



# State Medicaid and SCHIP Coverage of Noncitizens

**Ruth Ellen Wasem**  
Specialist in Immigration Policy

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## Summary

One of the first pieces of legislation taken up by the 111<sup>th</sup> Congress—H.R. 2, the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009)—contains provisions that would give states the option of providing Medicaid and State Children’s Health Insurance Program (SCHIP) benefits to certain legal permanent residents (LPRs, i.e., foreign nationals who live lawfully and permanently in the United States) during the first five years that they are living in the United States. The House passed H.R. 2 on January 14, 2009. The Senate Committee on Finance ordered reported a bill (S. 275) that also includes provisions that would give states the option of providing Medicaid and SCHIP to certain LPRs during the first five years that they are living in the United States. In turn, S. 275 became the substitute language for H.R. 2 when it passed the Senate on January 29, 2009. In both bills, those who could be covered would be children and pregnant women who are LPRs and battered individuals lawfully residing in the United States. Both bills would prohibit federal funding under the act for individuals who are not lawfully residing in the United States. On February 4, 2009, the House agreed to the Senate version of H.R. 2, and President Barack Obama signed it into law as P.L. 111-3.

Under current law (prior to passage of CHIPRA 2009), most newly arriving LPRs are barred from Medicaid and SCHIP for the first five years after entry. After five years, LPRs are eligible for SCHIP, but their subsequent coverage for Medicaid becomes the state’s option. Those longtime LPRs with a substantial work history—generally 10 years (40 quarters) of work documented by Social Security or other employment records—or a military connection (active duty military personnel, veterans, and their families) are also eligible. Medicaid coverage is required for all otherwise qualified Supplemental Security Income (SSI) recipients, so long as they meet SSI noncitizen eligibility tests. The enactment of current law on noncitizen eligibility for federal means-tested programs predates SCHIP’s passage by one year, and as a result, SCHIP’s noncitizen eligibility rules differ from Medicaid in some instances. How this state option provision in CHIPRA 2009 will be implemented will unfold in the coming months.

A significant exception to the five-year bar for LPRs are aliens who arrive as refugees or who become asylees. Refugees and asylees are eligible for Medicaid until they have been in the United States for seven years. After the initial seven years for refugees and asylees, states have the option to continue to provide Medicaid.

In establishing eligibility of noncitizens, the Systematic Alien Verification for Entitlements (SAVE) system provides federal, state, and local governmental agencies access to data on immigration status that are necessary to determine eligibility for Medicaid and SCHIP.

According to the limited data that are available, it appears that a noteworthy number of states had opted to provide Medicaid and SCHIP to LPRs during the first five years from solely state-funded sources. According to data from the State Noncitizen Eligibility Survey (SNES), conducted by the Congressional Research Service (CRS), many states that responded to the survey were exercising their option to cover LPRs. Specifically, eight states (of the 28 that responded) and the District of Columbia reported that they offered solely state-funded insurance to noncitizens that were ineligible for Medicaid coverage as of June of 2006. Ten states and the District of Columbia reported that they had locally funded (e.g., county) insurance plans in 2006. A study sponsored by the Kaiser Commission on the Uninsured found that nearly half (23) of states used state-only funds to provide coverage to legal immigrants who were ineligible for Medicaid or SCHIP in 2004.

This report will be updated to reflect legislative activity.

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## Background

As Congress debated extending the funding of the State Children's Health Insurance Program (SCHIP), immigrant eligibility was one of the more controversial elements. On February 4, 2009, President Barack Obama signed H.R. 2, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009), into law as P.L. 111-3. Over a decade ago, Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193) established comprehensive restrictions on the eligibility of all noncitizens for federal means-tested public assistance, with exceptions for legal permanent residents (LPRs) with a substantial U.S. work history or military connection.<sup>1</sup> Prior to 1996, LPRs were not categorically barred from federal assistance programs. These laws and policies are discussed extensively in other CRS products.<sup>2</sup> This report focuses on the laws governing noncitizen eligibility for Medicaid and the State Children's Health Insurance Program (SCHIP) and – to the extent data are available – implementation of these policies at the state-level. Because PRWORA predates SCHIP by one year, SCHIP's noncitizen eligibility rules differ somewhat from Medicaid, as noted below.<sup>3</sup>

### Summary of Law Prior to Passage of CHIPRA 2009 (P.L. 111-3)<sup>4</sup>

Under current law (prior to passage of CHIPRA 2009), most newly arriving LPRs are barred from Medicaid and SCHIP for the first five years after entry. After five years, LPRs are eligible for SCHIP, but their subsequent coverage for Medicaid becomes the state's option. Longtime LPRs resident as of August 22, 1996 are allowed Medicaid at state option. Those LPRs with a substantial work history—generally 10 years (40 quarters) of work documented by Social Security or other employment records—or a military connection (active duty military personnel, veterans, and their families) are also eligible. Medicaid coverage is required for all otherwise qualified Supplemental Security Income (SSI) recipients, so long as they meet SSI noncitizen eligibility tests.

A significant exception to the five-year bar for LPRs are aliens who arrive as refugees or who become asylees. Refugees and asylees are eligible for Medicaid until they have been in the United States for seven years. After the initial seven years for refugees and asylees, states have the option to continue to provide Medicaid.<sup>5</sup>

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<sup>1</sup> Legal permanent residents (LPRs) refer to foreign nationals who live lawfully and permanently in the United States.

<sup>2</sup> For further discussion of legal permanent residents' eligibility, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem, and CRS Report RL34500, *Unauthorized Aliens' Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem. For background on Medicaid and SCHIP, see CRS Report RL30473, *State Children's Health Insurance Program (SCHIP): A Brief Overview*, by Elicia J. Herz, Chris L. Peterson, and Evelyne P. Baumrucker, and CRS Report RL33202, *Medicaid: A Primer*, by Elicia J. Herz.

<sup>3</sup> SCHIP, which is title XXI of the Social Security Act, was established as title IV of the Balanced Budget Act of 1997, P.L. 105-33.

<sup>4</sup> It is premature to discuss how §214 of CHIPRA 2009 will be implemented.

<sup>5</sup> When LPRs naturalize as U.S. citizens, they are afforded the same benefits as all U.S. citizens have. See CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*.

Regarding nonimmigrants and unauthorized aliens,<sup>6</sup> §401 of PRWORA bars them from any federal public benefit except the emergency services and programs expressly listed in §401(b) of PRWORA. Treatment under Medicaid for emergency medical conditions (other than those related to an organ transplant) is one of the statutory exceptions to the bar.<sup>7</sup> PRWORA mandated that unauthorized alien women be ineligible for prenatal care under Medicaid. In *Lewis v. Thompson*, the court found that citizen children of unauthorized alien mothers must be accorded automatic eligibility on terms as favorable as those available to the children of citizen mothers.<sup>8</sup>

SCHIP is considered a federal public benefit that statutorily bars unauthorized aliens and nonimmigrants.<sup>9</sup> The U.S. Department of Health and Human Services promulgated regulations in 2002 permitting states to provide SCHIP coverage to “unborn children,” i.e., fetuses.<sup>10</sup> States reportedly are using this option of SCHIP coverage for fetuses to provide prenatal care services to pregnant women who are unauthorized aliens.

## **Noncitizen Verification**

The laws governing the eligibility of LPRs for means-tested federal assistance such as Medicaid and SCHIP are based on a complex set of factors (e.g., work history, category of admission, and petitioning sponsorship). As a consequence, determining a person’s immigration and citizenship status is not always easy. The technology to verify legal immigration status has advanced considerably over the years.<sup>11</sup>

In addition to drawing on documentary evidence provided by the person seeking Medicaid and SCHIP, the Systematic Alien Verification for Entitlements (SAVE) system provides federal, state, and local governmental agencies access to data on immigration status that are necessary to determine noncitizen eligibility for public benefits. The U.S. Citizenship and Immigration Service (USCIS) does not determine benefit eligibility; rather SAVE enables the specific program administrators to ensure that only those noncitizens who meet their program’s eligibility rules actually receive public benefits. SAVE’s statutory authority dates back to the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603). The IRCA, as amended, mandates the Medicaid

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<sup>6</sup> Nonimmigrants are foreign nationals admitted for a temporary period of time and a specific purpose. The three main components of the unauthorized resident alien population are (1) aliens who overstay their nonimmigrant visas, (2) aliens who enter the country surreptitiously without inspection, and (3) aliens who are admitted on the basis of fraudulent documents.

<sup>7</sup> §401(c) of PRWORA, 8 U.S.C. 1611.

<sup>8</sup> *Lewis v. Thompson*, 252 F.3d 567, 588 (2d. Cir. 2001). For a complete analysis, see CRS Report RS21470, *Noncitizen Eligibility For Major Federal Public Assistance Programs: Legal Concepts*, by Alison M. Smith.

<sup>9</sup> § 401(c) of PRWORA [8 U.S.C. 1611 ] defines federal public benefit as “any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.” See also U.S. Department of Health and Human Services and Department of Justice, “Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Federal Benefit Interpretation; Notice of Eligibility for Federal Public Benefits Verification,” 63 *Federal Register* 41658, August 4, 1998

<sup>10</sup> *Fed. Reg. v. 67*, pp. 61955–74, Oct. 2, 2002.

<sup>11</sup> CRS Report RL34007, *Immigration Fraud: Policies, Investigations, and Issues*, by Ruth Ellen Wasem, pp. 10-12.

program (along with other federal programs) to participate in the verification of an applicant's immigration status.<sup>12</sup>

In 1996, PRWORA broadened the verification requirement to include persons applying for all federal public benefits,<sup>13</sup> which would encompass SCHIP when it was enacted the following year because it is considered a federal public benefit.<sup>14</sup> Those states that run SCHIP through Medicaid are required to use SAVE. Those states that opt for their own variant of SCHIP are required to use a verification system similar to SAVE (referenced in §432 of PRWORA as similar to §1137 of SSA) or may use SAVE.<sup>15</sup>

## Deeming and Sponsorship

For LPRs (but not refugees and asylees), the law links the income of the person who sponsored the alien to immigrate to the United States with the immigrant's income calculations when determining eligibility for most federal benefits. The basis of this policy is that the Immigration and Nationality Act excludes immigrants who appear "likely at any time to become a public charge."<sup>16</sup> This exclusion is implemented by provisions on deeming sponsors' income and binding affidavits of support. Not all prospective LPRs are required to have affidavits of support to demonstrate that they will not become a public charge, and most exceptions are statutory (e.g., refugees or employment-based LPRs).<sup>17</sup>

The affidavit of support is a legally binding contract that requires the sponsor to ensure that the new immigrant will not become a public charge and to make the sponsor financially responsible for the new immigrant, as codified in § 213A of the Immigration and Nationality Act (INA).<sup>18</sup> Sponsors must demonstrate the ability to maintain an annual income of at least 125% of the federal poverty line (100% for sponsors who are on active duty in U.S. Armed Forces); or share liability with one or more joint sponsors, each of whom must independently meet the income requirement. Current law also directed the federal government to include "appropriate information" regarding affidavits of support in the SAVE system. Congress has required the establishment of an automated record of the sponsors' social security numbers (SSN) in order to implement this policy.<sup>19</sup>

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<sup>12</sup> §1137 of the Social Security Act as amended by P.L. 99-603 and P.L. 104-193.

<sup>13</sup> P.L. 104-193, § 432.

<sup>14</sup> U.S. Department of Health and Human Services and Department of Justice, "Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Federal Benefit Interpretation; Notice of Eligibility for Federal Public Benefits Verification," 63 *Federal Register* 41658, August 4, 1998.

<sup>15</sup> 8 U.S.C. 1642(a)(1). The U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services has an undated "Questions and Answers Guidance" that addresses these matters, which is available on their website at [<http://www.cms.hhs.gov/MedicaidEligibility/Downloads/alien2.pdf>].

<sup>16</sup> The colony of Massachusetts enacted legislation in 1645 prohibiting the entry of paupers, and in 1700 excluding the infirm unless security was given against their becoming public charges. New York adopted a similar practice. A bar against the admission of "any person unable to take care of himself or herself without becoming a public charge" was included in the act of August 3, 1882, the first general Federal immigration law. It is now §212 (a)(4) of the INA; 8 U.S.C. 1182.

<sup>17</sup> Employment-based LPRs, for example, meet the public charge ground by means of the job offer and only need an affidavit of support if the prospective employer is a relative. 8 C.F.R. § 213a.1.

<sup>18</sup> § 213A of INA; 8 U.S.C. 1631. *Fed. Reg.*, v, pp. 54346-56. Oct. 20, 1997.

<sup>19</sup> § 213A of INA; 8 U.S.C. 1631.

According to administrative guidance issued in 1999, the receipt of Medicaid or SCHIP does not trigger the deportation or removal of a noncitizen beneficiary. It also does not categorically prevent them from sponsoring a potential LPR. The cash benefit, however, cannot be included in the calculation of the beneficiary's income if they sign an affidavit of support for a potential LPR.<sup>20</sup>

Under the deeming rules, all of the income and resources of a sponsor (and a sponsor's spouse) may be deemed available to the sponsored applicant for assistance until the noncitizen becomes naturalized or meets a work test.<sup>21</sup> The INA requires states to seek reimbursement of the costs of federal means-tested benefits from the sponsors. The sponsor's liability ends when the sponsored alien is no longer subject to deeming, either through naturalization or meeting a work test.<sup>22</sup> SCHIP was enacted after the list of programs meeting the PRWORA designation of federal means tested programs was proposed.<sup>23</sup>

## Analysis of States' Coverage of LPRs

As noted above, states have the authority to provide Medicaid to LPRs following the initial five-year bar, and it appears that many states have opted to do so. According to data from the State Noncitizen Eligibility Survey (SNES), conducted by the Congressional Research Service (CRS), most states that responded to the survey were exercising their option to cover LPRs.<sup>24</sup> **Table 1** summarizes these policies that the states reported.

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<sup>20</sup> A 1999 memorandum stated that the "receipt of Medicaid or CHIP benefits will not be considered in making a public charge determination, except in the case of an alien who is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. This exception will not include short-term rehabilitation stays in long-term care facilities." The guidance further provided that the receipt of Medicaid or CHIP benefits would not disqualify an LPR from sponsoring other immigrants, i.e., signing an affidavit of support for a prospective LPR. U.S. Department of Health and Human Services, Health Care Financing Administration, Center for Medicaid and State Operations, letter to State Health Officials, May 26, 1999.

<sup>21</sup> § 421 of PRWORA. Also in 8 USC 1631.

<sup>22</sup> § 213A of INA; 8 U.S.C. 1631.

<sup>23</sup> *Fed. Reg. v.* 62, pp. 45256-58, Aug. 26, 1997.

<sup>24</sup> The data analyzed in this report are from the 2003 and 2006 self-reported State Noncitizen Eligibility Survey (SNES) conducted by Congressional Research Service (CRS). CRS Graduate Intern Robynn Cox prepared the data analysis of the 2003 and 2006 SNES data that are used in this report. The survey asks numerous questions about the various states' noncitizen eligibility policies in December of 2000, December of 2002, December of 2004, and June of 2006. All 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, U.S. Virgin Islands, and the Northern Mariana Islands were asked to participate in the questionnaire. Six states and 2 territories did not respond in 2003. There were 22 states and all 5 territories that did not respond in 2006, which obviously limits the usefulness of the data from the 2006 SNES survey.

**Table 1. State Policies on Noncitizen Eligibility for Medicaid in 2000 and 2006**

	2000	2006
<b>Total States Responding</b>	<b>47 States, the District of Columbia, and 3 Territories Responded</b>	<b>28 States and the District of Columbia Responded</b>
LPRs present in the U.S. before 8/22/96 were eligible for Medicaid at state option?	40 States, the District of Columbia, and the U.S. Virgin Islands	28 States and the District of Columbia
LPRs, parolees, and victims of abuse present on or after 8/22/96 were eligible for Medicaid after the federal bar expired?	33 States, 3 Territories, and the District of Columbia	25 States and the District of Columbia
Noncitizens admitted on humanitarian grounds were eligible for Medicaid at state option after federal eligibility period expired?	32 States, the District of Columbia, and the U.S. Virgin Islands	23 States and the District of Columbia
State offered state funded insurance plans to cover noncitizens not eligible for Medicaid or SCHIP?	15 States and the District of Columbia	8 States and the District of Columbia
State offered locally funded insurance plans to cover noncitizens not eligible for Medicaid or SCHIP?	15 States and the District of Columbia	10 States and the District of Columbia
State deemed immigrant sponsor income or resources?	5 States	16 States
State tracked immigrant sponsors to enforce reimbursement?	0 States	1 State
State had policy to collect government reimbursement under accountability rule?	0 States	1 State

**Source:** CRS State Noncitizen Eligibility Survey, 2003 and 2006. CRS Graduate Intern Robynn Cox prepared the data analysis of the 2000 and 2006 SNES data that are used in this table.

As noted above, states are required to deem the income of the LPRs' sponsor, i.e., the person or entity that signed the affidavit of support. In 2004 and 2006, there were 16 states that reported deeming the immigrant sponsors' income compared to 5 states in 2000. The 16 states that reported deeming immigrant sponsors' income in the 2006 SNES are: Alaska, Arkansas, Connecticut, Hawaii, Minnesota, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oregon, Texas, Utah, Vermont, Washington, and West Virginia.

In addition to providing SCHIP and the option of providing Medicaid, eight states and the District of Columbia reported that they offered solely state-funded insurance to noncitizens that were ineligible for Medicaid coverage as of June of 2006. Ten states and the District of Columbia reported that they had locally (e.g. county) funded insurance plans. The set of states offering solely state-funded insurance plans is different from those offering locally funded insurance plans, as can be seen in **Table 2**.

**Table 2. State and Locally Funded Medical Insurance for Otherwise Ineligible Noncitizens**

State	State offered solely state-funded insurance plans to cover noncitizens not eligible for Medicaid or SCHIP?				State offered locally-funded insurance plans to cover noncitizens not eligible for Medicaid or SCHIP?			
	2000	2002	2004	2006	2000	2002	2004	2006
Alabama	No	No	NR	NR	Yes	Yes	NR	NR
Alaska	Yes	Yes	No	No	No	No	No	No
American Samoa	No	No	NR	NR	No	No	NR	NR
Arizona	No	No	No	No	Yes	Yes	Yes	Yes
Arkansas	No	No	No	No	No	No	No	No
California	Yes	Yes	NR	NR	No	No	NR	NR
Colorado	NR	NR	NR	NR	NR	NR	NR	NR
Connecticut	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Delaware	NR	NR	Yes	Yes	NR	NR	No	No
District of Columbia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Florida	No	No	NR	NR	Yes	Yes	NR	NR
Georgia	NR	NR	No	No	NR	NR	No	No
Guam	NR	NR	NR	NR	NR	NR	NR	NR
Hawaii	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Idaho	No	No	NR	NR	No	No	NR	NR
Illinois	Yes	Yes	NR	NR	No	No	NR	NR
Indiana	No	No	NR	NR	NR	NR	NR	NR
Iowa	No	No	NR	NR	No	No	NR	NR
Kansas	No	No	No	No	Yes	Yes	Yes	Yes
Kentucky	No	No	NR	NR	No	No	NR	NR
Louisiana	No	No	No	No	No	No	No	No
Maine	Yes	Yes	NR	NR	NR	NR	NR	NR
Maryland	Yes	Yes	NR	NR	No	No	NR	NR
Massachusetts	Yes	Yes	NR	NR	Yes	Yes	NR	NR
Michigan	NR	NR	NR	NR	NR	NR	NR	NR
Minnesota	Yes	Yes	Yes	Yes	No	No	No	No
Mississippi	No	No	NR	NR	No	No	NR	NR
Missouri	No	No	No	No	NR	NR	Skip	Skip
Montana	No	No	No	No	No	No	No	No
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Nevada	No	No	NR	NR	No	No	NR	NR
New Hampshire	NR	NR	NR	NR	NR	NR	NR	NR

State	State offered solely state-funded insurance plans to cover noncitizens not eligible for Medicaid or SCHIP?				State offered locally-funded insurance plans to cover noncitizens not eligible for Medicaid or SCHIP?			
	2000	2002	2004	2006	2000	2002	2004	2006
New Jersey	Yes	Yes	NR	NR	Yes	Yes	NR	NR
New Mexico	No	No	Yes	Yes	Yes	Yes	Yes	Yes
New York	NR	NR	Yes	Yes	NR	NR	Yes	Yes
North Carolina	No	No	No	No	Yes	Yes	Yes	Yes
North Dakota	No	No	No	No	No	No	No	No
N. Mariana Islands	No	No	NR	NR	No	No	NR	NR
Ohio	No	No	No	No	Yes	Yes	No	Skip
Oklahoma	No	No	NR	NR	No	No	NR	NR
Oregon	No	No	No	No	No	No	No	No
Pennsylvania	Yes	Yes	NR	NR	No	No	NR	NR
Puerto Rico	NR	NR	NR	NR	NR	NR	NR	NR
Rhode Island	Yes	Yes	NR	NR	Yes	Yes	NR	NR
South Carolina	No	No	No	No	No	No	No	No
South Dakota	No	No	No	No	Yes	Yes	Yes	Yes
Tennessee	Yes	Yes	NR	NR	No	No	NR	NR
Texas	No	No	No	No	Yes	Yes	Yes	Yes
Utah	No	No	No	No	No	No	No	No
U.S. Virgin Islands	No	No	NR	NR	Yes	Yes	NR	NR
Vermont	No	No	No	No	No	No	No	No
Virginia	No	No	No	No	No	No	No	No
Washington	Yes	Yes	Yes	Yes	No	No	No	No
West Virginia	No	No	No	No	No	No	Yes	Yes
Wisconsin	No	No	No	No	No	No	No	No
Wyoming	No	No	NR	NR	No	No	NR	NR

**Source:** CRS State Noncitizen Eligibility Survey, 2003 and 2006. CRS Graduate Intern Robynn Cox prepared the data analysis of the 2000 and 2006 SNES data that are used in this table.

**NR** - Did not respond to the survey for that year

**Skip** - State responded to the survey for that year but skipped the question

Although the SNES data are limited by the number of states that responded, the trends from the SNES data are consistent with but not identical to other published research. In their 1997-1998 survey, Zimmerman and Tumlin found that 14 states offered state-funded Medicaid for qualified legal immigrants during the federal five-year bar: California, Illinois, Massachusetts, Maryland,

Virginia, Washington, Pennsylvania, Connecticut, Minnesota, Hawaii, Rhode Island, Nebraska, Delaware, and Maine.<sup>25</sup>

According to a Fremstad and Cox study sponsored by the Kaiser Commission on the Uninsured, nearly half (23) of states used state funds to provide coverage to legal immigrants who are ineligible for Medicaid or SCHIP in 2004. Fremstad and Cox also found seven states, including two states that do not provide any state-funded coverage for immigrants, opted to provide SCHIP-funded coverage for prenatal care regardless of the immigration status of the mother.<sup>26</sup>

**Figure 1** integrates the 2004 Kaiser state survey conducted by Fremstad and Cox with the 2006 SNES data gathered by CRS into a map of the United States. Obviously both of these surveys were conducted before the economic recession and the resulting financial budgetary problems that the states are experiencing.

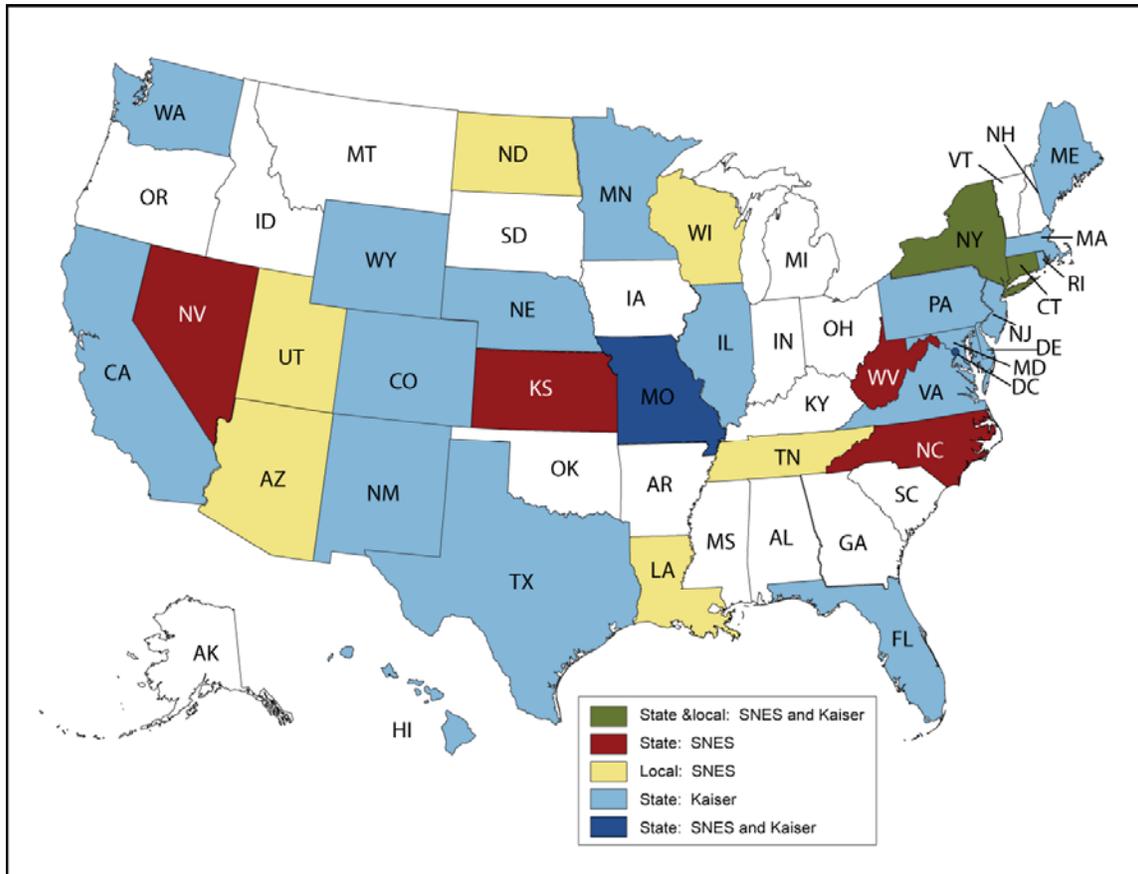
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<sup>25</sup> Urban Institute, *Patchwork Policies: State Assistance for Immigrants Under Welfare Reform*, by Wendy Zimmerman and Karen C. Tumlin, Occasional Paper Number 24, (1999). Twelve of the 14 states in the Zimmerman and Tumlin survey that offered state-funded Medicaid for qualified legal immigrants during the five year ban are included in the 16 states that offer State-funded health insurance to noncitizens who do not qualify for federal assistance in the CRS' survey. Delaware did not respond to the survey, and Virginia replied that they do not offer state-funded health insurance. In addition, Alaska, Tennessee, New Jersey, and the District of Columbia responded that they did not offer state-funded assistance for Medicaid to post-enactment qualified legal immigrants in the Zimmerman and Tumlin survey, but responded that they did offer unqualified noncitizens state-funded insurance in the CRS survey.

<sup>26</sup>Kaiser Commission on the Uninsured, *Covering New Americans: A Review of Federal and State Policies Related to Immigrants' Eligibility and Access to Publicly Funded Health Insurance*, by Shawn Fremstad and Laura Cox, Center on Budget and Policy Priorities, (2004).

**Figure I. State and Locally Funded Medical Insurance for Otherwise Ineligible Noncitizens**

2004 Kaiser Study and 2006 SNES Study



**Source:** 2006 data from the CRS State Noncitizen Eligibility Survey (SNES) and 2004 data from the Fremstad and Cox study sponsored by the Kaiser Commission on the Uninsured.

**Notes:** States that are white/blank either did not respond or responded that they did not provide such coverage.

## Legislative Activity in the 111<sup>th</sup> Congress

One of the first pieces of legislation taken up by the 111<sup>th</sup> Congress – H.R. 2, the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA 2009) – contains provisions that would give states the option of providing Medicaid and SCHIP to certain LPRs who have been in the United States less than five years. This option to expand immigrant eligibility is among the legislation’s most controversial provisions.

### Legislation

The Children’s Health Insurance Program Reauthorization Act of 2009 (H.R. 2) contains provisions that would give states the option of providing Medicaid and SCHIP to LPRs during the first five years that they are living in the United States. As passed by the House on January 14, 2009 §214 of H.R. 2 would allow states to waive—for children and pregnant women who are

LPRs and battered individuals lawfully residing in the United States—four elements of current law: the statutory bar, the limited eligibility provision, the five-year bar, and the deeming of sponsors' assets.<sup>27</sup> In addition, the bill would waive the sponsor's financial responsibility for Medicaid and SCHIP provided to individuals covered under this provision by amending the underlying language in §423 of PRWORA that pertains to §213A of the INA.<sup>28</sup> The Congressional Budget Office (CBO) estimates that the changes in §214 would increase direct spending under Medicaid by \$3.9 billion over the 2009-2019 period.<sup>29</sup>

On January 15, 2009, the Senate Committee on Finance ordered a Chairman's mark reported as amended (S. 275) to include provisions that also would give states the option of providing Medicaid and SCHIP to children and pregnant women who are LPRs and battered individuals (described in section 431(c) of PRWORA) lawfully residing in the United States during the first five years that they are living in the United States. While similar to §214 of H.R. 2, the Senate bill differs in a few instances. Although it does not directly amend the subsection of the INA that makes the sponsor financially responsible for the LPR, §214 of S. 275 might offer a similar outcome for individuals covered under this provision. As reported by the Senate Finance Committee, §214 states: "no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost."<sup>30</sup> Lastly, S. 275 would require the states to determine that individuals covered by §214 continue to be in lawful resident status as part of the state's ongoing eligibility redetermination requirements and procedures (i.e., to redetermine eligibility at least every 12 months with respect to circumstances that may change and affect eligibility). When the Senate took up CHIPRA, S. 275 became the substitute language for H.R. 2, and it passed the Senate on January 29, 2009.

Both bills prohibit federal funding under the act for individuals who are not lawfully residing in the United States.<sup>31</sup>

On February 4, 2009, the House agreed to the Senate version of H.R. 2, and President Barack Obama signed CHIPRA 2009 into law as P.L. 111-3. It premature to discuss how §214 of CHIPRA 2009 will be implemented, but will likely unfold in the coming months.

## Summary of the Debate

Proponents of allowing Medicaid and SCHIP eligibility for LPR children and pregnant LPRs during their first five years in the United States make several arguments. Foremost, advocates

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<sup>27</sup> The provisions that would be waived by § 214 of H.R. 2 respectively are §§ 401(a), 402(b), 403, and 421 of PRWORA. For further discussion of these specific provisions, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*.

<sup>28</sup> §214(d) of H.R. 2 as passed by the House.

<sup>29</sup> U.S. Congressional Budget Office, *H.R. 2 Children's Health Insurance Program Reauthorization Act of 2009 As transmitted to CBO by the House Committee on Energy and Commerce on January 13, 2009*. Jan. 13, 2009.

<sup>30</sup> According to the legislative language, the provision applies only to LPRs provided SCHIP and Medicaid under §214 of this Act.

<sup>31</sup> Except for a narrow set of specified emergency services and programs, unauthorized aliens are not eligible for federal public benefits. One the exceptions in current law, however, is emergency Medicaid. See CRS Report RL34500, *Unauthorized Aliens' Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem; and CRS Report RL31630, *Federal Funding for Unauthorized Aliens' Emergency Medical Expenses*, by Alison Siskin.

note that LPRs are legal residents who work and pay taxes; as a result, they contend, they should be able to draw on the federal Medicaid and SCHIP programs if need arises or misfortunes occur. They argue further that the use of Medicaid and SCHIP by LPR children and pregnant LPRs should not be considered a public charge and distinguish the need for health care from welfare dependency. A third important argument relates to the perceived complexity of the current eligibility rules for noncitizens. Advocates maintain that the rules are so complex (varying as they do among programs and classes of noncitizens) that many eligible noncitizens are discouraged from applying.

Supporters of current law maintain that LPRs and their sponsors should take responsibility for the LPR's support and not expect the federal government to do so. They often reference the public charge ground for exclusion of immigrants and argue that the United States should not admit LPRs if they do not have the financial means, employment skills, or the family resources to support themselves. Finally, they maintain that U.S. citizens and longtime LPRs should be prioritized for Medicaid and SCHIP eligibility before recently arriving LPRs gain access.

## **Author Contact Information**

Ruth Ellen Wasem  
Specialist in Immigration Policy  
rwasem@crs.loc.gov, 7-7342