

Immigrants and the Human Right to Health Care: A Perspective on the Federal Health Reform Law

Despite a growing U.S. movement for realizing health care as a human right and a public good for all, recent efforts to reform the market-based health system continue to treat health care as a commodity. The new federal health law excludes many people who cannot afford comprehensive insurance or are unable to prove their eligibility for public programs or the new insurance marketplaces.

Immigrants are three times more likely to be uninsured than U.S. citizens. In total, almost half (46%) of all immigrants, around 18 million people, lack health insurance.¹ They face greater barriers to accessing health care and obtain less care than U.S. citizens. Due to their lower use of health care, immigrants have lower health expenditures than citizens. However, immigrants pay a greater share out-of-pocket, as they receive less support from public sources despite being more likely to have a low income. While immigrants are generally healthier than the average citizen upon arrival in the United States,² their health tends to deteriorate the longer they remain in the country.³

What is the human right to health care?

All people have a right to the health care they need as recognized in the Universal Declaration of Human Rights. This right guarantees a system of health protection for all.

- ▶ **Universality:** Everyone must have access to equal high-quality and comprehensive health care.
- ▶ **Equity:** Costs and resources must be shared equitably, with everyone getting what they need and contributing what they can.
- ▶ **Accountability and Public Goods:** The people oversee the provision of health care as a public good, shared equitably by all.

Does the new law measure up for immigrants' human rights?

We measure the new law against the human rights standards of **universality, equity**, and assess whether health care is treated as a **public good**, accessible and accountable to all.

Our assessment finds that the law fails to realize immigrants' human right to health care and some sections even make access more difficult than it is now. The law retains a five year waiting period for lawful permanent residents to gain eligibility for Medicaid. It prohibits undocumented immigrants from buying private coverage with their own money in the new insurance exchanges, which are expected to replace the current individual market over time. This may lead to people losing the coverage they have now and lacking access to other sources of insurance.

What is the Patient Protection and Affordable Care Act (P.L. 111-148)?

Signed into law by President Obama on March 23, 2010, this Act, together with the Health Care and Education Reconciliation Act (P.L. 111-152), expands Medicaid and tightens some insurance industry regulations, while leaving the current market-based system largely intact. Many provisions of the law will come into effect in 2014.

Immigrants and UNIVERSALITY

Human Rights Principle

Everyone must have guaranteed access to equal high-quality and comprehensive health care.



Market-Based System

Different groups get different levels of coverage and many immigrants do not get coverage at all and have to forgo care.

| What will health reform change? | What will stay the same? |
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| <ul style="list-style-type: none"> ↑ Medicaid eligibility expanded to 133% of the federal poverty level, so that more poor immigrants could become eligible (if lawful permanent residents for 5 years). | <ul style="list-style-type: none"> ➔ No universal guarantee of access to health care. Millions of immigrants will remain excluded. ➔ Lawful permanent residents (green card holders) remain barred from Medicaid/CHIP for the first 5 years, and undocumented immigrants remain excluded. States have an option (under the Immigrant Children's Health Improvement Act) to cover lawfully residing children and pregnant women without a five-year waiting period. ➔ Access to coverage is based on an individual's eligibility and does not treat the family as a single unit. ➔ Strict citizenship verification requirements for Medicaid will remain, which deter eligible applicants, particularly people of color who are U.S. citizens. ➔ Deportation of some immigrants by public and private hospitals will continue, discouraging the use of health care, even emergency care. |
| <ul style="list-style-type: none"> ↓ Undocumented immigrants are prohibited from buying coverage with their own money in the insurance exchanges (a new group market mechanism to replace the individual market). Undocumented immigrants who currently buy insurance in the individual market would lose their coverage if this market merges into the exchanges. This would leave them without any access to a source of insurance. ↓ Overly strict verification requirements for the exchanges may lead to an exclusion of many eligible applicants. | |

What reforms would ensure UNIVERSAL ACCESS for immigrants?

Universality Standard: Immigrants have a human right to get the health care they need. No one should be discriminated against on the basis of income, health status, gender, race, age, immigration status or other factors.

Examples for advancing universality:

- ▶ A public system guaranteeing health insurance for all people residing in the United States, regardless of immigration status. One proposal for such a system is Representative Conyers' *Universal National Health Care Act or the Expanded and Improved Medicare for All Act* (H.R. 676), which would establish a national health insurance program administered by the government and delivered by non-profit private and public providers. This bill is expected to cover everyone, including documented and undocumented immigrants.
- ▶ As an interim step, an expansion of Medicaid/CHIP eligibility to cover all immigrants who cannot afford health insurance. A local example for addressing the Medicaid gap for immigrants and other low-income people is the DC Healthcare Alliance, which provides free coverage for District residents that have a household income up to 200% of the federal poverty level and do not qualify for Medicaid, regardless of immigration status.⁴

Immigrants and EQUITY

Human Rights Principle

Health care costs and resources must be shared equitably, with everyone getting what they need and contributing what they can.



Market-Based System

Health care costs place a greater burden on lower-income people; more resources are available in wealthier, profitable areas.

| What will health reform change? | What will stay the same? |
|---|--|
| <ul style="list-style-type: none"> ↑ Low-income documented immigrants are eligible for premium and cost-sharing subsidies in the exchanges. ↑ Language accessibility may increase as insurance companies in the exchanges can receive incentive payments for using language services and cultural competency trainings. | <ul style="list-style-type: none"> ➔ Premiums and out-of-pocket costs will still leave immigrants with high health care costs. Families may have to pay up to 22% of income.⁵ For an individual earning 400% of the federal poverty level, subsidized premiums would be 9.5% of income, out-of-pocket costs could reach up to \$4,147 per year, and co-pays and deductibles would be 30% of the insurance plan's value. ➔ Coverage may not fully pay for care (as little as 60% of the cost) nor cover all health needs (e.g. adult dental care). ➔ Lack of providers who accept Medicaid. Medicaid reimbursement rates for providers will remain lower than rates paid by Medicare, with only a temporary increase of Medicaid rates for 2013 and 2014. ➔ Immigrants who are temporary or part-time employees, day laborers, or work in the informal sector will not benefit from expanded employer coverage provisions. |
| <ul style="list-style-type: none"> ↓ Poor and low-income documented immigrants will be required to purchase coverage or face a tax penalty (up to a 2.5% income tax), unless they qualify for an exemption. If ineligible for Medicaid due to the 5 year bar, they must purchase coverage in the exchanges. ↓ Undocumented immigrants will be prohibited from buying insurance in the exchanges, even with their own money. ↓ Federal payments (Disproportionate Share Hospital payments) to hospitals serving poor, uninsured and disadvantaged people will be reduced. | |

What reforms would ensure EQUITY for immigrants?

Equity Standard: Immigrants have a human right to access care on the basis of clinical need, not privilege, payment, immigration status, or other such factors. Health care infrastructure should be distributed equitably to ensure that health care is available where it is needed.

Examples for advancing equity for immigrants:

- ▶ A public system which provides health services to everyone who needs them, including all immigrants. For example, Healthy San Francisco, the city's public health care program, provides direct access to care for all uninsured residents (with combined family incomes up to 500% of the federal poverty level), regardless of immigration status, on a sliding cost scale starting at zero.⁶
- ▶ Systematic and sustainable support to community-based clinics that make health care available to immigrants, including those who live and work in remote locations. For example, the network of mobile migrant health clinics operating across the country provides health care to migrant farmworkers regardless of immigration status. Mobile clinics also run on evenings and weekends, so that workers can access care more easily. In 2008, over 150 publicly funded migrant health centers operating at more than 500 sites served more than 834,000 migrant farmworkers and their families.⁷

Immigrants and Health Care as a PUBLIC GOOD

Human Rights Principle

Health care is a public good that belongs to all. Publicly financed and administered care is the strongest vehicle for making care accessible and accountable to all.



Market-Based System

Health care is a commodity bought and sold in the marketplace. Private, for-profit entities are primarily accountable to shareholders.

| What will health reform change? | What will stay the same? |
|---|--|
| <ul style="list-style-type: none"> ↓ Expansion of the public Medicaid program excludes recent immigrants. ↓ New marketplaces (state-based insurance exchanges) are subsidized with public funds but not accessible to all immigrants (not even if they use their own money to purchase coverage). | <ul style="list-style-type: none"> → Many immigrants are not treated as part of the U.S. public, even though they live and work here. → Despite paying taxes, many immigrants are not eligible for the public health insurance programs their tax dollars fund. → Public and private hospitals continue to deport some sick immigrants. |

Making health care a PUBLIC GOOD: what's in it for immigrants?

- ▶ If the public sector, funded and overseen by the people, were to assume responsibility for the health of the public as a whole, its role would no longer be viewed with suspicion, envy, and anger by those ineligible for public subsidies. Instead of acting merely as a separate insurance provider for certain groups, a safety net for those who fall through the cracks while carrying the right kind of documentation, the public sector would secure necessary care for everyone, just as it does with education.
- ▶ An inclusive health care system would command a higher level of solidarity and support from the people, including for extending access to all immigrants, because everyone—healthy and sick, wealthy and poor—would be in a common pool, with their use of health care cross-subsidized rather than paid for individually.

References

- ¹ Henry J Kaiser Family Foundation, "Immigrants' Health Coverage and Health Reform: Key Questions and Answers," 2009.
- ² S. Wallace/ X. Castañeda/ S. Guendelman/ I. Padilla-Frausto/ E. Felt, *Migration Health and Work: the Facts behind the Myths*, California Center for Population Research, 2007.
- ³ H. Antecol/K. Bedard, "Unhealthy assimilation: Why do immigrants converge to American health status levels?," in: *Demography*, Vol. 43, 2, May 2006.
- ⁴ See DC Healthcare Alliance website: <http://dhcf.dc.gov/dhcf/cwp/view,A,1412,Q,609129,dhcfNav,%7C34820%7C.asp>
- ⁵ National Council of La Raza, Comments on the "Patient Protection Affordable Care Act," April 2009
- ⁶ See www.healthysanfrancisco.org
- ⁷ See National Center for Farmworker Health (www.ncfh.org) and Migrant Clinicians Network (www.migrantclinician.org)