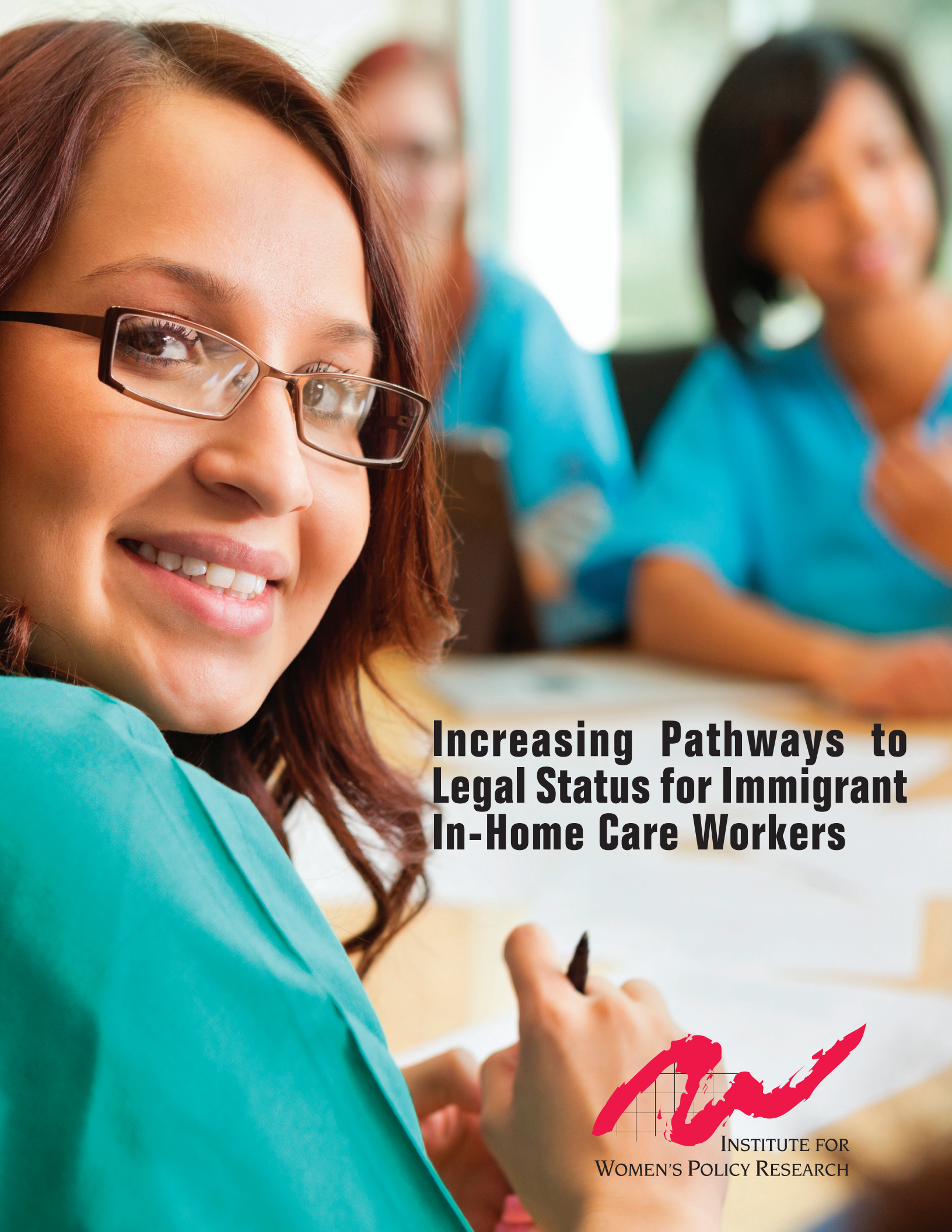

Increasing Pathways to Legal Status for Immigrant In-Home Care Workers

INSTITUTE FOR WOMEN'S POLICY RESEARCH

About This Report

This report is one of two studies conducted in collaboration with the Caring Across Generations Campaign, by the Institute for Women's Policy Research, on ways to improve working conditions experienced by low-income immigrant women doing in-home care work in the United States. *Increasing Pathways to Legal Status for Immigrant In-Home Care Workers explores* several ways to expand the paths to legal admission for immigrant in-home care workers, the benefits of permanent residence, and methods for improving the U.S. visa system as it affects in-home care workers. It also discusses how improved paths to legalization would help immigrant home care workers secure jobs with family-sustaining wages and good working conditions, and improve the quality of care available to older and disabled Americans. The second report in this series, *Improving Career Opportunities for Immigrant Women In-Home Care Workers* (Henrici 2013), examines existing coursework, training, and career ladder programs designed to address the particular needs of immigrant women domestic care workers.

About the Institute for Women's Policy Research

The Institute for Women's Policy Research (IWPR) conducts rigorous research and disseminates its findings to address the needs of women, promote public dialogue, and strengthen families, communities, and societies. The Institute works with policymakers, scholars, and public interest groups to design, execute, and disseminate research that illuminates economic and social policy issues affecting women and their families, and to build a network of individuals and organizations that conduct and use women-oriented policy research. IWPR's work is supported by foundation grants, government grants and contracts, donations from individuals, and contributions from organizations and corporations. IWPR is a 501(c)(3) tax-exempt organization that also works in affiliation with the women's studies, and public administration and public policy programs at The George Washington University.

About Caring Across Generations

Caring Across Generations is a national campaign to bring Americans together across generation and issue to build a culture of care in which our elders and people with disabilities and the workers who care for and support them can all live with dignity and respect. The campaign is anchored by a coalition of local and national organizations, including: research and policy groups, unions, women's organizations, aging organizations, disability rights organizations, direct care worker organizations, and domestic worker organizations. Caring Across Generations aims to win the creation of two million new good jobs in home care, improve the quality of existing and future care jobs, and build a comprehensive system of care that supports all Americans as we age and live with disability. The campaign is fiscally sponsored by Bend the Arc a 501(c)(3) organization, and is funded through foundation grants, coalition member grants, and individual donors. For a full leadership and coalition list please go to www.caringacrossgenerations.org.

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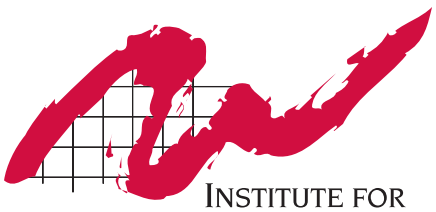

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Executive Summary

Undocumented immigrant women who are in-home care workers in the United States face multiple challenges and vulnerabilities that harm both care workers and the care industry as a whole. Care workers without legal status are more likely than native-born workers to be paid very low wages and to experience exploitation, harassment, and abuse. The U.S. immigration system contributes to these vulnerabilities by offering few, if any, paths to employment visas for those who provide in-home care to the elderly and disabled, making it extremely difficult for these workers to gain legal status once in the country or to enter the United States with legal documentation. This lack of legal status puts undocumented immigrants working in the care industry at risk for maltreatment by abusive or unscrupulous employers. In addition, the care industry itself—currently facing a growing labor shortage—is rendered unable to fully benefit from the work of immigrant workers who may want to provide in-home care, but are unable to find a legal path to enter the country or obtain employment once in the United States.

This paper explores options for reforming the U.S. visa system to increase the pathways to legal status for undocumented immigrant women interested in providing long-term care for the elderly and for individuals with disabilities and chronic illnesses. Drawing on a review of relevant literature and consultations with experts, it examines the current visa options for obtaining legal status that allow for employment and the reasons these avenues do not meet the needs of in-home care workers.

The report then explores four possibilities for reforming the U.S. visa system to address the needs of undocumented care workers: creating a path to legalization for undocumented care workers currently residing in the United States who meet specified criteria; developing a new temporary special visa for qualifying women (and men) from abroad who want to work in the U.S. in-home care industry; implementing a provisional visa that would allow care workers from abroad who hold certain qualifications, such as the ability to speak English and a clean criminal record, to enter the country with a temporary visa and ultimately transition to permanent legal status; and creating a hybrid model that allows states and the federal government to share authority for selecting economic immigrants to the United States and to use a point system to assess and address states' labor shortages.

The report concludes by noting that the circumstances of undocumented care workers point to two changes the United States needs to make to its immigration system. First, the United States needs to increase the numbers of visas extended to care workers. With the industry experiencing a labor shortage and substantial growth in this segment of the workforce anticipated, it is essential that employment visas be made more readily available to women and men with the qualifications and experience to meet this demand. Second, in making employment visas more widely available to care workers, the United States needs to consider the type of visas these workers can receive. Visas that allow for job mobility increase the chances that immigrant workers will enjoy jobs with fair wages and good working conditions—circumstances that benefit not only immigrant workers and their families, but the care industry as a whole.

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I. Introduction

Immigrant women constitute an important part of the in-home care workforce in the United States, yet often face barriers to pursuing jobs and careers in this industry.[1] One especially pressing barrier that many encounter is the limited number of pathways to legal status that the U.S. immigration system allows for care workers. The United States offers multiple types of employment visas, but individuals who provide in-home care are unlikely to qualify for any of them.

As a result, many immigrant in-home care workers lack access to employment visas, making it difficult for them to obtain legal status once here or to enter the United States with legal documentation.[2] Some come to the country through alternative legal channels, such as humanitarian and family-sponsored visas. Others enter and provide care in the United States without legal documentation, a status that increases their vulnerability to exploitation and rights violations (Ruíz Ruelas and Castañeda 2011).

This report examines the challenges that undocumented immigrant women who provide in-home care face under the current U.S. visa system as well as four proposed solutions for increasing their paths to legal admission. It suggests that such proposed changes to the immigration system are necessary to close a growing long-term care gap in the United States and to ensure the well-being of immigrant women who provide this care. Based on a review of literature on in-home care workers in the United States and consultations with experts, the report examines four options for increasing access to U.S. work visas for undocumented immigrants who provide in-home care. It begins with a brief look at the need for care workers in the United States and the role of immigrant women in this industry.

"Immigrant women constitute an important part of the in-home care workforce in the United States, yet often face barriers to pursuing jobs and careers in the industry."

1 The in-home care workforce is a subset of the direct care workforce, which is comprised of workers who provide care to the elderly and to individuals of all ages with disabilities or chronic illnesses. Direct care workers include nursing assistants, home health aides, and personal and home care aides. Direct care workers can work in various settings, including private homes, institutional facilities, and community-based settings. Physicians, dentists, nurses, and therapists are not included in the direct care workforce (Martin et al. 2009). This report focuses on direct care workers who are in-home care providers.

2 In this report, the terms immigrant and foreign-born are used interchangeably to refer to individuals born outside the United States who were not U.S. citizens at birth. As Singer, Wilson, and DeRenzis (2009) observe, this includes legal permanent residents, naturalized citizens, refugees, asylum seekers, undocumented immigrants, and migrants who temporarily stay in the United States.

II. The U.S. In-Home Care Workforce and the Growing Care Gap

"Immigrant women make up nearly one-fourth of the direct care workforce."

As of 2008, approximately 3.2 million individuals were employed as direct care workers in the United States. The demand for their services is expected to grow significantly as the U.S. population ages (PHI 2010). An estimated 1.1 million new direct care positions will be created by 2018, increasing this workforce to 4.3 million workers (Paraprofessional Health Institute 2011). Within the direct care industry, this growth is projected to be most rapid in the home health aide and personal care aide occupations, which are expected to grow by 50 and 46 percent, respectively (PHI 2010).

Immigrant women make up nearly one-fourth of the direct care workforce. Currently, native-born workers in the United States are not meeting the demands for long-term care, a situation that is unlikely to change as the demand for such care continues to grow (Martin et al. 2009). In the face of this labor shortage, a growing immigrant population in the United States has stepped up to fill a substantial portion of care work jobs (Martin et al. 2009).

Immigrants who are undocumented, however, face a significant challenge in obtaining legal status.

For most immigrant women who are in-home care workers, finding an employment-based legal path to come to the United States or a way to acquire legal status once here proves quite difficult. Few, if any, such paths are available for jobs in the care industry under the current immigration system. For immigrant care workers to have access to legal paths to employment, the U.S. system needs to change.

III. Immigrant Women in the U.S. In-Home Care Workforce

While popular images of female immigrant care workers in the United States often focus on nannies and child care providers, research suggests that a significant proportion of immigrant women who are care workers in the United States provide long-term care for the elderly and individuals of all ages with disabilities or chronic illnesses. Like their native-born counterparts, immigrant in-home care workers help with various activities such as bathing, dressing, and feeding their clients as well as assisting them with other activities of daily living (Martin et al. 2009). Some also perform clinical tasks such as blood pressure readings and range-of-motion exercises, while others do light housekeeping and help their clients get to work or appointments (PHI 2011). Given the range of tasks that immigrant and native-born care workers perform, those who are familiar with the industry note that this work requires multiple gifts and abilities, including well-developed interpersonal, communications, and other skills (Martin et al. 2009).

The Institute for Women's Policy Research's (IWPR's) analysis of U.S. Census Bureau data indicates that immigrants make up a disproportionate share of the in-home care workforce. Immigrants constitute about 28 percent of the in-home health care workforce overall, a workforce that is largely dominated by women (90 percent of in-home health care workers in the United States are female and 56 percent are from a minority racial or ethnic group; IWPR 2012c).[3,4] Immigrant women in this workforce come from all over the world, with the largest share from Central America and the Caribbean, followed by Mexico, Asia, and Europe (IWPR 2012a).

Once in the United States, immigrant women who provide in-home care settle in both rural and metropolitan areas. Among those in urban areas, by far the largest number (105,818) resides in the New York-Northeastern New Jersey metropolitan area, where immigrants make up 74 percent of the in-home care workforce. Other metropolitan areas where immigrant in-home care workers make up more than half of all workers in this industry include Miami-Hialeah, Florida (83 percent); Fort Lauderdale-Hollywood-Pompano Beach, Florida (79 percent); McAllen-Edinburg-Pharr-Mission, Texas (69 percent); Los Angeles-Long Beach, California (61 percent); San Francisco-Oakland-Vallejo, California (56 percent); and Washington, DC-Maryland-Virginia and San Diego, California (53 percent each; IWPR 2012b).

Immigrant women who provide in-home care in these cities and areas across the nation share certain challenges with their native-born counterparts, including low wages. The median weekly earnings for all female in-home care workers are $308, compared with $560 for all female workers in the U.S. workforce (IWPR 2012c). This suggests that immigrant and native-born women who provide in-home care encounter specific barriers to economic security that come with working in an occupation that can prove fulfilling but offers few material rewards.

Research also suggests that many immigrant women in the care workforce encounter challenges that are specific to their experiences as immigrant women. For example, one study that surveyed nearly 800 employers of care workers in home care services and nursing homes found that these employers perceived limited English proficiency, cultural differences, and the stresses of adapting to a new country as some of the most pressing challenges faced by immigrant women in the care workforce (Martin et al. 2009). Other studies have found that while all in-home care workers may be vulnerable to exploitation—due, in part, to the private settings in which they often work—immigrant women are especially vulnerable (Chang 2000; Hondagneu-Sotelo 2001).

3 In the United States as a whole, 13 percent of the population is foreign-born. Immigrants constitute 23 percent of the direct care workforce as a whole and 16 percent of the U.S. workfoce overall (IWPR 2012c).
4 All IWPR calculations in this report include workers in 2010 and 2011 who are not self-employed.

"While a number of factors contribute to in-home care providers' vulnerability to exploitation, one important factor for immigrant in-home care workers is the limited paths to legal status that are available to care workers in the United States."

While a number of factors contribute to in-home care providers' vulnerability to exploitation, one important factor for immigrant in-home care workers is the limited paths to legal status that are available to care workers in the United States. Although the U.S. immigration system offers several avenues to legal status for employment purposes, most care workers find it difficult—if not impossible—to qualify, leading them to enter or stay in the country through other authorized or unauthorized channels. The immigration status that care workers hold affects their experiences in the care workforce. To understand these effects, it helps to look at the specific pathways through which immigrants can legally come to and work in the United States, and how the restrictions placed on these pathways profoundly shape the circumstances of in-home care workers.

IV. In-Home Care Workers in the U.S. Workforce: Paths to Legal Admission

Approximately 38 million immigrants live in the United States, having come from various countries and for different reasons (Hess, Henrici, and Williams 2011). Those who migrated with legal documentation did so through two channels: temporary and permanent admissions. Each channel offers multiple avenues with different requirements and specifications, and each also offers several options for legal entry that allow for employment. The lack of a generally "good fit" between the U.S. visa-endorsed employment paths and immigrant in-home care workers, however, leaves many of these workers with either very limited legal options for entering the country or with none at all (Chishti 2011; Martin et al. 2009).

Temporary Work Programs

For workers coming to the United States on a temporary basis, three common types of employment visas are H-2A, H-1B, and H-2B visas. The first is for agricultural workers (U.S. Department of State 2012a) and, therefore, does not apply to the discussion of care workers.

H-1B and H-2B visas are relevant for some health care workers but not for those who provide in-home care. The H-1B visas, capped at 65,000 per year (with an additional 20,000 visas for foreign-born students who have graduated from U.S. institutions in science and engineering), allow businesses to temporarily employ immigrant workers who are trained in "specialty occupations" such as science, engineering, and computer programming (U.S. Citizenship and Immigration Services 2011). Most in-home care workers, however, likely will not qualify for H-1B visas because of the program's education requirements—workers must normally have at least a bachelor's degree to be eligible. In-home care workers who provide health care and have the necessary education also will probably not qualify for the H-1B visa because the program defines "specialty occupation" as requiring the applicant to have the knowledge necessary to perform "specific duties" that are "specialized and complex" (U.S. Citizenship and Immigration Services 2011). Despite the high value of care work for recipients of this care, the work of home care workers would not meet the government definition of "specialized and complex."

The H-2B visa is relevant to some health care workers but, for a different reason, largely excludes those who are in-home care workers. These visas, capped at 66,000 per year, are for temporary workers who are employed in non-agricultural occupations (Chishti 2011). For a worker to be admitted under an H-2B visa, the employer must also establish that his or her need for the additional labor is inherently temporary and that there are not enough U.S. workers to meet the temporary need for work. In practice, this means that employers must prove that the work is a one-time occurrence or is meeting a short-term, seasonal, or intermittent need (U.S. Citizenship and Immigration Services 2012). Since few jobs in the direct care industry meet this requirement, care workers remain largely ineligible (Chishti 2011).

In-home care workers are also generally excluded from the less common but also employment-based, temporary Trade NAFTA Professional (TN) visas. These visas allow entry to Canadian and Mexican citizens who work in designated North American Free Trade Agreement (NAFTA) professions such as teaching, accounting, engineering, and science (U.S. Citizenship and Immigration Services 2010a). An estimated 20,000–30,000 TN visas were given out in 2007. While the exact distribution of these visas is not known, anecdotal evidence indicates that a substantial number of Canadian nurses are admitted under the TN visa program (Martin et al. 2009). Because of the professional credentials required for TN visas, however, care workers with limited training and preparation are largely ineligible.

"The U.S. immigration system offers four paths to legal permanent residency: admission based on family sponsorship, humanitarian interests, diversity, and employment."

The J-1 visa represents an additional visa that offers an employment-based path for temporary legal admission. Known as the "exchange visitor visa," this visa enables individuals from other countries to stay in the United States for a temporary period of time while they teach, study, conduct research, perform a specific job, or participate in a cultural enrichment program (U.S. Department of State 2012b). With more than 170,000 individuals in the United States each month on a J-1 visa, this visa offers a path to temporary legal admission for people participating in a range of programs. One program—the au pair program—accommodates care workers between the ages of 18 and 26 who care for the children of their host families (U.S. Department of State 2012b). One expert consulted for this report suggested that the J-1 visa could be modified to offer a way for those who provide in-home care for the elderly or disabled to come to the county, even if only for a specified period of time to fill a temporary job that meets the needs of the care industry.

While other temporary visas exist, none is particularly relevant to workers in the health care sector with limited training, in general, and to in-home care workers, in particular. Immigrants who do not qualify to enter the United States through temporary work programs, however, may gain legal admission through a different path: one of the country's permanent admission streams.

Permanent Admissions

The U.S. immigration system offers four paths to legal permanent residency: admission based on family sponsorship, humanitarian interests, diversity, and employment.[5] These four streams grant individuals residence rights and the right to work, as well as the right to become a naturalized U.S. citizen after five years (Martin et al. 2009).

Among immigrants who come to the United States through these four permanent channels, only a small proportion receives employment visas. (In 2008, approximately 15 percent of those who immigrated through the permanent stream received employment-based visas; Martin et al. 2009). Approximately 140,000 permanent employment visas are allowed each year, but this includes visas for the family members of the principal workers as well (U.S. Citizenship and Immigration Services 2010b), so the number of employment visas given to workers is actually much smaller.

Permanent employment visas are issued through several streams. Most immigrant care workers who qualify for a permanent employment visa do so under the EB-3 visa (Chishti 2011). While this visa is reserved primarily for professionals and skilled workers with a bachelor's degree and/or two years of job experience who have a job offer in the United States, it includes a category for "other," lesser-skilled workers (U.S. Citizenship and Immigration Services 2010b) with a job offer that could apply to in-home care workers. The EB-3 program receives 28 percent of the 140,000 visas allotted for all permanent employment-based immigration programs (roughly 39,000 visas per year). Only 5,000 of these visas, however, can be given to workers in the "other" category. In addition, each category has country-specific limits. Therefore, while some care workers may receive EB-3 visas, the combination of the low number of visas given and per-country limits has created a large backlog of applicants in some countries, including Mexico, the Philippines, and China. This means that for many care workers looking to enter the United States, the wait for a visa could be eight years or more—a wait many employers may not be willing to endure (Chishti 2011).

5 The diversity visa category provides a path to legal admissions for individuals whose countries are underrepresented among those who immigrate to the United States. Applicants must have completed a secondary education and are selected through a lottery that includes residents of under-represented countries (Martin et al. 2009). The humanitarian category includes refugees and asylees. Members of certain nationalities—such as Cuba, Nicaragua, El Salvador, Guatemala, and Haiti—have also received legal permanent status on humanitarian grounds (Martin et al. 2009).

Given the very limited availability of employment visas, most immigrants who come to the United States through a permanent stream do so in a different way. In 2008, approximately 15 percent were admitted on a humanitarian basis and four percent were admitted under the "diversity" visa category. The largest share of immigrants (65 percent, or 716,224 of 1,107,126 million; Martin et al. 2009) were admitted on family-sponsored visas.

Since it is very difficult for women who are in-home care workers to migrate to the United States through temporary or permanent employment channels, many come to the country on a family-sponsored visa and only later work in the care industry (Martin et al. 2009). Not all women, however, can apply for a family-sponsored visa; many do not have a family member who can petition for them and serve as their sponsor. In addition, as the Immigration Policy Center points out, long backlogs mean that the wait to receive a family-sponsored visa can take years (2012). This visa, therefore, does not provide a viable path to legal admission for many care workers seeking employment opportunities in the United States.

V. The Benefits of Permanent Residence for In-Home Care Workers

The types of visa that women hold have implications for their experiences in the care industry. Having permanent residency of any kind—through family-sponsored, diversity, humanitarian, or employment visas—grants immigrant women certain benefits compared with a temporary work visa. Those with permanent status generally have greater job mobility; most immigrants on temporary work visas can only come to the United States if their employer has filed a petition, and losing their job often means losing their visa as well (Papademetriou et al. 2009).

"The types of visa that women hold have implications for their experiences in the care industry."

Workers with some temporary work visas can transfer their visa from employer to employer (as long as the new employer files a petition for the immigrant). But their job mobility may be restricted if they are in the process of applying for a green card. Some immigrants who apply for a green card and then change jobs need to restart the application process (Mukhopadhyay and Oxborrow 2012)–a disincentive to leaving one's current employment. Some researchers note that the lack of job mobility that results from being tied to an employer increases immigrants' vulnerability to exploitation (Papademetriou et al. 2009). Without the freedom to change jobs, immigrants on temporary work visas are subject to unethical employers who do not need to provide fair wages and good working conditions to retain immigrant employees. In some instances, workers who lack the freedom to change jobs experience violence, abuse, and even trafficking at the hands of employers (Human Rights Watch 2001).

While having permanent residence is critical to many immigrant women in the care workforce, even immigrant women in this occupation with permanent residency often face challenges that stem from their status. Current law deems many immigrants who are legal permanent residents but have resided in the United States for less than five years ineligible for certain means-tested public benefits, including cash assistance, nutrition assistance (formerly called "food stamps"), and Medicaid.[6] The lack of access to such benefits may pose a significant hardship for care workers, whose earnings are very low and who often rely on public benefits to make ends meet. Between 2008 and 2011, more than four in ten immigrant women (44 percent) who were in-home care providers in the United States lived in households that received cash assistance, nutrition assistance, or Medicaid. The largest share (43 percent) received Medicaid, followed by nutrition assistance (13 percent) and cash assistance (3 percent; IWPR 2012a).[7]

The current U.S. immigration visa system, then, poses at least two problems for care workers. First, the system does not offer enough employment visas—temporary or permanent—for low-skilled workers in the health care sector to accommodate the growing demand for long-term care in the United States. Second, even the more "beneficial" kind of visas—permanent visas—carry certain restrictions that prevent some immigrant women from accessing the resources they need to make ends meet.

Given the absence of any targeted migration flow for workers in the care industry, most care workers cannot migrate as workers but must instead rely on other options. While some migrate through other legal streams, others enter and stay in the United States as undocumented immigrants. Their undocumented status exacerbates the challenges faced by care workers—such as vulnerability to exploitation and abuse—and creates additional challenges that are particularly acute for women working in low-wage jobs, such as those in the in-home care industry.

6 These restrictions were made in the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996." (Public Law No. 104-193, 104th Congress, 2nd session, 110 Stat. 2105, August 22, 1996). Although this 1996 federal law disqualified many legal immigrants from receiving means-tested public benefits, subsequent legislation restored coverage to some immigrants who were originally deemed ineligible. In addition, some states have attempted to cover at least some immigrants considered ineligible, although state budget cuts have led to the reduction or elimination of many state-funded programs (Broder and Blazer 2011). Even immigrants who are eligible for federal means-tested benefits, however, often are reluctant to enroll in these programs due to fear and confusion about the law (Hess, Henrici, and Williams 2011). For a summary of immigrant eligibility for federal programs, see Broder and Blazer (2011).
7 Some received more than one form of assistance.

VI. Undocumented Women in the In-Home Care Workforce

Nationally, an estimated 11 to 12 million undocumented individuals live in the United States (Hoeffer, Rytina, and Baker 2012). Those who are active in the workforce find employment in various industries and occupations. Although the numbers of undocumented immigrants within a given occupation are difficult to determine, it is estimated that within the U.S. direct care workforce, approximately one in five immigrants (21 percent) are undocumented (Martin et al. 2009). Given the often informal nature of much of the care work performed in this country, however, it is possible that the proportion of undocumented immigrants is higher than this estimate would suggest.

"Although the numbers of undocumented immigrants within a given occupation are difficult to determine, it is estimated that within the U.S. direct care workforce, approximately one in five immigrants are undocumented."

If the estimation of undocumented immigrants in the care industry is accurate, the proportion of care workers without legal documentation is similar to the proportion of undocumented workers in the U.S. workforce as a whole. The one-in-five immigrant direct care workers who are undocumented represents four percent of all workers in long-term care; it is estimated that slightly more than five percent of workers in the United States are undocumented (Martin et al. 2009). This figure, however, is for the direct care workforce overall, not the in-home care workforce alone. Since human resource personnel in institutions that hire direct care workers likely scrutinize the legal status of potential employees more rigorously than employers in private households, it is possible that the proportion of undocumented workers among in-home care providers is higher.

Undocumented immigrant women who work in the care industry are disproportionately vulnerable to certain challenges and hardships. Research suggests that they are more likely than both native-born workers and documented immigrant workers to experience exploitation and to be targets of theft and other crimes (Chang 2000; Hondagneu-Sotelo 2001). For example, care workers are often denied workers' compensation for workplace injuries as well as other basic labor protections (Glenn 2010). In addition, one study that involved interviewing 33 in-home care workers found that these workers were often asked to work extra hours for no pay and to take on additional responsibilities; they were asked, for example, to stay a later at the end of the day or to perform a few extra chores, such as cooking and cleaning. In some instances, the perception of the employers that the care providers were "part of the family" made it difficult for these providers to refuse additional requests and obscured the exploitative nature of their working conditions (Clare 2005).

Research also suggests that undocumented care workers often earn very low wages. One study of Latina immigrants employed as care workers (nannies and housekeepers) in Los Angeles found that although immigrant women in general receive low wages in this occupation, undocumented women are especially likely to earn subminimum wages, since they more often work in "live-in" rather than "live out" jobs that typically pay higher wages (Hondagneu-Sotelo 2001). The vulnerability of undocumented immigrants to exploitation stems partly from their reluctance to report crimes or rights violations to authorities, for fear they might be asked about their immigration status (Hess, Henrici, and Williams 2011).

VII. Improving the U.S. Visa System for In-Home Care Workers

Four Proposals for Visa Reform

1. Legalization for Undocumented Care Workers Currently Residing in the United States

The first proposal focuses on providing a path to legal status for undocumented direct care workers currently residing in the United States. Developed by the Caring Across Generations Campaign (CAG)—a broad-based coalition of groups organizing to build a national movement of direct care workers, care recipients, and families—this legislative proposal outlines a process for legalization that has two steps.

In the first step, workers will qualify for temporary legal status and work authorization in the United States if they can prove that they were residing in the country at the time that the CAG legislation was passed and were working as domestic workers in a private home. In the second step, workers who obtain temporary legal status under step one may receive legal permanent residence if they complete specified job training requirements and continue to work as a home care worker for an established period of time.

In light of the reality of abusive employers and workplace power imbalances, the CAG plan also proposes to create a method for workers to obtain certification for the specified criteria without having to rely on validation from their employer. In addition, it seeks to offer guidance on ways that a pathway to legal status may still be available when a worker is fired, laid-off, or employed in jobs with unacceptable working conditions. Finally, the plan proposes certain labor protections in addition to the protections provided under current federal and state employment laws.

In proposing to create a path to legalization for undocumented care workers, this plan may appeal to immigrant rights advocates and others who argue that creating a path to legalization is essential to improving job quality for undocumented immigrants and enabling them to enjoy full participation in social and economic life. Opponents of the plan, however, may contend that such a legalization process is problematic because it represents a form of "amnesty" that allows undocumented workers to stay in the country without incurring any penalties. It is important to note that the process for legalization proposed here does not automatically give anyone legal permanent residence. Undocumented care workers would need to meet specified criteria to obtain temporary residency before they could even be considered for permanent residency in the United States.

2. A New Temporary Special Visa

Whereas the first proposal focuses on a legalization process for undocumented workers already residing in the United States, the other three suggest ways to offer legal admission to care workers from abroad. One addresses the growing need for direct care providers in the United States by creating a special visa for women (and men) who plan to work in this industry. While this visa could be structured in many ways, one expert consulted suggested that it be created as a temporary visa for care workers that could transition to a permanent visa after a specified period of time if the worker demonstrates continued employment and meets designated benchmarks, such as the ability to speak English and pass a background check. In allowing a transition into permanent residence, the visa would essentially formalize a process that already exists: 90 percent of the approximately 70,000 green cards issued every year are given to individuals with temporary work visas who are adjusting their status (Papademetriou et al. 2009).

Creating a temporary visa for care workers holds promise. It would help ensure that the demand for care workers is addressed, since the visas would not be available to workers from other occupations. In addition, in allowing workers who hold these visas to apply for permanent residence only if certain requirements are met, the visa might gain acceptance both from those who perceive the need for increased employment paths to permanent legal status and from those who emphasize that any permanent status must be "earned" and carefully regulated to help monitor immigration.

At the same time, it could be difficult to garner public and political support for creating a new visa for care workers. As one report notes, special legislation for nursing occupations (with no focus on elder care) has been under consideration by the U.S. Congress, but the changes proposed in the legislation have not been made, partly because it is difficult to defend establishing a visa specifically for nurses and therapists when other occupations also have shortages (Martin et al. 2009). This same issue could pose a challenge for any proposed temporary visa program for care workers.

Questions also remain about how long such visas would be temporary and under what conditions individuals who hold them could apply to acquire permanent status. In addition, eligibility requirements would need to be created to determine who would be admitted under the new temporary visa program for care workers—requirements that would probably give preference to those who are healthier, younger, and/or are English speakers. A mechanism to ensure job mobility among those with these temporary visas would also need to be developed

3. Provisional visas

The Migration Policy Institute has proposed another change to the current U.S. immigration visa system that is relevant to the discussion about the growing need for care workers in the United States: the implementation of "provisional" visas. Like the new visa for care workers discussed above, provisional visas could transition to permanent visas; those who hold provisional visas "would work in permanent or year-round jobs and transition into permanent residence after three years if they qualify and so choose" (Meissner et al. 2006). Although they would not be restricted to care workers, provisional visas would be open to workers of all skill levels and thus to care workers. This flexibility in skill level would help to ensure that the immigration system could more easily respond to both current and emerging demands for workers, including the growing shortage of care workers. The number of provisional visas given would be adjusted periodically according to the demands of the labor market (Meissner et al. 2006).

Applicants for provisional visas with employer sponsors would be admitted for a three-year period with one possible renewal. After one year, provisional visa holders could gain portability, allowing them to change employers without applying for a new visa (Papademetriou et al. 2009). At the end of the second three-year period, they could apply for a green card without the sponsorship of their employer, if they meet certain qualifications. These qualifications would include evidence of minimum employment requirements (visa holders must be employed or in school for a certain number of days throughout the year), the ability to speak English, the payment of all direct and indirect taxes, and evidence of a clean criminal record (Papademetriou et al. 2009). In addition, employers of provisional visas holders would need to undergo an attestation process or become pre-certified as a licensed employer of immigrant workers (Meissner et al 2006).

The provisional visa could have several advantages for care workers over the current immigration visa system. First, by remaining open to workers of all skill levels, it would provide a viable option for workers in occupations in the care industry. Second, by decoupling permanent residence from a relationship with a particular employer, the provisional visa would make it easier for immigrants to leave bad jobs, rendering them less vulnerable to exploitation (Papademetriou et al. 2009). This is especially important for women who are in-home care providers and work in private settings, where exploitation is more likely to occur and more difficult to address.

At the same time, the provisional visa may present some challenges for immigrant women. Although requiring immigrants to meet certain benchmarks before adjusting their status is important both for immigrant integration and to gain support for any legislative change to the immigration system, some benchmarks might affect women differently than men. For example, research suggests that immigrant women bear more child care responsibilities than men and often find it difficult to attend English classes if child care is not readily available (Hess, Henrici, and Williams 2011). Similarly, women are more likely to take time out of the paid workforce to care for their children or other family members, which would make it more difficult for them to meet a continuous employment requirement. Experts consulted for this report also emphasized that a continuous employment requirement could be difficult for immigrant women (and men) to meet if they do not develop the financial literacy to keep careful records of their employment in the United States, including hours and dates worked, names and addresses of employers and clients, and wages earned.[8] These challenges do not mean that such benchmarks should be discarded, but rather that it is critical to make available forms of support that will help immigrant women meet them.

4. A Hybrid Model: Combining a State-Based Selection System with a Points-Based System

One expert consulted for this report recommended a fourth option for changing the U.S. immigration visa system that is relevant to the discussion of care workers: implementing a state-based selection system that uses elements of a points-based system.[9] This hybrid model would allow states and the federal government to share authority for selecting economic immigrants to the United States and to use a point system to assess and address states' labor shortages. Point-based systems, which have been implemented in a handful of countries around the world, admit immigrants based on how they rate on a list of qualifications and experiences such as language skills, work experience, age, and education (Papademetriou and Sumption 2011). In point-based systems, employers do not choose specific immigrants to fill specific jobs, but rather governments devise criteria and assign applicants points based on their skills and qualifications. Those who meet the minimum point threshold are cleared for immigration (Papademetriou and Sumption 2011).

Under the hybrid model proposed here, the federal government would give each state a set number of visas based on demographic and business data.[10] States would share authority with the federal government to use these points to choose potential immigrants with the right qualifications to address regional labor needs, such as the need for care workers. In this hybrid model, states could work with employers to develop a point scale to assess how many workers are needed and the skills and qualifications that are most desirable for their region. States could also identify regional labor needs through the same kind of analysis of demographics, industry outputs, and occupation projections that some states have used to guide their education and workforce development efforts under the Workforce Investment Act of 1998 (McHugh 2011).

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8 It is critical for immigrant women providing in-home care to keep exact records of their employment. This information can be vital for those who want to legally challenge an employer's abuse or nonpayment of wages. It can also provide valuable evidence of residency and a pattern of having contributed responsibly to society that can be helpful in securing visa reauthorizations and accessing any new paths to legalization. In some states, nonprofit rights organizations and workers centers provide training and materials to help immigrant day laborers learn how to record and maintain employment information. Many workers centers also store these data. Some advocates for immigrant workers are also developing a software application so that workers can more easily use a cell phone to call or text an update to their employment information. All these tools might help immigrant women in-home care workers.

9 This hybrid proposal is modeled after a similar system in Canada, in which participating provinces and territories have made agreements with the federal government so that they can select migrants into their jurisdictions through a provincial nominee program, in which migrants are nominated by a province or territory based on their skills, qualifications, and work experience. For more on the Canadian system, see Seidle (2010).

10 For a summary of different ways in which hybrid immigration selection systems can be constructed, see Papademetriou, Somerville, and Tanaka (2008).

As part of their increased involvement in immigrant selection, states could be required to ensure an acceptable floor on wages, good working conditions, and the availability of proper integration services for immigrant workers. States could also take steps to encourage potential immigrants to settle in areas where labor shortages are most severe (McHugh 2011).

While many details of this process would need to be determined, one aspect of the proposal seems clear: it needs to incorporate measures to address worker rights and immigrant integration into its design. For instance, states could be required not only to ensure an acceptable floor for wages and working conditions but also to offer integration assistance. States could also earn extra points if they stringently enforce workplace protections in occupations for which states are actively seeking to recruit immigrants. One expert suggested that the federal government could also reward states that made significant efforts to accommodate immigrants in such public services as education and health care, and in the state's larger workforce and economic development plans.

By creating a partnership between the states and the federal government, this proposal has the advantage of allowing states—who are perhaps best suited to assess their labor needs—to play a role in determining the selection of immigrants. This system would allow states to emphasize the applicant characteristics they consider most valuable for their economic growth and permit flexibility in defining these characteristics; states could adjust their desired qualifications and experiences as their labor needs change over time.

One possible limitation of this system for direct care workers, however, is that it may be difficult for states to capture all the skills care workers bring to the job, such as strong interpersonal skills, motivation, and compassion. As Elizabeth Collett and Fabian Zuleeg observe, these skills are more difficult to quantify than years of education or technical knowledge, and it may prove difficult to capture them within a point system for immigrant selection (2008). This challenge points to the need to consider carefully how skills and qualifications for care workers are defined and measured.

The four options for changing the visa system proposed here all offer different ways for addressing the long-term care gap by increasing the opportunities for care workers to obtain employment in the United States. These approaches are not necessarily mutually exclusive. One option would involve creating a hybrid of two approaches, such as issuing provisional visas through the provincial selection system. As discussions about visa reform and closing the care gap move forward, it is important to consider ways to draw on the strengths of each proposal.

Comprehensive Immigration Reform

The four changes to the visa system proposed above represent what some advocates call "piecemeal" approaches to solving pressing labor force needs while ensuring that workers' rights are protected. These options, however, may be most effective if they are implemented not on their own but rather as part of a broader comprehensive reform of the U.S. immigration system. In recent years, many immigrant rights advocates, researchers, and policymakers have argued that piecemeal changes to the immigration system are not the answer; the nation needs comprehensive legislation that addresses all the complex and interrelated issues that surface in the current immigration debate.

Until recently, however, the debate on comprehensive immigration reform had largely stalled as policymakers failed to find common ground on multiple issues, including what to do about the population of undocumented immigrants already in the country and how to regulate the future flow of migration to the United States. On the one side were those who argued that the United States needs a legalization program that would create a path to citizenship for undocumented immigrants who meet specified requirements, such as passing a background check, learning English, staying employed, and paying a fine.[11] On the other side were those who rejected such a program and emphasized instead the need for strong enforcement measures to reduce future unauthorized migration. In the absence of progress toward comprehensive immigration reform, some individuals proposed that piecemeal legislation addressing specific workforce issues—such as the growing need for more long-term care providers—would represent the best option for moving forward (McHugh 2011).

Recently, however, advocates, policymakers, and other stakeholders have moved comprehensive immigration reform to the forefront of national political discussion, while pointing out that the costs of inaction by the federal government have been high. In the absence of changes to the immigration system that would offer a comprehensive set of solutions—including providing undocumented immigrants with a path to citizenship and the full rights enjoyed by U.S. citizens—many states and local jurisdictions have introduced, and often passed, policies designed to regulate the flow of immigrant workers, including care workers, to their local areas. The punitive nature of many of these policies has created an anti-immigrant climate in some localities and led many immigrants to live in fear (Hess, Henrici, and Williams 2011).

As part of a broader comprehensive immigration reform, the proposals for modifying the visa system discussed above have elements that may appeal to those on both sides of the immigration debate. On the one hand, these proposals aim to provide solutions that would enable more immigrant women and men to fill a growing labor shortage while holding a legal status that would not render them disproportionately vulnerable to rights violations. On the other hand, the proposals impose certain requirements that must be met for individuals to move forward on the path to permanent legal status, which might appeal to those concerned that legalization programs might be too generous and increase future migration flows. Although the details of the proposed approaches and a potential broader comprehensive reform of the U.S. immigration system remain to be worked out, the need to find a solution that benefits both the direct care industry and its immigrant workers is clear.

11 Two comprehensive immigration reform proposals that were recently introduced in the U.S. Congress include a path for "earned legalization": H.R. 4321, sponsored by Representatives Luis Gutierrez (D-IL) and Solomon Ortiz (D-TX), and S. 3932, sponsored by Senators Robert Menendez (D-NJ) and Patrick Leahy (D-VT). These proposals, which have not passed, were introduced in 2009 and 2010, respectively.

VIII. Conclusion

The options for reforming the U.S. visa system proposed above all represent approaches that could fill critical worker shortages by increasing the pathways to legal status for immigrant women interested in providing long-term care for the elderly and for individuals with disabilities and chronic illnesses. Additional ways to reform the current immigration visa system could be implemented, such as making the H-2B visa, which is currently allotted only for temporary employment, a path to permanent legal status for direct care workers as well as for workers in other occupations. Such a change would open up new possibilities for in-home care workers and help to fill the growing demand faced by the care industry.

In assessing these different options for reforming the current system, it becomes clear that significant changes to this system need to be made. In its current form, the immigration visa system offers few opportunities for workers with limited training in the health care sector in general, and for in-home care workers in particular, to obtain legal status through employment-based channels, leading some to find their way into the care workforce through other legal means and still others to come to the country and stay as undocumented immigrants. For the sake of both the U.S. care industry and undocumented immigrant women who participate in it, this system needs to change.

Two changes are particularly important. First, as part of a comprehensive reform of immigration policy, the United States needs to increase the numbers of visas extended to care workers. With the industry experiencing a labor shortage and substantial growth in this segment of the workforce anticipated, it is essential that the United States make employment visas more widely available to women with the qualifications and experience to meet this demand. Second, in making employment visas more readily available to care workers, the United States needs to carefully consider the type of visa these workers can receive. Visas that allow for job mobility (whether temporary or permanent) increase the chances that immigrant workers will enjoy jobs with fair wages and good working conditions.

While improving the U.S. visa system would make an important difference in the lives of many immigrant women who are care workers and help to close the long-term care gap, this change alone will not resolve all the challenges many immigrant care workers face. Immigrant care workers, along with their native-born counterparts, often find that their jobs are emotionally and physically demanding, yet provide very low wages and poor working conditions. The lack of family-sustaining wages and overtime compensation for many in-home care workers stems partly from society's tendency to undervalue care work itself. Any reform of the visa system, then, must be accompanied by policy changes designed to improve the nature of jobs for in-home care workers. For the nation to ensure that quality, long-term care is readily available for its aging population, it needs to rethink the value placed on this work and the people who provide it.

"In its current form, the immigration visa system offers few opportunities for workers with limited training in the health care sector in general, and for in-home care workers in particular, to obtain legal status through employment-based channels."

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