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## NEW CHARGES ABOUT HOW HOUSE CHILDREN'S HEALTH BILL AFFECTS UNDOCUMENTED IMMIGRANTS ARE FALSE

by Robert Greenstein

Rep. Nathan Deal has launched a new attack on House health insurance legislation that would cover about 5 million uninsured lower-income children, according to Congressional Budget Office estimates. Rep. Deal charged the bill opens Medicaid and the State Children's Health Insurance Program (SCHIP) to illegal immigrants, encourages more illegal immigrants to enter the United States, and reflects an "eagerness to offer free services to illegals at taxpayer expense."<sup>1</sup>

The charges are false.

### What the Provisions at Issue Would Actually Do

The charges revolve around two provisions of the health legislation that is headed to the House floor.

- One addresses severe problems that resulted from a poorly designed provision enacted in 2006 that imposes more burdensome requirements on *U.S. citizens* applying for Medicaid than on eligible legal immigrants and has caused thousands of poor, eligible citizen

### KEY FINDINGS

- Charges that the House SCHIP bill would enable undocumented immigrants to obtain Medicaid and SCHIP coverage are false. Undocumented immigrants have *never* been eligible for regular Medicaid or SCHIP. The House bill maintains this prohibition.
- The House bill would give states more flexibility in how to ensure that children applying for Medicaid are citizens or eligible legal immigrants. This would address severe problems caused by a poorly designed documentation requirement imposed in 2006, which has shut tens of thousands of U.S. citizen children out of Medicaid while identifying virtually no undocumented immigrants.
- The bill *tightens* controls to ensure that no federal Medicaid funds go to undocumented immigrants. It requires all states to conduct annual audits to ensure that undocumented immigrants are not participating in the program; states whose audits find any undocumented immigrants would be required to fully repay the federal government.
- The bill would also allow states to provide Medicaid or SCHIP coverage to *legal* immigrant children and pregnant women during their first five years in the country, as the National Governors Association and the National Conference of State Legislatures have called for on a bipartisan basis.

<sup>1</sup> See Rep. Nathan Deal, "New Entitlement for Illegal Aliens: Oppose the CHAMP Act," July 30, 2007; email from Todd Smith, deputy chief of staff for Rep. Deal, to all Members of the House, July 30, 2007; and "A new entitlement for illegals," *Washington Times*, July 30, 2007.

children and parents to be denied entry into Medicaid (or to have their entry into the program delayed). Many of these children and parents apparently became or remained uninsured as a result.

- The second broadens a provision of current law, under which certain categories of *legal* immigrants can qualify for Medicaid and SCHIP after residing for five years in the United States, to give states an *option* to cover legal immigrant children and pregnant women during their first five years here. The National Governors Association and the National Conference of State Legislatures have both endorsed this change on a bipartisan basis. It would not make any undocumented immigrants eligible.

## 1. The Provision Dealing with “Citizenship Documentation”

### Background

Undocumented immigrants have never been eligible for Medicaid (other than for some emergency medical care) or SCHIP. Eligible *legal* immigrants have always been required to provide various documents to prove that they have legal status and that their particular legal status lets them qualify for Medicaid under federal law. In addition, any citizens whose citizenship is in question have always been required to prove it. In 2005, Dr. Mark McClellan, then-Administrator of the Centers for Medicare and Medicaid Services, wrote that this policy “allows states to enroll eligible individuals while preserving program integrity.”<sup>2</sup>

In 2006, however, Congress changed the law. A proposal authored by Rep. Deal and the late Rep. Charles Norwood requires *every citizen* child and parent receiving or applying for Medicaid to provide an original birth certificate, passport, or similar document to prove his or her citizenship. Congress enacted the provision even though Dr. McClellan had indicated there was no evidence that it was needed.

Supporters said the provision was necessary to keep undocumented immigrants out of Medicaid and that it would have *no* impact on citizens. Studying the issue in 2005, however, the Department of Health and Human Services’ (HHS) Inspector General did not find evidence of a problem.<sup>3</sup> As Dr. McClellan, who was CMS Administrator at the time, noted concerning the Inspector General’s report, “The report does not find particular problems regarding false allegations of citizenship, nor are we aware of any.”<sup>4</sup>

Furthermore, the results of the provision have proved just the opposite of what Rep. Deal forecast: Tens of thousands of children who are U.S. citizens have been shut out of the program

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<sup>2</sup> Memorandum from Mark B. McClellan to Daniel R. Levinson, Acting Inspector General, April 8, 2005, printed as Appendix D in Office of Inspector General, U.S. Department of Health and Human Services, “Self-declaration of U.S. Citizenship for Medicaid,” June 2005.

<sup>3</sup> Office of Inspector General, U.S. Department of Health and Human Services, “Self-declaration of U.S. Citizenship for Medicaid,” June 2005.

<sup>4</sup> McClellan, *op. cit.*

because their parents lacked ready access to a birth certificate or passport, while virtually no undocumented immigrants have been identified.

- Numerous states have reported that, due to the new requirement, thousands of U.S. *citizen* children have been removed from, or denied entry into, Medicaid. Many of them apparently became or remained uninsured. The Government Accountability Office (GAO), the House Oversight and Government Reform Committee, and the Center on Budget and Policy Priorities have reported these results, based on data that the states collected.<sup>5</sup>
- The six states that examined this issue in greatest detail found that they have spent \$17 million so far to administer the burdensome requirement, have denied health insurance to tens of thousands of needy children and parents as a result, and have identified just *eight* undocumented individuals (whom they may have caught under the previous procedures anyway).<sup>6</sup> For example, the number of low-income children insured through Medicaid has dropped 11,000 in Virginia and 14,000 in Kansas due to the new requirements; each state identified one applicant who incorrectly claimed to be a citizen.<sup>7</sup>
- The three states that collected data by racial/ethnic group have found that the children losing coverage due to the requirement are overwhelmingly *non-Hispanic white* and *non-Hispanic black children*. Hispanic children are far less affected. In Virginia, for example, enrollment has fallen significantly among white and black children since the requirement took effect, while it has actually climbed among Hispanic children. This would not be occurring if the provision were affecting undocumented immigrants; an estimated 78 percent of undocumented immigrants are from Mexico, Central America, or South America, according to the respected Pew Hispanic Center.<sup>8</sup>

Governors have sharply criticized the provision. In a letter last month to leaders of both parties on the House Energy and Commerce Committee, California Gov. Arnold Schwarzenegger wrote that it has increased state administrative costs, put barriers in the way of eligible applicants, and “created a situation where U.S. citizens actually have fewer rights than non-citizens when applying for Medicaid benefits”<sup>9</sup> (in that the documentation requirements now imposed on citizens have proved more difficult for many of them to comply with than the substantial documentation requirements placed on eligible legal immigrants).

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<sup>5</sup> Government Accountability Office, *States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, June 2007; “Medicaid Citizenship Documentation Requirements Deny Coverage to Citizens And Cost Taxpayers Millions,” Majority Staff, Committee on Oversight and Government Reform, July 24, 2007; Donna Cohen Ross, “Medicaid Requirement Disproportionately Harms Non-Hispanics, State Data Show,” Center On Budget and Policy Priorities, July 10, 2007, and “New Medicaid Citizenship Documentation Requirement Is Taking A Toll,” Center on Budget and Policy Priorities, March 13, 2007.

<sup>6</sup> Committee on Oversight and Government Reform, *op. cit.*

<sup>7</sup> Donna Cohen Ross, “Medicaid Documentation Requirement Disproportionately Harms Non-Hispanics, State Data Show,” *op. cit.*

<sup>8</sup> An estimated 13 percent are from Asia, and 9 percent are from Europe, Africa, and other areas. Jeff Passel, “The Size and Characteristics of the Unauthorized Migrant Population in the United States,” Pew Hispanic Center, March 2006.

<sup>9</sup> Governor Arnold Schwarzenegger, Letter to Reps. John Dingell, Joe Barton, Frank Pallone, and Nathan Deal, June 5, 2007.

## The House Provision

A provision of the House bill is designed to give states flexibility to address these problems *without* allowing undocumented immigrants into Medicaid.

- The House bill would give states increased flexibility in how to ensure that children applying for Medicaid are citizens or eligible legal immigrants. (The House bill does not change the 2006 provision with respect to parents.)
- Parents in all states would be required to sign, under penalty of perjury, that their children are U.S. citizens and to provide the children's Social Security numbers.
- The bill would let states either retain the procedures mandated in 2006 or modify them. But *all* states would be required to conduct *annual audits* to ensure their procedures were keeping undocumented immigrants out of the program. And states whose audits found undocumented immigrants in the program would be required to fully repay the federal government for the costs of allowing undocumented individuals to receive Medicaid. They also would have to repay the costs of serving any *legal* immigrants who are not part of an eligible legal immigrant category.

The House provision would be considerably more stringent than the provisions that governed Medicaid prior to 2006, evidently without causing problems. The House provision would have the following effects:

- An estimated 100,000 low-income children who otherwise would not receive Medicaid coverage under current law would be covered due to the House provision, and these children would overwhelmingly be U.S. citizens, according to the Congressional Budget Office.
- The House provision would reduce federal and state administrative costs by allowing states to use more cost-efficient procedures to assure that undocumented immigrants do not receive Medicaid.
- The provision contains tough safeguards through its requirement for annual state audits.
- The provision would make no undocumented immigrants eligible.

The provision responds to requests from governors in a number of states – including Oklahoma, Washington, New Mexico, Wisconsin, Michigan, Oregon, Virginia, Maryland, Pennsylvania, New Jersey, New York, Massachusetts, and California, among others – for greater flexibility in this area. The National Association of State Medicaid Directors also called for such a change.

## **2. State Option to Cover Legal Immigrant Children and Pregnant Women in Their First Five Years Here**

The House bill also contains this state option, which governors and the National Conference of State Legislatures requested on a bipartisan basis, and which the Senate approved on a bipartisan basis in 2003 as part of the Senate's Medicare prescription drug bill. This provision would make *no* undocumented immigrants eligible.

Rep. Deal claims that if subsequent legislation allows undocumented immigrants to legalize, they will be able to get Medicaid and SCHIP due to this provision. That is not correct. Any future legislation that allows undocumented immigrants to legalize will itself set the rules for whether those individuals will qualify for benefits.