

Immigrant Families & Public Benefits

Under a New Presidential Administration

Sponsored by:

VIRGINIA LEAGUE OF SOCIAL SERVICES EXECUTIVES

Virginia State Bar Access to Legal Services Committee



Partners: *Virginia Poverty Law Center; Legal Aid Justice Center;
Charlottesville Office of Human Rights; Arlington Department of Social Services*



Introduction:

Changes to immigration enforcement have resulted in complications for social services providers and recipients.

- **Social services agencies across Virginia have reported decreased numbers of immigrant families** accessing services and attending meetings, and even seeking to withdraw their US-born children from crucial benefits like SNAP. These fears are based primarily on rumors and misunderstanding of the new administration's immigration enforcement practices; there have been no documented cases in Virginia of ICE coming after immigrants just because they or their US-born children access public benefits for which they actually do qualify.
- **The effect of immigrant families withdrawing themselves** from the social safety net – such as childhood hunger, lack of prenatal care, eviction, psychological trauma, and inability to leave situations of domestic violence – could have a generational impact.



Introduction: Presenters

Mary Frances Charlton, Attorney, Public Benefits and Affordable Care Act Coordinator, Economic Justice Program, Legal Aid Justice Center

Karl Doss, Director, Access to Legal Services, Virginia State Bar

Valerie L'Herrou, Staff Attorney, Center for Family Advocacy, Virginia Poverty Law Center

Simon Y. Sandoval-Moshenberg, Legal Director, Immigrant Advocacy Program, Legal Aid Justice Center

Susheela Varky, Director, LA VIDA: Legal Assistance for Victim-Immigrants of Domestic Abuse, Virginia Poverty Law Center

Heather Venner, Director, Community Assistance Bureau, Arlington County Department of Human Services

Becky Wolozin, Equal Justice Works Fellow, JustChildren Program, Legal Aid Justice Center



Overview: This webinar is geared towards state, county/city, and nonprofit social services providers in Virginia. We will discuss:

- Changes in the immigration enforcement landscape
- How to separate fact from fiction
- Eligibility for public benefits for immigrants and their US-born children
- Strategies to encourage immigrant families to continue accessing the social safety net and the public benefits for which they are eligible
- Question-and-answer period with experts on immigration and public benefits



Changes in the Immigration Landscape

Presenter:

- Simon Sandoval-Moshenberg, Legal Aid Justice Center
 - simon@justice4all.org



Climate of fear

leading immigrants to make panicked choices:

- Cancelling or non-renewing benefits like SNAP
- Not reporting domestic violence
- Keeping kids home from school, quitting work, dropping out of community life, etc.
- Moving apartments in the middle of the night, no forwarding address
- Not going to court

**These decisions will have lifelong consequences
for an entire generation of children.**



Separating myths from reality regarding immigration enforcement can help prevent immigrants from making panicked choices

- Jailhouse enforcement, always and still #1 means of ending up in deportation proceedings
- Enforcement outside of the jail context – list of “priorities”
 - Under Obama – finely striated list of priorities
 - Under Trump – broad definition of “criminal” – textbook with every word highlighted
 - “Collateral arrests”



Virginia has, so far, been spared some of the types of enforcement actions we've seen elsewhere in the country

- Elsewhere
 - Courthouse – protective order
 - Hospital
 - Worksites
 - Leaving a press conference
- Virginia (*to date*)
 - Hypothermia shelter in Fairfax Co. – lots of blowback
 - Otherwise, mostly large volume of home raids
- Danger of spreading rumors



Cooperation and non-cooperation

- No such thing as a “sanctuary city”
- Specific policies of cooperation and non-cooperation
 - 287(g)
- 3/20/17 ICE list of “non-cooperating jurisdictions” in VA:
Arlington and Chesterfield
 - Wait, what???



Impact on public benefits

- Always has been a ton of misinformation in immigrant community re: public benefits
 - E.g.: SNAP → Selective Service, or can't get financial aid, or...
- These databases are not hooked up. No enforcement as a result of getting benefits.
- Immigrants think they are hooked up.
 - My name → kids' birth certif. → school records → they're gonna come get me
- Yes, immigration enforcement due to accusations of benefit fraud being referred to prosecutors. Think about handling it internally first.



Impact on public benefits

- Leaked “Public Charge” EO
 - Doesn’t affect undocumented folks because they don’t qualify for these benefits anyway
 - Public charge currently means, cash benefits (TANF, SSI) or long-term care Medicaid
 - Does NOT include: SNAP, WIC, Medicaid, unemployment insurance, Marketplace subsidies, etc. etc. etc.
 - Prevents you from moving up the ladder towards citizenship



Eligibility for public benefits of immigrants & their U.S.-born children

Presenter:

- Mary Frances Charlton, Staff Attorney, Legal Aid Justice Center
 - maryc@justice4all.org



Disclaimers:

- I cannot cover all types of public benefits in the allotted time today.
- All of the programs I will speak about today have varying and complicated underlying financial and other eligibility criteria.
- I am only speaking about immigration-based eligibility in this presentation.



U.S. Citizen Children

- Every child born in the U.S. *or* naturalized is a U.S. citizen.
- U.S. citizen children are eligible for all public benefits programs I'll be presenting on if they otherwise meet eligibility criteria for the programs—Period!



Health Coverage: Medicaid

- The Department of Medical Assistance Services (DMAS) recently changed required eligibility documentation for non-citizens:
 - Non-immigrant visa-holders and other non-immigrants:
 - Eligibility workers required to accept declaration of Virginia residency on Medicaid application as verification of residency.
 - Eligibility workers may **not** require these individuals to sign a “statement of intended residency.”
 - *Virginia Medicaid Manual at M0220.500 and M0230.001*



Health Coverage: Medicaid

continued

- Groups that cannot be required to present an SSN:
 - In addition to individuals who are not eligible to receive an SSN (i.e. undocumented aliens), any noncitizen who is only eligible to receive an SSN for a valid non-work reason is NOT required to apply for an SSN. The individuals include, but are not limited to, non-citizens admitted to the U.S. on nonimmigrant visas and individuals who do not intend to work in the U.S. and would only have needed an SSN for the purposes of receiving public assistance.
 - *Virginia Medicaid Manual* at M0220.500 and M0240.001
- These changes were announced by DMAS on September 22, 2016 in a broadcast notice entitled [Change in Residency and SSN Requirements for Certain Non-Citizens.](#)



Health Coverage: Medicaid

- FAMIS/FAMIS Plus/FAMIS Moms
 - “Lawfully residing” children under age 19 + pregnant women qualify without regard to their date of arrival or length of time in the U.S.
 - “Lawfully residing” has a broad definition which also includes people with valid visas.
 - 5 year bar does not apply
 - *Virginia Medicaid Manual MO220.314*



Health Coverage: Medicaid

- The “five year bar” for other Medicaid categories applies to immigrants that arrived after April 22, 1996 with exceptions.
- Virginia has additional restrictions at *Virginia Medicaid Manual MO220.313(B)*
 - 40 work quarters as defined by SSA.
- “Qualified Alien” defined at *Virginia Medicaid Manual MO220.310*:
 - Lawful Permanent Resident (LPR/Green Card)
 - Refugees & Asylees;
 - Parolee;
 - Deportation is being withheld under Section 243(h) of the INA.
 - Conditional entrant (certain immigrants prior to April 1, 1980);
 - Cuban or Haitian Entrant as defined by 501(e) of the Refugee Education Assistance Act of 1980;
 - Battered Alien
 - Afghan or Iraqi Special Immigrant
 - Victims of Trafficking



Health Coverage: Medicaid

- Exceptions to the five-year bar:
 - Certain veteran/active duty immigrants & their family members can qualify for Medicaid regardless of entry date. *Virginia Medicaid Manual M0220.311*
 - Special 7 year rule for certain groups, *Virginia Medicaid Manual M0220.313(A)*:
 - The following are not subject to the 5-year bar, but can no longer receive Medicaid after 7 years:
 - Refugees & Asylees
 - Deportation is being withheld under Section 243(h) of the INA.
 - Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980
 - Victims of a Severe Form of Trafficking
 - Afghan or Iraqi Immigrant Admitted to the U.S. on a Special Immigrant Visa
 - Kids and pregnant women, as described in earlier



Health Coverage: Medicaid

- Emergency Services Medicaid
 - Immigrants qualify, regardless of lawful status.
 - Examples of services covered:
 - labor/delivery
 - kidney dialysis
 - accidents
 - *Virginia Medicaid Manual MO220.400*



Health Coverage: ACA Marketplace

Qualified statuses:

- Lawful Permanent Resident (LPR/Green Card holder)
- Asylee
- Refugee
- Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980
- Paroled into the U.S.
- Conditional Entrant Granted before 1980
- Battered Spouse, Child and Parent
- Victim of Trafficking and his/her Spouse, Child, Sibling or Parent
- Granted Withholding of Deportation or Withholding of Removal, under the immigration laws or under the Convention against Torture (CAT)



Health Coverage: ACA Marketplace

Qualified statuses, continued

- Individual with Non-immigrant Status, includes worker visas (such as H1, H-2A, H-2B), student visas, U-visa, T-visa, and other visas, and citizens of Micronesia, the Marshall Islands, and Palau
- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action Status (**But not DACA**)
- Lawful Temporary Resident
- Administrative order staying removal issued by the Department of Homeland Security
- Member of a federally-recognized Indian tribe or American Indian Born in Canada
- Resident of American Samoa

Sources: <https://www.healthcare.gov/immigrants/immigration-status/> (last accessed 3.23.17); 45 CFR § 155.305(a)(1).



Health Coverage: ACA Marketplace

Marketplace Coverage

Applicants for the following statuses qualify:

- Temporary Protected Status with Employment Authorization
- Special Immigrant Juvenile Status
- Victim of Trafficking Visa
- Adjustment to LPR Status
- Asylum (with Employment Authorization)
- Withholding of Deportation, or Withholding of Removal, under the immigration laws or under the Convention against Torture (CAT) (see note below)

Sources: <https://www.healthcare.gov/immigrants/immigration-status/> (last accessed 3.23.17); 45 CFR § 155.305(a)(1).



SNAP

Definition of “qualified alien” under 7 CFR 273.4(6)(i):

- LPRs
- Asylees & refugees
- Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980
- Deportation is being withheld under Section 243(h) of the INA.
- Conditional entrants
- A battered spouse or child of a battered spouse of a U.S. citizen or permanent legal resident, and aliens protected under 1508 of the Violence against Women Act of 2000;
- Victims of Trafficking
- Non-citizen Native Americans as defined in 4(e) of the Indian Self-Determination and Education Assistance Act, 25 USC 450b(e) and 289 Native Americans;
- Special immigrants from Iraq and Afghanistan admitted under section 101 (a) (27) of the INA.



SNAP

Eligible categories, **with no waiting period** per 7 CFR 273.4(6)(ii):

- “Qualified alien” children under 18.
- Refugees & Asylees
- Deportation withheld under 243(h) or 241(b)(3) of INA.
- Amerasian immigrants under 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act.
- Cuban or Haitian entrants as defined in 501(e) of the Refugee Education Assistance Act of 1980.
- Iraqi and Afghan special immigrants under Section 101(a)(27) of the INA.
- Certain American Indians born abroad.
- Members of Hmong or Highland Laotian tribes that helped the U.S. military during the Vietnam era, and who are legally living in the U.S., and their spouses or surviving spouses and unmarried dependent children.
- Elderly individuals born on or before Aug. 22, 1931 and who lawfully resided in the U.S. on Aug. 22, 1996.
- Lawful Permanent Residents in the U.S. and receiving government payments for disability or blindness.
- Lawful Permanent Residents with a military connection (veteran, on active duty, or spouse or child of a veteran or active duty service member).



SNAP

Eligible after waiting period per 7 CFR 273.4(6)(iii):

- LPR who has earned, or can be credited with, 40 quarters of work; or
- A “qualified alien” in one of the following groups who has been in qualified status for 5 years:
 - An alien age 18 or older lawfully admitted for permanent residence under the INA.
 - An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;
 - An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered;
 - An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.



TANF

Household must contain a U.S. citizen *or* eligible immigrant child, defined in *Virginia TANF Manual*, 201.7 pp. 1-1a:

- LPRs
- Refugees & Asylees
- Afghan or Iraqi alien granted special immigrant status
- Parolee under Section 212(d)(5) of the INA for a period of at least one year
- Deportation withheld under 243(h) or 241(b)(3) of INA.
- Conditional Entrants under Section 203(a)(7) of the INA as in effect prior to April 1, 1980.
- Alien, and/or alien parent of battered children and/or an alien child of a battered parent who is battered or subjected to extreme cruelty while in the U.S.
- Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.



TANF

No waiting period per *Virginia TANF Manual, 201.7 pp. 1a-1b:*

- Eligible immigrant, entered before 4/22/96.
- Refugees & Asylees
- Deportation is being withheld under Section 243(h) of the INA.
- Afghan or Iraqi alien granted special immigrant status, or an alien admitted as an Amerasian immigrant pursuant to section 584 of the Foreign Operations,

Export Financing, and Related Programs Appropriations Act of 1988.

- Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.
- Certain immigrant veterans/veterans' family members
- *Other eligible categories subject to 5 year bar.*



More information

- If you have questions please call or email me:
 - 434-529-1839 (direct dial)
 - maryc@justice4all.org
- Additional Sources:
 - National Immigration Law Center: <https://www.nilc.org/>
 - Center for Budget & Policy Priorities
 - Webinar: Immigrant Eligibility for Insurance Affordability Programs: <http://www.healthreformbeyondthebasics.org/cbpb-oe4-webinar-immigrant-eligibility/>



Language Access & Privacy

Presenter:

- Becky Wolozin, Legal Aid Justice Center
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Federal Protections

- Title VI of the Civil Rights Act
 - Prohibits recipients of federal funding from intentionally denying a person benefits on the basis of national origin (42 U.S.C. § 2000d.)
 - Applies to:
 - SNAP
 - Medicaid
 - HHS
 - USDA
 - Public Schools
 - HHS & USDA Regulations
 - Prohibits practices that have a discriminatory effect (45 C.F.R. § 80.3(b)(2); 7 C.F.R. § 15.3(b)(2).)
- ESSA and IDEA
 - Title I
 - Title III



Meaningful Access

- EO No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).
- 4 factors to balance
 - Number of LEP persons eligible to be served
 - Frequency with which LEP persons come in contact with the program
 - Nature and importance of the program
 - Resources available to the recipient
- VA DSS Policy Guidelines
 - Offer translation services upon request **or** if client has difficulty communicating in English
 - Use only qualified translators (unless waived by client in writing)
 - Program specific guidance
 - *E.g. Medicaid requires written information available in all prevalent non-English languages and free interpretation services for all non-English languages*



Language Resources

Federal

- HHS: <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html?language=es>
- Federal Interagency LEP Group: <https://www.lep.gov/>
- Dep't of Ed EL Toolkit: <https://www2.ed.gov/about/offices/list/oela/english-learner-toolkit/index.html>

Virginia

- Virginia Court System:
<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/home.html>
- Virginia Department of Health:
<http://www.vdh.virginia.gov/ohpp/clasact/LanguageProfile.aspx>



Privacy

Federal Protections

- Privacy Act of 1974 (5 U.S.C. § 552a (2012))
 - Applies only to Citizens & LPRs
- Protecting Info from States (42 U.S.C. § 1396a - State plans for medical assistance; 7 U.S. Code § 2020 – Administration)
- HIPPA (Public Law 104-191)
- FERPA (20 U.S.C. § 1232g; 34 CFR Part 99)

Program Regulations

- E.g. SNAP: 7 C.F.R. 278.1(q) – information may only be used or disclosed to administer or enforce the Food Stamp Act

Warrant required for individuals to share information

- JUDICIAL warrant or subpoena required to share information – consult with counsel before sharing information



Privacy Resources

Federal

- Privacy Act: <https://www.justice.gov/opcl/overview-privacy-act-1974-2015-edition>
- Food Stamp Program: <https://www.fns.usda.gov/sites/default/files/TIPUG-FSPandWICConfidentialityStatement.pdf>
- Policy Guidance Re: Immigration Status Inquiries: <https://www.fns.usda.gov/sites/default/files/a-QsAsonCitizenship.pdf>
- FERPA: <https://ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- HIPPA: <https://www.hhs.gov/hipaa/>
- NILC Article on Access to Public Benefits: <https://www.nilc.org/news/the-torch/3-2-17/>

Virginia

- Virginia DSS Privacy Manual: <http://www.dss.virginia.gov/files/division/isrm/privacypolicy.pdf>



Outreach & Communication

Presenter:

- Heather Venner, Director, Community Assistance Bureau, Arlington County Department of Human Services
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Resources for clients

- **CAIR Coalition:** Capital Area Immigrant Rights, www.caircoalition.org
- **Immigration Advocate Network:** www.immigrationadvocates.org
- **LAJC:** Legal Aid Justice Center, Justice4All.org
- **Tahirih Justice Center,** www.tahirih.org
- **VPLC:** Virginia Poverty Law Center, vplc.org
 - LA VIDA: Legal Assistance for Victim-Immigrants of Domestic Abuse
- **FreeLegalAnswers.org** (online resource for ALL low income clients who need help regarding civil law matters but can't afford an attorney)



Questions & Answers

What other concerns do you have there were not covered?



Conclusion

Thank you for your concern and efforts to help children from low-income immigrant families. Your work makes a difference!



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