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## **Federal Funding for Unauthorized Aliens' Emergency Medical Expenses**

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# Federal Funding for Unauthorized Aliens' Emergency Medical Expenses

## Summary

There has been interest in the amount of money spent, as well as the amount of federal funds available to provide emergency medical care to unauthorized (illegal) aliens in the United States. It is extremely difficult to ascertain the amount of money spent for emergency medical care for unauthorized aliens since most hospitals do not ask patients their immigration status. Additionally, prior to the passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173) on December 8, 2003 there were no federal funds available for the specific purpose of reimbursing hospitals or states for emergency medical care provided to unauthorized aliens (undocumented immigrants).

Although the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) barred unauthorized aliens from receiving most Medicaid benefits, they are eligible for emergency Medicaid services. Unauthorized aliens are also eligible for emergency medical services provided by the states.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173) signed into law on December 8, 2003 includes a provision, §1011, to provide reimbursement to states for emergency care afforded to unauthorized aliens. For each fiscal year FY2005-FY2008 the provision appropriates \$250 million to states to be distributed based on estimates of the number of undocumented aliens residing in the state and on the number of apprehensions for the six states with the highest number of apprehensions. This program is similar to one created in the Balanced Budget Act of 1997 (BBA97) which had expired.

In addition, the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorized reimbursement of public hospitals and certain nonprofit hospitals for emergency medical assistance to unauthorized aliens, and reimbursement of state and local governments for emergency ambulance services provided aliens injured while crossing U.S. borders while in custody. Neither program has been funded. However, in FY1998 Congress appropriated money for a pilot program in Nogales, Arizona to attempt to reimburse state and local governments for ambulance services. INS concluded from the pilot program that reimbursement for ambulance services was not a feasible program. H.R. 1515 would provide reimbursement for the costs of emergency medical care and ambulance services furnished to aliens paroled for medical reasons.

The provisions in PRWORA which limited immigrant access to public benefits were the result of the desire that immigrants be self-sufficient and not rely on public resources to meet their needs. Additionally, proponents did not want the availability of public benefits to constitute an incentive for immigrants to migrate to the United States. Nonetheless, many contend that since the federal government is wholly responsible for establishing immigration policy, and for policing the borders to keep out unauthorized aliens the burden to pay for immigration related costs should be born by the federal government not the states. This report will be updated as needed.

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# Federal Funding for Unauthorized Aliens' Emergency Medical Expenses

The growth of the unauthorized (also called illegal or undocumented) alien population during the 1990s coupled with changes in the distribution of the population within the United States has increased interest in funding of emergency medical treatment for this population. Although unauthorized aliens are ineligible for most federal means-tested programs, all aliens regardless of status are eligible for emergency Medicaid. Statute requires that all Medicare-participating hospitals with emergency departments treat all medically unstable patients and women in active labor.<sup>1</sup>

Between FY2001 and FY2004, there were no other federal funds available for the specific purpose of reimbursing hospitals or states for emergency medical care provided to unauthorized aliens. On December 8, 2003 the President signed the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (P.L. 108-173) which contains a provision to provide reimbursement to states for emergency care afforded to unauthorized aliens. Additionally it is extremely difficult to ascertain the amount of money spent for emergency medical care for unauthorized aliens since most hospitals do not ask patients their immigration status.<sup>2</sup>

## Overview of Noncitizen Eligibility for Medicaid Benefits

Currently, noncitizens' eligibility for federal Medicaid benefits largely depends on their immigration status and whether they arrived (or were on a program's rolls) before August 22, 1996, the enactment date of Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).<sup>3</sup> Legal permanent residents<sup>4</sup> (LPRs) entering after August 22, 1996, are barred from Medicaid for five years, after which coverage becomes a state option. States have the option to use state funds to provide medical coverage for LPRs within five years of their arrival in the United States.

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<sup>1</sup> 42 U.S.C. 1395dd. This provision was added by the Emergency Medical Treatment and Active Labor Act (EMTALA).

<sup>2</sup> Parts of this report were adapted from CRS Congressional Distribution Memorandum, *Federal Funding of Illegal Aliens' Emergency Medical Expenses*, by Joyce Vialet, Jan. 21, 1999.

<sup>3</sup> P.L. 104-193; also called the Welfare Reform Act.

<sup>4</sup> Legal permanent residents are sometimes referred to as green card holders, and are synonymous with immigrants.

Refugees and asylees<sup>5</sup> are eligible for Medicaid for seven years after arrival. After the seven years, they may be eligible for Medicaid at state option. LPRs with a substantial (10-year) work history or a military connection are eligible for Medicaid. LPRs receiving Supplemental Security Income (SSI) on or after August 22, 1996 are eligible for Medicaid since Medicaid coverage is required for all SSI recipients. Finally, in the case of LPRs sponsored for admission after 1997, the income and resources of their sponsor are “deemed” available to them when judging their eligibility.<sup>6</sup> Nonetheless, all aliens regardless of status who otherwise meet the eligibility requirements for Medicaid are eligible for emergency Medicaid.

## Emergency Medicaid

The Medicaid program is authorized by Title XIX of the Social Security Act, as amended. It is a federal/state matching program of medical assistance for low-income persons who are aged, blind, disabled or members of families with dependent children. Generally, as noted above, noncitizens face additional eligibility restrictions for Medicaid. In general, unauthorized aliens are ineligible for Medicaid with the exception of emergency Medicaid. Emergency Medicaid covers unauthorized aliens, nonimmigrants, and LPRs within the first five years of arrival for emergency conditions if they meet the other eligibility requirements of the program.

Unauthorized aliens who are otherwise eligible for Medicaid except for their illegal status may receive “medical assistance under Title XIX of the Social Security Act ... for care and emergency services that are necessary for the treatment of an emergency medical condition (as defined in Section 1903(v)(3) of such Act) of the alien involved and are not related to an organ transplant procedure.”<sup>7</sup> This language from the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 restates and carries forward a provision which had been enacted 10 years previously as an amendment to the Medicaid provisions of the Social Security Act.<sup>8</sup>

Section 1903(v)(3) defines “emergency medical condition” as:

a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result

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<sup>5</sup> Refugee and asylee status require a finding of persecution or a well-founded fear of persecution in situations of “special humanitarian concern” to the United States. Refugees are admitted from abroad. Asylum is granted on a case-by-case basis to aliens physically present in the United States who meet the statutory definition of “refugee.”

<sup>6</sup> For more information on specific eligibility criteria see CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*, by Ruth Ellen Wasem and Joe Richardson.

<sup>7</sup> The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; P.L. 104-193, §401(a)(1)(A).

<sup>8</sup> The provision was added by Section 9406 of the Omnibus Budget Reconciliation Act of 1986, P.L. 99-509.

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.

Like other Medicaid recipients, unauthorized aliens must demonstrate that they are state residents, and many are not (or are unable or unwilling to prove that they are). This is particularly true of unauthorized aliens requiring emergency hospital care during attempted illegal entries. To be eligible for emergency Medicaid, unauthorized aliens must also be poor and either aged, disabled, or members of a family with children. Working age single males, for example, are generally not eligible for any form of Medicaid regardless of their financial status or residence.

## **Funding for Emergency Services Prior to P.L. 108-173**

### **Balanced Budget Act (BBA) of 1997**

The reimbursement provision in P.L. 108-173 is similar to a provision in the Balanced Budget Act (BBA) of 1997 which appropriated \$25 million each year, FY1998 through FY2001, for additional funding for state emergency health services for unauthorized aliens.<sup>9</sup> The BBA specified that the funds should be divided among the 12 states with the highest number of unauthorized aliens, based on estimates provided by the former Immigration and Naturalization Service (INS). The money was allocated to each state based on the number of unauthorized aliens in the state as a percent of the unauthorized population of all 12 states.

According to a notice published in the *Federal Register* by HHS’s Centers for Medicare and Medicaid Services (CMS),<sup>10</sup> the funds were available to eligible states for both “emergency medical services furnished to unauthorized aliens who, except for their alien status, would otherwise qualify for Medicaid and for amounts paid for services furnished to aliens who do not meet the Medicaid eligibility requirements.” The emergency medical services covered were those defined by the Social Security Act, §1903(v)(3), quoted above. The notice included a table designating the 12 eligible states and their designated yearly allotments based on INS’s estimates of their unauthorized alien population (**Table 1**).<sup>11</sup>

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<sup>9</sup> Act of Aug. 5, 1998, P.L. 105-33, §4723; 111 Stat. 515.

<sup>10</sup> Formerly, the Health Care Financing Administration (HCFA). To avoid confusion this report always refers to CMS, regardless of whether the events occurred prior to the name change.

<sup>11</sup> According to available statistics from 1996, the top 12 states encompassed 88% of the unauthorized immigrant population.

**Table 1. Allotments for State Emergency Health Services  
Furnished to Unauthorized Aliens under Section 4723 of the  
Balanced Budget Act of 1997; Each Year FY1998-FY2001**

Ranking	State	Unauthorized population (estimated)	Percent of Unauthorized population of top 12 states	Allotment
1	California	2,000,000	45.34	\$11,335,298
2	Texas	700,000	15.87	\$3,967,354
3	New York	540,000	12.24	\$3,060,530
4	Florida	350,000	7.93	\$1,983,677
5	Illinois	290,000	6.57	\$1,643,618
6	New Jersey	135,000	3.06	\$765,133
7	Arizona	115,000	2.61	\$651,780
8	Massachusetts	85,000	1.93	\$481,750
9	Virginia	55,000	1.25	\$311,721
10	Washington	52,000	1.18	\$294,718
11	Colorado	45,000	1.02	\$255,044
12	Maryland	44,000	1.00	\$249,377
<b>Total</b>	—	<b>4,411,000</b>	<b>100.00</b>	<b>\$25,000,000</b>

**Source:** INS Statistics Branch, Demographic Statistics Section Estimated Resident Unauthorized Population by State, Oct. 1996. HCFA-200-N, *Federal Register*, vol. 63, Mar. 3, 1998, p. 10402.

**Table 1** shows that 45% of the money appropriated in the Balanced Budget Act of 1997 for emergency services for unauthorized aliens was allocated to California which had 45% of the total unauthorized population of the 12 states. In addition, 89% of the total funding was allocated to the five states with the highest number of unauthorized aliens.

## Estimated Total Cost

The total cost incurred by the states for unauthorized aliens is often an issue since many contend that immigration, especially border control, is solely a federal issue. The federal government is wholly responsible for establishing immigration policy, and for policing the borders to keep out unauthorized aliens. Thus, some argue that the burden to pay for immigration related cost should be born by the federal government not the states. However, others note that the provisions in PRWORA which limited immigrant access to public benefits were the result of a

desire that immigrants be self-sufficient and not rely on public resources to meet their needs. Additionally, proponents of the provisions in PRWORA did not want the availability of public benefits to constitute an incentive for immigrants to migrate to the United States.

CMS collected data from the 12 states with the highest number of unauthorized aliens on their total expenditures on emergency medical expenses for unauthorized aliens. **Table 2** shows total emergency health service costs for unauthorized aliens, including both emergency Medicaid and expenditures on emergency services for individuals who did not meet the Medicaid eligibility requirements. It is important to note that these costs are reported by the states, and different states use different accounting procedures. It is unlikely, for example, that New Jersey and Washington spent no money on emergency services for unauthorized aliens.

**Table 2. Cost and Federal Funding of Emergency Health Services for Unauthorized Aliens, FY2001  
(for 12 States with Largest Unauthorized Alien Population)**

Rank	State	Total	Federal share	State share	Percent paid by states
1	California	\$648,452,648	\$343,667,280	\$304,785,368	47.0%
2	Texas	\$173,072,108	\$108,797,125	\$64,274,983	37.1%
3	New York	\$18,363,180	\$18,363,180	\$0	0.0%
4	Florida	\$87,945,161	\$50,655,070	\$37,290,091	42.4%
5	Illinois	\$72,525,385	\$37,906,311	\$34,619,074	47.7%
6	New Jersey	\$0	\$0	\$0	0.0%
7	Arizona	\$80,734,455	\$53,750,974	\$26,983,481	33.4%
8	Massachusetts	\$963,500	\$963,500	\$0	0.0%
9	Virginia	\$2,290,220	\$2,290,220	\$0	0.0%
10	Washington	\$0	\$0	\$0	0.0%
11	Colorado	\$2,052,534	\$2,052,534	\$0	0.0%
12	Maryland	\$13,487,388	\$6,763,581	\$6,723,807	49.9%

**Source:** Congressional Research Service (CRS) presentation of unpublished CMS data, May 14, 2001. The data were reported by the states to CMS.

The data shown in **Table 2** are the closest approximation available of the cost of emergency services for unauthorized aliens. With the caveats that the data reflect emergency services as defined by Medicaid and that differences in the percent paid by states may be the result of state differences in accounting procedures, the data show for those reporting both federal and state shares that the federal government pays more than half the cost of emergency services for unauthorized aliens.



California, the most heavily impacted state, reported that 53% of its emergency costs for unauthorized aliens was reimbursed by the federal government. Maryland reported that 50.1% of its emergency cost was reimbursed, which is the smallest proportion of the states that reported both federal and state shares.<sup>12</sup>

**GAO Study.** In May 2004, the Government Accountability Office (formerly General Accounting Office) (GAO) released a study entitled *Undocumented Aliens: Questions Persist about Their Impact on Hospitals' Uncompensated Care Costs*.<sup>13</sup> The study concluded that since hospitals do not generally collect information on patients' immigration status, an accurate assessment of the impact of unauthorized aliens on hospitals' uncompensated care costs<sup>14</sup> "remains elusive." GAO surveyed 503 hospitals, but as a result of the low response rate to the survey, was unable to determine the cost of uncompensated care provided to unauthorized aliens. In addition, over 95% of the hospitals which responded to the survey used the lack of a Social Security number as the only method to identify unauthorized aliens. It is unclear whether this method over or under estimates the amount of care provided to unauthorized aliens.

The GAO study also reviewed the reported Medicaid spending for the 10 states with the highest estimated unauthorized populations: Arizona, California, Florida, Georgia, Illinois, New Jersey, New Mexico, New York, North Carolina, and Texas. Although states are not required to report to CMS the amount of Medicaid expenditures for unauthorized aliens, several states provided data or suggested to GAO that most of their emergency Medicaid expenditures were for services provided to unauthorized aliens. In addition, five of the states reported that more than half of emergency Medicaid expenditures were for labor and delivery services.

GAO found that emergency Medicaid expenditures for the 10 states have increased over the past several years but remain a small proportion, less than three percent, of each state's total Medicaid expenditures. Nonetheless, the study found that, between FY2000 and FY2002, in nine of the 10 states reviewed the state's emergency Medicaid expenditures grew faster than the total Medicaid expenditures.

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<sup>12</sup> A report released by the United States/Mexico Border Counties Coalition in September 2002, estimated that the uncompensated costs from treating unauthorized aliens born by border communities with hospitals in 2000 was \$189.6 million. However the report notes that the actual costs may be as low as \$6.5 million or as high as \$372.6 million. United States/Mexico Border Counties Coalition, *Medical Emergency: Costs of Uncompensated Care in Southwest Border Communities*, Sept. 2002. Available at [<http://www.bordercounties.org>].

<sup>13</sup> Government Accountability Office, *Undocumented Aliens: Questions Persist about Their Impact on Hospitals' Uncompensated Care Costs*, GAO-04-472 (May 2004).

<sup>14</sup> Uncompensated care is care for which the hospital does not receive payment from either the patient or an insurer including Medicaid.

## Reimbursement of Certain Emergency Medical Expenses

In addition, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 authorized reimbursement of public hospitals and certain nonprofit hospitals for emergency medical assistance to unauthorized aliens.<sup>15</sup> The provision, which is to be administered by the Attorney General in consultation with the Secretary of HHS, has not been implemented to date. The funding is subject to a number of restrictions, as follows:

- Funding is “subject to such amounts as are provided in advance in appropriation Acts.” To date no funds have been appropriated.
- Funds are available for reimbursement “only to the extent that such costs are not otherwise reimbursed through any other Federal program.”
- No payment can be made “with respect to services furnished to an individual unless the immigration status of the individual has been verified through appropriate procedures” established by the Secretary of HHS and the Attorney General.

Obviously, the lack of an appropriation has been the primary impediment to the implementation of this provision. However, according to HHS and former INS officials, the other restrictions would also pose difficulties. First, it is difficult to determine that no other federal funding exists, given the availability of other non-specific funding sources (e.g., Medicaid DSH payments, discussed below). Second and probably more seriously, there is no procedure for determining the immigration status of hospital patients.<sup>16</sup>

## Reimbursement for Emergency Ambulance Services

IIRIRA also authorized reimbursement of state and local governments for emergency ambulance services provided aliens injured while crossing U.S. borders while in state custody.<sup>17</sup> In 1997, the Conference Committee on the FY1998 Commerce, Justice, and State (CJS) Appropriations Act adopted the recommendation of the House Appropriations Committee for “a pilot project for reimbursement for emergency ambulance services in Nogales, Arizona.”<sup>18</sup>

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<sup>15</sup> Act of Sept. 30, 1996, P.L. 104-208, Division C, §562.

<sup>16</sup> Hospitals do not tend to ask immigration status.

<sup>17</sup> Act of Sept. 30, 1996, P.L. 104-208, Division C, §563.

<sup>18</sup> Conference Report on H.R. 2267, H.Rept. 105-405, 105<sup>th</sup> Cong., 1<sup>st</sup> sess., Nov. 13, 1997, p. 105. (The FY1998 CJS bill was enacted as P.L. 105-119.)

The Nogales pilot project began at the end of FY1998. A subsequent report to Congress on the feasibility of expanding the Nogales project,<sup>19</sup> did not recommend expanding or continuing the project since the Border Patrol had to redirect enforcement resources to administer the reimbursement of ambulance costs. The report suggests that if Congress wants to create a program for reimbursement that it “should develop a coordinated policy that includes the Department of Health and Human Services (HHS), State and local health services, and other authorities. We do not believe that under current law the HHS has the authority to reimburse States for this activity.”<sup>20</sup>

## Disproportionate Share Hospital (DSH) Payments

Although there is no Medicaid funding for the specific purpose of reimbursing hospitals for the cost of unauthorized aliens, the Medicaid statute requires that states make disproportionate share (DSH) adjustments to the payment rates of certain hospitals treating large numbers of low-income and Medicaid patients, including unauthorized aliens. These payments implicitly recognize the disadvantaged situation of hospitals treating large numbers of Medicaid patients and other patients with no insurance. States must define hospitals in their state Medicaid plans qualifying as DSH hospitals and the DSH payment formulas. However, the identification of unauthorized aliens among the Medicaid patients and uninsured as a component of either the DSH designation or payment formula is not required, and thus, there are no data on the amount of DSH payments used for unauthorized aliens.<sup>21</sup>

## Legislation in the 107<sup>th</sup> Congress

There were several bills introduced in the 107<sup>th</sup> Congress which would have created a grant program to provide additional funding to states for emergency health services for unauthorized aliens. These programs would have been similar to the one created in BBA97. Although none of the bills passed, the bills are similar to legislation that has been introduced in the 108<sup>th</sup> Congress.

- S. 169 introduced by Senator Kyl on January 24, 2001, would have authorized \$2 billion in each fiscal year FY2002-FY2005 to be divided among the 17 states with the highest number of unauthorized aliens.

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<sup>19</sup> H.Rept. 106-283, 106<sup>th</sup> Congress, 1<sup>st</sup> sess., July 30, 1999.

<sup>20</sup> Immigration and Naturalization Service Report to the Congress, *The Feasibility of Expanding the Local Ambulance Service Pilot Program and Implementation of Section 563 of the Illegal Immigration Reform and Immigrant Responsibility Act*.

<sup>21</sup> CRS Report 97-483, *Medicaid Disproportionate Share Payments*, by Jean Hearne, pp. 8-9. This discussion was adapted from this report. The total FY1998 allotment for DSH payments was \$10 billion; the highest state allotment was \$1.5 billion for New York, followed by \$1.1 billion for California and just under \$1 billion for Texas.

- S. 2449 introduced by Senator Bingaman on May 2, 2002, would have appropriated \$50 million in each fiscal year FY2003-FY2007 to be divided among the 15 states with the highest number of unauthorized aliens. The bill would have also amended PRWORA to allow states to use state funds to provide health benefits to all noncitizens regardless of immigration status.
- On June 24, 2002, during the Senate Finance Committee mark-up of the Work, Opportunity, and Responsibility for Kids (WORK) Act of 2002 (substitute H.R. 4737), Senator Kyl introduced an amendment that would have authorized additional funding to certain states to cover the emergency medical costs of treating unauthorized aliens. The measure was defeated.

## Legislation in the 108<sup>th</sup> Congress

### Enacted Legislation

**P.L. 108-173.** Section 1011 of The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (P.L. 108-173) signed into law on December 8, 2003, provides reimbursement states for emergency care afforded to unauthorized aliens.<sup>22</sup> For each fiscal year FY2005-FY2008 the provision appropriates \$250 million of which:

- \$167 million is allotted to states based on the percentage of unauthorized aliens residing in the state compared to the total number of unauthorized aliens in the United States;<sup>23</sup> and
- \$83 million is allocated to the six states with the highest percentage of unauthorized alien apprehensions for the fiscal year,<sup>24</sup> based on

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<sup>22</sup> Section 1011. The funds could also be used to provide reimbursement for medical services for aliens who have been paroled into the United States for the sole purpose of receiving emergency health care services, and for Mexican citizens admitted for no more than 72 hours with Border Crossing Cards or “laser-visas.” “Parole” is a term in immigration law which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

<sup>23</sup> The formula is based on the estimated number of unauthorized aliens residing in all states as determined by the Statistics Division of the former Immigration and Naturalization Service (INS). See **Appendix A** for the estimates.

<sup>24</sup> For FY2002, the six states with the highest number of apprehensions were Arizona (375,516), Texas (288,558), California (214,111), New Mexico (55,908), Florida (5,143), and Louisiana (2,501). The state with the seventh highest number of apprehensions in FY2002 was Washington (2,435). The number of apprehensions are based on unpublished data from the former INS.

the percentage of apprehensions in the state compared to the number of apprehensions for all such states.<sup>25</sup>

P.L. 108-173 directs the Secretary of Health and Human Services (HHS) to pay local governments, hospitals, or other providers located in the state (including providers of services rendered through an Indian Health Service facility) for the costs of furnishing emergency health care services to unauthorized aliens during that fiscal year.<sup>26</sup> It also requires the Secretary of HHS to establish, no later than September 1, 2004, a process, including measures to protect against fraud and abuse, under which entities would apply for reimbursement for claims associated with emergency health care services provided to unauthorized aliens. Advanced payments will be made quarterly based on the applicants' projected expenditures. (See **Appendix A** for the preliminary allocations under this provision.)

***CMS Policy Paper on Implementing Section 1011 of P.L. 108-173.***

On July 21, 2004, CMS released a policy paper outlining the proposed implementation approach and general framework for submitting claims under Section 1011.<sup>27</sup> The paper states that since the legal obligation to provide emergency treatment only applies to those hospitals participating in the Medicare program, that only Medicare participating hospitals can apply to receive funds under Section 1011. According to the CMS policy paper, the grant program would also cover ambulance transportation of an alien to a hospital to be treated for an emergency medical condition.<sup>28</sup> CMS also requires that providers seek funds from all available funding sources<sup>29</sup> before requesting payment under Section 1011. CMS proposes a single-payment pool for each state from which each provider in the state would receive payment on a quarterly or annual basis.

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<sup>25</sup> The number of unauthorized alien apprehensions would be based on the four most recent quarterly apprehension rates as reported by the Department of Homeland Security (DHS). The bill states that the rates are to be reported by INS; however, the Homeland Security Act of 2000 (P.L. 107-296) transfers most functions of Department of Justice's Immigration and Naturalization Service (INS) to the DHS. The transfer of these functions occurred on Mar. 1, 2003, at which time INS as an agency ceased to exist.

<sup>26</sup> The funds could also be used to provide reimbursement for medical services for aliens who have been paroled into the United States for the sole purpose of receiving emergency health care services. "Parole" is a term in immigration law which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

<sup>27</sup> Department of Health and Human Services, Center for Medicare and Medicaid Studies, *Proposed Implementation Approach: Federal Funding of Emergency Health Services Furnished to Undocumented Aliens: Fiscal Years 2005 Through 2008*, July 21, 2004. The Secretary of HHS does not have explicit rule making authority under the provision.

<sup>28</sup> The program would also cover ambulance costs for a transfer of a medically unstable alien from one hospital to another for care.

<sup>29</sup> Other funding sources include Federal sources (e.g., Medicare), state, and local governmental sources (e.g., Medicaid), third-party-payers (e.g., private health insurers), and direct payment from the patient.

The CMS policy paper states that for payment under Section 1011, hospitals must collect and maintain information regarding the immigration status of the patients. CMS proposes that providers request information on a patient's citizenship or immigration status prior to discharge, but after the patient is identified as self-pay and not Medicaid eligible. Individual level immigration information would be maintained at the hospital and not routinely transmitted to CMS, as CMS would designate a contractor to review and determine the number of claims and the percentage of patients qualifying for reimbursement. CMS contends that this approach would minimally increase paperwork for hospitals, as much of the information can be gathered from existing Medicaid enrollment forms. Nothing in the paper suggests that the information should be transmitted to the Department of Homeland Security (DHS); however, some are concerned that DHS could use hospital records to locate unauthorized aliens, making aliens less likely to seek medical treatment. Reportedly, after receiving comments on the proposed implementation plan (i.e., the policy paper), CMS has revised the policy, and will not require providers to ask about a patient's immigration status to receive reimbursement under §1011.<sup>30</sup>

**H.Rept. 108-10.** In addition, the conference report for the Consolidated Appropriations Resolution, 2003 (H.Rept. 108-10)<sup>31</sup> instructs the former INS to provide a one-time payment to hospitals in Cochise, Pima, Santa Cruz, and Yuma Counties, Arizona for unreimbursed costs associated with treating unauthorized immigrants. The conferees directed the payment because they "believe hospitals in Cochise, Pima, Santa Cruz and Yuma Counties, Arizona are bearing an unfair burden as a result of illegal immigrants injured as a result of interaction with the Border Patrol, ... [and that] this one-time funding infusion is appropriate until a nation-wide solution is developed in fiscal year 2003." The conferees also directed the former INS, in coordination with the Department of Health and Human Services, to provide a report by July 1, 2003 to the Committees on Appropriations with recommendations to address the issue of unreimbursed cost of treating unauthorized aliens.

## Other Legislation

**S. 412/H.R. 819.** The "Local Emergency Health Services Reimbursement Act of 2003" (S. 412) introduced by Senator Kyl on February 13, 2003, and its companion the companion bill (H.R. 819) introduced by Representative Kolbe on February 26, 2003, are similar to Section 1011 in P.L. 108-173.<sup>32</sup> S. 412/H.R. 819 would appropriate \$1.450 billion for each fiscal year FY2004 to FY2008 to reimburse states for emergency care to unauthorized aliens. Of the monies appropriated:

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<sup>30</sup> "CMS Won't Require Hospitals to Collect Citizenship Data to Qualify for Subsidies," *Health Care Policy*, vol. 12, no. 40 (Oct. 11, 2004), p.1377.

<sup>31</sup> P.L. 108-7 was signed into law on Feb. 20, 2003.

<sup>32</sup> The provision for reimbursement for medical care provided to unauthorized aliens in P.L. 108-173, was added in committee by Sen. Kyl.

- \$957,000,000 would be allotted to states based on the percentage of unauthorized aliens residing in the state compared to the total number of unauthorized aliens in the United States;
- \$493,000,000 would be allocated to the six states with the highest percentage of unauthorized alien apprehensions for the fiscal year, based on the percentage of apprehensions in the state compared to the number of apprehensions for all such states.

The bills specify that monies paid to the states from this program may only be used to make payments for costs incurred by the provision of emergency health care to unauthorized aliens, and require the reallocation of unused funds.

**H.R. 690.** H.R. 690 introduced by Representative Gutierrez on February 11, 2003 would extend medicaid coverage for organ transplants to aliens under the age of 18 who are residing<sup>33</sup> in the United States on the date that the bill is enacted or who develop the medical condition necessitating the transplant while residing in the United States.

**H.R. 1515.** Representative Flake introduced H.R. 1515 on March 31, 2003. H.R. 1515 would provide reimbursement for the unreimbursed costs of emergency medical care<sup>34</sup> to aliens paroled into the United States for medical reasons. The bill would direct the Secretary of the Department of Homeland Security to create a program to reimburse hospitals and other providers of emergency medical care (e.g., physicians and ambulance services) for care to aliens paroled into the country for medical reasons, and would authorized such sums as necessary for the program.

**H.R. 3722.** H.R. 3722 was brought to the floor under suspension of the rules on May 17, 2004. The vote to suspend the rules and pass H.R. 3722 occurred on May 18, 2004 at which time the motion was defeated 331 to 88. H.R. 3722 introduced by Representative Rohrabacher on January 21, 2004 would have amended §1011 of P.L. 108-173 to place certain conditions on the reimbursement to health care providers for emergency health services for unauthorized aliens. H.R. 3722 would have required as a condition of reimbursement that eligible providers obtain information on the alien's citizenship, immigration status, address in the United States, financial data which is required of non-indigent patients including health insurance status, and current employer in the United States (if applicable) as well as a biometric identifier. The bill would have also required that the health care provider submit the alien's information in an electronic format to the Secretary of Homeland Security. H.R. 3722 would have also made removable (deportable) aliens who do not provide payment for the provided health services, and do not give accurate information on the required questions or a biometric identifier.

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<sup>33</sup> The term "residing" is not defined in the INA, and, as a result, this bill would likely provide medicaid coverage to unauthorized aliens under the age of 18 who need an organ transplant.

<sup>34</sup> Reimbursement is limited to medical examinations and treatment required to stabilize an emergency medical condition as defined under the Social Security Act.

In addition, H.R. 3722 would have made employers of unauthorized aliens for whom the hospital received financial reimbursement for medical services, liable to HHS for the amount of the payment with certain exceptions. Lastly, the bill would have required the Secretary of State to do a study on the appropriateness of negotiating treaties under which countries provide for the international medical evacuation of their nationals who require emergency health care in the United States and provide funding through visa surcharges to pay for the evacuation of nationals seeking emergency health care from countries without treaties.

Those in favor of H.R. 3722 argued that the bill would not have forced hospitals to report unauthorized aliens as only those hospitals who wished to be reimbursed for medical expenses provided to unauthorized aliens would have had to send reports to DHS. Those opposed to the bill argued that the added paperwork would be burden to hospital staff, and would detract from their other duties.

**H.R. 4360.** Introduced on May 13, 2004 by Representative Jo Ann Davis, H.R. 4360 would make the grant program to provide reimbursement for emergency care afforded to unauthorized created in §1011 of The Prescription Drug Act (P.L. 108-173) permanent in FY2009, and beginning in FY2009 would allocate \$250 million from foreign aid funds to pay for the reimbursement.

**H.Amdt. 737.** This amendment was introduced by Representative Thomas Tancredo during floor debate on the FY2005 appropriations bill for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (H.R. 5006).<sup>35</sup> The amendment would have prohibited CMS from using any appropriated funds to pay the salaries of personnel administering the grant program, created in Section 1011 of The Prescription Drug Act of 2003, which provides reimbursement for emergency care afforded to unauthorized aliens. The amendment failed by voice-vote.

## Issues

There are several policy issues concerning the provision of federal funding for states with large populations of unauthorized aliens. As discussed above, the provisions in PRWORA which limited immigrant access to public benefits were the result of a desire that immigrants be self-sufficient and not rely on public resources to meet their needs. Additionally, proponents did not want the availability of public benefits to constitute an incentive for immigrants to migrate to the United States. Nonetheless, others argue that immigration is solely a federal issue. The federal government is wholly responsible for establishing immigration policy, and for policing the borders to keep out unauthorized aliens. Thus, they argue that the burden to pay for immigration-related cost should be born by the federal government, not the states. Additionally, some question the wisdom of only providing funding to help cover the costs of unauthorized aliens when no federal funds are provided to states to cover the emergency medical costs of nonimmigrants and legal permanent residents who have been in the country for less than five years.

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<sup>35</sup> The amendment was introduced on Sept. 9, 2004.



Another issue concerns the lack of reliable data on the number and distribution of unauthorized aliens.<sup>36</sup> As the 2000 census of the U.S. population is being released, preliminary data analyses offer competing population totals that, in turn, imply that illegal migration soared in the late 1990s and that estimates of unauthorized residents of the United States have been understated. The Department of Homeland Security estimates that there are about 7 million unauthorized aliens living in the United States.<sup>37</sup> In testimony before the House Committee on the Judiciary Subcommittee on Immigration and Claims, Jeffrey Passel, a demographic researcher at the Urban Institute, offered an estimate of 8 to 9 million unauthorized residents. At the same hearing, economists from Northeastern University using employment data reported by business establishments as well as 2000 census totals concluded that the unauthorized population may be 11 million.<sup>38</sup> These discrepancies suggest that assessments of the unauthorized population by state may be an inaccurate and problematic basis for distributing grant funds.

None of these estimates addresses the distribution among states of the unauthorized population; however, anecdotal reports suggest that unauthorized aliens may be dispersed among many states rather than concentrated in a few states as previously presumed.<sup>39</sup> If this is true, a program which limits the number of states eligible for additional reimbursement for medical treatment of unauthorized immigrants may exclude smaller states that have proportionally high numbers of unauthorized aliens in relation to their population, but not high absolute numbers of unauthorized aliens.

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<sup>36</sup> The discussion of different estimates of the unauthorized population is adapted from CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation*, by Ruth Ellen Wasem. For more information see CRS Report RS21938, *Unauthorized Aliens in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

<sup>37</sup> U.S. Immigration and Naturalization Service, *Estimates of Unauthorized Immigrant Population Residing in the United States: 1990-2000*, Jan. 2003. Available from [<http://www.immigration.gov/graphics/shared/aboutus/statistics/Illegals.htm>].

<sup>38</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Claims, *Hearing on the U.S. Population and Immigration*, Aug. 2, 2001.

<sup>39</sup> For more information on unauthorized aliens in nontraditional areas, see Laura Parker, and Patrick McMahon, "Immigrant Groups Fear Backlash," *U.S.A. Today*, Apr. 9, 2001, p. A3; Mary Morgan Edwards, and Jeff Ortega, "Latinos: Destination Columbus," *The Columbus Dispatch*, Mar. 19, 2000, p. 1A; and James Andrews, and Ruth Knack, "The Newest Americans: Immigrants Challenge Communities Across the Country," *Planning*, vol. 63, no. 9, Sept. 1997, pp. 4-10.

**Appendix A: Preliminary State Allocations Under Section 1011:  
Federal Reimbursement of Emergency Health Services  
Furnished to Unauthorized Aliens**

State	Estimated unauthorized population (thousands)	State allocations based on percentage of unauthorized aliens	Number of apprehensions FY2003	State allocations based on apprehensions	Projected total allocation
<b>Total</b>	<b>7,003</b>	<b>\$167,000,000</b>	<b>977,252</b>	<b>\$83,000,000</b>	<b>\$250,000,000</b>
Alabama	24	\$572,326	757	—	\$572,326
Alaska	5	\$119,235	278	—	\$119,235
Arizona	283	\$6,748,679	410,105	\$34,831,052	\$41,597,731
Arkansas	27	\$643,867	1,288	—	\$643,867
California	2,209	\$52,677,852	231,523	\$19,663,719	\$72,341,572
Colorado	144	\$3,433,957	7,207	—	\$3,433,957
Connecticut	39	\$930,030	460	—	\$930,030
Delaware	10	\$238,469	—	—	\$238,469
District of Columbia	7	\$166,928	1,139	—	\$166,928
Florida	337	\$8,036,413	9,510	\$807,704	\$8,844,117
Georgia	228	\$5,437,098	1,788	—	\$5,437,098
Hawaii	2	\$47,694	508	—	\$47,694
Idaho	19	\$453,092	1,131	—	\$453,092
Illinois	432	\$10,301,871	2,721	—	\$10,301,871
Indiana	45	\$1,073,112	605	—	\$1,073,112
Iowa	24	\$572,326	486	—	\$572,326
Kansas	47	\$1,120,805	—	—	\$1,120,805
Kentucky	15	\$357,704	656	—	\$357,704
Louisiana	5	\$119,235	4,110	—	\$119,235
Maine	0.5	\$11,923	380	—	\$11,923
Maryland	56	\$1,335,428	1,135	—	\$1,335,428
Massachusetts	87	\$2,074,682	1,532	—	\$2,074,682
Michigan	70	\$1,669,285	3,577	—	\$1,669,285
Minnesota	60	\$1,430,815	2,138	—	\$1,430,815
Mississippi	8	\$190,775	861	—	\$190,775
Missouri	22	\$524,632	4,099	—	\$524,632
Montana	0.5	\$11,923	1,063	—	\$11,923
Nebraska	24	\$572,326	2,683	—	\$572,326
Nevada	101	\$2,408,539	1,213	—	\$2,408,539
New Hampshire	2	\$47,694	470	—	\$47,694
New Jersey	221	\$5,270,170	1,963	—	\$5,270,170
New Mexico	39	\$930,030	49,421	\$4,197,426	\$5,127,456
New York	489	\$11,661,145	9,612	\$816,367	\$12,477,512
North Carolina	206	\$4,912,466	1,398	—	\$4,912,466
North Dakota	0.5	\$11,923	663	—	\$11,923
Ohio	40	\$953,877	1,320	—	\$953,877
Oklahoma	46	\$1,096,958	681	—	\$1,096,958
Oregon	90	\$2,146,223	2,306	—	\$2,146,223
Pennsylvania	49	\$1,168,499	3,374	—	\$1,168,499
Rhode Island	16	\$381,551	736	—	\$381,551
South Carolina	36	\$858,489	342	—	\$858,489
South Dakota	2	\$47,694	395	—	\$47,694
Tennessee	46	\$1,096,958	1,415	—	\$1,096,958

State	Estimated unauthorized population (thousands)	State allocations based on percentage of unauthorized aliens	Number of apprehensions FY2003	State allocations based on apprehensions	Projected total allocation
Texas	1,041	\$24,824,647	267,081	\$22,683,733	\$47,508,379
Utah	65	\$1,550,050	2,503	—	\$1,550,050
Vermont	0.5	\$11,923	1,158	—	\$11,923
Virginia	103	\$2,456,233	406	—	\$2,456,233
Washington	136	\$3,243,181	4,564	—	\$3,243,181
West Virginia	1	\$23,847	169	—	\$23,847
Wisconsin	41	\$977,724	491	—	\$977,724
Wyoming	2	\$47,694	—	—	\$47,694

**Source:** Department of Health and Human Services, Center for Medicare and Medicaid Studies, *Proposed Implementation Approach: Federal Funding of Emergency Health Services Furnished to Undocumented Aliens: Fiscal Years 2005 Through 2008*, July 21, 2004. Calculations are based on data from the Department of Homeland Security, Office of Immigration Statistics.

**Note:** States that had fewer than 1,000 estimated unauthorized aliens received values of 500 unauthorized aliens for the purpose of calculating the formula.