

VAWA Self-Petitioner Victim Benefits under the Affordable Care Act (ACA)

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The Patient Protection and Affordable Care Act (popularly known as the “ACA”) of 2010 sought to establish online health insurance exchanges containing multiple private health insurance plans and increase health care coverage in the United States by requiring eligible individuals to purchase qualified health insurance plans. ³ Similar to other public benefits, there is no one-size-fits-all rule as to when immigrant victims qualify, and for what health care benefits.⁴ In addition to the federal laws, states have the power to regulate immigrant access to health care and to public benefits.⁵

The ACA created two categories of immigrants: those are who are “lawfully present” and those who are not.⁶ VAWA self-petitioners are included in the category of “lawfully present” and are therefore subject to the individual mandate and eligible to purchase insurance on the exchanges if they do not qualify for an income exemption.

A person may be eligible for VAWA self-petitioning when they:⁷

- Have been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident. Immigration law allows the following relatives who have been subject to battering or extreme cruelty by US citizens and lawful permanent residents to self-petition for lawful permanent residency without the abusive family member’s knowledge, assistance or consent.
 - Abused spouses, former spouses, or intended spouses of citizens or lawful permanent residents may file for themselves and may include their under 21 year old children in their application.
 - Immigrant parents of child abuse victims: An immigrant parent or step-parent of a 21-year-old and under unmarried child who has been battered or subjected to extreme cruelty by the child’s US citizen or lawful permanent resident parent is eligible to self-petition and to include in her/his application any of her/his children who are not already citizens or lawful permanent residents. The abused child may be a citizen or an immigrant with lawful or undocumented status.
 - Abused Children: Children battered or subjected to extreme cruelty by a US citizen or lawful permanent resident parent or step-parent when the child was under 21 years old are eligible to self-petition and can include their own children in their application. Abused children who can demonstrate that the battering or extreme cruelty was at least one central reason for the delay in filing have up to age 25 to file the self-petition.
 - Elder Abuse: Parents who are battered or subjected to extreme cruelty by a citizen (not lawful permanent

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³ Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (Mar. 23, 2010).

⁴ For further information on the various benefits available to VAWA self-petitioners, please see JORDAN TACHER AND LESLYE E. ORLOFF, VAWA PUBLIC BENEFITS ELIGIBILITY PROCESS: VAWA SELF-PETITIONERS, VAWA CANCELLATION OF REMOVAL, AND VAWA SUSPENSION OF DEPORTATION (April 17, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/VAWA-Benefits-Eligibility-Process.pdf/view>.

⁵ For further information, please see NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, MEDICAL ASSISTANCE PROGRAMS FOR IMMIGRANTS AND IMMIGRANT CRIME VICTIMS (June 13, 2014), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/state-benefits/Medical-Assistance-State-Chart.pdf>.

⁶ Those who are not lawfully present include undocumented immigrants and immigrants who have been granted relief under Deferred Action for Childhood Arrivals (DACA.) These immigrants are barred from using the health care exchanges but are also exempted from the individual mandate. They are still eligible for emergency care.

⁷ Applicants for VAWA cancellation of removal and VAWA suspension of deportation are eligible for health care benefits to the same extent as VAWA self-petitioners. The application requirements for VAWA cancellation and VAWA suspension differ from VAWA self-petitioning. For an overview of VAWA cancellation and VAWA suspension requirements please see the article that this summary was derived from JORDAN TACHER AND LESLYE E. ORLOFF, VAWA PUBLIC BENEFITS ELIGIBILITY PROCESS: VAWA SELF-PETITIONERS, VAWA CANCELLATION OF REMOVAL, AND VAWA SUSPENSION OF DEPORTATION (Apr. 17, 2013), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/VAWA-Benefits-Eligibility-Process.pdf>.

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resident) son or daughter over the age of 21 can self-petition.

Application process for VAWA self-petitioners:⁸

- Victim files a VAWA self-petition to the VAWA Unit at the Vermont Service Center of the U.S. Citizenship and Immigration Services (USCIS). The victim may include immigrant children as self-petitioners by listing the children in the application. Victims seeking work authorization for themselves and/or their children should include an employment authorization application with their self-petition.
- When a self-petition is accepted, normally within 2-4 weeks, USCIS sends a receipt notice, which provides evidence that the self-petitioner and self-petitioning children included in the application are lawfully present.
- If the Vermont Service Center believes that the victim would meet all of the requirements if all of the information in the application were true, it will issue a “notice of prima facie case.” Victims and their children who receive prima facie determinations are eligible for state and federal public benefits and health care as “qualified immigrants.”

VAWA self-petitioners are considered lawfully present for the purposes of the ACA when they receive a “prima facie” approval from USCIS. At this point, they are subject to the individual mandate unless they meet a low-income exception.

VAWA self-petitioners become lawfully present when:

- They receive “prima facie” notification from USCIS; or
- When their VAWA self-petition is approved.

Lawfully present immigrants are eligible for:

- Private qualified health insurance plans available on the state and federal exchanges
- Tax credits and cost-sharing reductions
- Temporary high risk pools and basic health plans
- If low income, possibly Medicaid
 - Required to wait 5 years from becoming “qualified” to apply for Medicaid coverage⁹
 - Additional state specific restrictions¹⁰
- Whether a qualified battered immigrant and/or children included in the battered immigrant’s self-petition are eligible for health care subsidies in some states¹¹
 - Subsidies are most often available for pregnant women and children depending on the state.¹²

Battered immigrant VAWA self-petitioners can receive health care from the following sources before they file VAWA self-petitions, while they are awaiting prima facie determinations and if they live in states that do not provide health care access to lawfully present battered immigrants:

- Health care from HHS funded public and migrant health centers. Go to www.hrsa.gov
- Emergency Medicaid
- VOCA funded health care in most states for post-assault health treatment¹³
- In addition to health care battered immigrants and their children are eligible without regard to immigration status to receive services necessary to protect life and safety and other publically available services including: shelter, transitional housing, soup kitchens, victim services, legal services police assistance, and justice system access.¹⁴

⁸ *Id.*

⁹ *Id.*

¹⁰ For state by state comparisons of health care benefits available to immigrants, please see <http://niwaplibrary.wcl.american.edu/public-benefits/health-care>.

¹¹ For further information, please see CARLY ERICKSON AND LESLYE E. ORLOFF, FEDERAL, PARTNERSHIP, AND STATE EXCHANGES THAT PROVIDE STATE AND STATE-OPTION FUNDED MEDICAID OR MEDICAID-LIKE SERVICES (June 16, 2014), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/health-care/Affordable%20Care%20Act%20and%20Exchanges.pdf/view>

¹² For a state by state breakdown of the options available to pregnant women and children, please see LEGAL MOMENTUM AND MORGAN LEWIS, LLP, PRE-NATAL CARE FOR QUALIFIED AND NON-QUALIFIED IMMIGRANTS (2010), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/health-care/4-PreNatal%20Care%20for%20Qualified%20and%20Non-Qualified%20Aliens%20-all%20states.pdf>.

¹³ LEGAL MOMENTUM AND MORGAN LEWIS, LLP, *State-by-State Post-Assault Healthcare Chart*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT (2013), available at: http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17.3_Chart_PostAssaultHealthCare-MANUAL-ES.pdf/view

¹⁴ Please see, CATHERINE LONGVILLE AND LESLYE ORLOFF, PROGRAMS OPEN TO IMMIGRANT VICTIMS AND ALL IMMIGRANTS WITHOUT REGARD TO IMMIGRATION STATUS (May 22, 2014), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/Programs%20Open%20To%20All%20Immigrants%20Regardless%20of%20Status.pdf/view>