2020

Health Care for All

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I. Health Care for All

With the 2020 presidential election approaching, polls suggest that Americans are concerned about health insurance and immigration issues.[1] Some candidates have expressed support for providing health coverage for undocumented immigrants as well.[2] Unfortunately, no candidate has shared with the public how they plan to go about doing this.[3] This is not surprising given the complex nature of health care coverage and immigration law in the United States. Further, given the fear and anxiety that undocumented immigrants face about being deported not many undocumented immigrants are likely to be open about their qualms regarding their lack of medical coverage in the United States. However, "[n]ational research suggests rates of uninsurance are highest among low-income undocumented immigrants."[4] As of 2017, undocumented immigrants were almost five times more likely than citizens to be uninsured.[5] Undocumented immigrants cannot purchase private health insurance in state insurance

[1] "Health care has been and remains a top issue for Democrats during the 2020 Democratic presidential primary. Recent KFF Health Tracking Polls have found that health care consistently emerges as a top issue that Democrats and Democratic-leaning independents want to hear the 2020 Democratic presidential candidates discuss, and this month's poll finds this continues to be true. When asked to say in their own words what issue they would most like to hear the Democratic presidential candidates discuss in the upcoming debate, one in four Democrats and Democratic-leaning independents (24%) offer health care. This is twice as many as say they want to hear more about any other issue such as the environment (12%), immigration (6%), jobs and the economy (5%), education (4%), and gun control (4%)." Lunna Lopes et. al., *Health Care In The 2020 Election, Medicare-for-all, And The State Of The ACA*, Kaiser Family Foundation (Jul. 15, 2019), https://www.kff.org/health-reform/poll-finding/kff-health-tracking-poll-november-2019/.

[2] Samantha Artiga & Maria Diaz, *Health h Coverage and Care of Undocumented Immigrants*, Kaiser Family Foundation (Jul. 15, 2019), https://www.kff.org/disparities-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/

[3] *Id.*

[4] Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.

[5] *Health Coverage of Immigrants*, Kaiser Family Foundation (Feb. 15, 2019), https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/.

exchanges even at full cost.[6] Under the Affordable Care Act (ACA), undocumented immigrants are "eligible for emergency care under federal law" or for Emergency Medicaid if they are considered to be low-income.[7] They may receive "nonemergency health services at community health centers or safety-net hospitals."[8]

Reconsidering health insurance for the undocumented is more important than ever because the number of undocumented immigrants that have lived in the U.S. for more than ten years continue to rise.[9] In 2017, 66% of undocumented adults were in the U.S. for more than a decade, relative to 41% in 2007.[10] The opposite is true for the number of undocumented adults that have lived in the U.S. for five years or less--20% in 2017 and 30% in 2007.[11] Further, in 2017, the average amount of time that undocumented immigrants lived in the U.S. was 15.1 years.[12]

The Pew Research Center statistics show that the undocumented immigrant population in the U.S. is getting older overall, which means that limiting public health care to those 25 years old and younger is just the starting point to create more cost-effective legislation. California has gradually taken steps in the right direction to provide more cost-effective health care to this population. California should serve as a model for other states on how to provide public health insurance for low-income undocumented immigrants because California is home to more

[6] *Immigrants and the Affordable Care Act*, National Immigration Law Center, https://www.nilc.org/issues/health-care/immigrantshcr/ (last revised January 2014).
[7] *Id.*
[8] *Id.*
[9] Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, Pew Research Center (Jun. 12, 2019), https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/.
[10] *Id.*
[11] *Id.*
[12] *Id.*

undocumented persons than any other state. If California can find a way to make such a policy work other states will likely be able do to the same.

This paper seeks to explore some of the reasons why the U.S. does not provide more comprehensive medical care for undocumented persons, whether those reasons are justified by a cost-benefit analysis from a public health perspective, and how people who are insured are affected by the lack of medical care available to undocumented persons. Ultimately, this paper makes the argument that undocumented immigrants should be afforded comprehensive health insurance because under some circumstances preventative health care will cost less than emergency care,[13] those who are already insured will likely benefit from undocumented immigrants gaining health coverage,[14] and providing comprehensive health care for undocumented immigrants will help to end a significant amount human suffering for what would likely be a reasonable cost.[15] Therefore, undocumented immigrants should not be excluded from receiving health insurance under the Affordable Care Act (ACA). Further, for society to reap the full benefits of providing undocumented immigrants health insurance, medical staff/facilities must be held accountable when they fail to keep information about an undocumented immigrant's immigration status private.

[13] See Lilia Cervantes et al., *Association of Emergency-Only vs Standard Hemodialysis with Mortality and Health Care Use Among Undocumented Immigrants with End-Stage Renal Disease*, JAMA INTERNAL MEDICINE (Dec. 18, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5838789/.
[14] See Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.
[15] See Aaron E. Carroll, Preventive Care Saves Money? Sorry, It's Too Good to Be True, NYTIMES.COM (Jan. 29, 2018, https://www.nytimes.com/2018/01/29/upshot/preventive-health-care-costs.html.

II. Various Laws Concerning Health Care Access for Undocumented Immigrants

a. The Affordable Care Act

One of the main reasons why undocumented immigrants likely have poor access to health care is because they "are explicitly excluded from the [ACA's] health insurance exchanges, cost-sharing reductions, health insurance mandate, tax credits, and the expansion of Medicaid's traditional provisions."[16] Although the ACA has reduced racial and income-based disparities in health care, it has arguably intensified disparities among undocumented immigrants.[17]

Section 1312(f)(3) of the ACA states that: "If an individual is not, or is not reasonably expected to be for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States, the individual shall not be treated as a qualified individual and may not be covered under a qualified health plan in the individual market that is offered through an Exchange."[18]

b. Emergency Medical Treatment & Labor Act (EMTALA)

The Emergency Medical Treatment & Labor Act (EMTALA) is the federal law that mandates hospitals to provide emergency care. The Congressional purpose behind the enactment of EMTALA in 1986 was to "ensure public access to emergency services regardless of ability to pay."[19] Section 1867 of the Social Security Act imposes certain duties on hospitals that

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[16] Alexander N. Ortega et al., *Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California 2018*, MEDICAL CARE (Nov. 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6226215/pdf/mlr-56-919.pdf.
[17] *Id.*
[18] Office of the Legislative Counsel for the Use of the U.S. House of Representatives, *Compilation of Patient Protection and Affordable Care Act*, HOUSE.GOV, http://housedocs.house.gov/energycommerce/ppacacon.pdf (as amended through May 1, 2010).
[19] Centers for Medicare and Medicaid Services, *Emergency Medical Treatment & Labor Act (EMTALA)*, CMS.GOV, https://www.cms.gov/regulations-and-guidance/legislation/emtala/ (last modified Mar. 26, 2012).

participate with Medicare and provide requested emergency services for emergency medical screening examinations (MSEs) and requested treatment for emergency medical conditions (EMCs), including women in labor, regardless of whether a patient can pay.[20] Then, hospitals are required to provide treatment to stabilize patients with EMCs.[21] If a hospital is unable to render the treatment necessary for stabilization, or if a patient requests it "an appropriate transfer should be implemented."[22]

c. Medicare and Medicaid

The Centers for Medicare and Medicaid Services allows states to determine which conditions are defined as emergency medical conditions: "The broad definition [of emergency medical condition] allow[s] states to interpret and further define the services available to aliens covered by section 1903 (v)(2) which are any services necessary to treat an emergency medical condition in a consistent and proper manner supported by professional medical judgment."[23]

"A few states, including Oregon, Illinois, and New York, allow undocumented children and pregnant women to join Medicaid."[24]

[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Lilia Cervantes et al., *Association of Emergency-Only vs Standard Hemodialysis with Mortality and Health Care Use Among Undocumented Immigrants with End-Stage Renal Disease*, JAMA INTERNAL MEDICINE (Dec. 18, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5838789/ (quoting 55 Federal Register 36 813, 36 816 [1990]).
[24] Francie Diep, *What Would Happen if the Government Covered Undocumented Immigrants' Health Care?*, PSMAG.com (Jul. 3, 2019), https://psmag.com/economics/what-would-happen-if-the-government-covered-undocumented-immigrants-health-care.

II. Motivations for the Law

The Trump Administration and Congress have considered a variety of enforcement and policy choices that would reduce the number of immigrants in the U.S.[25] Among other reasons, one key motivator for these policies and their enforcement is the belief that immigrants tend to use resources like health care more often than is "normal" despite evidence that as a group they tend to use less health care than others.[26] In addition to underutilizing public resources, the Institute on Taxation and Economic Policy reported that undocumented immigrants as a group pay close to $12 billion a year in state and local taxes, with more than $3 billion coming from undocumented immigrants living in California.[27] As a group, they also contribute $2 to $4 billion to the Medicare Trust Fund and $12 billion to Social Security every year but they cannot receive the benefits that these programs offer.[28]

Many American citizens probably do not see the direct connection between providing care for the undocumented and their own interests.[29] One researcher, Kelley, suggests that because the U.S. provides care for anyone struck with a medical emergency, we all pay for everyone's healthcare at some point in time.[30] Kelley goes on to say that "[w]hen we provide access to care for undocumented immigrants, it's not necessarily going to be a cost burden every time. In some ways, it may be beneficial to us in both indirect ways and even in direct ways." [31]

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[25] Alexander N. Ortega et al., *Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California 2018*, MEDICAL CARE (Nov. 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6226215/pdf/mlr-56-919.pdf.
[26] *Id* (citations omitted).
[27] *Id.*
[28] *Id* (citations omitted).
[29] Institute for Healthcare Policy and Innovation, *An Ironic Health Care Twist for Undocumented Immigrants*, UNIVERSITY OF MICHIGAN (Jan. 2, 2018), https://ihpi.umich.edu/news/ironic-health-care-twist-undocumented-immigrants.
[30] *Id.*
[31] *Id.*

Consistent with Dr. Kelley's thought process quoted above, Congress recently provided funding for "federally qualified health centers that provide care to underserved patients outside of the hospital."[32]

Before California's recent decision to provide publicly funded health care for low-income undocumented persons ages 25 and under, a 2018 study by Ortega et al. focused on Latinos' access to health care because "they are the largest ethnic group of immigrants nationwide and because over 80% of undocumented immigrants in California are Latino."[33] One of the study's main findings is that undocumented Latino immigrants have poorer health care access and use health care less often than U.S.-born Latinos.[34]

In the Ortega et. al. study the researchers used the California Health Interview Survey (CHIS) spanning from 2011 to 2015 to study health care access and use based on the subjects' citizenship status.[35] The study shows that undocumented Latinos had the worst access and lower levels of use when compared to the other groups in the study, meanwhile U.S born Latinos had the best access and higher levels of use.[36] The study shows that over the course of one year, undocumented Latinos were least likely to have a consistent source of medical care other than the Emergency Department (61%), were least likely out of the groups to have visited the Emergency Department (14%), least likely to have visited a doctor (58%), and reported the

[32] *Id.*
[33] Alexander N. Ortega et al., *Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California 2018*, MEDICAL CARE (Nov. 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6226215/pdf/mlr-56-919.pdf.
[34] *Id.*
[35] *Id.*
[36] *Id.*

lowest average of doctor visits.[37] The study shows that undocumented Latinos use health care less than Latino citizens and Latinos who are legally present in the U.S.[38]

Interestingly, Latinos reported experiencing serious psychological distress significantly less than the other groups.[39] Immigrant Latinos reported significantly less need for help regarding behavioral health issues and interacted with mental health professionals significantly less than US-born Latinos.[40] Undocumented Latinos that had an insurance plan were less likely to have a plan that covers behavioral health services.[41] Finally, among those who actually reported a need for help but did not visit a mental health professional, undocumented Latinos were more likely not to seek help due to the cost of care compared to US-born Latinos.[42]

Based on Ortega et. al.'s study, it seems that undocumented immigrants were excluded from the ACA based on discriminatory reasons rather than evidence or a cost benefit analysis that considers the health of American citizens and noncitizens alike.[43] Major components of the ACA's Marketplace insurance exchanges include the subsidized and unsubsidized coverages that are available.[44] The ability to offer affordable premiums is dependent on healthy individuals participating in the Marketplace to reduce the cost of care for less stable populations.[45] Since

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[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] "Although the specific societal impact of mental illness varies among cultures and nations, untreated mental illness has significant costs to society. In 2001, the [World Health Organization] WHO estimated that mental health problems cost developed nations between three and four % of their GNP (gross national product). When mental illness expenditures and loss of productivity are both taken into account, the WHO estimated that mental disorders cost national economies several billion dollars annually. In 1997, a Harvard Medical School study estimated that the United States lost more than 4 million workdays and experienced 20 million "work cutback days" (days of impaired workplace performance) due to mental illness." Unite for Sight, *Module 1: Introduction to Global Mental Health: Effect of Mental Health on Individuals and Populations*, UNITEFORSIGHT.ORG, https://www.uniteforsight.org/mental-health/module1 (last visited Oct. 28, 2019).
[43] *Id.*
[44] *Id.*
[45] *Id.*

Ortega et. al.'s findings represent that undocumented immigrants report being healthier and using care less often than their counterparts they have the potential to lower costs if they are permitted to participate in the Marketplace. Further, under some scenarios, allowing undocumented immigrants to participate in the ACA marketplace would provide them with preventive health care that may save some costs in the long term to health plans and improve public health altogether.[46]

III. Fear as a Barrier to Care

Even if states were to extend health coverage to undocumented immigrants, it is not certain how much the coverage will positively impact the health of the undocumented population and the overall U.S. population in light of the current Trump administration. The ever-changing Trump Administration immigration policies have heightened fears in immigrant communities.[47] Reports show that fear causes families to avoid using programs like Medicaid and CHIP for themselves and their children (many of whom are citizens).[48]

Changes to public charge policies could decrease lawfully present immigrants' and their children's participation in Medicaid as well as the participation of undocumented immigrants' children.[49] In the U.S., immigration policy gives federal officials the power to refuse an immigrant entry into the United States or refuse to confer legal permanent resident (LPR) status (also known as a "green card") to an immigrant if they think that the person would become a public charge.[50] "In immigration law, public charge is a ground of 'inadmissibility.' This law

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[46] *Id.*
[47] Samantha Artiga & Maria Diaz, *Health Coverage and Care of Undocumented Immigrants*, Kaiser Family Foundation (Jul. 15, 2019), https://www.kff.org/disparities-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/.
[48] *Id.*
[49] *Id.*
[50] Samantha Artiga et al., *Estimated Impacts of Final Public Charge Inadmissibility Rule on Immigrants and Medicaid Coverage, Kaiser Family Foundation* (Sep. 18, 2019), https://www.kff.org/disparities-policy/issue-brief/estimated-impacts-of-final-public-charge-inadmissibility-rule-on-immigrants-and-medicaid-coverage/.

says that those that are likely to become dependent on the government in the future as a "public charge" are inadmissible. Grounds of inadmissibility only apply to those seeking entry at our borders or those seeking to get a green card in the United States through an adjustment of status."[51]

In August 2019, the Trump Administration proposed a new public charge rule so that the federal government could take into consideration more programs that an immigrant would be eligible for if they were given legal status.[52] The new rule would have allowed the federal government to consider "health, nutrition, and housing programs, such as Medicaid for non-pregnant adults" when determining whether someone would be a public charge.[53] Other factors that the Department of Homeland Security (DHS) would have considered in making a public charge determination include an income under 125% of the federal poverty level (FPL), which for a family of three is currently equal to $26,663.[54] Consider the effects that the rule would have had by considering the following: 79% of noncitizens who originally entered the U.S. would have at least one condition that would weigh against them in a public charge determination.[55] 27% would have a condition that DHS could weigh heavily against them in granting admission or conferring legal status.[56] The most common negative factors inflicting this group are lack of private health insurance (56%), not possessing a high school diploma (39%), and having an income below the 125% FPL threshold (32%).[57]

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[51] *Public Charge*, Immigrant Legal Resource Center, https://www.ilrc.org/public-charge (last visited Dec. 12, 2019).
[52] Samantha Artiga & Maria Diaz, *Health Coverage and Care of Undocumented Immigrants*, Kaiser Family Foundation (Jul. 15, 2019), https://www.kff.org/disparities-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*

The new public charge rule was set to take effect on October 15, 2019, but as of October 11, 2019 it was enjoined by several courts.[58] The rule cannot be implemented unless a court holds that it can take effect.[59] This means that for now the longstanding policies that have been used to determine whether someone will be a public charge will continue to be followed.[60] Currently, immigration officers make public charge determinations by evaluating if a person seeking a green card or a person requesting to enter the United States with some types of visas will "become primarily dependent on the government for support. Primary dependence refers to reliance on cash-aid for income support or long-term care paid for by the government."[61]

Even though the Democratic presidential candidates have shown support for expanding health care to include undocumented immigrants, none of the candidates have shared how exactly they plan to achieve this aim.[62] The costs and effects of expanding health care to undocumented immigrants is dependent on how exactly they would gain coverage (publicly or privately), which benefits they receive, and cost-sharing and premium levels.[63] Some of the cost of the expansion would be offset by the existing avenues available for undocumented immigrants to receive care.[64] For example, California's 2019 expansion provides coverage for all young adults by using solely state funds.[65] The state budget for the expansion amounts to $98 million for the first year which will cover around 90,000 people.[66] Despite these efforts, it seems almost

[58] *Public Charge*, Immigrant Legal Resource Center, https://www.ilrc.org/public-charge (last visited Dec. 12, 2019).
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] Samantha Artiga & Maria Diaz, *Health Coverage and Care of Undocumented Immigrants*, Kaiser Family Foundation (Jul. 15, 2019), https://www.kff.org/disparities-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *Id.*

inevitable that fears among immigrant communities will limit the effectiveness of California's expansion in care along with other similar expansions.[67]

A documented example of fear getting in the way of an attempt to provide health insurance to undocumented immigrants includes the June 2016 example of when California Governor Brown signed a senate bill that was going to allow undocumented immigrants to participate in Covered California, the state exchange, without any subsidies.[68] But, in January 2017, California withdrew their proposal to CMS because the state was concerned about how the information might be used by the Trump Administration to facilitate deportation efforts.[69]

As Nessel explains in her article, "when undocumented immigrants turn to hospitals for emergency care, they are at risk of de facto deportation if they require ongoing hospital care once they are no longer in critical condition."[70] A major issue with current state of the law is that it only requires medical care up to the point of "stabilization" and "once the patient is stabilized, the hospital is not required to continue treating the patient and will no longer receive federal reimbursement for doing so."[71] Therefore, it is not uncommon for hospitals to push for the removal of the patient back to their native country.[72] Nessel explains that hospitals used to employ private transportation companies to carry out the removal of immigrants because of the government's preference in avoiding the expenses of medical care while a person is being detained.[73] To make matters worse, the government is no longer prioritizing the deportation of

[67] *Id.*
[68] Louise Norris, *How Immigrants can Obtain Health Coverage*, HEALTHINSURANCE.ORG (Oct. 11, 2019), https://www.healthinsurance.org/obamacare/how-immigrants-are-getting-health-coverage/.
[69] *Id.*
[70] Lori Nessel, INSTILLING FEAR AND REGULATING BEHAVIOR: IMMIGRATION LAW AS SOCIAL CONTROL, 31 Geo. Immigr. L.J. 525, 554-555.
[71] *Id* (quoting 42 U.S.C. § 1395dd (2006)).
[72] *Id.*
[73] *Id.*

dangerous immigrants.[74] Now, undocumented immigrants are forewarned that they will be "detained and deported at any moment."[75] One appalling example of this was when ICE chained a woman's hands and ankles while she was waiting for emergency surgery for her brain tumor.[76] ICE also refused to let her speak to her family and removed her from the emergency department while she was in a wheelchair in order detain her.[77]

IV. Benefits of Expanding Health Coverage

The ACA has allowed more than two million previously uninsured Californians to gain health insurance coverage.[78] The implementation of the ACA benefitted not only those who were uninsured before its implementation but also some of those who were already insured before the ACA took effect. Some people who were already insured benefitted from the implementation because high rates of uninsurance in a community can hurt local hospital systems financially since hospitals must provide care, in some instances, regardless of whether a patient is insured.[79]

Uninsured persons cost hospitals money in terms of uncompensated care and in turn result in lower quality care for all patients.[80] The 2015 Garthwaite study explains that just one

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[74] *Id.*
[75] *Id.*
[76] *See* Erin White, *Ice Agents Move Hospitalized Salvadoran Woman Awaiting Emergency Surgery to a Detention Facility in Texas*, L.A. TIMES (Feb. 23, 2017), http://ktla.com/2017/02/23/iceagents-move-hospitalized-salvadoran-woman-awaiting-emergency-surgery-to-detention-facility-intexas/, (noting that the woman had no criminal convictions and had been detained prior to the hospitalization based on being denial asylum protection).
[77] *Id.*
[78] Bobby Allyn, *California is 1st State to Offer Health Benefits to Adult Undocumented Immigrants*, NPR.ORG (July 10, 2019 at 3:41 AM ET), https://www.npr.org/2019/07/10/740147546/california-first-state-to-offer-health-benefits-to-adult-undocumented-immigrants.
[79] Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.
[80] *Id.*; Craig Garthwaite et al., *Hospitals as Insurers of Last Resort*, NATIONAL BUREAU OF ECONOMIC RESEARCH (June 2015), https://www.nber.org/papers/w21290.pdf; José A. Pagán et al., *Community-Level Uninsurance and the Unmet Medical Needs of Insured and Uninsured Adults*, WILEY ONLINE LIBRARY (Jan. 25, 2016), https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1475-6773.2006.00506.x.

uninsured person costs a local hospital $900 per year in uncompensated care.[81] The 2006 Pagán et al. study and the 2015 Garthwaite et al. study support the idea that denying undocumented persons public health insurance has adverse health consequences on the population at large—even those who are insured.

When the ACA expanded health insurance coverage for low-income persons in California through Medi-Cal, the state's Medicaid program, around a million low-income persons were still ineligible to receive public health insurance because they were undocumented immigrants.[82] Gaining health insurance can have a significant positive impact on communities and families. For example, the 2014 Sommers et al. study showed that after Massachusetts expanded coverage in 2006, the state experienced lower morality rates, more specifically, for every 830 people that gained insurance one death was avoided.[83]

IV. California's Extension of Public Health Insurance

As early as May 2016, California expanded Medi-Cal to undocumented children. At that time, the expansion was expected to make about 170,000 children in California eligible for comprehensive health care.[84] Senate Bill 75 was the authorizing legislation that extended

[81] Craig Garthwaite et al., *Hospitals as Insurers of Last Resort*, NATIONAL BUREAU OF ECONOMIC RESEARCH (June 2015), https://www.nber.org/papers/w21290.pdf
[82] "The Affordable Care Act offers states the opportunity and considerable financial incentives to expand their Medicaid programs to cover non-disabled, -income adults with no dependent children. Not all states have taken advantage of the Medicaid expansion. California did and has enrolled more than 2 million people in Medi-Cal since October 2013." Lucia et al., *Which Californians will Lack Health Insurance Under the Affordable Care Act?*, UCLA CENTER FOR HEALTH POLICY RESEARCH (January 2015), http://healthpolicy.ucla.edu/publications/Documents/PDF/2015/uninsuredbrief-jan2015.pdf.
[83] Benjamin D. Sommers et al., *Changes in Mortality After Massachusetts Health Care Reform: A Quasi-experimental Study*, ANNALS OF INTERNAL MEDICINE (May 6, 2014), https://annals.org/aim/article-abstract/1867050/changes-mortality-after-massachusetts-health-care-reform-quasi-experimental-study.
[84] Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.

Medi-Cal to undocumented children.[85] Senate Bill 4 includes more information about the execution of this expansion.[86]

Other legislation proposed to allow low-income undocumented persons to gain Medi-Cal benefits and for those with higher incomes to purchase benefits through the state exchange, Covered California.[87] During the 2015-2016 term, these expansions for adults did not move forward, but the proposals continued to be part of active bills for the next year.[88] The eligibility requirements of Medi-Cal include that one must earn 138 percent of the federal poverty level or less, which for a family of four would equal about $33,500.[89] It was estimated that about half of California's undocumented population, 1.4 million, would have been eligible for Medi-Cal coverage based solely on the financial eligibility requirements.[90]

During the 2015-2016 term, in Los Angeles County alone, there were about 500,000 undocumented immigrants that would have been covered by the proposed expansions of Medi-Cal.[91] Los Angeles has California's largest population of undocumented immigrants, and higher poverty levels among immigrants in Los Angeles increases the number of people potentially eligible for Medi-Cal compared to other regions in the state.[92] There is an indigent care program in Los Angeles that undocumented immigrants can participate in, but more comprehensive care would be available with Medi-Cal coverage which would offer access to more providers and

[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*

services.[93] In other California regions where there is a prevalent population of undocumented immigrants they remain ineligible for county indigent program services, leaving safety net providers like community clinics and hospital emergency departments primarily responsible for the care of undocumented immigrants in need.[94] The expansion of programs like Medi-Cal to undocumented immigrants would lessen the demand for safety net providers,[95] which would likely increase the quality of care that they can provide to patients.

As mentioned previously, the ACA prohibited undocumented immigrants from buying health insurance plans or from getting federal assistance from state or federal health insurance exchanges.[96] In 2015, proposals were made to authorize California to request a federal waiver to allow undocumented immigrants to participate in Covered California.[97] States must request a waiver from the Centers for Medicare and Medicaid Services as required under section 1332 of the ACA, this section affords states the opportunity to expand their health coverage to fit "local needs and preferences."[98] The proposed waiver would have allowed undocumented adults to purchase plans under Covered California, but only at full price.[99] Such a waiver would likely be ineffective in providing medical care to a majority of undocumented immigrants in California.[100]

In 2015, California's state interest in providing health coverage to undocumented immigrants was evidenced by public opinion, legislative proposals, and executive decisions.[101]

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[93] "Los Angeles operates My Health LA, a health care program that offers a medical home to participants through primary care clinics, and as of March 2015 provided coordinated care for more than 100,000 low-income, uninsured Los Angeles county residents, most of whom are undocumented." *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*

California was successful in providing comprehensive Medi-Cal to undocumented children.[102] This important change in coverage was an "example of California taking initiative on policy issues involving the undocumented population."[103] California's decision to care for undocumented children in the state was a step in the right direction because "Medi-Cal expansion to children can provide several benefits, including increased future wages and tax contributions as well as improved health and educational outcomes."[104] Providing care early on for young individuals can lead to long-term benefits for the state overall. The 2015 Brown, Kowalski, and Lurie study examined the long-term effects of expanding health insurance to children over multiple decades.[105] More specifically, the study focused on the connection between administrative tax data and children's health insurance eligibility.[106] Children whose eligibility increased contributed more in taxes, received less earned income tax credit (EITC)[107], and had higher wages overall.[108] Further, the study found evidence that children's increased eligibility for health insurance decreased mortality and increased college attendance.[109]

When California expanded health insurance benefits to cover undocumented children, the state helped to prove the stereotype that undocumented persons overutilize public resources even more wrong. By providing health insurance to a vulnerable group the state helped to secure a better and more independent future for these previously uninsured children. The improved

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[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] "The Earned Income Tax Credit, EITC or EIC, is a benefit for working people with low to moderate income. To qualify, you must meet certain requirements and file a tax return, even if you do not owe any tax or are not required to file. EITC reduces the amount of tax you owe and may give you a refund." *Earned Income Tax Credit (EITC)*, IRS.GOV (Dec. 11, 2019), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit.
[108] Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.
[109] *Id.*

health and education of this group will help the public in California to prosper and become less dependent on government benefits in the future. Other states would be well-advised to follow California's footsteps toward comprehensive health care for undocumented immigrants.

V. California Budget Considerations

California's 2019-2020 budget allows for full-scope Medi-Cal benefits for undocumented young adults ages 19-25. The changes in California's budget suggest that there is an intelligent way for states to allocate funds so that costs are not drastically increased and so that the undocumented population can receive more care than they do without the properly allocated state funding. The budget allocates $98 million for the expansion providing comprehensive Medi-Cal to low-income young adults ages 19 to 25 regardless of their immigration status.[110] These changes will take effect no earlier than January 1, 2020.[111] In the first year of this expansion's implementation, about 90,0000 undocumented young adults will receive comprehensive coverage.[112] About 75 percent of the individuals that will benefit next year are already enrolled to receive restricted scope Medi-Cal coverage.[113] Since nearly 75 percent of the individuals that will receive full-scope benefits are currently enrolled in restricted scope coverage it seems likely that that the full-scope coverage to be provided to these individuals will be more efficient in terms of costs expended by the state and the quality of care provided for these young adults.

Since the state has decided to provide care for undocumented young adults, county costs and services rendered will likely decrease.[114] Therefore, the budget will reflect this expected

[110] Gavin Newsom, *California State Budget 2019-20*, EBUDGET.CA.GOV, 20/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf (last visited Oct. 28, 2019).
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] Gavin Newsom, *Governor's Budget Summary 2019-20*, EBUDGET.CA.GOV, http://www.ebudget.ca.gov/2019-20/pdf/BudgetSummary/FullBudgetSummary.pdf (last visited Oct. 28, 2019).

shift in costs by allocating funds that would usually be designated for the County Medical Service Program Board and other county indigent care instead to fund services through Med-Cal.[115] These changes will offset the additional costs to California Work Opportunity and Responsibility to Kids (CalWORKs).[116]

Before the 2019-2020 Budget for California was officially enacted it was expected that responsibilities and costs incurred on the county level would be alleviated by increasing state funds so that undocumented young adults who gain coverage would be less reliant on care rendered by the counties.[117] In addition, by allocating costs to the state level, regions such as Los Angeles County where indigent programs exist will be less burdened because undocumented young adults will be able to receive full scope coverage.[118] Further, full scope coverage for these individuals will likely also mean that community clinics and emergency departments will see a decrease in the demand for their services thereby allowing these facilities to provide better quality care to their patients.[119]

VI. Comprehensive Health Coverage v. Safety Net Providers

In 2015, California counties already had indigent care programs in place, but many counties refused to render services to undocumented immigrants.[120] This left safety net providers primarily consisting of hospital emergency departments and community clinics to provide medical care for undocumented immigrants.[121] Safety net providers render services to patients regardless of their immigration status and provide free or reduced-cost care

[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.
[120] *Id.*
[121] *Id.*

dependent on patient income level.[122] Although safety net providers are primary sources of medical care for undocumented Californians, safety net providers are not an adequate replacement for them possessing comprehensive health insurance.[123] Prior to California's 2019 health coverage expansion, except for children under 19 years old, undocumented immigrants were ineligible for full-scope Medi-Cal but could receive limited emergency services such as care for pregnant women.[124]

Some people worry that once all undocumented persons are eligible to receive publicly funded health insurance that they will increase costs to the subsidized plan that they participate in.[125] However, researchers Ortega and Zallman, research director at the Institute for Community Health, think that coverage for undocumented people will result in long-term savings because treating illness sooner is cheaper than waiting for them to become emergency situations.[126] Some researchers believe that savings will occur in the long run because fewer people would visit emergency rooms as a last resort since emergency departments must stabilize anyone who is seriously ill even if they are undocumented or cannot afford the required care.[127] Whether people like the fact that emergency room physicians have a duty to stabilize undocumented immigrants under federal law "eventually the price tag hits taxpayers."[128]

From the limited research conducted to determine the cost saving effect of providing comprehensive health care for people regardless of their immigration status, the research shows

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[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] Francie Diep, *What Would Happen if the Government Covered Undocumented Immigrants' Health Care?*, PSMAG.com (Jul. 3, 2019), https://psmag.com/economics/what-would-happen-if-the-government-covered-undocumented-immigrants-health-care.
[126] *Id.*
[127] *Id.*
[128] *Id.*

that the savings would be significant in some cases.[129] In 2004, the Government Accountability Office was uncertain just how much undocumented immigrants cost hospitals in terms of uncompensated emergency treatment.[130] However, one 2018 study compared undocumented immigrants suffering from kidney failure who received only emergency hemodialysis and those who were able to start dialysis sooner.[131] Standard hemodialysis costed significantly less than implementing only emergency hemodialysis.[132] Further, the patients who only received only emergency hemodialysis spent ten times as much time in acute care and were fourteen times more likely to die in the next five years.[133]

The results of this study were consistent with data showing worse survival rates for patients who receive standard hemodialysis but miss treatment sessions.[134] Similarly, patients who miss sessions are more likely to be hospitalized, visit the emergency department, and stay in the intensive care unit.[135] The Cervantes et al. study examined a total of 211 undocumented persons, 46 people in this group received standard hemodialysis while 169 people received emergency-only hemodialysis. *Id.*

The patients who received only emergency hemodialysis spent ten times as much time in a hospital setting and less time outside of a medical setting.[136] A 2015 study examining patients who utilize a particularly high amount of medical services showed that in Colorado undocumented persons getting emergency hemodialysis make up 2% of these superusers of care

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[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] Lilia Cervantes et al., *Association of Emergency-Only vs Standard Hemodialysis with Mortality and Health Care Use Among Undocumented Immigrants with End-Stage Renal Disease*, JAMA INTERNAL MEDICINE (Dec. 18, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5838789/.
[135] *Id.*
[136] *Id.*

but they visit the hospital more and their care costs more than other superusers on average.[137] The 2007 Sheikh-Hamad et al. study examined the cost differences between 13 undocumented immigrants recently diagnosed with ESRD receiving emergency care and 22 undocumented immigrants who already had ESRD and found that emergency hemodialysis care costs about four times as much and consists of more emergency room and hospital visits overall.[138] Therefore, limiting the quality of care that undocumented immigrants can receive, at least in this one example, ends up being costlier over time.[139]

The experience of undocumented immigrants with ESRD who receive emergency-only care is likely more distressing than for those who can access standard hemodialysis leading to greater mental and physical complications associated with their existing illness. A 2017 study described the experience of undocumented immigrants with ESRD as one filled with severe and potentially life-threatening episodes of uremic and respiratory symptom buildup before they enter an emergency room.[140] In addition, the study described quality of life, finding more than 90% of the patients who received emergency-only hemodialysis were employed before starting hemodialysis, but only 14% could continue working because of their illness and irregular dialysis schedules.[141] Patients and their families are met with psychosocial distress with the specter of death lurking.[142] Therefore, it seems that undocumented immigrants receiving emergency hemodialysis suffer more severe symptoms associated with ESRD before they can access treatment, and by that point the treatment they receive is more costly than if standard

[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*

hemodialysis was implemented and is significantly less effective in terms of survival rates and quality of life.[143]

Municipalities and states that provide standard hemodialysis to undocumented immigrants have different sources of funding such as federal matching funds or modified state Medicaid emergency programs. As an example, Arizona's administrative code provides that "emergency services include outpatient hemodialysis…where a treating physician has certified that…the absence of receiving dialysis at least three times per week would reasonably be expected to result in: 1.) Placing the member's health in serious jeopardy, or 2.) serious impairment of bodily function, or 3.) serious dysfunction of a bodily organ or part."[144] As of 2017, other than Arizona, only New York, California, and North Carolina provide standard hemodialysis to undocumented immigrants.[145]

According to researchers involved in the 2017 Cervantes et al. hemodialysis study described above, the emergency-only hemodialysis treatment of patients with ESRD is strongly linked to a higher likelihood of death and a higher rate of acute[146] hospital visits relative to standard hemodialysis treatment.[147] The authors of the study suggest that because of the life-and-death risk intertwined with emergency-only hemodialysis, state policies should address the

[143] *Id.*
[144] Az. Admin. Code § 9-22-217
[145] Lilia Cervantes et al., *Association of Emergency-Only vs Standard Hemodialysis with Mortality and Health Care Use Among Undocumented Immigrants with End-Stage Renal Disease*, JAMA INTERNAL MEDICINE (Dec. 18, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5838789/.
[146] Acute care is a level of health care in which a patient is treated for a brief but severe episode of illness, for conditions that are the result of disease or trauma, and during recovery from surgery. *Hospitals Today*, PORTAL.CT.GOV (last visited Dec. 13, 2019), https://portal.ct.gov/-/media/OHS/ohca/HospitalStudy/HospTodaypdf.pdf?la=en.
[147] Lilia Cervantes et al., *Association of Emergency-Only vs Standard Hemodialysis with Mortality and Health Care Use Among Undocumented Immigrants with End-Stage Renal Disease*, JAMA INTERNAL MEDICINE (Dec. 18, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5838789/.

issue of providing standard hemodialysis care for undocumented immigrants.[148] Further, providing comprehensive medical care to low-income undocumented immigrants under some circumstances would reduce costs in the long run while in other cases although comprehensive care might not be cheaper it would significantly reduce human suffering.[149]

XI. Conclusion

The reasons for restricting undocumented immigrants' access to health insurance likely have more to do with inaccurate beliefs like that they tend overutilize health care rather than any rational explanation.[150] Further, undocumented immigrants contribute billions to state and local taxes, the Medicare Trust Fund, and Social Security every year but they cannot receive the benefits that these programs offer to citizens.[151] Providing comprehensive health insurance to low income undocumented immigrants is the morally right step to take, because it simply seems wrong to make people pay for something they will not receive. In some ways, this sort of exploitation seems like a fraud.

When the ACA was implemented it benefitted not only those who were uninsured before it took effect, but it also benefitted some people who were already insured.[152] As previously mentioned, some people who were already insured benefitted from the implementation of the ACA because high rates of uninsurance in a community can hurt local hospital systems

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[148] *Id.*
[149] *Id.*
[150] Alexander N. Ortega et al., *Health Care Access and Physical and Behavioral Health Among Undocumented Latinos in California 2018*, MEDICAL CARE (Nov. 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6226215/pdf/mlr-56-919.pdf.
[151] *Id.*
[152] Bobby Allyn, *California is 1st State to Offer Health Benefits to Adult Undocumented Immigrants*, NPR.ORG (July 10, 2019 at 3:41 AM ET), https://www.npr.org/2019/07/10/740147546/california-first-state-to-offer-health-benefits-to-adult-undocumented-immigrants.

financially since hospitals must provide care, in some instances, regardless of whether a patient is insured.[153] Therefore, denying undocumented persons public health insurance has adverse health consequences on the population at large—even those who are insured.

Changes to ACA provisions are necessary because rates of uninsurance are highest among low-income undocumented immigrants.[154] Further, safety net providers like clinics and emergency departments are likely in higher demand in communities that are home to a higher population of uninsured individuals.[155] In any event, uninsured individuals should not rely on emergency departments as a primary source of care—as explained in Cervantes et al.'s study certain illnesses like ESRD cannot be treated effectively with emergency care alone in terms of health outcomes and in terms of a rational cost-benefit analysis.[156]

Viewing this issue from a public health prospective, the following changes to the law should be implemented for the best public health outcomes: (1) all undocumented persons should be allowed to benefit from the ACA's provisions allowing access to medical care and (2) medical/hospital staff must be held accountable if they breach their duty to protect the privacy of their patients, including their immigration status.[157] Significant accountability is crucial for any extension of health coverage to undocumented immigrants to be truly meaningful.

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[153] Shannon McConville et al., *Health Coverage and Care for Undocumented Immigrants*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Nov. 2015), https://www.ppic.org/content/pubs/report/R_1115SMR.pdf.
[154] *Id*.
[155] *Id*.
[156] Lilia Cervantes et al., *Association of Emergency-Only vs Standard Hemodialysis with Mortality and Health Care Use Among Undocumented Immigrants with End-Stage Renal Disease*, JAMA INTERNAL MEDICINE (Dec. 18, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5838789/.
[157] For the argument that reporting undocumented immigrants to the police or immigration authorities is a Health Insurance Portability and Accountability Act (HIPAA) violation see Scott J. Schweikart's case and commentary piece where he argues that "immigration status—as information collected by the clinician—meets the definition of individually identifiable health information because it relates to the "past, present, or future physical or mental health or condition of an individual," and thus should be legally, clinically, and ethically regarded as [protected health information] PHI." Scott J. Schweikart, *Should Immigration Status Information be Considered Protected*

Health Information?, AMA JOURNAL OF ETHICS (Jan. 2019), https://journalofethics.ama-assn.org/article/should-immigration-status-information-be-considered-protected-health-information/2019-01.