Questions and Answers:
Outreach, Enrollment and Immigration Issues

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Prepared For

covering kids & families

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TABLE OF CONTENTS

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INTRODUCTION

According to data from Urban Institute's 2002 National Survey of America's Families, there are 2.9 million uninsured Hispanic children in the United States; at least 1.8 million of them are estimated to be eligible for low-cost or free health care coverage through the State Children's Health Insurance Program (SCHIP) or Medicaid. Further, of the at least 4 million children in the United States who are estimated to be eligible for SCHIP or Medicaid more than 40 percent are Hispanic.

Covering Kids & Families statewide and local projects and partners were given an opportunity to pose questions on what barriers exist and how to overcome these barriers that prevent eligible children and adults in immigrant families from accessing health care coverage. Answers to the submitted questions were compiled by Gabrielle Lessard, JD of the National Immigration Law Center.

QUESTIONS AND ANSWERS

Question 1

In Rhode Island we have mixed opinions and no written policy about the citizen children (born in U.S.) of foreign nationals who are here on valid student visas. Clearly, the adults on student visas are not eligible because of their immigration status. How should we regard the citizen children?

- **Should those children be considered RI residents and therefore eligible for SCHIP?**
- **Should the permanent residence of the children be considered to be the same as that of their parents in a foreign country, thereby making them ineligible for SCHIP?**
- **Should pregnant foreign students, or pregnant wives of foreign students, be eligible for Medicaid or SCHIP during the pregnancy?**

Answer

This issue comes up because it is a condition of eligibility for Medicaid and SCHIP (and other programs) that the applicant be a resident of the state.

The federal Medicaid rules that define a resident can be found at 42 CFR §435.403. (CFR is the code of federal regulations. You can access it on the Legal Information Institute Website: http://cfr.law.cornell.edu/cfr/) For non-institutionalized adults, a person is considered a resident of a state if the person resides in the state and:

Entered the state with the intention of residing there permanently or for an indefinite time period
or
Entered the state with a job commitment or for the purpose of seeking employment (whether or not currently employed).

State rules generally follow the federal rules closely, although states may also require an applicant to sign a declaration stating that he or she intends to remain in the state, and/or proof of residency such as rental receipts, utility bills, children's school enrollment records, etc.

For children, the child's state of residence is usually the same as the parents'. However, the regulations do not require that outcome. The regulations for children (other than institutionalized or emancipated children) refer back to the old AFDC rules, which state that "a child is a resident of the state in which he or she is living on other than a temporary basis," 45 CFR §233.40. Therefore, there may be cases where the parents are non-residents but they intend for the child to remain in the state permanently. California regulations specifically permit parents to establish a separate residence for their children by showing that they intend for the children to remain in the state and have made arrangements for their care.

People who hold student visas and other non-immigrant visas are only authorized to enter the U.S. for a limited period of time. They effectively promise to return to their home country when their visas expire, which is inconsistent with the intent to remain in the state as a resident. Likewise, a child who is living with parents who have a student or other temporary visa is probably residing in the state temporarily. But not always – the parents may intend for the child to remain in the state beyond the date of their departure.
In addition, people's circumstances change. A person who enters the country on a nonimmigrant visa may decide that he or she wants to remain in the U.S. Once the person's visa has expired, he or she becomes undocumented and can establish residency on the same basis as anyone else. While the visa remains in effect, it is possible for people to show that they intend to remain in the U.S. despite possession of a visa that requires their departure, but any person in this situation should consult with a lawyer. There is a risk the person could be deported if they are accused of having lied to obtain their visa.

The answer to your specific questions is that it depends upon whether the people involved intend to stay. However, remember that a benefits application cannot require a social security number (SSN) or information about immigration status from the parents of an applicant or any other person who is not applying for benefits. (See the joint HHS/USDA Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits, September 21, 2000, online at http://www.cms.gov/states/letters/shw92100.asp).

In reference to the citizen children, the parents do not need to disclose that they are on nonimmigrant visas. They can simply decline to state their status. With respect to pregnant students or spouses, the issue is essentially the same in your state because Rhode Island has taken the option to extend SCHIP to cover "the period from conception to birth." Under your state's program the fetus/future child is actually the applicant for SCHIP, and the state should not require immigration status or SSN information from the pregnant woman. In states that have not taken the option, pregnant women with nonimmigrant visas would only be eligible for services through state or local programs, and the state or locality would have the ability to define residency in any way it chose to.

CAUTION: Some states ask a person to sign a declaration that he or she intends to remain in the state indefinitely. If a person with a temporary visa signs such a declaration, it could be considered fraud, which can be cause for deportation.

Question 2

I had a situation where an eligibility worker in Texas processed an application for children's Medicaid for the parents of a newborn baby. The father was from India and a student on a scholarship at a public university and was legally in the U.S. on a student visa. A few weeks later, university officials called this eligibility worker chastising her for having reported the father, whose entire family was deported back to India. The worker was told that even though the child was born in the U.S., the kind of documentation he had made him an "any offspring he should have" ineligible for public benefits. Any offspring would assume the citizenship of the parents (who were Indian).

My question is how is it possible that there exists a circumstance that a child born here could not be a U.S. citizen? It does not make sense that people who come to the U.S illegally and then have children that those children are considered U.S. citizens. And for this student who was legally present under a student visa had a child here, but that child was not considered a U.S citizen and then deported.

Answer

The information the worker received (child is not a U.S. citizen) is incorrect. Any person born in the U.S. is a citizen. The only exception is for people who are not subject to U.S. jurisdiction – for example, if they are born to a diplomat from another country who is residing here. You can find the law at Section 301(a) of the Immigration and Nationality Act, 8 USC §1401(c). (USC is the United States Code, online at www.4.law.cornell.edu/uscode/) Children who enter the U.S. with parents who are on student visas have a special visa classification derived from the fact that the parent is a student visa holder. But that is not the case here.

There is not enough information here to know why the family was deported. We can assume the state decided the child was not eligible for SCHIP because the parents had a temporary visa and were therefore non-residents. This should result in a denial of the application, not a deportation. Perhaps, as in my caution above, the parents signed a declaration of their intent to stay in the state and that somehow got to the Bureau of Immigration and Customs Enforcement (ICE)[1], and ICE concluded the father had lied in obtaining his visa. I am speculating here, but my purpose in doing so is to make the point that this is an unusual case – normally people do not get deported simply because their benefits application is denied.

[1] Formerly the enforcement arm of the INS that is now part of the U.S. Department of Homeland Security.

Question 3

The state of Rhode Island covers all undocumented children until age 19. RI does not cover persons here with a valid tourist visa. Many immigrants enter the US with tourist visas even though they intend to stay in the U.S. permanently. If a person is admitted to the U.S. with a temporary tourist visa valid for 2 or 5 years and the I-94 allows them to stay 3 or 6 months, at what point is he or she considered to be undocumented? Is it once he or she overstays the time allotted on the I-94 and does not request an extension, or is it when his or her tourist visa expires?

Answer

The person becomes undocumented at the point the I-94 expires, unless he or she requests an extension. Like the two previous questions, this question raises residency issues. It seems a bit twisted that an undocumented person can be eligible but a person who is lawfully present cannot because he or she has a temporary visa. The reason is the visa-holder has made a commitment to leave the country, which is inconsistent with the intent to remain in the state as a resident.

Question 4

Are there best Practices for Medicaid/SCHIP enrollment and renewal policies for migrant workers whose children qualify for SCHIP/Medicaid? For example, Illinois receives a number of migrant field workers who live some months in our state and live the rest of the months in another.

Answer

Outreach to migrant communities involves special challenges. In addition to being a mobile population, migrants often have limited education and literacy. Many live in overcrowded but isolated communities that have little familiarity with U.S. health systems and programs. Many are cut off from mainstream communications like newspapers and television, and most have little or no access to transportation.

In doing outreach to migrant communities it is most effective to go out to the migrant housing camp, or other location where migrants gather, and interact face-to-face. Many communities have health outreach workers, called promotoras, who provide basic health education in community settings. Promotoras can inform migrants about Medicaid and SCHIP and assist with enrollment. Some communities have migrant head start programs or mobile health clinics that travel out to migrant camps, which are also excellent vehicles for outreach and enrollment efforts. Where these resources are not available, outreach workers can visit migrant camps to educate workers about available programs. It is best to go on a regular schedule or for several consecutive days to allow community members to encourage one another to work with you.

Because of migrants' limited literacy, printed outreach materials are generally not effective. My former colleague, Elena Rodriguez, had the ingenious idea of using pre-paid phone cards for

outreach. In order to make a call with the card, the migrant worker had to listen to a recorded message (in Spanish) about Medicaid and SCHIP.

Certain program implementation issues also affect migrant workers' access. In states where Medicaid and SCHIP case management is performed at a county level, it is important to ensure that your state has an effective process for inter county transfer of cases. Workers who travel from one county to another should not experience any gap in coverage and should never have to reapply for coverage because they moved within the state. Workers who travel across state lines face additional barriers. First, workers sometimes have difficulty establishing residency (as discussed above) in any single state. In addition, a worker (or the worker's child) who is enrolled in his or her home state may have difficulty finding providers in other states because program reciprocity across states is limited. The National Center for Farmworker Health, www.ncfh.org, is working with a number of states to establish interstate reciprocity and can provide technical assistance on this and other issues related to migrant worker access.

Question 5

I know Bush/Thompson removed the five-year rule for certain benefits for legal immigrants. Can you tell me (or direct me to a website) which would pertain most to health care for kids and families?

Answer

This question refers to the five-year bar on eligibility for certain federal benefits, including Medicaid and SCHIP, that applied to most immigrants who entered the U.S. after August 22, 1996.

The news about the five-year bar is not really about healthcare. Last year's farm bill contained provisions that restored food stamp eligibility for qualified immigrant children and persons receiving disability assistance, regardless of their date of entry into the U.S. and without a five-year bar. The bill also restored eligibility for qualified immigrants who have been in that status for five years. (The old rules were very restrictive.) You have probably heard about this recently because the restoration of eligibility for children went into effect on October 1, 2003. This is the only recent change in the law that has had the effect of removing the five-year bar in a federal benefit program.

Advocates have been trying for several years to get Congress to pass a bill called the Immigrant Children's Health Improvement Act (ICHIA), which would restore Medicaid and SCHIP eligibility for lawfully present immigrant children and pregnant women, without a five-year bar. A bill, called the Healthcare Equality and Accountability Act of 2003, would also restore lawfully present pregnant women's and children's eligibility for Medicaid and SCHIP. This second bill was presented on November 7, 2003. Both of these bills would make the restoration of eligibility a state option. If the bills pass, advocates will need to work with their states to ensure that they exercise the option.

Immigrant children who are ineligible for the regular Medicaid program because of the five-year bar can get emergency Medicaid.

Question 6

There is a family with a five-year-old child living in Iowa. They have no health insurance, are not U.S. citizens but have a green card. If the child was not born in the U.S., would the child qualify for a health care coverage program through Medicaid or SCHIP*?*

Answer

Whether the child qualifies depends on when the child entered the country. People who have their green cards are lawful permanent residents (LPR). LPRs are qualified immigrants under federal law, which means they can qualify for benefits like Medicaid and SCHIP. A complete list of all of the categories of immigrants who are qualified is on the CMS Web site at www.cms.gov/immigrants.

LPRs who entered the country after August 22, 1996, are subject to a five-year bar, meaning they are not eligible for federal benefit programs like Medicaid and SCHIP for five years after they have acquired qualified immigrant status. Immigrants in certain categories, including refugees, asylees, military veterans and their dependants, and children in foster care, are not subject to the five-year bar. CMS has developed a helpful fact sheet about the five-year bar that is available online at www.cms.gov/immigrants.

Since the child is five and entered the country after birth, he or she is probably still subject to the five-year bar, unless one of the exceptions applies. Many states use their own funds to cover children who are subject to the five-year bar, but Iowa is not one of them. Assuming the family meets the income standards and other requirements, this is a child who would become eligible if ICHIA or the Healthcare Equality and Accountability Act of 2003 passed and your state took up the option.

Question 7

Latino families encounter many barriers to obtaining Medicaid and/or SCHIP among them are:

- **Income documentation for payments in cash.**
- **Language barriers because of an inadequate number of Spanish speaking Medicaid staff.**
- **Fear of deportation or obtaining benefits that may jeopardize citizenship.**
- **Ineligible for benefits due to being undocumented. Even if children are citizens, parents may be undocumented so they have difficulty obtaining coverage for their children.**

My question is about the federal position on not providing Medicaid/federal benefits for undocumented children. Is there any way that Medicaid can be made available for undocumented children? What rationale and advocacy would work to change this policy

at least for children? Could Alien Emergency Medical be changed to cover non-emergency care for children?

Answer

The issue of providing non-emergency health care and other benefits to undocumented children is very political. On the national level, it would require a change in long-standing federal law. A small number of states use their own funds to provide health coverage for children regardless of their immigration status, but I suspect there is little political momentum in that direction in Texas. The last several years local communities, especially in California, have begun developing programs that provide universal health coverage for children regardless of their immigration status. Dr. Liane Wong has an excellent article about these initiatives in the latest issue of the Future of Children, www.futureofchildren.org.

Within the framework of your existing programs, you can work with your state health agency to ensure that it is not using overly narrow criteria to determine what is an emergency under the emergency Medicaid program. Many people think a medical condition has to be life-threatening to be covered by emergency Medicaid. In fact, an emergency medical condition is defined by law as: a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including extreme 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.

42 U.S.C. §1396(b)(V)(3). Several Arizona health care providers recently won a law suit in which the state supreme court interpreted this definition to mean that an emergency did not necessarily end when a patient was transferred from an acute to a sub-acute bed. An article about the case, *Scottsdale Healthcare, Inc., et al. v. Arizona Health Care Cost Containment System Administration,* is posted on our Web site www.nilc.org. Perhaps you could refer to this decision as an entré to a discussion about revising the state's standards.

Question 8

If there are an estimated 2.9 million uninsured Hispanic children in the U.S., and 1.8 million of those are eligible for SCHIP/FAMIS, what can we do to reach the other 1.1 million children? Specifically, in families where one child may be enrolled in FAMIS but because the older child was born outside the U.S., they are ineligible.

Answer

Please see the answer to the previous question regarding undocumented children. It is possible as a matter of federal law to enroll eligible children in emergency Medicaid in advance, not simply at the time an emergency occurs. California does this. Families may feel more

comfortable seeking health care for an emergency when they know in advance the child will be covered.

It is important to keep in mind that a child is not necessarily ineligible because he or she was born outside the U.S. It is important to inquire into the child's immigration status. A child who is a refugee, lawful permanent resident or other "qualified immigrant" may be eligible for Medicaid or SCHIP. A fact sheet on qualified immigrants is available at www.cms.gov/immigrants.

Depending on your state's programs, also you may need to know the date the child entered the U.S. As mentioned above, most qualified immigrants who entered the country after August 22, 1996, are subject to a 'five-year bar' on non-emergency Medicaid and SCHIP, but many states cover immigrants who are subject to the five-year bar through state funded programs. Since you mention FAMIS, I think you are from Virginia. My information indicates that Virginia does cover immigrants subject to the five-year bar, but you should confirm this information with your state program director or eligibility office because some states have cut immigrant programs because of budget shortfalls.

Question 9

Obtaining documentation to support sliding fee scale adjustments serves as a barrier in access to care when attempting to provide services to undocumented persons (including children who are not eligible for SCHIP). There has been a difference of opinion about the legitimate use of "self declaration" in lieu of producing the documentation of household income and total persons in household. Apparently, the requirements for documentation vary as to funding source, i.e. migrant health centers vs. federally qualified health centers (FQHCs). However, it is important to remember that FQHCs provide care to many undocumented persons, although the FQHC may not qualify for a migrant health center grant.

I would still like to see a definitive solution or answer to this problem for FQHCs who do not have migrant health center grants.

Answer

I am not aware of any requirement that an FQHC obtain income documentation from patients. The requirement may be coming from another funding source that is supplementing the clinics' federal grants. The best way to unravel this issue is to talk to your state primary care association. Primary care associations are essentially trade associations for community and migrant clinics, and they will understand the details of funding and operations for FQHCs in your state.

RESOURCES

- Genevieve Kenney, Jennifer Haley and Alexandra Tebay. 2003. "Children's Insurance Coverage and Service Use Improve." *Snapshots of America's Families III*, No. 1. Washington, DC: Urban Institute; and Genevieve Kenney, Jennifer Haley and Alexandra Tebay. 2003. "Familiarity with Medicaid and SCHIP Programs Grows and Interest in Enrolling Children is High." *Snapshots of America's Families III*, No.2. Washington, DC: Urban Institute.

- The federal Medicaid rules that define a resident can be found at 42 CFR §435.403. CFR is the code of federal regulations. You can access it on the Legal Information Institute Web site: http://cfr.law.cornell.edu/cfr/.

- Joint HHS/USDA Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits, September 21, 2000, online at http://www.cms.gov/states/letters/shw92100.asp.

- Categories of immigrants who qualify for Medicaid and SCHIP and a helpful fact sheet about the five-year bar can be found on the CMS Web site at www.cms.gov/immigrants.

- Future of Children, Spring Journal "Health Insurance for Children" may be downloaded at www.futureofchildren.org.

- The National Center for Farmworker Health (www.ncfh.org) works with states to establish interstate reciprocity for migrant worker access to health coverage.

- National Immigration Law Center (www.nilc.org) has a variety of information that can be used as technical assistance on immigration issues.