

# 7 Health Insurance & Workers' Compensation

## **INTRODUCTION**

Nationally and in North Carolina, a greater percentage of Latinos are uninsured compared to other racial and ethnic groups. Latinos are more likely to work for small employers or in industries that do not offer health insurance coverage to employees. In addition, because many Latinos are recent immigrants, they are unable to qualify for public insurance. Latinos who work in the agricultural industry face another problem—under North Carolina laws, many agricultural workers lack workers' compensation protection which could also be used to help pay for medical expenses if hurt on the job.

## **PRIVATE HEALTH INSURANCE COVERAGE**

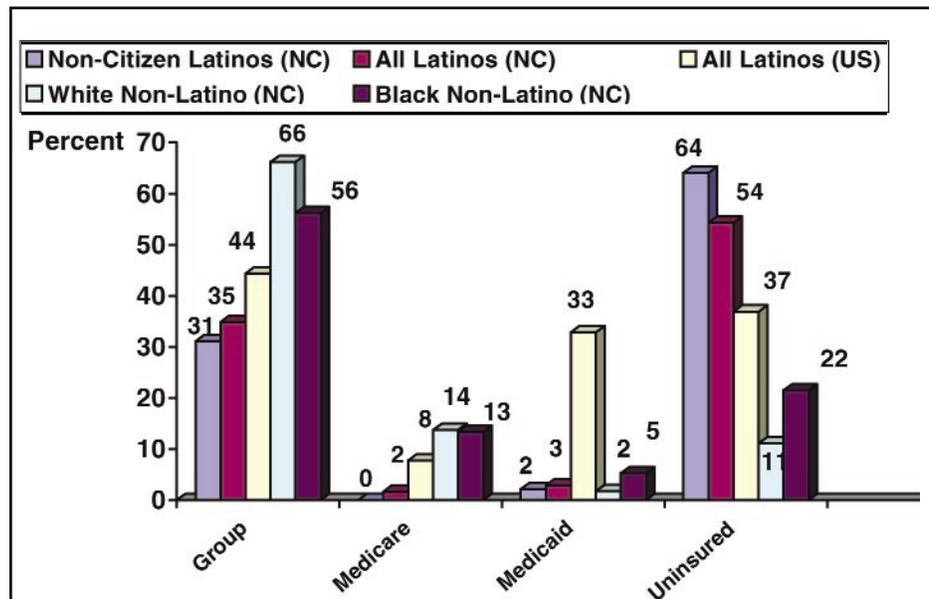
Nationally, immigrant Latinos are more likely to be employed in small firms as compared to non-immigrant Latinos or non-Latino whites.<sup>1</sup> Businesses with less than 25 employees are less likely to offer coverage; thus, these immigrants are less likely to have employer-sponsored health insurance. Recent immigrants are also more likely than whites to work in industries such as agriculture and construction that are less likely than other industries to offer health insurance coverage.

Immigrant couples are slightly younger than the average non-immigrant US Latino couple, and are more likely to have a child six years old or younger. These immigrant families are more likely to have just one worker in the household, perhaps due to having the young child. With just one worker, the family is less likely to have access to employer-sponsored health insurance, and may be less able to afford health insurance if offered. The combined effect of these high rates of one-worker couples and working for industries that are less likely to offer coverage is reduced access to employer-sponsored coverage for immigrants.<sup>2</sup> The cost of premiums is such a large issue that in some studies, affordability is a larger barrier to coverage than language barriers.

The Task Force heard presentations from the construction, hotel and poultry industries in North Carolina. Health insurance coverage was often offered to the Latino workers, but not all Latinos were able to afford or saw the need for the coverage offered.

North Carolinian Latinos are more likely to be uninsured than Latinos nationally (Chart 7:1). More than half (64%) of the Latino non-citizens in North Carolina are uninsured. This compares with 54% of all North Carolina Latinos, and 37% of Latinos in the United States. Further, North Carolina Latinos have a higher chance of being uninsured than non-Latino whites (11%) or African Americans (22%) in North Carolina. Fewer Latinos in North Carolina or the United States have private group-based insurance coverage. The percentage of farmworkers who are uninsured is even higher because most farmworkers in North Carolina are not covered by any employer-based plans.<sup>3</sup> Latino adults nationally are more likely to be covered by publicly-funded programs like Medicaid (33%), but this is not true for North Carolina Latino adults (3%).

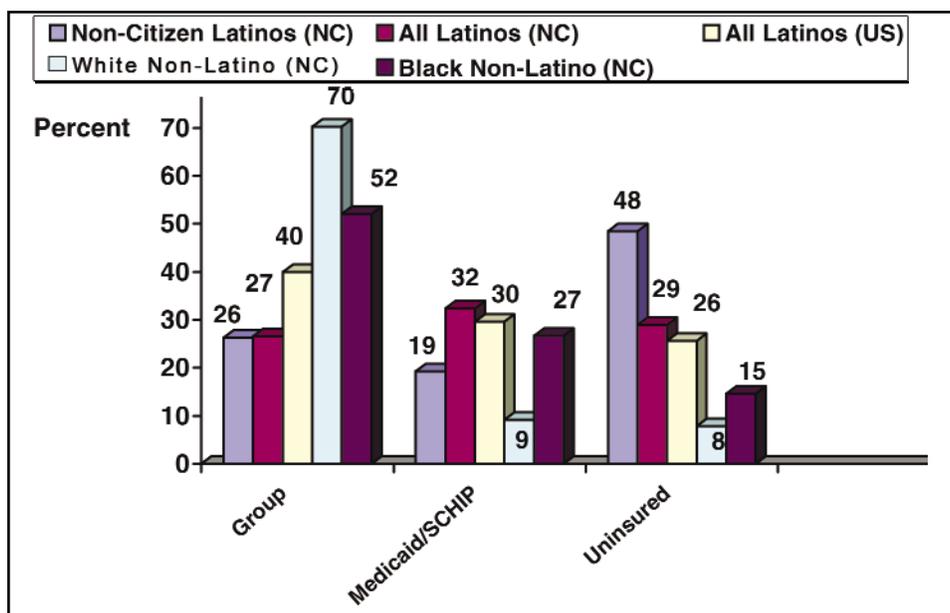
**Chart 7:1**  
**Insurance Status for Latino Adults (18 or older)<sup>4</sup>**



Source: US Census. Current Population Survey (2000, 2001, 2002). Totals do not equal 100% because Champus and private, non-group insurance are excluded from chart.

Similarly, Latino children are more likely to be uninsured (Chart 7:2). Almost one-half (48%) of non-citizen Latino children younger than 18 years of age are uninsured, compared to 29% of all Latino children in North Carolina. North Carolina Latino youth are slightly more likely to be uninsured than are Latino youth nationally (26%), and are significantly more likely to be uninsured than non-Latino white children in North Carolina (8%) or non-Latino black children (15%).

**Chart 7:2**  
**Insurance Status for Latino Children (0-17)<sup>5</sup>**



Source: US Census. Current Population Survey (2000, 2001, 2002). Totals do not equal 100% because Medicare, Champus and private, non-group insurance are excluded from chart.

While Latinos are less likely to have group health insurance coverage than other non-Latinos, some Latinos do have private employer-sponsored health insurance coverage. Having a health insurance card does not always translate into meaningful coverage. Some immigrants, especially those who are recent immigrants or undocumented, have experienced difficulties using their health insurance coverage. Latinos, particularly new immigrants, are often unfamiliar with health insurance and how to use it. Further, immigrants may have difficulty using their health insurance because the name on the insurance card is different than the name they use when presenting to a health care provider. This may occur because Latinos use multiple last names (including both the name of the father and the mother). Employers and insurers may not understand which last name to list—so that the last name listed by the insurer may be different than the one used most often by the individual. Alternatively, some immigrants working in the country without documentation may be using a false Social Security card with another name listed, and that name is the one listed with the employer's health insurance carrier.

The Task Force heard that some providers are unwilling to bill the insurer when a different name is presented for fear that this may be considered insurance fraud.<sup>6</sup> The NC insurance fraud laws were enacted to ensure that individuals do not provide intentionally misleading information in order to obtain health insurance coverage or payment for services that they would not otherwise obtain. Presumably, the name of the individual has little to do with whether the individual is likely to use health care services, or whether the insurer would otherwise provide that person with insurance coverage. Nonetheless, some health care providers have been fearful of submitting a health insurance claim

*Innovative Practices*  
**Affordable Health Insurance in Durham**

El Centro Hispano in Durham, Lincoln Community Health Center, Duke University Health System, the Durham County Department of Social Services, Blue Cross Blue Shield of North Carolina, and other interested individuals are currently working on an initiative to provide affordable health insurance to the Latino population in Durham County. The group is developing a network-based insurance product. To keep premiums low, the providers who are in the network have agreed to accept 50% of the insurers' normal payment as payment in full. Latinos who seek care from a network provider would have to pay a small copayment, but no coinsurance. However, if the insured individual seeks care from a non-network provider, they will be required to pay the copayment, plus 50% coinsurance.

because of the anti-fraud provisions in current state law. As a result, insurers get a financial windfall as both employers and employees are paying the insurance premiums without receiving meaningful insurance coverage in return. Although the Task Force heard anecdotal information about the existence of this problem, there were no data available to know the prevalence of this problem or the extent of its consequences for the NC Latino population.

#### **PUBLICLY FUNDED INSURANCE**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) changed the rules for how immigrants can qualify for most publicly-funded programs, including Medicaid and NC Health Choice. Prior to these changes, immigrants could qualify for coverage if they met other program requirements, had been naturalized, were lawful permanent residents (LPR) or were permanently residing in the United States under color of law (PRUCOL). Undocumented immigrants were ineligible for non-emergency Medicaid coverage.

The new laws made coverage more restrictive, especially for legal immigrants. Rather than looking at whether immigrants are "legal" or undocumented to determine eligibility, the new rules determine eligibility on whether the immigrant is "qualified" or "non-qualified." Qualified immigrants can qualify for federally funded public benefits if they meet program rules, although they may be barred from receiving means-tested public benefits,<sup>7</sup> such as Medicaid and NC Health Choice, for a certain length of time. Non-qualified immigrants are ineligible for all but emergency Medicaid, and certain other limited programs that are not subject to these same restrictions (see below).

Qualified immigrants include:

- Lawful permanent residents
- Refugees, asylees, and persons granted withholding of deportation/removal
- Cuban and Haitian entrants
- Immigrants paroled into the US for at least one year
- Certain battered spouses and children<sup>8</sup>

Latinos are most likely to obtain authorization to live and work in the United States as lawful permanent residents. LPRs who enter the country after August 22, 1996, are ineligible for assistance from a means-tested program for the first five years after receiving their green card (authorization to live and work in the United States).<sup>9</sup> Certain publicly funded programs are covered by the five-year bar, and others are not. In general, means-tested programs are subject to the five-year bar. Other publicly funded programs that do not base eligibility on income or assets are not subject to the five-year bar.

Once a qualified immigrant meets the five-year bar, they may still be ineligible for assistance because of "sponsor deeming." Most immigrants who entered the country after December 17, 1997, had to obtain affidavits of support from a

"sponsor" who agreed to support the family at a level equaling 125% of the federal poverty guidelines. This "support" is considered available to a qualified immigrant when they apply for public benefits (in other words, the income and resources of the sponsor are "deemed" available to the immigrant family-such that the immigrant family will be considered to have income equaling 125% of the federal poverty guidelines). The deeming continues until the immigrant becomes a citizen or the immigrant has 40 quarters of earnings. If the immigrant is married, the spouses can combine their quarters of earnings. However, the deeming rules will not apply if a person would go hungry or homeless without the benefits or if the person is a domestic violence victim.

While LPRs are subject to the five-year bar, other "qualified" immigrants are not. The following immigrants are exempt from the five-year bar on federal means-tested public benefits:

- Refugees (including Hmong), persons granted asylum or withholding of deportation, Amerasian immigrants, Cuban/Haitian entrants
- Veterans, active duty military, spouse, unremarried surviving spouse, or child of veteran/active duty military
- Victims of trafficking

These individuals are eligible for the first seven years after entering the United States. They can continue to receive assistance after the seven years if they later qualify as an LPR or obtain their citizenship.

Any immigrant who doesn't fit one of the categories listed above is "not qualified." Immigrants who are "not qualified" are ineligible for most federally-funded public benefits (including Medicaid and NC Health Choice) even if they have work authorization and are lawfully present in the United States.

### ***Limited Medicaid Coverage***

While ineligible for regular Medicaid coverage, all immigrants regardless of immigration status may be eligible for emergency Medicaid as long as they meet other Medicaid eligibility rules. A medical emergency is defined as a medical condition (including labor and delivery) with acute symptoms that could place the patient's health in serious jeopardy, result in serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part. Medicaid will pay for the labor and delivery charges of women, regardless of the immigration status of the mother.

Further, pregnant immigrants may be eligible for limited Medicaid coverage during a presumptive eligibility period. A pregnant woman who applies for Medicaid can receive coverage immediately upon confirmation of the pregnancy. This "presumptive eligibility" period lasts for no more than two months, while the full Medicaid application is being processed. Coverage during the presumptive eligibility period is guaranteed, even if the woman is later determined to be ineligible because of immigration status (or other reasons). Therefore, pregnant Latinas can obtain time-limited coverage for their prenatal care by seeking presumptive eligibility.

### *Innovative Practices*

#### **NC Health Choice Targeted Outreach efforts**

The Duke Endowment provided funding to six NC agencies to conduct special NC Health Choice outreach efforts targeted to the African/American, Latino and Native American communities. Three projects specially targeted the Latino community in 25 counties, including New Hanover County Partnership for Children, Charlotte's Catholic Social Services, and the Access Project at UNC-Greensboro. In addition, the Robert Wood Johnson Covering Kids Project provided funding for a demonstration project to target Latino children in Forsyth county. According to outreach workers, the best way to reach Latinos was through institutions they trusted, including churches, grocery stores, Catholic social ministries, health care providers that targeted Latino populations, organizations specifically serving Latinos, and Latino media.

***Eligible Children of Immigrant Families***

While most non-qualified immigrants are ineligible for assistance, their children may qualify if born in the United States. Nationally, 85% of immigrant families have at least one citizen member, usually a child.<sup>10</sup> Immigrant families with children experience greater poverty—21.3% have incomes at or below federal poverty guidelines (compared with 11.2% of citizen families).<sup>11</sup> Thus, these families are more likely to meet the income and resource requirements of the federally-funded means-tested programs.

Children who are citizens should have equal access to public benefits by virtue of being citizens; but because they live in immigrant households, they are less likely to receive public assistance. For example, of the 6.7 million uninsured children in families with incomes below 200% of the federal poverty guidelines in 2000, 20% were citizen children with non-citizen parents.<sup>12</sup> In North Carolina, 11.3% of all NC Health Choice children were Latino in SFY02, as were 10% of all Medicaid recipients.<sup>13</sup>

***Barriers That Discourage Eligible Families from Applying***

Many immigrants are afraid to apply for their children because they fear they may be labeled a "public charge," making it more difficult later to qualify for lawful permanent resident status. Additionally, some immigrants may be afraid of reporting their (possibly false) Social Security number to DSS, for fear of deportation. Because of these issues, some Latinos are afraid of seeking services from governmental agencies. And, as noted in other chapters, the lack of forms or notices translated into Spanish and the inadequate number of Spanish speaking eligibility workers in some counties make it difficult for some families to apply. The application and re-certification processes for many governmental programs are complicated; language barriers compound this problem. Special barriers also exist for migrant families, as their mobility and irregular income make it difficult to obtain coverage.

**Public charge**

The Immigration and Naturalization Services (INS) must assess whether an immigrant will become dependent on the federal government for subsistence (i.e., become a "public charge") in deciding whether to grant the person lawful permanent resident status and issue a so-called green card.<sup>14</sup> Many immigrants fear that applying for health care coverage for themselves or their children will adversely affect their ability to obtain a green card. This fear was exacerbated because of an initial INS misinterpretation about what factors to consider in determining whether a person is a public charge. Under federal law, the INS is not allowed to consider the use of health or nutrition support in the public charge consideration. This includes Medicaid, NC Health Choice, Food Stamps, or WIC (although INS may consider health coverage if used for long-term residential assistance, like nursing home care, in their public charge consideration). INS is allowed to consider the receipt of cash assistance such as SSI or TANF, but only for the immigrant who receives the benefit, not for other family members unless it is the sole means of support for the family. Overall, the INS is supposed to look at the totality of the circumstances to determine if the person/family is likely to become a public charge. Thus the INS can determine that

a poor family is likely to become a public charge even if the family does not receive publicly-funded services. Conversely, even if the immigrant did use cash assistance in the past, INS may not determine them to be a public charge if they have a more recent history of work. Refugees, asylees, and citizenship applicants are exempt from these rules. People who already have a green card are also exempt from these rules.

### **Fear of Deportation**

As a general rule, states must obtain Social Security numbers of *applicants* for many federal programs. While states may seek the Social Security number (SSN) of applicants, they may not require that non-applicants provide their SSN. This means that states may not deny benefits because a non-applicant in the family or household has not provided information on immigration status or his or her SSN. Parents need not supply their SSNs when applying solely on behalf of their children.<sup>15</sup>

Requesting SSNs from non-applicant parents may discourage some immigrants from applying for publicly-funded programs, even if they are only applying for their children. Many immigrants, depending on their immigration status, are not issued SSNs. If non-applicant parents see application forms that seem to require SSNs from all household members, the parents may not apply for benefits for their children since the parents do not have SSNs. Other immigrants may have invalid SSNs they use to obtain work. These immigrants may be afraid that the SSN will be used to determine if they are in the country legally, and that if they are not, they will be reported to INS. Many immigrants are afraid to seek assistance even if the SSN is not requested, as they fear that their immigration status may be reported to INS.

Immigration enforcement is the responsibility of the Immigration and Naturalization Service of the newly created US Department of Homeland Security (DHS). DSS agencies are generally not responsible for enforcing immigration laws, and are under no duty to report the immigration status of Medicaid or NC Health Choice applicants. DSSs do have an affirmative duty to report the immigration status of TANF applicants, but only if the agency *knows* the legal immigration status.

Under federal guidance, an agency can only appropriately know or seek to know the immigration status of an applicant for publicly-funded program. Thus, DSS can never know the actual immigration status of parents who apply solely on behalf of their citizen child(ren). If an ineligible parent applies on behalf of his or her eligible child, only the immigration status of the child is at issue. The parents' immigration status should never become an issue. Further, the agency can only know the immigration status if they have seen a formal INS deportation document. In addition, under federal law, the determination that someone is subject to deportation is a formal determination, subject to administrative review. Until the deportation review process has been completed, a DSS agency can never "know" whether a person is subject to deportation.

In North Carolina, parents can apply for Medicaid for their children only; they need not be included when seeking Medicaid coverage. The NC Medicaid man-

ual (for families and children) states that DSS may request a Social Security number from the non-applicant parents, but may not require it. However, the application form contains a space to include the parent's Social Security number. This may be confusing both to the eligibility workers and to the immigrant families; some ineligible immigrant parents may be unaware that they need not provide their Social Security number if they are applying solely for their children, not themselves. In addition, the Privacy Act states that, unless the state is required by Federal law to solicit an SSN, they may ask for SSNs but must make clear that the request is voluntary and how the SSN will be used. Because DSS is not required by federal law to solicit SSNs from non-applicants, the workers must clarify what the number will be used for, and that the request is voluntary.

The current NC Health Choice application forms do not request the Social Security number of the parents. However, in some parts of the state, DSS offices are using old forms, which include a place for the parents' Social Security numbers. Because of the high turnover among DSS eligibility workers, not all of the eligibility workers may understand that Social Security numbers are not needed for the parents. The use of old applications in any place throughout the state could raise Title VI and Privacy Act concerns.

In addition, there is nothing in the DSS manual that prevents or discourages workers from reporting the parent's suspected immigration status to the INS. Thus the fear of deportation may discourage some eligible immigrant families from applying.

### ***Recommendations***

The North Carolina Department of Health and Human Services needs to ensure that it is using the correct policies so that eligible immigrants are not mistakenly denied benefits for which they are eligible. To that end, the Task Force recommended that:

**25. The NC Division of Medical Assistance and DSS re-examine the Medicaid, NC Health Choice and other DSS applications, notices and policies to make services more accessible to the Latino population.**

- **As part of this effort, the NC Department of Health and Human Services should help train Latino service organizations and other organizations to assist applicants in filling out Medicaid, NC Health Choice and other public assistance applications. Funding from private foundations would assist in supporting this work.**

Specifically, the NC Division of Medical Assistance should ensure that:

- DSS workers do not require non-applicant parents to supply their own Social Security numbers when applying for benefits for their children. Ideally, non-applicant parents should not be requested to provide their SSN, but if they do, it must be clear that providing the information is voluntary, not mandatory.

- Information is included on the application, the recipient rights and responsibilities notice and in the procedure manuals to help immigrant families understand that applying for Medicaid or NC Health Choice will not be considered in determining whether the individual or family will become a "public charge."
- The manual provisions are changed to affirmatively ensure that DSS does not report suspected immigration status to the INS, unless DSS makes a formal finding of fact or conclusion of law supported by administrative review that the person is applying for benefits for themselves for TANF or Food Stamps and this DSS finding is supported by a determination by the INS or Executive Office of Immigration Review that the person has been found to be unlawfully present, resulting in a final order of deportation.
- Training on these topics should be provided to DSS eligibility workers. In addition, this training should be videotaped and made available to each DSS so that it can be included as part of orientation training of new DSS eligibility workers. The training materials should also be made available to local NC Health Choice outreach committees, for outreach to the Latino community.

In addition, the Division of Medical Assistance and Division of Social Services should help train Latino services organizations and other organizations in filling out Medicaid applications. Latinos may be more comfortable filling out a Medicaid, NC Health Choice or other public assistance application through an organization they trust, rather than a governmental organization.

### **Special barriers for migrant families**

One of the biggest problems for migrant families is their mobility. Migrants, and specifically those who are farmworkers, may be in the state for only short periods of time, so that the regular application processing time period may be too long to provide meaningful coverage for this transient population. Another problem is the state-based structure of Medicaid. Although Medicaid coverage is portable from county to county (e.g., if a family is determined eligible in one county, they can continue to receive Medicaid if they move to another county), Medicaid coverage is not generally portable from state to state. Another problem is how the state counts income. Since farmwork is not typically year-round employment, calculating farmworkers' annual income by using a weekly or monthly pay stub will overestimate farmworkers' annual income. The Division of Medical Assistance already has a provision to annualize the income of a farmer, but not that of a farmworker.<sup>16</sup> In addition, it is sometimes difficult for farmworker families to provide proof of income when they are paid in cash, and the grower is unwilling to provide a written statement verifying wages.

There are several ways to address this problem. First, the state could establish a system of interstate portability and reciprocity of Medicaid benefits, so that Medicaid-eligible families moving in the migrant stream can use their Medicaid coverage in other states. Wisconsin was the first state to create such a system. Wisconsin accepts out-of-state Medicaid cards for farmworkers in the migrant stream.<sup>17</sup> Second, the Division of Medical Assistance can rewrite its Medicaid

eligibility manual, clarifying that a farmworker's income—like that of a farmer—should be calculated on an annualized basis. North Carolina could also establish a presumptive eligibility process in Medicaid and NC Health Choice for children. The Task Force was interested in exploring the possibility of seeking a federal waiver to allow the state to implement a presumptive eligibility period to cover migrant children. Specifically, the Task Force recommended that:

**26. The NC Division of Medical Assistance explore methods to improve migrant families' access to Medicaid and NC Health Choice.**

For example, the Division should explore the possibility of entering into an interstate compact to recognize the Medicaid eligibility of migrants who have been determined eligible in their home state, when working in the North Carolina migrant stream; develop alternative methods of counting farmwork income to more closely reflect the farmworkers' annual income; and explore the possibility of obtaining a waiver to implement presumptive Medicaid and NC Health Choice eligibility for migrant children.

Once changes are made, the Division should provide training to DSS eligibility workers about farmworker-specific eligibility considerations, such as verification of wages and mobility.

**FEDERALLY-FUNDED PROGRAMS AVAILABLE TO ALL IMMIGRANTS**

There are some federally-funded services and programs that are available to all immigrants, regardless of immigration status. The health-related services and programs that are available to all immigrants, both documented and undocumented, include: Community Health Centers, emergency Medicaid and other emergency medical services, immunizations, testing and treatment of communicable diseases (whether or not symptoms are caused by such disease), WIC (at state option), and programs delivered at the community level that do not condition assistance on income or resources and are necessary to protect life or safety.

In addition, there are no restrictions on programs that are provided to protect life and safety, including programs that provide:

- Mental illness or substance abuse treatment
- Medical, public health services and mental health, disability or substance abuse services necessary to protect life or safety
- Child and adult protective services
- Violence and abuse prevention, including domestic violence
- Short-term shelter or housing assistance (e.g., battered women's shelters)
- Other services necessary for the protection of life or safety

**State health replacement programs**

States can enact their own laws to provide health services to cover any groups of immigrants, whether "qualified" or "not qualified," if the programs are 100% funded by state or county funds. These state health programs are generally referred to as state health replacement programs. Since no federal funds are involved in these programs, there are no federal restrictions on which people the programs can cover.

Nationally, a majority of other states offer some type of health replacement program.<sup>18</sup> Some programs are limited in scope (for example, covering only prenatal care). Some states cover all immigrants (both documented and undocumented); others limit their programs to those immigrants who would have been eligible using the pre-1996 laws covering PRUCOL. Others provide state replacement programs only to qualified immigrants who are affected by the five-year bar. North Carolina does not have replacement health programs.

Recognizing that the state has very limited new resources at this time, the Task Force did not recommend that the state immediately implement a state health replacement program. However, the state should consider this in the future when the state's budget improves.

**Recommendations**

Specifically, the Task Force recommended that:

- 27. The North Carolina General Assembly establish a health care program that would address the health care needs of uninsured low-income Latinos who would otherwise qualify for public insurance but who cannot because of federal immigration restrictions. Priority should be given to: coverage of children; prenatal care; and health conditions or diseases that are significant problems for Latino populations, as determined by the State Public Health Director.**

**WORKERS' COMPENSATION FOR AGRICULTURAL WORKERS**

Workers' compensation helps pay for medical expenses, lost wages, rehabilitation expenses, permanent disability and death benefits for workers who suffer a work-related injury. Under North Carolina law, employees who work for firms with three or more full-time year round employees are generally covered by workers' compensation. Employees in certain hazardous industries are covered if there are one or more full-time-year-round employees. Farmers are only required to provide workers' compensation coverage to employees if they employ 10 or more full-time-year-round employees. However, under federal law, employers that hire H-2A workers must also provide workers' compensation, regardless of the size of the labor force.<sup>19</sup> Of the state's approximately 55,000 farms, 1,050 employ 10,000 H-2A guest workers.<sup>20</sup> Even if not required under state or federal law, farmers may provide workers' compensation coverage voluntarily. Farmers who do provide workers' compensation may also pay for coverage for themselves. One study suggested that farmers could benefit from this coverage, as 42% of all fatal agricultural injuries occurred to people working on their own farms.<sup>21</sup>

Workers' compensation is particularly important for agricultural workers, as agriculture is one of the state's most hazardous industries. On average, there are 4.3 fatalities per 100,000 workers in non-agricultural settings, but 23.9 in agriculture. Workers' compensation premiums are based on the type of farming operation, size of operation, and the claims made<sup>22</sup>. This provides an incentive for employers to improve the safety of the workplace so that fewer claims will be filed.

Agricultural workers who are injured on the job are unlikely to have alternative health insurance coverage that can help pay the health care bills. Because these workers earn relatively low salaries (on average \$7.50/hour for H-2A workers; other farmworkers may only be paid minimum wage), they are unlikely to be able to pay for needed health care. This means that the costs of caring for these injured workers are shifted onto other paying patients, a form of indirect tax on other insured individuals.

Last year, Sen. Clodfelter introduced a bill (SB 1444) to remove the workers' compensation exemption for farmworkers. Under the bill, agricultural workers would be covered by workers' compensation if the farmer regularly employed three or more workers. The bill did not pass. The Task Force supports efforts to extend workers' compensation coverage to agricultural workers. Because few farmers hire workers for the entire year, the Task Force recommended that farmers be required to provide coverage if they have three or more full-time workers during their growing season. However, even if workers' compensation coverage is offered, additional protections must be provided to ensure that migrant and seasonal farmworkers can exercise their rights.

Similar to health insurance, being eligible for workers' compensation does not guarantee that migrant and seasonal farmworkers will actually utilize such benefits. Migrant and seasonal farmworkers may not know that they are covered by workers' compensation (even when offered), and may not understand how to exercise these rights. Depending on the particular circumstance, filing a workers' compensation claim can be very complex and time consuming, and the waiting time for eligibility to be determined can be long. As a result, some eligible farmworkers end up returning to Mexico or migrating to other areas before learning the outcome of the claim or before receiving benefits. Out of frustration, some farmworkers abandon their claims.

Some growers offer injured workers a sum of money up front to return home and seek treatment rather than pursue a workers' compensation claim. Farmworkers may not be aware that, under certain circumstances, they can obtain medical care and treatment in their home country and have the services covered by workers' compensation. Alternatively, immigrants who are in this country on H-2A visas may be able to get those visas extended to obtain needed medical care. However, these options are not fully understood by many agricultural workers. Immigrants working in other industries have similar problems, also lacking information about where to turn for assistance. The NC Industrial Commission has a Latino Ombudsman, and has translated many of the workers' compensation forms and informational brochures into Spanish. Still, the availability of these services is unknown to many Latino workers.

One way to improve outreach to the farmworker community would be to include information about workers' compensation in the weekly orientations that the NC Growers Association provides for incoming H-2A workers. The NC Industrial Commission could also provide trainings to NC agencies that provide health, social and other services to farmworkers in order to increase access to workers' compensation benefits.

The Task Force also heard testimony about "bad-faith denials," that is, some workers' compensation carriers initially deny the workers' compensation claims knowing that many of the injured workers will never appeal. This is a particular problem for migrant and seasonal farmworkers, many of whom are in the state for short periods of time. The Industrial Commission has the authority to reverse an initial denial, but cannot impose sanctions for bad-faith denials (aside from ordering the insurer to pay attorney's fees). As a result, there are no effective "checks" that could help discourage an unscrupulous insurer from routinely denying claims, especially for people with large medical bills.

### ***Recommendations***

To address these problems, the Task Force recommended that:

- 28. The NC General Assembly extend workers' compensation to agricultural workers if they work for an employer who employs three or more full-time workers, working 30 or more hours/week at least 13 weeks in a year. The NC General Assembly should also change existing workers' compensation laws to give the Industrial Commission the right to impose monetary or other sanctions on workers' compensation carriers for a pattern or practice of bad-faith denials.**
  - **The Industrial Commission should be directed to conduct an educational campaign, through the Latino media, partnering organizations and existing outreach sources and programs, to explain how the workers' compensation system works, who is covered, how they can apply for benefits, and where they can go to seek assistance.**

The Commission should partner with Latino agencies, migrant/community health centers, NC Farmworker Health Program, farmworker health outreach programs, North Carolina Growers Association, NC Legal Services, and other agencies to disseminate information about workers' compensation to the Latino community.

**NOTES**

1. Schur C. Running in Place: How Job Characteristics, Immigrant Status, and Family Structure Keep Hispanics Uninsured. The Commonwealth Fund, May 2001.
2. *Ibid.*
3. Ninety-eight percent of the farmworkers who received services from the NCFHP in 2001 were uninsured. Generally, only dependents of farmworkers have some form of coverage, and this is limited to those who are eligible for Medicaid or NC Health Choice.
4. Poley S. Special data run from Cecil G. Sheps for Health Services Research. Using Current Population Survey data for 2000, 2001, 2002.
5. *Ibid.*
6. N.C.G.S. 58-2-161.
7. Means tested programs are programs that limit eligibility to those who are low and/or moderate income. To qualify, a person or family must meet certain income and/or resource standards in addition to other program rules.
8. To qualify as a battered spouse, the person has to be married to or have been married within the past two years to a citizen or lawful permanent resident and have filed to change their status on the basis of being a battered spouse.
9. Individuals who arrived in the United States before August 22, 1996, who later become "qualified immigrants" are not subject to the bar. However, if an immigrant arrives on or after August 22, 1996, then the bar starts on the day the immigrant becomes a "qualified immigrant," not on the date of entry into the United States.
10. Fix, Passell, and Zimmerman. The Integration of Immigrant Families in the United States. The Urban Institute, July 2001, p. 8.
11. Profile of the Foreign Born Population, 2000; <http://www.census.gov/prod/2002pubs/p23-206.pdf>
12. Ku L. Center for Budget and Policy Priorities. Analysis of March 2001 Current Population Survey. Personal communication, November 6, 2002.
13. Division of Medical Assistance. Special data run from the NC DHHS Data Warehouse during August 2002.
14. Griffin C. Attorney, Office of Civil Rights, US Department of Health and Human Services; Presentation to NCIOM Latino Health Task Force, September 17, 2002.
15. For US HHS and USDA guidelines regarding inquiries into citizenship, immigration status and Social Security numbers see [www.hhs.gov/ocr/immigration/triagency.html](http://www.hhs.gov/ocr/immigration/triagency.html).
16. Division of Medical Assistance. Family & Children's Medicaid Manual. Section 3300 VII.
17. Arendale E. Medicaid and the State Children's Health Insurance Program. Migrant Health Issues. Monograph Series. Monograph No. 3. Under this special initiative, farmworkers needed to show their out-of-state Medicaid cards and proof of working in agriculture.
18. Guide to Immigrant Eligibility for Federal Programs. 2002. National Immigration Law Center.
19. An H-2A worker is an individual who has a residence in a foreign country, with no intention of abandoning that residence, and who is coming to the United States to perform agricultural labor services of a temporary or seasonal nature. 8 USC Sec 1101 (a)(15)(H)(ii)(a).
20. A farm is considered any establishment from which \$1,000 or more of agricultural products were sold or would normally be sold during the year. [www.ncagr.com/stats/num%5Fland/numfrmyr.htm](http://www.ncagr.com/stats/num%5Fland/numfrmyr.htm). Accessed January 7, 2003.
21. Luginbuhl R. Presentation to NC Institute of Medicine. October 16, 2002. Data from: McQuiston TH. Potential Applicability of OSHA Standards to NC Farm Fatalities (1990-1994). Jan. 22, 1997.
22. Information about the workers' compensation rate settling methodology is available from the North Carolina Rate Bureau. Information is available on the Internet at: <http://www.ncrb.org/ncrb/services.htm>

