

HB 2835 by Rep. Susan King

CPPP Position: Opposed.

HB 2835 by King, as amended and engrossed by House:

1. Directs DSHS to, *after considering acuity of medical need and if allowed by federal law*, give lower priority to taking undocumented children off of waiting lists, and into services, under the Title V M&CH block-grant-funded Children with Special Health Care Needs Program (CSHCN).
 2. Re-names the program “Special Health Care Needs Program,” offering the rationale that 3% of Texans served are cystic fibrosis patients 21 and older.
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Problems with HB 2835:

Barriers to Care, Cost-Shift to Children’s Hospitals and other Providers

CSHCN typically serves children with complex medical conditions who need specialty care. If HB 2835 succeeds in denying care to undocumented children in need, Children’s Hospitals and other charity care providers must leave children untreated, or absorb the costs.

Likely Violation of Federal Law and Regulation

Federal law and regulation will not allow DSHS to discriminate in eligibility for Children with Special Health Care Needs (CSHCN) based on immigration status.

- HB 2835 proposes to test whether Texas can circumvent this intent by giving undocumented children lower priority than U.S. citizen and lawfully present immigrant children in being removed from waiting lists for CSHCN (i.e., making a questionable distinction between eligibility determination and removal from waiting list).
 - The House floor amendment to HB 2835 improves the bill by allowing DSHS to consider medical acuity before considering immigration status. This allows sicker children to be served first, but could still mean discrimination among equally seriously ill children.
 - HB 2835 probably violates the letter of federal law; and clearly violates the spirit of the law. We expect any attempt to implement the policy will be scrutinized by the US Department of HHS Office of Civil Rights for evidence of discrimination under Title VI.
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Q: How does the CSHCN waiting list affect children’s access to care?

A: Waiting lists build up rapidly, and state appropriations determine how quickly children get served.

- As of October 2014, 464 children were waiting for CSHCN services.
- DSHS then allocated funds to reduce the list by 450 children in November 2014.
- By January 31, 2015, that waiting list had climbed back to 178.
- The current waiting list as of April 2015 is 297 and the current projected waiting list for September 1, 2015 is 430.

Funding in the state budget determines how long the lists get—and how often they are reduced.

- The House budget bill would increase funds to serve an additional 186 clients on the waiting list, and
- the Senate bill did not propose funding any reduction in the waiting list.

If the CSHCN waiting list grows to the projected 9/2015 numbers, some children waiting will not receive services, and those denied services would be more likely to be children who are undocumented residents.

Q: Why are undocumented children a growing share of CSHCN?

A: Nearly all U.S. citizen and lawfully present immigrant children today can access coverage via employer, Marketplace, Medicaid, or CHIP coverage, so more families with medically complex children get their needs met by insurance, and fewer families turn to CSHCN. In contrast undocumented children are excluded from Marketplace, Medicaid, and CHIP coverage.

- DSHS reports that about 2/3 of the combined total of CSHCN enrollees and children on the waiting list (as of 1/31/2015) were not lawfully present.
- Most children with intensive medical needs enrolled in CSHCN use the program only for “wrap-around” non-medical supports that their insurance does not cover. (This was not the case before CHIP existed (2000) and before Texas made Medicaid coverage more accessible for children (2002).)
- In contrast, undocumented children with Special Health Care Needs do not qualify for Medicaid or CHIP, and can only access private insurance at full cost. Because of this, the typical undocumented child will need more support from CSHCN than an insured child.

Background: Children with Special Health Care Needs program (CSHCN)

- **The Texas Legislature created the Children with Special Health Care Needs (CSHCN) Services Program in 1933.** First called the Crippled Children’s program, then Chronically Ill and Disabled Children (CIDC) program, it was renamed Children with Special Health Care Needs (CSHCN) Services Program in 1999. To qualify, a child must have a serious physical medical condition that is long-lasting, limits major life activities, and requires above-average medical treatment.
- CSHCN has been part of the Maternal and Child Health Block Grant since it was created by Congress in 1935. Every U.S. state must spend at least 30% of its Title V funds on Children with Special Health Care Needs.
- CSHCN serves U.S citizen children, lawfully-present immigrant children, and undocumented immigrant children.
- It also serves a small number of adults with cystic fibrosis, typically those who began as child enrollees in CSHCN, and with today’s improved treatments have survived their CF to live past age 21. All states began including adults with CF in 1964.
- As of 03/31/2015, DSHS reports 2,230 total enrollees in CSHCN, 97% of them children. 71 clients were ages 21 or over, all Cystic Fibrosis patients, making up 3% of CSHCN clients.

Questions related to this position paper may be addressed to:

Anne Dunkelberg, Assoc. Director, dunkelberg@cphp.org

Center for Public Policy Priorities, 7020 Easy Wind Drive - Austin, Texas 78752

Phone (512) 320-0222 (ext.102) – www.cphp.org