

**PRESENTED BY: U.S. DEPARTMENT OF JUSTICE OFFICE ON VIOLENCE  
AGAINST WOMEN IN PARTNERSHIP WITH LEGAL MOMENTUM, THE  
NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (NIWAP) AND  
THE CALIFORNIA COALITION AGAINST SEXUAL ASSAULT (CALCASA)**

# **Webinar**

## **Yes We Can!: Public Benefits for Immigrant Survivors**

**We will start soon**



**NIWAP**



**NIWAP**

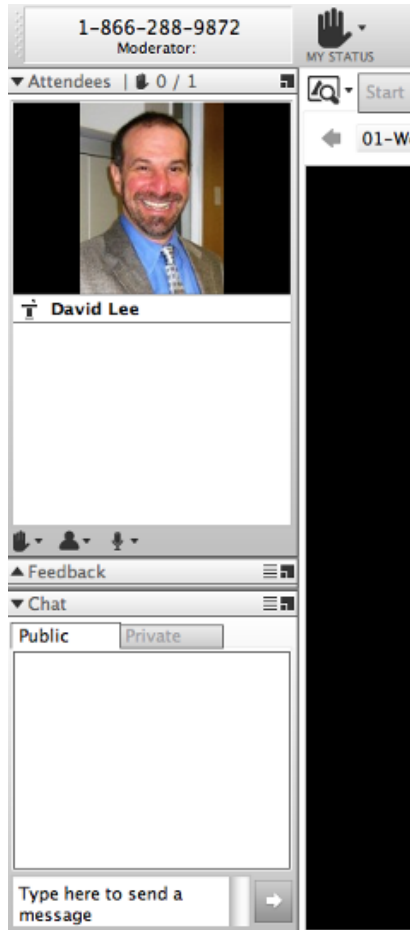
National Immigrant Women's Advocacy Project,  
American University, Washington College of Law

4/25/2013 ... 1

# Please Note

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# Webinar Series



- This the 4<sup>th</sup> Webinar in a series of 5 Webinars



**NIWAP**

**LEGAL  
momentum**  
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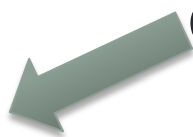
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# Let's see who is on the call with us. Please check the box that best describes you:

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Feedback

A

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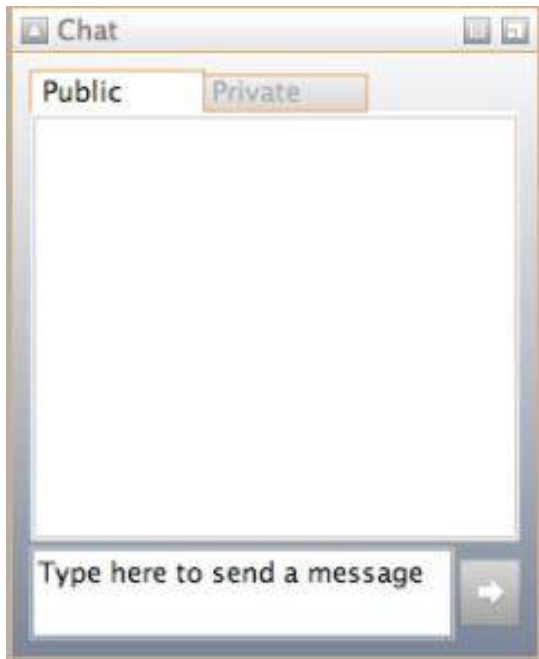
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- A. Lawyer
- B. Domestic violence victim advocate
- C. Sexual Assault victim advocate
- D. Government Benefits or other Staff
- E. Other, please write your description in the chat box

# Learning Objectives:

- Understand what forms of assistance undocumented immigrants can access
- Screen for VAWA, T or U visa immigration relief eligibility to help victims become lawfully present
- Understand the differences between VAWA, T and U visa immigration relief for benefits access purposes
- Accompany victims when they apply for benefits for themselves or their children

**What barriers are present, when an immigrant victim seeks federal or state public benefits?**





# Overview of Barriers for Immigrant Survivors

- Language access
- More legal rights tools needed
  - For benefits staff
  - For victim advocates and attorneys
- Immigration and benefits law confusing
- Not enough help for survivors filing for immigration protections
- Survivors afraid to seek benefits
  - VAWA 2013 – public charge exception
- Apparent conflict between state laws/policies and federal benefits and services access laws

# Review of Resources and Webinar Materials

- Materials available at go link
  - Government: statutes, policies, regulations
  - Screening and benefits identification tools
  - Detailed benefits legal research, legislative history information supports advocacy/educating benefits providers
- VAWA, T and U visa benefits tools
  - Screening tools
  - Benefits flow charts
  - Program eligibility tools
- State by state charts
  - NIWAP: Immigrant victims access to health care, post assault health care, emergency Medicaid, prenatal care, forensic exams, TANF, child care
  - NILC: Food assistance, SSI, LEHEAP, rental housing, disaster relief

# Immigrant Benefit Classifications

- Citizens
- “Qualified Immigrants”
  - Entering U.S. before Aug. 22, 1996
  - Entering U.S. on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
- PRUCOL (Permanently Residing Under Color of Law)
  - States can opt to offer state funded benefits to persons residing under color of law
- Lawfully Residing
  - Health care access is provided and states can opt to offer state funded benefits to lawfully residing immigrants
- Undocumented Immigrants

# PRUCOL Definition

- Acronym for “Persons Residing Under Color of Law”

This is a public benefits eligibility category that refers to individuals who are in the U.S. with the knowledge of immigration services and are not likely to be deported.

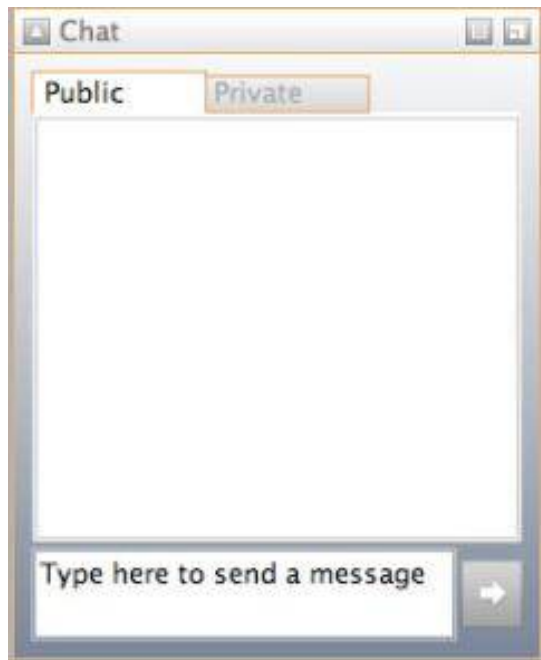
# Lawful Presence Defined

- Lawful presence is similar to PRUCOL and includes immigrants who have:
  - Deferred action
  - Filed or have prima facie determinations in VAWA, T or U visa cases
  - Visas (work, student, tourist, etc.)
  - Humanitarian parole
  - TPS
  - Qualified immigrants
  - Persons with approved visa petitions
  - Children who have applied for special immigrant juvenile status

# Access to Benefits and Services Grows As Victims Pursue Immigration Relief

- Programs and services all undocumented survivors can access
- Filing immigration case leads to
  - Lawful Presence
  - PRUCOL
  - Continued presence
  - HHS certification or eligibility letter
  - State benefits access to some programs in some states
- Prima facie determination in VAWA or T visa case leads to
  - Qualified Immigrant Status
    - Federal public benefits
    - Federal Means tested public benefits
    - State funded benefits

**How does lack of access to public benefits and work authorization affect immigrant survivors ?**

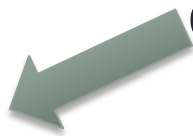


# What happens in the lives of immigrant victims who cannot access benefits or work authorization?

Please check the box that best describes you:

- A. Stay in with abusive spouse/employer
- B. Face homelessness
- C. Interferes with ability to seek help from and work with law enforcement
- D. All of the above
- E. Other, please write your description in the chat box

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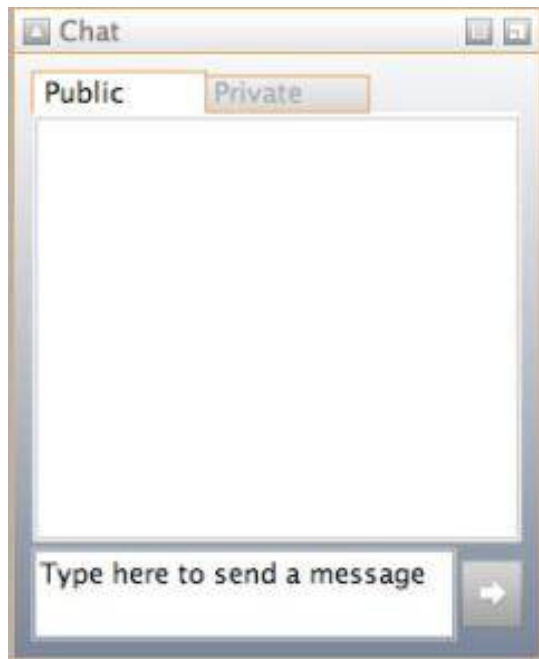
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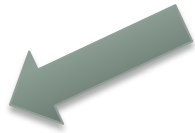
**What services,  
programs, benefits  
can undocumented  
immigrant survivors  
legally access?**




# Help Open to All Immigrants Without Regard to Immigration Status

# RECEIVING PUBLIC BENEFITS CAN HARM AN IMMIGRANT VICTIM'S ABILITY TO OBTAIN LEGAL IMMIGRATION STATUS

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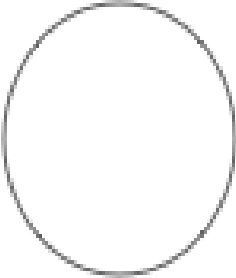


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Yes

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## **Benefits available to all immigrants include those offering the following types of services, programs or assistance:**

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Crime victim assistance
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Medical and public health services
  - including treatment and prevention of diseases and injuries and mental health, disability, or substance abuse assistance necessary to protect life or safety

# Benefits and Services continued

- Help during adverse weather conditions
- Soup kitchens, community food banks and nutrition programs for seniors and others requiring special assistance
- Activities designed to protect the life and safety of workers, children, youth and community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

# Other Federal Benefits Available to ALL Immigrants

- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Community Services Block Grant funded programs
  - ESL
  - Vocational Training
  - Transitional shelters
  - Community gardens

# Attorney General's List of Required Services

- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life & safety
- Programs covered by this AG order are open to all persons
- State and local governments **CANNOT** impose immigrant access restrictions

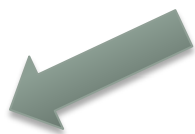
# Preemption


- DOJ Necessary to Protect Life and Safety Regulation
- PRWORA “vests in the Attorney General the authority to specify certain types of community programs, services, or assistance for which all aliens remain eligible”
- “Neither states nor other service providers may use the Act as a basis for prohibiting access of undocumented to any programs, services, or assistance covered by this Order.”



# UNDOCUMENTED VICTIMS AND CHILDREN CAN ACCESS TRANSITIONAL HOUSING PROGRAMS

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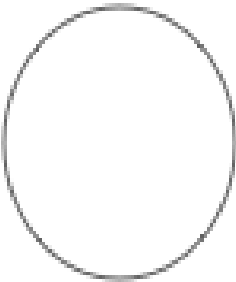


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Yes

No

No Answer



# Health Care For Undocumented Immigrants

- Services necessary to protect life and safety
- Community and migrant health clinics
- State funded programs
- Post assault health care paid by VOCA funds
- Emergency Medicaid

# Emergency Medicaid

- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
  - place the patient's health in serious jeopardy;
  - result in serious impairment of bodily functions;
  - or
  - cause dysfunction of any bodily organ or part

# What Various States Offer Under Federal Emergency Medicaid

- Labor and Delivery (emergency and most states normal)
- Severe and acute
- Urgent pharmacy needs
- Mental health
- Inpatient substance abuse
- 72 hour release of drugs without prior approval
- No SSN is required to receive emergency services under Hawaii law

# Additional Health Care Open to All Immigrants

- HHS funded community and migrant health clinics
  - [www.nachc.com](http://www.nachc.com)
  - [www.hrsa.gov](http://www.hrsa.gov)
    - Enter zip code
- VOCA funded post assault health care
- Emergency Medicaid
- Immunizations, testing, and treatment of communicable diseases

# Federally Qualified Health Centers Offer

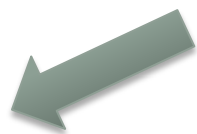
- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Well child services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Emergency medical and dental services

# State-by-State Charts Addressing Immigrant Victim Access to the Following:

- Health care access by immigration status by state
  - Emergency Medicaid
  - Forensic Examinations
  - Post-Assault Health Care
  - Pre-Natal Care
  - TANF Replacement Programs
  - Child Care
  - SNAP (Food Stamps)
  - LIHEAP
  - SSI
- Available at  
[Niwaplibrary.wcl.american.edu](http://Niwaplibrary.wcl.american.edu)

# IMMIGRANTS APPLYING FOR BENEFITS FOR THEIR CHILDREN CAN REFUSE TO PROVIDE IMMIGRATION OR SOCIAL SECURITY INFORMATION ABOUT THEMSELVES?

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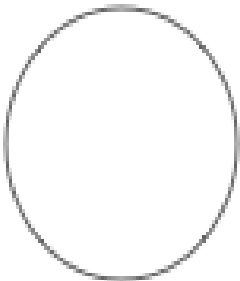


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Yes

No

No Answer





# When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or “qualified immigrant” the benefits granting agency may *ONLY* ask questions about the child’s eligibility
- No questions may be asked about the *immigration status or social security number* of the child’s parent if the parent is not applying for additional benefits for themselves

# Resources for Undocumented Victims

- Chapter: “Access To Programs And Services That Can Help Victims of Sexual Assault and Domestic Violence”
- HHS Programs List
- HUD Programs List
- HUD Letter
- AG Order

# Immigration Options for Survivors

## VAWA self-petition

Abused spouses/children of US citizens and lawful permanent residents

- Abused parents of U.S. citizens over 21 years of age

## Battered spouse waiver

- Abused spouses of US citizens with two-year conditional permanent residency

## T visa

- Victims of severe forms of human trafficking

## Asylum

- Persecution based on protected classes

## U visa

- Victims of criminal activity
- Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Substantial harm from criminal activity

## Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, abandoned or neglected

## Deferred Action (DACA)

- Deferred action for child arrivals including Dreamers

## DHS Prosecutorial Discretion

- “low priority” for removal immigrants -- survivors, witnesses, parents, others
- Humanitarian detention release

# U Visa Criminal Activity



**Domestic violence**  
**Sexual assault**  
**Rape**  
**Incest**  
**Prostitution**  
**Torture**  
**Female genital  
mutilation**  
**Felonious assault**  
**Manslaughter**  
**Murder**

**Kidnapping**  
**Abduction**  
**Trafficking**  
**Involuntary  
servitude**  
**Slave trade**  
**Being held  
hostage**  
**Peonage**

**False Imprisonment**  
**Blackmail**  
**Extortion**  
**Witness tampering**  
**Obstruction of  
justice**  
**Perjury**

# Application for VAWA, T or U immigration status improves immigrant victims access to public assistance

- Screen for immigration case already filed
- Screening + Filing (VAWA, T or U) = Lawful Presence
- Filing for immigration remedy is required for VAWA Self-petitioners to become “qualified immigrants” to eligible for federal public benefits

# Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
  - Which benefits they can access depends on:
    - Immigration status
    - When they entered the United States
    - Whether they meet heightened program requirements for some programs
    - What benefits are offered by the state

# Immigrant Benefit Classifications

- U.S. Citizens
- Qualified Immigrants
  - Entering US before Aug. 22, 1996
  - Entering US on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
- Lawfully Residing and PRUCOL (Permanently Residing Under Color of Law)
  - States can opt to offer state funded benefits to persons residing under color of law
    - See NILC charts
- Undocumented Immigrants

# Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
  - “federal public benefits” or
  - “federal means-tested public benefits”



# Examples of “Federal Public Benefits”

- **US Agency Funded/Provided:**
  - Grants
  - Contracts
  - Loans
  - Professional or commercial licenses
    - Drivers licenses
- **Federally Funded Benefits for**
  - Retirement
  - Welfare
  - Health
  - Disability
  - Postsecondary education
  - Public or assisted housing
  - Food assistance or
  - Unemployment

# Only considered a Federal Public Benefit if:

- Payment made or assistance provided directly to:
  - An individual
  - A household
  - A family eligibility unit

# Funds are Not Federal Public Benefits if Federal Funds Are Paid to:

- A state in the form of a block grant
- A victim services program
- A shelter
- A hospital
- A health clinic
- A government entity
- A non-profit organization

# Access to State Funded Benefits

- 1996 Welfare Reforms gave states the authority to:
  - Extend state funded benefits eligibility to immigrants who are not “qualified immigrants” under federal law
  - Limited the state funded “public benefits” available to “qualified immigrants”, immigrant visa holders, and immigrants paroled into the U.S. for under one year

State Benefits Charts track state funded:

- TANF, Health Care, Food Stamps, SSI, Child Care

# Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T-visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose child) has been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

# How does and immigrant victim prove that they are a “qualified immigrant”?

- Family-based immigration cases
  - Prima facie determination in VAWA self-petition or cancellation
  - Approved VAWA self-petition or VAWA suspension/cancellation
  - Approved visa petition filed by an abusive spouse or parent
- Trafficking victims
  - Prima facie determination in a T-visa case
  - Approved T-visa

# Additional Requirements for Battered Immigrant Spouse or Child to be a “qualified immigrant”

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “substantial connection” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser

# Factors Used to Determine “Substantial Connection”

- To ensure the safety of the victim, the victim’s child or the victim’s parent
- The victim had to leave her job for safety reasons
- The victim loses a dwelling or a source of income following separation
- The victim needs medial attention or mental health counseling or has become disabled
- The victim’s fear of the abuser jeopardizes the victim’s ability to take care of her children



# “Substantial Connection” continued

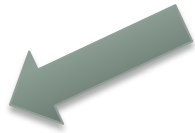
- To alleviate nutritional risk or need resulting from the abuse or following separation
- The victim lost her job or earns less because of the battery or cruelty or because of involvement in legal proceedings
- To provide medical care during a pregnancy resulting from the relationship with the abuser
- To replace medical coverage or health care services lost following separation.


# Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals
- Adoption assistance
- Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

# DHS REQUIRES UNIVERSITIES TO ASK ABOUT IMMIGRATION STATUS OF APPLICANT OR ENROLLING STUDENTS?

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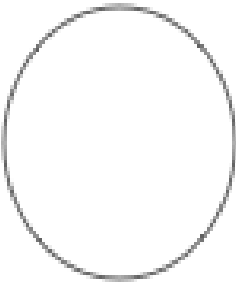


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Yes

No

No Answer



# Post Secondary Educational Grants and Loans

- Battered immigrant self-petitioners and their children are “qualified immigrants” eligible to receive DOE funded grants and loans
- Universities should accept DHS/Immigration Judge Documentation of VAWA self-petition/cancellation status
  - documents must be current at each time of re-application
- On FAFSA check “eligible non-citizen” and provide “A” number
  - Explains no-match with DOE/DHS computer system and
  - DOES NOT require verification
- Students remain eligible after age of majority unless VAWA case is denied

# Federal Means-Tested Public Programs Have Most Limited Immigrant Access:

- **TANF**
  - 5 yr. bar if entered the U.S. after August 22, 1996
- **SSI**
  - Lawful permanent residents only if 40 quarters or work credit + “qualified immigrant” status and 5 year bar if entered the U.S. after August 22, 1996
  - Refugee
  - Trafficking victim
  - Veteran and “qualified immigrant” spouses, children
- **Food Stamps**
  - “Qualified Immigrants” 5 year bar post August 22, 1996
- **Medicaid and Child Health Insurance Program**
  - Health Care reform opened up access to immigrants who are “lawfully present”

# Federal Food Stamps

- “Qualified immigrant” children under 18 (no 5 year bar)
- Refugees, persons granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, Amerasian immigrants, persons granted Iraqi or Afghan special immigrant status, and victims of trafficking (upon receipt of status and as lawful permanent residents)
- “Qualified immigrant” adults after 5 year bar
- Lawful permanent residents with 40 quarters work history
- Veterans & active military and their “qualified immigrant” spouses and children
- “Qualified immigrants” receiving disability
- Hmong and Laotian tribe members lawfully present

# Immigrants and Health Care Reform

- Naturalized Citizens same as U.S. Born Citizens
- Legal immigrants
  - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants
  - May purchase for state insurance exchanges (no wait)
  - Eligible for tax credits and cost-sharing reductions (no wait)
  - Eligible for state's temporary high risk pools and basic health plans
  - 5 year bar to Medicaid for “qualified immigrant” low income non-pregnant adults
- Undocumented immigrants
  - Exempt from individual mandates
  - Cannot purchase from state insurances exchanges & no tax credit
  - No Access to Medicare, Medicaid or CHIP
  - Only HHS funded unrestricted health care and emergency Medicaid

# Immigrants and Health Care Reform

- Citizen or lawfully present children of undocumented immigrant parents
  - May purchase child-only coverage on state insurance exchanges
  - Are eligible for premium tax credits and reduced cost-sharing
  - May be eligible for Medicaid or CHIP



# Federally Funded Medicaid and CHIP for “lawfully residing” children and pregnant women

- Lawfully present + Medicaid state residency rules
- Lawfully present =
  - Lawful permanent residency
  - Approved visa petition + application for lawful permanent residency filed
  - Persons fleeing persecution (e.g. refugees, asylees, withholding, conditional entrants)
  - Humanitarian immigrants (e.g. Cuban Haitian Entrants, TPS, DED, Deferred Action Status)
  - Parolees (lawfully present) if parole for 1yr + (also qualified immigrants)

# **Federally Funded Medicaid and CHIP for “lawfully residing” children and pregnant women**

- VAWA self-petitioning applicants and their children
- VAWA cancellation and suspension applicants
- T visa holders, applicants and continued presence and their children
- U visa holders includes their children
- Temporary visa holders (e.g. student, visitor, work)
- Citizens of Micronesia, the Marshall Islands, and Palau
- Long term residents in the process of obtaining lawful permanent residency or not likely to be returned home

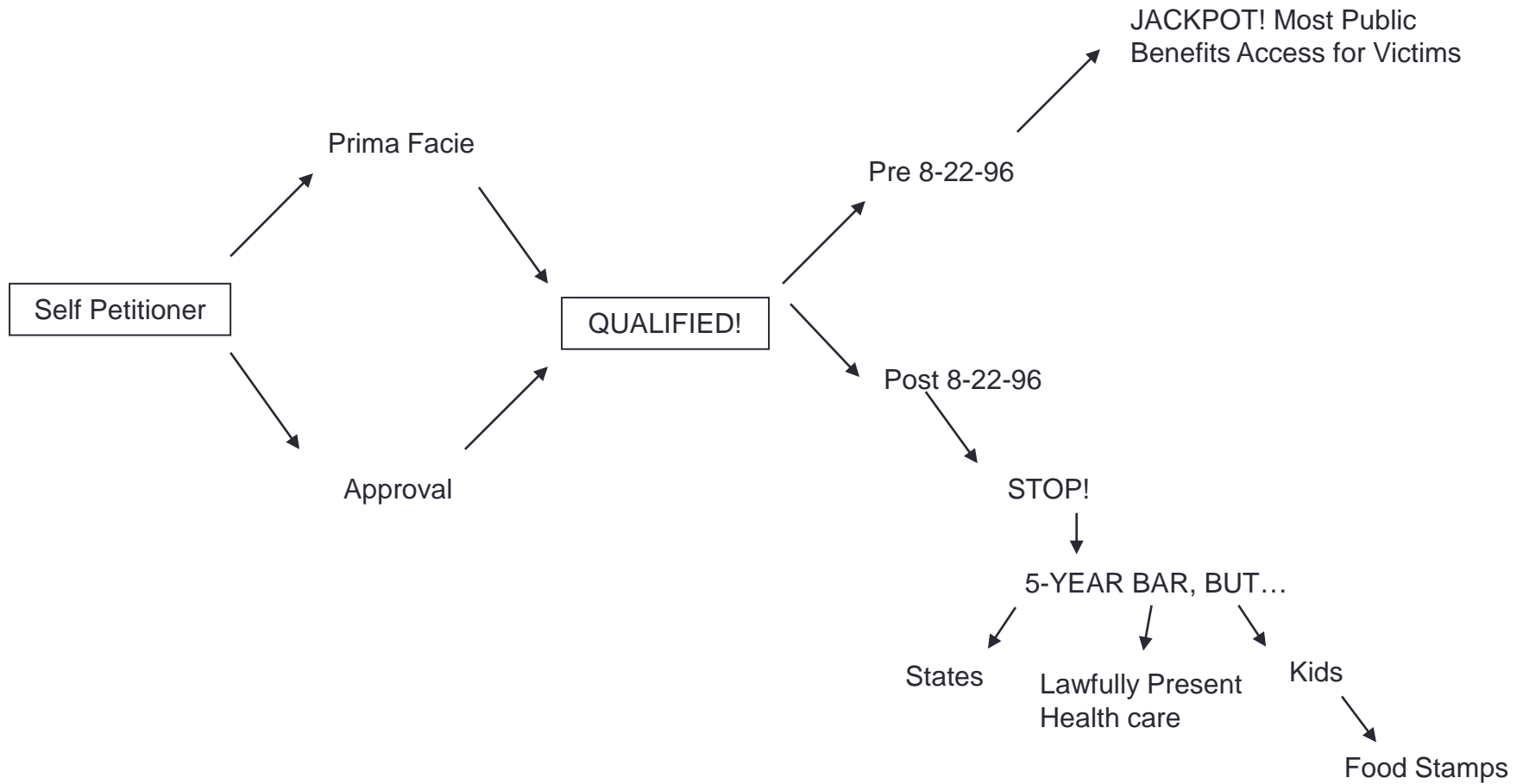
# Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

- Child Care Development Fund
  - Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
  - Open to “qualified immigrants” and victims of trafficking and their children
  - CCDF child care open to all without immigration restrictions if
    - Subject to public educational or Head Start standards, or
    - Eligibility determined by a non-profit organization
  - CCDF parents have the right to choose their child care provider, (e.g. relative, a family child care home, or child care center)
  - Provider may be required to have an SSN
  - State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

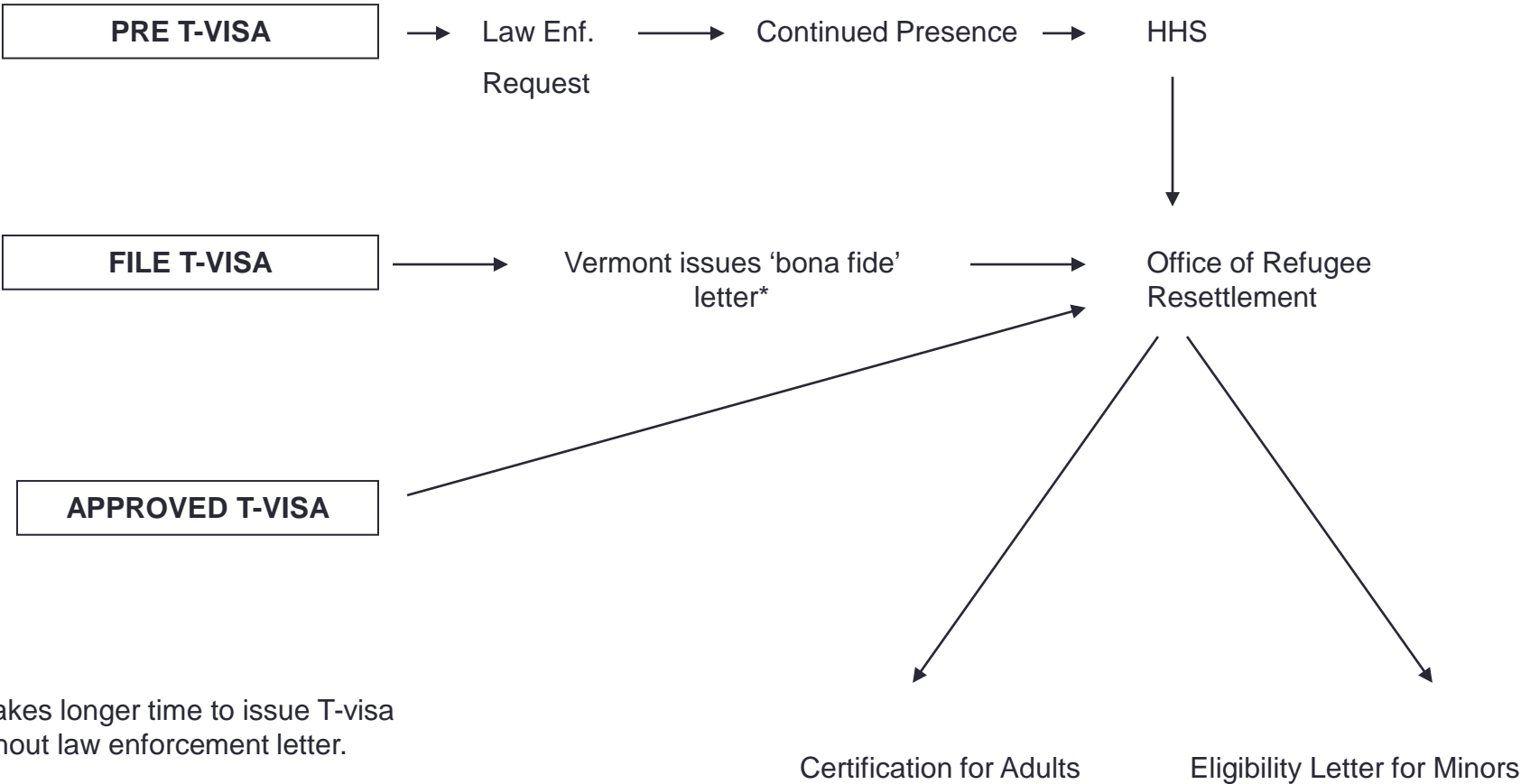
# TANF Funded Child Care

- “Qualified immigrants” who entered the U.S. before Aug. 22, 1996.
- 5 year bar applied to all other qualified immigrants
- Refugees and asylees
- Persons granted withholding of removal
- Amerasian immigrants
- Cuban/Haitian entrants
- Victims of trafficking and their children
- Veterans and active duty military personnel, their spouses, un-remarried surviving spouses, and children, who are “qualified” immigrants

# Helping Immigrants Applying for Federal or State Funded Public Benefits



# Benefits Eligibility for Victims of Severe Forms of Trafficking

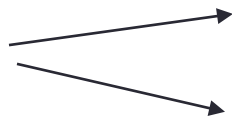


\* Takes longer time to issue T-visa without law enforcement letter.

# U VISA



lawful presence and PRUCOL (Persons Residing Under Color of Law)



Not qualified immigrants for public benefits purposes under federal law = no access to federally funded public benefits



State Benefits ?  
Non-PRUCOL States NO access to state funded benefits

U-visa holders lawfully present and eligible under health care reform laws



State Benefits?  
Lawful presence or PRUCOL = some access to state funded public benefits





# QUESTIONS

# National TA Providers

- National Immigrant Women's Advocacy Project  
[niwap@wcl.american.edu](mailto:niwap@wcl.american.edu) (202)274-4457
- Web Library NIWAP and Legal Momentum
  - [iwp.legalmomentum.org](http://iwp.legalmomentum.org)
    - Training materials and Tools for advocates
    - Multi-lingual materials for immigrant survivors
    - National online directory of programs serving immigrant survivors
- ASISTA [questions@asistahelp.org](mailto:questions@asistahelp.org) (515)244-2469



- National Immigration Project of the National Lawyer's Guild  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org) 617.227.5495

**Thank you!**