

Enacting Meaningful Citizenship Verification for Receipt of Public Benefits

“Although the federal government has the sole authority to govern immigration flows, the responsibility for providing support to legal and illegal immigrants rests with the state and local governments.”¹

-- *Bear Stearns Asset Management report*

Section 6036 of the federal Deficit Reduction Act of 2005 requires that Medicaid applicants prove that they are U.S. citizens in order to enroll in the program. The goal of the legislation is to ensure that Medicaid coverage, which should be provided only to U.S. citizens and other qualifying legal residents, is not accessed by undocumented immigrants or those who are unable to prove their citizenship.

In Texas, the Medicaid citizenship verification requirement has proven to be a successful cost-saving measure. Since the rule went into effect on July 1, 2006, the Texas Health and Human Services Commission (HHSC) has removed, on average, 1,944 non-citizens from the Medicaid rolls each month (August 2006 through December 2006).²

The proof-of-citizenship requirement in the Deficit Reduction Act, however, does not apply to other government programs, such as Temporary Assistance for Needy Families (TANF), Food Stamps, the State Children’s Health Insurance Program (S-CHIP), or the Housing Choice Voucher Program (known commonly as Section 8 Housing). Enrollment in most of these programs is typically restricted to citizens and certain eligible non-citizens, although the processes by which citizenship is verified are often deficient, if not non-existent.

The new Medicaid citizenship requirement comes as concerns about the costs of illegal immigration continue to increase. It is hard to accurately determine the cost of illegal immigration in terms of how much state and federal money is spent on illegal immigrants who unlawfully enroll in government programs. In Texas, the only reliable indicator of a portion of what the state spends on illegal immigrants relates to the cost of incarceration. In its 2006–2007 legislative appropriations request, the Texas Department of Criminal Justice sought over \$31 million to fund the incarceration of illegal immigrants.³ At the national level, the Center for Immigration Studies estimated in 2004 that illegal immigrants enrolled in Medicaid cost the federal government \$2.5 billion, and that illegal immigrants enrolled in Food Stamps and other food-assistance programs cost the federal government \$1.9 billion.⁴

¹ Robert Justich and Betty Ng, CFA, “The Underground Labor Force is Rising to the Surface,” Bear Stearns Asset Management report, January 3, 2005.

² Texas Health and Human Services Commission, August through December, 2006 monthly averages.

³ Texas Department of Criminal Justice, “Fiscal Year 2005 Operating Budget and Fiscal Years 2006-2007 Legislative Appropriations Request,” August 23, 2004, at www.tdcj.state.tx.us/publications/finance/lar-fy2006-7-short.pdf.

⁴ Steven A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget*, Center for Immigration Studies, Washington, D.C., August 2004, at www.cis.org/articles/2004/fiscal.html.

Despite these cost estimates, denying benefits to illegal immigrants remains controversial, not least because many illegal immigrants contribute to state and federal programs through taxes paid on their earnings, property taxes, and consumption taxes. Those who argue against denying benefits to illegal immigrants hold that undocumented workers pay into the system through their taxes, and that they therefore cannot rightfully be denied access to the government programs that their tax dollars have helped to fund.

However, any tax contributions made by illegal immigrants are negated by the amount of public spending they necessitate. An April 4, 2007, study by Robert Rector of The Heritage Foundation shows the negative impact that low-skilled, low-education households have on public benefits. In a comprehensive review of *all* federal government spending (in which each dollar spent is considered a benefit of some type), Rector found that:

“[L]ow-skill households received \$32,138 per household in immediate benefits and services and \$43,084 in total benefits. ... [L]ow-skill households received approximately \$10,000 more in government benefits than did the average U.S. household.

In contrast, low-skill households pay less in taxes than do other households. On average, low-skill households paid only \$9,689 in taxes in FY 2004.

Strikingly, low-skill households in FY 2004 had average earnings of \$20,564 per household. Thus, the \$32,138 per household in government immediate benefits and services received by these households not only exceeded their taxes paid, but also substantially exceeded their average household earned income.”⁵

The deficit created by the use of public benefits and services by low-skill households is \$22,449 per year, per low-skill household.⁶ Rector argues that if low-skilled, low-education households (like those of many unauthorized immigrants) worked for free, essentially donating their labor to the economy and/or government, their receipt of benefits would still create a deficit.

Rector also argues that any “immigration policy that would substantially increase the future inflow of low-skill immigrants... would dramatically increase the future fiscal burden to taxpayers.”⁷

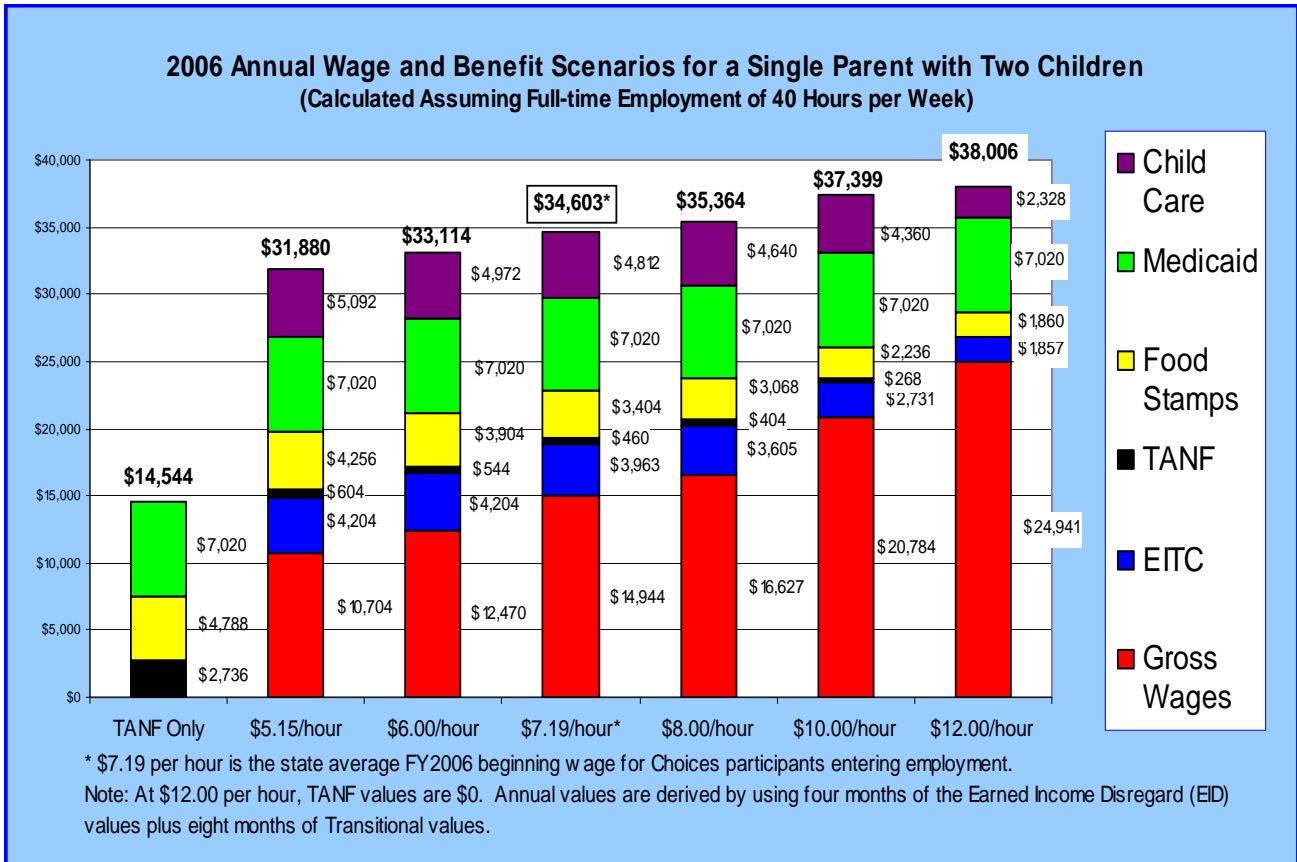
The Texas Workforce Commission (TWC) has conducted a similar study of the public benefits that are available to a single parent of two children. With the exception of

⁵Robert E. Rector, Christine Kim, and Shanea Watkins, Ph.D., “The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer,” Heritage Foundation *Special Report* No. 12, April 4, 2007, Executive Summary, Page 1, at www.heritage.org/Research/Welfare/sr12.cfm

⁶*Ibid.*, Executive Summary, Page 2

⁷*Ibid.* Executive Summary, Page 2

Medicaid benefits, the chart⁸ below illustrates the extent of federal and state benefits that illegal immigrants may claim due to lax or absent enforcement of citizenship verification requirements.



For a single parent of two children earning \$7.19 per hour and working forty hours per week, gross wages of \$14,944 per year are more than doubled by public benefits to \$34,603 per year. Even subtracting Medicaid, the only public benefit listed that requires citizenship verification, an illegal immigrant who meets the same criteria would collect \$27,583 in combined wages and public benefits per year.

Of course, the chart above details some of the benefits that illegal immigrants might access, but not all of them. An illegal immigrant child, for example, would be eligible for Head Start. Illegal immigrants access our courts and are eligible for state action on child support collections and could be awarded exemplary damages in a civil suit. The overarching point is that illegal immigrants represent a significant cost to state taxpayers.

⁸ Chart provided by the Executive Staff of the Texas Workforce Commission

Denying Benefits to Illegal Immigrants

The case against offering benefits to illegal immigrants is compelling.

Illegal immigrants have come here *illegally* and their very presence here is a violation of federal law. This argument was articulated succinctly by U.S. Senator Jim DeMint (R–SC) in May 2006, when he asked, “Why in the world would we endorse this criminal activity with federal benefits?”⁹ Even if illegal immigrants were to fund their own public benefits through taxes paid, their presence in our nation is a violation of federal law that should not be rewarded with public benefits.

A supply-and-demand equation is at work. As long as federal and state governments continue to supply generous benefits, including public education [see next section], to those who have entered the U.S. illegally, and as long as employers are not penalized for knowingly hiring undocumented workers, people will continue to come (even if access to benefits isn’t the chief reason they come).

Evidence of this has been well documented for many years; as far back as 1995, the General Accounting Office recorded 24,594 Medicaid-funded births to undocumented immigrants in Texas¹⁰. In 2005, the Pew Hispanic Center estimated that 3.1 million children of illegal immigrants currently reside in the U.S., having obtained citizenship by birth.¹¹ Similarly, according to *The Houston Chronicle*, in 2005, administrators at Houston’s Ben Taub General Hospital and Lyndon B. Johnson General Hospital reported that as many as 80 percent of the two hospitals’ 10,587 births were to “undocumented immigrant” parents.¹² The same *Houston Chronicle* article cites an illegal immigrant woman who has given birth to four children on U.S. soil.¹³

Denying benefits to illegal immigrants is as much about helping to stop illegal immigration as it is about doing what is right and just. The Legal Action Center reports that “federal law imposes a lifetime ban on anyone convicted of a drug-related felony from receiving federally-funded food stamps or cash assistance,”¹⁴ which demonstrates that simply being a resident of the U.S. does not confer upon an individual permanent eligibility for enrollment in all public programs. Those who engage in criminal activity, whether it be drug-related offenses or entering the country illegally, should be denied access to government programs on the basis of that activity.

⁹ Charles Hurt, “Illegals Granted Social Security,” *The Washington Times*, May 19, 2006

¹⁰U.S. General Accounting Office, “Undocumented Aliens: Medicaid-Funded Births in California and Texas,” GAOLHEHS-97-124R, May 30, 1997 at <http://archive.gao.gov/paprpdf/1/158747.pdf>.

¹¹Jeffrey S. Passel, “Unauthorized Migrants: Numbers and Characteristics,” Pew Hispanic Center, June 15, 2005, at <http://pewhispanic.org/files/reports/46.pdf>.

¹² James Pinkerton, “‘Border Baby’ Boom Strains South Texas,” *The Houston Chronicle*, September 24, 2006.

¹³*Ibid.*

¹⁴Legal Action Center, “Opting Out of Federal Ban on Food Stamps and TANF,” at www.lac.org/toolkits/TANF/TANF.htm.

The second part of the argument for denying benefits to illegal immigrants becomes apparent through the following question: To whom does the U.S. government have its primary responsibility? The U.S. government is primarily responsible, of course, for U.S. citizens. Any welfare benefits that the U.S. government offers are intended to help U.S. citizens and legal residents. It is absolutely clear that the U.S. government is not responsible for helping people who come here illegally. Anyone who enters the country illegally shows a blatant disregard for our laws. To expect that the government should then offer illegals the same benefits as it does to citizens shows either our own disregard for our laws or else our irrationality.

Those who argue that welfare programs should be expanded to include many or all of the illegal immigrants who live in the U.S. must know that such an expansion will dilute resources. Stretching these resources to accommodate illegal immigrants may mean that everyone enrolled in these programs will receive less assistance.

Those who advocate the expansion of government welfare programs, such as the Texas-based Center for Public Policy Priorities (CPPP), are usually critical when rising costs cause welfare programs to be cut back. In February 2006, CPPP opposed federal Medicaid funding reductions because “65,000 individuals would lose Medicaid coverage entirely.”¹⁵ Yet research by the Center for Immigration Studies (CIS) conducted in 2005 revealed that nationwide, Medicaid enrollment among legal and illegal immigrant households is almost 40 percent higher than enrollment among “native” households.¹⁶ According to the analysis by the CIS, 24.2 percent of the 35 million legal and illegal immigrants residing in the U.S. are enrolled in Medicaid—almost 8.5 million people. If just one percent of these Medicaid enrollees are illegal immigrants, then 85,000 people are enrolled illegally; which is higher than the 65,000 people CPPP complained would lose coverage in Texas when federal cuts were made. Allowing illegal immigrants to enroll in government programs because of lax citizenship verification procedures undermines the extent to which the programs can deliver services to eligible enrollees. If the government has the authority to deport people, it has a right to deny them benefits.

Additionally, certain welfare programs, such as TANF, require enrollees to participate in “work activities” such as work, job training, or even simply searching for a job, in order to wean them off welfare programs. Illegal immigrants cannot fully participate in these work programs because any employer that hires them is breaking the law.

Essential to the process of ensuring that illegal immigrants do not receive benefits to which they are not entitled is the method by which the citizenship of welfare applicants is verified. It is clear that, in Texas at least, citizenship verification procedures for a variety of programs, ranging from Medicaid to Section 8 Housing, often lack the appropriate level of scrutiny. The following sections highlight some of the most obvious flaws in how

¹⁵Center for Public Policy Priorities, “Last Chance to Oppose Federal Medicaid Cuts,” February 1, 2006, at www.cppp.org/files/3/Last%20Chance%20to%20Oppose%20Federal%20Medicaid%20Cuts.pdf.

¹⁶Steven A. Camarota, “Immigrants at Mid-Decade: A Snapshot of America’s Foreign Born Population in 2005,” Center for Immigration Studies, December 2005, at www.cis.org/articles/2005/back1405.html.

the citizenship of applicants for Medicaid, TANF, Food Stamps, S-CHIP, and Section 8 Housing in Texas is verified.

Medicaid

Despite the clear need for close inspection of applicants' citizenship status, scrutiny of the Texas Health and Human Services Commission's guidance on how Medicaid applicants must prove their citizenship reveals that the documentary requirements are not nearly as stringent as they should be.¹⁷ Documents allowed by the Texas Health and Human Services Commission (HHSC) to prove citizenship are:

- U.S. birth certificate,
- U.S. citizen identification card,
- Report of birth abroad of a U.S. citizen,
- Religious record of birth recorded in the U.S. or its territories,
- Hospital record of birth in one of the 50 states or affiliated territories,
- Northern Mariana or American Indian identification card,
- Affidavit from two blood-related individuals of the applicant who have personal knowledge of the events establishing the applicant's claim of U.S. citizenship.

Each of these documents is used based on rules promulgated by the Centers for Medicare and Medicaid Services (CMS). This guidance means that Medicaid applicants who cannot provide appropriate documentary evidence of their citizenship, such as a birth certificate, can still be approved if two family members simply attest to their citizenship. There is no indication of how or if HHSC officials are expected to verify the relationship between the applicants and their sponsors, or that the sponsors must themselves be U.S. citizens and if so, how this is verified.

Below is an excerpt from the sample affidavit that Texas HHSC suggests can be used by Medicaid applicants who are otherwise unable to prove their citizenship.¹⁸ In addition to the information shown below, the affidavit must be signed by the affiant and must be notarized by a public official. A letter sent by HHSC to all Medicaid clients to advise them of the new citizenship requirement informs the clients that:

“If you want to provide an affidavit to prove citizenship and identity, you can get a form at your local HHSC benefits office or online at www.hhsc.state.tx.us. An affidavit must be notarized. Free notary services are available to you at your local HHSC benefits office.”¹⁹

¹⁷Texas Health and Human Services Commission, Texas Works Bulletin No. 06-13, June 9, 2006, at www.dads.state.tx.us/handbooks/TexasWorks/res/Bulletins/06-09-06.htm.

¹⁸The full affidavit is available on the Texas Health and Human Services Commission Web site: www.hhs.state.tx.us/medicaid/Affidavit_Adult.pdf.

¹⁹Texas Health and Human Services Commission letter to clients, June 2006, at www.hhs.state.tx.us/medicaid/engApp.shtml.

An image of the sample affidavit follows, below.

| |
|---|
| AFFIDAVIT OF FACTS CONCERNING CITIZENSHIP AND IDENTITY OF _____ |
| Before me, the undersigned authority, on this day personally appeared _____ ("Affiant") who, being first duly sworn, upon his/her oath states: |
| 1. My name is _____, and I live at _____. I am more than eighteen years of age and I have personal knowledge of the facts stated in this affidavit. |
| 2. I have known Applicant for _____. I am personally familiar with the circumstances of the Applicant, who resides at _____. I have personal knowledge of the circumstances that establish the Applicant's United States Citizenship. The facts known to me are as follows (for example, date and place of birth in the United States): _____ _____ |
| 3. Applicant is unable to produce documentary evidence of citizenship because _____ _____ |

Despite federal guidelines issued by the Centers for Medicare and Medicaid Services, which specify that affidavits must only be used in rare circumstances “when the state is unable to secure evidence of citizenship from another listing,”²⁰ HHSC fails to clearly instruct clients that the affidavit can be submitted only as a last resort, and only if there is no other way for a client to prove citizenship. Instead, the affidavit is promoted as a way for clients who do not have the appropriate documentation, such as a birth certificate or passport, to prove their citizenship. This is despite the obvious deficiencies of using a document that requires the affiant to provide only name, address, and signature in order to “verify” the citizenship of the applicant. Again, although federal guidelines indicate that “for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity,”²¹ Texas HHSC fails to explain that the affiant must be a citizen, and much less how this can be verified if the affiant is instructed only to provide their name, address, and signature.

In short, the process of verifying a Medicaid applicant’s citizenship is severely compromised by the potential for fraud that is presented by the use of affidavits such as the one suggested by CMS. The verification process is compromised both because the affidavit itself requires that only the bare minimum amount of information be provided by the affiant, and because the affidavit is promoted as a way to prove citizenship.

If an affidavit is to be used at all, it must be used only as a last resort, and as such, it should not be advertised to clients when they are first asked to prove their citizenship. Such an affidavit must be more detailed than the one currently suggested by Texas

²⁰Medicaid Fact Sheet issued by U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, July 6, 2006, at www.cms.hhs.gov/MedicaidEligibility/Downloads/Citizenshipfactsheet.pdf.

²¹*Ibid.*

HHSC, so that information about the applicant and the affiant can be verified against existing state and federal records. The applicant and affiants should also be required to attend a face-to-face meeting with state administrators in the appropriate field office, so that all the relevant documentation can be presented, and the state can verify the identity and citizenship status of all three parties.

TANF and Food Stamps

Guidance on how administrators should verify the citizenship of TANF and Food Stamp applicants is even more deficient than the new processes to be followed for Medicaid applicants. HHSC's *Texas Works Handbook* permits citizenship to be verified by documents ranging from a U.S. birth certificate or passport to a hospital birth record or certificate of citizenship. A voter registration card is acceptable as proof of citizenship for the Food Stamp program only, which is significant because a voter registration card can be obtained without the applicant having to do anything other than indicate that he is a citizen; no supporting evidence is required.²² Furthermore, the U.S. Department of State specifically indicates that a voter registration card is *not* an acceptable proof of citizenship when applying for a passport.²³ Yet providing a voter registration card is sufficient evidence of citizenship to enroll an individual in the Food Stamp program in Texas.²⁴ This is a clear loophole which must be addressed. Other evidence that can be submitted by TANF or Food Stamp applicants to prove citizenship includes: baptismal records, Indian census papers, and local, state, or federal records showing a U.S. place of birth.²⁵

If the applicant cannot provide documentation to prove his citizenship, HHSC administrators are instructed to “obtain an affidavit signed by someone who knows the applicant’s history.... The affidavit must state that the signer: is a U.S. citizen; knows that the applicant is a U.S. citizen; and may be fined, imprisoned, or both if he gives false information.”²⁶ Unlike Medicaid applicants, TANF and Food Stamp applicants are required to obtain an affidavit from only one person, and the person need not be a blood relative. When these facts are coupled with the more general deficiencies of the CMS suggested affidavit, severe doubts arise about the ability of states to accurately verify the citizenship of its TANF and Food Stamp applicants.

²²In a June 15, 2006, letter, Ann McGeehan, Director of Elections, Texas Secretary of State’s Office, states: “...under current Texas voter registration guidelines, there is no formal verification of an applicant’s citizenship status... Texas relies on the applicant to provide accurate/truthful information on his or her voter registration application. To the extent that an applicant must sign the application verifying that he or she has met the qualifications to register (one of which is U.S. citizenship) and that he or she has provided accurate/truthful information, the application is processed on those merits.”

²³U.S. Department of State, “How to Apply in Person for a Passport,” at http://travel.state.gov/passport/get/first/first_830.html.

²⁴Texas Health and Human Services, *Texas Works Handbook*, Section 350, Item 358, October 1, 2006, at www.dads.state.tx.us/handbooks/TexasWorks/A/300/358.htm.

²⁵*Ibid.*

²⁶ Texas Health and Human Services, *Texas Works Handbook*, Section 350, Item 351.2, January 1, 2007, at www.dads.state.tx.us/handbooks/TexasWorks/A/300/351.2.htm.

S-CHIP

A similarly slipshod citizenship verification process exists for the State Children’s Health Insurance Program (S-CHIP), which is also administered by HHSC in Texas. Any child enrolled in S-CHIP must be a citizen or legal permanent resident,²⁷ but the parent or guardian who files the application on a child’s behalf is not required to provide his own immigration status. Even if parents do provide this information, they are informed that it “cannot be used to deny you admission to the U.S., to harm your permanent residency status or to deport you.”²⁸ This provision is derived from federal guidelines governing “public charge” that were announced in May 1999. The Center on Budget and Policy Priorities points out that the guidance:

“[N]arrowly limits the situations in which receipt of public benefits is relevant to a “public charge” finding....[T]he receipt of any non-cash benefit, with the sole exception of institutionalization for long-term care at government expense is *never* a factor in public charge determination.... Thus, immigrants can accept Medicaid, food stamps, WIC, housing benefits, child care subsidies or other non-cash benefits without endangering their immigration status.”²⁹

The S-CHIP application form requests information about the citizenship status of each child for whom coverage is being sought.³⁰ Space on the form is also provided for the Social Security number (SSN) of each child, although the HHSC *Texas Works Handbook* notes that “undocumented aliens are not required to apply for an SSN.”³¹

When S-CHIP was established in Texas 1999, the enabling legislation (Senate Bill 445) included Texas Health & Safety Code §62.105, allowing “qualified aliens” (as defined by §431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or PRWORA) to be eligible for S-CHIP coverage. The “2006–2007 Fiscal Size-Up”³² notes that for the current biennium, \$36.3 million has been appropriated toward immigrant health. However no statutory citizenship requirement exists, and HHSC confirms that there is no process by which the citizenship of S-CHIP applicants is verified. Currently, S-CHIP citizenship verification relies solely on the honesty of those completing application forms, since applicants are not asked to prove the citizenship or immigration status of the children for whom they are applying.

²⁷Texas Health and Human Services Commission, CHIP/Children’s Medicaid Web page, at www.chipmedicaid.com/english/qualify.htm.

²⁸Texas Health and Human Services Commission, Application Information for Children’s Medicaid and the Children’s Health Insurance Program, at www.chipmedicaid.com/files/CHIP_TexCare_Application_Eng.pdf.

²⁹Center on Budget and Policy Priorities, “The INS Public Charge Guidance: What Does it Mean For Immigrants Who Need Public Assistance?,” January 7, 2000, at www.cbpp.org/1-7-00imm.htm (emphasis in original).

³⁰ www.chipmedicaid.com/files/CHIP_TexCare_Application_Eng.pdf.

³¹ Texas Health and Human Services, *Texas Works Handbook*, Section 410; <http://www.dads.state.tx.us/handbooks/TexasWorks/A/400/410.htm>

³²“Fiscal Size-Up, 2006-2007 Biennium”, Texas Legislative Budget Board at http://www.lbb.state.tx.us/Fiscal_Size-up/Fiscal_Size-up_2006-2007_0106.pdf

Furthermore, Section 403 of PRWORA provides that certain immigrants who enter the United States after August 22, 1996, are not eligible to receive federally funded benefits, including Medicaid and the State Children’s Health Insurance Program (S-CHIP).

Texas expenditures on S-CHIP benefits for “qualified aliens” are purely state-funded; Texas receives no federal matching funds for the \$36.3 million in biennial expenditures. This makes a compelling argument for state verification of the citizenship of S-CHIP recipients. To the extent that illegal immigrants are accessing the “qualified alien” services made available under S-CHIP, those services are financed entirely by Texas taxpayers.

To that end, State Representative Dan Flynn (R–Van) amended a bill on the floor of the Texas House to require HHSC to verify either the United States citizenship or qualified alien status of applicants for S-CHIP benefits. While the S-CHIP bill passed, the citizenship verification amendment was stripped from the bill in the closing days of the 80th Legislature.

Aside from the “qualified alien” program, the Texas HHSC openly acknowledges that illegal immigrant women are eligible for the S-CHIP Perinatal program, under which coverage is technically provided to the unborn child, who is an assumed United States citizen.³³

Section 8 Housing Choice Voucher Program

Section 8 Housing provides rental assistance to low-income families and individuals, and is administered locally by public housing agencies under the supervision of the Texas Department of Housing and Community Affairs (TDHCA). Illegal immigrants are permitted to live in Section 8 Housing; the only requirement is that one member of the household must be a legal resident. Rental payments are then pro-rated in accordance with the number of eligible immigrants in the household.³⁴ The U.S. Department of Housing and Urban Development reports that:

“Eligibility for a housing voucher is determined by the PHA [Public Housing Agency] based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status.”³⁵

In a May 2004 report, the Audit Committee of TDHCA reported that Section 8 applicants are required to attest to their citizenship and to provide “at least a signed declaration of their U.S. citizenship or U.S. nationality.”³⁶ The report pointed out that TDHCA’s policy

³³July 27, 2006, legislative briefing for state legislators by HHSC intergovernmental affairs staff on S-CHIP and non-citizens.

³⁴Andrea Ball, “A Visible Housing Crunch,” *Austin-American Statesman*, July 16, 2006.

³⁵U.S. Department of Housing and Urban Development, Housing Choice Vouchers Fact Sheet, at www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm.

³⁶Texas Department of Housing and Community Affairs, Audit Committee Report, May 12, 2004, at www.tdhca.state.tx.us/pdf/agendas/040512-auditbook-040505.pdf, p. 238.

is to require that additional information, such as a U.S. passport, also be provided. However, the Audit Committee found that:

“For one of 30 tenants selected for test work, documentation was not available to determine if the tenant met the requirements of citizenship or eligible immigration status. The tenant noted, was admitted to the program on February 1, 2000 without the proper citizenship documentation. During the renewal process...DHCA noted in the tenant’s file that the required citizenship information was not provided and requested the information from the tenant. However, the documentation was not obtained and benefits of \$1,262 were paid during the 2003 fiscal year.”³⁷

As a result of the Audit Committee report, TDHCA began using the U.S. Citizenship and Immigration Services’ (USCIS) automated system, Systematic Alien Verification for Entitlement (SAVE), to verify the immigration status of applicants who claim to have eligible immigration status. SAVE is a database established by the USCIS to help employers and state agencies to ascertain the immigration status of any non-citizens.

Employers may use the SAVE system to verify that a potential employee is permitted to work in the U.S., while state agencies can use it to establish a non-citizen’s precise immigration status, and therefore the benefits or state programs for which the individual is entitled. The primary problem with using the SAVE system to verify citizenship however, is that the system contains information pertaining only to non-citizens.³⁸ If an individual applies for Section 8 housing claiming to be a U.S. citizen, SAVE cannot substantiate the veracity of the applicant’s claim.

Recommendations

Verify the citizenship of all applicants for all state benefits.

This recommendation is critical to the fiscal solvency of Medicaid, S-CHIP, and other public benefit programs in the state of Texas, and is likely important to the integrity of those programs in other states.

Such state action may necessitate judicial challenges to the Fourteenth Amendment.

Alternatively, count the number of illegal immigrants who access public benefits.

Currently, statistics on illegal immigrants and their use of public benefits are limited, leaving policymakers to rely on estimates. By conducting a headcount of illegal immigrants who access services, states can arm legislators to make better, more informed decisions. Also, states can use the statistics to bill the federal government for the cost of

³⁷*Ibid.*, p. 239.

³⁸U.S. Immigration and Naturalization Service, *Systematic Alien Verification for Entitlement (SAVE) Program User Manual*, September 2000, at <http://dhfs.wisconsin.gov/EM/pdf/SAVEManual.pdf>.

providing benefits and services to individuals who are illegally in the state due to a failure of the federal government.

NOTE: Model legislation follows in Appendix 2.

Anticipating and Answering Objections:

1. Objection: Citizenship verification places an undue burden on minorities and the elderly.

Response: Perhaps the simplest way to circumvent this argument is to place the burden of citizenship verification on the state. The Texas Health and Human Services Commission, which administers most of the public benefit programs in the state, also houses the Bureau of Vital Statistics, which maintains all birth and death records. Texas HHSC officials confirm that in verifying citizenship for the Medicaid program, according to the Deficit Reduction Act and CMS rules, applicants need not bring a hard copy of a birth certificate. HHSC officials can verify a birth that occurred in Texas dating back to 1903. For Texas-born U.S. citizens, citizenship verification is a simple, electronic process of cross-checking state records. Other states can similarly place the burden of verifying citizenship for public benefits on state agencies.

2. Objection: Denying benefits to illegal immigrants is unconstitutional.

Response: Any argument that denying benefits to illegal immigrants is unconstitutional is unfounded based on the Deficit Reduction Act's requirement for citizenship verification for Medicaid.

More important, states should consider laws that test the Fourteenth Amendment to the U.S. Constitution. The Fourteenth Amendment reads that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." This has been interpreted by courts to mean that a child of illegal immigrants who is born on U.S. soil is a United States citizen.

In Texas, State Representative Leo Berman (R-Tyler) filed House Bill 28 (80th Texas Legislature, 2007) to challenge that notion. The bill denied state benefits to children born in Texas to illegal immigrant parents. Representative Berman's bill, like so many others, fell victim to a lack of political will to take action against illegal immigration. The Texas Legislature took no substantive action to deny public benefits to illegal immigrants.

Nevertheless, just as the Supreme Court ruling in *Roe v. Wade* has been challenged by state laws (sometimes successfully, sometimes not), the notion that illegal immigrants' children may become automatic U.S. citizens should be similarly challenged by the states.

As a basis for challenging the Fourteenth Amendment, states should consider that the U.S. Supreme Court, in the late 1970s, denied that every exclusion of aliens was subject

to strict scrutiny, “because to do so would ‘obliterate all the distinctions between citizens and aliens, and thus deprecate the historic values of citizenship.’”³⁹ The Court later ruled that “governmental entities, when exercising the functions of government, have wider latitude in limiting the participation of noncitizens.”⁴⁰ Supreme Court rulings generally conclude that a citizenship requirement need only bear a rational relationship to the state interest. By arguing the fiscal and social costs of illegal immigration, states have a rational basis to deny benefits to illegal immigrants.

A summary of the Supreme Court’s interpretation of the Fourteenth Amendment as it relates to citizenship and aliens reads as follows:

“Thus, the Court so far has drawn a tripartite differentiation with respect to governmental restrictions on aliens. First, it... would foreclose attempts by the States to retain certain economic benefits, primarily employment and opportunities for livelihood, exclusively for citizens. Second, when government exercises principally its spending functions, such as those with respect to public employment generally and to eligibility for public benefits, its classifications with an adverse impact on aliens will be strictly scrutinized and usually fail. Third, when government acts in its sovereign capacity, when it acts within its constitutional prerogatives and responsibilities to establish and operate its own government, its decisions with respect to the citizenship qualifications of an appropriately designated class of public office holders will be subject only to traditional rational basis scrutiny.”⁴¹

These notions must be challenged in order to protect taxpayers and respect the rule of law.

3. Objection: Denying benefits to illegal immigrants violates basic human rights.

In personal privilege speech from the floor of the Texas House of Representatives, State Representative Paul Moreno (D–El Paso) made impassioned human rights arguments:

“We [Hispanics] have been here a long, long time, and we should not be called illegal aliens. We are a people devoted to love; to love and respect to all others....

This state is showing total disregard, total disregard, and they’re not showing that love that each of us as humans deserves. We have to show love, we have to show respect. Some of the younger Members that came into the House...they changed their views and they have forgotten that we are still people that are suffering.

³⁹*Foley v. Connelie*, 435 U.S. 291, 295 (1978). The opinion was by Chief Justice Burger and the quoted phrase was from his dissent in *Nyquist v. Mauclet*, 432 U.S. 1, 14 (1977). Justices Marshall, Stevens, and Brennan dissented. *Id.* at 302, 307.

⁴⁰*Ambach v. Norwick*, 441 U.S. 68, 75 (1979).

⁴¹ FindLaw.com, “U.S. Constitution: 14th Amendment Annotations” p. 31, SECTION 1. RIGHTS GUARANTEED: THE NEW EQUAL PROTECTION, at <http://caselaw.lp.findlaw.com/data/constitution/amendment14/31.html#1>

They have forgotten that we are people that believe in humanity. I am the strongest believer in humanity there is. I believe strongly in humanity.”⁴²

Response: The business of running a free, democratic state demands that leaders make tough decisions. In order to provide limited public benefits that help the most indigent state residents in times of need, states must dedicate their limited resources to U.S. citizens and lawful residents *only*. Programs must remain limited to keep citizens’ tax burden equitable.

Conclusion

Illegal immigrants should be denied all state and federal benefits except genuine emergency medical care (most births do not require emergency medical care in the same way that a serious injury would). Any services or benefits provided to illegal immigrants should be on a strict fee-for-services basis. Just as the supply of jobs attracts immigrants illegally to America, so the supply of welfare programs with lax citizenship verification procedures serves as an incentive for immigrants to enter and stay illegally.

The method by which state and federal agencies verify the citizenship of applicants to welfare programs is the most important part of the process of ensuring that illegal immigrants do not receive benefits to which they are not entitled. Allowing stringent documentary requirements to be circumvented by permitting applicants to attest to their own citizenship, or have a family member or other person attest on their behalf, represents a major flaw in the application process for many welfare programs in Texas.

A signed affidavit does not prove the citizenship of those applying for, or receiving, welfare. Allowing the signatures of three persons to “verify” citizenship blurs the line between clear verification of citizenship and an honor system, under which the state and federal government must trust the information provided by those applying to government programs. In reality, the only documents that absolutely prove citizenship are a birth record, naturalization certificate, or a U.S. passport. Allowing an affidavit as proof of citizenship undermines the entire system. The affidavit loophole should be eliminated from the new Medicaid rules if citizenship verification is to have any meaning.

Those who cannot provide appropriate documentary evidence of their citizenship should be denied enrollment in a program until such time as they can provide appropriate evidence of their eligibility. Similarly, those already enrolled in programs who are unable to satisfactorily prove their citizenship should be dis-enrolled until their citizenship can be verified.

States should also keep a record of the number of illegal immigrants who are enrolled in welfare programs. This count can be used to ask for a federal reimbursement for the cost of the services and financial support that the state provides to those who are here illegally.

⁴² State Representative Paul Moreno, Personal Privilege Speech before the Texas House of Representatives on May 8, 2007 (transcribed from video by TCCRI)