a similar tax subsidy for payment of insurance premiums. The Senate version pays the credits directly to insurers. The credits are based on household income between 133 percent and 400 percent of the poverty level. Section 1401(e) deals with excluding “individuals not lawfully present” from credit calculations.

The House bill poses the more direct threat to the employer-based health insurance benefit — which covers some 180 million Americans today with private health coverage as a fringe benefit — through HR 3962’s federal public option and other measures. This means steady movement from private insurance plans, where taxpayer subsidy of illegal aliens’ health coverage is less direct, to more of a single-payer model of health coverage, where the government-run health plan more directly uses tax dollars to provide illegal aliens with health coverage. Both bills provide for certain employees with work-based insurance to use the exchange and apply for affordability subsidies.

Also, both bills create tax credits for small businesses with fewer than 25 full-time employees. The House’s business subsidy lasts only two years; the Senate also credits small employers for two years, but excludes seasonal workers from the tax credit calculation. HR 3962 fails to require businesses that claim these tax

credits for providing employee health insurance to verify their workers’ legal status, specifically through the E-Verify program. While HR 3590 in the Senate places no worker verification condition on employers seeking a tax subsidy, the Senate bill does provide for verification of citizenship or immigration status by the government (see “Verification of Eligibility,” below).

## Medicaid Expansion

Both health bills, House and Senate, significantly expand eligibility for the Medicaid program. The House expands Medicaid to cover those earning up to 150 percent of the federal poverty level (thus raising Medicaid coverage to households with annual income of \$33,000). The Senate increases Medicaid eligibility income levels to 133 percent of official poverty (over \$29,000). The Senate bill also extends Medicaid to childless adults, based solely on income and apart from other requirements, such as having young children. Both House and Senate bills include “presumptive eligibility” provisions. These amount to huge loopholes for “no-questions-asked” Medicaid enrollment of illegal aliens.

Section 1786 of the House bill states that illegal aliens are barred from federal Medicaid and Children’s Health Insurance Program (CHIP) payments. However, the combination of easy enrollment of illegal immigrants into these programs and the glaring absence of meaningful verification requirements virtually ensures access by unlawfully present aliens to Medicaid and other government health care. Title II of HR 3590, the Senate version, contains no similar provision excluding illegal aliens, nor does the Senate bill require verification of eligibility based on citizenship or immigration status. Rather, both bills apparently rely on current law (see “Verification of Eligibility,” below).

HR 3962’s Section 305(d) makes newborn children lacking other insurance automatically qualify for Medicaid. This instant Medicaid enrollment covers the costs of the birth. Currently, U.S.-born babies, even of illegal alien mothers, are considered U.S. citizens automatically. A basic law of economics is that you get more of what you subsidize. Given that some 400,000 anchor babies are born to illegal-alien mothers in the United States each year, this aspect of Medicaid expansion may well be viewed as another magnet for illegal immigration. Therefore, this element of Medicaid expansion may prove to be quite costly, as well as increase the number of births to illegal aliens at U.S. taxpayer expense.

Given the disproportionately low income levels of immigrants (particularly illegal aliens), both

bills' expansion of Medicaid eligibility would expose U.S. taxpayers and state governments to significant tax liability by subsidizing immigrants through this entitlement program. Medicaid has already been growing at such unsustainable rates that Medicaid persists as one of the worst cost stresses on state budgets, as well as contributing to massive federal debt accumulation.<sup>3</sup>

## Verification of Eligibility

HR 3962 includes a single verification of eligibility requirement relating to citizenship or immigration status. It pertains only to affordability credits. Section 341(b)(4)(B) provides that an applicant for the premium subsidy declare U.S. citizenship or lawful immigrant status. Section 341(b)(4)(D) invokes the verification procedures in the Social Security Act. That process was weakened when Congress reauthorized CHIP early in 2009.

The Children's Health Insurance Program Reauthorization Act, HR 2, made the verification of citizenship or immigration status much more vulnerable to fraud. HR 2's Section 211 allows states to administer the CHIP or Medicaid entitlement with merely a check of a Social Security number and place of birth. This method is subject to easier fraud and abuse. This change diminished the effective measures of the Deficit Reduction Act of 2005 (DRA). The DRA required Medicaid applicants to produce proof of citizenship. Prior to DRA, states could accept one's self-declaration to be a U.S. citizen.<sup>4</sup> Thus, reliance on the current verification procedures will stop some, but not nearly all illegal aliens from receiving taxpayer subsidies or enrolling in expanded Medicaid.

The Senate bill establishes a verification procedure. This citizenship or immigration status check, in Section 1411, applies to participation in the exchange, premium subsidy credits, cost-sharing reductions, and exemptions from the individual mandate (see next section). Despite its broader applicability, the Senate verification contains weaknesses that risk the high likelihood of loopholes, fraud, and abuse. Most glaringly, the Senate bill fails to designate usage of the SAVE system already used by more than 70 other means-tested programs. SAVE is proven, and is very similar to the E-Verify system used by participating employers to check the status of new hires.

Secondly, HR 3590 leaves crucial details to be written by bureaucrats, such as what "identifying information" is deemed "appropriate" to prove one's claimed immigration status. Thirdly, Health and Human Services receives the "flexibility" to modify the

verification process in order to "reduce" the "burdens on the applicant." This adds up to immigrant status verification that is a mile wide and, if not now then eventually, an inch deep. The Senate bill's verification provisions almost guarantee exploitation by illegal aliens and their advocacy groups that help them enroll in government programs. American taxpayers will end up subsidizing illegal aliens' health care by the tens or even hundreds of billions of dollars.<sup>5</sup>

## Individual Mandate

Title V of HR 3962 requires most residents of the United States to maintain health insurance. Among the exceptions are nonresident aliens. Because of silence regarding nonimmigrants, immigrants, and illegal aliens, this part of the House legislation apparently places the individual mandate to have health coverage on these groups. Enforcement of the mandate comes through a tax penalty.

The Senate bill similarly includes an individual mandate requiring possession of health insurance. However, the Senate substitute language in HR 3590, Section 1501(b), exempts illegal aliens from this mandate. Illegal immigrants are also exempted from the tax penalty that applies to those not complying with the mandate, and unlawful aliens have their immigration status verified through the Senate verification process (but there is no requirement to turn illegals' information over to immigration enforcement authorities for pursuit or arrest). One analyst has noted that the exemption of illegal aliens from the individual mandate and its tax penalty treats foreign lawbreakers more favorably than the bill treats American citizens.<sup>6</sup>

## Conclusion

Both the House and Senate health reform bills inequitably treat American citizens in relation to illegal aliens. The latter are all but guaranteed to obtain health benefits at taxpayer expense, possibly at costs into the hundreds of billions of dollars (paid for nearly exclusively by taxpaying Americans). The few eligibility verification requirements that do exist in each bill fall well short of what would be needed to prevent illegal aliens from gaining access to taxpayer-funded health care on top of the emergency care they already receive. In addition to greatly expanding taxpayer liability and growing government's role in the health sector of the U.S. economy, the legislation amounts to a reward for illegal aliens and another power boost to the magnet that draws illegal aliens.

## End Notes

<sup>1</sup> See, for example, Jared Allen, “Immigration May Threaten Health Vote,” *The Hill*, November 5, 2009, <http://thehill.com/homenews/house/66649-immigration-threatens-vote>.

<sup>2</sup> See Kevin Mooney, “Illegal immigrants cashing in on federal tax credits, study shows,” *Washington Examiner*, April 16, 2009, <http://www.washingtonexaminer.com/opinion/Many-illegal-immigrants--43088487.html>.

<sup>3</sup> Editorial, “Max’s Mad Mandate,” *Wall Street Journal*, September 27, 2009, <http://online.wsj.com/article/SB10001424052970203917304574414831869954664.html>.

<sup>4</sup> See James R. Edwards, Jr., “Health Reform Loopholes for Illegals,” *Human Events*, October 10, 2009, <http://www.humanevents.com/article.php?id=33820>.

<sup>5</sup> For a discussion of a more effective verification procedure, see Robert Rector, “Providing Health Care for Illegal Immigrants: Understanding the House Health Care Bill,” Heritage Foundation Backgrounder No. 2345, November 23, 2009, <http://www.heritage.org/Research/HealthCare/bg2345.cfm>.

<sup>6</sup> For an excellent explanation of how the Senate treatment of illegal aliens under the individual mandate is unfair to American citizens, see Keith Hennessey, “A penalty tax inequity in the Reid bill,” November 21, 2009, <http://keithhennessey.com/2009/11/21/penalty-tax-inequity/>.