

## How the Senate Health Care Bill (H.R. 3590) Impacts Immigration

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**INTRODUCTION** | On November 28, 2009, the United States Senate began debating its version of health care reform legislation, the “Patient Protection and Affordable Care Act” (H.R. 3590). Over the past several months, FAIR has identified three key immigration related issues related to previous versions of health care legislation. These issues include: (1) changes to current law that would eliminate the existing 5-year waiting period before legal aliens can access certain taxpayer-funded health benefits<sup>1</sup>; (2) verification loopholes that would allow illegal aliens to access these benefits<sup>2</sup>; and (3) language that would allow illegal aliens to access a taxpayer-subsidized “exchange” marketplace.<sup>3</sup> Like the House-passed health care bill, the Senate bill fails to address these issues in a way that protects the American taxpayers. Moreover, the Senate bill raises an additional issue in that it gives low-income legal immigrants the ability to receive taxpayer-subsidies so they can choose which health insurance they want, while similarly-situated American citizens are denied this choice and are instead forced to enroll in Medicaid.

**VERIFICATION LOOPHOLES** | The Senate health care bill lacks a meaningful and effective verification system. Section 1411 of the bill requires the federal government “to establish a program [to determine] whether an individual who is to be covered [by] the exchange]... [is a] citizen or national of the United States or an alien lawfully present in the United States.” The bill also requires that the Department of Homeland Security, the Social Security Administration, and the Department of the Treasury to work together to use an “online system” to determine an applicant’s eligibility. This verification mechanism is problematic for three main reasons:

(1) It does not require the use of the existing System Alien Verification for Entitlements (SAVE) system at all. As FAIR has consistently stated since the health care debate began in July, meaningful verification must effectively prevent illegal aliens from obtaining all of the taxpayer-funded health care subsidies, and the most effective way to do this is to verify eligibility through the already existing SAVE system.

(2) Section 1411(c)(4)(B) of the bill (page 277) gives the Secretary of Health and Human Services (HHS) broad discretion to waive or alter the verification requirements under the bill. Specifically, the legislation says that the HHS Secretary may “modify the methods used under the program established by this section for the Exchange and verification of information...” In effect, the legislation gives HHS the power to waive altogether any verification requirements in the bill if HHS believes that verification is proving to be either: (a) too burdensome to applicants (including, potentially, illegal aliens); or (b) too costly.

(3) Similar to its House-passed counterpart, the Senate health care bill fails to require that applicants attempting to enroll in taxpayer-subsidized insurance verify their identity and that they are actually eligible for these benefits. **At no point does the bill require presentment of a photo ID by any applicant.** Like the House bill, the Senate bill also relies largely on self-attestation which is not effective to determine eligibility. In addition, to the extent anyone applying for the subsidies encounters any inconsistencies regarding the information they are required to provide, these inconsistencies will be handled in accordance with the flawed system established by section 1902(ee) of the Social Security Act. FAIR has criticized this process as being highly ineffective.<sup>4</sup>

**ILLEGAL ALIEN PARTICIPATION IN THE EXCHANGE** | Like the House-passed legislation, the Senate health care bill creates a health care “Exchange.” This Exchange is meant to act as a marketplace where individuals will be able to shop for and purchase health insurance. According to the Congressional Budget Office (CBO),

<sup>1</sup> See FAIR’s Analysis: <http://www.fairus.org/site/DocServer/342d.pdf?docID=3942>.

<sup>2</sup> See FAIR’s Analysis: <http://www.fairus.org/site/DocServer/HR3962.pdf?docID=3941>.

<sup>3</sup> See “Insurance for illegal immigrants means longer waits, higher costs,” an Op-Ed written by FAIR President Dan Stein for *USA Today*: <http://blogs.usatoday.com/oped/2009/11/opposing-view-dont-let-them-buy-policies.html>.

<sup>4</sup> See FAIR’s Analysis: <http://www.fairus.org/site/DocServer/HR3962.pdf?docID=3941>.

allowing illegal aliens to access this Exchange in order to purchase health insurance would drive up the costs of health care for American citizens and legal immigrants.<sup>5</sup> It is also worth noting that an increase in the number of persons accessing health services, without a corresponding increase in the number of doctors, nurses, hospital beds, and doctor's offices, could impact health care quality for all Americans, creating the potential for longer waits at doctors' offices and reduced access to services.

Moreover, the Exchange will be taxpayer subsidized. This means that American taxpayers will be paying for a system that benefits anyone participating in the Exchange. Nearly half (46.5 percent) of the 25.6 million non-citizens in the United States are illegal aliens, and about 69 percent of illegal alien adults currently lack health insurance. So if illegal aliens are able to access the Exchange, their use would constitute a substantial portion of the overall usage of the Exchange. As a result, it is highly likely that allowing illegal aliens to buy into the Exchange would dramatically increase the bureaucratic costs of the taxpayer-funded exchange. This will inevitably lead to increased costs for American taxpayers.

In spite of these facts, the Senate bill does not go far enough to address the issue of illegal alien participation in the Exchange. While the legislation reads as if only citizens, nationals and legal immigrants can participate in the Exchange, the bill relies on the same faulty verification process discussed above to determine eligibility to participate in the Exchange. As a result, the bill will not effectively prevent illegal aliens from accessing the taxpayer-subsidized Exchange.

**WAIVING WELFARE REFORM'S 5-YEAR WAITING PERIOD |** In 1996, Congress passed the Welfare Reform Act. This legislation imposed a 5-year waiting period before most legal aliens can access many federal benefits (like Medicaid or welfare).<sup>6</sup> After Welfare Reform became law, the Clinton Administration issued implementing rules that exempted certain federal benefits from the definition of "assistance" to which many of the welfare reform provisions apply.<sup>7</sup> One such benefit exempted from "assistance" was the refundable tax credit known as the Earned Income Tax Credit (EITC). The Senate health care bill creates a "refundable tax credit" — very similar to the EITC — to help people afford health insurance. Consequently, while the Senate bill does not explicitly waive the 5-year waiting period, the likely impact of the Senate bill would permit legal aliens to access taxpayer-funded subsidies without regard to the 5-year waiting period. As a result, FAIR believes that the 5-year waiting period will not apply to the tax credits created by the Senate bill, and American taxpayers will be forced to foot the bill for legal immigrants who will be able to access these credits immediately upon their arrival in the United States.

**LEGAL IMMIGRANTS TREATED BETTER THAN AMERICAN CITIZENS |** In order to qualify for the tax credits created under the Senate health care bill, an individual or household must have an income between 100 percent and 400 percent of the Federal Poverty Level (FPL). If an American citizen/household has income below 100 percent of the FPL, they cannot qualify for the tax credit. Instead, their only option is to enroll in Medicaid. By contrast, the Senate bill makes legal immigrants with income below 100 percent of the FPL eligible for the tax credits created by the Senate bill. This means that American citizens with income below 100 percent of FPL are forced to enroll in Medicaid, and have no other health insurance options, but certain legal immigrants with comparable income will have a lot more choices because they can access the tax credits under the Senate bill and use those subsidies to shop for health insurance that best meets their needs. Accordingly, the Senate health care bill gives legal aliens greater freedom and greater rights than American citizens.

**CONCLUSION |** Like the House bill, the Senate health care reform bill contains many flaws that: (1) would allow illegal aliens to participate in the taxpayer-funded exchange; (2) fail to include effective verification to prevent illegal aliens from accessing taxpayer-subsidized tax credits; (3) also fail to maintain current law's 5-year waiting period before legal aliens can access benefits under the bill; and (4) treats some American citizens unfairly in comparison to how it treats certain immigrants. Congress can, and should, fix these problems and inequities.

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<sup>5</sup> According to CBO: "[F]or most preventive services, expanded utilization leads to higher, not lower, medical spending overall." (Available [here](#)).

<sup>6</sup> This waiting period was put in place by Section 403 of the Personal Responsibility and Work Opportunity Act of 1996 ("Welfare Reform Act").

<sup>7</sup> See U.S. Department of Health & Human Services, Office of Family Assistance, *Summary of Final Rule for Temporary Assistance to Needy Families (effective October 1, 1999)*, available [here](#).