

Budget Bill May Boost Unauthorized Immigrants' Health Care

By **Mike LaSusa**

Law360 (November 19, 2021, 8:33 PM EST) -- Millions of people living in the U.S. illegally face barriers to accessing affordable health care due to their immigration status, but the immigration provisions of a budget bill making its way through Congress could remove some of those obstacles.

The Build Back Better Act, which **passed** the U.S. House of Representatives Friday, would offer certain unauthorized immigrants a shot at temporary parole granted by the U.S. Department of Homeland Security. Immigrants who are granted parole are eligible to shop for health insurance subsidized by the federal government under the Affordable Care Act.

"It would still leave out a lot of people, because we know this proposal only covers 7 million of the 11 million undocumented people in the country, but it would be a great start," said Juliana Macedo do Nascimento, a senior advocacy manager for United We Dream, the nation's largest network of immigrant youth.

Unauthorized immigrants generally aren't eligible for federal health care benefits under the ACA, Medicare, nonemergency Medicaid or the Children's Health Insurance Program. A welfare reform law passed in 1996 restricted noncitizens' access to federally funded health care, and the ACA, enacted in 2010, excluded unauthorized immigrants.

Some immigrants are eligible for the ACA and other federal health care programs if they've received a deferral of deportation. But the hundreds of thousands of beneficiaries of the Deferred Action for Childhood Arrivals, or DACA, program were **specifically excluded** from the ACA by former President Barack Obama.

"It was a political calculation by the administration that didn't want to go back on its promise that undocumented immigrants wouldn't get health care," said Jose Magaña-Salgado, the founder of the immigration consulting firm Masa Group.

In addition to facing obstacles to accessing federally subsidized health care, unauthorized immigrants may also have trouble finding insurance in the private market.

Many work under the table or as independent contractors, meaning that unlike most U.S. citizens, they can't get health insurance through their jobs. There may also be language and cultural barriers, and concerns about confidentiality that hinder access.

"They're worried about what could happen with that information. Could it be used for immigration enforcement purposes?" said Medha Makhoul, the director of the Medical-Legal Partnership Clinic at Penn State University's Dickinson College of Law.

Moreover, private health insurance can be expensive. Magaña-Salgado, who is a DACA beneficiary and therefore isn't eligible for the ACA, said he pays about \$300 a month. His mother, who is also an unauthorized immigrant, pays around \$1,000 per month, he said.

"I'm happy to have it, but I'd have something better and cheaper if I was eligible for the ACA," he said.

The obstacles to health care access for people living in the country without legal permission have

ripple effects.

Uninsured immigrants add to the problem of uncompensated care costs for hospitals, as federal law requires hospitals to provide emergency care to anyone, including unauthorized immigrants, regardless of the ability to pay.

Additionally, excluding millions of people, including the approximately 700,000 DACA beneficiaries, from the subsidized insurance provided under the ACA undermines the intent of the health care law, Magaña-Salgado said.

"The whole point of the ACA was to make sure that those healthy, young individuals would begin to subsidize the sicker people who cannot be denied based on preexisting conditions," he said.

While immigrant rights advocates are hopeful about passage of the budget bill, which would offer parole to millions of unauthorized immigrants, they've also previously pushed legislation that tackles the issue of health care access head-on.

The Health Equity and Access under the Law for Immigrant Women and Families Act, dubbed the HEAL Act, was first floated in 2014 and **was reintroduced** earlier this year.

It would allow "lawfully present" immigrants to enroll immediately in Medicaid or the Children's Health Insurance Program, scrapping the current rule requiring individuals to wait five years after receiving "qualified" immigration status before enrolling. It would also allow DACA beneficiaries access to subsidized insurance under the ACA.

The HEAL Act would be a good step to reduce confusion around who's eligible for which programs, Makhoulf said, noting that her clinic frequently communicates with officials responsible for administering health care programs who get tripped up by complex eligibility requirements.

"There's a lot of confusion in the administration of the law and also in the interpretation by members of the community, so reducing the complexity of the law would be a huge step forward," Makhoulf said.

Both immigration and health care are highly controversial topics, and legislation aiming to change the law in those areas typically doesn't move quickly in Congress. But immigrant advocates say President Joe Biden could take some steps on his own to expand unauthorized immigrants' access to health care.

Biden could direct the U.S. Department of Health and Human Services to put forth a rule that makes DACA recipients eligible under the ACA, or he could grant unauthorized immigrant communities other forms of protection, like temporary protected status, that would make them eligible for federal health care benefits.

"We don't need Congress to act for the administration to do all these things," Magaña-Salgado said. "One of the big fights right now is getting the administration to use its executive authority more boldly."

At the same time, some immigrant advocates view executive action and legislation like the budget bill as stopgap measures that would fail to address broader problems associated with a lack of legal status.

"The real solution is to provide a pathway to citizenship for people so we don't live lives in exclusion of everything that's offered by the government," Macedo do Nascimento said.

--Additional reporting by Hannah Albarazi. Editing by Robert Rudinger.