

# Health Care Options for Immigrant Survivors

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## Where Immigrant Survivors Can Have Access to Health Care Regardless of Immigration Status:

- Payment for out-of-pocket expenses for health care costs that are not considered to be part of the Medical Forensic Exam (MFE) can be an issue for immigrants that do not have access to private medical insurance or subsidized health care. <sup>1</sup> Coverage for services beyond sexual assault evidence collection kits varies by state, with survivors incurring costs not included in the MFE for STI testing, completing Post-exposure prophylaxis (PEP) treatment to protect against HIV, emergency contraception, oral or injected medications (e.g. antibiotics), or injury-related services. <sup>2</sup>
- Not all immigrants are eligible to purchase health insurance on the healthcare exchanges, even if they have pending or approved immigration applications. <sup>3</sup>
  - The Affordable Care Act<sup>4</sup> and HHS implementing regulations<sup>5</sup> provide a list of immigrants considered lawfully present who are eligible to purchase health insurance on the state and federal healthcare exchanges.<sup>6</sup>
- Community Health Centers and Migrant Health Centers that are Federally Qualified Health Centers (FQHCs)<sup>7</sup> provide primary healthcare to the uninsured and are open to all persons without regard to immigration status. FQHCs can provide the follow-up services that immigrant sexual assault survivors need to address their post-assault healthcare and mental health care needs.
  - FQHCs can provide sexual assault survivors with STI testing, Post-exposure prophylaxis (PEP) treatment to protect against HIV, emergency contraception, oral or injected medications (e.g. antibiotics), and other injury-related services.
    - FQHCs also provide basic healthcare services including primary care, diagnostics, prenatal care, post-assault health care; immunizations against vaccine-preventable diseases; screening for elevated blood lead levels, communicable diseases and cholesterol; and other services.<sup>8</sup>
- Lawfully present immigrants<sup>9</sup> (e.g. foreign students, green card holders, diplomat visas, work visa holders) may have private insurance or access to subsidized health care that can help cover post sexual assault healthcare needs.
- In addition, programs that are necessary to protect life and safety are available to survivors of sexual assault without regard to immigration status. These programs and services include but are not limited to: shelter, transitional housing, soup kitchens, community food banks, WIC,

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violence and abuse prevention, crisis counseling and intervention programs, and treatment of mental illness or substance abuse.<sup>10</sup>

### Victims of Crime Act (VOCA) and Health Care:

- When immigrant survivors incur out-of-pocket costs related to sexual assault including healthcare costs, survivors can access Victims of Crime Act (VOCA) funded compensation in almost all states<sup>11</sup> and U.S. jurisdictions<sup>12</sup> without regard to the victim's immigration status.<sup>13</sup>
- VOCA compensation programs vary by state in what costs are covered, application procedures, and eligibility. Check [Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence](#) for state-by-state details.
- Most state VOCA compensation programs reimburse victims for costs associated with: healthcare, mental health treatment, dental services, prescription drugs, STD and HIV treatment and testing, crime scene clean-up, relocation costs, needed home security and other crime related costs.

### Immigration Relief and Reporting Sexual Assault:

- All immigrant victims of sexual assaults perpetrated in the United States are eligible for special immigration protections<sup>14</sup>.
  - These crime and abuse victim-based forms of immigration relief help immigrant victims who are not U.S. citizens or lawful permanent residents by providing protection from deportation, work authorization, and a pathway to lawful permanent residency (a green card).
    - Victim-based forms of immigration relief offer help and protection to undocumented immigrants and to immigrants with forms of legal immigration status that do not include a path to a lawful permanent residence.
    - Each of the victim-based forms of immigration relief also expand immigrant sexual assault survivor's ability to access federal and state funded public benefits.
- Immigrant survivors of sexual assault may qualify for the following forms of victim-based immigration relief:<sup>15</sup>
  - **The VAWA immigration relief** helps immigrant victims of spouse, child, and elder abuse perpetrated by U.S. citizen spouses or lawful permanent resident spouses, parents, stepparents or U.S. citizen over 21-year-old sons or daughters;
  - **Special Immigrant Juvenile Status** provides immigration relief for children who suffered parent perpetrated abuse, abandonment or neglect;
  - **U Visas** offer protection to immigrant victims of domestic violence, sexual assault, stalking, child abuse, human trafficking and a number of other crimes that were committed against the victim in the U.S.;

- **T Visas** protect immigrant victims of human sex and/or labor trafficking.
- For immigrant survivors of sexual assault, the decision to report a crime or cooperate with law enforcement and prosecution can be complex, due to fear, safety, the survivor’s privacy concerns, cultural barriers, and concerns about revictimization.<sup>16</sup>
  - In weighing the potential pros and cons of reporting, to make fully informed decisions, immigrant survivors need information about the benefits of available immigration relief, such as T-visas and U-visas, which often require evidence of helpfulness<sup>17</sup> and/or cooperation<sup>18</sup> with law enforcement, prosecutors, government agency investigations, and/or courts.
    - When immigrant survivors choose to participate in a Forensic Medical Exam this provides the victim with evidence of helpfulness, cooperation, harm, and injury that is useful to support victims’ applications for any of the victim-based forms of immigration relief.
    - Both the T and U visa programs have useful exceptions to the cooperation requirement due to trauma<sup>19</sup> or when the victim’s inability to cooperate is not unreasonable.<sup>20</sup>
  - In addition, protection against deportation is greatly enhanced once an immigrant survivor files an immigration case protected by VAWA confidentiality, such as T-visa and U-visa.<sup>21</sup>

### Public Benefits for Immigrant Survivors:

- When immigrant survivors of sexual assault begin the process of applying for victim-based forms of immigration relief their ability to access public benefits including healthcare and other public benefits expands.<sup>22</sup>
- In addition to health care, other public benefits may be available to immigrant survivors based on their immigration status and state where they reside. Check the NIWAP Public Benefits Map<sup>23</sup> to understand which public benefits may be available to immigrant survivors of sexual assault in your state.<sup>24</sup>

<sup>1</sup> See, *All State Public Benefits Charts and Interactive Public Benefits Map* (2022) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/> (to look up by immigration status or pending immigration case type which immigrant survivors of sexual assault are eligible to purchase health insurance on the healthcare exchanges in each states).

<sup>2</sup> See Peter Daub et.al., *Coverage for Forensic Costs for Immigrant crime Victims: Medical Coverage and Services*, NIWAP (May 4, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-2-forensiccoverageimmvictims/> (For a detailed state-by-state report on what is covered in the state funded Medical Forensic Exam).

<sup>3</sup> Carly Erickson & Leslye Orloff, *U-Visa Victim Benefits Under the Affordable Care Act (ACA)*, NIWAP (June 18, 2014), <https://niwaplibrary.wcl.american.edu/pubs/u-visa-healthcare-aca/>; See also, *NIWAP Newsletter: Healthcare*, NIWAP (Apr. 2015), <https://niwaplibrary.wcl.american.edu/pubs/healthcare-newsletter-april-2015/>.

<sup>4</sup> The Patient Protection and Affordable Care Act, Pub. L. 111–148 (enacted on March 23, 2010). The Healthcare and Education Reconciliation Act of 2010, Pub. L. 111–152 (enacted on March 10, 2010) (amended and revised several provisions of the Patient Protection and Affordable Care Act). In this article, the two statutes are referred to collectively as the “Affordable Care Act”.

<sup>5</sup> Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), *Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens for a Qualified Health Plan through an Exchange, Advance Payments of the Premium Tax Credit,*

*Cost-Sharing Reductions, and a Basic Health Program*, 89 Fed. Reg. 90, 39392 (May 8, 2024)(to be codified at 42 C.F.R. pts 435, 457, 600), <https://niwaplibrary.wcl.american.edu/pubs/2024-final-aca-daca-fed-reg/>.

<sup>6</sup> 45 C.F.R. § 155.20 (Defining lawfully present immigrants); 42 CFR § 435.4 (Defining qualified immigrants). For a detailed list of lawfully present immigrants eligible under federal law to purchase health insurance on the exchanges, who may also be eligible for federal or state funded healthcare subsidies, *see*, Leslye E. Orloff, *Health Care Access for Lawfully Present Immigrants – Definitions* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/lawfully-present-healthcare/>; Leslye E. Orloff, *Annotated Statutes Related to Public Benefits Eligibility for Immigrant Survivors of Domestic Violence, Child Abuse and Human Trafficking* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/1641-1631-benefits-laws-annotated/>; Leslye E. Orloff, *Annotated Violence Against Women Act (VAWA) Self-Petition Definition INA 101(a)(51)* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/vawa-self-petitioner-annotated-ina-101a51/>.

<sup>7</sup> To find a community health center, interested individuals should go to <http://bphc.hrsa.gov/>. To find a Certified Community Behavioral Health Clinic <https://www.thenationalcouncil.org/program/ccbhc-success-center/ccbhc-locator/>.

<sup>8</sup> Bureau of Primary Health Care, HHS, *Health Centers: A Guide for Patients* (January 2024) <https://bphc.hrsa.gov/sites/default/files/bphc/about/health-center-handout.pdf>

<sup>9</sup> For a complete list of lawfully present immigrants *see*, Leslye E. Orloff, *Health Care Access for Lawfully Present Immigrants – Definitions* (May 27, 2024) <https://niwaplibrary.wcl.american.edu/pubs/lawfully-present-healthcare/>.

<sup>10</sup> Catherine Longville and Leslye E. Orloff, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status*, NIWAP (July 23, 2015) <https://niwaplibrary.wcl.american.edu/pubs/programs-open-to-all-immigrants/>

<sup>11</sup> The only exceptions are Alabama which places restrictions on immigrant access to VOCA compensation. *See* Sarah Andrews, et.al., *Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence - Medical Coverage and Services for Immigrants*, NIWAP (May 24, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-3-postassault-healthcare-compensation/>. (Provides a detailed explanation on which immigrant survivors qualify because Alabama only provides victim compensation payments to immigrant victims who at the time of filing for compensation are qualified immigrants as defined by 8 U.S.C. § 1641 or who are trafficking victims with certification or child eligibility letters from the Office on Trafficking in Persons at the U.S. Department of Homeland Security.)

<sup>12</sup> The Northern Mariana Islands does not have a VOCA compensation program. *See* The OVC Center for VOCA Administrators, *State VOCA Program Directory* (March 24, 2021) <https://ovc.ojp.gov/training-and-technical-assistance/voca/state-voca-program-directory> (The Northern Mariana Islands has no VOCA compensation program).

<sup>13</sup> *See* Sarah Andrews, et.al., *Post-Assault Healthcare and Crime Victim Compensation for Immigrant Victims of Violence - Medical Coverage and Services for Immigrants*, NIWAP (May 24, 2024) <https://niwaplibrary.wcl.american.edu/pubs/ch17-3-postassault-healthcare-compensation/>. (Provides a state-by-state analysis of access to VOCA compensation for immigrant victims).

<sup>14</sup> DEPT. HOMELAND SECURITY, U.S. IMMIGRATION BENEFITS FOR NONCITIZEN CRIME VICTIMS (2021) (2021), <https://niwaplibrary.wcl.american.edu/pubs/dhs-shield-infographic/>; USCIS, *Immigration Options for Victims of Crimes* (2010) <https://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes/>

<sup>15</sup> Rocio Molina, *Screening for Victims Who Qualify for Immigration Protective Relief Eligibility Questions for Protective Relief*, NIWAP (March 2, 2018) <https://niwaplibrary.wcl.american.edu/pubs/screening-tool-victims-qualify/>; Krisztina Szabo, *Comparison Chart of U visa, T Visa, Violence Against Women Act (VAWA) Self-Petition, Special Immigrant Juvenile Status (SIJS), and Deferred Action for Childhood Arrivals (DACA)*, NIWAP (December 30, 2021) <https://niwaplibrary.wcl.american.edu/pubs/chart-vawa-t-u-sijs-daca/>

<sup>16</sup> *See* Jessica Mindlin et. al, *Dynamics of Sexual Assault and the Implications for Immigrant Women*, NIWAP (March 31, 2014), <https://niwaplibrary.wcl.american.edu/pubs/ch1-dynamics-sexual-assault-implications/>.

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<sup>17</sup> *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 (Jan. 2023), <https://niwaplibrary.wcl.american.edu/pubs/immigration-privacy-faqs/>; *The Violence Against Women Act (VAWA): Tips to Protect the Privacy of Immigrant Survivors*, VICTIM RIGHTS LAW CENTER (Jan. 2023), <https://niwaplibrary.wcl.american.edu/pubs/immigrant-survivor-privacy-vawa-protections/>.

<sup>18</sup> Department of Homeland Security, *T VISA Law Enforcement Resource* (Oct. 2021), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/T-Visa-Law-Enforcement-Resource-Guide.pdf> (in T-visa applications the requirement to cooperated with any reasonable requests for assistance from law enforcement can be exempt due to trauma suffered).

<sup>19</sup> 8 C.F.R. § 214.208(e).

<sup>20</sup> 8 U.S.C. § 1255(m)(1).

<sup>21</sup> Leslye Orloff, *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (2013), <https://niwaplibrary.wcl.american.edu/empowering-survivors-contents/>.

<sup>22</sup> Soraya Fata, *Chapter 16: Access to Programs and Services that Can Help Victims of Sexual Assault* (2013) <https://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims/>.

<sup>23</sup> NIWAP, *Public Benefits Map*, <https://niwaplibrary.wcl.american.edu/benefits-map/>.

<sup>24</sup> See also Soraya Fata et. al., *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, in *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (2013) <https://niwaplibrary.wcl.american.edu/pubs/ch17-accesshealthcare/>.