



## MEMORANDUM

May 27, 2010

**To:** Honorable Tom Coburn  
Attention: Josh Trent

**From:** Alison Siskin, Specialist in Immigration Policy, 7-0260

**Subject:** Questions About Health Reform and Noncitizens

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This memorandum responds to your request for answers to four questions pertaining to noncitizens (aliens), health care, and the Patient Protection and Affordable Care Act (PPACA).<sup>1</sup> Specifically you asked:

1. Under PPACA, are noncitizens under 133% of the federal poverty level (FPL) eligible for a tax credit toward their premium costs? Does this eligibility differ for similarly situated U.S. citizens?
2. How similar are the new eligibility verification provisions in PPACA to receive the premium credits and cost-sharing subsidies to current verification requirements for employment and federal benefits? How effective is the new verification system?
3. Under PPACA, are unauthorized aliens subject to the mandate to have health insurance?
4. Assuming, as stated in PPACA §10106, that average cost-shift from uncompensated care adds about \$1,000 to the average families' annual health insurance premiums, is there a rough estimate of how much of this cost-shift is for uncompensated care for uninsured noncitizens? Are there any data or research that shows that the amount of the cost-shift for uncompensated care for noncitizens is different than for U.S. citizens?

The memorandum begins with a brief discussion of the treatment of noncitizens in PPACA, and then addresses the posed questions.

I hope that this memorandum provides useful information and analysis. Given the interest in the treatment of noncitizens in PPACA, the Congressional Research Service (CRS) is receiving requests for background and analysis on this topic. While the discussion and analysis below are tailored to your specific request, portions of it are taken from and may be used in CRS products available to other Members of Congress.<sup>2</sup>

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<sup>1</sup> P.L. 111-148 was signed into law on March 23, 2010, and amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010, on March 30, 2010. P.L. 111-152 did not make any changes to the treatment of noncitizens in P.L. 111-148.

<sup>2</sup> For a detailed discussion of the treatment of noncitizens under PPACA, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

## Treatment of Noncitizens in the Patient Protection and Affordable Care Act (PPACA)

PPACA includes an individual mandate as of 2014 to maintain health insurance with tax penalties for noncompliance. In other words, individuals —with some exceptions— who do not maintain acceptable health insurance coverage for themselves and their children will be required to pay an additional tax. All aliens who are lawfully present are covered by the requirement to maintain health insurance. Unauthorized (illegal) aliens are expressly exempted from this mandate.

In addition, under PPACA, "American Health Benefit Exchanges" will begin operation by 2014. An exchange cannot be an insurer, but will provide eligible individuals and small businesses with standardized access to insurers' plans. Based on their income, certain individuals may qualify for a tax credit toward their premium costs and a subsidy for their cost-sharing; the credits and subsidies will be available only through an exchange beginning in 2014.<sup>3</sup>

The law allows all lawfully present noncitizens to purchase insurance through an exchange, and expressly bars unauthorized aliens from obtaining insurance through an exchange. In addition, all lawfully present aliens who meet specified criteria are eligible for the premium tax credit and cost-sharing subsidies. Unauthorized aliens are ineligible for the tax credit and subsidies.

## Questions

### **1. Under PPACA, are noncitizens under 133% federal poverty level (FPL) eligible for a tax credit toward their premium costs? Does this eligibility differ for similarly situated U.S. citizens?**

#### **Background: Noncitizen Eligibility for Medicaid**

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)<sup>4</sup> as amended, noncitizens' eligibility for Medicaid largely depends on their *immigration status*, whether they arrived (or were on a program's rolls) before *August 22, 1996*,<sup>5</sup> and how long they have lived and worked in the United States. Notably, to be eligible for Medicaid aliens must also meet the program's financial and categorical eligibility requirements.<sup>6</sup>

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<sup>3</sup> CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, by Hinda Chaikind et al.

<sup>4</sup> P.L. 104-193, also called the Welfare Reform Act.

<sup>5</sup> The enactment date of PWRORA.

<sup>6</sup> Medicaid is a means-tested entitlement program operated by states within broad federal guidelines. To qualify, an individual must meet both categorical and financial eligibility requirements. Categorical eligibility requirements relate to the age or other characteristics of an individual. People aged 65 and over, certain persons with disabilities, children and their parents, and pregnant women are among the categories of individuals who may qualify.

Most legal permanent residents (LPRs) entering the United States after August 22, 1996, are barred from Medicaid for five years, after which they are eligible at the state's option. However, states may also choose to use state and federal Medicaid funds to cover pregnant women and children who are LPRs within the first five years of arrival.<sup>7</sup> In addition, states have the option to use state funds to provide medical coverage for other LPRs within five years of their arrival in the United States.<sup>8</sup>

LPRs with a substantial (10-year) U.S. work history or a military connection are eligible for Medicaid without regard to the five-year bar. LPRs receiving Supplemental Security Income (SSI) on or after August 22, 1996, are eligible for Medicaid because Medicaid coverage is required for all SSI recipients. Refugees and asylees<sup>9</sup> are eligible for Medicaid for seven years after arrival. After the seven years, they may be eligible for Medicaid at the state's option. Nonimmigrants and unauthorized aliens are barred from Medicaid. However, states may choose to cover these individuals using state-only funding.

### Answer to Question 1

Beginning in 2014, or sooner at state option, PPACA requires states to expand Medicaid to certain individuals who are under age 65 with income up to 133% of the FPL. PPACA does not amend the current immigration status-based restrictions (i.e., alien eligibility requirements) on receiving Medicaid (discussed above.) Thus, in 2014, all non-elderly U.S. citizens and certain lawfully present noncitizens up to 133% FPL will be eligible for Medicaid.<sup>10</sup> This reform not only expands eligibility to a group that is not currently eligible for Medicaid (low-income childless adults), but also raises Medicaid's mandatory income eligibility level for certain existing groups to 133% of the FPL and is considered the most significant expansion of Medicaid eligibility in many years.<sup>11</sup>

Beginning January 1, 2014, qualifying individuals will receive advanceable, refundable tax credits toward the purchase of an exchange plan.<sup>12</sup> Notably, eligibility for the premium credit is dependent on a number of factors, and income is just one.<sup>13</sup> To be eligible for the premium credits, a taxpayer (including lawfully present noncitizens) must be ineligible for Medicaid and certain other coverage. Due to the fact that they will be eligible for Medicaid in 2014, U.S. citizens with income up to 133% FPL *will not* be eligible for premium credits. In contrast, noncitizens up to 133% FPL who are ineligible for Medicaid (e.g., LPRs subject to a 5-year bar) *will* be eligible for premium credits if they meet all of the criteria specified in

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<sup>7</sup> Prior to the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3, signed into law on February 4, 2009), states had to use their own money to cover any LPRs within the first five years after entry.

<sup>8</sup> For a detailed discussion of noncitizen eligibility for Medicaid see pages 5-7 in CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

<sup>9</sup> Refugee and asylee status require a finding of persecution or a well-founded fear of persecution in situations of "special humanitarian concern" to the United States. Refugees are admitted from abroad. Asylum is granted on a case-by-case basis to aliens physically present in the United States who meet the statutory definition of "refugee."

<sup>10</sup> One might say that, notwithstanding what the new statute says, eligibility will in fact be required up to 138% FPL, because §1004(e) of P.L. 111-152 also requires income equivalent to 5% FPL be disregarded from household income. CRS Report R41126, *Private Health Insurance: Changes Made by H.R. 4872, the Health Care and Education Reconciliation Act of 2010*, by Hinda Chaikind et al.

<sup>11</sup> CRS Report R41210, *Medicaid and the State Children's Health Insurance Program (CHIP) Provisions in PPACA*, coordinated by Julie Stone.

<sup>12</sup> The advance payment will actually go directly to the insurer. §1412(a)(3).

<sup>13</sup> For a full discussion of the eligibility factors for the premium credit, see CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA)*, by Chris L. Peterson and Thomas Gabe.

PPACA.<sup>14</sup> Importantly, if a person who applies for premium credits in an exchange is determined to be eligible for Medicaid, the exchange will have that person enrolled in Medicaid.<sup>15</sup>

## **2. How similar are the new eligibility verification provisions in PPACA to receive the credits and subsidies to current verification requirements for employment and federal benefits? How effective is the new verification system?**

Section 1411 of PPACA requires that the Secretary of Health and Human Services establish a program to determine whether an individual who is to be covered in the individual market by a qualified health plan offered through an exchange, or who is claiming a premium tax credit or reduced cost-sharing, is a citizen or national of the United States or an alien lawfully present in the United States. The verification system created under PPACA will use three pieces of personal data to verify citizenship and immigration status. The Social Security Administration (SSA) will verify the name, social security number, and date of birth of the individual. For those attesting to be U.S. citizens, the attestation will be considered substantiated if it is consistent with SSA data. For individuals who do not claim to be U.S. citizens but attest to be lawfully present in the United States, the attestation will be considered substantiated if it is consistent with Department of Homeland Security (DHS) data.<sup>16</sup> PPACA requires such verification of all individuals seeking exchange coverage, regardless of whether they would be federally subsidized or would pay premiums entirely on their own.

All federal public benefits have citizenship requirements (i.e., that a person is a citizen or an alien in a eligible immigration status); however, the specific mechanism (i.e., implementation) to verify the status of U.S. citizens (e.g., attestation, documentary requirements) differs by program and the verification mechanism may also differ by state (e.g. electronic verification, attestation). For all public benefits, the status of noncitizens is verified in a manner consistent with the electronic verification system outlined in PPACA.<sup>17</sup> In addition, some states may use an electronic verification system similar to the system created under PPACA to verify the citizenship of U.S. citizens. Nonetheless, the verification requirements in

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<sup>14</sup> To be eligible for the premium credits, a taxpayer (including lawfully present noncitizens) must be ineligible for Medicaid and certain other coverage and have a household income that is above 100% of the FPL but that does not exceed 400% of the FPL. In addition, lawfully present noncitizens who have household incomes that do not exceed 100% of the FPL, and are ineligible for Medicaid due to their alien status, are *eligible* for premium credits. Without this provision (§1401), noncitizens with household incomes that did not exceed 100% of the FPL and who were ineligible for Medicaid would have been ineligible for the credits and subsidies and to participate in an exchange, and would possibly have a difficult time affording the mandated health insurance.

<sup>15</sup> §1311(d)(4)(F) and §1413(a).

<sup>16</sup> CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

<sup>17</sup> The verification requirements under PPACA are similar to and compatible with the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) system established by §1137(d) of the Social Security Act. The DHS Systematic Alien Verification for Entitlements (SAVE) system provides federal, state, and local government agencies access to data on immigration status that are necessary to determine noncitizen eligibility for public benefits. DHS does not determine benefit eligibility; rather, SAVE enables the specific program administrators to ensure that only those noncitizens and naturalized citizens who meet their program's eligibility rules actually receive public benefits. The SAVE system does not require a Social Security number (SSN). The key to SAVE is the immigration document number (e.g., number from the individual's permanent resident card, employment authorization document, or I-94 document) and the person's name, date of birth, and nationality. For more on the SAVE System, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

PPACA are most comparable to the employment verification system known as E-Verify, because in that system the citizenship status of both U.S. citizens and noncitizens is verified electronically.<sup>18</sup>

## Eligibility Verification and Its Implementation

Importantly, since the verification system under PPACA has not yet been created, the issues concerning verification are unknown. Some argue that since the new verification system—similar to E-Verify and other electronic verification systems for public benefits—does not include a biometric identifier, it could lead to identity theft; however, requiring applicants to provide documents with biometric identifiers could lead to the inappropriate denial of credits and subsidies to eligible persons. As with the current verification systems, the new system verifies that the name, SSN, and date of birth match the Social Security Administration's records and immigration documents match Department of Homeland Security (DHS) records. As a result a person (e.g., a U.S. citizen, an unauthorized alien) who is using the documents of an eligible person would not necessarily be denied access to an exchange or premium or cost-sharing subsidies.<sup>19</sup> Nonetheless, while all lawfully present noncitizens have documents with biometric identifiers,<sup>20</sup> U.S. citizens do not necessarily have such documents,<sup>21</sup> and as a result, requiring such biometric identifiers may make it more difficult for some eligible U.S. citizens to gain access to an exchange and the premium credits and cost-sharing subsidies.<sup>22</sup>

In a recent evaluation of the E-Verify system for employment, researchers estimate that 6.2% of all queries relate to unauthorized aliens. In about half (54%) of these queries, the unauthorized aliens receive an inaccurate finding of being authorized to work, which is primarily due to identity theft. Thus, the researchers estimate that about 3.3% of all queries receive a false positive verification. In other words, it is estimated that of the unauthorized aliens that are run through the system, the system does not identify approximately 54% who are using false documents.<sup>23</sup> In an effort to better detect and deter identity fraud,

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<sup>18</sup> Employers participating in E-Verify submit information about their new hires (name, date of birth, Social Security number, immigration/ citizenship status, and alien number, if applicable) via the Internet for confirmation. This information is automatically compared with information in SSA's Numerical Identification File (Numident). In cases in which the employer-submitted information matches SSA records but the individual self-identifies as a noncitizen, the information is sent electronically to DHS' U.S. Citizenship and Immigration Service (USCIS) to verify work authorization. CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

<sup>19</sup> For a full discussion of issues related to verification, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

<sup>20</sup> For a full discussion of these documents, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

<sup>21</sup> The United States does not require its citizens to have legal documents that verify their citizenship and identity (i.e., national identification cards). U.S. passports contain biometric identifiers (i.e., digitized photographs) as do some states' drivers licenses.

<sup>22</sup> For an example, the Deficit Reduction Act of 2005 (P.L. 109-171), as amended, requires states to obtain satisfactory documentation of citizenship to determine eligibility for Medicaid. In a 2007 survey by the U.S. Government Accountability Office (GAO) assessing the impact of this requirement, 22 of 44 states reported declines in enrollment due to the new citizenship documentation requirement. Of the 22 states reporting enrollment declines to GAO, a majority (16 states) attributed them to Medicaid coverage delays in or losses of Medicaid coverage for individuals who appeared to be U.S. citizens. The extent to which the citizenship requirement is deterring ineligible noncitizens from applying for Medicaid is unknown. GAO, *States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, GAO-07-889, June 2007. For a more detailed discussion of the Medicaid citizenship documentation requirements and the effects on enrollment, see CRS Report RS22629, *Medicaid Citizenship Documentation*, by Ruth Ellen Wasem. In addition, for an example of the issues surrounding requiring national id cards, see National Public Radio, *All Things Considered: A Look at National ID Card Programs*, Washington, DC, May 11, 2010, <http://www.npr.org/templates/story/story.php?storyId=126759966>.

<sup>23</sup> Westat, *Findings of the E-Verify Program Evaluation*, Report Prepared for the Department of Homeland Security, Rockville, MS, December 2009, p. xxxi, [http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-\(continued...\)](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-(continued...))

the DHS that administers E-Verify is taking steps that include adding more photographs to the system and developing methods to prevent stolen identifies from being used in the system.<sup>24</sup>

### **3. Under PPACA, are noncitizens subject to the mandate to have health insurance?**

As discussed above, under PPACA (§1501) all aliens who are lawfully present in the United States are covered by the requirement to maintain health insurance, and are subject to the penalties for noncompliance. Unauthorized (illegal) aliens are expressly exempted from the mandate to have health insurance and, as a result, cannot be penalized for noncompliance.

### **4. Assuming, as stated in PPACA §10106, that average cost-shift from uncompensated care adds about \$1,000 to the average families' annual health insurance premiums, is there a rough estimate of how much of this cost-shift is for uncompensated care for uninsured noncitizens? Are there any data or research that shows that the amount of the cost-shift for uncompensated care for noncitizens is different than that for U.S. citizens?**

The cost of providing uncompensated care to the uninsured was \$43,000,000,000 in 2008. To pay for this cost, health care providers pass on the cost to private insurers, which pass on the cost to families. This cost-shifting increases family premiums by on average over \$1,000 a year. [PPACA §10106]

There is very limited research on the differences in the amount of uncompensated care provided to U.S. citizens and noncitizens. However, within this limited research, there does not seem to be evidence that noncitizens use emergency departments more than citizens, or are responsible for a disproportionate share of the estimated uncompensated care provided to uninsured individuals.<sup>25</sup> Due to the lack of information on uncompensated care costs and noncitizens, it is not possible to estimate how much of the cost-shift can be attributed to noncitizens.

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<sup>24</sup> U.S. Citizenship and Immigration Services, *Westat Evaluation of the E-Verify Program: USCIS Synopsis of Key Findings and Program Implications*, Washington, DC, January 28, 2010, <http://www.uscis.gov/USCIS/Native%20Docs/Westat%20Evaluation%20of%20the%20E-Verify%20Program.pdf>.

<sup>25</sup> For a review of studies on emergency department usage by noncitizens, see CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

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