



## **Immigration Reform: Key Issues for People with Disabilities and Older Adults**

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### **Background**

On June 27, 2013, the Senate passed a comprehensive immigration reform bill with strong bipartisan support: The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S.744). In the House, leadership has outlined principles for reform and considered several piecemeal bills in relevant committees. However, it remains uncertain whether legislation will move forward in this Congress and, if so, what path it may take. The purpose of this brief is to highlight key issues for people with disabilities and older adults and analyze the extent to which these issues have been addressed in the current immigration reform debate.

### **Fully Inclusive Road to Citizenship**

A central issue in the debate is establishment of a road to citizenship for the approximately 11.7 million unauthorized immigrants residing in the U.S.<sup>1</sup> As this pathway is constructed, it is critical that immigrants with disabilities and seniors are provided equal opportunity for citizenship.

Researchers have not adequately explored the prevalence of disability among this population. Some families of children with disabilities have come to the U.S. in search of better educational opportunities and supports. In addition, some immigrants have acquired disabilities due to conditions of poverty, barriers to health care, and work in physically demanding occupations with high rates of injury (e.g. agriculture, maintenance, grounds keeping, construction, and direct care work).<sup>2</sup> Moreover, while the unauthorized immigrant population is young overall, with an average age of 36, some have lived in the U.S. for decades and are aging. There are approximately 1.3 million unauthorized immigrants between the ages of 45 and 54 and another half million over age 55.<sup>3</sup>

In general, the Senate bill provides a path to citizenship for the full population of unauthorized immigrants. However, some members of Congress have called for a narrower approach, focused on certain subpopulations—such as immigrants with advanced science and technology degrees. A limited road to citizenship would exclude many individuals with disabilities and seniors.

It is also important to prevent procedural barriers that would discriminate against individuals with disabilities and seniors. In the Senate bill, exceptions to mandatory employment requirements are made for individuals with disabilities and older individuals. Exceptions to

English language proficiency requirements also are made for older immigrants and some individuals with disabilities. Exceptions to DREAMer status are made for students with disabilities if they are unable to meet criteria due to disability (e.g. graduation from high school and qualified enrollment in college or military service).<sup>4</sup> This is particularly important because the Senate bill provides an expedited path to citizenship for DREAMers.

Finally, the Senate bill ensures access to legal counsel for individuals with significant mental disabilities trapped in immigration deportation proceedings. Currently, these immigrants are often detained for years or deported without representation because they are unable to understand the proceedings or state the facts of their case.

### **Access to Health Care and Long-Term Services and Supports**

Unfortunately, the Senate bill falls far short on access to health and long-term services and supports for immigrants. The Senate bill denies immigrants pursuing citizenship access to Medicaid and other federal means-tested benefits for 15 years.<sup>5</sup> Unauthorized immigrants would be required to register for provisional status, pay hefty fines and back taxes, maintain continuous employment, and pay taxes during the 10-year provisional status. Yet, during this time, they would not have access to any federal means-tested benefits or subsidies to purchase private insurance through the Affordable Care Act. Following the 10-year provisional period, individuals could apply for lawful permanent resident status. However, they would be subject to an additional 5-year bar from Medicaid and other federal means-tested programs, which currently applies to legal immigrants.

Medicaid is the primary payer of long-term services and supports in the U.S. It is a lifeline for people with disabilities and seniors. Immigrants with disabilities, including those who become disabled during this 15-year period, will not have access to essential supports required to participate in the community and remain productive. Without a safety net, some individuals will be forced into costly institutional settings funded entirely by the state. Others may face “de-facto” deportation through a practice known as medical repatriation.

Medical repatriation occurs when hospitals send critically injured immigrants back to their native country. Hospitals are required to provide emergency care regardless of insurance or immigration status. However, this obligation terminates when the patient is stabilized. If individuals need ongoing rehabilitation or long-term services and supports, there are few options without access to Medicaid. As a result, many hospitals have begun contracting with outside companies to discharge patients to their native countries. A recent study documented over 100 cases of medical repatriation, many occurring without informed consent, breaking up families at a time when they need them most, and in some cases resulting in death due to placements in substandard facilities.<sup>6</sup> Currently, there are no federal regulations guiding these practices or data collection to track prevalence.

Short of full eligibility for Medicaid, there are a number of incremental policy options that could be considered to improve access. The 5-year bar for lawful permanent residents could be eliminated or the time during provisional status could be counted as applying to the 5-year bar. Another option could be to provide states with the flexibility to provide Medicaid coverage to immigrants with disabilities and seniors. A similar option exists for pregnant women and

children, and approximately half of states have elected this option. While some of these ideas were considered as amendments in the Senate, none were voted on or adopted.

Finally, the Senate bill denies credit for Social Security contributions made by immigrants while they were unauthorized. Not only will this significantly limit SSDI for working immigrants who become disabled, it also will limit access to Medicare for individuals with disabilities and older immigrants approaching retirement age. Full access to Medicare Part A (which covers hospital, nursing home, home health, and hospice service) is based upon work history. Without enough work credits, individuals must purchase Part A at a cost of up to \$441 a month in 2013, which is simply unaffordable for many older immigrants and immigrants with disabilities.

### **Strengthening the Direct Care Workforce**

Immigration reform holds great potential to help stabilize and strengthen the direct care (or personal assistance) workforce that provides long-term services and supports to seniors and people with disabilities. Due to the aging of the U.S. population, the number of individuals who need long-term services and supports will more than double in the coming decades, from 12 million to 27 million by 2050.<sup>7</sup> Individuals who need long-term services and their families currently struggle to find and retain direct care workers. A severe shortage of future workers is projected that will create even more difficulties for individuals and families. Conservatively, approximately 1.6 million additional direct care workers will be needed by 2020 and 3 million by 2030.<sup>8</sup>

Immigration reform is part of the solution to addressing this projected shortfall of workers. Nationally, approximately 26% of the current direct care workforce is foreign born. In some states, the percentage is much higher: NY (63%), NJ (50%), DC (46%), CA (45%), and FL (42%).<sup>9</sup> Approximately half of these workers are naturalized citizens and others have legal status, but a portion is estimated to be unauthorized.<sup>10</sup> Providing a pathway to citizenship for direct care workers will help stabilize the workforce, ensure protections for workers, and improve the quality of services and supports. For example, legal status would allow for improved background checks of workers, ability of workers to drive legally, opportunities for training and career advancement, and development of registries to assist individuals in locating workers.

Moreover, the Senate bill establishes a new “W” nonimmigrant visa for low-skilled workers. This would allow for low-skilled workers to enter the U.S. and work for registered employers in occupations with labor shortages for a limited period of time. The program would start at 20,000 visas, increasing to 75,000 or more annually based on shortages in the labor market. While the number of visas for low-skilled workers is modest, this would be an important step forward in helping to address the projected gap in available direct care workers.

### **Access to Family Visas**

Dating back to the Eugenics movement, “public charge” policies remain in law and practice.<sup>11</sup> The term “public charge,” as defined by the U.S. Citizenship and Immigration Services (USCIS), refers to an individual who is likely to become “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense.” An individual

who perceived as *likely* at any time to become a public charge is inadmissible to the U.S. and ineligible to become a lawful permanent resident.

These outdated policies counter decades of progress in U.S. and international disability policy that have sought to remove barriers, open opportunities, and promote inclusion. Public charge policies prevent family unification. Immigrants who have become citizens are unable to petition for their children or other relatives with disabilities. These policies also lead to sheltering individuals with disabilities at home for fear of deportation. While the Senate bill promotes an inclusive road to citizenship for unauthorized immigrants, it does nothing to remove barriers to entry for individuals with disabilities.

The Senate bill also makes a number of major changes to the current visa system. It eliminates the sibling category for family visas and establishes a new “merit-based” system to reduce the substantial backlogs. Siblings play important support roles in the lives of people with disabilities. For individuals with lifelong intellectual and developmental disabilities, siblings frequently assume family caregiving roles when aging parents pass away or are no longer able to provide support. The merit-based system, which awards points that are heavily weighted toward academic and employment criteria, could pose barriers to reunification with siblings and low-income family members.

### **Economic Benefits of Immigration Reform**

There are numerous economic benefits from immigration reform that directly and indirectly benefit seniors and people with disabilities. While many unauthorized immigrants currently contribute to Social Security, immigration reform would increase the percentage of immigrants paying into Social Security and increase contributions due to higher earnings. Because the population is young, they will pay hundreds of billions of dollars more in Social Security taxes than they will receive in benefits over the next 36 years, strengthening the trust fund.<sup>12</sup>

Similarly, the net positive contributions of young, working immigrants paying into Medicare would extend the solvency of the Medicare Part A Trust Fund.<sup>13</sup> Finally, bipartisan economists and policy experts have estimated that comprehensive immigration reform would contribute to 4.8% growth in the U.S. economy and reduce the federal deficit by \$1.2 trillion over the next 20 years.<sup>14</sup> Reducing the deficit would allow for investments in underfunded aging and disability programs, particularly as needs increase with the aging of the U.S. population.

### **Conclusion**

Immigration reform holds the promise of establishing a new social contract for a more just and caring society across generations. A comprehensive approach is needed that fully includes individuals with disabilities, older adults, and their families. Comprehensive reform can help strengthen the direct care workforce and help fill projected shortages of workers who assist individuals to age with independence and dignity. An influx of younger workers contributing to the economy can produce numerous economic benefits, help reduce the federal deficit, and strengthen programs such as Social Security and Medicare. However, as a matter of equity, hardworking immigrants, paying taxes and producing these economic benefits, should have fair access to a basic safety net of health care and long-term services and supports.

<sup>1</sup> Passel, J.S., Cohn, D., & Gonzalez-Barrera (2013). *Population decline of unauthorized immigrants stalls, May Have Reversed: New estimate: 11.7 million in 2012*. Washington, DC: Pew Hispanic Center.

<sup>2</sup> Passel, J.S., & Cohn, D. (2009). *A portrait of unauthorized immigrants in the United States, 2009*. Washington, DC: Pew Hispanic Center.

<sup>3</sup> Hoefler, M., Rytina, N., & Baker, B. (2012). *Estimates of the unauthorized immigrant population residing in the United States: January 2011*. Washington, DC: Office of Immigration Statistics, U.S. Department of Homeland Security.

<sup>4</sup> In general, the term “DREAMers” refers to immigrants who were brought to the U.S. by their families, entered before age 16, graduated from high school (or received a GED), and attended at least 2 years of college or served 4 years in the military. It originates from the Development, Relief, and Education for Alien Minors (DREAM) Act.

<sup>5</sup> National Immigration Law Center (2013). *The Senate Immigration Reform Bill (S. 744): What’s Good, What’s Bad*. Los Angeles, CA: National Immigration Law Center.

<sup>6</sup> Seton Hall Law School (2012). *Discharge, deportation, and dangerous journeys: A study on the practices of medical repatriation*. Newark, NJ: Center for Social Justice, Seton Hall Law School and Health Justice Program, New York Lawyers for the Public Interest.

<sup>7</sup> The SCAN Foundation (2012). *Growing demand for long-term care*. Long Beach, CA: The SCAN Foundation.

<sup>8</sup> PHI (2012). *America’s direct care workforce*. Bronx, NY: PHI.

<sup>9</sup> Community Living Policy Center (2014). *Size and characteristics of the PAS workforce, 2007-09: Data source: U.S. Census Bureau’s American Community Survey*. San Francisco, CA: Community Living Policy Center. Available at: [http://pascenter.org/state\\_based\\_stats/pas\\_workforce.php](http://pascenter.org/state_based_stats/pas_workforce.php)

<sup>10</sup> Direct Care Alliance (2011). *By our sides: The vital work of immigrant direct care workers*. New York, NY: Direct Care Alliance, Inc.

<sup>11</sup> Baynton, D.C. (2005). Defectives in the land: Disability and American immigration policy, 1882-1924. *Journal of American Ethnic History*, 24, 31-44.

<sup>12</sup> Kugler, A., Lych, R., & Oakford, P. (2014). *Improving lives, strengthening finances: The benefits of immigration reform to Social Security*. Washington, DC: Center for American Progress.

<sup>13</sup> Oakford, P., & Lynch, R. (2014). *How will immigration reform impact the Medicare trust fund?* Washington, DC: Center for American Progress.

<sup>14</sup> Bipartisan Policy Center (2013). *Immigration reform: Implications for growth, budgets, and housing*. Washington, DC: Bipartisan Policy Center.