



# Treatment of Noncitizens in H.R. 3200

**Alison Siskin**

Specialist in Immigration Policy

**Erika K. Lunder**

Legislative Attorney

August 25, 2009

Congressional Research Service

[www.crs.gov](http://www.crs.gov)

R40773

## Summary

This report outlines the treatment of noncitizens (aliens) under H.R. 3200, America's Affordable Health Choices Act of 2009. In particular, the report analyzes specific provisions in H.R. 3200, and whether there are eligibility requirements for noncitizens in the provisions. Within the bill, noncitizens are treated differently in several provisions. In 2008, there were approximately 37.3 million foreign-born persons in the United States. The foreign-born population was comprised of approximately 15.1 million naturalized U.S. citizens and 22.2 million noncitizens.

H.R. 3200 includes an individual mandate to have health insurance, with tax penalties for noncompliance. Individuals who do not maintain acceptable health insurance coverage for themselves and their children would be required to pay an additional tax. Some individuals, including nonresident aliens, would be exempt from the individual mandate. "Nonresident alien" is a term under tax but not immigration law. For federal tax purposes, alien individuals are classified as resident or nonresident aliens. In general, an individual is a nonresident alien unless he or she meets the qualifications under a residency test. Thus, legal permanent residents, and noncitizens and unauthorized aliens who qualify as resident aliens (i.e., meet the substantial presence test), would be required under H.R. 3200 to have health insurance.

In addition, under H.R. 3200, a "Health Insurance Exchange" would begin operation in 2013 and would offer private plans alongside a public option. The Exchange would provide eligible individuals and small businesses with access to insurers' plans, including the public option, in a comparable way. Individuals would only be eligible to enroll in an Exchange plan if they were not enrolled in other acceptable coverage (for example, from an employer, Medicare and generally Medicaid). H.R. 3200 does not contain any restrictions on noncitizens participating in the Exchange—whether the noncitizens are legally or illegally present, or in the United States temporarily or permanently. Nonetheless, only aliens who could be classified as resident aliens would be required under the bill to have health insurance.

In 2013, under H.R. 3200, some individuals would be eligible for premium credits (i.e., subsidies based on income) toward their required purchase of health insurance. To be eligible for the premium credits under H.R. 3200, individuals must be lawfully present in a state in the United States, excluding most nonimmigrants (i.e., those in the United States for a specific purpose and a specific period of time). The exceptions for nonimmigrants who could obtain premium credits under H.R. 3200 would be trafficking victims, crime victims, fiancées of U.S. citizens, and those who have had applications for legal permanent residence (LPR) status pending for three years. It is expected that almost all aliens in these excepted nonimmigrant categories will become LPRs (i.e., immigrants) and remain in the United States permanently. Furthermore, unauthorized aliens would be barred from receiving the premium credit.

H.R. 3200 as reported from the House Energy and Commerce Committee (E&C) would extend Medicaid eligibility up to 133 1/3% of poverty for populations that previously were not covered (e.g., childless adults and many parents). This extension of benefits could mean an increase in the number of noncitizens who already meet the immigration status requirements for Medicaid eligibility who would be eligible for Medicaid. Also, H.R. 3200 as reported by E & C would make eligible for full Medicaid noncitizens who lawfully reside in the United States in accordance with the Compacts of Free Association between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and are otherwise eligible for such assistance. This report will be updated.

## **Contents**

Introduction .....	1
Overview of the Noncitizen Population in the United States .....	1
Noncitizens and Provisions in H.R. 3200.....	2
Individual Mandate .....	2
Exchange .....	4
Credits .....	4
Medicaid/CHIP .....	6
Noncitizen Eligibility for Medicaid/CHIP .....	6
Emergency Medicaid .....	7
Extension of Medicaid Coverage to Citizens of the Freely Associated States .....	8

## **Contacts**

Author Contact Information .....	8
Acknowledgments .....	8
Key Policy Staff.....	8

## Introduction

This report outlines the treatment of noncitizens<sup>1</sup> under H.R. 3200, America's Affordable Health Choices Act of 2009. The report analyzes specific provisions in H.R. 3200, and whether there are eligibility requirements for noncitizens in the selected provisions. H.R. 3200 was ordered reported by the House Committees on Education and Labor, Ways and Means, and Energy and Commerce.<sup>2</sup>

Noncitizens are treated differently in several provisions of the bill. For example, H.R. 3200 would mandate that as of 2013, resident aliens (as defined in the Internal Revenue Code and discussed below) have health insurance. However, not all resident aliens would qualify for the credits (i.e., subsidies based on income) that would be created under the bill toward their required purchase of health insurance, because eligibility for the credits is based on immigration status (as defined under the Immigration and Nationality Act) not on status as a resident alien, as defined under the tax code.

## Overview of the Noncitizen Population in the United States

Using the March 2008 Current Population Survey (CPS), the Congressional Research Service estimated that in the beginning of 2008 there were approximately 37.3 million foreign-born persons in the United States.<sup>3</sup> The foreign-born population was comprised of approximately 15.1 million naturalized U.S. citizens<sup>4</sup> and 22.2 million noncitizens.<sup>5</sup>

Researchers at the Pew Hispanic Center used the same data, but adjusted the survey weights to account for noncitizen undercounts in the survey. They also assigned a specific immigration status (e.g., legal permanent resident, unauthorized alien) to each foreign-born survey respondent, and used a methodology to estimate the illegally present population.<sup>6</sup> The Pew Hispanic Center estimated that in the beginning of 2008 there were approximately 40 million foreign-born persons in the United States, and of the foreign-born population, approximately 14.2

---

<sup>1</sup> A noncitizen is anyone who is not a citizen or national of the United States and is synonymous with the terms alien and foreign national. Noncitizens include those in the United States permanently (e.g., legal permanent residents, refugees), those in the country temporarily (e.g., students, temporary workers), and those who are in the country illegally (i.e., unauthorized aliens). For more information on the different categories of noncitizens, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

<sup>2</sup> The bill was reported by the House Ways and Means Committee and the House Education and Labor Committee on July 17, 2009. The House Energy and Commerce Committee reported the bill on July 31, 2009.

<sup>3</sup> A foreign-born resident is anyone in the United States who was born in another country, and did not automatically acquire U.S. citizenship at birth.

<sup>4</sup> Under U.S. immigration law, all legal permanent residents are potential citizens and may become so through a process known as *naturalization*.

<sup>5</sup> Since the CPS does not ask citizenship status, CRS does not use the CPS to estimate the different noncitizen populations (e.g., legal permanent residents, temporary workers, unauthorized aliens).

<sup>6</sup> Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, Washington, D.C., April 14, 2009, p. 48, <http://pewhispanic.org/files/reports/107.pdf>.

million (36%) were naturalized U.S. citizens, 12.3 million (31%) were legal permanent residents (LPRs), 1.4 million (4%) were temporarily in the United States (i.e., nonimmigrants),<sup>7</sup> and 11.9 million (30%) were estimated to be unauthorized (illegal) residents.<sup>8</sup> The Center for Immigration Studies,<sup>9</sup> using the monthly public use files of the CPS, estimated that in the first quarter of 2009 (January/February/March), the unauthorized alien population declined to approximately 10.8 million.<sup>10</sup>

## Noncitizens and Provisions in H.R. 3200

### Individual Mandate

Section 401 of H.R. 3200 includes an individual mandate to have health insurance unless expressly exempted, with penalties for noncompliance effective in 2013. Individuals would be required to maintain acceptable coverage, defined as coverage under a qualified health benefits plan (QHBP), an employment-based plan, a grandfathered nongroup plan, Part A of Medicare, Medicaid, military coverage (including Tricare), Veteran's health care program, and coverage as determined by the Secretary of Health and Human Services (HHS) in coordination with the Health Choices Commissioner (Commissioner).<sup>11</sup> Notably, there is nothing in H.R. 3200 that would alter current law relevant to restrictions on certain categories of aliens (i.e., legal permanent residents within the first five years after entry, nonimmigrants, unauthorized aliens) receiving Medicaid. (These restrictions are discussed below.)

This provision in the legislation would be put into effect through a change in the tax law (i.e., as an amendment to the Internal Revenue Code (I.R.C.)). Individuals who do not maintain acceptable health insurance coverage for themselves and their children would be required to pay an additional tax.<sup>12</sup>

Some individuals, including nonresident aliens, would not be required to obtain health insurance under H.R. 3200 (i.e., would be exempt from the individual mandate).<sup>13</sup> For federal tax purposes,

---

<sup>7</sup> The two basic types of legal aliens are *immigrants* and *nonimmigrants*. Immigrants are persons admitted as legal permanent residents (LPRs) of the United States. Nonimmigrants—such as tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, or intracompany business personnel—are admitted for a specific purpose and a temporary period of time. Nonimmigrants are required to leave the country when their visas expire, though certain classes of nonimmigrants may adjust to LPR status if they otherwise qualify. For more information on the different categories of noncitizens, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

<sup>8</sup> Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, Washington, D.C., April 14, 2009, p. 3, <http://pewhispanic.org/files/reports/107.pdf>.

<sup>9</sup> Steven A. Camarota and Karen Jensenius, *A Shifting Tide: Recent Trends in the Illegal Immigrant Population*, Center for Immigration Studies, Washington, D.C., July 2009, <http://cis.org/IllegalImmigration-ShiftingTide>.

<sup>10</sup> For a discussion of the differences in the methodologies of the estimates, see CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

<sup>11</sup> The duties of the Health Choices Commissioner are defined in §142 of H.R. 3200.

<sup>12</sup> The tax would be prorated for the time the individual (or family) does not have coverage, and would be equal to the lesser of (1) 2.5 % of the taxpayer's modified adjusted gross income (MAGI) over the amount of income required to file a tax return, or (2) the national average premium for applicable single or family coverage. See CRS Report R40724, *Private Health Insurance Provisions of H.R. 3200*, by Hinda Chaikind et al.

<sup>13</sup> Other exemptions would include individuals residing outside of the United States, individuals residing in possessions (continued...)

foreign nationals are classified as resident or nonresident aliens.<sup>14</sup> These terms are in the I.R.C. but do not exist in the Immigration and Nationality Act (INA)<sup>15</sup> (i.e., immigration law). As a result, the specific immigration statuses under the INA do not align directly with the terms resident and nonresident alien. Based on time in the United States and treaty obligations, for example, some foreign agricultural workers (H-2A visa holders)<sup>16</sup> would be considered resident aliens while others would be considered nonresident aliens for tax purposes.

In general, an individual is a nonresident alien unless he or she meets the qualifications under one of the following residency tests

- Green card test: the individual is a lawful permanent resident of the United States at any time during the current year, or
- Substantial presence test: the individual is present in the United States for at least 31 days during the current year and at least 183 days during the current year and previous two years. For computing the 183 days, a formula is used that counts all the qualifying days in the current year, one-third of the qualifying days in the immediate preceding year, and one-sixth of the qualifying days in the second preceding year.<sup>17</sup>

There are several situations in which an individual may be classified as a nonresident alien even though he or she meets the substantial presence test. For example, an individual will generally be treated as a nonresident alien if he or she has a closer connection to a foreign country than to the United States, maintains a tax home in the foreign country, and is in the United States for fewer than 183 days during the year.<sup>18</sup> Another example is that an individual in the United States under an F-, J-, M-, or Q-visa<sup>19</sup> may be treated as a nonresident alien if he or she has substantially complied with visa requirements.<sup>20</sup> Other individuals who may be treated as nonresident aliens even if they would otherwise meet the substantial presence test include employees of foreign governments and international organizations, regular commuters from Canada or Mexico, aliens who are unable to leave the United States because of a medical condition, foreign vessel crew

---

(...continued)

of the United States, those with qualified religious exemptions, those allowed to be a dependent for tax-filing purposes, and others granted an exemption by the Secretary of Health and Human Services.

<sup>14</sup> It is possible for an individual to be a resident alien and a nonresident alien during the same year. For an explanation of the rules on determining residency starting and ending dates and dual-status filing, see *IRS Publication 519: U.S. Tax Guide for Aliens*, which is available at <http://www.irs.gov>.

<sup>15</sup> 8 U.S.C. §1101 *et seq.*

<sup>16</sup> The visa letter is derived from the subparagraph of section 101(a)(15) of the Immigration and Nationality Act that describes the type of visa. For further information, see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddal and Ruth Ellen Wasem.

<sup>17</sup> I.R.C. §§7701(b)(1)(A) and (b)(3). A nonresident alien may elect, under certain circumstances, to be treated as a resident alien if the substantial presence test is met in the year following the election. I.R.C. §7701(b)(4). A dual-status or nonresident alien married to a U.S. citizen or resident may qualify to be treated as a resident alien for the entire year. I.R.C. §§6013(g) and (h).

<sup>18</sup> I.R.C. §7701(b)(3)(B).

<sup>19</sup> These individuals are temporarily admitted into the United States as students, teachers, trainees, and cultural exchange visitors.

<sup>20</sup> I.R.C. §7701(b)(5). There are limits on how long an individual may be exempt from the substantial presence test. See *id.*

members, and athletes participating in charitable sporting events.<sup>21</sup> Additionally, depending on where the individual is from, there may exist an income tax treaty between that country and the United States with provisions for determining residency status.<sup>22</sup>

Under H.R. 3200, all legal permanent residents (LPRs),<sup>23</sup> nonimmigrants, and unauthorized aliens who meet the substantial presence test (defined above) would be required to obtain health insurance.<sup>24</sup> Noncitizens meeting the definition of nonresident aliens (e.g., temporary visitors, temporary workers in the United States for less than 183 days in the year) would not be required to obtain health insurance. Notably, the IRC does not contain special rules for individuals who are in the United States without authorization (i.e., illegal or unauthorized aliens). Instead, the IRC treats these individuals in the same manner as other foreign nationals—an unauthorized individual who has been in the United States long enough to qualify under the substantial presence test is classified as a resident alien; otherwise, the individual is classified as a nonresident alien.<sup>25</sup> Thus, it would appear that unauthorized aliens who meet the substantial presence test would be required under H.R. 3200 to have health insurance.

## Exchange

Under H.R. 3200, a “Health Insurance Exchange” would begin operation in 2013 and would offer private plans alongside a public option. The Exchange would not be an insurer; it would provide eligible individuals and small businesses with access to insurers’ plans, including the public option, in a comparable way. Individuals would only be eligible to enroll in an Exchange plan if they were not enrolled in other acceptable coverage (for example, from an employer, Medicare and generally Medicaid).<sup>26</sup> H.R. 3200 does not contain any restrictions on noncitizens—whether legally or illegally present, or in the United States temporarily or permanently—participating in the Exchange.<sup>27</sup> However, as discussed above, H.R. 3200 would only mandate that resident aliens would be required to have health insurance.

## Credits

In 2013, under §241 of H.R. 3200, certain individuals would be eligible for premium credits (i.e., subsidies based on income) toward their required purchase of health insurance. Even when individuals have health insurance, they may be unable to afford the cost sharing (deductible and copayments) required to obtain health care. Under H.R. 3200, those eligible for premium credits would also be eligible for cost-sharing credits (i.e., subsidies). To be eligible for credits,

---

<sup>21</sup> I.R.C. §§7701(b)(3)(D), (b)(5), and (b)(7).

<sup>22</sup> See, for example, Treas. Reg. §301.7701(b)-7.

<sup>23</sup> Legal permanent residents are also referred to as immigrants in the INA.

<sup>24</sup> In other words, all aliens who meet the definition of resident alien under the I.R.C.

<sup>25</sup> For more on taxation of aliens, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States and Selected Legislation*, by Erika K. Lunder.

<sup>26</sup> For more on the Exchange, see CRS Report R40724, *Private Health Insurance Provisions of H.R. 3200*, by Hinda Chaikind et al.

<sup>27</sup> H.R. 3200 would not change any of the alien eligibility restrictions on the receipt of Medicaid. Thus, there could be aliens who would meet the categorical and income eligibility requirements for Medicaid but are ineligible due to their alien status (e.g., legal permanent residents within five years after entry to the United States), who under H.R. 3200 would be required to have health insurance.



individuals must have family income of less than 400% of the federal poverty level (FPL), among other requirements.<sup>28</sup>

To be eligible for the credits under §242 of H.R. 3200, individuals must be lawfully present in a state in the United States, but generally not in the United States temporarily (i.e., nonimmigrants).<sup>29</sup> Nonimmigrants—that is, foreign nationals who are admitted to the United States for a specified period of time and a specific purpose—are “lawfully present,” but most, with exceptions noted below, would be ineligible for the credits under H.R. 3200. The exceptions for nonimmigrants who could obtain credits under H.R. 3200 would be trafficking victims, crime victims, fiancées of U.S. citizens, and those who have had applications for legal permanent residence (LPR) status pending for three years; these individuals are likely to become LPRs (i.e., immigrants) and remain in the United States permanently. Furthermore, §246 would bar unauthorized aliens from receiving any premium or cost-sharing credit.<sup>30</sup>

Notably, many categories of nonimmigrants in the United States who have work authorization (i.e., temporary workers) would meet the definition of a resident alien, and as a result would be required under H.R. 3200 to have health insurance. Nonetheless, many of these aliens would be ineligible for the credits under the bill. For example, professional specialty workers (H-1B) are admitted to the United States for up to three years, and can stay for a maximum of six years. Thus, in general, these aliens would be considered resident aliens under the I.R.C. and would be required under H.R. 3200 to have health insurance, but would be ineligible for the credits under the bill because they are nonimmigrants.<sup>31</sup>

In addition, the credits are based on an individual’s eligibility, but many tax returns are filed jointly or with dependents. There could be instances where some family members would meet the definition of an eligible individual for purposes of the credit, while other family members would not. For example, in a family consisting of a U.S. citizen married to an unauthorized alien and a U.S. citizen child, the U.S. citizen spouse and child could meet the criteria for being a credit-eligible individual, while the unauthorized alien spouse would not meet the criteria. H.R. 3200 does not expressly address how such a situation would be treated. Therefore, it appears that the Health Choices Commissioner would be responsible for determining how the credits would be administered in the case of mixed-status families.<sup>32</sup>

Some have expressed concerns that since H.R. 3200 does not contain a mechanism to verify immigration status, the prohibitions on certain noncitizens (e.g. nonimmigrants and unauthorized

---

<sup>28</sup> The federal poverty level used for public program eligibility varies by family size and by whether the individual resides in the 48 contiguous states and the District of Columbia versus Alaska and Hawaii. For a two-person family in the 48 contiguous states and the District of Columbia, the federal poverty level (i.e., 100% of poverty) was \$14,570. See 74 Federal Register 4200, January 23, 2009, <http://aspe.hhs.gov/poverty/09fedreg.pdf>.

<sup>29</sup> The actual provision reads: “an individual who is lawfully present in a State in the United States (other than as a nonimmigrant described in a subparagraph (excluding subparagraphs (K), (T), (U), and (V)) of section 101(a)(15) of the Immigration and Nationality Act).” (H.R. 3200, §242(a)(1))

<sup>30</sup> In addition, in the subtitle of H.R. 3200 pertaining to premium credits, §246 states, “Nothing in this subtitle shall allow Federal payments for affordability credits on behalf of individuals who are not lawfully present in the United States.”

<sup>31</sup> For more information on the categories of nonimmigrants who are entitled to work in the United States, including their approved length of stay in the country, see CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*, by Ruth Ellen Wasem, and CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Chad C. Haddad and Ruth Ellen Wasem.

<sup>32</sup> The Commissioner’s responsibilities to administer the credits are outlined in §142(a)(3) of H.R. 3200.



aliens) receiving the credits may not be enforced. However, others note that under §142(a)(3) of the bill, it is the responsibility of the Health Choices Commissioner (Commissioner) to administer the “individual affordability credits under subtitle C of title II, including determination of eligibility for such credits.” Thus, it appears, absent of a provision in the bill specifying the verification procedure, that the Commissioner would be responsible for determining a mechanism to verify the eligibility of noncitizens for the credits.<sup>33</sup>

## **Medicaid/CHIP**

H.R. 3200 as reported from the House Energy and Commerce Committee would make some changes to Medicaid and the State Children’s Health Insurance Program (CHIP). In addition, the bill as reported from the House Energy and Commerce Committee would amend the current immigration status-based restrictions (i.e., alien eligibility requirements) on receiving Medicaid or CHIP (discussed below) for citizens of the Freely Associated States.

The bill as reported by the House Energy and Commerce Committee would extend Medicaid coverage up to 133 1/3% of poverty for populations that previously were not covered (e.g., childless adults and many parents). This extension of benefits could mean an increase in the number of noncitizens who already meet the immigration status requirements for Medicaid eligibility (e.g., refugees, LPRs in the country more than five years) who would be eligible for Medicaid. In addition, this change could also mean that more noncitizens who meet the categorical and income eligibility standards for Medicaid but are barred due to their immigration status (e.g., nonimmigrants, unauthorized aliens) would be eligible for emergency Medicaid (discussed below).<sup>34</sup> Notably, the House Energy and Commerce Committee added a section to H.R. 3200 that reiterates current law that unauthorized aliens are not eligible for full-benefit Medicaid coverage.<sup>35</sup>

## **Noncitizen Eligibility for Medicaid/CHIP**

Currently, noncitizens’ eligibility for federal Medicaid and CHIP benefits depends largely on their immigration status and whether they arrived (or were on a program’s rolls) before August 22, 1996, the enactment date of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).<sup>36</sup> Notably, the aliens must also meet the financial and categorical eligibility requirements for Medicaid or be targeted low-income uninsured children or eligible pregnant women eligible for CHIP.<sup>37</sup> Most legal permanent residents (LPRs) entering after August 22,

---

<sup>33</sup> For more information on existing systems and laws related to verification of immigration status, see CRS Report R40144, *State Medicaid and CHIP Coverage of Noncitizens*, by Ruth Ellen Wasem.

<sup>34</sup> The Emergency Medical Treatment and Active Labor Act (EMTALA) requires Medicare-participating hospitals to provide emergency medical services for all patients who seek care, regardless of their ability to pay or immigration status. (42 U.S.C 1395dd) While some argue that unauthorized aliens should not receive any type of taxpayer funded medical care, others contend that increasing the number of unauthorized aliens eligible for emergency Medicaid could decrease the amount of hospitals’ uncompensated care.

<sup>35</sup> H.R. 3200 (§1783) as reported by the Energy and Commerce Committee contains a provisions stating, “Nothing in this title shall change current prohibitions against Federal Medicaid and CHIP payments under titles XIX and XXI of the Social Security Act on behalf of individuals who are not lawfully present in the United States.”

<sup>36</sup> P.L. 104-193; also called the Welfare Reform Act.

<sup>37</sup> In general, Title XXI of the Social Security Act defines a targeted low-income child for CHIP eligibility as one who is under the age of 19 years with no health insurance and who would not have been eligible for Medicaid under the (continued...)

1996, are barred from Medicaid and CHIP for five years, after which they are eligible for CHIP and eligible for Medicaid at state option. States may also choose to use state and federal Medicaid and CHIP funds to cover pregnant women and children who are LPRs within the first five years of arrival.<sup>38</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.

Refugees and asylees<sup>39</sup> are eligible for Medicaid and CHIP for seven years after arrival. After the seven years, they may be eligible for Medicaid and CHIP at the state's option. LPRs with a substantial (10-year) U.S. work history or a military connection are eligible for Medicaid and CHIP 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.<sup>40</sup> All aliens regardless of status who otherwise meet the eligibility requirements for Medicaid are eligible for emergency Medicaid.

## Emergency Medicaid

Emergency Medicaid may pay for the care of unauthorized aliens, nonimmigrants, and LPRs within the first five years of arrival (or longer if the state does not exercise the option to provide coverage for LPRs after the five years) for emergency conditions if they meet the other eligibility requirements of the Medicaid program.<sup>41</sup> Specifically, aliens who are otherwise eligible for Medicaid except for their immigration status (e.g., unauthorized aliens, nonimmigrants) may receive “medical assistance under Title XIX of the Social Security Act ... for care and emergency services that are necessary for the treatment of an emergency medical condition (as defined in Section 1903(v)(3) of such Act) of the alien involved and are not related to an organ transplant procedure.”<sup>42</sup>

---

(...continued)

rules in effect in the state on March 31, 1997. States can set the upper income threshold for targeted low-income children up to 200% of the federal poverty level (FPL) or 50 percentage points above the applicable pre-CHIP Medicaid threshold.

<sup>38</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>39</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>40</sup> For more information on specific eligibility criteria, see CRS Report R40144, *State Medicaid and CHIP Coverage of Noncitizens*, by Ruth Ellen Wasem, and CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>41</sup> In other words, aliens who except for their immigration status would be eligible for Medicaid by being in a Medicaid-eligible category such as children and pregnant women and by meeting the state residency and income requirements are eligible for emergency Medicaid.

<sup>42</sup> The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; P.L. 104-193, §401(a)(1)(A). Section 1903(v)(3) defines “emergency medical condition” as “a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—(A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.”

## Extension of Medicaid Coverage to Citizens of the Freely Associated States

Currently under PRWORA, citizens of the Freely Associated States (i.e., citizens of the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the Republic of Palau) are not eligible for full-Medicaid or CHIP. Prior to PRWORA, citizens of the Freely Associated States were not barred from Medicaid. Under §1736 of H.R. 3200 as reported by the House Energy and Commerce Committee, citizens of the Freely Associated States would be eligible for full-Medicaid (without regard to the five-year bar) if they are (1) lawfully residing in the United States (including territories and possessions of the United States) in accordance with the Compacts of Free Association between the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau; and (2) are otherwise eligible for such coverage.

## Author Contact Information

Alison Siskin  
Specialist in Immigration Policy

Erika K. Lunder  
Legislative Attorney

## Acknowledgments

Chris Peterson and Hinda Chaikind contributed to this report.

## Key Policy Staff

Area of Expertise	Name	Phone	E-mail
Alien/Noncitizen eligibility for health care including Medicaid and CHIP	Alison Siskin		
Alien/Noncitizen eligibility for public benefits	Ruth Ellen Wasem		
Health Insurance Exchange, premium and cost-sharing credits	Chris Peterson		
Individual mandates to obtain health insurance	Hinda Chaikind		
Medicaid and CHIP eligibility	Evelyne Baumrucker Elicia Herz		
Taxation and noncitizens	Erika Lunder Edward Liu		