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Benefits for Immigrant Crime Victims: Technical Assistance on Eligibility for Maryland

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I. Abstract

This report provides a brief description of Maryland's current eligibility criteria for a variety of public benefits, including food assistance, cash assistance (TANF), healthcare, and Supplemental Security Income, as well as access to Driver's Licenses for persons who cannot provide proof of lawful status including specifically immigrant survivors of domestic violence, child abuse, sexual assault, stalking, and human sex and labor trafficking. The report focuses particularly on benefits for immigrant crime survivors who have filed or are preparing to file for immigration relief: VAWA Self-Petitioners,[1] U visa applicants, T visa applicants, applicants for Special Immigrant Juvenile Status (SIJS), and applicants for Continued Presence.

For each benefit type, the report discusses a model state law as well as options for a more incremental approach. It then provides a menu of options, drawn from other state law approaches, for Maryland to extend eligibility for public benefits to more immigrant victims of crime and abuse[2] than it currently does. The report also provides an analysis of best practices where appropriate.

II. Background

Federal laws including the Violence Against Women Act and the Trafficking Victims Protection Act and these Act's reauthorizations provide immigrant victims of crime, including victims of domestic violence, child abuse, sexual assault, staking, and human trafficking, with access to some public benefits subject to certain conditions. The federal public benefits eligibility criteria provide a floor at which certain immigrant crime victims can receive benefits. However, due to long immigration case processing delays and federal eligibility conditions such as the 5-year bar for access to certain federal public means-tested public benefits, immigrant crime victims lack access to the critical services provided by the public benefits safety net for months or years under federal eligibility guidelines.

[1] VAWA self-petitioner for public benefits purposes includes: VAWA self-petitioners, battered spouse waiver applicants, applicants for relief under VAWA Cuban Adjustment Act ("VAWA CAA"), VAWA Haitian Refugee Immigration and Fairness Act ("VAWA HRIFA"), VAWA Nicaraguan and Central American Relief Act ("VAWA NACARA'), VAWA cancellation of removal, VAWA suspension of deportation, and battered spouses and children with approved I-130 visa applications filed by their abusive citizen spouse, parent or step-parent. *See* 8 U.S.C. § 1641(c); 8 U.S.C. § 1101(a)(51).

[2] U.S. immigration laws and federal and state public benefits law offer protections to immigrant victims of crime and also for immigrant family violence victims including spouse abuse, intimate partner abuse, and child abuse when the abuse suffered constitutes extreme cruelty. When this report uses the term immigrant crime victims or immigrant survivors these terms include immigrant victims and survivors of crime, criminal activities, abuse, coercive control, battering or extreme cruelty, and abuse, abandonment, or neglect of children. The immigration and benefits law definition of extreme cruelty includes but is not limited to forms of abuse that constitute coercive control. *See* Leslye E. Orloff, Brittnay Roberts and Stefanie Gitler, *Battering or Extreme Cruelty Drawing Examples from Civil Protection Orders and Family Law Cases*, NIWAP, (September 12, 2015), http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order-2/; *Families and Children Model Code on Domestic and Family Violence – Revised Chapter Four*, NCJFCJ (January 2023) https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/; *Judicial Officer Guide Responding to Stalking*, SPARK & NIWAP (July 14, 2022) https://niwaplibrary.wcl.american.edu/pubs/sparc-judicial-guide-for-stalking (Table 6 comparing stalking, extreme cruelty, and coercive control).

Several states have extended eligibility for public benefits for immigrants, including immigrant survivors of crime and abuse, using state funded programs or a combination of state-funded and federal matching programs. To increase safety, healing, and stability of immigrant survivors of crime and abuse, many such programs extend eligibility to immigrant crime victims at an early stage of their visa application process, such as when they file, when they have received a prima facie determination, or when they receive employment authorization. Others states create exceptions for victims of certain kinds of crimes, such domestic violence[3] or human trafficking.

State-funded public benefits are a critical way states can protect immigrant crime victims, including while they wait for their visa applications to be adjudicated. State laws have become increasingly important in recent years because of lengthy processing delays in adjudicating applications for humanitarian victim-based forms of immigration relief. The current backlog for humanitarian visa relief in all categories far outweighs anticipated adjudication times when the federal public benefits and immigration eligibility requirements were established, leaving immigrant crime victims without access to critical benefits for much longer than Congress and many State Legislatures intended.

Although federal agencies have taken numerous steps to mitigate the impact of processing delays, including instituting a Bona Fide Determination process for U visa applicants[4] and creating a dedicated processing center to speed adjudication of some visa types,[5] the wait time to receive either a bona fide or prima facie determination, deferred action, work authorization, or final adjudication while improving are still very long. The unpredictability of these wait times increases the risk to victims and impede effective safety planning. A highly anticipated final rule may implement a statutorily created bona fide determination process for T visas, providing T visa applicants swifter to access public benefits.[6]

In FY 2022[7], the mean adjudication times for each visa category were:

- **T visa from application to adjudication**: 17 months
- **U visa from application to Wait List Adjudication or BFD Review**: 58.7 months
- **VAWA Self-Petitioners from application until adjudication:** 19-28 months depending on whether the self-petitioner is an abused parent, spouse, or child.

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[3] In 42 states and the District of Columbia that state law definition of domestic violence includes child abuse. Tolulope Adetayo, Rafaela Rodrigues, Chloe Canetti & Leslye E. Orloff, *State Law Definitions of Domestic Violence and Child Abuse*, NIWAP (Dec. 14, 2017), https://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect. Federal immigration laws offer protection to immigrant child abuse victims through the VAWA self-petition and U visa programs and include abuse-perpetrated by stepparents. Special Immigrant Juvenile Status offers immigration relief to immigrant child victims of parent perpetrated child abuse, abandonment, neglect, or other similar form of child maltreatment against which state laws offer protection to children.

[4] https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5

[5] *USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center*, USCIS PUBIC ENGAGEMENT DIVISION, https://www.uscis.gov/sites/default/files/document/notices/USCISOpenstheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf (last accessed 2/6/2024).

[6] 81 Fed. Reg. 92266.

[7] *Annual Report on Immigration Applications and Petitions Made by Victims*, USCIS (April 13, 2023) https://www.uscis.gov/sites/default/files/document/reports/FY22_Immigration_Applications_Made_by_Victims_of_Abuse_5.17.23.pdf.

- **Special Immigrant Juvenile Status:** 263 days to approval of petition (in excess of the 180-day statutory requirement), time to adjust to LPR status varies considerably, up to almost four years,[8] because SIJS petitioners must wait for a visa to become available.

These delays in immigration adjudications lead to delays in access the legal work authorization that immigrant survivors of domestic violence, child abuse, human trafficking, sexual assault and stalking need to be able to leave abusive homes, employers, and human traffickers. When Congress provided immigrant victims of domestic violence, child abuse and human trafficking access to the public benefits safety net in 1996 and 2000, the goal was to provide early access to public benefits to help immigrant victims with pending immigration applications flee abusive situations and sever economic dependence on abusers. Public benefits access provided victims the economic support they needed during the time they were awaiting the issuance of legal work authorization as part of their crime victim related immigration cases.[9] Without access to the public benefits safety net and without legal work authorization victims of domestic violence, child abuse, and human trafficking were effectively locked into abusive homes and work places.[10]

Research among immigrant survivors applying for VAWA and U visa immigration relief has found that:[11]

- 43% of VAWA self-petitioners remained with their abusers until after survivors work authorization. Many domestic violence and child abuse victims reported experiencing ongoing abuse while continuing to reside with their abusers:
    - 56.5% faced threats, attempts, or incidents of physical battering during this time;
    - 48.6% faced economic abuse;
    - 28.7 faced further threats, attempts, or incidents of extreme cruelty; and
    - 20.4% reported that the abuser threatened, attempted, or perpetrated abuse against the victim's children.

- 63.4% of U visa applicants, who were victims of domestic violence and child abuse, remained with their abusers until receiving work authorization. As a result reported abuse included:

[8] Children with approved special immigrant juvenile status receive their lawful permanent residence through the EB-4 employment based visa progra wait list. As of December 2023 the wait to apply was between 3 and 4 years. *See Visa Bulletin*, U.S. DEP'T OF STATE, BUREAU OF CONSULAR AFFAIRS, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html.

[9] Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 Wm. & Mary J. Women & L. 597 (2001) https://niwaplibrary.wcl.american.edu/pubs/wm-2001; TRAFFICKING VICTIMS PROTECTION ACT, 22 U.S.C. § 7101(b)(18) (2000); 46 Cong. Rec. S10167 (2000)(Senator Wellstone "Of those, 700,000 women and children, primarily young girls, are trafficked from poor countries to rich countries and sold into slavery, raped, locked up, physically and psychologically abused with food and health care withheld. Of those, as many as 50,000 immigrants are brought into the United States each year, and they wind up trapped in brothels, sweatshops, and other types of forced labor, abused and too fearful to seek help."); The TVPA included benefits access for trafficking victims that "o increases protections and services for trafficking victims by establishing programs designed to assist in the safe reintegration of victims into their communities and ensure that such programs address both the physical and mental health needs of trafficking victims." (Wellstone) 146 Cong. Rec. S10168 (2000).

[10] Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps*, 7 WM. & MARY J. RACE, GENDER, & SOC. JUST. 597, 609, 610, 618-623, 656 (2001). https://niwaplibrary.wcl.american.edu/pubs/wm-2001 (Discussing the legislative history of public benefits access for battered immigrants and the social science research documenting the role economic dependence played in undermining victim's options to successfully and safely leave abusive homes.)

[11] Kristina Szabo, David Stauffer, Benish Anver, and Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, NIWAP, Feb. 12, 2013, at 22-23 (Feb. 12, 2014) https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

- 68.3% faced threats, attempts, or incidents of physical battering during this time;
- 24.4% faced threats, attempts, or ongoing incidents of sexual assault;
- 64.2% faced economic abuse; and
- 19.2% reported that the abuser threatened, attempted, or perpetrated abuse against the victim's children.

This research further noted that 55.8% of VAWA self-petitioners who lived with their abuser reported experiencing abuse at least once a month and 97.4% of U visa applicants who live with their abuse reported experiencing abuse at least once a month. Battered immigrants still living with their abusers report much higher economic barriers to leaving the abusive relationship than reported by the general population of battered immigrant women.[12] Research on U visa victims found that once victims gain access to work authorization 64.3% are able to leave abusive homes and employment.[13]

A 2015 study illustrates the impact that expanding access the economic relief that public benefits offer would have for immigrant survivors of crime and abuse. Research on Victims of Crime Act (VOCA) compensation found that when immigrant victims can access to VOCA's economic safety net assistance victims experience lower rates of ongoing abuse compared to immigrant victims who lack access. Immigrant victims who accessed VOCA compensation experienced lower rates of each of the following forms of ongoing abuse than ineligible victims:[14]

- Human trafficking – 92% lower
- Extreme cruelty – 44% lower
- Abuse of the victim's children - 43% lower
- Sexual assault – 33% lower
- Economic abuse – 27% lower
- Physical abuse – 6% lower

Federal law imposes a 5-year bar on immigrant access to several public benefits programs that survivors of crime and abuse particularly need to access to successfully escape abuse. Several states have stepped in to provide state-funded benefits including TANF, TANF funded child care, subsidized medical assistance, food assistance, [15] and SSI replacement programs.[16] A 2021 research report documenting the positive ways immigrant victims' and their children's lives are transformed by the time they attain legal work authorization, found that without state funded benefits programs, victims and their children were left without an means to

[12] Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POLY 245, 295-296 (2000) https://niwaplibrary.wcl.american.edu/pubs/characteristics-help-seeking-behaviors (For instance, lack of money (67.1% vs. 40%), lack of employment (31.8% vs. 20%) and lack of a place to go if they leave (35.3% vs. 18.3%)); https://niwaplibrary.wcl.american.edu/pubs/wm-2001 p 618-623.

[13] Kristina Szabo, David Stauffer, Benish Anver, and Leslye E. Orloff, *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, NIWAP, Feb. 12, 2014, at 31, https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12.

[14] Leslye E. Orloff, Benish Anver, and Robert D. Goodis, *State Restrictions on Immigrant Access to VOCA Compensation*, NIWAP, (October 1, 2015) https://niwaplibrary.wcl.american.edu/pubs/niwap-voca-al-nv-survey-memo-10-1-15-final.

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

[16] *State Funded SSI Replacement Programs*, NATIONAL IMMIGRATION LAW CENTER, https://www.nilc.org/wp-content/uploads/2022/08/tbl9_state-ssi_2022-09-final.pdf.

survive economically apart from their abusers.[17] This research demonstrates both how the existing patchwork of state and federally funded benefits is not meeting immigrant victims needs and how victims and their children thrive as survivors' access to economic security grows over the course of the victims' immigration case process. By expanding access to state-funded public benefits for immigrant victims and their children, states will accelerate healing, economic independence, and safety for immigrant survivors and their children.

Federal law generally provides greater access to benefits for victims of human trafficking who have received T visas, Continued Presence, Certification Letters from the Office of Trafficking in Persons at the Department of Health and Human Services (for adult victims of human trafficking who have been granted Continued Presence, or notice that a bona fide application for a T visa has not been denied)[18], or a Child Eligibility Letter from the Department of Health and Human Services (for minor victims of human trafficking)[19]. Trafficking victims who receive benefits access or immigration relief through one of these pathways are eligible for benefits to the same extent as refugees and asylees, which often means they are not subject to the 5-year bar. [20] A highly anticipated final rule implementing the Bona Fide Determination process Congress created for T visa applicants will assure that trafficking victims who have received a bona fide determination on a T visa application will receive these benefits, as intended by federal law. [21]

Despite this greater federal eligibility for victims at later stages of the visa process, access to state funded benefits is critical for trafficking victims at earlier stages, including for victims who are filing or preparing to file for Continued Presence or T visa relief. Economic precarity is a key driver of human trafficking at every stage, from the recruitment of victims to life after abuse. The nature of human trafficking itself also leaves many survivors unable to meet their basic needs after exiting abusive situations.

Many trafficking victims have been forcibly prevented from contributing to their own economic security for months or years while trafficked. For these and many other reasons, trafficking survivors experience high rates of economic precarity after they leave their traffickers. A recent survey by the Polaris Project and the National Survivor Network found that 43% of trafficking survivors had a household income of less than $25,000 a year, as compared to 26% of the non-survivor population, despite more than 80% of respondents working one or more jobs.[22] Financial abuse and exploitation are also common in trafficking situations, leaving

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[17] Leslye E. Orloff, Haley Iesha Magwood, Yasmin Campos-Mendez, and Giselle A. Hass, *Transforming Lives: How the VAWA Self-Petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status*, June 8, 2021, at 70-88 https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report.

[18] *Certification Letters*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., OFFICE OF TRAFFICKING IN PERSONS (Nov. 6, 2020) https://www.acf.hhs.gov/otip/victim-assistance/certification?_gl=1*1g5wxgq*_gcl_au*NjkzMTE2MDM5LjE3MDQ3MzExOTc.

[19] *Child Eligibility Letters*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., OFFICE OF TRAFFICKING IN PERSONS, https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters?_gl=1*je9zrp*_gcl_au*NjkzMTE2MDM5LjE3MDQ3MzExOTc (last visited Feb. 13, 2024).

[20] *Federal Resources for Trafficking Victims*, U.S. DEP'T OF STATE, https://www.state.gov/humantrafficking-federal-resources-for-trafficking-victims/ (last visited Feb. 13, 2024).

[21] https://www.federalregister.gov/documents/2016/12/19/2016-29900/classification-for-victims-of-severe-forms-of-trafficking-in-persons-eligibility-for-t-nonimmigrant#p-300

[22] *In Harm's Way: How Trafficking Systems Fail Human Trafficking Survivors Polaris Project*, POLARIS PROJECT (January, 2023) https://polarisproject.org/wp-content/uploads/2023/07/In-Harms-Way-How-Systems-Fail-Human-Trafficking-Survivors-by-Polaris-modifed-June-2023.pdf.

victims with poor credit or no economic safety net as a direct result of being trafficked.[23] Immigrant victims, including migrant workers, are often even more vulnerable, since they often lack social safety nets such as friends, family, or community in the place they were trafficked.

State-funded benefits allow immigrant trafficking victims to access lifesaving services in the months or years they are waiting to meet federal eligibility requirements. As with survivors of intimate partner violence and other crimes, research demonstrates how the existing web of benefits and services are not meeting the economic, safety, and health needs of trafficking survivors or allowing them to recover financially from their experience of economic abuse.[24] The extreme economic precarity many trafficking survivors face upon leaving their traffickers also makes them vulnerable to re-trafficking (i.e. being trafficked again) as they are forced to turn to potentially abusive relationships to meet their basic economic needs. By extending state-funded benefits to trafficking survivors, states can play a crucial role in helping immigrant survivors recover from abuse and preventing future victimization for them and their children.

III. Promising State Approaches to Helping Immigrant Victims

Emerging State Statutory Trends

Many states have begun to recognize the need for additional state-funded services that allow immigrants, including immigrant victims, access to essential benefits not provided by federal law. By increasing access to this wider array of services, states can begin to address the gaps in wraparound services immigrant victims require to safely leave abusive situations and gain security for themselves, their children, and their families.

Legal services are one frequently overlooked yet lifesaving benefit for immigrant crime victims. Attorneys and legal nonprofits, along with victim advocates and other social service providers, are crucial to helping victims understand the kinds of immigration relief they may be eligible for, navigate the complex legal application process, and assist victims in cooperating with law enforcement. Access to legal counsel is especially important for immigrant crime victims defending themselves against removal proceedings from which they are protected as victims of crime and abuse by federal law.

In 2023 Oregon became the first state to enact universal, state-funded, legal representation for immigrant residents facing removal proceedings, who meet residency and income requirements.[25] At least one other state, New York, has considered similar legislation in the past.[26] Access to legal representation in removal proceedings is a crucial determinant of

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[23] *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Inudstries to Prevent and Disrupt Human Trafficking*, POLARIS PROJECT (July 2018) https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Financial-Industry.pdf.

[24] *In Harm's Way: How Trafficking Systems Fail Human Trafficking Survivors Polaris Project*, POLARIS PROJECT (January, 2023) https://polarisproject.org/wp-content/uploads/2023/07/In-Harms-Way-How-Systems-Fail-Human-Trafficking-Survivors-by-Polaris-modifed-June-2023.pdf.

[25] Or. S.B. 1543, 81 Leg. (2022). New York State has considered similar legislation NY S.B. S999A (2023). Federal legislation establishing a federal right to representation for indigent immigrants facing removal was reintroduced in April 2023 by Representatives Pramila Jayapal (D-WA), Norma Torres (D-CA), and Grace Meng (D-NY), along with Senators Kristin Gillibrand (D-NY), and Corey Booker (D-NJ) in April, 2023. H.R. 2697, 118 Cong. (2023).

[26] https://www.nysenate.gov/legislation/bills/2023/S999/amendment/A. Federal legislation, The Fairness to Freedom Act, has also been introduced.https://www.aila.org/files/o-files/view-file/14E91170-2A51-4D71-8E66-5DCD7A67528F

whether eligible immigrants, including immigrant crime victims, can obtain the legal immigration protections for which they are legally eligible. A study by the American Immigration Council found that 63% of represented immigrants obtained legal relief when sought, as compared to only 13% of unrepresented immigrants.[27] However, less than 40% of immigrants facing removal, [28] including immigrant children and immigrant victims, do not have access to legal counsel, in part because of limited funding for nonprofit legal services and immigrant restrictions on use of Legal Services Corporation (LSC) funds from which victims of crime and abuse are entitled to exemptions.[29] However, in order to benefit from LSC's anti-abuse protections victims need to be screened for abuse instead of immigration status,[30] an approach that has not been fully implemented at many LSC funded legal services agencies across the country. [31]

Access to legal counsel also has a substantial impact on whether immigrants, especially immigrant crime victims, will pursue humanitarian visa relief when eligible. Few immigrant victims file for VAWA, U visa, T visa, or SIJS immigration relief without the assistance of assistance of attorneys or accredited victim advocate representatives. In 2020, U.S. Citizenship and Immigration Services published a report on the demographics of U visa applications over a period of 7 years which found that only 3% of U visa applicants filed *pro se* by unrepresented victims and that 91.6% of U visa applications were filed with the assistance of an attorney or accredited representative.[32]

Oregon's Universal Representation Law established a state fund to provide culturally-specific, victim-centered, pro bono representation to immigrant residents facing removal or civic exclusion through the Equity Corps of Oregon (ECO). The ECO is a collaborative of community-based nonprofit organizations and attorneys who serve immigrant residents, established in 2018.[33] Immigrant residents with household incomes below 200% of the Federal Poverty Level can obtain legal help with removal or civic exclusion proceedings through an ECO affiliated entity, who can then apply back to the state for full compensation.

Oregon's universal representation model allows immigrant residents to obtain legal assistance from qualified attorneys, at no cost for eligible proceedings. While the Universal Representation Law currently provides state funding only for removal and civic exclusion proceedings, the way the fund and the ECO are structured would allow for the legislature to fund

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[27] Ingrid Eagly and Steven Shafer, *Access to Council in Immigration Court*, AMERICAN IMMIGRATION COUNCIL https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf (last accessed Feb. 2., 2024).
[28] *Id*.
[29] *Can LSC Grantees Represent Undocumented Immigrants?*, LEGAL SERVICES CORPORATION, https://www.lsc.gov/our-impact/publications/other-publications-and-reports/can-lsc-grantees-represent-undocumented (last accessed Feb. 2, 2024).
[30] Cheryl Zalenski, *The Need for Pro Bono Assistance to Unaccompanied Immigrant Children*, NATIONAL LEGAL AID & DEFENDER ASSOCIATION CORNER STONE (Jan. 2015) https://niwaplibrary.wcl.american.edu/pubs/anti-abuse-lsc-reg-articles-cornerstone_jan-apr-2015.
[31] Lack of access to counsel at the border or in Expedited Removal proceedings prevents many immigrant victims from getting access to the immigration relief to which they are entitled, in part because they are not aware that there is relief available to them. Access to legal counsel at the border has become increasingly urgent; for some groups of migrants, access to counsel is less than 3 in 10. *Explainer | Too Fast for Fairness: "Expedited Removal" And The Family Expedited Removal Management Program*, The National Immigrant Justice Center (Jan. 11, 2024), https://immigrantjustice.org/research-items/explainer-too-fast-fairness-expedited-removal-and-family-expedited-removal.Unaccompanied children, including child victims, are also routinely un-or-underrepresented, with less than half securing access to counsel for all or part of their proceedings. *Legal Counsel for Unaccompanied Children Is Essential to Due Process and Government Efficiency,* Kids In Need of Defense (KIND), https://supportkind.org/wp-content/uploads/2021/09/Two-Pager-on-Counsel-for-UCs-9.10.pdf.
[32] *U Visa Demographics*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, March 2020, at 6, https://niwaplibrary.wcl.american.edu/pubs/uscis-u-visa-demographics.
[33] *About*, EQUITY CORPS OF OREGON, https://universalrep.org/the-challenge-solution/ (last accessed Feb. 2, 2024).

additional kinds of legal services in the future, many of which ECO affiliates likely already provide. For instance, a state following a similar scheme could choose to offer representation to immigrant victims filing for humanitarian victim-based immigration relief, or legal assistance for unrepresented victims facing complex family court proceedings such as parental termination or child custody hearings.

Other Promising Practices

State lawmakers should also be aware of promising practices that increase access to public benefits for immigrant crime victims, including within their own states. One important promising practice for immigrant victims who may have a path to legalization through humanitarian visa relief is the Individual Taxpayer Identification Number (ITIN). The ITIN is a tax-processing number that allows immigrants and foreign nationals without a Social Security Number to comply with U.S. tax laws. Immigrants who do not have lawful status can obtain ITINs. Many states also allow immigrants to use ITINs in lieu of an SSN to obtain certain public benefits like driver's licenses and state-regulated occupational and professional licenses (see below for further discussion of states that allow ITINs to stand in for SSNs in individual public benefits categories). Filing a federal tax return is also necessary to access certain federal benefits, such as the Affordable Care Act tax credits, for which some immigrants victims may be eligible.[34]

As an overall best practice, states should not require immigrants provide ITINs in lieu of an SSN. As discussed further below, many states require neither ITINs nor SSNs for many occupational and professional licenses or driver's licenses. However, obtaining an ITIN is an excellent practice that allows immigrant victims to obtain benefits in states that *do* require an ITIN. An ITIN also has substantial benefits for immigrants, including all immigrant victims of crime and abuse, who will eventually have a path to legal status, beyond state benefits. For instance, during the pandemic, immigrants with ITINs received Covid-19 Economic Impact Payments (commonly referred to as stimulus payments) under the CARES Act[35], the Consolidated Appropriations Act of 2021[36], and the American Rescue Plan[37], as these payments were dispersed to all eligible federal taxpayers. Individuals with ITINs can also claim crucial economic supports such as the Child Tax Credit.[38] ITINs, and the federal tax compliance they represent, can also serve as evidence of good moral character for immigrant crime victims applying for humanitarian visa relief and for immigrants who are currently or who will be eligible to apply for Legal Permanent Resident status, including immigrant victims whose victim-based immigration cases are approved.

IV. Best Overall Practices That Should Apply to Any State Law Approach

[34] *Individual Taxpayer Identification Number (ITIN): A Powerful Tool for Immigrant Taxpayers*, NATIONAL IMMIGRATION LAW CENTER (Oct. 2022) https://www.nilc.org/wp-content/uploads/2022/12/Individual-Taxpayer-Identification-Number-OCT-2022PDF.pdf.
[35] *Coronavirus Relief Fund*, U.S. DEPARTMENT OF THE TREASURY, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/coronavirus-relief-fund (last accessed Feb. 16, 2024).
[36] *About the CARES Act and the Consolidated Appropriations Act*, U.S. DEPARTMENT OF THE TREASURY, https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act (last accessed Feb. 16, 2024).
[37] *American Rescue Plan*, THE WHITE HOUSE, https://www.whitehouse.gov/american-rescue-plan/ (last accessed Feb. 16, 2024).
[38] *Individual Taxpayer Identification Number (ITIN): A Powerful Tool for Immigrant Taxpayers*, NATIONAL IMMIGRATION LAW CENTER (Oct. 2022), at Footnote 34, https://www.nilc.org/wp-content/uploads/2022/12/Individual-Taxpayer-Identification-Number-OCT-2022PDF.pdf.

Often states will extend eligibility for public benefits to applicants for certain visas earlier than others, creating a patchwork approach to eligibility for immigrant victims. For instance, some states that allow U visa applicants to receive benefits once they receive a Bona Fide Determination do not extend that eligibility to VAWA self-petitioners or SIJS applicants with an approved petition, even though these are analogous stages in the visa process. Some states provide access to state funded cash assistance (TANF), subsidized health care, and food assistance (SNAP) to U and T visa applicants but do not offer the same protection to abused spouses and victims of child maltreatment who are VAWA self-petitioners or SIJS applicants.[39]

This patchwork approach disproportionately impacts applicants for some visa applicants over others, in part due to immigration adjudication timelines and backlogs that did not exist when public benefits laws were being drafted by Congress and the states. For instance, states that only provide benefits to SIJS recipients who have received a green card may not be aware that SIJS recipients must wait months or even years to be able to apply for and receive lawful permanent residency (green card). SIJS recipients, disproportionately minors or very young adults, endure what can be multi-year wait to access benefits, in part because many state statutes were enacted before the current SIJS backlog.

This change in circumstances leaves some of the most vulnerable child victims unprotected, in ways Congress did not envision or intend. Similarly, at the time state legislatures extended access to state-funded public benefits immigrant victims they focused only on U and T visa applicants who were experiencing long delays in benefits access. In recent years as immigration adjudication delays in VAWA self-petition cases have grown from 6 months to over 3 years, VAWA self-petitioner applicants are now in grave need of the same state protections offered T and U visa applicants. By extending eligibility to all immigrant crime victims who are eligible for immigration protections at analogous stages of the immigration process, states can ensure that all victims receive the same protections no matter which visa the victim and their children are eligible to apply for.

State eligibility laws should offer a parallel set of public benefits for immigrant crime victims across all victim-based visa programs.

- **If extending eligibility to include any immigrant victim who has filed or is preparing to file**: parallel benefits for VAWA Self-Petitioners, U visa applicants, T visa applicants, SIJS applicants, trafficking victims who have filed or are preparing to file for Continued Presence.
    - Note, in the states (e.g., CA, IL, WA) that do allow immigrant crime victims who have filed or are preparing to file access to state funded benefits, this eligibility in only available to U visa and/or T visa applicants. VAWA Self-Petitioners and SIJS applicants may not be eligible until a later stage in the process.[40] States should ideally consider legislation that equalizes access and provides parallel eligibility across all victim-based types of immigration relief.

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

[40] One notable exception is CHIP eligibility for lawfully present children, which includes SIJS applicants. For a list of states that exercise this option *see*: *Medical Assistance Programs for Immigrants in Various States*, NATIONAL IMMIGRATION LAW CENTER (Aug. 2023) https://www.nilc.org/wp-content/uploads/2023/08/med-services-for-imms-in-states-2023-08-08.pdf.

- **If extending eligibility to include immigrant victims who have received a prima facia determination on an application:** parallel benefits for VAWA Self Petitioners who have received a prima facie determination, SIJS applicants who have been approved, U visa and T visa applicants who have received a Bona Fide Determination, and trafficking victims for whom Continued Presence has been requested by Federal law enforcement. T visa applicants who have received a Bona Fide Determination and recipients of an HHS Certification Letter (including for Continued Presence) and trafficked immigrant children who have received an HHS Child Eligibility Letter are already eligible to the same extent as refugees and asylees under federal law.

- **If creating an exception to the 5-year bar for some victim-based visa recipients**: Ensure that any benefits extended to U visa and T visa applicants also extend to VAWA Self-Petitioners and to both SIJS children who have been granted lawful permanent residency and SIJS recipient children who are waiting for an available visa to apply for lawful permanent residence. This practice will account for the current backlog of SIJS recipients who are eligible to apply for lawful permanent residence but must wait months or years for an available visa. It will also ensure that battered immigrant spouses and children abused by U.S. citizens and lawful permanent residents receive the same benefits as other immigrant victims of crime.

- **If creating an exception for victims of domestic violence:** Ensure that all domestic violence and child abuse victims qualify by extending benefits access to victims who meet either state law definitions of child abuse, child endangerment, and domestic violence or federal immigration and benefits laws definitions of "battering or extreme cruelty". This practice will ensure that victims of child abuse are eligible, even though not all states include child abuse in domestic violence statutes.[41]

V. VAWA Confidentiality[42]

VAWA federal immigration confidentiality laws[43] offer three types of protections specifically designed to protect immigrant survivors. The laws prohibit the government, including the Department of Homeland Security (DHS) from: (1) relying on information provided by the perpetrator; (2) enforcing immigration law at certain locations; (3) disclosing information about a victim who has a pending or approved immigration case that is protected by federal immigration VAWA Confidentiality protections.[44] Victims *do not* need to have filed for humanitarian visa relief to be protected by VAWA Confidentiality's deportation, prohibitions

[41] Tolulope Adetayo, Rafaela Rodrigues, Chloe Canetti & Leslye E. Orloff, *State Law Definitions of Domestic Violence Include Child Abuse* (Dec. 14, 2017), Appendix N, https://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect.
[42] For more information on VAWA Confidentiality *see FAQs for Victims' Lawyers: The Central Role of Federal Immigration Laws and the Confidentiality Provisions of the Violence Against Women Act (VAWA) in Protecting the Safety and Privacy of Immigrant Survivors*, VICTIM RIGHTS LAW CENTER, https://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigration-Privacy-FAQs.pdf (last accessed Feb. 2, 2024).
[43] 8 U.S.C. 1367; Kavell Joseph and Leslye E. Orloff, *VAWA Confidentiality Interlineated Statues* (March 18, 2018) https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-interliniated.
[44] These federal immigration VAWA confidentiality protections are in addition to the VAWA privacy and confidentiality provisions protecting all victims of domestic violence, sexual assault, dating violence and stalking set forth in 34 U.S.C. § 12291.

against reliance on perpetrator provided information, and immigration enforcement location protections.[45]

Immigrant crime victims who have filed VAWA, T or U visa related cases receive confidentiality protections that preclude release of information about the existence of, actions taken in, and release information contained in the victim's immigration case file. [46] These protections extend to all immigration cases filed by any VAWA confidentiality protected immigrant victim.[47] For instance, if a child has suffered sexual assault in the U.S. and has filed for a U visa, and the child was also abandoned by their father in their home country and has filed an SIJS application, both the SIJS and the U visa cases receive immigration law's VAWA confidentiality protections because the applicant is a VAWA confidentiality protected child. Federal VAWA confidentiality laws effectively seal the immigration case files against disclosure and discovery,[48] but allow for some limited release of information under limited circumstances including when needed for and solely used for verification of an immigrant victim's eligibility for state or federal public benefits.[49] As will be discussed below, VAWA confidentiality's protections have a particularly important impact on best practices with regard to state Driver's License laws.

VI. Access to Public Benefits for Immigrant Crime Victims

Which state or federally funded public benefits an immigrant victim can access and whether they must wait 5 years to access a particular federal public benefit after becoming a qualified immigrant depends on:[50]

- What state the victim resides in;
- When the victim first entered the United States;
- What form of crime victim related or other immigration status the victim has applied for or been granted;
- The public benefits program the victim or their child needs to apply for; and
- Whether the publicly funded program is open to all persons without regard to immigration status under federal law.[51]

Public Benefits Eligibility Categories

Qualified Immigrants:

[45] *Three Prongs of VAWA Confidentiality*, NIWAP (Dec. 15, 2021), https://niwaplibrary.wcl.american.edu/pubs/conf-vawa-bro-3prongsofconfidentiality.
[46] Alina Husain, Daliana Gomez Garcia, and Leslye Orloff , *VAWA Confidentiality Statutes, Legislative History and Implementing Policy*, NIWAP (Updated June 7, 2022), https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history.
[47] *USCIS Policy Update: VAWA Confidentiality and Safe Address for Survivor-Based Petitions* (April 11, 2023), https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-policy-update-safe-address. US Citizenship and Immigration Services Policy "Safe Address and Special Procedures for Persons Protected by 8 U.S.C. 1367" Alert April 11, 2023. PA-2023-14.
[48] Rafaela Rodrigues, Leslye E. Orloff, and Gabriela Rezetko, *How to Argue or Rule on VAWA Confidentiality Protections in Discovery Involving Immigrant Survivors*, NIWAP (November 18, 2022), https://niwaplibrary.wcl.american.edu/pubs/how-to-vawa-confidentiality-discovery.
[49] 8 U.S.C. 1367(b)(5)
[50] Soraya Fata, Leslye E. Orloff and Monique Drew , *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, NIWAP, https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims.
[51] Catherine Longville and Leslye E. Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status*, NIWAP (May 22, 2014), https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants (discussing state and federally funded programs and services that are open to all persons without regard to immigration status including but not limited to public health and safety and programs necessary to protect life and safety).

Any immigrant crime victim who is a *qualified immigrant* is eligible for many state and federal public benefits.[52] Whether a qualified immigrant is eligible to access a federal-means tested public benefits will depend on whether they meet heightened immigrant eligibility requirements and whether the state offers state funded benefits that cover the immigrant until they can qualify for the federally funded means-tested benefits program.[53] When states offer state funded benefits these benefits will often cover qualified immigrants during the 5 year bar to federal means tested public benefits.[54] Victims with the following immigration statuses are qualified immigrants:[55]

- Lawful permanent residents;[56]
    - Trafficked children with Child Eligibility Letters issued by the Office on Trafficking in Persons (OTIP) receive public benefits access to the same extent as refugees;
- Asylees and refugees;
- Cuban and Haitian entrants;
- Immigrants paroled into the U.S. for more than a year;[57]
- Immigrants granted withholding of removal and immigrants granted conditional entry;
- VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, Battered Spouse Waiver applicants with prima facie determinations or approved cases;
- Approved family based visa applicants who have been battered or subjected to extreme cruelty; and
- T visa holders and T visa applicants with bona fide determinations.

Lawfully Present Immigrants:

Under the Affordable Care Act immigrants need to be lawfully present to be able to purchase health care on the federal and state health care exchanges.[58] States may elect to provide state funded health care subsidies to immigrants. As of January 2024:

- 37 states provide state funded health care for lawfully present children
- 30 states provided state funded full-healthcare for pregnant persons and 9 other states provide only state funded prenatal care for pregnant persons.

Lawfully present immigrant crime victims include:

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[52] *Id*. Federal public benefits that all qualified immigrants receive include but are not limited to: public and assisted housing, rural housing, federal student aid, grants and loans, foster care, adoption assistance, low income heating energy and assistance program (LIHEAP), and FEMA disaster assistance.
[53] Federal mean-tested public benefits are: TANF, TANF funded-child care, SNAP food assistance, Medicaid, CHIP, and SSI.
[54] Leslye Orloff and Axelle Pesme, *State Funded Public Benefits Comparison Chart*, NIWAP (July, 7, 2022). https://niwaplibrary.wcl.american.edu/pubs/state-benefits-comparison-chart.
[55] *See* Leslye E. Orloff, *Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse, and Human Trafficking*, NIWAP (Oct. 31, 2021), https://niwaplibrary.wcl.american.edu/pubs/annotated-qualified-immigrant-statutes-survivors.
[56] SIJS children and U visa victims will need to wait until they are lawful permanent residents to be qualified immigrants.
[57] Includes many Afghan and Ukrainian immigrants and historically included many Cuban immigrants.
[58] *See Coverage for lawfully present immigrants*, HEALTHCARE.GOV, https://www.healthcare.gov/immigrants/lawfully-present-immigrants/ (last accessed Feb. 6, 2024); *See also Immigration status and the Marketplace*, HEALTHCARE.GOV, https://www.healthcare.gov/immigrants/immigration-status/ (last accessed Feb. 6, 2024).

- VAWA self-petitioners, VAWA cancellation of removal or VAWA suspension of deportation with a prima facie determination;
- SIJS applicant children;
- U visa victims who have been granted a U visa or deferred action (bona fide determination or wait-list approved);
- T visa applicants who have been granted T visas or bona fide determinations;
- Other immigrant survivors with lawful presence[59] or who are qualified immigrants (listed above).

Persons Residing Under Color of Law (PRUCOL):

PRUCOL a benefits eligibility category that offers access to state funded public benefits to persons residing in the U.S. under color of law. PRUCOL is not a form of immigration status. The term PRUCOL generally means that immigration authorities are aware of a noncitizen's presence in the United States, but have no plans to deport or remove them from the U.S. Whether an immigrant is considered PRUCOL is interpreted differently depending on the state and the public benefits program. Immigrants who have filed and have pending applications for immigration relief could be considered PRUCOL.

State Funded Public Benefits Offered to Immigrants

Full Scope Medicaid for Adults

I. Maryland's Existing Statutory Approach

In Maryland, Qualified Immigrants (which includes some immigrant crime victims) are eligible to receive Full Scope Medicaid, *subject to the 5-year bar* unless exempted by federal law[60].

- **VAWA Self-Petitioners** (including Battered Spouse Waivers) become eligible upon receiving a Prima Facie Determination
- **U visa applicants** become eligible upon receiving Lawful Permanent Residency
- Those with **Special Immigrant Juvenile Status** (SIJS) are eligible upon receiving Lawful Permanent Residency

[59] The full list of immigrants who are defined by the U.S. Department of Health and Human Services as lawfully present include: Lawfully present immigrants who are able to purchase health insurance on the health care exchange include: Lawful Permanent Residents (Green Card Holders); Asylees; Refugees; persons with valid visas who have not violated the terms of their visas; Cuban/Haitian entrants; Paroled into the U.S. for at least one year; Conditional entrant granted before 1980; Battered VAWA non-citizens, spouses, children, or parents; eligible immigrants who have filed applications for lawful permanent residency; Victims of trafficking and their spouse, child, sibling, or parent or individuals with a pending application for a victim of trafficking visa; immigrants with a pending application for cancellation or removal or suspension of deportation; Granted withholding of deportation; Member of a federally recognized Indian tribe or American Indian born in Canada; Citizens of the Marshall Islands, Micronesia, and Palau who are living in one of the U.S. states or territories (referred to as Compact of Free Association or COFA migrants); Temporary Protected Status; Special Immigrant Juvenile Status; asylum applicants; Convention Against Torture; victims of trafficking; Legal status conferred by other laws (temporary resident status, LIFE Act, Family Unity individuals). *See Coverage for Lawfully Present Immigrants*, HEALTHCARE.GOV, https://www.healthcare.gov/immigrants/lawfully-present-immigrants/ (last accessed Feb. 6, 2024)

[60] Monica Bates, Leslye E. Orloff, Abigail Whitmore, *Access to State-Funded Public Benefits in Maryland for Survivors, Based on Immigration Status*, NIWAP (updated Sept 3, 2022), https://niwaplibrary.wcl.american.edu/pubs/maryland-benefits.

- In accordance with federal law, **victims of human trafficking** with HHS Certification (based on Continued Presence or a bona fide determination of a T visa application), or who are under the age of 18 and have received an HHS Child Eligibility Letter determination, are eligible to the same extent as refugees and asylees, meaning they are not subject to the 5-year bar.

Maryland is also one of 26 states to extend medical assistance to Lawfully Residing pregnant immigrants, regardless of date of entry, under the Immigrant Children's Health Improvement Act (ICHIA).[61]

Montgomery County has additional programs that provide health care to eligible resident adults regardless of immigration status.

In **Montgomery County** the Montgomery Cares Program provides medical care for county residents ages 19 and over who:

- Are uninsured
- Are not eligible for Maryland CHIP
- Have family incomes under 250% of the Federal Poverty Level

Maryland's current statutes leave many immigrant crime victims unprotected. These include:

- <u>Victims Subject to the Five-Year Bar:</u>
  - VAWA self-petitioners
  - U visa lawful permanent residents
  - Over 18 year old SIJS lawful permanent residents

- <u>Victims Filing,Preparing to File, or Who Have Pending:</u>
  - VAWA Self-Petitioners, T visa applicants, U visa applicants, applicants for Continued Presence and SIJS applicants
  - Victims eligible to file VAWA self-petitions, T visas, U visas, SIJS, and for Continued Presence who are filing or preparing to file
  - Continued Presence (CP) applicants for whom CP has been requested by federal law enforcement
  - SIJS applicants between the ages of 19 and 21 (not eligible for coverage as children) whose applications have been approved
  - SIJS recipients over the age of 19 (not eligible for coverage as children) who are waiting for an available visa to adjust status

- <u>Immigrant Victims of Domestic Violence and Child Abuse:</u>
  - Adults and children who are battered or abused immigrants who have not filed and are not preparing to file for humanitarian visa relief

[61] *Medicaid CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women*, KFF HEALTH NEWS (January 1, 2023), https://www.kff.org/health-reform/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Lawfully-Residing%20Immigrant%20Children%20Covered%20without%205-Year%20Wait%20(ICHIA%20Option)%22,%22sort%22:%22asc%22%7D/.

II. Options for Increasing Access to State Funded Health Care for Adult Immigrant Survivors of Crime or Abuse

Model Approach

Provide state-funded look-alike coverage (i.e. equivalent to Medicaid) for all otherwise eligible state residents who are not eligible for Medicaid because of their immigration status.

Existing State Statutes that Adopt the Model Approach

The Model Approach is the current statutory scheme of **Oregon**, **Minnesota**, and the **District of Columbia**.

- **Oregon** provides full scope Medicaid coverage to all otherwise eligible, non-pregnant adults, regardless of immigration status, through their state-funded Healthier Oregon Program (formerly Cover all People).[62]

- **The District of Columbia** provides full scope medical coverage to all otherwise eligible adults, regardless of immigration status, through the DC Health Care Alliance.[63]

- As of January 1st 2025, **Minnesota** will make MinnesotaCare available to eligible to all otherwise eligible residents, regardless of immigration status.[64]

- In 2024, **Washington** will begin providing state-funded Medicare-like coverage regardless of immigration status; however, program funds are limited, and demand is likely to exceed available program funds.[65]

Incremental Approaches to Increasing Immigrant Victim Eligibility For State Funded Health Care

Other states have eligibility requirements that are less inclusive than the Model Approach, but extend eligibility to more groups of immigrant victims than Maryland's current statutory approach. Consistent with Best Practices, all recommendations listed below provide equal access to state-funded health care eligibility for immigrant survivors across all types of victim-based immigration relief.

1. **Expand full-scope state funded healthcare eligibility to include Lawfully Present immigrants, with a tiered system that provides more limited-scope coverage to PRUCOL[66] or undocumented state residents.**

[62] Pregnant adults are eligible for prenatal coverage and 12 months of post-partum care through a standalone program using both state and federal funds.
[63] D.C. LAW 14-18; D.C. CODE § 7–1405.
[64] 2023 MINN. LAWS ART. 1 SEC. 6.
[65] WASH. ADMIN. CODE § 182-5070110 (2023); *State-Funded TANF Replacement Programs*, NATIONAL IMMIGRATION LAW CENTER (May 2023), https://www.nilc.org/issues/economic-support/guide_tanf/.
[66] Persons Residing Under Color of Law.

- **Massachusetts**[67]: Adopts a tiered approach to eligibility for adults of different immigration statuses.
  - *Lawfully present immigrants* are eligible for ConnectorCare subsidies under 300% of the Federal Poverty Level
  - Not Lawfully Present *PRUCOL adults* under 300% of the Federal Poverty Level are eligible for Family Assistance with premiums comparable to Marketplace contributions for eligible adults earning 150-300% of the Federal Poverty Level.

2. Extend eligibility to immigrant victims who have filed or are preparing to file VAWA Self-Petitions, U visas applications, T visa applications, applications for Continued Presence, applications for OTIP child eligibility letters, and applications for SIJS

Washington, **New York**, **California**, and **Illinois** all provide eligibility for some immigrant crime victims filing or preparing to file for victim-based immigration relief.

- **New York** state's Medicaid program extends eligibility to U visa applicants, T visa applicants, VAWA Self-Petition applicants, and SIJS applicants. [68]

- **Washington**'s Medical Care Services (MCS) extends eligibility to immigrant victims who have filed or are preparing to file for T visas, U visas, or for Continued Presence. [69]

- **California**[70] provides medical assistance and other benefits to immigrant victims of human trafficking and other U visa qualifying crimes, before they are eligible for federal funds.[71] This includes any person meeting the income and resource limitations who:
  - Has filed a U visa application
  - Can provide a sworn statement or documentation showing that they are a victim of human trafficking *and;*
    - Have filed or are preparing to file an application for a T visa;

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[67] *MassHealth Information for Noncitizens*, MASSHEALTH.GOV, https://www.mass.gov/info-details/masshealth-information-for-noncitizens#general-information-for-members-and-applicants (last accessed Feb. 16, 2024).

[68] All adults over the age of 65 who are not otherwise eligible for health coverage are eligible for comprehensive state-funded healthcare, regardless of immigration status. NY S.B. S2237A (2023).

[69] *Public Benefit Eligibility for Survivors of Certain Crimes*, WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Feb. 5, 2024), https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/public-benefit-eligibility-survivors-certain-crimes; Under Washington State law survivors are eligible for state funded medical care services (MCS) if the survivor has filed or are preparing to file T visa or U visa applications or has been harmed by specific crimes which include: human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, coercion of involuntary servitude, sexual exploitation of children, or similar crimes listed under Chapter 9A.40 RCW or similar laws from other states and has filed an application for asylum or been granted continued presence. *See* WASH. ADMIN. CODE § 182-508-005(1)(a)(iii)(2022) (Survivors of Certain Crimes (SCC) program through Washington Apple Health Medical Care Services); *see also* WASH. ADMIN. CODE § 388-424-0035 (1) & (2) (2022); & WASH. ADMIN. CODE § 388-424-0001(4)(2024) (Citizenship and Immigration Status Definitions, Survivors of certain crimes); 3d Sub. S. 5164, 66th Leg., Reg. Sess. (Wa. 2020) https://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Passed%20Legislature/5164-S3.PL.pdf?q=20220303054314; *Letter Regarding Third Substitute Bill 5164*, STATE OF WA DEP'T OF SOC. SERVS. (Jan. 18, 2022), https://www.dcyf.wa.gov/sites/default/files/pdf/gov/docs/DSHS_SHB5164_Letter.pdf; *Public Benefit Eligibility for Survivors of Certain Crimes*, WASH. STATE ECONOMIC SERVICES ADMIN., https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/public-benefit-eligibility-survivors-certain-crimes (last visited Feb. 2, 2024).

[70] CA Senate Bill 245 (2023); CA Senate Bill 1569 (2023); *Trafficking and Crime Victims Assistance Program (TVCAP) Eligibility Guidelines* CA HEALTH AND HUM. SERVS. DEP'T OF SOC. SERVS., (Jan. 2015), http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acin/2015/I-07_15.pdf . (U visa applicants are eligible for medical assistance. Trafficking victims who provide a sworn statement considered credible are eligible).

[71] CAL. WELF. & INST. CODE § 13650 (2022).

- Are an applicant for whom Continued Presence has been requested by law enforcement, *or*;
- Are otherwise taking steps to meet the eligibility conditions for federal benefits. [72]

- In **Illinois**[73], immigrant victims who have filed or are preparing to file U and T visa applications are eligible for medical assistance.[74] Illinois also extends eligibility to "qualified abused" immigrants, regardless of date of entry, as defined by U.S. immigration laws. This category includes immigrants who file for VAWA Self-Petitions, Battered Spouse Waivers, VAWA cancellation of removal, VAWA suspension of deportation and certain other battered immigrants who are spouses, children, or step-children of U.S. citizens or lawful permanent residents. Victims of torture are also eligible for up to 24 months of continuous coverage.

3. Extend eligibility to immigrant victims who have received a prima facie determination, bona fide determination or wait list approval, who have been approved for SIJS, and for whom Continued Presence has been requested by Federal Law Enforcement

Minnesota[75]**, and Massachusetts** extend eligibility to U visa applicants with Bona Fide Determinations. Massachusetts and Colorado[76] also extend eligibility to VAWA Self-Petitioners with a prima facie determination.

4. **Extend eligibility to qualified abused immigrants providing state funded health care during the 5-year bar**

- **Illinois**[77] extends eligibility to "qualified abused" immigrants as defined by U.S. immigration laws, irrespective of date of entry. Victims of torture can also receive up to 24 months of continuous coverage

- **New Mexico**[78] extends eligibility to qualified abused immigrants irrespective of date of entry, as defined by U.S. immigration laws [79]

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[72] *Manual of Policies and Procedures, Specialized Programs*, CA DEP'T OF SOCIAL SERVICES, July 1, 2008, at 64, https://www.cdss.ca.gov/ord/entres/getinfo/pdf/SPMAN.pdf#page=59*; CalWORK's Eligibility Handbook*, SAN FRANCISCO HUMAN SERVICES AGENCY (May 29, 2019), https://www.sfhsa.org/sites/default/files/media/document/migrated/Handbook_CalWORKs%20Eligibility%20Two_5.29.19.pdf.

[73] Adults 65 or older with incomes below 100% of the federal poverty line are eligible for Medicaid-like coverage regardless of immigration status. Adults ages 42-64 whose income is at or below 138% of the federal poverty line are also eligible for Medicaid-like coverage regardless of immigration status, though the state has paused new enrollments for this category beginning in July 2023. ILL. DEP'T HUMAN SERVICES, *MR #17.19: Medical Benefits for Non-Citizen Victims of Trafficking, Torture or Other Serious Crimes* (Dec. 12, 2017) https://www.dhs.state.il.us/page.aspx?item=97367 (In Illinois, victims and their family members who filed or are preparing to file T visa or U visa applications are eligible for medical assistance).

[74] Coverage for persons preparing to file will terminate if the applicant has not filed a visa application within one year, unless the individual has experienced a health crisis, has been unable after reasonable attempts to obtain necessary information from a third party, or has other extenuating circumstances that prevent the individual from filing their application. ILL. DEP'T HUMAN SERVICES, *MR #17.19: Medical Benefits for Non-Citizen Victims of Trafficking, Torture or Other Serious Crimes* (Dec. 12, 2017) https://www.dhs.state.il.us/page.aspx?item=97367.

[75] In Minnesota, any person receiving services from the Minnesota Center for Victims of Torture is eligible without regard to immigration status.

[76] Colorado also provides reproductive and contraceptive healthcare regardless of immigration status.

[77] ILL. DEP'T HUMAN SERVICES, *MR #17.19: Medical Benefits for Non-Citizen Victims of Trafficking, Torture or Other Serious Crimes* (Dec. 12, 2017) https://www.dhs.state.il.us/page.aspx?item=97367.

[78] N.M. CODE R. 8.200.410.11 (2017).

[79] 8 U.S.C. 1641(c).

I. Maryland's Existing Legal Regime

Maryland is one of 35 states that provides medical coverage to lawfully present children regardless of date of entry under the Immigrant Children's Health Improvement Act (ICHIA).[80] This includes many groups of children who are immigrant victims.

In Maryland, the following categories of minor immigrant victims are eligible for medical assistance regardless of date of entry and are not subject to the federal 5-year bar.

- **VAWA Self-Petitioners under the age of 19** are eligible upon receiving a Prima Facie Determination.
- **U visa applicants under the age of 19** are eligible upon receipt of a Bona Fide Determination or Wait List approval.
- **Special Immigrant Juvenile Status under the age of 19** (SIJS) applicants are eligible upon filing.
- In accordance with federal law, **victims of human trafficking** with HHS Certification (based on Continued Presence or a bona fide determination of a T visa application), or who are under the age of 18 and have received an HHS OTIP eligibility letter, are eligible to the same extent as refugees and asylees.

Montgomery County and Prince George's County have additional programs that provide health care to eligible resident children regardless of immigration status.

- The **Montgomery County** Care for Kids Program provides medical care for county residents under the age of 19 who:
    - Are uninsured
    - Are not eligible for Maryland CHIP
    - Have family incomes under 250% of the Federal Poverty Level

- **Prince George's County** provides medical care for county residents under the age of 19 who:
    - Are uninsured
    - Are not eligible for Maryland CHIP
    - Have family incomes under 300% of the Federal Poverty Level

[80] *Medicaid CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women*, KFF HEALTH NEWS (January 1, 2023), https://www.kff.org/health-reform/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Lawfully-Residing%20Immigrant%20Children%20Covered%20without%205-Year%20Wait%20(ICHIA%20Option)%22,%22sort%22:%22asc%22%7D/.

II. Options for Increasing Access to State Funded Health Care for Immigrant Children Who Are Survivors of Crime or Abuse

Model Approach

Adopt the approach taken by Montgomery and Prince George's counties statewide by providing state-funded look-alike programs (i.e. coverage equivalent to CHIP for all otherwise eligible state residents who are not eligible for CHIP).

Existing State Statutes That Adopt the Model Approach

The Model Approach reflects the current laws in 9 states, as well as Montgomery and Prince George's counties (see above).

- **Oregon**[81]: All Oregon residents (including children) with incomes below 300% of the Federal Poverty Line, regardless of immigration status, are eligible for Oregon Health Plan coverage through the Healthier Oregon Program (formerly Cover All People).

- **California**[82]: Provides medical coverage to all eligible persons under the age of 26 who are below 138% of the Federal Poverty Line, regardless of immigration status, through a state funded program.

- **Illinois**[83]: All children under 318% of the Federal Poverty Level, regardless of immigration status, can get coverage through the All Kids Program. The program additionally suspends all premiums and copays for enrollees.

- **Rhode Island**[84]: All children under the age of 19 under 250% of the Federal Poverty Level are eligible regardless of immigration status

- **New York**[85]: All children regardless of immigration status are covered by the Child Health Plus program. Children receive free healthcare up to 222% of the Federal Poverty Level, and subsidized healthcare up to 400% of the Federal Poverty Level.[86]

- **New Jersey**[87]**:** All children under 19 under 355% of the Federal Poverty Level are eligible for New Jersey Family Care, regardless of immigration status.

[81] OR. REV. STAT. § 414.231 (2023).
[82] Cal. Senate Bill 75 (2015); *see also Senate Bill (SB) 75: Full Scope Medi-Cal Coverage for All Children - Frequently Asked Questions*, CAL. DEP'T OF HEALTH CARE SERVICES, https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/SB75_FAQ.aspx (last accessed Feb. 16, 2024).
[83] 22 ILL. COMP. STAT. 215/170 (2023).
[84] 2022 R.I. Pub. Laws 2187.
[85] S. 1572A (NY 2021).
[86] *2022 Health Plus Monthly Eligibility and Premiums*, NEW YORK STATE DEPARTMENT OF HEALTH, https://www.nyc.gov/assets/ochia/downloads/pdf/child_health_plus.pdf (last accessed Feb. 16, 2024).
[87] H.R. 4516, 220th Leg. (N.J. 2022).

- **Washington[88]:** Children with household incomes below 317% of the Federal Poverty Line are eligible regardless of immigration status. Children with household incomes below 215% of the Federal Poverty Line are not required to pay premiums or copays.

- **District of Columbia[89]**: All residents under the age of 21 with incomes under 200% of the Federal Poverty Level, are eligible for the DC Immigrant Children's Program regardless of immigration status. Note: Immigrant residents over the age of 21 are eligible for parallel coverage through the DC Health Care Alliance.

- **Minnesota[90]** has adopted the model approach, which will become effective in 2025.

Incremental Approaches to Increasing Eligibility

Other states have eligibility requirements that are less inclusive than the Model Approach, but extend eligibility to more groups of immigrant victims than Maryland's current legal regime. Consistent with Best Practices, all recommendations parallel eligibility across types of visa relief.

1. **In addition to providing coverage for lawfully present children, provide tiered coverage to PRUCOL children and children without legal status.**

- **Massachusetts**: Adopts a tiered approach to eligibility for children of different legal statuses.
    - Lawfully present children are eligible for limited scope coverage under the MassHealth Family Assistance Program and CommonHealth Program (which provides healthcare to individuals including children with disabilities).[91]
    - Children who are PRUCOL may be eligible for these programs depending on their income and medical condition.[92]
    - All children under the age of 19 can receive primary and preventative care (including dental care, mental health care, care for substance use disorders, and pharmacy services) through the Children's Medical Security Plan.[93]

- **Hawaii[94]**: Hawaii extends eligibility to eligible PRUCOL children.

[88] WASH. ADMIN. CODE § 182-503-0535 (2023).
[89] D.C. MUN. REGS. TIT. 29 § 7300 (2024).
[90] *2023 Health and Human Services budget will expand access to affordable care*, MINNESOTA BUDGET PROJECT (Aug. 2023), https://www.mnbudgetproject.org/reportdetails/2023-health-and-human-services-budget-will-expand-access-to-affordable-care
[91] *Understanding Non-Citizen Eligibility for Health Coverage from MassHealth and the Health Connector*, MASSACHUSETTS LAW REFORM INSTITUTE (Mar. 2023), https://www.masslegalservices.org/system/files/library/Understanding%20eligibility%20of%20non-citizens%20for%20MassHealth%20and%20Health%20Connector%20%28March%202023%29_0.pdf
[92] Heather Rossi, *Verification of PRUCOL Status*, MASSHEALTH (Feb. 2022), https://www.mass.gov/doc/eom-22-04-verification-of-prucol-status-0/download.
[93] MASSHEALTH INFORMATION FOR NONCITIZENS, MASS.GOV, (Last updated July 17, 2023) https://www.mass.gov/info-details/masshealth-information-for-noncitizens
[94] HAW.REV. STAT. ANN. § 346-59.4(2) (West 2020); *Haw. State Med-Quest Division, State Medical Insurance of Immigrant Children Program* https://medquest.hawaii.gov/en/archive/eligibility/EligPrograms_SA_IC.html (last visited Feb. 6, 2024).

2. **In addition to providing coverage for lawfully present children, extend eligibility to all qualified abused immigrants (including eligible abused children and children of eligible abused parents whether or not the children are also abused).**

- **New Mexico[95]:** In addition to extending coverage to lawfully present children, New Mexico extends eligibility to qualified abused immigrants, which includes children and children of battered parents as defined by U.S. immigration laws.[96]

- **Illinois[97]** also extends Medicaid eligibility to qualified abused immigrants as a standalone category (as noted in the section of this report on medical assistance for adults). Standalone eligibility is not relevant for children as all income eligible children receive medical assistance, regardless of immigration status.

Healthcare for Pregnant People

I. Maryland's Existing Statutory Approach

The Healthy Baby Equities Act provides prenatal and postpartum coverage up to 4 months, regardless of immigration status.[98]

Maryland is one of 36 states plus the District of Columbia to provide prenatal care to immigrant residents regardless of immigration status, under the Children's Health Insurance Program's "Unborn Child" Option.[99] The Unborn Child Option allows states to use federal funds to provide prenatal care from conception to birth but does not cover postpartum care, unless the state otherwise bundles prenatal care with labor, delivery, and postpartum care.[100]

The American Rescue Plan allowed states to extend CHIP coverage to include up to 12 months of postpartum care. This option which was originally available to states only for five years, is now been made permanently available.[101] Of the 41 states (including DC) that have implemented the extension, 10 (including Maryland) have extend the coverage to all residents regardless of immigration status, using a CHIP Health Services Initiative. Of those states, 8 (including DC[102]) provide 12 months of comprehensive medical coverage in the postpartum period regardless of immigration status. [103]

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[95] N.M. CODE R. 8.200.410.11 (2017).
[96] 8 U.S.C. 1641(c).
[97] ILL. DEP'T HUMAN SERVICES, *MR #17.19: Medical Benefits for Non-Citizen Victims of Trafficking, Torture or Other Serious Crimes* (Dec. 12, 2017) https://www.dhs.state.il.us/page.aspx?item=97367.
[98] Healthy Babies Equity Act, H.R. 1080, 444th Leg. (Md. 2022).
[99] 42 Fed. Reg. § 457.10.
[100] Many other pregnancy related emergency medical coverage in Medicaid and CHIP requires 60 days of postpartum care but the Unborn Child Option does not contain these provisions. *Medicaid CHIP Coverage of Lawfully-Residing Immigrant Children and Pregnant Women*, KFF HEALTH NEWS (January 1, 2023), https://www.kff.org/health-reform/state-indicator/medicaid-chip-coverage-of-lawfully-residing-immigrant-children-and-pregnant-women/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Lawfully-Residing%20Immigrant%20Children%20Covered%20without%205-Year%20Wait%20(ICHIA%20Option)%22,%22sort%22:%22asc%22%7D/.
[101] *RE: Improving Maternal Health and Extending Postpartum Coverage in Medicaid and the Children's Health Insurance Program (CHIP),* DEPARTMENT OF HEALTH AND HUMAN SERVICES (December 7, 2021), https://www.medicaid.gov/sites/default/files/2021-12/sho21007_1.pdf.
[102] DC does not have standalone postpartum coverage, but provides full scope medical coverage (including prenatal and postpartum coverage) to all residents regardless of immigration status through the DC Health Alliance.
[103] California. Connecticut, Illinois, Maryland, Massachusetts, Minnesota, Rhode Island, and Washington Provide postpartum coverage. *Key Facts on Health Coverage of Immigrants*, KFF HEALTH NEWS (Sept. 17, 2023) https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-health-coverage-of-immigrants/.

Best Practices

Provide comprehensive, Medicaid equivalent coverage rather than prenatal-only coverage to pregnant immigrants: Of the 20 states that have elected to provide medical coverage to pregnant immigrants under CHIP, the majority provide full-scope Medicaid-equivalent coverage during pregnancy. However, some states have chosen to limit coverage to services that are directly related to pregnancy. These practices do not allow the pregnant person to receive coverage for medical services that are not directly pregnancy-related or related to the fetus, even if the health condition impacts the pregnancy, placing both the mother and child at a higher risk for adverse health outcomes.[104] Immigrant survivors of domestic violence, sexual assault, child abuse, human trafficking, and other crimes often have health care needs that extend beyond those related to the pregnancy itself. Survivors benefit most from comprehensive Medicaid equivalent coverage including during pregnancy and post-partum. When determining their scope of coverage, states should ensure that pregnant immigrants receive full-scope medical coverage during pregnancy and during whatever postpartum period the state funds. States should increase access to full-scope postpartum medical coverage for the full 12-month period authorized in the American Rescue Plan.

I. Options for Increasing Access to State Funded Prenatal and Postpartum Care for Immigrants Who Are Survivors of Crime or Abuse

Model Approach

State statutes that provide prenatal care to undocumented immigrants exist alongside state statutory approaches that provide state-funded medical care for both children and adults. States integrate prenatal, postpartum, and other medical care in different ways. For instance:

- The **District of Columbia** does not provide standalone coverage for prenatal or postpartum care, but does provide healthcare equivalent to Medicaid to all income eligible residents regardless of immigration status that includes these services.

- The Healthier **Oregon** Program, which similarly provides state-funded care to all residents regardless of immigration status, does not include prenatal care; however, Oregon separately provides prenatal healthcare, 12 months of comprehensive coverage postpartum, and reproductive healthcare to pregnant persons regardless of immigration status through a combination of federal and state-funded programs.

Model Approaches to ensuring that pregnant state residents receive prenatal and postpartum healthcare regardless of immigration status can thus take multiple forms:

[104] *Supporting Health Equity and Affordable Health Coverage for Immigrant Populations: Chip Coverage Option for Pregnant Immigrants and their Children*, MANATT HEALTH, STATE HEALTH & VALUE STRATEGIES (January 2022), https://www.shvs.org/wp-content/uploads/2022/01/Supporting-Health-Equity-and-Affordable-Health-Coverage-for-Immigrant-Populations_CHIP-Coverage-Option-for-Pregnant-Immigrants-and-their-Children.pdf.

a. Expand postpartum coverage regardless of immigration status from 4 to 12 months using state funds.

b. Provide state funded medical care to children and adults who are otherwise eligible for Medicaid or CHIP but are ineligible because of immigration status. If pregnant residents are not eligible for the program, states should *also* provide standalone prenatal and postpartum coverage for 12 months.

Existing States With Statutes that Adopt the Model Approach

A total of 9 states provide prenatal and 12 months of postpartum coverage to income eligible state residents without regard to immigration status.

- The **District of Columbia**[105] does not provide standalone prenatal or postpartum coverage, but these services are included in coverage under DC Health Alliance, which provides Medicaid equivalent coverage to adults with incomes below 200% of the Federal Poverty Level.

- **Colorado**[106] will extend these benefits to all residents below 250% of the Federal Poverty Level, effective 2025.

An additional 7 states currently provide standalone prenatal care and 12 months of postpartum coverage to income eligible residents regardless of immigration status:

- **Connecticut**[107]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, for all residents below 263% of the Federal Poverty Level

- **Illinois**[108]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, for all residents below 208% of the Federal Poverty Level

- **Massachusetts**[109]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, with an option to extend to the end of the expiring month, for all residents below 200% of the Federal Poverty Level

- **Minnesota**[110]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, for all residents below 278% of the Federal Poverty Level

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[105] D.C. LAW 14-18; D.C. CODE § 7–1405.
[106] 2022 COLO. SESS. LAWS 22-1289.
[107] 2021 Conn. Acts 176 (Reg. Sess.).
[108] *Moms and Babies*, ILL. DEP'T OF HEALTHCARE AND FAMILY SERVICES, https://hfs.illinois.gov/medicalprograms/allkids/momsandbabies.html (last accessed Feb. 20, 2024); ILL. ADMIN. CODE TIT. 20, § 475.5.
[109] Heather Rossi, *Verification of PRUCOL Status*, MASSHEALTH (Feb. 2022), https://www.mass.gov/doc/eom-22-04-verification-of-prucol-status-0/download.
[110] *Medical Assistance Programs for Immigrants in Various States*, NATIONAL IMMIGRATION LAW CENTER, https://www.nilc.org/wp-content/uploads/2023/08/med-services-for-imms-in-states-2023-08-08.pdf.

- **Rhode Island**[111]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, for all residents below 250% of the Federal Poverty Level

- **Washington**[112]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, for all residents below 193% of the Federal Poverty Level

- **Oregon**[113]: Provides comprehensive medical coverage during pregnancy, as well as comprehensive coverage for 12 months postpartum, for all residents below 185% of the Federal Poverty Level.

Temporary Assistance to Needy Families

I. Maryland's Existing Statutes

Maryland is one of four states that allow Qualified and Lawfully Present immigrants to access TANF.[114] Current Maryland law allows many groups of immigrant victims to access state-funded cash assistance.[115] These include:

- **VAWA Self-Petitioners** (including Battered Spouse Waivers) become eligible upon receiving a Prima Facie Determination.

- **U visa applicants** become eligible upon receipt of a Bona Fide Determination or Wait List approval

- Those with **Special Immigrant Juvenile Status** (SIJS) are eligible upon application

- In accordance with federal law, **victims of human trafficking** with HHS Certification (based on Continued Presence or a bona fide determination of a T visa application), or who are under the age of 18 and have received an HHS eligibility letters, are eligible to the same extent as refugees and asylees.

Maryland's eligibility criteria also leave many victims without access to critical services, which may delay or prevent their ability to leave abusive situations. These include:

- Victims Filing or Preparing to File:

[111] 210-30 R.I. CODE R. §§ 1.6(A)(5)(d), 1.6(A)(5)(f);
[112] WASH. REV. CODE § 74.09.830.
[113] OR. ADMIN. R. 442.860.
[114] Maryland makes the following categories of immigrant survivors eligible including providing state-funded benefits during any 5-year bar that may have applied under federal law. May be subject to deeming a spouse or parent's income. Battered immigrants can access special VAWA deeming exceptions. Catherine Longville and Leslye Orloff, *Public Benefits: What is "Deeming" and What Are its Exceptions* (June 13, 2015), https://niwaplibrary.wcl.american.edu/pubs/deeming-fact-sheet.
[115] MD. CODE REGS. 07.03.03.07.

- VAWA Self-Petitioners, T visa applicants, U visa applicants, applicants for Continued Presence and SIJS applicants who have filed or are preparing to file
- Continued Presence (CP) applicants for whom CP has been requested by federal law enforcement

- Immigrant Victims of Domestic Violence and Child Abuse:
  - Adults and children who are battered or abused immigrants who have not filed and are not preparing to file for humanitarian visa relief

- Immigrants Who are Pregnant or Parents
  - Immigrant crime victims who are pregnant or parents, who do not otherwise meet eligibility criteria

II. Options for Increasing Access to State Funded TANF for Immigrant Survivors of Crime and Abuse

Model Approach

a. Extend eligibility to include immigrant victims who have filed or are preparing to file VAWA Self-Petitions, U and T visa applications, applications for SIJS, Continued Presence, and HHS OTIP eligibility letters, not subject to the 5-year bar.

b. **To be maximally protective, Maryland could also extend eligibility to any immigrant victims of domestic abuse (including child abuse), not subject to the 5-year bar.**[116]
   - Adding a standalone domestic violence exception in addition to eligibility for immigrant crime victims who have filed or are preparing to file for humanitarian visas would allow immigrant victims of domestic abuse, including child abuse, who may not qualify for or be able to file for visa relief to receive essential benefits for themselves and their children.

Existing State Statues that Adopt the Model Approach

I. Model Approach

c. Extend eligibility to include immigrant victims who have filed or are preparing to file VAWA Self-Petitions, U and T visa applications, applications for SIJS, Continued Presence, and HHS OTIP eligibility letters, not subject to the 5-year bar.

d. **To be maximally protective, States could also extend eligibility to any immigrant victims of domestic abuse (including child abuse), not subject to the 5-year bar.**[117]

[116] Abused immigrants include immigrants who have suffered battering or extreme cruelty as defined by U.S. immigration laws. 8 C.F.R.§204.2(c)(1). Victims of domestic violence and child abuse as defined under state law also qualify. See, Md. Ann. [Fam.] Code § § 4-501, 14–101.
[117] Abused immigrants include immigrants who have suffered battering or extreme cruelty as defined by U.S. immigration laws. 8 C.F.R.§204.2(c)(1). Victims of domestic violence and child abuse as defined under state law also qualify. See, Md. Ann. [Fam.] Code § § 4-501, 14–101.

- Adding a standalone domestic violence exception in addition to eligibility for immigrant crime victims who have filed or are preparing to file for humanitarian visas would allow immigrant victims of domestic abuse, including child abuse, who may not qualify for or be able to file for visa relief to receive essential benefits for themselves and their children.

The Model Approach combines best practices from the current statutory schemes of **California**, **Oregon**, and **Washington**. Other states, including **Maine**, **Rhode Island**, **Tennessee**, **New Jersey**, **Connecticut**, **Massachusetts**, **Iowa**, and **Illinois** have extended additional eligibility to survivors of domestic violence, through a variety of mechanisms.

- **California's Trafficking and Crime Victim Assistance Program**[118] provides cash assistance and other benefits to immigrant victims of human trafficking and other U visa qualifying crimes, before they are eligible for federal funds.[119] This includes any person meeting the income and resource limitations who:
  - Has filed a U visa application
  - Can provide a sworn statement or documentation showing that they are a victim of human trafficking *and;*
    - have filed or are preparing to file an application for a T visa;
    - are an applicant for whom Continued Presence has been requested by law enforcement, *or*;
    - are otherwise taking steps to meet the eligibility conditions for federal benefits. [120]

- Consistent with overall best practices, the Model Approach parallels eligibility across categories of immigrant victims who are experiencing processing delays. Modifications to the California law would thus need to be added to include extending eligibility to:
  - U visa applicants who are preparing to file
  - SIJS applicants are preparing to file
  - VAWA Self-Petitioners who have filed or are preparing to file

- **Washington**[121]**:** extends eligibility to Qualified Immigrants, Lawfully Present Immigrants, and persons who have filed or are preparing to file for U visas, T visas, HHS Certification, or asylum.

- **Oregon**[122]**:** provides a domestic violence carveout that extends eligibility to immigrant survivors of domestic violence regardless of immigration status, as defined by U.S. immigration and state laws.

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[118] *Manual of Policies and Procedures, Specialized Programs*, CA DEP'T OF SOCIAL SERVICES, July 1, 2008, at 64, https://www.cdss.ca.gov/ord/entres/getinfo/pdf/SPMAN.pdf#page=59*; CalWORK's Eligibility Handbook*, SAN FRANCISCO HUMAN SERVICES AGENCY (May 29, 2019), https://www.sfhsa.org/sites/default/files/media/document/migrated/Handbook_CalWORKs%20Eligibility%20Two_5.29.19.pdf.
[119] Cal Welf. & Inst. Code § 13659 (2022).
[120] *Manual of Policies and Procedures, Specialized Programs*, CA DEP'T OF SOCIAL SERVICES, July 1, 2008, at 64, https://www.cdss.ca.gov/ord/entres/getinfo/pdf/SPMAN.pdf#page=59*; CalWORK's Eligibility Handbook*, SAN FRANCISCO HUMAN SERVICES AGENCY (May 29, 2019), https://www.sfhsa.org/sites/default/files/media/document/migrated/Handbook_CalWORKs%20Eligibility%20Two_5.29.19.pdf.
[121] WAC 388-424-0015
[122] OR. ADMIN. R. 461-135-1200; OR. REV. STAT. § 411.117.

Incremental Approaches to Increasing Eligibility

Other states have eligibility requirements that are less capacious than the Model Approach. Adopting one of these options would extend eligibility to more categories of immigrant survivors than is currently available to victims in many states.

1. **Extend eligibility to Qualified Immigrants and Persons Residing Under Color of Law (PRUCOLs)**

   - **Pennsylvania, Hawaii, Maine, New York,** and **California**[123] all extend eligibility to Qualified Immigrants and PRUCOL persons. Some of these states also extend additional eligibility to certain categories of abused immigrants, as described below when relevant.

2. **Enact provisions, either by affirmatively extending eligibility or creating exceptions to otherwise excluded categories of immigrants) that allow survivors of domestic violence to access state funded TANF look-alike benefits.**

   - **Rhode Island**[124]**, Tennessee**[125]**, New Jersey**[126]: extend eligibility to qualified abused immigrants.

   - **Massachusetts**[127]**:** extends eligibility to all battered noncitizens, including qualified abused immigrants and legal permanent residents who have been abused

   - **Illinois**[128]**:** extends eligibility to all persons who have meet the federal definition of domestic violence (i.e. battered or subject to extreme cruelty) by a U.S. citizen or Lawful Permanent Resident, or by a member of that relative's family who lives with them. Eligible individuals must no longer live with the abuser or plan to live separately within one month of receiving the assistance. The need for assistance must in be due, at least in some part, to the abuse.

   - **Oregon**[129]**:** provides a domestic violence carveout that extends eligibility to immigrant survivors of domestic violence regardless or immigration status, as defined by U.S. immigration and state law. Please see Model Law analysis.

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[123] *Manual of Policies and Procedures, Specialized Programs*, CA DEP'T OF SOCIAL SERVICES, July 1, 2008, at 64, https://www.cdss.ca.gov/ord/entres/getinfo/pdf/SPMAN.pdf#page=59*; CalWORK's Eligibility Handbook*, SAN FRANCISCO HUMAN SERVICES AGENCY (May 29, 2019), https://www.sfhsa.org/sites/default/files/media/document/migrated/Handbook_CalWORKs%20Eligibility%20Two_5.29.19.pdf.
[124] 218-RICR-20-00-2
[125] Natasha K. Metcalf, *Guidance for Family Assistance Staff: Citizenship, Immigration Status, and Social Security Numbers,* State of Tennessee Department of Human Services (June 12, 2001), https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/origin/tnpolicyonlepandssns.pdf.
[126] NJ Rev Stat § 44:10-48 (2023)
[127] 106 C.M.R. § 703.430(A)(8)(a).
[128] Ill. Admin. Code tit. 89, § 112.10
[129] OR. ADMIN. R. 461-135-1200; OR. REV. STAT. § 411.117.

- **Iowa[130]:** extends eligibility to abused immigrants who are lawful (or conditional) permanent residents, asylum applicants, or who have received prima facie definitions on a VAWA visa.

- **Maine[131]:** extends eligibility to Qualified Immigrants and PRUCOL residents. It also provides additional coverage to survivors of domestic violence by excepting them from the hardship criteria that most other categories of PRUCOL residents are required to meet.

- **Connecticut**[132] extends eligibility to Qualified Immigrants and Lawfully Present Immigrants, pursuant to some conditions. Recipients are required to pursue citizenship to the maximum extent allowed by law as a condition of eligibility. Survivors of domestic violence, persons with mental disabilities, persons with medical conditions, and those who have a language barrier are excepted from these conditions. Other exemptions, including exemptions for immigrants with a language barrier, also benefit immigrant survivors.

Food Assistance

I. Maryland's Existing Statutes

Federal Eligibility: Qualifying immigrants are eligible for federal food assistance (SNAP) if they have:

- Lawfully resided in the state for 5 years (the 5-year bar);
- Have 40 qualifying work quarters;
- Are elderly, are disabled, or are minors;
- Are refugees or asylees; or
- Are victims of human trafficking eligible to the same extent as refugees and asylees.

Maryland's general eligibility follows federal guidelines. With respect to immigrant crime victims this means:

- **VAWA Self-Petitioners** (including Battered Spouse Waivers) who are elderly, disabled, or under 18 are eligible.
    - Other VAWA Self-Petitioners are eligible upon receipt of a prima facie determination, subject to the 5-year bar unless they can prove 40 qualifying work credits, are under the age of 18, or are disabled.

- Those with **Special Immigrant Juvenile Status** (SIJS) are eligible upon receiving Lawful Permanent Residency while there are under age 18 or if they are disabled.
    - After SIJS lawful permanent resident children turn 19 they lose eligibility under they complete the 5-year bar unless they can prove 40 qualifying work credits.

[130] Iowa Code §239B.2B
[131] C.M.R. Title 22 §3762
[132] CONN. GEN. STAT. ANN. § 17B-112C.

- In accordance with federal law, **victims of human trafficking** with HHS Certification (based on Continued Presence or a bona fide determination of a T visa application), or who are under the age of 18 and have received an HHS Child Eligibility Letter, are eligible for SNAP and receive benefits to the same extent as refugees and asylees, meaning they are not subject to the 5-year bar.

- **U Visa Holders** are eligible upon receiving Lawful Permanent Residency, subject to the 5-year bar unless they have 40 qualifying work credits, are elderly, are under 18, or are disabled.

- **T visa applicants with pending cases who have not been granted a T visa or a Bona Fide Determination** are not eligible.

- **U visa applicants, including applicants with a Bona Fide Determination or placement on the Wait List** are not eligible.

- **Victims eligible to file for immigration relief under the U or T visa, VAWA, or SIJS programs who have filed or are preparing to file** are not eligible.

- **Applicants for Continued Presence of for whom CP has been requested by federal law enforcement** are not eligible.

- **Child Trafficking victims with pending applications filed with HHS OTIP for child eligibility letters** are not eligible.

II. Options for Increasing Access to State Funded Food Assistance for Immigrant Survivors of Crime and Abuse

Model Approach

a. **Extend eligibility to include immigrant victims who have filed or are preparing to file VAWA Self-Petitions, U and T visa applications, applications for SIJS, and persons who have filed applications for Continued Presence or for Child Eligibility Letters.**

b. **To be maximally protective, Maryland could also extend eligibility to any immigrant victims of domestic abuse (including child abuse).**[133]
   - Adding a standalone domestic violence exception in addition to eligibility for immigrant crime victims who have filed or are preparing to file for humanitarian visas would allow immigrant victims of domestic abuse, including child abuse, who may not qualify for or be able to file for visa relief to receive essential benefits for themselves and their children.

[133] Abused immigrants include immigrants who have suffered battering or extreme cruelty as defined by U.S. immigration laws. 8 C.F.R.§204.2(c)(1). Victims of domestic violence and child abuse as defined under state law also qualify. See, Md. Ann. [Fam.] Code § § 4-501, 14–101.

Existing State Statutory Schemes that Adopt the Model Approach

The Model Approach adopts best practices from the existing statutes in **Illinois**, **Washington**, and **California**, each of whom extend eligibility to immigrant victims who have filed or are preparing to file for one or more of the forms of victim-based immigration relief. Consistent with overall best practices, the Model Approach parallels eligibility across all victim-based visa types.

- **Illinois**[134] extends eligibility to U and T visa applicants who have filed or are preparing to file.

- **Washington**[135] extends eligibility to U and T visa applicants who have filed or are preparing to file, as well trafficking victims filing or preparing to file for Continued Presence. Spouses, unmarried children under the age of 21, parents if the child applicant is under the age of 18, and other dependents may also be eligible. SIJS applicants are also eligible.

- **California**[136] provides food assistance and other benefits to immigrant victims of human trafficking and other U visa qualifying crimes, before they are eligible for federal funds.[137] This includes any person meeting the income and resource limitations who:
  - Has filed a U visa application
  - Can provide a sworn statement or documentation showing that they are a victim of human trafficking *and;*
    - Have filed or are preparing to file an application for a T visa;
    - Are an applicant for whom Continued Presence has been requested by law enforcement, *or*;
    - Are otherwise taking steps to meet the eligibility conditions for federal benefits.[138]

Incremental Approaches to Increasing Eligibility

Other states have eligibility requirements that are less inclusive than the Model Approach, but extend eligibility to more groups of immigrant victims than Maryland's current statutory approach. Consistent with Best Practices, all recommendations parallel eligibility across all types of victim-based forms of immigration relief.

1. **Extend eligibility to immigrant victims who have received a prima facie determination or Bona Fide Determination (or Wait List approval), or for whom Continued Presence has been requested by Federal Law Enforcement.**

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[134] 2016 Ill. Laws 99-0870.
[135] *Public Benefits Eligibility for Survivors of Certain Crimes*, WASHINGTON STATE DEP'T OF HEALTH SERVICES (Feb. 5, 2023) https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/public-benefit-eligibility-survivors-certain-crimes; WASH. ADMIN. CODE § 388-400-0010.
[136] CAL. WELF. & INST. § 18930 (2023).
[137] CAL. WELF. & INST. § 13540 (2022).
[138] *Manual of Policies and Procedures, Specialized Programs*, CA DEP'T OF SOCIAL SERVICES, July 1, 2008, at 64, https://www.cdss.ca.gov/ord/entres/getinfo/pdf/SPMAN.pdf#page=59; *CalWORK's Eligibility Handbook*, SAN FRANCISCO HUMAN SERVICES AGENCY (May 29, 2019), https://www.sfhsa.org/sites/default/files/media/document/migrated/Handbook_CalWORKs%20Eligibility%20Two_5.29.19.pdf.

- **Washington**: [139] In addition to the eligibility described above, Washington extends eligibility to Lawfully Present and Qualified Immigrants, subject to the 5-year bar unless they are a qualified immigrant under the age of 18 who is eligible for federally funded SNAP.[140] As such, VAWA Self-Petitioners with Prima Facie Determinations are eligible.

- **California**[141]: VAWA Self-Petitioners with Prima Facie Determinations are eligible for state-funded food assistance, subject to the 5-year bar unless they are a veteran or active duty military, the spouse of a veteran or active duty military, an un-remarried surviving spouse of an un-remarried surviving spouse or child of an active duty military or veteran, or are a child.

- **Minnesota**[142]: Lawfully Present immigrants are eligible for the Minnesota Family Investment Program, which includes food assistance, subject to additional requirements upon Lawful Permanent Residency. As such, VAWA Self-Petitioners with Prima Facie Determinations, U visa applicants with Bona Fide Determinations or Wait List Approval, and SIJS applicants are eligible.

Driver's Licenses

I. Maryland's Existing Statutory Scheme

Nineteen (19) states plus the District of Columbia and Puerto Rico currently allow state residents who cannot provide proof of lawful status to obtain some form of legal identification or a card to extend legal driving privileges.[143] Fifteen (15) of those states (including Maryland) allow noncitizen residents to obtain a Standard, or non-Real-ID compliant, driver's license (i.e. a drivers license that is identical to the standard licenses issued to lawful residents who do not apply for Real ID). Some of these states impose additional requirements on noncitizens, for instance that they provide an Individual Taxpayer ID Number (ITIN)[144] in lieu of a Social Security Number or demonstrate that they have filed one or two years of state tax returns.

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[139] Public Benefit Eligibility for Survivors of Certain Crimes, Washington State Dep't of Social and Health Services, (Feb. 4, 2024), https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/public-benefit-eligibility-survivors-certain-crimes; WASH. ADMIN. CODE §288-400-0010.

[140] Qualified immigrants who turn 18 before they have been in the U.S. for five years must either qualify under a different eligibility criteria, or satisfy the remainder of the five-year bar to continue receiving benefits. *Citizenship and Alien Status-For Food Benefits*, WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (July 10, 2015), https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/citizenship-and-alien-status-food-benefits.

[141] CAL. WELF. & INST. CODE ANN. § 18901 (WEST).

[142] MINN. STAT. ANN. § 256J.11, SUBD. 2; MINN. STAT. ANN. § 256D.053. Under Minnesota law, upon attaining lawful permanent resiency, immigrants age 18-69 who have resided in the country for four years must: (1) enroll in literacy, ESL or citizenship class, or (2) apply for literacy or ESL class, or (3) be in the process of applying for a waiver from the English language or civics requirement of the citizenship test, or (4) have submitted a citizenship application, or (5) have been denied citizenship due to a failure to pass the test after 2 or more attempts or because of an inability to understand the rights and responsibilities of becoming a U.S. CITIZEN. SEE MINN. STAT. ANN. § 256J.11, SUBD. 2; MINN. STAT. ANN. § 256D.05.

[143] *State Laws Providing Access to Driver's Licenses or Cards*, REGARDLESS OF IMMIGRATION STATUS. NATIONAL IMMIGRATION LAW CENTER (July 2023), https://www.nilc.org/wp-content/uploads/2023/07/drivers-license-access-table-2023-07-01-.pdf.

[144] *Individual Taxpayer Identification Number*, NATIONAL IMMIGRATION LAW CENTER, (Last updated Oct. 2022), https://www.nilc.org/issues/taxes/itinfaq/; *The Facts About the Individual Taxpayer Identification Number (ITIN),* AMERICAN IMMIGRATION COUNCIL (Mar. 2022), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_facts_about_the_individual_tax_identification_number_0.pdf

States also provide varying degrees of privacy protections to ensure that immigrants, including immigrant victims, are not vulnerable to use of their personal data for immigration enforcement purposes. Ensuring privacy protections for immigrant crime victims is especially critical, since victims are often subject to ongoing stalking, coercion, and other forms of abuse by their perpetrators including, but not limited to, threats to report them to immigration enforcement authorities.

In **Maryland**, non-citizens who cannot provide proof of lawful status can obtain a Standard (or Non-Compliant) Driver's License or State ID Card if they have can provide an ITIN and have filed tax returns in Maryland for two years before applying.

Maryland issues Standard Driver's Licenses to any resident who does not apply for Real ID, regardless of immigration status.

Maryland does *not* currently provide any privacy protections for driver data. The Maryland Driver Privacy Act passed the Maryland General Assembly in 2021 but was vetoed by the Governor.[145] The law would have barred ICE from directly accessing the Motor Vehicle Administration database, and required immigration enforcement agencies to obtain a warrant before accessing Maryland driver data. Without these protections, ICE can not only lawfully obtain driver data for immigration enforcement purposes without a warrant, they can log directly into Maryland's law enforcement database and conduct a wide range of searches on Motor Vehicle Association records without judicial oversight or protection. Maryland does not currently provide any oversight of ICE searches or track how many immigrant residents' data are accessed by ICE or other government actors.[146]

Best Practices

Issue Standard Drivers Licenses to all residents, rather than Driver Access Cards:

The majority of states that provide legal identification to residents without legal status issue Standard Drivers Licenses that are identical to those issued to any resident who does not apply for Real ID. However a small number of states issue an alternate motor vehicle operator's license, often called a Driver Privilege or Driver Access Card indicating that the bearer cannot provide proof of lawful status.[147] These cards make immigrants vulnerable to targeting or harassment because they are immediately recognizable as not having lawful status. At least one state, Florida, has passed legislation declining to recognize cards from 5 such states.[148]

States should also minimize the difference in appearance between Real ID and Standard Driver's Licenses to the greatest extent possible under the law. For instance, some states

[145] Maryland Driver Privacy Act, H.B. 00023, Ch. 18 2021 Spec. Sess. (Ma. 2021).
[146] *Letter of Opposition – Senate Bill 234 – Personal Information – State and Local Agencies Restrictions on Access*, To The Honorable William C. Smith Jr. Chairman of MD Senate Judicial Proceedings Committee from Christine E. Nizer, William P. Doyle, Ricky D. Smith, Pilar Helm https://drive.google.com/file/d/1siYx-yDkwggUQB3APZzqYmfKkg7BQHnF/view (Jan 28. 2021).
[147] Delaware, Vermont, Rhode Island, Hawaii, and Connecticut issue Driver Access or Privilege Cards to residents who cannot provide proof of lawful status, subject to additional requirements. Del. S.B. 59 (2015); Vt. S. 38 (2013); RI Gen. Laws § 31-10.4-1(a)(1); Haw. H.B. 688 (2013); Conn. H.B. 64-95 (2013). Utah and Vermont issue temporary visitors drivers licenses to residents who cannot provide proof of lawful status. Utah SB 0227 (2005);Vt. S.B. 38 (2014).
[148] Fla. SB 1718, Reg. Sess. (2023). Licenses from Virginia and Utah still considered valid in Florida because they are temporary licenses identical to any other temporary license, as opposed to distinct driver privilege cards.

distinguish Real-IDs from Standard Licenses solely by use of the Real ID symbol, rather than text declaring the ID "Not Valid for Federal Purposes."[149]

Apply federal VAWA Confidentiality laws to all immigrant driver and identification card data: Lack of privacy protections makes obtaining a driver's license or a state issued identification card very risky for residents without legal status, because it allows immigration enforcement agencies open access to their personal data. Enforcement agencies can then use this data for a wide variety of purposes, including removal. These databases include also immigrant crime survivors who as a matter of federal law are entitled to VAWA confidentiality protections:

- Who have filed for forms of immigration relief that receive VAWA confidentiality protections and are victims about whom immigration enforcement officials are barred by VAWA confidentiality laws from obtaining information including locational information from the Department of Homeland Security's own case files.

- Who are abused spouses, former spouses, children or step-children of U.S. citizens and lawful permanent residents who are entitled to be protected by VAWA Confidentiality laws as victims of battering or extreme cruelty without regard to whether or not they may have filed form humanitarian immigration relief.
- Who are in the process of filing a U or T visa case against their domestic violence, child abuse, elder abuse, sexual assault, stalking, human trafficking, or other U visa covered crime perpetrator. These victims are also legally entitled to federal VAWA confidentiality protections.

Allowing ICE and other agencies open access to driver data places immigrant crime victims at greater risk of harassment, stalking, retaliation and abuse by their perpetrators. Victims who are cooperating with law enforcement and prosecutors in criminal investigations or prosecutors of their perpetrators and victims who have filed cases against their perpetrators in state family or civil court proceedings are particularly at risk from perpetrators who are often actively involved in efforts to trigger immigration enforcement against victims.[150]

States should apply VAWA Confidentiality to *all* immigrant driver data to ensure that all immigrant survivors of crime and abuse who are required to receive these protections, including victims who have not filed for humanitarian victim-based forms of immigration relief, receive the life-saving protections that VAWA confidentiality sought to offer victims.

In the alternative:

If States do not extend VAWA Confidentiality to all immigrant driver data, they should ensure robust privacy protections that limits access to driver data by state and federal agencies, including immigration enforcement agencies.

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[149] New York and Virginia have passed legislation requiring minimal differences between Standard and Real-ID, within federal requirements. New York's A3675B, sec. 5; Virginia's SB34, sec. 46.2-328.3 B.1. https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB34ER2.

[150] Krisztina E. Szabo. David Stauffer, Benish Anver, and Leslye E. Orloff, *Early Access to Work Authorization For VAWA Self-Petitioners and U-Visa Applicants* (Feb. 12, 2012), https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12; , Leslye E. Orloff, Haley Iesha Magwood, Yasmin Campos-Mendez, and Giselle A. Hass, *Transforming Lives: How the VAWA Self-Petition and U Visa Change the Lives of Survivors and their Children After Employment Authorization and Legal Immigration Status* (June 8, 2021), https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report.

Many states have enacted some protections to limit or prevent DHS access to driver data; however these protections may be less comprehensive than states intend, in part because legislators lack a clear understanding of how government agencies access and share data. Laws that only target DHS and other immigration enforcement agencies may also not account for the ways that immigrants, especially immigrant crime victims, experience vulnerability through the use of their data by other government agencies (including when these agencies share data with DHS). Best practices should thus also include provisions that limit what data Departments of Motor Vehicles can request, collect, or store electronically, as well as provisions that constrain use of that data by other government agencies.

Privacy provisions vary significantly by state and exist alongside the background data privacy and immigration enforcement laws already enacted in a given state. The best practices described here do not themselves constitute a model law, but rather kinds of provisions that states have used to create robust privacy protections that limit the use of driver data by outside agencies, including law enforcement.

Examples of key best practices, along with at least one example of a relevant enacted provision, include:

- Departments of Motor Vehicles should not be allowed to scan or retain electronic copies of documents provided by noncitizens and require the immediate destruction of any documents already retained[151]

- Provide in their legislation that driver data is not a public record and cannot be disclosed by the Department unless required by law;[152] *or* enact provisions protecting the confidentiality of driver data and limiting the release of that data unless required by law.[153]

- Applicants for a driver's license should not be required to provide their place of birth.[154]

[151] *See e.g.* New York A3675B, § 5 (2019); New Jersey A4743, § 5 (2018).
[152] An example of such an enacted provision is California' Vehicle Code 12801.9(j) and (k), stating that: "(i) information collected pursuant to this section is not a public record and shall not be disclosed by the department except where required by law; (k) Documents provided by applicants to prove identity or residency pursuant to this section shall not be disclosed except in response to a subpoena for individual records in a criminal proceeding or court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit the authorities time to obtain a court order. Immigration enforcement, as defined in Section 7284.4 of the Government Code, does not constitute an urgent health and safety need for the purposes of this subdivision." CAL. VEH. CODE. § 12801 (2022).; New York's A3675B, §2 similarly requires: "Any portion of any record retained by the commissioner in relation to a noncommercial driver's license or learner's permit application or renewal application that contains the photo image or identifies the Social Security number, telephone number, place of birth, country of origin, place of employment, school or educational institution attended, source of income, status as a recipient of public benefits, the customer identification number associated with a public utilities account medical information or disability information of the holder of, or applicant for, such license or permit is not a public record and shall not be disclosed in response to any request for records except: (a) to the person who is the subject of such records; or (b) where expressly required pursuant to chapter three hundred three of part A of subtitle vi of title forty-nine of the United States code; or (c) where necessary to comply with a lawful court order, judicial warrant signed by a judge appointed pursuant to article III of the United States constitution, or subpoena for individual records issued pursuant to the criminal procedure law or the civil practice law and rules." In addition: "The commissioner shall not disclose or otherwise make accessible original documents or copies of documents collected from noncommercial driver's license or learner's permit applicants or renewal applicants to prove identity, age, or fitness [subject to the same exceptions as the preceding section]." NY A03675 (2019).
[153] *see e.g.* Va. H.B. 2163 § 46.2-208E; CAL.VEH. CODE § 1653.5(f); N.J. A4743 § 8.
[154] In January 2023, Washington State issued a 120-day Emergency Rule (pending permanent modifications to state policy) prohibiting, among numerous other provisions, the inclusion of Place of Birth requests on Driver's License applications WASH ADMIN. CODE 308-104-014; *see also* Jessica Lee, *WA Drivers-License Applications No Longer Ask Where a Person Was Born*, SEATTLE TIMES, (January 26, 2018) https://www.seattletimes.com/seattle-news/wa-drivers-license-applications-no-longer-ask-where-a-person-was-born/.

- States should eliminate attestation requirements that compel applicants to state in writing that they are ineligible for a Social Security Number or Individual Tax Identification Number, if they do not provide either.[155]

- ICE, DOJ, and other enforcement agencies should not have direct access to driver data, either directly or through law enforcement databases[156]

II. Options for Increasing Access for Immigrant Victims of Crime and Abuse to Standard Driver's Licenses and State Issued Identification Cards

Model Approach

a. State residents can apply for a Standard Driver's License or State Identification Card regardless of immigration status if they provide proof of residence, proof of age, and proof of identity. There is no tax return requirement. State law prohibits any markings on the license that indicate the bearer's immigration status.

b. **VAWA Confidentiality should be extended to all applicants regardless of whether they have filed for humanitarian immigration relief, to ensure that all immigrant crime victims receive the privacy necessary to ensure their safety and the safety of their children and family members.**

Existing State Statutes that Adopt the Model Approach

The model approach is the current statutory scheme in **Minnesota**[157], as of October 1st 2023, with adjustments to the privacy protection provisions; specifically, the Model Approach applies VAWA Confidentiality to all immigrants applying for drivers licenses, to ensure that all immigrant victims are protected even if they have not filed for humanitarian immigration relief.

Minnesota's existing driver data privacy approach incorporates many of the best practices described above, including prohibiting the use of Department of Motor Vehicle data in arrests and deportations, prohibiting the release of driver data to ICE or any other immigration enforcement agency absent a warrant, and provisions requiring other government agencies to

[155] *See e.g.* N.J. A4743 § 5 (2018).
[156] States have addressed the issue of access to driver data by law enforcement and, by extension, DHS and other immigration enforcement agencies in a variety of ways. Some states have included restrictions on the release of driver information pertaining to immigration status, *see e.g.* New Jersey A4743 (2018); *see also* Va. S.B. 34, § 2.2-3808.1 (2020), or for federal immigration enforcement purposes *see e.g.,* Nev. S.B. 303, sec. 1, subsection 10 (2013); *see also* Washington, DC's B20-275, sec. 2(b).
Other states have enacted provisions limiting the transmission of driver data to law enforcement databases such as the National Law Enforcement Telecommunications System (NLETS) and their state equivalents, which DHS can access. *See e.g.* Cal. SB 54 (2017) and *Information Bulletin from Xavier Becerra, Attorney General of California, to All Chiefs of Police, Sheriffs, and Executives of California Law Enforcement Agencies, Subject: California Values Act's Database Guidance* (No. 18-10-CJIS, Oct. 1, 2018), https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/18-10-cjis.pdf (forbidding immigration enforcement agency access to the California Law Enforcement Communications System and requiring all CLETS subscribing agencies to submit compliance documentation or face termination from the database); *see also* New York A3675B §2 (2019) (blocking ICE access to Nlets data of state residents, among other relevant provisions).
[157] Minn. HF 4, 93 Leg. (2023).

attest that they will not release driver data to any agency seeking to use that data for immigration enforcement purposes.[158]

New Mexico, **California**, **New York**, **Massachusetts**, **Oregon**, **Colorado, Washington, New Jersey,** and the **District of Columbia** all also allow residents who cannot provide proof of lawful status to obtain Standard Drivers Licenses, with varying degrees of privacy protections.[159]

Incremental Approaches to Increasing Eligibility

1. **Impose a short length of residency requirement in lieu of a state tax return requirement**

    - **District of Colombia**[160]: Allows noncitizen residents to obtain a Standard Driver's License with proof of age, identity, and 6 months of D.C. . residency

    - **Utah**[161]: Allows noncitizen residents to obtain a Standard Drivers License with proof of age, identity, an ITIN, and 6 months of state residency

    - **Connecticut**[162]: Allows noncitizen residents to obtain a Driver Access Card (not Standard Driver's License) with proof of age, identity, and 6 months of state residency.

2. **Impose a tax return requirement of only one year**

    - **Colorado**[163]**:** Allows noncitizen residents to obtain a Standard Driver's License with proof of age, identity, residency, and 1 year of state tax returns.

3. **Allow noncitizens to obtain Standard Driver's Licenses with an ITIN only**

    - **New Jersey**[164]: Allows noncitizen residents to obtain a Standard Driver's License with proof of identity, age, residency, and an ITIN, unless they attest that they cannot get an ITIN.
        - NB: Consistent with Best Practices, states should not require applicants to attest that they are not eligible for a SSN or ITIN. If an applicant cannot provide an ITIN, they should not be required to attest in writing.

4. **Allow individuals with prima facia determinations to establish legal presence for the purposes of obtaining REAL ID**

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[158] *Id*.
[159] N.M. STAT. ANN. § 66-5-9 (2021); Cal. Assembly Bill No. 1766 (2022), Mass. Bill H.4805, 192nd Leg., Reg. Sess. (2021); Or. H.B. 2015 c. 701, Reg. Sess. (2019); Colo. S. Bill 13-251, Reg. Sess. (2014); Colo. S. Bill 131, Reg. Sess. (2021). , Wash. H.B. 5008, 65 Leg., Reg. Sess. (2017); N.J. Bill S3229, Reg. Sess. (2019); District of Columbia Drivers Safety Amendment of 2013, B20-0275, Reg. Sess. (2013).
[160] District of Columbia Drivers Safety Amendment of 2013, B20-0275, Reg. Sess. (2013).
[161] Utah Senate Bill 227, Reg. Sess. (2005).
[162] Conn. H.B. 6495, Reg. Sess. (2013).
[163] Colo. Senate Bill 13-251, Reg. Sess. (2013).
[164] N.J. A4743 (2019).

- **Maine**[165] Allows noncitizens who have received prima facie determinations (or any other currently pending or approved petition or application for immigration relief related to nonimmigrant status) to establish legal presence for the purposes of obtaining a REAL ID.

Social Security Insurance

I. Maryland's Existing Statutory Scheme

All states have identical requirements following federal eligibility for federally funded Supplemental Security Income (SSI). Six states, California, Hawaii, Illinois, New Hampshire, Maine, and Washington have state-funded look alike programs that cover some immigrant populations not eligible for SSI.

Maryland's general eligibility follows federal guidelines. It does not provide additional state-funded benefits. With respect to immigrant crime victims this means:

- **VAWA Self-Petitioners** (including Battered Spouse Waivers) are eligible upon receiving a prima facie determination, subject to the 5-year bar unless they can prove 40 qualifying work credits. Self-Petitioners who received SSI on August 22nd, 1996, or who were lawfully residing in the U.S. as of that date, *and* are now disabled, may be eligible with a prima facie determination. Self-Petitioners may also be eligible with a prima facie determination if currently receiving SSI based on an application filed before 1979.

- Those with **Special Immigrant Juvenile Status** (SIJS) are eligible upon receiving Lawful Permanent Residency, subject to the 5-year bar unless they can prove 40 qualifying work credits if they arrived on or after August 22nd, 1996; or if lawfully present before that date and are now disabled. SIJS Lawful Permanent Residents may also be eligible with a prima facie determination if currently receiving SSI based on an application filed before 1979.

- In accordance with federal law, **victims of human trafficking** with HHS Certification (based on Continued Presence or a bona fide determination of a T visa application), or who are under the age of 18 and have received an HHS Child Eligibility Letter, are eligible for SNAP and receive benefits to the same extent as refugees and asylees. This means that they are eligible for the first seven years after the status was granted.

- **U Visa Holders** are eligible upon receiving Lawful Permanent Residency, subject to the 5-year bar unless they can prove 40 qualifying work credits if they arrived on or after August 22nd, 1996; or if lawfully present before that date and are now disabled. Lawful Permanent Residents may also be eligible with a prima facie determination if currently receiving SSI based on an application filed before 1979.

[165] *Legal Presence Non Citizen,* DEP'T OF SEC'Y OF STATE, BUREAU OF MOTOR VEHICLES, http://www.maine.gov/sos/bmv/licenses/noncitizen.html

- **VAWA self-petitioners and U visa and SIJS lawful permanent residents subject to the 5 year bar** are not eligible.

- **SIJS applicants, including children with approved SIJS applications** are not eligible.

- **T visa applicants with pending cases who have not been granted a T visa or a Bona Fide Determination** are not eligible.

- **U visa applicants, including applicants with a Bona Fide Determination or placement on the Wait List** are not eligible.

- **Trafficking victims for whom Continued Presence has been requested by Federal Law Enforcement** are not eligible.

II. Options for Increasing Necessary Services for Immigrant Crime Victims

Model Approach

a. **Create a state-funded program that provides SSI-like benefits to immigrant victims who have filed or are preparing to file VAWA Self-Petitions, U and T visa applications, applications for SIJS, Continued Presence, and HHS OTIP eligibility letters, not subject to the 5-year bar.**

b. **To be maximally protective, Maryland could also extend eligibility in any state-funded program to immigrant victims of domestic abuse (including child abuse), not subject to the 5-year bar.**[166]

Existing State Statues that Adopt the Model Approach

The Model Approach draws from the current state programs of California, Washington, and Maine which extend eligibility to *all* immigrants who are not eligible for SSI solely because of their immigration status. Undocumented immigrants are not eligible for SSI in any state.

No state currently provides SSI-like benefits to immigrant victims of domestic violence, including child abuse, who have not otherwise filed for humanitarian visa relief.

- **California**[167] provides a state-funded look alike program for a small group of noncitizens who are ineligible for Supplemental Security Income solely because of their immigration status. Coverage is limited to eligible individuals who are aged, blind, or disabled. Eligible immigrant victims include aged, blind, or disabled noncitizen victims of trafficking, domestic violence, and other serious crimes including:
    - Persons who have filed or are preparing to file U or T visa applications

[166] Abused immigrants include immigrants who have suffered battering or extreme cruelty as defined by U.S. immigration laws. 8 C.F.R.§ 204.2(c)(1). Victims of domestic violence and child abuse as defined under state law also qualify. *See* MD. ANN. [FAM.] CODE § § 4-501, 14–101.
[167] CAL. WELF. & INST. CODE § 18940 (2022).

- Persons who have filed or are preparing to file for Continued Presence or HHS certification
- SIJS applicants
- VAWA Self Petitioners who have received prima facie determinations. VAWA Self-Petitioners who have filed or are preparing to file are not eligible.

- **Washington**[168] provides a state-funded look alike program for a small group of noncitizens who are ineligible for Supplemental Security Income solely because of their immigration status. Coverage is limited to eligible individuals who are aged, blind, or disabled. Eligible noncitizens include qualified aliens, nonqualified aliens who have deferred action or withholding and deportation, and survivors of certain crimes including human trafficking.[169] Eligible immigrant victims include:

    - Persons who have filed or are preparing to file an application for a U or T visa
    - SIJS applicants
    - Other victims of human trafficking (including persons for whom Continued Presence has been requested by federal law enforcement and persons with HHS OTIP eligibility letters)
    - VAWA Self Petitioners who have received prima facie determinations. VAWA Self-Petitioners who have filed or are preparing to file are not eligible.

- **Maine**[170] provides a state-funded look alike program for "qualified immigrants" and PRUCOL persons who are otherwise eligible for SSI. Eligible immigrant victims include
    - Persons who have filed or are preparing to file U or T visa applications
    - Persons who have filed or are preparing to file for Continued Presence or HHS certification
    - SIJS applicants
    - VAWA Self Petitioners. VAWA Self Petitioners who are preparing to file, have filed, or who have received prima facie determinations are not eligible.

Educational Benefits: Access to In-State Tuition for Public Colleges and Universities & Financial Aid

Best Practices

Provide parallel access to in-state tuition and financial aid, and occupational and professional license for immigrant residents. To the greatest extent possible, states should provide parallel access to in-state tuition, financial aid, and professional and occupational licenses (discussed in the next section). Currently, 14 of the 19 states that provide undocumented immigrants, including immigrant crime victims, with comprehensive access to in-state tuition and financial aid, have a more restrictive policies for occupational and professional licensure. This leaves many immigrants who may have received education and financial aid from the state to obtain training in their field unable to obtain the necessary license to practice their profession

[168] WASH. ADMIN. CODE 388-424-0015.
[169] WASH. ADMIN. CODE 388-424-001 (2023).
[170] MAINE REV. STAT. TITLE 22, CH. 1161.

in the state. States that do not allow immigrants to obtain professional or occupational licenses, but do provide access to in-state tuition and financial aid, undermine their ability to capitalize on their investment in immigrant students and reap the benefits of educating in-state residents.

Allow undocumented students to access state-based financial aid even if they do not meet the requirements for in-state tuition.

Do not require undocumented students to submit affidavits declaring that they will apply for lawful status upon becoming eligible. Some states, including Maryland, require that students seeking in-state tuition or financial aid submit an affidavit declaring that they will apply for lawful status or legal permanent residency as soon as they become eligible. Others, like Nevada and Connecticut, do not impose such a requirement. Still other states, like Minnesota, impose an alternative requirement, requiring students to demonstrate that they have applied for legal status but only if a federal process exists; many undocumented students and DACA recipients are exempt from this requirement because no such pathway exists.

Individuals may not apply for lawful status as soon as they are eligible for a wide variety of reasons, including an inability to pay associated costs, lack of access to legal assistance, or lack of knowledge of an existing pathway. Immigrant victims may also face additional concerns about exposing themselves and their family members to additional scrutiny, especially if they are unaware of VAWA Confidentiality protections and other statutory rights. Eliminating affidavit requirements provides greater protection to immigrant students while allowing them to achieve greater economic security through education.

In-State Tuition

I. Maryland's Existing Statutory Scheme

Maryland is one of nineteen states that provides comprehensive access to in-state tuition for undocumented residents, subject to certain conditions. As compared to other states that provide access to in-state tuition and financial aid for eligible undocumented students, Maryland imposes more requirements than some and less than others.

Maryland currently allows undocumented students, including DACA recipients, to access in-state tuition at the state's public colleges and universities if they:

- Attended a public or nonpublic Maryland secondary school
- Graduated from a Maryland secondary school or received a GED
- Register as a student in college or university no later than six years after graduating from high school or receiving the equivalent of a high school diploma
- Provide documentation that they or their parent or guardian has filed three years of Maryland state tax return
- Have registered with the Selective Service System if required and provide documentation that they have complied with this requirement
- Sign an affidavit saying they will apply for Legal Permanent Residency within 30 days of becoming eligible.

Until 2019 Maryland required that undocumented students, including DACA recipients, attend two years of community college before being eligible to access in-state tuition at a public university. It also required that undocumented students attend at least three years of high school in Maryland in order to receive in-state tuition. S.B. 0537, signed into law in 2019, eliminated both of these requirements. Maryland is now the only state that does not require undocumented students to have completed a predetermined number of years at a state secondary school, though it is one of only a small number of comprehensive access states that imposes a state tax return requirement on a student's parent or guardian.

II. Options for Increasing Necessary Services for Immigrant Crime Victims

Model Approach

Provide access to in-state tuition for undocumented students, including DACA recipients, if they have graduated from a public or nonpublic high school in the state or received an equivalent degree.

Existing State Statues that Adopt the Model Approach

The Model Approach is the state statutory scheme of **Nevada,**[171] which allows undocumented students to access in-state tuition if they have graduated from a Nevada high school, regardless of whether the student or their family are considered "bona fide residents" under state law; meaning that they have established residency in the state, have actually resided in the state in the state for the 6 months required to establish bona fide residency, and have a valid driver's license or identification card issued by the Department of Motor Vehicles.

Nevada also allows undocumented residents to access state financial aid, as well as some state scholarship programs for use at public institutions. [172]

Incremental Approaches to Increasing Eligibility

1. **Allow students to meet the residency requirements using years of attendance at an in-state school *or* parent's tax returns.**

No state currently allows undocumented students to prove residency via one of multiple options. Most states require that students demonstrate that they attended a high school in the state for some determined number of years. However, some states have pursued alternate approaches to allowing undocumented students to prove eligibility. Maryland, for instance, eliminated the requirement that students attend three years of high school at an in-state high school, but requires that the student demonstrate three years of residency through parental tax returns. Other approaches include:

[171] *Nevada,* HIGHER ED IMMIGRATION PORTAL, https://www.higheredimmigrationportal.org/state/nevada/ (last accessed Feb. 20, 2024).
[172] SB347, 81st Leg, Reg. Sess. (Nev. 2021).

- **California**[173]: Allows students to satisfy the three- year requirement by attendance at a wide variety of educational institutions, including elementary schools, high schools, community colleges, or adult education institutions.

- **Hawaii**[174]: Allows students to satisfy the three-year requirement by attending a high school anywhere in the United States for three years and establishing one year of residency in Hawaii by domicile and physical presence in the state.

- **Texas**[175]: Requires that students graduate from a high school in the state, or receive an equivalent degree, and have resided in the state for three years in advance of receiving their diploma or equivalent degree.

- **Washington**[176]**:** requires that students complete a full senior year of high school and receive a diploma or equivalent, and have resided in the state for at least three consecutive years in advance of receiving the diploma or equivalent degree.

2. Impose a residency requirement of only one or two years

- **New Mexico**[177]**:** Allows undocumented students to qualify for in-state tuition after attending an in-state high school for one year, with other requirements.

- **New York**[178]**:** Allows undocumented students to qualify for in-state tuition after attending an in-state high school for two years, with other requirements

- **Virginia**[179]**:** Allows undocumented students to qualify for in-state tuition after attending an in-state high school for two years, with other requirements

- **Connecticut**[180]: Allows undocumented students to qualify for in-state tuition after attending an in-state high school for two years, with other requirements

Access to Financial Aid

I. Maryland's Existing Statutory Scheme

Maryland[181] is one of nineteen states that provides comprehensive access to state-based and/or other forms of financial aid for undocumented residents, subject to certain conditions. Nineteen states provide comprehensive access to state-based and/or other forms of financial aid

[173] Cal. Edu. Code § 68130.5 (2023) (allows for elementary high school, or adult education to satisfy the requirement).
[174] *UH System wide Policies and Procedures Information System, Ch. 6 Tuition, Financial Assistance, and Fees,* UNIVERSITY OF HAWAI'I, https://www.hawaii.edu/policy/?action=viewPolicy&policySection=rp&policyChapter=6&policyNumber=209
[175] Tex. H.B. 1403, 77th Reg. Sess. (2001).
[176] Wash. Ch. 95 54 Leg. (2003).
[177] N.J. Bill S3119, 3110 Leg. (2021)
[178] *New York*, HIGHER IMMIGRATION PORTAL, https://www.higheredimmigrationportal.org/state/new-york/.
[179] Va. Acts of Assembly, Ch. 766 (2020).
[180] https://www.cga.ct.gov/2015/TOB/h/pdf/2015HB-06844-R00-HB.pdf
[181] Md. Senate Bill 532 (2018).

for undocumented residents, subject to certain conditions. Many of these states also allow undocumented students to access state-sponsored grants and scholarships that are separate from financial aid. Undocumented students in Maryland are eligible for state-based financial aid if

- They meet the eligibility requirements for in-state tuition
- Fill out the Maryland State Financial Aid Application

II. Options for Increasing Necessary Services for Immigrant Crime Victims

Model Approach

Provide access to state-based financial aid regardless of whether students meet the eligibility requirements for in-state tuition.

Existing State Statues that Adopt the Model Approach

- **California**[182][183]: Allows otherwise eligible undocumented students to access financial aid, regardless of whether they meet the requirements for in-state tuition

- **Minnesota**[184]: Allows otherwise eligible undocumented students to access financial aid, regardless of whether they meet the requirements for in-state tuition

- **Massachusetts**[185]: Allows eligible undocumented students to access financial aid, regardless of whether they meet the requirements for in-state tuition. Undocumented students in Boston can also access the Tuition Free Community College Plan, which allows eligible Boston residents to receive free tuition at a community college regardless of age, income, or immigration status. [186]

- **Rhode Island**[187]**:** Allows otherwise eligible undocumented students to access financial aid, regardless of whether they meet the requirements for in-state tuition. The Rhode Island Promise Scholarship also allows undocumented students to receive a tuition-free Associates Degree at an in-state community college. [188]

Occupational and Professional Licenses

I. Maryland's Existing Statutory Scheme

[182] CAL. EDUC. CODE § 68130, 66021.6, 69508.5, 76300.5 (2023).
[183] *Id*.
[184] *Minnesota Dream Act*, MINN. OFFICE OF HIGHER EDUCATION, https://www.ohe.state.mn.us/mPg.cfm?pageID=2056 (last accessed Feb. 20, 2024).
[185] 2015 CONN. PUB. ACTS 12-89 (Reg. Sess.)
[186] *Tuition-Free Community College (TFCC) Plan*, CITY OF BOSTON, https://www.boston.gov/departments/workforce-development/tuition-free-community-college-plan#eligibility (last accessed Feb. 20, 2024).
[187] *The Rhode Island Student Aid Application (RISAA),* COALITION OF ADVOCATES FOR STUDENT OPPORTUNITIES, http://tamtranscholarship.org/RIUndocStudentFinAid.html (last accessed Feb. 20, 2024).
[188] *Rhode Island Promise*, COMMUNITY COLLEGE OF RHODE ISLAND, https://www.ccri.edu/ripromise/ (last accessed Feb. 20, 2024).

Maryland is one of nine states that allows qualified immigrant residents to obtain with access to a wide variety of occupational and professional licenses. Access varies by type of license, including whether there are federal requirements for licenses that impose immigration restrictions. States also set different requirements for different kinds of state regulated licenses; for instance, some will allow nurses, educators, social workers and others to obtain licenses without a SSN or ITIN. Other states will require either an ITIN or an SSN for such licenses. Still others will limit access to individuals with SSNs only.

As of October 2023, occupation and licensing boards in Maryland are prohibited from considering citizenship in determining whether to grant a license.[189] Maryland also allows otherwise eligible immigrant residents to obtain licenses for a significant number of state-regulated professions without an ITIN or an SSN including:

- Nurse (requires alternative documentation)
- Physician's Assistant (requires alternative documentation)
- Counselor (requires alternative documentation)
- Psychologist (requires alternative documentation)
- Medical/Clinician and lab technician (not regulated by the state)
- Dentist and dental hygienist (requires alternative documentation)
- Educator
- Social Worker (requires alternative documentation)
- Professional Engineer

II. Options for Increasing Necessary Services for Immigrant Crime Victims

Model Approach

Allow otherwise eligible noncitizens to access all state-regulated professional and occupational licenses without an SSN or ITIN. States should also prohibit licensing boards from requiring evidence of immigration status, or denying a license because of an applicant's immigration status.

[189] Md. Senate Bill 187 (2023, enacted).

Existing State Statues that Adopt the Model Approach

In addition to Maryland, **Nevada**[190], **Delaware**,[191] and **New Jersey**[192] have legislation expressly prohibit licensing boards from considering immigration status in determining whether to issue a license.

In addition to Maryland, **Colorado**[193], **Delaware**[194], and **Illinois**[195] all allow immigrant residents to obtain professional and occupational licenses without an SSN or ITIN for a variety of professions.

[190] NEV. REV. STAT § 391.0365 (2024).
[191] 2023 Senate Bill 80 (Del.).
[192] N.J. Pub. L. c. 45 (2020).
[193] 2024 COLO. S.B. 21-077 (enacted).
[194] 2023 Senate Bill 80 (Del.).
[195] 20 ILL. COMP. STAT. 2105/2105-15 (f-5) (2023); 705 Ill. Comp. Stat. 205/0.01 (2023).