8-8-2013

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Leighton C. Ku
George Washington University

Issue Brief

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By

Leighton Ku, PhD, MPH
Professor of Health Policy
Director, Center for Health Policy Research

The George Washington University
School of Public Health and Health Services
Department of Health Policy

August 8, 2013

This report was partially funded with support from the Commonwealth Fund. All views expressed are the author's and should not be interpreted as positions of the Commonwealth Fund or the George Washington University.

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Most have long agreed that that major changes are needed in the dysfunctional U.S. immigration system. But it has been vexing to navigate an immigration bill through the troubled waters of Congress. In 2006-7, President George W. Bush promoted comprehensive immigration reform with support from key Republican and Democratic leaders, but the legislation never even received a vote on the Senate floor. A new effort began in 2013 and on June 27, 2013, the U.S. Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). The bill was developed after months of work by a bipartisan "Gang of Eight" Senators, amended in the Senate Judiciary Committee and further modified on the Senate floor prior to passage with a strong bipartisan 68-32 vote. The fate of the legislation remains uncertain, however, because of resistance in the House of Representatives.[1] Despite the momentum built in the first half of 2013, the future of immigration reform is cloudy.

Even so, the Senate bill marks a milestone as the most significant immigration reform legislation in a generation to achieve bipartisan support. This brief summarizes key aspects of the Senate bill that pertain to immigrants' access to health care and health insurance coverage. In designing the legislation, the Senate sought to balance three overarching priorities: (1) expanding legal immigration to bolster America's labor supply and make the economy stronger, (2) creating a pathway to legal status and eventual citizenship for unauthorized immigrants who already live in the U.S. and (3) intensifying border security efforts to limit future flows of unauthorized immigrants into the nation. Analyses by the Congressional Budget Office and others indicate the bill would meet these goals, help balance the federal budget and strengthen the overall economy and employment. Improving immigrants' access to health coverage or health care was not one of the top priorities, however.

Large disparities in health insurance coverage and access to care now exist, when non-citizen immigrants are compared with citizens. The changes in immigrants' health coverage and access as a result of the Senate bill would be modest and gradual. From the start, a bipartisan agreement was struck that unauthorized immigrants would remain ineligible for premium assistance or cost-sharing reductions under the ACA for many years while they are on the path to citizenship, that is, when they are in Registered Provisional Immigrant (RPI) status. Recognizing this, provisional immigrants are not subject to the ACA requirement that people must purchase insurance or pay a tax penalty. They would be permitted to buy insurance from the health insurance marketplaces (that is, the health insurance exchanges), but since federal subsidies would not be available, relatively few would be able to afford coverage. However, prior experience indicates that legalization will help these immigrants get better jobs, which could increase employer-sponsored private coverage for them and their families. They would become eligible for ACA benefits many years later, after attaining lawful permanent resident (LPR or "green card") status.

[1] Gregory, A. and Weisman, J. "Republicans in House Resist Overhaul for Immigration," *New York Times*, July 10, 2013.

An important, but less discussed, element of the bill would permit significant numbers of new immigrants to legally enter the U.S. in the coming years, including many who have been waiting for years to gain LPR status. The bill also open new paths for entry with temporary visas (e.g., work visas). Current ACA policies would continue to apply for the new legal immigrants, including the requirement that they have health insurance or pay a tax penalty, as well as eligibility for ACA subsidies to buy insurance in the health insurance marketplaces. Thus, it seems likely that most of the new legal immigrants will be privately insured. Because of an existing requirement, the new LPR immigrants will not be eligible for Medicaid for five years after attaining permanent residency. The influx of new immigrants would likely increase the demand for services such as language assistance.

Although the Senate bill will expand legal, civil rights and economic opportunities for many immigrants, substantial disparities in health care access for non-citizens will persist, particularly for those who are currently unauthorized. As a result, the need for a strong health care safety net, including community health centers, safety net hospitals and other safety net providers will remain.

Overview of the Bill Passed by the Senate

Because the scope of S. 744 is so broad and because many of the health provisions are specific to people in different immigration categories, a quick overview of the legislation is needed:

- **Restructuring Legal Immigration.** The bill makes a number of changes in the nation's legal immigration system. It will reduce the current backlog of those who have been waiting for years to enter as LPRs, but have not yet gained a visa for legal entry. The family-based (e.g., spouses and dependents of citizens or LPRs) and employment-based (including high skill immigrants and their spouses and dependents) preference categories for LPR entry will be expanded, although the sibling category and diversity immigrant program will be eliminated and age caps will be applied for adult children. New temporary visa programs will be developed for workers. While the bill particularly emphasizes admissions for high skill entrants, initial analyses suggest that a substantial share of the new legal immigrants will be spouses and dependents of citizens and LPRs, particularly in the beginning.[2]

  The Congressional Budget Office (CBO) estimated that the U.S. population could be about 10 million higher by 2023 because of the changes in policies for legal immigration.[3] (Some of that increase would be U.S.-born children of new immigrants, who will be native-born citizens.) Changes in the legal status of unauthorized immigrants under the bill would not contribute to the population increase since those who can legalize are already in the U.S.

[2] Sumption, M. and Bergeron, C. "Remaking the Green Card System: Legal Immigration under the Border Security, Economic Opportunity and Immigration Modernization Act of 2013", Migration Policy Institute Issue Brief, June 2013.
[3] *Ibid.*

The bill also expands opportunities for immigrant physicians and nurses to enter or remain in the U.S., particularly if they will practice in medically underserved areas. This can help ease health workforce shortages in underserved rural and urban areas, including increases in the demand for care prompted by insurance expansions under the ACA.

- **Border Security.** The bill calls for an unprecedented surge in systems to prevent and prosecute unauthorized immigration, including both security at America's borders as well as internal monitoring, such as employment verification systems. Before RPIs can transition into lawful permanent residency, the Department of Homeland Security must verify that more border fencing has been built, more Border Patrol agents are deployed, mandatory employer electronic verification of immigration status (E-Verify) has been implemented, and biometric entry/exit systems have been established at airports and seaports. CBO expects these policies to reduce up to half of the future flow of unauthorized immigrants into the U.S.[4]

- **Legal Status of Current Unauthorized Immigrants.** The most publicized element of the bill is the creation of a pathway to citizenship for unauthorized immigrants who already reside in the U.S. They must first apply for Registered Provisional Immigrant status—or "blue card" status in the case of agricultural workers—which will provide temporary legal status in the U.S. After a number of years, if certain criteria are met, they may apply for LPR status and eventually seek to become naturalized citizens. On the other hand, if they do not continue to qualify as provisional immigrants, they may revert to unauthorized status. Their opportunities to access federal health benefits will depend on their ability to acquire status. Three provisional immigrant pathways will be available:

    i) **Registered Provisional Immigrants (RPIs).** Unauthorized immigrants who have been in the U.S. since December 2011 (or December 2012 for spouses and dependents) and have not committed certain crimes are eligible for RPI status after paying penalties and processing fees. RPI status could be lost if they are unable to maintain work or educational standards; CBO anticipates that a substantial share will be unable to maintain RPI status. If the Department of Homeland Security certifies that border security standards (discussed above) are met, RPIs could apply for LPR status after 10 years. After three years in RPI status, they are eligible to apply for citizenship. CBO estimated that about 6.8 million unauthorized people would initially register for RPI status, but only 3.9 million would eventually attain LPR status.

    ii) **DREAMers.** Unauthorized persons who entered U.S. before age 16 may qualify for an expedited path to LPR status and citizenship. They also begin in RPI status but may apply for LPR status after five years if they have completed at least two years of a college education or four years of military service. CBO estimated that about 1.5 million would initially qualify for RPI status, although only 360,000 would eventually attain LPR or citizen status through the DREAM pathway. More may eventually gain residency or citizenship through the RPI pathway. These provisions could also apply to the youth who have been granted temporary legal status under the

[4] Letter from Douglas Elmendorf, CBO Director, to Senator Patrick Leahy, on the Senate-passed version of S. 744, July 2, 2013.

Deferred Action for Childhood Arrivals policy, established in 2012 by the Department of Homeland Security.

iii) **Blue Card Agricultural Workers.** Unauthorized immigrants who have been agricultural workers can apply for a "blue card" that will grant them legal status for eight years. If they have met certain criteria that include ongoing agricultural work, they may apply for LPR status five years after the law is enacted. CBO estimated 1.4 million individuals (workers and their dependents) would eventually qualify for LPR status through the blue card program.

Economic and Budgetary Impact

CBO and the Joint Committee on Taxation estimated that the version of S. 744 passed by the Senate would reduce the federal budget deficit by $135 billion from fiscal years 2014 to 2023[5] and $685 billion in the following ten year period. [6] At a macroeconomic level, the bill would increase the American labor force, enhance productivity and significantly increase the gross domestic product.[7] Other analyses indicate the bill would stabilize and prolong the Social Security Trust Fund[8] and similarly help the Medicare Trust Fund.[9]

A more recent analysis by Regional Economic Models, Inc. (REMI) indicates that creation of a legal pathway for the undocumented alone would boost the U.S. economy by $50 billion in 2018 and add employment for 600,000 more people. The work visa expansions would provide even larger additional economic and employment gains. Immigration reform would benefit every state in the country. For example, in 2020 the legalization pathway alone would help the state of Texas experience $5 billion in additional economic growth and increase employment by 60,000, while Iowa -- a much smaller state -- would grow an additional $300 million and gain 4,000 jobs.[10]

The final version of the bill is similar to the version passed by the Judiciary Committee,[11] with the exception of increased border security requirements under an amendment from Senators Corker and Hoeven that increases border security costs and reduces the flow of unauthorized immigrants into the U.S. in future years. This amendment slightly reduced projected Medicaid, child nutrition and refundable tax credit costs. It also specified that Social Security payments made by or on behalf of RPI immigrants that occur during the time they were unauthorized will

[5] This assumes that discretionary funds are appropriated at levels anticipated in the bill.
[6] Elmendorf, D., *op cit.*
[7] Congressional Budget Office. "The Economic Impact of S. 744, Border Security, Economic Opportunity and Immigration Modernization Act", June 2013.
[8] Goss, S., Chief Actuary of the Social Security Administration. Letter to Senator Marco Rubio, March 8, 2013.
[9] Zallman, L and McCormick, D. Immigration Reform and the Financial Health of Medicare, Health Affairs blog, May 29, 2013. http://healthaffairs.org/blog/2013/05/29/immigration-reform-and-the-financial-health-of-medicare/
[10] Treyz, F, Stottlemyer, C., and Motamedi, R. "Key Components of Immigration Reform: An Analysis of the Economic Effects of Creating a Pathway to Legal Status, Expanding High-Skilled Visas and Reforming Lesser-Skilled Visas." Amherst, MA: REMI. July 17, 2013. This report and related fact sheets for every state are available at http://www.remi.com/immigration-report.
[11] The earlier estimate was summarized in Ku, L. "Comprehensive Immigration Reform and Health Care: CBO's Analysis of S. 744," George Washington University. Dept of Health Policy report, June 20, 2013. Available at http://sphhs.gwu.edu/departments/healthpolicy/publications/CBO%20analysis%20summary%20S%20744.pdf.

not count towards the number of quarters counted as working for Social Security or Medicare purposes in later life; only the earnings that occur when they have legal status would count.

Access to Health Coverage and Health Benefits

Research has consistently shown that immigrants, particularly the unauthorized, have low levels of health insurance coverage and limited access to health care services.[12, 13] Unauthorized immigrants are ineligible for Medicaid, Medicare and the new health benefits under the ACA and legal non-citizen immigrants have limited eligibility in certain cases. As a result, many low-income uninsured immigrants must seek free or low-cost care at safety net facilities such as federally qualified health centers or charity care hospitals, pay for care entirely out-of-pocket or go without care.[14] The Senate bill would lead to very modest changes in the insurance coverage and health access for immigrants.

Health Coverage During Provisional Status. Relatively soon after the bill is enacted, several million undocumented immigrants are expected to apply for RPI or for blue card status. Those whose applications are granted would have provisional legal status. Under the Affordable Care Act (ACA), immigrants who are considered "lawfully present" would be eligible for premium assistance tax credits and cost-sharing reductions for individual insurance purchased in the new health insurance marketplaces. Because of the high potential cost of these benefits and the political controversy associated with them, from the very start there was bipartisan agreement that RPI immigrants and blue card agricultural workers would be ineligible for ACA subsidies and cost-sharing reductions during the provisional status period.[15] While they are in provisional status, immigrants would not be subject to the individual responsibility requirements to have insurance coverage or pay a tax penalty. If and when they attain LPR status, they would be eligible for the ACA financial assistance, but that would be many years after initial registration.

One small gain is that RPI immigrants would be able to purchase insurance in the Health insurance marketplaces, although they would have to pay the full price without any government subsidies. This would let a small number purchase insurance, although most would be unable to afford it without subsidies. Research has shown that immigrants usually have much lower health care costs than citizens,[16,17] so the inclusion of more immigrants in the exchange pools could slightly reduce average per capita costs for all of those covered, including citizens.

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[12] Capps, R., Bachmeier, J, Fix, M. and Van Hook, J. "A Demographic, Socioeconomic and Health Care Profile of Unauthorized Immigrants in the United States," Washington, DC: Migration Policy Institute Issue Brief No. 5, May 2013, Available at http://www.migrationpolicy.org/pubs/CIRbrief-Profile-Unauthorized.pdf.

[13] Ku, L. and Jewers, M. Health Care for Immigrant Families: Current Policies and Issues. Washington, DC: Migration Policy Institute. June 13, 2013. Available at http://www.migrationpolicy.org/pubs/COI-HealthCare.pdf

[14] Unauthorized and other low-income immigrants may be eligible for Medicaid coverage of emergency care, provided that they still meet income and categorical eligibility criteria. Since hospitals are required to provide screening and stabilization to all who seek care at emergency rooms anyway under the Emergency Medical Treatment and Active Labor Act anyway, Medicaid coverage helps reimburse hospitals and physicians for the care they must provide anyway.

[15] S. 744 specifies that RPIs and blue card workers are not eligible for these ACA benefits. They would count as being lawfully present for other purposes, such as getting a driver's license or Social Security number, but not for the ACA benefits.

[16] Ku, L. "Health-Insurance Coverage and Medical Expenditures for Immigrants and Native-Born Citizens in the United States," *American Journal of Public Health*, 99(7): 1322-28, July 2009.

Even after they gain LPR status, immigrants will not generally eligible for full Medicaid benefits for five years after they become LPRs or when they become citizens, whichever comes first. RPIs are eligible to become LPRs after 10 years and then are eligible to become citizens three years after that. Thus, it will usually be at least 13 years before provisional status immigrants could qualify for Medicaid, even in states that adopt a Medicaid expansion under the ACA. An exception remains under the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, which gave states the option to provide Medicaid coverage to lawfully residing children and pregnant women.[18] Under the Senate bill, the road to federally-subsidized coverage for legalizing immigrants is very long.

Provisional status immigrants may be able to employer-sponsored insurance more quickly. Gaining legal status should empower many immigrants to get better jobs which, in turn, can increase levels of employer-sponsored health insurance for both the workers and their families. The Migration Policy Institute estimated that 29 percent of unauthorized adults had employer-sponsored or other private insurance in 2011.[19] Studies have consistently shown that the immigrants who gained legal status under the 1986 Immigration Reform and Control Act (IRCA) found better jobs and significantly increased their earnings.[20,21] One study found legalization not only improved earnings, but also increased other job-based benefits such as health insurance coverage.[22] Other research has demonstrated positive health effects for legalization following IRCA. For instance, a study found that legalization contributed to large reductions in mortality among the immigrants, apparently because they gained better access to health care.[23]

Because S. 744 prohibits work done while an immigrant was unauthorized from counting toward the accumulation of earnings that qualify for Social Security, fewer will eventually receive Social Security or Medicare benefits when they are elderly. Since most unauthorized workers are relatively young, the reduction should be modest; most provisional immigrants should still be able to accumulate ten years of countable Social Security earnings required for benefits. But some who legalize when they are older, in their fifties or older, might not be able to obtain enough years of countable earnings before they retire to qualify for Social Security or

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[17] Stimpson, J., Wilson, F., and Su, D. Unauthorized Immigrants Spend Less Than Other Immigrants and US Natives on Health Care. *Health Affairs*. 32(7):1313-8, July 2013.

[18] Sec. 4417 of S. 744 also makes technical changes, clarifying that persons with tourist or student visas (B or F visas) are not considered lawfully resident, so these types of visa holders are not eligible for either the CHIPRA option.

[19] Capps, R., et al., *op cit.*

[20] Hinjosa-Ojeda, R. "Raising the Floor for American Workers. Economic Benefits of Comprehensive Immigration Reform." Washington, DC: Center for American Progress and Immigration Policy Center. Jan. 2010.

[21] Kossoudji, S. and Cobb-Clark, D. "Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population." *Journal of Labor Economics*. 20(3): 598-628. Jul. 2002.

[22] Kandilov, A. and Kandilov, I. "The Effect of Legalization on Wages and Health Insurance: Evidence from the National Agricultural Workers Survey." *Applied Economic Perspectives and Policy*. 32(4): 604-23. 2010.

[23] Baker, S. Effects of Legal Status and Health Service Availability on Mortality. Stanford Institute for Economic Policy Research Discussion Paper 09-018. April 2010.

Medicare, even if they have become LPRs or citizens.[24] If they cannot get Medicare or Social Security, they will probably require more assistance from ACA subsidies for the health insurance marketplaces, Medicaid or the Supplemental Security Income program when they are elderly.

Health Coverage for New Legal Immigrants. The rules differ for new immigrants who enter the U.S. under the revamped legal immigration categories spelled out in the Senate bill.[25] Current ACA and Medicaid policies regarding lawfully admitted immigrants are not altered. Those who are lawfully residing, including LPRs and those with work visas, would be immediately eligible for ACA premium subsidies, cost-sharing reductions and can purchase insurance in the health insurance marketplaces.[26] Of course, many of the new immigrants will have employer-sponsored insurance or will have incomes too high for ACA subsidies. After five years in LPR status, new legal immigrants who are impoverished could be eligible for Medicaid (or could be eligible sooner under the CHIPRA option discussed above). The lawfully admitted immigrants will be subject to the ACA's individual responsibility requirement to have health insurance or pay a tax penalty, unless they are otherwise exempt from the penalty because they are too poor or their health insurance costs would be too high. As a result, it is reasonable to expect most of the new lawfully admitted immigrants will have private health insurance, either employer-sponsored or through the new marketplaces.

The increase in the new lawfully admitted immigration population will be gradual, but over the first ten years the size of the immigrant population should grow appreciably. The bill establishes a target of clearing the backlog of applicants within ten years. While there has been less public debate or controversy about the new legal immigrants, they will have an even larger impact on future health needs than the undocumented because millions more may join the population and they will create additional demand for health services. (In comparison, the unauthorized immigrants who can convert to RPI status are already here and, as discussed above, their health coverage will not change much for many years.) On the other hand, since some of the new legal immigrants will be health care professionals, like physicians and nurses, they will also help meet some the additional demand for care.

The Remaining Unauthorized. The combination of a pathway to citizenship and heightened border security will greatly shrink the number of unauthorized immigrants in the United States. But some unauthorized individuals will still remain, including those who do not initially qualify or apply for provisional status, those who are unable to retain provisional status (e.g., because they became unemployed) and those who enter illegally in future years. The remaining unauthorized will continue to be ineligible for publicly-subsidized health assistance, will not be able to participate in the health insurance marketplaces and will continue to be ineligible for other public assistance like the Supplemental Nutrition Assistance Program. The employment verification systems will make it much harder for them to find or keep jobs and,

[24] Elderly legal immigrants may be able to buy into Medicare Part A if they have not accumulated enough quarters of creditable earnings, but if they lack Social Security benefits, it will be harder for them to afford Medicare benefits (Parts A, B, C or D).

[25] While most of the new legal immigrants currently reside outside the U.S., some are already present in the U.S. under other immigration categories, such as work visas.

[26] The CBO estimates indicate that the great majority of federal health insurance-related costs under S. 744 will be for new lawfully admitted immigrants. See Ku, L. "Comprehensive Immigration Reform and Health Care: CBO's Analysis of S. 744," *op cit.*

thus, will reduce their private insurance coverage. Moreover, greater concerns about border security and legal sanctions like deportation may create higher barriers or fears regarding care from safety net health care providers. Health coverage and health care access, as well as economic security, could become more difficult for those who remain unauthorized.

Effects for the Health Care System and Access to Care

The lack of change in health insurance coverage for millions of unauthorized immigrants who enter the pathway to citizenship suggests that the disparities in health access for immigrants will persist. Even though they would gain provisional legal status, many of these immigrants are likely to continue to rely on care from safety net providers, such as community health centers, free clinics, and safety net hospitals, or go without care.

Thus, their access to care will, like other the native-born who remain uninsured, rely in part on the strength of safety net facilities to provide care for uninsured people who need care. The ACA provides extra funding for federally-qualified health centers, which provide comprehensive primary care services, but the funding boost only lasts through FY 2015. Access to safety net hospitals is also important because they provide a wide range of care, including specialty care, emergency care, and inpatient care. Contrary to stereotypes, research indicates that immigrants use emergency departments less than the native-born population.[27] Many safety net hospitals are concerned about potential problems if the level of Medicaid DSH funding they receive declines, as is scheduled under the ACA. There will continue to be a need for a strong network of safety net providers who can provide care for uninsured people, including both the native-born and immigrants. (It is useful to remember that, even after full implementation of the ACA, most uninsured Americans will continue to be native-born or naturalized citizens and only a small fraction will be uninsured non-citizen immigrants.[28])

Enhanced border security efforts are expected to substantially reduce the net inflow of unauthorized immigrants into the U.S. But some unauthorized immigrants will continue to be present. The border security build-up will likely drive them further underground, making it harder to find and retain work, reducing their incomes. They could become even more concerned about apprehension and deportation. A potential side effect may be that those who remain unauthorized will become more wary of using even safety net health care facilities and less able to pay for care out-of-pocket. Thus, those who remain undocumented might experience even more serious problems accessing health care services.

The Senate bill will also affect the health workforce. Expanding visas for immigrant physicians and nurses to work in medically underserved areas (as well as other immigrant health professionals), could help reduce primary care workforce shortages and increase the pool of clinicians who can care for patients in health centers or safety net facilities.[29] Even lower skilled

[27] Ku, L. and Jewers, M. *op cit.*

[28] Buettgens, M. and Hall, M. "Who Will Who Will Be Uninsured After Health Insurance Reform?" Washington, DC: The Urban Institute. March 2011.

[29] Daly, R. and Zigmond, J. "Boost to Healthcare Workforce Could Come From Immigration Bill." *Modern Healthcare*. April 19, 2013.

immigrants can play an important health care role as medical aides or long-term care staff to help care for an aging population.

One of the broadest impacts of the bill is that it will gradually increase the overall size of the immigrant population in the U.S. Many of the new immigrants will have limited English skills. Language barriers can impede health care when patients and physicians (or other clinicians) do not speak the same language. It will be important to upgrade the availability of language assistance for immigrants with limited English proficiency. Federal policy that health care providers must offer free language assistance to those with limited English proficiency has existed since 2000,[30] but language barriers nonetheless persist.[31] The health delivery system will need to change to correspond to the new profile of America's residents.

Conclusion

The architecture of the Senate immigration bill was based on achieving a balance between three major policy goals: (1) expanding legal immigration to meet America's future economic and labor needs, (2) creating a pathway to citizenship to bring unauthorized immigrants out of the shadows, and (3) toughening border security to limit future unauthorized immigration. Improving health coverage or access for immigrants, particularly the unauthorized, was not one of the top priority issues and major initiatives were ruled out from the beginning as being too costly and too politically controversial.

The Senate immigration bill does much to advance the civil rights and responsibilities of immigrants and should gradually improve their economic well-being as well as strengthen the overall national economy, but changes in health access will be marginal. Gradual increases in private insurance coverage may occur for new lawful or provisional immigrants. But eligibility to publicly-subsidized coverage will be prohibited for more than a decade for most legalizing immigrants, and impediments to Medicaid eligibility would continue even for those with lawful permanent residency. A strong safety net system will continue to be needed to meet the needs of those who remain uninsured, including immigrants and citizens alike.

The final story on immigration reform legislation is still unwritten. Although the Senate passed a bipartisan comprehensive immigration reform bill with a strong vote of support, the House of Representatives has resisted the Senate bill and it is not yet clear what direction the House will take in the coming months. Before the end of the year, more should be known about whether we will have comprehensive immigration reform or under what terms.

[30] Executive Order 13166. "Improving Access to Services for Persons with Limited English Proficiency." Aug. 11, 2000.

[31] Hadler, M., Chen, X. Gonzalez, E. and Roby, D. "Limited English Proficient HMO Enrollees Remain Vulnerable to Communication Barriers Despite Language Assistance Regulations." Los Angeles: UCLA Center for Health Policy Research Policy Brief, Feb. 2013.