

## House Health Reform Bill Will Allow Illegal Aliens to Receive Taxpayer-Funded Health Care

Critics of America’s Affordable Health Care Act of 2009 (AAHCA), the health care reform bill currently working its way through the House of Representatives, have suggested the bill will provide taxpayer-funded health care to illegal aliens. Supporters of the bill maintain that Section 246 will prevent illegal aliens from receiving benefits under the bill. Section 246 states that “[n]othing in this subtitle shall allow Federal payments for affordability credits on behalf of individuals who are not lawfully present in the United States.”<sup>1</sup> As discussed in this memorandum, [Section 246 will not prevent illegal aliens from receiving taxpayer-funded health care benefits](#) under the bill.

**(1) Illegal Aliens Eligible for Public Plan.** Section 246 applies only to “affordability credit” access, but does not apply to anyone attempting to enroll in the public health insurance plan created by Section 221. Affordability credits can be used to offset the cost of health care coverage for individuals who enroll in private insurance plans, but there is currently no provision barring illegal aliens from enrolling in the taxpayer-funded public plan. An amendment offered by Rep. Dean Heller (R-NV) at the Ways & Means Committee markup would have required that enrollees in the public plan, or those seeking affordability credits, must verify eligibility with the Income Eligibility Verification System (IEVS) and the Systematic Alien Verification for Entitlements (SAVE) system. That amendment was rejected by the committee on a party-line vote. As currently written, the bill would allow illegal aliens to freely enroll in the public plan.

**(2) Section 246 Lacks Verification Requirements.** Over the years, Congress has required various methods to ensure that only eligible individuals receive federal public benefits. The most effective of these methods involves the requirement that an agency or employer confirm eligibility with a verification database. Examples of effective databases to verify eligibility include the **SAVE system**, which confirms an individual is a citizen or qualified alien (as defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, more commonly known as the “Welfare Reform Act of 1996”)<sup>2</sup> and is therefore eligible for certain benefits; the **IEVS**, which confirms income eligibility for purposes of certain means-tested benefits like Temporary Assistance to Needy Families (TANF); or the **E-Verify system**, which confirms an individual is work-authorized in the United States. A lesser method to screen for benefit eligibility would be to require applicants to self-attest eligibility, subject to penalties of perjury, on a benefit enrollment form. This method is unreliable because it depends solely on the honesty of applicants and also fails to actually determine an applicant’s eligibility. The health care reform bill does not require the use of any verification database to determine eligibility for affordability credits. Likewise, this bill does not require any screening or self-attestation by applicants to determine eligibility for affordability credits. Instead, Section 246 bars illegal aliens from receiving affordability credits but contains no enforcement method to ensure compliance so as to preclude ineligible individuals from receiving that benefit. Where enforcement is lacking, we can expect compliance to be similarly lacking. Accordingly, Section 246 will do nothing to actually preclude benefits from being improperly provided to illegal aliens.

**(3) Government Studies Confirm: Bar on Benefits without Verification is Ineffective.** Government research confirms that a statute that limits the availability of government benefits is meaningless unless it is also coupled with a vigorous method of ensuring eligibility in order to eliminate fraud and abuse. For example, the Government Accountability Office (GAO) and other independent research have concluded that illegal aliens have been a significant factor in the rise of Earned Income Tax Credit (EITC) disbursements despite the fact that illegal

<sup>1</sup> Section 246 (starting on page 143, line 3) available [here](#).

<sup>2</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. [104-193](#) (1996).

aliens are technically ineligible for the tax benefits.<sup>3</sup> Likewise, the Congressional Research Service (CRS) reported in May 2008 that illegal aliens receive significant federal benefits, notwithstanding numerous federal laws designed to prevent this form of fraud.<sup>4</sup> CRS cited studies from the U.S. Departments of Agriculture, Labor, Health and Human Services, and a private organization to support the contention that a statutory bar alone will not prevent illegal aliens from accessing government benefits.<sup>5</sup> Accordingly, it is highly unlikely that Section 246 will operate to effectively prevent illegal aliens from receiving affordability credits provided for in the bill.

**(4) Does Loophole Extend Health Coverage to Illegal Aliens Via Dependents?** Section 246 may also be rendered ineffective by virtue of Section 242(a)(2). 242(a)(2) states “members of the same family... *shall be treated as a single affordable credit individual eligible.*”<sup>6</sup> This raises the question of whether a family of illegal aliens can qualify for the affordability credit because they have a single family member who is eligible. For example, could an illegal alien woman receive the credit for herself simply by giving birth to a child in the United States? If so, this exception would negate the general rule barring illegal aliens from receiving the credit and would impose a significant cost burden on the American taxpayers.

**(5) Recent Congressional Enactment to Limit Benefits for Illegal Aliens.** In recent years, Congress has enacted various provisions to effectively preclude illegal aliens from receiving taxpayer-funded benefits. For example, the Welfare Reform Act of 1996 contained a number of reforms to ensure that only “qualified aliens” (which excludes illegal aliens) would be eligible to receive “federal public benefits.” More recently, as part of the Economic Stimulus Act of 2008, Congress precluded the issuance of stimulus rebate checks to illegal aliens by limiting rebates only to persons with valid Social Security numbers (SSNs) while prohibiting checks for individuals using individual tax identification numbers (ITINs) which can be used by illegal aliens.<sup>7</sup> This provision was effective in preventing the issuance of stimulus checks to illegal aliens. Likewise, the American Recovery and Reinvestment Act of 2009 included language to preclude illegal aliens from receiving the bill’s “Making Work Pay” tax credit.<sup>8</sup>

**Conclusion.** The health care reform bill lacks adequate safeguards to ensure that illegal aliens will not qualify for the taxpayer-subsidized public health plan or affordability credits. The best way to protect the American taxpayers is to require that each individual who enrolls in the public plan or who applies for an affordability credit to first verify their eligibility using the IEVS and SAVE databases. Government studies confirm that statutory bars, like Section 246, are ineffective by themselves to protect taxpayers. Congress has enacted effective language to preclude illegal aliens from receiving benefits in recent years. The same willingness to adopt verification requirements in the past is again necessary with respect to AAHCA in order to protect the interests of the American taxpayers.

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<sup>3</sup> See GAO Report No. GAO/GGD-95-27, *Tax Administration: Earned Income Credit – Data on Noncompliance and Illegal Alien Recipients* (October 1994), available [here](#), GAO Report No. GAO/GGD-95-122BR, *Earned Income Credit: Targeting to the Working Poor* (March 1995), available [here](#) and Edwin S. Rubenstein, *The Earned Income Tax Credit and Illegal Immigration: A Study in Fraud, Abuse, and Liberal Activism* (Spring 2009), available [here](#).

<sup>4</sup> See Ruth Ellen Wasem, Congressional Research Service Report No. RL34500, *Unauthorized Aliens’ Access to Federal Benefits: Policy and Issues* (May 21, 2008), available [here](#) (last viewed July 24, 2009).

<sup>5</sup> See U.S. Department of Agriculture Report No. FSP-07-CHAR, *Characteristics of Food Stamp Households, Fiscal Year 2006* (September 2007) (not available online); U.S. Department of Labor, Employment and Training Administration, *An Analysis of Overpayments Not Included In the Unemployment Insurance (UI) Government Performance and Results Act (GPRA) Measure for ‘Prevention of Overpayments’*, available [here](#) (last viewed July 24, 2009); U.S. Department of Health and Human Services, *Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2006*, Table 12, (November 1, 2007), available [here](#). See also, Steven A. Camarota, Center for Immigration Studies Report, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget* (August 2004), available [here](#).

<sup>6</sup> Section 242(a)(2) (starting on page 133, line 10).

<sup>7</sup> Economic Stimulus Act of 2008, Pub. L. No. [110-185](#), § 101 (2008). The House passed bill would have permitted illegal aliens to receive the stimulus rebates, language was added in the Senate bill and that language was enacted into law.

<sup>8</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. [111-16](#). When the bill originally passed the House and Senate, it did not include adequate language to exclude illegal aliens from eligibility because the “substantial presence test,” an existing provision of the tax code, and the lack of language limiting availability only to persons using a valid SSN would allow illegal aliens to receive the tax credit. See 26 U.S.C. § 7701(b)(3) (detailing the substantial presence test). Congressional leaders originally denied that the language was deficient and when the media reported on this issue, Congress eventually bowed to public pressure and included a fix in the conference report. See *ABC News*, “Stimulus Seeks to Bar Illegals From Tax Credit” (January 29, 2009), available [here](#) (last viewed July 24, 2009). At the time of this article, the legislation actually did permit illegal aliens to obtain the tax credit, but within weeks the language in the conference report was changed to preclude illegal aliens from obtaining the tax credit.