STEERING COMMITTEE ON UNMET LEGAL NEEDS OF CHILDREN - Report No. 113

RESOLVED, That the American Bar Association supports legislation which ensures the provision of comprehensive health care for children 18 years of age and younger and pre-natal care for pregnant women.
I. BACKGROUND

For children, as for the general population, adequate health insurance is critical to receiving quality health care. Research has shown that uninsured children receive fewer health care services than insured children: they have fewer physician visits per year; are less likely to receive adequate preventive services and immunizations; and are less likely to be seen by physicians when they are ill. For example, the majority of uninsured children with asthma never see a doctor. Many of them are later hospitalized with problems that could have been prevented. One-third of uninsured children with recurring ear infections never see a doctor and many suffer permanent hearing loss. In addition, children with untreated health problems are less likely to learn in school. The most recognized causes of learning disabilities can be linked to limited access to proper health care and related services. Many of these health problems are not addressed until the conditions are more advanced resulting in more expensive treatments and visits to emergency rooms.

Health insurance is also necessary for pre-natal care. Uninsured women are about three times as likely to receive delayed pre-natal care as women with private health insurance. Without adequate pre-natal care, women give birth to dangerously low birth weight babies, who are then at greater risk of death and disabilities including developmental delays, cerebral palsy, and seizure disorders. In addition, the average hospital costs for a low-birth weight baby are 10 times the cost of pre-natal care. Nine months of pre-natal care costs $1,100 while neonatal intensive hospital care.

This recommendation and report builds upon policy adopted by the ABA House of Delegates supporting the expansion of Medicaid program to provide coverage for all children and pregnant women with family income less than 200 percent of the federal poverty level, and, in principle, legislation that would provide access to quality health care for every American regardless of income. Access to Quality Health Care (Feb. 1994) and Medicaid Expansion (Feb. 1990).

Paul Newacheck, Dana Hughes, and Miriam Ciocieras, Children and Health Insurance: An Overview of Recent Trends, HEALTH AFFAIRS 245 (Spring 1995).


Some of the causes of learning disabilities include pre-natal malnutrition, maternal substance abuse, chronic illness (ear infections, etc.), lead poisoning, and low birth weight. Glenn Young & Paul J. Gerber, Learning Disabilities and Poverty: Moving Towards New Understanding of Learning Disabilities As a Public Health and Economic-Risk Issue, to be published in LEARNING DISABILITIES: A MULTIDISCIPLINARY JOURNAL.
costs $1,000 per day.4

While health insurance is critical in obtaining health care, a large and growing number of children are uninsured in this country. On a given day, more than 10 million children lack health insurance coverage — one in every seven.6 A recently released study found that during the two year time period of 1995 and 1996, one out of three children under the age of 18, approximately 23.1 million out of 70.8 million, went without health insurance for one or more months.7 Of these uninsured children, most were likely to be uninsured for a significant period of time: approximately half (47%) were uninsured for one year or longer and 1 out of 7 (15%) were uninsured for the entire two years. In contrast, only 7% were uninsured for less than three months.8

Most of the uninsured children live in working families.9 The most recent statistics indicate that 9 out of 10 (88%) uninsured children have a parent who works and nearly 2 out of 3 (64%) have a parent who works full-time year-round.10 Two-thirds of children without health care insurance coverage live in families with income above the poverty level and more than 3 out of 5 (61%) live in two-parent families.11

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4 Children’s Defense Fund, supra note 2, at 23, 28.
5 Id. at 22. According to the Center on Budget and Policy Priorities, nearly 2.7 million children who lack health insurance are eligible for Medicaid. There are numerous reasons for the lack of enrollment in Medicaid including the fact that states are no longer required to automatically enroll children who receive assistance under the new welfare block grant in Medicaid. In addition, large numbers of families may no longer be eligible for cash assistance. While many are still eligible for Medicaid, studies have shown these families are much less likely to enroll in the Medicaid program. Center on Budget and Policy Priorities, MILLIONS OF UNINSURED AND UNDERINSURED CHILDREN ARE ELIGIBLE FOR MEDICAID 2-3 (January 6, 1997).

6 Id. at 7.
8 Children’s Defense Fund, supra note 2, at 22.
9 Children’s Defense Fund, UNINSURED CHILDREN IN WORKING FAMILIES NEED HEALTH CARE COVERAGE (January 17, 1997). The Families USA study found that of the children who lacked insurance for one or more months, 9 out of 10 (89%) lived in households where the head of the household worked during all or part of the two year period. In addition, uninsured children are two times more likely (69% versus 31%) to live with a married parent rather than a single
Much of the decline in health insurance coverage for children can be attributed to one factor: a drop in employment-based health care insurance coverage. Since 1989, the number of children lacking private coverage has increased by an average of 1.2 million per year. Several factors account for this. For one, many employers do not offer health coverage at all. In addition, numerous employers are requiring employees to pay larger shares of premiums -- costs employees may not be able to afford. For example, in 1980 the majority of medium to large companies paid the full cost of family coverage. In 1995, however, more than three-fourths required employees to help pay the costs: the average employee share being $1,600 a year ($1,900 in small companies). Also contributing to the large numbers of children lacking private coverage is the growing percentage of Americans who now work as contractors or as temporary or part-time workers -- positions that do not generally provide employer-based health insurance.

II. PENDING LEGISLATION

The U.S. Congress and current Administration are paying increasing attention to the critical need to provide access to quality health care for uninsured children. Numerous bills have been introduced in the 105th Congress by both Republicans and Democrats, with increasing bipartisan efforts. Strong leadership in the 105th Congress has insured a dialogue on this issue and the possibility of the passage of legislation that would make child health care coverage more accessible and affordable. Both Republicans and Democrats are making great efforts to achieve this end.

parent. Families USA, supra note 6, at 2. A large proportion of children from moderate-income families were uninsured for one month or longer: 50% of children with family incomes between $17,300 - $29,00 (in 1996 dollars) lacked health insurance. Id. at 3.

12 Families USA, supra note 6, at 3. See also, U.S. Governmental Affairs Office, EMPLOYMENT-BASED HEALTH INSURANCE (Report to the Ranking Minority Member, Subcommittee on Children and Families, Committee on Labor and Human Resources, U.S. Senate, February 1997). While the number of children covered by Medicaid has somewhat increased, thus, partly offsetting the number of children no longer covered by private health insurance, the slight increase in Medicaid coverage has not resulted in an overall increase in the number of insured children. Id. at 4.

13 Children's Defense Fund, supra note 2, at 21.

14 Families USA, supra note 6, at 4.

15 Children's Defense Fund, supra note 2, at 22.

16 Families USA, supra note 6, at 4.

17 This report does not discuss current initiatives at the state level. However, in general, efforts at both the state and federal level are too be applauded.
For example, Senator Hatch (R-UT) and Senator Kennedy (D-MA) recently introduced S.525, the Child Health Insurance and Lower Deficit Act of 1997, which provides a premium subsidy of 95% for children in families below 185% of the federal poverty level and 80% assistance for normal cost-sharing expenses. This Act would be financed by a 43 cents per pack increase in tobacco taxes and is a voluntary block grant to states.

Senator Specter (R-PA) is sponsoring S.24, the Health Care Assurance Act of 1997 and S.435, the Healthy Children's Pilot Program Act of 1997. S.24 would provide full or partial subsidy for children in families with income below 233% of poverty and who are not eligible for Medicaid. States would receive funds to provide vouchers for children for the purchase of health insurance covering primary, preventive, and acute care services.

The Children's Health Coverage Act, introduced by Sen. Daschle (D-SD), is a federal program of subsidies for families with income under $75,000. Families below 300% of the poverty level would be subsidized through a non-refundable tax credit while families with incomes between 300% of poverty and $75,000 would be authorized a refundable tax credit for 10% of the premium. Funding would be provided by states who collect subsidy-adjusted premiums from eligible families.

Rep. Stark (D-CA) introduced both H.R.560, the Healthy Start Act of 1997, and H.R.561, the Children's Health Insurance Act of 1997. H.R.560 establishes a new Medicare-like entitlement program for children under 18 years of age and pregnant women who are not otherwise insured under an employee benefit or other plan. H.R.561 allows for Medicaid cost-sharing assistance for qualifying children in families with income less than 150% of the poverty level. The bill authorizes a refundable tax credit for 95% of the cost of children's health insurance with limitations based on adjusted gross income and employer contributions. It imposes an excise tax on group health plans and insurers offering individual coverage that fail to make available qualifying coverage for dependent children.

III. INVOLVEMENT OF THE LEGAL PROFESSION

A. The ABA's Historical Commitment to Children at Risk

The American Bar Association has long been concerned about the welfare and legal rights of children. The ABA's emphasis on protecting children at risk is reflected in a variety of resolutions, reports, and committees that the Association has approved in recent years. The House of Delegates has adopted over sixty resolutions pertaining to children, of which over thirty-five specifically address the needs of children in society. Specifically relating to health

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18 This report summarizes proposed legislation as of April 18, 1997.
19 These resolutions cover a wide variety of issues including: (1) increasing child welfare services in abuse and neglect cases (Federal Child Abuse and Child Welfare Legislation (Aug. 1980); Bar and Attorney Involvement in Child Protection Cases (Aug. 1981); Federal Child
insurance, the House of Delegates adopted resolutions supporting: the expansion of the Medicaid program to provide coverage for all children and pregnant women with family incomes less than 200 percent of the federal poverty level; and, in principle, legislation that would provide access to quality health care for every American regardless of income.20

The ABA has also funded and otherwise supported staff and several committees that work to protect the interests of all children. The mission of the Young Lawyers Division’s Center on Children and the Law is "to improve the quality of life for children through advancement in law, justice, and public policy." In July 1993, the ABA Presidential Working Group on the Unmet Legal Needs of Children and their Families issued America’s Children at Risk: A National Agenda for Legal Action, which emphasizes ABA advocacy on behalf of all children and urges essential services for all families in need.21 The Steering Committee on the Unmet Legal Needs of Children, created in August 1993, is charged with facilitating the ABA’s efforts to implement the recommendations set forth in the report and with coordinating ABA activities on behalf of children. The Litigation Section’s Task Force on Children assists lawyers in representing children who face, among other things, the denial of critically needed public services. The Young Lawyers Division -- at both the national and affiliate level -- has also placed a high priority on promoting the interests of children.22 The Section of Criminal Law established the Juvenile Justice Center in 1975. Numerous other ABA entities have devoted considerable attention to children’s issues including the Family Law Section, the Section of Individual Rights and Responsibilities, the Section of Dispute Resolution, the Judicial Division, the Commission on Homelessness and Poverty, and the Commission on Domestic Violence, to name a few.

Welfare Act Enhancements (Aug. 1988); Foster Care Safety (Aug. 1990); Treatment in Cases of Child Abuse and Domestic Violence (Aug. 1996); Child Welfare Federal and State Law Reform (Feb. 1997); (2) improving education resources both in general and to prevent juvenile crime (Learning Disabled Children (Aug. 1983); and Individuals with Disabilities Education Act Advocacy (Feb. 1996)); (3) maintaining assistance programs to meet children’s basic needs in life: (Public Assistance Benefits (Aug. 1992); and Welfare Benefit Reductions for Children (Feb. 1993)); and (4) the enactment of legislation to address the barriers to permanency (Child Welfare Federal and State Law Reform (Feb. 1997); and Adoption of Children (Feb. 1993)).

20 Access to Quality Health Care (Feb. 1994); and Medicaid Expansion (Feb. 1990). In addition, America’s Children at Risk discusses the health needs of children. See America’s Children at Risk, supra note 8, at 35-41.

21 America’s Children at Risk, supra note 8.

B. ABA’s Support of Health Insurance for Children

In 1984, the House of Delegates adopted a resolution urging the legal profession to respond to the needs of children, to preserve children’s legal rights, and to assist in the implementation of programs “to meet the health and welfare needs of children.” The resolution notes that children are often without many of the basic necessities of life, such as adequate food, shelter, and medical care and that lawyers have an obligation to articulate “the needs of children who have no effective voice of their own in government.”

A resolution supporting the provision of health care for children and for pre-natal care pregnant women falls within the mandate of the 1984 policy. While the House of Delegates takes no position on the specific means to reach the goal of health care insurance for all children, it is extremely important that the goal be reached. As lawyers, we are in a unique position to reach out to our communities and legislatures to urge the provision of health care. Not only are lawyers skilled in drafting and interpreting legislation, but health care insurance is a part of numerous practice areas such as tax, insurance, and employment law. The Association acknowledges the strong efforts of the leaders and members of the 105th Congress and hopes these Congressional efforts will continue so that the recognized need to provide health insurance for all children is met promptly. Healthy children are the future of this country.

Respectfully submitted,

Catherine J. Ross
Chair, ABA Steering Committee on the Unmet Legal Needs of Children

Robert Hirshon
Chair, ABA Torts and Insurance Practice Section

August, 1997

23 Bar Association and Attorney Action (Feb. 1984).
1. **Summary of Recommendation(s).**

The ABA supports the provision of quality health care for children through the age of 18 and for pre-natal care for pregnant women.

2. **Approval by Submitting Entity.**

Steering Committee on the Unmet Legal Needs of Children - approved the resolution on May 3, 1997. The Torts and Insurance Practice Section’s Council approved the resolution on May 12, 1997.

3. **Has this or a similar recommendation been submitted to the House or Board previously?**

No.

4. **What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**

The ABA adopted policy in February, 1994 supporting the expansion of Medicaid to provide coverage for all children and pregnant women with family incomes less than 200 percent of the federal poverty level. The ABA also adopted policy in February, 1990 which supports, in principle, legislation that would provide access to quality health care for every American regardless of income.

5. **What urgency exists which requires action at this meeting of the House?**

The number of children who are not covered by some form of health insurance is growing everyday. On a given day, more than 10 million children lack health insurance coverage — one in every seven. The United States Congress is currently debating several proposed bills that would address this escalating problem.

6. **Status of Legislation. (If applicable.)**

The recommendation does not support or oppose any specific legislation.
7. **Cost to the Association.** (Both direct and indirect costs.)
   None.

8. **Disclosure of Interest.** (If applicable.)
   None.

9. **Referrals.**
   - Section of Family Law
   - Section of Health Law
   - Section of Individual Rights and Responsibilities
   - Section of Litigation
   - Section of Business Law
   - Section of Taxation
   - Commission on Homelessness and Poverty
   - Commission on Domestic Violence
   - Commission on Mental and Physical Disability Law
   - Standing Committee on Substance Abuse

10. **Contact Person.** (Prior to the meeting.)
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11. **Contact Person.** (Who will present the report to the House.)
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12. **Contact Person Regarding Amendments to This Recommendation.** (Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.) - None