

## **Agricultural worker policy review**

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The policies affecting the health of agricultural workers reflect the interplay of race, immigration status, poverty and harsh working conditions. Agricultural “exceptionalism” has lessened labor protections for agricultural workers who labor in a dangerous occupation, while the immigrant status of the largely Latino workforce has marginalized agricultural workers into low-paying jobs and communities<sup>1-6</sup>.

### **Labor protections**

Historically, US agricultural workers have been excluded from many labor protections afforded to other workers. Agricultural workers remain excluded from federal overtime and certain child labor requirements under the Fair Labor Standards Act, as well as many state minimum wage laws and workers’ compensation laws, and many occupational safety and health protections. The principal federal labor law governing agricultural workers is the Migrant and Seasonal Agricultural Worker Protection Act<sup>7</sup>.

Since a vast majority of agricultural workers are immigrants, and a large percentage do not have legal authorization to work in the US, immigration laws and policies have a disparate impact on agricultural workers compared to other US workers. The US has implemented “guest worker” programs such as the Bracero program from the 1940’s to the 1960’s, and the current H-2A program to bring in temporary foreign non-immigrant workers<sup>1-6</sup>.

California has had a more progressive history beginning in expanding the rights of agricultural workers beyond those provided by the federal government. The California Agricultural Labor Relations Act of 1975 established the right of collective bargaining for agricultural workers<sup>8</sup>. California law has provided agricultural workers greater rights than federal law to have work breaks, potable drinking water<sup>9</sup>, well maintained toilet facilities and hand washing facilities<sup>10</sup>, and be free from heat related stress<sup>10</sup>. California also recently provided for raises in the minimum wage,<sup>10</sup> extended overtime benefits to farm workers<sup>11</sup> and encouraged construction of farm worker housing<sup>12</sup>.

California has stricter oversight pesticide registration and use than the federal government through the California Department of Pesticide Regulation (DPR) which was created in 1991, when the state’s pesticide regulatory program was incorporated into the newly created California Environmental Protection Agency<sup>13</sup>.

### **Health coverage**

The Affordable Care Act (ACA or “Obamacare”) greatly expanded the availability of health insurance coverage for Americans. It eliminated exclusions for pre-existing conditions, provided subsidies to lower income individuals with incomes below 400 percent of the federal poverty level to purchase health insurance, and allowed States to expand Medicaid (Medi-Cal in California) to previously ineligible low-income persons. It also required larger employers to offer full time workers health coverage not to exceed 9.5 percent of the employee’s income and required

individuals to obtain insurance or pay a penalty. (The penalty portion of the individual mandate was later eliminated by Congress.)<sup>14</sup>

Agricultural workers, however, continue to face challenges in obtaining health coverage due to their immigration and work statuses. The ACA excluded undocumented residents from obtaining coverage through an exchange and the Medicaid expansion, thus leaving the “employer mandate” as the remaining major source of coverage. However, implementing regulations excluded seasonal workers from the employer mandate. It also set the minimum value of employer-offered coverage at a level that allowed for large deductibles and co-pay reducing the value to low-income farm workers<sup>14</sup>.

California fully embraced the ACA and implemented a State health insurance exchange (Covered California) and expanded Medi-Cal to cover low-income individuals under 138 percent of the federal poverty level. Overall, California lowered its rate of uninsured persons from 16.3 percent in 2012 to 8.5 percent in 2016<sup>15</sup>. Recently, California further expanded subsidies to persons with incomes under 600 percent of the poverty level and reinstated the individual mandate to purchase insurance<sup>16</sup>.

### **Immigration barriers**

Agricultural workers, however, are still subject to federal barriers to coverage due to their immigration status. The current federal Administration has recently adopted several regulations that deter immigrants – legal and unauthorized -- from applying for health coverage and other benefits for fear of being labelled a “public charge.”<sup>17</sup>

California, on the other hand, has incrementally expanded coverage for undocumented residents by expanding Medi-Cal eligibility (at State expense) for otherwise eligible young person’s up to age 26<sup>18</sup>. The Governor’s 2020 budget proposal further expands Medi-Cal eligibility to elderly immigrants, 65 years of age, and older<sup>19</sup>.

In response to ongoing farm labor shortages and immigration issues, the House of Representatives recently passed the bipartisan Farm Workforce Modernization Act (HR5038). The FWMA establishes a program for agricultural workers in the United States to earn legal status through continued agricultural employment, reforms the H-2A program to provide more flexibility for employers, and establishes a mandatory, nationwide E-Verify system for all agricultural employment<sup>20</sup>. Providing legal status to previously undocumented farm workers will potentially expand their eligibility for public programs such as Medicaid and ACA subsidies.

### **Access to healthcare**

Access to health care presents complex challenges to agricultural workers. Approximately half of all agricultural workers are undocumented and are not eligible for Covered California, Medical, Medicaid, State Children’s Health Insurance Program (SCHIP) or Medicare<sup>20</sup>. Federally Qualified Health Centers and Community and Migrant Health Centers are, by law, permitted to offer care regardless of immigration status and are a primary source of health care. Although relatively modest, copayments are out of reach for many agricultural workers. Sliding eligibility scales are not available to many due to income verification and proof of residency requirements. Emergency

Medical Assistance provides care for hospital-based emergencies, but follow-up care is not covered. Workers' Compensation is a primary form of health insurance for agricultural workers and is provided by the employer. However, provision is not mandatory in all states. Farms with more than 50 employees can provide coverage through ACA but documentation limits eligibility and access. In recent years, large farms have opened health care clinics for their agricultural workers.

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