

# Immigrant Seniors in the New Administration

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**JUSTICE IN AGING**  
FIGHTING SENIOR POVERTY THROUGH LAW

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

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Justice in Aging is grateful to the National Immigration Law Center for partnering on this training by providing their expertise on this topic to the Justice in Aging network.

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

# **Immigrant Eligibility for Benefit Programs**

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# Categories Of Immigrants

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## Undocumented v. Lawfully Present Immigrants

- Lawfully present: anyone who is federally authorized to be in the U.S.
  - may have work authorization, but not necessarily
- Undocumented: not federally authorized to be in the US
  - Not all entered without inspection – many came lawfully!

## Many families are “mixed-status”

- It's not unusual for a family to include citizen children and one or more immigrant parents
- Implications for access to programs, services, affecting the entire family

## NOTEPAD

-eligibility based on immigration status is in addition to eligibility based on income, residency, etc.

-immigrants' eligibility for benefits changed dramatically in 1996

# Immigration Statuses for Federal Benefit Programs

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## **“QUALIFIED” IMMIGRANTS:**

8 U.S.C. 1641

- Lawful Permanent Resident (LPR/green card holder)
- Refugee
- Asylee
- Cuban/Haitian Entrant
- Paroled into the U.S. for at least one year
- Conditional Entrant
- Granted Withholding of Deportation or Withholding of Removal
- Battered Spouse, Child and Parent
- Trafficking Survivor and Spouse, Child, Sibling or Parent

# Five Year Waiting Period

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Qualified immigrants are ineligible for the major federal benefits programs during their first 5 years (or longer) in a qualified status

- There are exceptions, depending on the program
- States can use their own funds to provide benefits to immigrants subject to the five-year waiting period
- **There is no five-year waiting period for Affordable Care Act (ACA) coverage**

# Not Subject to 5 Year Waiting Period in Medicaid (+ CHIP and TANF)

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- ✓ Immigrants who physically entered the U.S. before 8/22/96 and remained in the U.S. continuously until obtaining a qualified status
- ✓ Refugees, asylees, granted withholding of deportation/removal (even if later become LPRs)
- ✓ Cuban/Haitian entrants, certain Amerasian immigrants, Iraqi or Afghan special immigrants, trafficking survivors (even if later become LPRs)
- ✓ Qualified immigrants who are honorably discharged U.S. veterans or on active military duty and their spouses or children
- ✓ Children and Pregnant women in Medicaid & CHIP (at state option)

# Other Immigrants Eligible for Medicaid, SSI, SNAP without a waiting period

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- Member of a federally-recognized Indian tribe or American Indian born in Canada
- Afghani and Iraqi Special Immigrants
- Certain Amerasian Immigrants

# Medicaid (and CHIP) State Options

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## **State Funded Coverage**

- States can cover additional immigrants with their own funds

## **Federal options**

- Coverage of lawfully present children and pregnant women without a waiting period
- Prenatal care regardless of a woman's status through CHIP

A few states deny Medicaid to qualified immigrants even after the five year waiting period

# Emergency Medicaid

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**Medicaid payment for limited services related to an emergency medical condition** is available to people who meet a state's Medicaid eligibility requirements except for immigration status, including:

- ✓ Qualified immigrants during the 5-year waiting period
- ✓ Lawfully present but not qualified immigrants, such as persons with Temporary Protected Status (TPS) and many others
- ✓ Undocumented immigrants

# The Affordable Care Act (ACA)

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ACA coverage is available to all **lawfully present** immigrants

- Exception: DACA recipients
- There is no waiting period for ACA coverage

## Statutes Eligible for Medicaid:

- Lawful Permanent Resident (LPR/green card holder)
- Refugee
- Asylee
- Afghan and Iraqi special immigrants
- Cuban/Haitian Entrant
- Certain Amerasian immigrants
- Paroled into the U.S. for at least one year
- Conditional Entrant (prior to April 1, 1980)
- Granted Withholding of Deportation or Withholding of Removal
- Battered Spouse, Child and Parent
- Trafficking Survivor and his/her Spouse, Child, Sibling or Parent
- Member of a federally-recognized Indian tribe or American Indian born in Canada

## Other “Lawfully Present” Immigrants:

- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action (except DACA)\*
- Paroled into the US for less than one year
- Individual with Nonimmigrant Status (includes worker visas; student visas; U visas; citizens of Micronesia, the Marshall Islands, and Palau; and many others)
- Administrative order staying removal issued by the Department of Homeland Security
- Granted relief under the Convention Against Torture (CAT)
- Lawful Temporary Resident
- Family Unity Beneficiary

**\*EXCEPTION:** Individuals granted deferred action under the **2012 Deferred Action for Childhood Arrivals (DACA) program** are **not eligible** to enroll in coverage in the Marketplace.

**APPLICANT for Any of These Statuses:**

- Lawful Permanent Resident (with an approved visa petition)
- Asylum\*
- Special Immigrant Juvenile Status
- Victim of Trafficking Visa
- Withholding of deportation or withholding of removal, under the immigration laws or under the Convention Against Torture (CAT)\*

**Applicants Who Must Also Have Employment Authorization:**

- Applicant for Temporary Protected Status
- Registry Applicants
- Order of Supervision
- Applicant for Cancellation of Removal or Suspension of Deportation
- Applicant for Legalization under IRCA
- Legalization under the LIFE Act

*\*Only those who have been granted employment authorization or are under the age of 14 and have had an application pending for at least 180 days are eligible*

# Supplemental Security Income (SSI)

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Immigrants who arrived after August 22, 1996:

Veterans, active duty military, and their spouse/surviving spouse/children

LPRs with credit for 40 quarters of work

- Subject to a five-year waiting period

Eligible only during first 7 years after granted the relevant status:

- Refugees and asylees
- Granted withholding of deportation/removal
- Cuban/Haitian entrants
- Amerasians
- Iraqi & Afghani Special Immigrants
- Trafficking survivors

# Supplemental Security Income (SSI)

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Immigrants who arrived before August 22, 1996:

- Qualified immigrants who were lawfully present on August 22, 1996 and currently have a disability
- Immigrants who were receiving SSI or had an application pending on August 22, 1996
- Veterans, active duty military, and their spouse/children

# Social Security and Social Security Disability Insurance (SSDI)

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- **Must have credit for sufficient work history**
  - Retirement - If born in 1929 or later, need 40 credits (10 years of work). People born before 1929 need fewer than 40 credits
  - Disability - number of work credits needed for disability benefits varies. Generally need 40 credits, 20 of which earned in the 10 years prior to acquiring the disability. Younger workers may qualify with fewer credits.  
<https://www.ssa.gov/planners/credits.html>
- **Must have been issued a valid SSN**
- **Must be lawfully present** as defined at 8 CFR Sec. 1.3

# Lawfully present under 8 CFR Sec. 1.3 includes:

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- **Qualified immigrants;**
- Immigrants who have been inspected and admitted to the US, who have not violated the terms of their status;
- Paroled into the US for less than 1 year
- Temporary Protected Status (TPS)
- Deferred action;
- Spouses and children of citizens with approved visa petitions and pending applications for adjustment of status;
- Applicants for asylum or withholding of removal granted employment authorization, and children under 14 who have had an application pending for at least 180 days;
- A few other categories

# Medicare

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## **Part A inpatient care**

“Premium Free” Part A is available to individuals who are:

- 65 years and over and eligible for Social Security; their spouse, and former spouse
- Individuals who have been receiving SSDI for 24 months

“Buy-in” Part A is available to LPRs, 65 years and older, who have resided in U.S. continuously for at least 5 years

- premium assistance programs available to LPRs in status for at least 5 years

## **Part B outpatient care**

- Part B requires the payment of a monthly premium
- Immigrant eligibility same as Part A

# Threats to Immigrants – **LEAKED** Draft Executive Order

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# Leaked Order: Public Benefits

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On January 25<sup>th</sup>, Vox leaked the text of several Executive Orders

One EO, **which has not been finalized or signed**, would affect lawfully present immigrants' use of public benefits and the willingness of US citizens and LPRs to sponsor family members

Concerns about the EO already are having an impact on immigrant communities



# Background – Public Charge

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Public charge – a ground of inadmissibility for people who are, or are likely to become, **dependent on the government** for basic subsistence

A public charge assessment is made when a person applies to enter the US from abroad or to **adjust status** to lawful permanent residence (LPR)

The public charge determination is based on **all relevant factors**, including a person's age, resources, health, education, income/employment/skills, family situation and affidavit of support.

Longstanding policy and guidance: two types of benefits – **cash assistance** for income maintenance and **institutionalization for long-term care** at government expense – may be considered in a public charge determination

# Leaked Draft Order: Public Charge

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The leaked draft order would expand the types of benefits that could be considered in a public charge determination, but could not change the “totality of the circumstances” test, which is in the statute

Remember!

- We don't know if the order will be signed!
- It could be changed before it is filed.... Or may not be filed at all



# Leaked Draft Order: Sponsor Liability

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People who immigrate through a family-based visa petition are required to have a sponsor, who signs an “**affidavit of support**” on their behalf.

- In effect until immigrant becomes a **citizen**, has credit for **40 quarters of work** in the US or leaves the country
- Authorizes the government to pursue reimbursement from sponsors if the immigrant uses **certain public benefits** - “Sponsor liability”
  - In practice, government agencies have rarely pursued sponsors

The leaked order would expand the benefits subject to sponsor liability

- This could affect peoples’ willingness to sponsor their relatives

# Messages for Consumers – Public Charge

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Federal law requires immigration officials to look at **all factors**. No single factor, including use of benefits, is dispositive

- The statute cannot be changed by EO

**Public charge is not assessed when LPR apply for citizenship**

**Some immigrants are Not Subject to public charge**, including: refugees, asylees, T-visa applicants/holders, U-visa applicants/holders, VAWA self-petitioners, SIJS, certain parolees, temporary protected status applicants.

# Messages for Consumers - Benefits

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**Laws and policies related to the use of benefits have not changed**

Federal and state laws that protect the privacy of health and public benefit recipients remain in place

Never misrepresent information on a benefits application!

Document! Send stories to [publiccharge@nilc.org](mailto:publiccharge@nilc.org)

# Information for Consumers - Enforcement



You have the right to remain silent. You may refuse to speak to immigration officers.

- Carry a **know-your-rights card** and show it if an immigration officer stops you.

You have a right to be free from warrantless searches in private places like your home.

- Do not open your door unless an ICE agent shows you a warrant (ask them to slide it under the door).
- If they have a warrant **signed by a judge** for a specific person, that person should come out
- You do not have to let them in unless they have a warrant to search your address

You have a right to talk to a lawyer.

- Before you sign anything, talk to a lawyer.
- Never sign a document you don't understand.

# Information for Consumers

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## **KNOW YOUR RIGHTS!**

If you are stopped by immigration or the police:

- ✓ Hand this card to the officer, and remain silent.
- ✓ The card explains that you are exercising your right to refuse to answer any questions until you have talked with a lawyer.

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### **To: Immigration or Other Officer**

Right now I am choosing to exercise my legal rights.

- I will remain **silent**, and I refuse to answer your questions.
- If I am detained, I have the right to contact an attorney **immediately**.
- I refuse to sign anything without advice from an attorney.

Thank you.

# Information for Consumers

## Create a safety plan.

Memorize the phone number of a friend, family member, or attorney

If you take care of children or other people, make a [plan](#) for their needs to be met.

Keep important papers such as birth certificates and immigration documents in a safe place where a friend or family member can get them if necessary.

Make sure your loved ones know how to find you if you are detained by ICE. They can use ICE's online [detainee locator](#) to find an adult in immigration custody. Or they can [call the local ICE office](#). Make sure they have your "A number" (alien registration number), if you have one.

You can call the Executive Office for Immigration Review (EOIR) hotline number at 240-314-1500 or 1-800-898-7180 (toll-free) 24 hours a day, 7 days a week to get information on your case's status.



# Resources

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[Trump's Executive Orders and Immigrants' Access to Health, Food, and Other Public Programs](#) -*Things to Keep in Mind When Talking with Immigrants*

[Five Things You Should Know About the Draft Executive Order on Public Benefits](#)

[Unpacking the References to Public Benefits and the Privacy Act in Trump's Executive Order on Interior Enforcement](#)

[Everyone has Certain Basic Rights, No Matter who is President](#)

# Resources for finding legal assistance

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Local legal services offices In California,  
<http://www.lawhelpcalifornia.org/>

Non-profit legal assistance: <https://www.adminrelief.org/legalhelp>

American Immigration Lawyers Association lawyer referral service:  
<http://www.ailalawyer.com/>

Executive Office of Immigration Review list of pro bono resources:  
<https://www.justice.gov/eoir/list-pro-bono-legal-service-providers-map>

# For more information: [www.nilc.org](http://www.nilc.org)

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The screenshot shows the homepage of the National Immigration Law Center (NILC). The browser address bar displays "Secure | https://www.nilc.org". The website header features the NILC logo (a hand holding a lit candle) and the text "NATIONAL IMMIGRATION LAW CENTER". Social media icons for Facebook, Twitter, YouTube, and LinkedIn are present, along with a search bar. A navigation menu includes "ISSUES", "ABOUT US", "GET INVOLVED", and "NEWS".

The main content area features a large image of a woman in a red headscarf holding a sign that reads "LOVE TRUMPS HATE". Below the image is a text box with the headline "Court Orders Government to Allow Those Impacted by Trump Immigration Order to Stay" and a "Learn more" link. To the right of the image is a "DONATE NOW" button with the text "Help us defend and advance the rights of low-income immigrants!". Below the donate button is a "SIGN UP FOR EMAIL UPDATES" section with the text "Join one or more of NILC's email lists and receive news about issues related to immigrants' rights." and an "Email Address" input field.

At the bottom of the page, there are social media icons for Facebook, Twitter, and a plus sign. A Windows taskbar is visible at the very bottom, showing various application icons and the system clock displaying "6:54 PM 2/8/2017".