

## Helping People Re-enroll in Basic Health under the *Unthaksinkun v. Porter* court order

The United States District Court for the Western District of Washington has ordered changes in Basic Health, allowing some people who were disenrolled earlier this year to re-enroll now. These changes will affect immigrants whose Basic Health benefits were terminated on March 1, 2011 when new restrictions were put on Basic Health eligibility. The court's order allows lawfully present immigrants to qualify for Basic Health. It also allows **all** immigrants whose Basic Health benefits were terminated in March, due to immigrant status, to re-enroll in Basic Health, at least temporarily. This bulletin will help you understand and assist with the re-enrollment process.

### Why all the changes to Basic Health?

In February, Basic Health limited the types of immigrants who qualified. It disenrolled immigrants who have had a green card for less than five years, certain other categories of legally present immigrants, and undocumented immigrants.

Basic Health mailed out termination notices to thousands of immigrant enrollees without first requesting information about their immigration status. Some of these people successfully appealed the termination of their benefits by showing proof that they qualified for Basic Health under the new eligibility requirements. They were re-enrolled. But many others didn't ask for an appeal or lost their appeal. They have been without Basic Health since March.

A recent class action lawsuit, *Unthaksinkun v. Porter*, challenged the exclusion of some lawfully present immigrants from Basic Health. It also challenged the way that all immigrants were notified of the termination of their benefits. This lawsuit has been initially successful, and the court hearing the case has issued a "preliminary injunction" that requires Basic Health to offer re-enrollment to all those disenrolled on March 1<sup>st</sup> on the basis of their immigration status.

### Who does this affect?

This court order affects people who received termination notices sent by Basic Health on February 18<sup>th</sup> and who have not already been re-enrolled. There are two groups of immigrants affected by the lawsuit.

**Equal protection group:** This group includes people who were disenrolled March 1 based on immigrant status and are "lawfully present" in the United States. It includes people who are considered Legal Permanent Residents (have a green card), even if they have not yet lived in the United States for 5 years, as well as all other groups of lawfully present immigrants. Until March, the state did not exclude any group from Basic Health eligibility on the basis of immigration status, except for persons with temporary student visas. The court made an initial ruling that disenrolling some lawfully present immigrants while continuing to offer Basic Health to U.S. citizens and some other groups of immigrants is likely to be found to be unconstitutional.

discrimination.<sup>2</sup> Under the ruling, the state must offer to re-enroll these individuals in Basic Health. This group includes at least 1,580 people.

**Due Process group:** This group includes all other immigrants who were disenrolled March 1 based on immigrant status, about 9,400 people. The court made an initial ruling that these termination notices didn't have enough information about Basic Health's reasons for the terminations, the new eligibility criteria, and clients' rights to receive continued benefits pending an administrative appeal of their disenrollments, which likely made the terminations unconstitutional. Under the court's order, Basic Health must allow these immigrants to re-enroll. Basic Health will make a quick determination of whether it currently has enough information to determine whether these immigrants are "lawfully present" and should be in the equal protection group.

Basic Health members who were disenrolled on March 1<sup>st</sup> due to their immigration status will *not* be re-enrolled *automatically*. Basic Health will mail them each a notice with an enclosed invoice. To re-enroll, the person must then pay premiums for the next month of their coverage as well as any retroactive coverage they wish to request.

#### **What will these groups receive from Basic Health about re-enrollment?**

Basic Health will mail notices about re-enrollment to both groups no later than November 3<sup>rd</sup>. The notice for Due Process members who have not already been determined to be lawfully present will be slightly different than the notice for persons already known to be members of the equal protection class. The initial notices will be sent in a person's preferred language of one of the following: English, Spanish, Korean, Vietnamese, Chinese, and Russian. The notice sent to anyone who did not receive premium sponsorship at the time of disenrollment will include a billing statement (invoice) for **December** coverage, with instructions on how to re-enroll. It will explain that a person wishing to get **November** coverage immediately should contact Basic Health as soon as possible. We recommend using web chat or telephone. Coverage for October 2011 and, in certain circumstances, September 2011 will also be available (see "What steps should a person take to re-enroll?").

**The two different notices and a sample invoice are included in this information packet.**

#### **How does a person re-enroll?**

If a person decides to re-enroll in Basic Health, they should send in a premium payment with the billing statement. The amount of the monthly premium will be the same as the last premium billed in February. The person may choose when the coverage should start: September 1<sup>st</sup>, October 1<sup>st</sup>, November 1<sup>st</sup>, December 1<sup>st</sup>, or January 1<sup>st</sup>. If the individual wants September, October, or November coverage, she should re-enroll by calling 1-800-660-9840 as soon as possible. If the person wants December coverage, then Basic Health should receive payment by November 21<sup>st</sup>. If Basic Health receives payment between November 22<sup>nd</sup> and December 31<sup>st</sup>, December coverage will still be granted, but there may be additional procedures required. If the

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<sup>2</sup> The court order is called a "preliminary injunction." A preliminary injunction is not a final decision in the case. It only orders the Defendant to do part or all of what the Plaintiffs have requested until the court makes a final decision in the case. Because this is not a final decision ending the case, the court bases its decision on whether it is "likely" that the Plaintiffs will be able to prove the legal claims they have made.

person wants coverage to start in January, then Basic Health must receive payment by December 22<sup>nd</sup>.

It will be very difficult to re-enroll after December 22<sup>nd</sup>. Re-enrollment after December 22<sup>nd</sup> will only be permitted if they can show "extenuating circumstances" for the delay.

### **What if a "sponsor" organization paid the person's premiums?**

These individuals will not receive premium invoices in their first letter. Basic Health will contact organizations that paid their premiums in the past and ask them to sponsor coverage again. Basic Health will then contact them to let them know whether their former sponsors are resuming premium sponsorship or whether they need to pay their own premium to re-enroll. Sponsors are being told that they have until November 9 to tell Basic Health if they are going to resume sponsorship of any re-enrolling class members for whom they provided premium sponsorship in February of this year.

A person who was previously sponsored may wish to re-enroll in Basic Health *immediately*, before knowing whether the sponsor will pay. The person should first contact Basic Health and/or the sponsor to confirm whether or not the sponsor will pay. He or she may also request and pay the Basic Health premium to re-enroll immediately. If the sponsor then agrees to resume sponsorship, the member's premium payments will be refunded for months covered by the sponsor payments.

### **How should a person decide when to start coverage?**

If a person received medical services on or after September 28<sup>th</sup>, he or she may want to consider re-enrolling for coverage starting September 1, October 1, or November 1.

To qualify for September coverage, a person may need to have received health care services that Basic Health covers, during the period running from September 28 – September 30.<sup>3</sup> However, once enrolled for September coverage, it will cover any qualified health care they received during the entire month of September.

When deciding whether to request retroactive coverage for a particular month, a person will likely want to calculate the cost of that coverage and compare it to the total cost of coverable medical care she received during that month. Specifically, a person must pay his or her premium for each month of retroactive coverage she requests, **and** will be required to pay the enrollee portion of any medical service fee (the copayment, co-insurance, or deductible) for which coverage is sought during each such month. Therefore, a person should first determine what health services they received would be covered under their plan (considering Basic Health benefits and the provider network requirements of their plan). Then they should compare the amount they paid or were billed for these services with the cost of the Basic Health premium plus the enrollee cost-sharing. If the premiums plus cost sharing add up to more than the cost of care she received during those months, the person may not want retroactive coverage for that period.

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<sup>3</sup> We have not yet determined whether Basic Health is extending September coverage to class members who request September coverage, but who did not receive care during the last three days of September.

Example:

*Cecilia was terminated from Basic Health in March. She had paid her own premiums, which were \$70/month. In October, she went to a community health center to have her cholesterol checked. The visit cost \$20 for a visit and \$10 for a lab fee. She paid for this out of pocket. Cecilia is trying to decide whether to re-start her Basic Health coverage in October or December. Cecilia should probably start her Basic Health coverage in December. If she started coverage in October, she would have to pay \$140 for her October and November premiums plus cost-sharing. This is much more than the \$30 she paid for her doctor's visit and lab.*

Also, individuals can only re-enroll for a continuous block of coverage. In other words, if a client wants retroactive coverage for September, she must also request and pay for coverage for October and November. If she wants coverage for October, she must request and pay for November coverage too. She cannot obtain retroactive coverage for October, forgo coverage for November, and restart coverage in December.

### **Should a person re-enroll in Basic Health?**

Some class members may choose to not re-enroll. Basic Health will require individuals who re-enroll to show proof of immigration status in order to keep coverage. As discussed below, Basic Health will send out a form to all members of the due process class about whom it does not believe it has enough information to determine they are lawfully present, asking for proof of immigration status. Recipients of this letter will have 30 days to provide Basic Health documentation of their lawful presence in the U.S.. If they fail to do so, Basic Health will send them another notice reminding them to respond. It is possible that a person who cannot show proof of immigration status will have Basic Health coverage for as little as two or three months. If a person's situation has changed since March in a way that may affect her eligibility for Basic Health -- for example, if her household income has increased, if there has been a change in household composition, or if the person turned 65 --she can still re-enroll now, but Basic Health may then disenroll her for that reason with a new notice that meets the requirements of the Court's Order. A person in any of these circumstances - who re-enrolls now but is likely to be ineligible for continued coverage -- should be aware that her re-enrollment is thus likely to result only in temporary coverage.

### **What happens after a person is re-enrolled?**

After re-enrolling, the member will be asked to show continuing eligibility for the program. There is no guarantee of ongoing coverage. However, while the court's order is in effect: 1) Basic Health cannot use immigration status to restrict a lawfully present immigrant's eligibility for Basic Health; and 2) Basic Health must provide new notices meeting specified requirements to any class members it wishes to disenroll for any reason other than non-payment of premiums.

Members of the *Equal Protection* group will be subject to the normal recertification process. Members of the *Due Process* group who are not known to be equal protection class members will also be subject to the normal recertification process. However, they will also be sent an additional request for documentation of their immigration status as described below.

If Basic Health decides it does not have enough information from a *Due Process* group member, they must send a notice explaining the meaning of “lawfully present,” including a list of immigration statuses and typical documents showing lawful presence. This “Continuing Eligibility Determination” form will ask for proof of immigration status.

Before seeking to disenroll any re-enrolled member of either group for any reason other than nonpayment of premiums (including immigration status, income, age, etc.), Basic Health must send them a new disenrollment notice that spells out the reason for disenrollment, the eligibility criteria Basic Health believes they no longer meet, their right to appeal their disenrollment, and how to receive continued benefits during any eligibility appeal they may make.

**This packet contains a Continuing Eligibility Determination letter and the list of immigration statuses and typical documents.**

### **What counts as immigration status for continuing Basic Health coverage?**

Many immigration documents may be used to show that a person is “lawfully present” in the United States and is eligible for Basic Health. Lawful permanent residents, refugees, asylees, recipients of Temporary Protected Status and many more types of immigrants are eligible. We can help you determine whether a person’s documents qualify. If a person has any personal document related to an immigration process that is not listed, we can assist you in determining if the person qualifies (see contact information below).

### **What if the documents a person receives are not in a language they understand?**

All documents related to re-enrollment will be available in English or Spanish. The initial notices will also be available in Korean, Vietnamese, Chinese, and Russian. If the person cannot read the language of the notice, he or she can call Basic Health and have the document read aloud in a language the person understands. This interpretation service is free of charge. Interpretation will also be provided free of charge to clients who wish to discuss this with Basic Health staff.

### **Where can I get more information?**

Updated information including FAQs is available at <http://www.basicealth.hca.wa.gov>. You may also call 1-800-660-9840 to reach Basic Health.

The lawyers representing the disenrolled Basic Health members in this case are Northwest Health Law Advocates and Riddell Williams, P.S. You may contact them with questions at 206-389-1665, 1-888-989-1665 or [basicealthcase@nohla.org](mailto:basicealthcase@nohla.org). Se habla español.

*Prepared by Northwest Health Law Advocates  
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