118TH CONGRESS
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S. 2646

To expand access to health care services for immigrants by removing legal and policy barriers to health insurance coverage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2023

Mr. BOOKER (for himself, Mr. MARKEY, Ms. HIRONO, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Mr. SANDERS, Ms. WARREN, Mr. PADILLA, Mrs. MURRAY, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To expand access to health care services for immigrants by removing legal and policy barriers to health insurance coverage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Health Equity and Access under the Law for Immigrant Families Act of 2023'' or the ''HEAL for Immigrant Families Act of 2023''.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds as follows:

(1) Health insurance coverage reduces harmful racial, economic, gender, and health inequities by alleviating cost barriers to, and increasing utilization of, necessary health care services, especially among low-income and underserved populations.

(2) Based solely on their immigration status, many immigrants and their families face legal and policy restrictions on their ability to obtain affordable health insurance coverage through Medicaid, the Children's Health Insurance Program (CHIP), and the health insurance exchanges.

(3) Lack of health insurance coverage contributes to persistent inequities in the prevention, diagnosis, and treatment of health conditions. This leads to negative health outcomes for immigrants and their families, especially Black, Indigenous, Latinx, Asian, Pacific Islander, and other Immigrants of Color.

(4) Black immigrant women often cite cost as a major barrier to health care. Many who are undocumented forgo doctor visits altogether due to the financial burden in addition to consistent racial bias by medical practitioners and racism in health care.

(5) Nearly half of immigrant women are of reproductive age. Immigrant women, lesbian, gay, bi-

sexual, transgender, and queer (LGBTQ) immigrants, and immigrants with disabilities disproportionately live in households with low incomes and lack health insurance coverage. Legal and policy barriers to affordable health insurance coverage significantly exacerbate their risk of negative pregnancy-related and other reproductive and sexual health outcomes, with lasting health and economic consequences for immigrant women, LGBTQ immigrants, immigrants with disabilities, and their families and society as a whole.

(6) Denying health insurance coverage or imposing waiting periods for health insurance coverage on the basis of immigration status unfairly hinders immigrants' ability to reach and maintain their optimal levels of health and undermines the economic well-being of their families.

(7) Like the Hyde amendment's prohibition on public insurance coverage for abortion care, immigration-related health care eligibility barriers have long curtailed access to abortion. In June 2022, in Dobbs v. Jackson Women's Health Organization, the Supreme Court of the United States overturned the constitutional right to abortion, exacerbating pre-existing barriers. In the year since the Dobbs decision

was issued, 19 States have banned or restricted abortion—disproportionately impacting 15 million women of color and millions of transgender and non-binary people. Notably, in 2022, 39 percent of all Latinas living in States that were likely to ban abortion following the Dobbs decision were born outside of the United States—this group includes people with varying citizenship statuses, among whom fear of surveillance may be particularly prevalent, due to disproportionate investigation and surveillance that many immigrant communities already face. Bans and restrictions on abortion exacerbate the fear of criminalization in immigrant communities, and contribute to a chilling effect that leads many immigrants to forego reproductive health care and coverage of any kind as they navigate these intersecting risks of criminalization. Polling conducted in 2018 found one in four Latina/o voters (24 percent) had a close family member or friend delay or avoid health care because of fear related to discriminatory immigration policies, and one in five (19 percent) said the same about reproductive health care.

(8) Ensuring access to crucial coverage of reproductive and sexual health services such as contraception and pregnancy-related care through Med-

icaid and the Affordable Care Act is imperative, with only half (52 percent) of immigrants at risk of unintended pregnancy receiving contraceptive care in the previous year. Many immigrants are being denied the basic human right to make the health care decisions they believe are best for them and their families, including abortion care, simply because of their immigration status. In States along the Southern Border, immigrant communities are subject to interior checkpoints that increase the threat of family separation, deportation, and detention, and compound the harm of abortion restrictions that force people to travel to obtain care. Immigrants living without documentation, in particular, may have no way of obtaining an abortion when immigration enforcement and abortion restrictions combine to prevent them from traveling to a provider. Further, due to the high cost of travel associated with the onslaught of abortion bans, practical support organizations that assist with procedure and travel costs have been experiencing high demand, and struggle with inadequate resources. Accessing support services can be out of reach for those without reliable technology to research and maintain contact with support services, or who encounter linguistic barriers

when support services are not able to provide translators. For many, abortion care will be entirely inaccessible due to these compounding barriers, thus exacerbating the need for accessible reproductive and sexual health services such as contraception and pregnancy-related and post-pregnancy care.

(9) International human rights standards hold that governments have an affirmative obligation to ensure that everyone, including immigrants, can access safe, respectful, culturally and linguistically appropriate, and high-quality pregnancy-related care, including postpartum care, free from discrimination or violence. Medicaid is the nation's single largest payer for pregnancy-related care. Nevertheless, barriers to health coverage persist for pregnant and postpartum people, particularly immigrants.

(10) Immigrants—especially Black, Indigenous, Latinx, Asian, and Pacific Islander immigrants—are among those most harmed by the United States pregnancy-related morbidity and mortality epidemic, which is the worst among high-income nations. Black people are nearly four times more likely than white people to suffer pregnancy-related death, and twice as likely to suffer maternal morbidity. Indigenous people are two and a half times more likely

than white people to die from a pregnancy-related death. The majority of United States pregnancy-related deaths are preventable. Lack of access to health care, immigration status, poverty, and exposure to racism, sexism, and xenophobia in and beyond the health care system contribute to the disproportionately high number of pregnancy-related deaths among BIPOC birthing and postpartum people. Unnecessary barriers that limit pregnant and postpartum immigrants' access to health care undermine their health, safety, and human rights.

(11) One in seven United States residents is foreign-born, approximately one in four children in the United States has at least one immigrant parent, and the population of immigrant families in the United States is expected to continue to grow in the coming years. It is therefore in our collective public health and economic interest to remove legal and policy barriers to affordable health insurance coverage that are based on immigration status.

(12) Delaying or denying health insurance coverage because of immigration status can impede mental health and substance use prevention and early intervention interventions. Not acknowledging the impacts of trauma can impact mental health and

substance use, and conditions may increase in severity without appropriate and consistent support and treatment.

(13) Although individuals granted relief under the Deferred Action for Childhood Arrivals (DACA) program are authorized to live and work in the United States, they have been unfairly excluded from the definitions of lawfully present and lawfully residing for purposes of health insurance coverage provided through the Department of Health and Human Services, including Medicaid, CHIP, and the health insurance exchanges.

(14) On April 26, 2023, the Centers for Medicare & Medicaid Services (CMS) published a proposed rule that would modify the definition of ''lawfully present'' used to determine eligibility for Patient Protection and Affordable Care Act (ACA) health plans and certain other health care programs. Codifying these protections in legislation is crucial to ensure individuals granted relief under the Deferred Action for Childhood Arrivals (DACA) program and those who gain new forms of administrative relief are not similarly excluded in future administrative action. This is even more imperative as more than a quarter of DACA recipients are currently unin-

sured as they await the finalization of the proposed rule.

(15) Since immigration law evolves constantly, new immigration categories for individuals with federally authorized presence in the United States may be created.

(16) Some States continue to unwisely restrict Medicaid access for immigrants who have long resided in the United States, fueling significant health inequities and increasing health care costs for individuals and the public.

(17) Congress restored Medicaid eligibility for individuals living in the United States under the Compacts of Free Association as part of bipartisan legislation in December 2020 and should build on that success by ensuring all immigrants can access care.

(b) PURPOSE.—It is the purpose of this Act to—

(1) ensure that all individuals who are lawfully present in the United States are eligible for all federally funded health care programs;

(2) advance the ability of undocumented individuals to obtain health insurance coverage through the health insurance exchanges established under

part II of the Patient Protection and Affordable Care Act, Public Law 111–148;

(3) eliminate the authority for States to restrict Medicaid eligibility for lawful permanent residents; and

(4) eliminate other barriers to accessing Medicaid, CHIP, and other medical assistance.

SEC. 3. REMOVING BARRIERS TO HEALTH COVERAGE FOR LAWFULLY RESIDING INDIVIDUALS.

(a) MEDICAID.—Section 1903(v)(4) of the Social Security Act (42 U.S.C. 1396b(v)(4)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) Notwithstanding sections 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a State shall provide medical assistance under this title, to individuals who are lawfully residing in the United States (including individuals described in paragraph (1), battered individuals described in section 431(c) of such Act, and individuals with an approved or pending application for deferred action or other federally authorized presence), if they otherwise meet the eligibility requirements for medical as-

sistance under the State plan approved under this title (other than the requirement of the receipt of aid or assistance under title IV, supplemental security income benefits under title XVI, or a State supplementary payment).'';

(2) by amending subparagraph (B) to read as follows:

''(B) No debt shall accrue under an affidavit of support against any sponsor of an individual provided medical assistance under subparagraph (A) on the basis of provision of assistance to such individual and the cost of such assistance shall not be considered as an unreimbursed cost.''; and

(3) in subparagraph (C)—

(A) by striking ''an election by the State under subparagraph (A)'' and inserting ''the application of subparagraph (A)'';

(B) by inserting ''or be lawfully present'' after ''lawfully reside''; and

(C) by inserting ''or present'' after ''lawfully residing'' each place it appears.

(b) CHIP.—Subparagraph (N) of section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended to read as follows:

"(N) Paragraph (4) of section 1903(v) (relating to lawfully present individuals and undocumented immigrants).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act and shall apply to services furnished on or after the date that is 90 days after such date of enactment.

(2) EXCEPTION IF STATE LEGISLATION REQUIRED.—In the case of a State plan for medical assistance under title XIX, or a State child health plan under title XXI, of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the respective State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sen-

tence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 4. CONSISTENCY IN HEALTH INSURANCE COVERAGE FOR INDIVIDUALS WITH FEDERALLY AUTHORIZED PRESENCE, INCLUDING DEFERRED ACTION.

(a) IN GENERAL.—For purposes of eligibility under any of the provisions described in subsection (b), all individuals granted federally authorized presence in the United States shall be considered to be lawfully present in the United States.

(b) PROVISIONS DESCRIBED.—The provisions described in this subsection are the following:

(1) EXCHANGE ELIGIBILITY.—Section 1411 of the Patient Protection and Affordable Care Act (42 U.S.C. 18031).

(2) REDUCED COST-SHARING ELIGIBILITY.—Section 1402 of the Patient Protection and Affordable Care Act (42 U.S.C. 18071).

(3) PREMIUM SUBSIDY ELIGIBILITY.—Section 36B of the Internal Revenue Code of 1986 (26 U.S.C. 36B).

(4) MEDICAID AND CHIP ELIGIBILITY.—Titles XIX and XXI of the Social Security Act, including under section 1903(v) of such Act (42 U.S.C. 1396b(v)).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Subsection (a) shall take effect on the date of enactment of this Act.

(2) TRANSITION THROUGH SPECIAL ENROLLMENT PERIOD.—In the case of an individual described in subsection (a) who, before the first day of the first annual open enrollment period under subparagraph (B) of section 1311(c)(6) of the Patient Protection and Affordable Care Act (42 U.S.C. 18031(c)(6)) beginning after the date of enactment of this Act, is granted federally authorized presence in the United States and who, as a result of such subsection, qualifies for a subsidy under a provision described in paragraph (2) or (3) of subsection (b), the Secretary of Health and Human Services shall establish a special enrollment period under subparagraph (C) of such section 1311(c)(6) during which such individual may enroll in qualified health plans through Exchanges under title I of the Patient Protection and Affordable Care Act and qualify for such a subsidy. For such an individual who has been

granted federally authorized presence in the United States as of the date of enactment of this Act, such special enrollment period shall begin not later than 90 days after such date of enactment. Nothing in this paragraph shall be construed as affecting the authority of the Secretary to establish additional special enrollment periods under such subparagraph (C).

SEC. 5. REMOVING CITIZENSHIP AND IMMIGRATION BARRIERS TO ACCESS TO AFFORDABLE HEALTH CARE UNDER THE ACA.

(a) IN GENERAL.—

(1) PREMIUM TAX CREDITS.—Section 36B of the Internal Revenue Code of 1986 is amended—

(A) in subsection (c)(1)(B)—

(i) by amending the heading to read as follows: ''SPECIAL RULE FOR CERTAIN INDIVIDUALS INELIGIBLE FOR MEDICAID DUE TO STATUS''; and

(ii) by amending clause (ii) to read as follows:

''(ii) the taxpayer is a noncitizen who is not eligible for the Medicaid program under title XIX of the Social Security Act

by reason of the individual's immigration status,''; and

(B) by striking subsection (e).

(2) COST-SHARING REDUCTIONS.—Section 1402 of the Patient Protection and Affordable Care Act (42 U.S.C. 18071) is amended by striking subsection (e) and redesignating subsection (f) as subsection (e).

(3) BASIC HEALTH PROGRAM ELIGIBILITY.—Section 1331(e)(1)(B) of the Patient Protection and Affordable Care Act (42 U.S.C. 18051(e)(1)(B)) is amended by striking ''lawfully present in the United States,''.

(4) RESTRICTIONS ON FEDERAL PAYMENTS.—Section 1412 of the Patient Protection and Affordable Care Act (42 U.S.C. 18082) is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(5) REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.—Subsection (d) of section 5000A of the Internal Revenue Code of 1986 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(b) CONFORMING AMENDMENTS.—

(1) ESTABLISHMENT OF PROGRAM.—Section 1411(a) of the Patient Protection and Affordable Care Act (42 U.S.C. 18081(a)) is amended by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2) QUALIFIED INDIVIDUALS.—Section 1312(f) of the Patient Protection and Affordable Care Act (42 U.S.C. 18032(f)) is amended—

(A) in the heading, by striking ''; ACCESS LIMITED TO CITIZENS AND LAWFUL RESIDENTS''; and

(B) by striking paragraph (3).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years, plan years, and taxable years, as applicable, beginning after December 31, 2023.

SEC. 6. STATE OPTION TO EXPAND MEDICAID AND CHIP TO INDIVIDUALS WITHOUT LAWFUL PRESENCE.

(a) MEDICAID.—

(1) IN GENERAL.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) in subclause (XXII), by striking ''or'' at the end;

(B) in subclause (XXIII), by striking the semicolon and inserting ''; or''; and

(C) by adding at the end the following new subclause:

''(XXIV) who would be eligible under the State plan (or waiver of such plan) under this title if they were citizens of the United States;''.

(2) CONFORMING AMENDMENT.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) is amended, in the matter preceding paragraph (1)—

(A) in the matter designated as clause (xxvi), by striking ''or'' at the end;

(B) in the matter designated as clause (xxvii), by adding ''or'' at the end; and

(C) by inserting after the matter designated as clause (xxvii) the following:

''(xxviii) individuals described in section 1902(a)(10)(A)(ii)(XXIV),''.

(b) CHIP.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by inserting after section 2112 the following new section:

''SEC. 2112A. STATE OPTION TO PROVIDE COVERAGE FOR INDIVIDUALS WITHOUT LAWFUL PRESENCE.

''A State may elect through an amendment to its State child health plan under section 2102 to treat an individual as a targeted low-income child or a targeted low-income pregnant woman for purposes of this title if such individual would otherwise be included as such a child or such a pregnant woman (as applicable) under such plan if the individual were a citizen of the United States.''.

(c) NONAPPLICATION OF ELIGIBILITY PROHIBITION.—Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. 1611(a)) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply with respect to a noncitizen's eligibility under a State plan (or waiver of such plan) under title XIX of the Social Security Act or under a State child health plan (or waiver of such plan) under title XXI of such Act to the extent that such State has elected to make such individual so eligible pursuant to section 1902(a)(10)(A)(ii)(XXIV) or 2112A of such Act, respectively.''.

SEC. 7. PRESERVING ACCESS TO COVERAGE.

(a) IN GENERAL.—Nothing in this Act, including the amendments made by this Act, shall prevent lawfully present noncitizens who are ineligible for full benefits under the Medicaid program under title XIX of the Social

Security Act from securing a credit for which such lawfully present noncitizens would be eligible under section 36B(c)(1)(B) of the Internal Revenue Code of 1986 and under the Medicaid provisions for lawfully present noncitizens, as in effect on the date prior to the date of enactment of this Act.

(b) DEFINITION.—For purposes of subsection (a), the term ''full benefits'' means, with respect to an individual and State, medical assistance for all services covered under the State plan under title XIX of the Social Security Act that is not less in amount, duration, or scope, or is determined by the Secretary of Health and Human Services to be substantially equivalent to the medical assistance available for an individual described in section 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)).

SEC. 8. REMOVING BARRIERS TO HEALTH COVERAGE FOR LAWFULLY PRESENT INDIVIDUALS IN MEDICARE.

(a) PART A.—Section 1818(a)(3) of the Social Security Act (42 U.S.C. 1395i–2(a)(3)) is amended by striking ''an alien'' and all that follows through ''under this section'' and inserting ''an individual who is lawfully present in the United States, including individuals with an ap-

proved or pending application for deferred action or other federally authorized presence''.

(b) PART B.—Section 1836(2) of the Social Security Act (42 U.S.C. 1395o(2)) is amended by striking ''an alien'' and all that follows through ''under this part'' and inserting ''an individual who is lawfully present in the United States, including individuals with an approved or pending application for deferred action or other federally authorized presence''.

(c) LAWFULLY PRESENT DEFINED.—The term ''lawfully present'' shall include, at a minimum, all immigration categories that are treated as lawfully present for purposes of the title XIX program as amended by section 3.

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