

**H
I
V**

and
**Undocumented
Immigrants**

YOUR LEGAL RIGHTS

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This is one in a series of booklets published by the AIDS LEGAL COUNCIL OF CHICAGO. All are designed to help you understand **YOUR LEGAL RIGHTS** in Illinois. The booklets in this series are:

HIV and Confidentiality

HIV and Discrimination

HIV and Insurance

HIV and Public Benefits

HIV and Undocumented Immigrants

HIV in the Workplace

HIV: Issues for Families with Children

HIV: Issues for Youth and Young Adults

HIV: Returning to Work

HIV: Wills and Powers of Attorney

All of these booklets are free and available at:

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This guide is intended as an overview of HIV-related Illinois and federal law. As with any legal matter, it is always a good idea to consult an attorney concerning the particular circumstances of your case.

HIV AND UNDOCUMENTED IMMIGRANTS

	Page
Introduction	4
1. Basic Information for HIV-Positive Undocumented Immigrants.....	5
2. Healthcare	9
3. Housing	11
4. Children’s Education and Assistance.....	13
5. Confidentiality.....	15
6. Workers’ Rights	17
7. Entry and Legal Permanent Residence	19
8. If the Police Stop You	21
9. Domestic Violence and VAWA.....	22

INTRODUCTION

A person who lives in the United States illegally can find themselves in a very difficult situation, filled with suspicion. If they are HIV-positive, they may feel additional pressures for their current circumstances and for any future plans.

However, there are laws, programs and agencies that offer assistance and protections for HIV-positive undocumented immigrants. The following chapters give an overview of what is available.

The AIDS Legal Council of Chicago (ALCC) is the only legal organization in Illinois devoted solely to preserving and protecting the rights of men, women, and children living with HIV/AIDS. Every year, ALCC assists thousands of people through its no-cost legal services, community education sessions, and policy and advocacy efforts. ALCC provides legal help to meet the ongoing needs of underserved communities.

If you have questions after reading this book, you can call the AIDS LEGAL COUNCIL OF CHICAGO at (312) 427.8990. Someone there will be happy to speak with you.

Chapter One

BASIC INFORMATION FOR HIV-POSITIVE UNDOCUMENTED IMMIGRANTS

1) What does “undocumented” mean?

When a person enters the United States and resides in this country without authorization by the Department of Homeland Security (DHS), they are undocumented, which is against the law. Immigrants without documentation risk deportation, fines, penalties, and/or prosecution.

2) Do undocumented immigrants have any rights?

United States law applies to all persons residing within its borders. Even if you are not a U.S. citizen, or are an immigrant without legal status, you still are entitled to certain rights and resources under U.S. law.

3) I have HIV. Can anyone assist me ?

Yes, a Case Manager can help!

A Case Manager is trained to make sure you receive all the benefits entitled to you. They can help you understand the complex public benefits system. Case Managers provide information about: medical services, nutritional programs, substance abuse, domestic violence, and other resources. To get a Case Manager call the AIDS Foundation of Chicago at 1-312-922-2322.

4) Can I get any public benefits?

If you are an undocumented immigrant, you do not qualify for most public benefits or programs like Medicaid or Medicare. Still, you can get the medical services discussed in Chapter Two.

5) Can I be reported as undocumented if I apply for benefits?

Many social services exist to provide support to people living with HIV/AIDS. The majority of these organizations offer free services regardless of immigration status. But, some federal and state programs are required to report undocumented individuals or families to the Department of Homeland Security. Programs required to report undocumented individuals to DHS are: Social Security Insurance (SSI), Food Stamps, and Temporary Assistance to Needy Families (TANF).

If you are only applying for your child who is a U.S. citizen or a Legal Permanent Resident, then case workers from the Illinois Department of Human Services are prohibited from asking for information about your immigration status. For example, George recently lost his job because he is disabled. George is undocumented but his son was born in the U.S. If George goes to apply for TANF only for his U.S. citizen son, not for himself, then the caseworker cannot ask his immigration status. But if George applied for SSI to receive money for his whole family, they would ask his immigration status and be required to report him to DHS if they discovered he was not in the U.S. legally. If you have any doubt, consult your case manager or talk to a lawyer.

6) If I am HIV positive, can I still get legal permanent residence in the U.S.?

Starting January 4, 2010, having HIV infection no longer prevents someone from visiting the United States or becoming a Legal Permanent Resident. People with HIV are no longer required to file a waiver. See Chapter Seven.

7) Can someone who is HIV+ become a U.S. citizen?

Yes. Naturalization applicants do not take a medical examination, and the HIV grounds of inadmissibility do not apply. But, HIV-positive citizenship applicants should talk to an attorney in order to prepare for other possible problems in the application process.

8) What if the police stop me?

When in doubt, contact a lawyer.

Living in the U.S. without a legal status is a risk to you and your family. You should always carry with you the name and number of a lawyer who will accept your phone call in an emergency. If you are detained by a government agent, you can always ask to speak to a lawyer. See Chapter Eight.

9) Don't I have to put up with my abusive spouse until I get my green card?

No. The Violence Against Women's Act protects women or men who want to leave an abusive relationship and apply for a green card without the sponsorship of the abuser. See Chapter Nine.

10) Do I have any rights if the government wants to deport me?

Today, immigrants facing deportation are entitled to:

- ◆ a hearing before an immigration judge and review by a federal court;
- ◆ representation by a lawyer (but not at government expense);

- ◆ reasonable notice of charges and of a hearing's time and place;
- ◆ a reasonable opportunity to examine the evidence and the government's witnesses;
- ◆ competent interpretation for non-English-speaking immigrants, and
- ◆ clear and convincing proof that the government's grounds for deportation are valid.

Because deportation is considered a "civil procedure," not "punishment," prospective deportees lack full protection.

Chapter Two

HEALTHCARE

1) What if I have a health emergency?

An emergency is an injury that will result in death if not immediately treated. Giving birth is also considered an emergency. According to Federal law, no hospital emergency room can refuse treatment to anyone, regardless of immigration or HIV status. But they can charge for their services and emergency bills can be very expensive.

2) I do not have much money and just had a hospital emergency; is there any way to pay the bill?

If you had an extreme emergency, you can qualify for a Medicaid card to pay for emergency medical care. These cards can be very difficult to receive and you must prove that the emergency would have resulted in death or loss of a limb (for example, if you had a heart attack or other serious life threatening problem that required immediate care). To qualify you must also meet the low-income guidelines and the visit must have occurred within the last three months. To apply for an emergency Medicaid card contact your local Public Aid office.

3) Where can I get regular medical care?

There are many places in Chicago that offer free medical care to low-income people, regardless of immigration status. Cook County operates a hospital and numerous clinics. The main number of Cook County Department of Health is 1-708-492-2000.

Cook County also offers specialized medical treatment for individuals infected with HIV/AIDS at the CORE Center, located at 2020 W. Harrison. For more information call 1-312-572-4500 ext. 2. Howard Brown Health Center 1-773-388-1600, on Chicago's North side, provides medical services for gay and lesbian individuals.

4) What about receiving medications?

The **AIDS Drug Assistance Program (ADAP)** pays the cost of HIV/AIDS medications. To qualify you must be a resident of Illinois without other means to pay for your medications. Talk to your doctor or case manager to apply. For more information you can also contact the Illinois Department of Public Health at 1-217-524-5983.

5) Are there any programs for pregnant women and children?

Illinois offers health care coverage to children, pregnant women and their babies who are state residents and meet the income requirements. **All Kids** is the health care program for children. A family of four with less than \$2,444 of income per month (in 2010) can participate; those with higher income may be eligible but have to pay a fee. The **Moms & Babies** program is for women during pregnancy and for up to 60 days after birth. The income limit for a family of four is \$3,675 in 2010. Call 1-866-255-5437 for information about both of these programs.

WIC provides health screenings, nutritious foods, nutrition education, counseling and breastfeeding support to women during and after pregnancy, and while breastfeeding, if they meet the income requirements. In 2010, a family of 4 making up to \$3,400 a month qualified. All infants and children up to 5 years of age who are in danger of malnutrition or starvation or need immediate medical attention also qualify. For more information in Illinois call 1-800-323-4769.

Chapter Three

HOUSING

1) Can I be discriminated against when trying to find a place to live?

No one can refuse to rent or sell you housing solely because of your HIV status, race, sex, religion, ethnicity, national origin, or disability. This type of discrimination is illegal. If you believe that you have suffered discrimination contact a lawyer immediately. If you cannot afford a lawyer, you may qualify for free legal assistance. For all discrimination cases related to HIV contact the AIDS Legal Council of Chicago at 1-312-427-8990. For any other discrimination issues contact the Legal Assistance Foundation at 1-312-347-8309 or the John Marshall Fair Housing Clinic at 1-312-786-2267.

2) What kind of housing assistance is available?

HOPWA (Housing Opportunities for Persons Living with AIDS) provides emergency money for short- and long-term rental assistance, live-in medical facilities, and housing sites developed exclusively for people living with HIV/AIDS. Applications can be filed through a Case Manager.

If you are homeless or at risk of becoming homeless because you cannot pay your rent, you may be eligible for **Emergency Rental Assistance**. This program gives up to \$800 for the 1st month's rent and security deposit. To qualify you must have HIV/AIDS and have an income. Talk to your Case Manager to apply.

For a list of **emergency homeless shelters** contact the Department of Human Services at 312-744-4045. If the need for emergency shelter is related to Domestic Violence, refer to Chapter Nine of this booklet.

3) I need help keeping warm in the winter and with my electric bills.

The Low-Income Home Energy Assistance Program (LIHEAP) helps eligible low-income households to pay for winter heating bills. The amount of the payment is determined by income, household size, fuel type, and geographic location. **All applicants of the LIHEAP program must present a Social Security number to receive services.** For more information contact 1-312-456-4100.

If you do not qualify for LIHEAP, the Salvation Army administers an energy assistance program that provides its services regardless of immigration status to all households who meet income guidelines. The grants are approximately \$300. For the application center nearest you contact the Chicago Salvation Army at 1-773-725-1100.

Budget Payment Plans may also be arranged with People's Energy by calling 1-312-240-7000.

Chapter Four

CHILDREN'S EDUCATION AND ASSISTANCE

1) Can I send my children to school if I am undocumented?

All children living in the U.S. have the right to a public education. In fact, the law requires all children under 16 years of age to attend school. It is illegal for a school to demand to know the immigration status of a student or their parents. To enroll, simply contact your neighborhood school or, if you currently do not have a permanent home, contact Chicago Public Schools Homeless Education Program at 1-773-553-2242.

2) Is there a way to feed my children?

The **National School Lunch Program (NSLP)** was created to ensure all children, regardless of income or immigration status, receive nutritious meals. If your income is below 130% of the federal poverty guidelines, your child may be eligible for free meals. If your income is under 185% of the guidelines, you may qualify for reduced cost meals for your child. In 2010, a family of four making under \$2,389 a month is qualified for free lunches, a family making under \$3,400 a month qualifies for reduced cost meals. Contact your local school or Chicago Public Schools department of food service at 1-773-553-2830 to enroll in the school lunch or breakfast program.

3) What if I have very young children?

Head Start is a pre-school program for children ages 3 to 5 from low-income families. The comprehensive program promotes school readiness, provides nutritious meals and access to medical and dental services. To enroll contact the Day Care Action Council of Illinois at 1-773-769-8000.

4) My child is HIV-positive. Who will find out about it at his/her school?

Under the current Illinois public health code, the public health department must inform the school principal that a student is HIV positive if the student:

- ♦ is enrolled in elementary, middle, or high school , and
- ♦ is between the ages of 3 and 21.

In a public school, the principal must then disclose the identity of the student to the district superintendent. The principal may also disclose the student's identity to:

- ♦ the school nurse,
- ♦ his/her classroom teachers,
- ♦ those persons who are required to decide placement or educational programs for the student.

But the principal may only tell these people if they need to know.

In addition, the principal may tell other people who work in the school that there is an HIV-positive child enrolled there, so long as the principal does not reveal the name of the child.

The principal cannot disclose the identity of an HIV-positive student to other students in the school, or to the parents of other students.

For more information refer to our publication *HIV: Issues for Youth and Young Adults*.

Chapter Five

CONFIDENTIALITY

1) If I test HIV positive, does my doctor have to tell my employer?

Absolutely not. Most people who test HIV positive do not want their employer to know because they are worried that their employer might discriminate against them. Your doctor has no right to disclose your HIV status to your employer without your permission.

2) If I test HIV positive, do I have to tell anyone when I have sex or share needles?

Yes. Illinois law says that any HIV positive person who does something which could transmit HIV is committing a “criminal transmission of HIV.” You don’t have to actually infect someone to break this law. Just putting someone at risk is enough. If you do not inform sexual or needle-sharing partners that you are HIV positive before you have sex or share needles, then you are breaking Illinois law.

3) What can I do to stop someone from telling other people I’m HIV positive?

One thing you can do is make it very clear to that person that any unauthorized disclosure of your HIV status is a violation of the law. The Illinois AIDS Confidentiality Act says that each time someone intentionally discloses your HIV status, that person can be fined \$10,000 by the courts. If this person is threatening to tell five people about your HIV status, he might be liable for \$50,000 in damages!

4) If I apply for health insurance, can the insurance company require me to get an HIV test?

Yes. Under Illinois law, it is legal for an insurance company to test you for HIV if you are applying for insurance. Of course, no law says that you have to get that HIV test. But if you refuse to take an HIV test, the insurance company can legally refuse to offer you the insurance policy.

To learn more read our booklet *HIV and Confidentiality*.

Chapter Six

WORKERS' RIGHTS

1) Do I have any rights at my workplace if I am undocumented?

The labor laws in the United States protect workers' rights regardless of their immigration or HIV status. Citizens, Legal Permanent Residents and undocumented workers all enjoy the same workplace rights including:

- ◆ a minimum wage and overtime for all workers;
- ◆ a safe and healthy workplace environment;
- ◆ the ability to form and join unions, engage in collective bargaining, and participate in all other activities covered under the National Labor Relations Act;
- ◆ a workplace free of discrimination based on race, gender, religion, ethnicity, immigration status, or HIV status;
- ◆ the possibility of a “reasonable accommodation” under the Americans With Disabilities Act, or ADA. This means if workers are sick or disabled they can ask for changes in their work arrangement as long as they can still perform the essential job duties.

2) Can I be fired if I challenge my employer?

While undocumented workers are entitled to the same rights as all workers, they face increased challenges when trying to exercise these rights. The law prohibits any employer from retaliating against anyone.

In some instances, undocumented immigrants who were fired because of discrimination or in retaliation for asserting their rights have been ordered by a

judge to receive back pay. For more information contact the American Civil Liberties Union at 1-312-201-9740.

To learn more about workers' rights see our booklets *HIV in the Workplace* and *HIV and Discrimination*.

Chapter Seven

ENTRY AND LEGAL PERMANENT RESIDENCE

The Immigration and Nationality Act, does not allow any person who has been diagnosed with certain illnesses to enter the U.S. or become a Legal Permanent Resident. Prior to 2010, one of these illnesses was HIV. However, on January 4, 2010 the rule banning persons with HIV infection was changed.

As of that date, having HIV infection no longer prevents someone from visiting the United States or becoming a Legal Permanent Resident. The immigration physical exam does not include an HIV test. People with HIV are no longer required to file a waiver. The following are some frequently asked questions.

- 1) I am HIV positive and was not eligible for a waiver. Does this change mean I can enter the United States or apply for a greencard without a waiver?**

You are no longer required to file a waiver just because you are HIV positive. If your case is pending on or after January 4, 2010, a waiver for HIV is not required, even though your medical examination showed that you have HIV infection. Civil surgeons no longer test for HIV.

- 2) My application for a greencard was denied before July 2, 2009, due solely to HIV infection. What should I do?**

You may apply again for a greencard. Following January 4, 2010, USCIS will make a new decision on your application based on the change to the rule.

3) My HIV-positive spouse is applying for a greencard overseas. How will the rule change affect my spouse's application?

Testing for HIV infection is no longer required as part of the U.S. immigration medical screening process.

Chapter Eight

IF THE POLICE STOP YOU

1) What is the “Right to Remain Silent”?

The 5th Amendment of the Constitution of the United States declares all people have the right not to answer questions made by a government agent. They can ask questions, but no one can arrest you solely on the grounds that you refuse to answer questions. However, if you refuse to answer you may raise the suspicions of the authorities.

2) Do the police need a warrant to search my home?

The 4th Amendment protects your privacy. Without a judicial warrant, no government agent can search your house or office without your consent. You have the right to deny them entry. However, in cases of emergency (for example when they hear a person inside asking for help), the police can enter and search without a warrant.

3) What rights do I have if I am arrested?

If you are arrested you may ask the police to notify your home consulate. The police are obligated to allow your consulate to visit you or talk to you. Your consulate may be able to help you acquire a lawyer or offer other assistance. You also have the right to refuse any help offered by your consulate.

4) Can I attend marches for immigrants’ rights?

The 1st Amendment protects groups of people and individuals who advocate nonviolently for their rights or who oppose the politics of the government. A Department of Homeland Security official cannot identify you for deportation solely because of your participation in activities covered by the 1st Amendment.

Chapter Nine

DOMESTIC VIOLENCE AND VAWA

1) What do you mean by “domestic violence”?

Domestic violence can be physical and psychological abuse including: threats, intimidation, isolation or economic coercion used by one person to exert power and control over another person in the context of a dating, family or household relationship. Domestic violence is against the law. If you need to talk with someone about domestic violence call the Chicago Area Domestic Violence Hotline at 1-877-863-6338.

If you are in *immediate danger* dial 911.

2) If I leave my spouse, can I still get a green card?

Frequently, a victim of domestic violence needs their spouse to sponsor their green card application to become a Legal Permanent Resident and stay in the U.S. They fear if they leave their abusive partner they will have to leave the country or won't be able to apply for a green card. In 1995, Congress passed the **Violence Against Women's Act**, or **VAWA**, to protect women or men who leave an abusive relationship from losing their ability to become residents. Under the law, a woman or man who was abused by a U.S. citizen or Legal Permanent Resident can file for a green card on their own, without the sponsorship of their abuser. To learn how to file a VAWA petition, contact Lifespan at 1-312-408-1210.

3) What if my abuser is also undocumented?

Domestic violence is illegal, regardless of immigration status. While you may not be eligible for residency under VAWA, many services are still available to you,

such as: emergency housing, counseling, support programs, etc.

To speak to someone in more detail, call the Chicago Domestic Violence Hotline at 1-877-863-6338.

4) What is the advantage of filing a VAWA petition?

If your VAWA petition is approved, you are eligible for most public benefits available to citizens. When you apply for benefits you must be able to prove you need the assistance due to the abuse – for example, to become self-sufficient, escape your abuser, replace lost financial support, make up for a job lost because of the abuse, obtain medical attention, or care for your children. In addition, you must demonstrate that you are living separately from your abuser (your eligibility can be determined before you separate but you cannot receive benefits until you separate).

VAWA petitioners can receive the following benefits no matter when they entered the USA:

- ◆ **TANF** cash grant and related **Medicaid** if you have very low income and have children,
- ◆ **AABD** cash grant if you have a disability or are over 65,
- ◆ **Transitional Assistance**.

If you were living in the United States legally before August 22, 1996, you can receive:

- ◆ **Food Stamps** if you are under 18 years old, receiving disability-related assistance, or turned 65 before August 22, 1996;
- ◆ **State Food Benefits** if your child receives Food Stamps or you are between 60 and 65 years old.

5) What can I do to stop my abuser from contacting me?

If you are afraid that your abuser will take future action against you, you can obtain an order of protection. This is a legal document that orders the abuser to do or stop doing certain acts. There are 2 types of orders:

- ◆ ***“Criminal” Orders of Protection***

When officers file a criminal report, and no arrest is made, they will tell the victim how to get an order of protection. “Criminal” orders of protection are issued at Domestic Violence Court, 1340 S. Michigan, 1st floor, Chicago, Monday through Friday 8:30 a.m. – 11:30 a.m. The victim will need the police report number. Charges will be filed against the abuser if an order of protection is obtained in criminal court.

- ◆ ***“Civil” Orders of Protection***

If a person does not want criminal charges filed against the abuser, a civil order may be available. It has the same protections as an order issued in criminal court. A Civil Order can be issued at Civil Court, 28 N. Clark, 6th Floor, Chicago, Monday through Friday from 9:00 a.m. – 5:00 p.m.

