

Health Care Access for Lawfully Present Immigrants - Definitions

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All lawfully present immigrants are eligible to purchase health insurance on the federal and state healthcare exchanges.¹ Many states have also extended state funded health care subsidies to certain groups of lawfully present immigrants including primarily children, pregnant persons, and/or abused immigrants.² This publication provides a tool to help victim advocates, forensic nurses, health care providers, attorneys and other professionals working with immigrant survivors of domestic violence, sexual assault, stalking, dating violence, child abuse, and human trafficking identify lawfully present immigrant survivors who:

- Are eligible under federal law to purchase healthcare on state and federal healthcare exchanges; and
- May be eligible for state funded healthcare subsidies.³

The following list explains each category of immigrants that are considered by the Centers for Medicaid and Medicare Services (CMS), U.S. Department of Health and Human Services to be lawfully present under the Affordable Care Act⁴ as defined in regulations published May 8, 2014 that take effect on November 1, 2024.⁵

Advocates, attorneys, and healthcare providers will encounter immigrant survivors of sexual and domestic violence who fall into many of the categories of immigrants eligible to purchase healthcare on the exchanges some of whom may also qualify for healthcare subsidies either under federal or state laws. Since access to health care is important for the health, mental health, and economic stability of survivors, it is important to screen both the victim and their children for the following forms of immigration relief with which immigrants are considered lawfully present and eligible to purchase healthcare on the exchanges and to receive some subsidies depending on the state.

Noncitizens described in the categories listed below are lawfully present:⁶

- Qualified immigrants:⁷
 - Lawful permanent residents;⁸
 - Asylees;⁹
 - Refugees;¹⁰
 - Humanitarian parolees;¹¹
 - Immigrants granted withholding of deportation;¹²
 - Conditional entrants;¹³
 - Cuban and Haitian Entrants;¹⁴
 - Compact of Free Association (COFA) citizens living in the U.S.;¹⁵
 - VAWA immigrants who have been (or their child has been) battered or subjected to extreme cruelty:¹⁶
 - VAWA self-petitioner spouses, former spouses, intended spouses, children, stepchildren, of U.S. citizens;¹⁷ and

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- Abused parents and stepparents of over 21-year-old citizen sons and daughters;
 - The battering or extreme cruelty may have been perpetrated by the citizen spouse, former spouse, parent, stepparent, or over 21 year old son or daughter or by a member of their family residing in the same household;
 - The victim of battering or extreme cruelty may be of either or both the immigrant or their child;
 - Both the immigrant applicant and any of their children included in their self-petition qualify as lawfully present.

- VAWA self-petitioner spouses, former spouses, children, and stepchildren of lawful permanent residents;¹⁸
 - The battering or extreme cruelty may have been perpetrated by the citizen spouse, former spouse, parent, or stepparent, or by a member of their family residing in the same household;
 - The victim of battering or extreme cruelty may be of either or both the immigrant or their child;
 - Both the immigrant applicant and any of their children included in their self-petition qualify as lawfully present.

- Battered spouse waiver spouses, former spouses, and their children;¹⁹
 - The victim of battering or extreme cruelty may be of either or both the immigrant or their child;
 - Both the immigrant applicant and any of their children included in their self-petition qualify as lawfully present.

- VAWA suspension of deportation²⁰ spouses, former spouses, children or stepchildren of U.S. citizens or lawful permanent residents; and
 - Parents of children abused by the child's other parent who is a U.S. citizen or lawful permanent resident;
 - The victim of battering or extreme cruelty may be of either or both the immigrant or their child.

- VAWA cancellation of removal²¹ spouses, former spouses, intended spouses, children or stepchildren of U.S. citizens or lawful permanent residents; and
 - Parents of children abused by the child's other parent who is a U.S. citizen or lawful permanent resident;
 - The victim of battering or extreme cruelty may be of either or both the immigrant or their child.

- Abused spouses, children and stepchildren of U.S. citizens and lawful permanent residents whose I-130 visa petitions have been approved;²²
 - The battering or extreme cruelty may have been perpetrated by the citizen or lawful permanent resident spouse, former spouse, parent,

- or stepparent, by the over 21-year-old citizen son or daughter, or by a member of their family residing in the same household;
 - The victim of battering or extreme cruelty may be of either or both the immigrant or their child.
 - Both the immigrant applicant and any of their children included in their self-petition qualify as lawfully present.
 - T visa holders and T visa applicants with prima facie determinations;²³
 - Noncitizens who are granted the same access to federal and state public benefits as refugees:²⁴
 - Trafficking victims granted continued presence;²⁵
 - Child trafficking victims granted child eligibility letters;²⁶
 - Iraqi and Afghan special immigrants;²⁷
 - Amerasian immigrants;²⁸
 - Certain Afghan parolees;²⁹
 - Certain Ukrainian parolees;³⁰
- Immigrants visa holders with valid visas;³¹
 - Common categories include:³²
 - Visas for diplomats, ambassadors, foreign government officials, United Nations employees and their family members (A), (C3) (G)
 - Their personal employees who work for their families
 - Visitor visas (B)
 - Investor visas (E) and their family members
 - Student visas (F) (J) (M) and their family members
 - Work visas (H) (L) (O) (P) (Q) and their family members
 - Fiancé Visas (K)
 - Witnesses in certain criminal cases (S)
 - Religious workers (R)
 - Human trafficking victims (T)
 - Crime victims (U)
 - Spouses of lawful permanent residents awaiting visa availability (V)
- Persons paroled into the U.S. for less than one year;³³
- Persons granted temporary resident status;³⁴
- Immigrants granted Temporary Protected Status;³⁵
- Immigrants granted work authorization under 8 CFR 274a.12(c);³⁶
 - Spouse or child of a lawful temporary resident (c)(1) or E-1 visa holder (c)(2);
 - Student visa holders (c)(3)
 - Spouse or child of a foreign government employee (c)(4), NATO (c)(7), Irish peace process (c)(23)
 - Domestic servants of diplomats and certain U.S. citizens and airline employees (c)(17)
 - Spouse of a student visa holder (c)(5), (c)(6)
 - Asylum application pending (c)(8)

- Pending application for lawful permanent residency (c)(9); (c)(16)
- Suspension of deportation and cancellation of removal applicants (c)(10)
- Public interest parolee (c)(11)
- Spouse of E-2 investor (c)(12)
- Immigrant granted deferred action (c)(14)
- Immigrants with orders of supervision (c)(18)
- Certain Temporary Protected Status applicants (c)(19)
- Persons pending legalization (c)(20); (c)(22); (c)(24)
- S visa holders (c)(21)
- T visa holders (c)(25)
- Spouses of work visa holders (c)(26)
- Approved VAWA self-petitioners (c)(31)
- Deferred Action for Childhood Arrivals (c)(33)
- Applicant for work visa, and their spouse or child facing compelling circumstances (c)(35), (c)(36)
- Abused spouse of an (A), (E-3), (G) or (H) work visa holder (c)(27), (c)(28), (c)(2), (c)(30).
- Family unity beneficiaries;³⁷
- Persons granted Deferred Enhanced Departure;³⁸
- Immigrants granted deferred action;³⁹
 - Examples include:
 - Deferred Action for Childhood Arrivals⁴⁰
 - Approved VAWA self-petitioners⁴¹
 - Approved applicants for Special Immigrant Juvenile Status⁴²
 - U visa applicants granted bona fide determinations⁴³ or waitlist approvals;⁴⁴
 - T visa applicants granted bona fide determinations;⁴⁵
 - Workers involved in a Department of Labor, EEOC, or state labor enforcement agency investigation⁴⁶
- Immigrants with pending applications for lawful permanent residence;⁴⁷
- Applicants for asylum,⁴⁸ withholding of removal,⁴⁹ or protection under the Convention Against Torture (CAT)⁵⁰ who are under the age of 14;⁵¹
- Immigrants who have been granted CAT convention protection;⁵² or
- Has a pending or approved application for Special Immigrant Juvenile Status.⁵³

¹ 45 C.F.R. § 155.20 (Defining lawfully present immigrants); Center for Medicare and Medicaid Services, *Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program*, 89 Fed. Reg. 90, 39392, 39413 (May 8, 2024) (to be codified at 42 C.F.R. pts. 435, 457, and 600), <https://niwaplibrary.wcl.american.edu/pubs/final-aca-daca-rule/>.

² Leslye E. Orloff and Axelle Pesme, *State-Funded Public Benefits Comparison Chart* (July 7, 2022) <https://niwaplibrary.wcl.american.edu/pubs/state-benefits-comparison-chart/>.

³ Noncitizen access to state-funded healthcare subsidies and other public benefits varies by state, by the date the noncitizen entered the United States, and by immigration status or the type of pending immigration application a survivor filed. Each state and federally funded public benefits or services program has its own eligibility rules. *See*,

NIWAP, *Public Benefits Map* (2022) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>, (to look up which benefits and services an immigrant survivor is eligible for by state and by immigration status).

⁴ The Patient Protection and Affordable Care Act (ACA) (Pub. L. 111–148)(enacted on March 23, 2010).

⁵ Center for Medicare and Medicaid Services, *Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit, Cost-Sharing Reductions, and a Basic Health Program*, 89 Fed. Reg. 90, 39392, 39413 (May 8, 2024) (to be codified at 42 C.F.R. pts. 435, 457, and 600), <https://niwaplibrary.wcl.american.edu/pubs/final-aca-daca-rule/>.

⁶ 45 C.F.R. § 155.20.

⁷ 8 U.S.C. § 1641(b),(c); 42 C.F.R. § 435.4. See, Leslye E. Orloff, *Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse and Human Trafficking* (May 27, 2024). <https://niwaplibrary.wcl.american.edu/pubs/1641-1631-benefits-laws-annotated/>, (or a detailed description of each of the categories of immigrant sexual assault, domestic violence, stalking, child abuse and human trafficking victims who are qualified immigrants).

⁸ 8 U.S.C. § 1641(b)(1); 42 C.F.R. § 435.4(1)(i).

⁹ 8 U.S.C. § 1641(b)(2); 42 C.F.R. § 435.4(1)(ii).

¹⁰ 8 U.S.C. § 1641(b)(3); 42 C.F.R. § 435.4(1)(iii).

¹¹ 8 U.S.C. § 1641(b)(4); 42 C.F.R. § 435.4(1)(iv). This category includes certain Afghans who entered the United States after July 31, 2021 and Ukrainians who entered the United States after February 24, 2022. See, NIWAP, *All State Public Benefits Charts and Interactive Public Benefits Map* (2022)

<https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>, (for details on current eligibility for Afghans and Ukrainians).

¹² 8 U.S.C. § 1641(b)(5); 42 C.F.R. § 435.4(1)(v).

¹³ 8 U.S.C. § 1641(b)(6); 42 C.F.R. § 435.4(1)(vi)(requires entry into the U.S. before April 1, 1980).

¹⁴ 8 U.S.C. § 1641(b)(7); 42 C.F.R. § 435.4(1)(vii) (in effect between 1980 and 2017).

¹⁵ 8 U.S.C. § 1641(b)(8); 42 C.F.R. § 435.4(1)(viii). Pacific Islanders from the Marshall Islands, Palau, and the Federated States of Micronesia (collectively the Freely Associated States or FAS) living in the United States are eligible for federal public benefits without being subject to the 5 year bar. Compact Impact Fairness Act (CIFA) included in Consolidated Appropriations Act of 2024 (March 9, 2024).

¹⁶ 8 U.S.C. § 1641(c). For a detailed description of VAWA self-petitioners and battered spouse waiver, VAWA cancellation of removal, and VAWA suspension of deportation applicants who are eligible as qualified immigrants for federal and state funded public benefits see, Leslye E. Orloff, *Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse and Human Trafficking* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/1641-1631-benefits-laws-annotated/>; Leslye E. Orloff, *Annotated Violence Against Women Act (VAWA) Self-Petition Definition INA Section 101(a)(51)*, 8 U.S.C. 1101(a)(2024) (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-annotated-ina-101a51/>.

¹⁷ 8 U.S.C. §§ 1641(c)(1)(B)(i), (2), (3); 8 U.S.C. § 1101(a)(51)(A); 42 C.F.R. § 435.4(1)(ix)(B)(1); 42 C.F.R. § 435.4(1)(x); 42 C.F.R. § 435.4(1)(xi).

¹⁸ 8 U.S.C. §§ 1641(c)(1)(B)(ii), (2), (3); 8 U.S.C. § 1101(a)(51)(B); 42 C.F.R. § 435.4(1)(ix)(B)(2); 42 C.F.R. § 435.4(1)(x); 42 C.F.R. § 435.4(1)(xi).

¹⁹ 8 U.S.C. § 1641(c)(1)(B)(i); 8 U.S.C. § 1101(a)(51)(C); 42 C.F.R. § 435.4(1)(ix)(B)(4).

²⁰ 8 U.S.C. § 1641(c)(1)(B)(iii); 8 U.S.C. § 1254(a)(3)(as in effect on March 31, 1997); 42 C.F.R. § 435.4(1)(ix)(B)(3).

²¹ 8 U.S.C. § 1641(c)(1)(B)(v); 8 U.S.C. § 1229(b)(2); 42 C.F.R. § 435.4(1)(ix)(B)(5).

²² 8 U.S.C. §§ 1641(c)(1)(B)(i), (2), (3); 42 C.F.R. §§ 435.4(1)(ix)(B)(1),(2); 42 C.F.R. § 435.4(1)(x); 42 C.F.R. § 435.4(1)(xi).

²³ 8 U.S.C. § 1641(c)(4); 42 C.F.R. § 435.4(2)(i). These trafficking victims will receive certification letters from the Office on Trafficking in Persons (OTIP) U.S. Department of Health and Human Services.

²⁴ 42 C.F.R. § 435.4(2).

²⁵ Trafficking victims granted continued presence are to be treated as refugees under 22 U.S.C. § 7105(b)(1)(C); 42 C.F.R. § 435.4(2)(i).

²⁶ Trafficking victims granted child eligibility letters by OTIP are to be treated as refugees under 22 U.S.C. § 7105(b)(1)(C); 42 C.F.R. § 435.4(2)(i).

²⁷ 42 C.F.R. § 435.4(2)(ii).

²⁸ 42 C.F.R. § 435.4(2)(iii).

²⁹ 42 C.F.R. § 435.4(2)(iv).

³⁰ 42 C.F.R. § 435.4(2)(v).

³¹ 42 C.F.R. § 155.20(2). These are immigrants with valid visas are referred to under immigration law as nonimmigrant visa holders. They include T visas, U visas, family based visas, employment based visas, student visas, diplomatic visas and other visas listed in 8 U.S.C. § 1101(a)(15). *See*, Rafaela Rodrigues, Mikaela Rodriguez, Leslye E. Orloff, Andrea Cavazos Carcamo, and Lucia Macias, *Immigration Status: Work Authorization, Public Benefits, and Ability to Sponsor Children* (December 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/fam-chart-immstatus/>, (for a full list of nonimmigrant visas).

³² *See*, 9 FAM 402.1-2 Nonimmigrant Visa Classifications <https://fam.state.gov/fam/09FAM/09FAM040201.html> (For a complete list of visas that are considered non-immigrant visas). Many nonimmigrant visas do not include a path to lawful permanent residency. Others can be dual intent visas that include a path to lawful permanent residency (e.g. U visas, T visas).

³³ 42 C.F.R. § 155.20(3).

³⁴ 8 U.S.C. § 1160, 1255a; 42 C.F.R. § 155.20(4).

³⁵ 8 U.S.C. § 1254a; 42 C.F.R. § 155.20(5).

³⁶ 8 C.F.R. § 274a.12(c); 42 C.F.R. § 155.20(6).

³⁷ 42 C.F.R. § 155.20(7); 301 of Pub. L. 101–649 as amended; or section 1504 of the LIFE Act Amendments, Title XV of H.R. 5666, enacted by reference in Pub. L. 106–554 (2000) (see section 1504 of App. D to Pub. L. 106–554).

³⁸ 42 C.F.R. § 155.20(8).

³⁹ 42 C.F.R. § 155.20(9).

⁴⁰ 8 C.F.R. § 236.22; <https://www.uscis.gov/DACA>.

⁴¹ USCIS, *Abused Spouses, Children and Parents, How to Apply*, <https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents>.

⁴² USCIS, *Special Immigrant Juvenile (SIJ) Frequently Asked Questions, I SIJ Deferred Action: Process and Timelines for Adjudication*, <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4/special-immigrant-juveniles/special-immigrant-juvenile-sij-frequently-asked-questions>.

⁴³ 3 USCIS-PM C.5 <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>; *National Engagement - U Visa and Bona Fide Determination Process - Frequently Asked Questions* <https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions>.

⁴⁴ 3 USCIS-PM C.6 (Waiting list) <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6>.

⁴⁵ 8 C.F.R. § 214.205; 89 Fed. Reg. 84, 34864, 348675 (April 30, 2024), (to be codified at 8 C.F.R. pts 212, 214, 245, 274(a)), <https://niwaplibrary.wcl.american.edu/pubs/2024-t-visa-final-rule/>.

⁴⁶ <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/dhs-support-of-the-enforcement-of-labor-and-employment-laws>.

⁴⁷ 42 C.F.R. § 155.20(10). These applications for lawful permanent residency are referred to in immigration law as applications for adjustment of status.

⁴⁸ 8 U.S.C. § 1158.

⁴⁹ 8 U.S.C. § 1231(b)(3)(A).

⁵⁰ 8 C.F.R. § 208.18.

⁵¹ 42 C.F.R. § 155.20(11).

⁵² 42 C.F.R. § 155.20(12).

⁵³ 8 U.S.C. § 1101(a)(27)(J); 42 C.F.R. § 155.20(13).