

## **How the Latest House Health Care Bill (H.R. 3962) Impacts Immigration**

### **INTRODUCTION**

On October 29, 2009, House Democrats introduced the latest version of the “Affordable Health Care for America Act” (H.R. 3962). This bill is similar to an earlier version, H.R. 3200, that was debated over the summer. FAIR opposed several provisions in the earlier bill because it: (1) would change current law to immediately allow legal immigrants to access certain taxpayer-funded health benefits<sup>1</sup>; and (2) contained loopholes to allow illegal aliens to access these benefits.<sup>2</sup> Unfortunately, these problems still persist in the latest bill.

### **WAIVING WELFARE REFORM’S 5-YEAR WAITING PERIOD**

Current law imposes a 5-year waiting period before most legal aliens can access many federal benefits (like Medicaid or welfare).<sup>3</sup> Section 342(d) of the new House health care bill eliminates this waiting period in relation to the “affordability credits” created by the bill. FAIR has completed a cost analysis of this provision and has concluded that it would cost the American taxpayers at least \$5.9 billion in 2015 (the first year affordability credits would be available), rising to at least \$7.3 billion by 2019. Accordingly, this provision will cost the American taxpayers at least \$33 billion dollars from 2015 to 2019.

### ***FAIR Recommendation***

The House should strike the word “not” as it appears on Page 250, Line 3 of H.R. 3962, to correct this issue and save the American taxpayers at least \$33 billion.

### **VERIFICATION LOOPHOLE REMAINS**

Over the summer, FAIR raised concerns that the House health care bill contained a loophole that would allow illegal aliens to access taxpayer-funded health benefits. This loophole existed because the bill lacked an **effective** verification method to determine whether applicants were in fact eligible (and not illegal aliens). With its latest bill, Congress has taken a positive step forward by requiring some verification, but, unfortunately, this new language still falls short of what is necessary to close the illegal alien loophole in the bill.

Under the House bill, the initial step to verify eligibility for the affordability credit is to require persons seeking the credit to first declare whether they are a “citizen” or a “noncitizen.” The House bill then provides different methods to verify eligibility based on this declaration.<sup>4</sup> A self-declaring “noncitizen” has eligibility determined through the SAVE system, a program FAIR supports. But a major loophole exists in the method used to verify eligibility for persons who declare they are citizens because these people never have to provide documentation to establish: (1) that they are in fact a citizen of the United

<sup>1</sup> FAIR’s Analysis: [http://www.fairus.org/site/DocServer/242d\\_v4.pdf?docID=3641](http://www.fairus.org/site/DocServer/242d_v4.pdf?docID=3641)

<sup>2</sup> FAIR’s Analysis: [http://www.fairus.org/site/DocServer/2009\\_07\\_24\\_Analysis\\_Section\\_246\\_is\\_Ineffective\\_vFINAL.pdf?docID=3101](http://www.fairus.org/site/DocServer/2009_07_24_Analysis_Section_246_is_Ineffective_vFINAL.pdf?docID=3101)

<sup>3</sup> This waiting period was put in place with Section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (commonly known as the “Welfare Reform Act”).

<sup>4</sup> Section 341(b)(4) of H.R. 3962 (beginning on page 228).

States; or (2) even that they are who they claim to be. As a result, this process will **not** prevent illegal aliens who falsely claim citizenship from accessing benefits under the bill.<sup>5</sup>

Section 341(b)(4)(C) of the House health care bill establishes the verification process required to determine eligibility for the affordability credit for anyone **claiming to be a U.S. citizen**. This section states that this determination will be made using Section 1902(ee) of the Social Security Act (the “Act”).<sup>6</sup> Section 1902(ee) is a new, untested verification process that was only created earlier this year by Congress as part of the Children’s Health Insurance Program Reauthorization (CHIP) bill. This verification process is so new that the CHIP bill provides it will not even go into effect until January 1, 2010. This is troubling because it means that this verification system — which serves as the backbone for eligibility verification under the House health care bill — (1) does not yet exist; (2) is not currently being utilized; and (3) has not been tested or audited for effectiveness.

By contrast, the Social Security Act currently contains a proven method to verify that persons who apply for certain federal benefits — and claim to be citizens — are in fact citizens and that they are who they say they are.<sup>7</sup> This process is found in Section 1903(x), and it requires people to present documentation to definitively prove **both their identity and citizenship**. Persons prove their identity and citizenship by presenting specified documents (such as a passport or certificate of citizenship), but, in lieu of such documents, can also present alternative documentation which must — at a minimum — include some form of government-issued photo identification.

When Congress enacted the lesser process of Section 1902(ee) to determine citizenship, Congress did so with the **express intent of bypassing any documentation requirements** of Section 1903(x). Section 1902(ee) states that eligibility can be established “in lieu of requiring the individual to present satisfactory documentary evidence of citizenship” simply by having a person claiming citizenship provide a name and matching Social Security number (SSN). This information is then supposed to be matched against records at the Social Security Administration (SSA).

This is problematic for a number of reasons. First, because many noncitizens have valid SSNs, a name-SSN match is not definitive proof of “citizenship.” Second, it does not appear that 1902(ee) expressly requires SSA to verify citizenship (only the name-SSN match), but, if SSA were required to do so, SSA’s database cannot consistently confirm citizenship. Third, 1902(ee) does not require presentment of any form of documentation confirming citizenship, or even a photo I.D. As a result, someone who commits identity theft, using another person’s name and matching SSN, could fraudulently obtain benefits under the House bill. Finally, 1902(ee) allows people to enroll in public benefit programs **even before their eligibility is determined**. As a result, even an illegal alien who falsely claims citizenship and gives a false name and SSN could, under 1902(ee), receive the affordability credit and the resulting health coverage long before the no-match was ever discovered. If the no-match was ever discovered, and the illegal alien disenrolled from the insurance plan, the illegal alien could come back and repeat the process by giving another false name and SSN — in much the same way as occurs under the I-9 employment process — and receive benefits again. In short, 1902(ee) contains too many ways for ineligible persons to falsely claim citizenship in order to fraudulently obtain benefits under H.R. 3962.

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<sup>5</sup> Section 341(b)(4)(D) of H.R. 3962 provides that persons who declare they are a “noncitizen” will have eligibility determined using Section 1137(d) of the Social Security Act (42 USC 1320b-7). This is the Systematic Alien Verification for Entitlements (SAVE) system.

<sup>6</sup> Section 1902(ee) was Section 211 of H.R. 2, which became Public Law 111-3. It is codified as 42 USC 1396a.

<sup>7</sup> Section 1903(x) was contained in Section 6036 of S. 1932, which became Public Law 109-171. Regulations issued pursuant to this section detail a list of documents satisfactory to demonstrate citizenship. These requirements were explained by the Centers for Medicare & Medicaid Services (CMS) in a June 9, 2006 memorandum to State Medicaid Directors (Document Reference Number: SMD 06-012).

***FAIR Recommendation***

The House should amend Section 341(b)(4)(C) to require verification of claims of citizenship using § 1903(x) and not § 1902(ee) of the Social Security Act. This would close the illegal alien loophole and save taxpayers \$30.5 billion *per year*.<sup>8</sup>

**CONCLUSION**

The latest House health care bill still contains several problematic immigration related provisions. Congress can easily correct these problems and should take the opportunity to do so.

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<sup>8</sup>See *Illegal Immigrants and HR 3200: Estimate of Potential Costs to Taxpayers*, Center for Immigration Studies, September 2009. Available here: <http://www.cis.org/IllegalsAndHealthCareHR3200>