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Healthcare laws in the United States have undergone major changes over the past several years. The passage of the Patient Protection and Affordable Care Act (ACA) in 2010 created both an entirely new way to obtain healthcare in the U.S. and also expanded on some of the preexisting healthcare access options. These changes affect everyone, including immigrant survivors of domestic violence, sexual assault, stalking, dating violence, human trafficking and other crimes. This newsletter will provide an overview of and links to further information and resources on current laws governing access to healthcare, insurance and subsidies for immigrant survivors.

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NIWAP offers technical assistance to advocates, attorneys, Judges, court staff, police, prosecutors, social services and health care providers, and others working with immigrant victims of domestic violence, sexual assault, stalking, and human trafficking. To submit your questions, email info@niwap.org or call us at 202-274-4457.

General Information Regarding the Affordable Care Act (ACA)

The ACA implemented numerous wide-sweeping changes to the U.S. healthcare system, including the expansion of income-related eligibility for Medicaid, allowing young adults to stay covered on their parents' health insurance plans until the age of 26, proscribing certain minimum requirements for nearly all healthcare plans, and prohibiting insurance companies from denying coverage based on "pre-existing conditions" or imposing life-time coverage limits. Among the most fundamental changes, however, was the creation of healthcare "marketplaces" (also called "exchanges") and the individual healthcare mandate.

The healthcare marketplace is a conduit through which individuals may purchase health

insurance from certain private insurance companies. It is run either by the federal government, or by the state, depending on whether the state created its own exchange, and it provides the opportunity to compare options and ultimately choose an insurance plan that fits the needs of the particular individual. Further, U.S. citizens and certain categories of immigrants purchasing insurance through the healthcare exchanges can be eligible for federal subsidies if their income is below specified levels.

Determining which immigrants qualify to purchase health insurance on the exchanges and which may additionally qualify for healthcare subsidies depends on multiple factors including:

- What form of immigration status the immigrant has;
- In the case of some immigrant crime victims, or abused, abandoned or neglected immigrant children, what form of immigration relief they have filed for;
- Whether the immigrant first entered the United States before August 22, 1996; or
- The state in which the immigrant resides.

The sections below will discuss which immigrant victims are eligible to purchase health insurance through the marketplace and the limited categories of non-citizens who may, depending on their state of residence, qualify for healthcare subsidies.

Generally, the same individuals who are permitted to use the healthcare exchanges are also required to purchase healthcare insurance for themselves, or pay a penalty. That does not mean, however, that everyone is required to use the marketplace to purchase health insurance. For instance, an individual may purchase insurance from an insurer who does not sell on the exchanges. An individual who is already covered by insurance either through their employer or through another individual's insurance policy need not purchase additional insurance through the exchanges, as the individual already has insurance and is, therefore, already in compliance with the individual mandate. Regardless of how coverage is obtained, under the ACA requirements, immigrants who qualify to purchase insurance on the healthcare exchanges are required to be insured under the individual mandate. If they do not purchase health insurance, they will face the same civil penalties that U.S. citizens are required to pay.

For more information on access to healthcare for immigrant crime victims under the ACA, please see the following resources:

1. Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Leslye Orloff, Amanda Baran & Phoebe Mounts, [Chapter 17: Access to Healthcare for Immigrant Victims of Sexual Assault \(2012\)](#)
 2. Carly Erickson & Leslye Orloff, [Federal, Partnership, and State Exchanges That Provide State and State-Option Funded Medicaid or Medicaid-Like Services](#)
 3. Rocio Molina, [Eligibility Under the Affordable Care Act for Survivors of Domestic Violence, Trafficking, and Other Serious Crimes](#)
 4. Up-to-date information on access to healthcare for immigrant adults and children including immigrant survivors who may have forms of immigration status that are not connected to crime victimization is [available from the National Immigration Law Center \(NILC\)](#)
 5. For general information about healthcare reform, see National Health Law Program's [Information on the Affordable Care Act Eligibility and Enrollment](#) and [Medicaid Expansion Toolbox](#).
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Immigrant Crime Victims Who Are Eligible To Access Healthcare Exchanges

An immigrant's eligibility for the healthcare exchanges and its related subsidies depends upon the immigrant's status at the time of applying for the benefit.

Immigrant access to the healthcare exchanges is governed by whether an immigrant is on the list of immigrants that are "lawfully present" in the United States. It is important to note that "lawfully present" includes, but is not limited to, lawful permanent residents. "Lawfully present" is a term of art in public benefits law that includes some groups of immigrants who are in the process of filing for, but may not have received, legal immigration status. Three significant examples of lawfully present immigrants who have access to the healthcare exchanges, but do not have legal immigration status under U.S. immigration laws are:

1. Human trafficking victims who have received bona fide determinations from the U.S. Department of Homeland Security (DHS) in their T visa cases;
2. Violence Against Women Act (VAWA) self-petitioners who have received prima facie determinations in pending VAWA self-petitioning cases; and
3. Abused, abandoned, or neglected immigrant children who have filed cases seeking Special Immigrant Juvenile Status (SIJS).

The following is an overview of categories of immigrants who are eligible to purchase health insurance on the healthcare exchanges and who are subject to the individual mandate to purchase health insurance. Immigrant survivors of domestic and sexual violence and their children may have significant physical and mental healthcare needs that can be addressed by access to healthcare insurance through the healthcare exchanges. It is important for advocates and attorneys to screen survivors and their children for healthcare exchange eligibility and help those eligible obtain insurance that will provide them full access to post assault, prenatal, child, and other forms of healthcare. Some immigrant survivors will qualify based on a form of immigration relief they have already received. Other immigrant survivors will be eligible based on a pending application for immigration relief they have filed with DHS. Finally, a category of immigrant survivors will qualify based on having been awarded an immigration status and having been awarded employment authorization. Most, but not all, of the immigrants eligible to purchase insurance on the exchanges will have been awarded work authorization, providing an avenue to earn the funds needed to purchase healthcare through the exchanges. Battered immigrant VAWA self-petitioners are one example of immigrants who will be granted access to the healthcare exchanges up to 9 months before they receive legal work authorization.

The list below indicates which categories of lawfully present immigrants granted legal work authorization by the initials (WK) following the category. To determine when and whether a survivor will receive work authorization based on an immigrant survivor's immigration status or application for legal immigration status, see [Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children \(Chart\)](#)

The list below indicates which categories of lawfully present immigrants are considered "qualified immigrants" by the annotation (QA). "Qualified immigrants" generally have an ability to access certain forms of federal and state public benefits beyond healthcare. For example, battered immigrant spouses, children, and step-children of U.S. citizens and lawful permanent residents, who receive prima facie determinations in VAWA immigration cases, are qualified immigrants, as are human trafficking victims who have received a bona fide determination in a T visa case. For more general information on survivors who are qualified

immigrants and their eligibility for public benefits, see Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Soraya Fata, Leslye E. Orloff, & Monique Drew, [Chapter 16: Access To Programs And Services That Can Help Victims of Sexual Assault \(2013\)](#) and Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants, Cecelia Olavarria, Amanda Baran, Leslye Orloff, & Grace Huang, [Chapter 4.2: Public Benefits Access for Battered Immigrant Women and Children \(2013\)](#)

Finally, the list below includes immigrants deemed lawfully present because advocates and attorneys working with immigrant survivors will encounter immigrant survivors who will only be eligible for access to healthcare exchanges, as opposed to other forms of federal and state benefits. Immigrant visa holders on student, tourist and work visas who become victims of sexual assault, dating violence or domestic violence in the U.S. will qualify for healthcare.

Immigrants who have been granted by DHS any of the following forms of legal immigration statuses are eligible to access the healthcare exchanges as lawfully present immigrants:¹

- Lawful Permanent Resident (LPR/Green Card holder)(WK)(QA)
- Asylee (WK)(QA)
- Refugee (WK)(QA)
- Conditional entrants (entered U.S. before 1980, like refugees)(WK)(QA)
- Cuban/Haitian Entrant(WK)(QA)
- Paroled into the U.S. (WK and QA only if parole for 1 year or more, included children of approved VAWA cancellation of removal and suspension of deportation recipients)
- Battered Spouse, Child and Parent receiving immigration relief under the Violence Against Women Act (VAWA)(WK)(QA)
 - VAWA self-petitioners and their children (WK)(QA)
 - VAWA cancellation or removal recipients (WK)(QA)
 - VAWA suspension of deportation recipients (WK)(QA)
- Victim of Trafficking granted Continued Presence or a T visas and his/her Spouse, Child, Sibling or Parent(WK)(QA T Visa only not continued presence)
- U visa holders (WK)
- Deferred Action Status (WK)
 - Except Deferred Action for Childhood Arrivals (DACA) are not an eligible immigration status for applying for health insurance
 - Includes U visa applicants and their spouses and/or children included in their applications who have received wait-list approvals
- Temporary Protected Status (TPS)(WK)
- Immigrants with lawful visas: Tourists, students, and visitors on business, as well as individuals who are permitted to live and work in the U.S. indefinitely. Persons granted status under 8 U.S.C. section 1101(a)(15)(A) through (V) or by a treaty. Must not have violated the terms of their status.
- Granted Withholding of Deportation or Withholding of Removal (higher standard than asylum, no path to lawful permanent residency)(WK)(QA)
- Granted Convention Against Torture (CAT) Withholding of Deportation or Removal (WK)
- Citizens of Micronesia, the Marshall Islands, and Palau (WK)
- Deferred Enforced Departure (DED)(WK)
- Lawful Temporary Resident (WK)

Applicants for the following immigration statuses are eligible to access the healthcare exchanges:¹

- Battered Spouse, Child and Parent receiving immigration relief under the Violence Against Women Act (VAWA)(QA)
 - VAWA self-petitioners and their children (QA)
 - VAWA cancellation or removal recipients (QA)
 - VAWA suspension of deportation recipients (QA)
 - Battered spouses or children with family based visa petitions pending with prima facie determinations or approved petitions who have not filed for or are not eligible to file for lawful permanent residency (QA)
- Immigrants with approved family based visa petitions who have filed applications for lawful permanent residency (WK)
- Immigrants with approved employment based visa petitions who have filed applications for lawful permanent residency(WK)
- Temporary Protected Status with Employment Authorization (WK)
- Special Immigrant Juvenile Status (SIJS)
- Victim of Trafficking Visa (T visa applicants with bona fide determinations and his/her Spouse, Child, Sibling or Parent included in the application)(QA)
- Asylum, Withholding of Deportation/Removal including CAT (only if they have been granted employment authorization, or if the applicant is under the age of 14 and their application has been pending for at least 180 days)(WK)
- Withholding of Deportation, or Withholding of Removal, under immigration laws or under the Convention against Torture (CAT) (only if they have been granted employment authorization, or under the age of 14 and their application has been pending for at least 180 days)
- Family Unity (spouse/child of amnesty recipient who was in the U.S. on May 5, 1988 or LIFE Act recipient who is in the U.S. on December 1, 1988)

Individuals with the following statuses who also have employment authorization are eligible to access the exchanges:

- Registry Applicants who have been continuously in the U.S. since 1972 (WK)
- Order of Supervision (WK)
- Applicant for Cancellation of Removal or Suspension of Deportation (WK)
- Applicant for Legalization under IRCA (WK)
- Legalization under the LIFE Act (WK)

For additional information on immigrant crime victim eligibility for health insurance through the healthcare exchanges under the ACA, please see the following resources:

- Carly Erickson, David Stauffer, & Leslye Orloff, [Healthcare Resource Guide for Service Providers Aiding Immigrant Victims of Domestic Violence, Sexual Assault, Stalking, Human Trafficking and Other Criminal Activity](#)
- Carly Erickson & Leslye Orloff, [Victim Benefits Under the Affordable Care Act \(ACA\)](#)
- Carly Erickson & Leslye Orloff, [U-Visa Victim Benefits under the Affordable Care Act \(ACA\)](#)
- Carly Erickson & Leslye Orloff, [VAWA Self-Petitioner Victim Benefits under the Affordable Care Act \(ACA\)](#)
- [National Immigration Law Center materials on lawfully residing immigrants](#)
- [Center for Medicare and Medicaid Services U.S. Department of Health and Human Services](#)
- Immigrant Survivor's Public Benefits Flow Charts

¹ Information taken from <https://www.healthcare.gov/immigrants/immigration-status/>.

How Do I Access the Healthcare Exchanges?

There are a number of ways to fill out an application to get health insurance from the healthcare exchanges, including:

- Going to www.healthcare.gov;
 - Calling 1-800-318-2596 or 1-855-889-4325; or
 - Finding a trained healthcare expert to provide personal help with the process at <https://localhelp.healthcare.gov>.
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Access to Healthcare Subsidies for Immigrant Survivors and Their Children

This section will discuss which immigrant survivors of domestic or sexual violence or human trafficking qualify under federal or state law for healthcare subsidies, if they are low income. The majority of immigrant survivors will not qualify for federal funded Medicaid. As a result, since many advocates, attorneys and state and federal benefits providers assume that the immigrant survivor they are assisting will not qualify for Medicaid funded healthcare, victims who do qualify can be either wrongly turned away or incorrectly told that they do not qualify.

The goal of this section is to assist advocates, attorneys, healthcare and benefits providers in ensuring that when qualified immigrant survivors and/or their derivatives apply for healthcare subsidies, they receive them. This section includes a discussion about the categories of immigrant crime victims who, if they meet benefits program eligibility requirements (e.g., low income, state of residence), qualify for healthcare subsidies due to their immigration status or filing of an application for immigration relief.

Qualified Immigrants: Pre-August 22, 1996 Entrants or 5+ Years of Qualified Immigrant Status

Qualified immigrants who first entered the United States prior to August 22, 1996 are eligible under federal law for healthcare subsidies, including Medicaid. With the creation of the Deferred Action for Childhood Arrivals (DACA) program, advocates and attorneys working with immigrant crime victim survivors are encountering growing numbers of immigrant victims of spousal abuse and child abuse who qualify as VAWA self-petitioners, VAWA suspension of deportation and cancellation of removal applicants and battered spouse waiver applicants who have been continually present in the United States since before August 22, 1996. For those immigrants who qualify for VAWA immigration relief who entered the United States before August 22, 1996, once they become qualified immigrants, they are directly able to access subsidized healthcare and other federal means tested public benefits. This is because immigrants who entered prior to August 22, 1996 are not subject to the 5-year bar. As further deferred action becomes available to a larger group of immigrants in 2015, it will be important for advocates and attorneys working with qualified immigrant victims of spousal abuse and child abuse to screen clients to identify those who qualify for direct access to subsidized healthcare.

For a discussion of treatment of immigrants who entered the United States before August 22, 1996 under federal public benefits laws, see [U.S Department of Justice, Interim Guidance on](#)

[Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344, 61415 \(Nov. 17, 1997\)](#)

The following immigrants with qualified immigrant status for more than five (5) years are also eligible for federal healthcare subsidies, including Medicaid:

- Lawful permanent residents;
- Conditional permanent residents;
- Persons granted cancellation of removal;
- Persons granted conditional entry;
- Persons paroled into the United States for a year or more;
- Battered spouse waiver applicants;
- VAWA self-petitioners with prima facie determinations or approvals;
- VAWA cancellation of removal applicants with prima facie determinations or approvals;
- VAWA suspension of deportation applicants with prima facie determinations or approvals; and
- Immigrants or their children who have been battered or subject to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or a member of the spouses' family who resides in the same household if the immigrant has a pending or approved family based visa petition filed on their behalf by their U.S. citizen or lawful permanent resident spouse

For a full discussion of qualified battered immigrant eligibility for healthcare and other public benefits, see [Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants](#), Cecelia Olavarria, Amanda Baran, Leslye Orloff, & Grace Huang, [Chapter 4.2: Public Benefits Access for Battered Immigrant Women and Children \(2013\)](#)

Qualified Immigrants Exempt from the 5-Year Bar

There are certain groups of qualified immigrants who are directly eligible for healthcare subsidies (federal and state) because they are exempt by federal statute from the 5 year bar to benefits access. To be exempt from the 5-year bar, immigrants must have been continuously present in the United States from the date of their last entry before August 22, 1996 through the date they became qualified immigrants. Immigrants can maintain continuous presence for public benefits eligibility purposes despite some minimal absences from the United States (under 30 days for a single absence, but no more than a total of 90 days for combined multiple absences of less than 30 days). This exemption applies to the following categories of immigrants regardless of whether they entered the United States before or after August 22, 1996:

- Refugees;
- Asylees;
- Victims of severe forms of human trafficking with certification from the Office of Refugee Resettlement, U.S. Department of Health and Human Services;
 - Note: Only trafficking victims with continued presence and Bona Fide determinations in T visa cases receive certification. For further information, see Jordan Tacher & Leslye Orloff, [Trafficking Victim Benefits Eligibility Process](#)
- Cuban/Haitian entrants;
- Amerasians;
- Immigrants granted withholding of deportation; and

- Veterans and immigrants on active military duty, their spouses and their unmarried children under the age of 21 (includes Filipino, Hmong, and Highland Lao);
 - The immigrant spouse remains eligible for an exemption from the 5-year bar only if the immigrant spouse remains married to the veteran spouse.
 - Divorce during the five (5) years after the immigrant spouse becomes a qualified immigrant results in the immigrant spouse becoming subject to the 5-year bar and losing access subsidized healthcare for the remainder of the 5-year bar period
 - If the veteran spouse dies, the surviving immigrant spouse may continue to receive healthcare subsidies unless they remarry. Upon remarriage they will lose access to the subsidy for the remainder of the 5-year bar period, except in limited circumstances when the new marriage brings with it access to exemption from the 5 year bar (e.g., marrying another veteran).

For an overview of immigrants exempt from the 5-year bar, see Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Soraya Fata, Leslye E. Orloff, & Monique Drew, [Chapter 16 Access To Programs And Services That Can Help Victims of Sexual Assault pp19-21 \(2013\)](#)

Qualified Immigrant Children Under 21 Years of Age

Children can become qualified immigrants because they have filed or received an approved application for immigration relief as a qualified immigrant or are exempt immigrants included in one of the two lists above. Children included in their parents' applications can receive immigration benefits because they are included in their parent's applications for immigration relief contained in the qualified immigrant or exempt qualified immigrant lists above. Advocates and attorneys will most commonly encounter children included in battered immigrants' VAWA self-petitions. Both battered immigrants and their children included in their application are VAWA self-petitioners. Once a prima facie determination is received in the VAWA self-petitioning case, the under 21-year old child of the applicant becomes a qualified immigrant. There are two avenues by which the VAWA self-petitioner's qualified immigrant child will be directly eligible for subsidized healthcare.

- The immigrant child has been continuously present in the United States since before 8/22/96; or
- The immigrant child lives in a state that offers healthcare subsidies to qualified immigrant children. (See the discussion of state funded benefits of certain categories of immigrants below.)

Eligibility Based on 40 Quarters of Work Credit

Qualified immigrants who have earned or can be credited with 40 quarters of work can also qualify for subsidies because they have earned an exemption from the 5-year bar. A "qualifying quarter" is a unit of wages under Social Security law and is calculated upon the basis of how much a person earns in a calendar year. For the dollar amount needed to earn per quarter for 4 quarters for 2005 through 2014, visit [the social security website, http://www.socialsecurity.gov/oact/cola/QC.html](http://www.socialsecurity.gov/oact/cola/QC.html)

Other important Notes on 40 Quarters of Work Credit:

- It will take 10 years of work credit for an individual to earn 40 quarters of work credit.
- Income earned from all work immigrants have done can be counted towards attaining 40 qualifying quarters of work credit, including income from work performed while

the immigrant was undocumented.

- Immigrants who want to receive credits for work performed while the immigrant was undocumented can file for and obtain an Income Tax Identification Number (ITIN) that can be used to file taxes for those years of work.
- Immigrants can meet the 40 quarter test using quarters earned by a spouse or parent by adding these quarters together, if any of the following occur:
 - Immigrant children add the quarters earned by their parent(s) before the child's 18th birthday to any quarters the immigrant child may have worked; or
 - Immigrant spouses add the quarters earned by their spouse to the quarters the immigrant spouse earned so long as the marriage continues
 - If the spouse dies, the immigrant widow(er) can continue to receive credit for the quarters unless the immigrant spouse remarries
 - Divorce during the five (5) years after the immigrant spouse becomes a qualified immigrant results in the immigrant spouse losing the ability to count the quarters of the former spouse and can result in the applicant spouse becoming subject to the 5-year bar and losing access subsidized healthcare for the remainder of the 5-year bar period

State Funded Healthcare Subsidies

In addition to choosing to run their own healthcare exchanges, states have the option to offer state funded subsidized healthcare to immigrants living in their state. Subsidized healthcare is offered through Medicaid or Medicaid-like programs, which fund healthcare for adults or state child health insurance programs. Whether an immigrant qualifies for state funded healthcare subsidies varies significantly from state to state. The two groups of immigrants most likely to be able to receive subsidized health are qualified immigrants and lawfully present immigrant children and pregnant women.

Qualified immigrants include VAWA self-petitioners and the children included in their applications when they receive prima facie determinations, approximately six (6) months after the self-petition is filed. Victims of severe forms of human trafficking with continued presence or bona fide determinations in T visa cases can access public benefits available to qualified immigrants. VAWA cancellation of removal and suspension of deportation applicants with prima facie determinations from an immigration judge are also qualified immigrants. For rules on obtaining qualified immigrant determinations from immigration judges, [click here](#).

In states that offer child healthcare and/or prenatal care to all persons without regard to immigration status or to immigrants who are permanently residing under color of law (PRUCOL), U visa applicants can receive child healthcare and/or prenatal care. U visa applicants and their children become eligible for healthcare subsidies as lawfully present immigrants once their U visa application has been wait-list approved and they have been granted deferred action status.

The following list summarizes what subsidized healthcare states offer that immigrant survivors in particular may be eligible to receive:

- Very few states provide access to subsidized healthcare to limited groups of adult immigrants. What is offered is access to state funded Medicaid or Medicaid like programs.
 - Qualified Immigrants (≈4 states, 1 state battered qualified immigrants only)
 - Lawfully present immigrants (≈2 states, 1 state VAWA, T or U applicants only)

- Many states provide access to subsidized healthcare for specific groups of immigrant children under the age of 21
 - Qualified Immigrants (≈25 states)
 - Lawfully present immigrants (≈21 states)
 - U visa applicants (≈15 states)
- Subsidies for prenatal care and/or healthcare for pregnant immigrant women is also commonly provided
 - Qualified Immigrants (≈27 states)
 - Lawfully present immigrants (≈24 states)
 - U visa applicants (≈22 states)

Advocates and attorneys working with immigrant crime survivors should consult the following resources to determine what healthcare subsidies are available to which groups of immigrant survivors in the state in which the immigrant survivor resides.

- [Interactive Public Benefits Map](#)
- [Medical Assistance Programs Updates](#)
- Carly Erickson & Leslye Orloff, [Federal, Partnership, and State Exchanges That Provide State and State-Option Funded Medicaid or Medicaid-Like Services](#)
- Rocio Molina, [Eligibility Under the Affordable Care Act for Survivors of Domestic Violence, Trafficking, and Other Serious Crimes](#)
- Resources from the National Immigration Law Center are available at: <http://www.nilc.org/guideupdate.html> and <http://www.nilc.org/health.html>

Healthcare Access for Immigrants Who are NOT Eligible to Access the Healthcare Exchanges

Immigrant victims of domestic and sexual violence who have not filed for immigration relief or who will not be filing for immigration relief can access healthcare from federally funded healthcare programs that are open to all persons without regard to the individual's immigration status. Abused immigrants, as well as other immigrant children and adults, can access health-related services that are available to all individuals, regardless of their immigration status from:

- **HHS funded unrestricted healthcare offered by HHS funded public, community and migrant health clinics**
To find one of these health centers go to [FIND A HEALTH CENTER](http://findahealthcenter.hrsa.gov/Search_HCC.aspx), http://findahealthcenter.hrsa.gov/Search_HCC.aspx
- **Emergency Medicaid**
To learn what emergency Medicaid services are available to help immigrant survivors, see [Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Chapter 17.1 Emergency Medicaid State-By-State Chart Access For Immigrant Victims \(2010\)](#)
- **Victims of Crime Act (VOCA) for healthcare related to crime victimization**
[Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Chapter 17.3 State-by-State Post-Assault Healthcare Chart \(2013\)](#)
- **Access to and payment for Forensic Exams for immigrant survivors of rape and sexual assault**
[Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Chapter 17.2 State-by-State Coverage for Forensic Costs \(2010\)](#)
- **Services that protect life and safety (shelter, transitional housing, soup kitchens,**

victim services, police assistance, justice system access)**Programs Open to All Immigrants**

For a discussion of the range of healthcare, benefits, services and assistance open to all immigrant victims without regard to immigration status, see *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants*, Cecelia Olavarria, Amanda Baran, Leslye Orloff, & Grace Huang, [Chapter 4.2 Public Benefits Access for Battered Immigrant Women and Children \(2013\)](#)

For a list of U.S. Department of Health and Human Services funded programs available to all persons without regard to immigration status and a list of the programs that have immigrant restrictions, see [Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault, Chapter 16.1 HHS Funded Programs Open to All Immigrants \(2013\)](#)

Applicability of Public Charge and Deeming Rules to Immigrant Survivors and Their Children Eligible for Healthcare Subsidies

Public Charge

Immigrant survivors may be reticent to seek healthcare subsidies that they and their children are eligible for because they are concerned that seeking subsidized healthcare will prevent them from becoming lawful permanent residents under public charge laws. The public charge ground of inadmissibility refers to the barring of a foreign national from obtaining lawful permanent resident status if he or she is likely to become a public charge. Under the Violence Against Women Reauthorization Act of 2013, immigrant crime victims who pursue immigration relief such as VAWA self-petitioning, battered spouse waiver, VAWA cancellation of removal, VAWA suspension of deportation, U visa and T visa are exempt from public charge ever affecting their applications for lawful permanent residency or any other immigration benefit. Thus, immigrant survivors can seek and receive publicly funded healthcare or other benefits for themselves and their children without any concern being determined to be a public charge.

For immigrant crime victims and other immigrants who pursue other paths to lawful permanent residency, it is important to note that, with one exception, obtaining healthcare subsidies that they or their children are eligible to receive will not cause the immigrant to be denied lawful permanent residency on the basis of public charge. Medicaid, Medicare, and other similar health services are excluded from the publicly funded programs DHS is allowed to consider when making public charge determinations. The only form of healthcare benefit that would lead to a finding that the immigrant is likely be a public charge and should, therefore, be inadmissible for lawful permanent residency would be institutionalization for long-term care at the government's expense, since the immigrant would be primarily dependent on the government for support for such an extended period of time.

For further information on immigrant crime victims and public charge, see Catherine Longville & Leslye Orloff, [Immigrant Crime Victims and Public Charge: Post-VAWA 2013 \(June 20, 2014\)](#)

[The Public Charge Regulations](#) that codify public charge law prior to the VAWA 2013 amendments that apply in all cases other than VAWA, T and U visa applicants

Deeming

“Deeming” refers to the practice of counting the income of an immigrant’s sponsor together with the immigrant’s own income in determining financial eligibility for state or federal public benefits programs. Deeming applies to spouses and children with family based immigration cases. Certain immigrants are exempt from sponsor deeming. Exempt immigrants include immigrants who are not required to have sponsors, including, but not limited to: refugees; asylees; parolees; Cuban Haitian entrants; immigrants who have naturalized; immigrants whose sponsor has died; certain qualified battered spouses and children; indigent immigrants who would go hungry or homeless without assistance; and immigrants who have or can be credited with 40 quarters of work credit. Additionally, for states that choose to provide subsidized healthcare to lawfully residing children and/or pregnant women, deeming does not apply.

Exemption from Deeming for Certain Qualified Battered Immigrants

When the person who sponsored the immigrant is also the immigrant’s abusive spouse or parent, the immigrant victim will not be able to access the income of the abuser when applying for benefits. Counting the abusive spouse or parent’s income as income that is attributed to the immigrant victim results in the immigrant victim losing access to public benefits eligibility that Congress intended they receive.

To address this issue, Congress included a specific exemption from deeming for certain qualified battered immigrants. Qualified battered immigrant spouses and children of citizen and lawful permanent residents can be exempt for one year from the deeming requirements if:

- The battery or extreme cruelty took place in the United States;
- The abuser was the spouse, parent, or member of spouse’s or parent’s family;
- There is a “substantial connection between the battery or extreme cruelty and the need for the healthcare benefit;” and
- The victim no longer resides with the abuser.

This qualified battered immigrant exemption can extend beyond a year, the battered immigrant must demonstrate that:

- An order of a judge or a prior DHS determination has recognized the battery or extreme cruelty; and
- There continues to be a substantial connection between the abuse and battery suffered and the need for the benefits sought.

For more information on the issue of deeming, and on the issue of the battered immigrant exemption to deeming, please see the following resources:

1. Catherine Longville and Leslye Orloff, [Public Benefits: What is “Deeming” and What are its Exceptions](#)
2. Soraya Fata, Leslye E. Orloff and Monique Drew, [Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence](#)
3. Tanya Broder and Jonathan Blazer, [Overview of Immigrant Eligibility for Federal Programs \(October 2011\)](#)

NIWAP addresses the needs of immigrant women, immigrant children and immigrant victims of domestic violence, sexual assault, dating violence,

stalking, human trafficking and other crimes by advocating for reforms in law, policy and practice.

NIWAP is a national provider of training, legal and social science research, policy development, and technical assistance to advocates, attorneys, pro bono law firms, law schools, universities, law enforcement, prosecutors, social service and health care providers, justice system personnel, and other professionals who work with immigrant women, children and crime victims. Our work supports those in the field and in government who work to improve laws, regulations, policies, and practices to enhance legal options and opportunities for immigrant women and children.

NIWAP provides training and technical assistance on a broad range of issues of importance to immigrant women and children, including VAWA immigration and confidentiality, family law, protection orders, public benefits, language access, cultural competency, and access to services, including shelter, transitional housing, health care, and education.

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