

Legal Protections and Public Benefits for Immigrant Populations

Camila Maturana, Supervising Attorney
Megan Monahan, Social Services Manager

Northwest
IMMIGRANT
RIGHTS
Project

Logistics

Please note, today's presentation is intended for educational purposes only. The information provided should not be construed as individualized legal advice. We will not be able to address questions about specific cases, clients, or situations, as that is beyond the scope of our materials here, and would be a breach of confidentiality, and the rules of professional responsibility. Individuals with immigration questions will need to seek the advice and counsel of an experienced immigration attorney.

Overview

Part I:
Overview of Immigration Agencies and Systems

Part II:
Types Immigration Relief

Part III:
NWIRP / TSU services

Part IV:
Access to Health Insurance/Public Benefits for Immigrants

PART I: Overview of Immigration Agencies and Systems

Northwest
IMMIGRANT
RIGHTS
Project

Agencies & Departments

Department of Homeland Security (DHS) - www.dhs.gov

- Citizenship and Immigration Services (USCIS) - www.uscis.gov
- Immigration and Customs Enforcement (ICE) - www.ice.gov
- Customs and Border Protection (CBP) - www.cbp.gov

Department of Justice (DOJ) - www.usdoj.gov

- Executive Office for Immigration Review (EOIR) - www.justice.gov/eoir
- Immigration Court, Board of Immigration Appeals (BIA)

Department of State (DOS) - www.state.gov

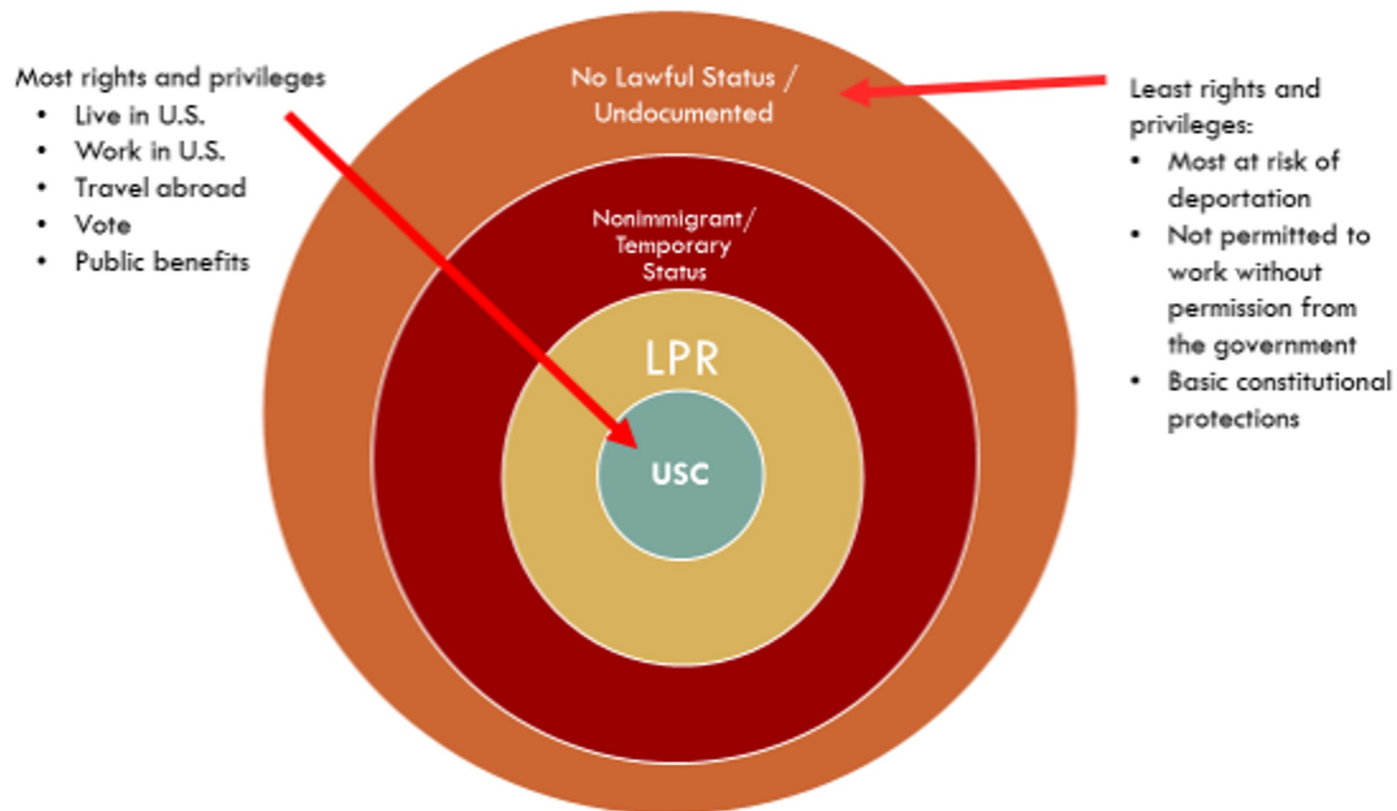
- Embassies / Consulates

INS no longer with us !!!

Examples of Different Immigration Statuses

- U.S. Citizen
- Lawful Permanent Resident (LPR or “green card” status)
- Refugee / Asylee
- Non-Immigrant Visa Holders (e.g. tourist visas, student visas, U/T visas, H2A)
- OTHERS:
 - Temporary Protected Status (TPS)
 - Deferred Action, including for Childhood Arrivals (DACA) and labor violations
 - Applications Pending
- NO LAWFUL STATUS:
 - Entry without Inspection (EWI)
 - Visa overstay
 - Out of Status

Rights and Privileges based on Immigration Statuses



Removal (Deportation) Proceedings

Process to determine if an individual should be deported from the United States.

Who is removable or deportable? Potentially any person who is not a U.S. citizen! Including:

- Individuals with no status or expired status
- Green card holders (LPRs), primarily because of criminal conviction

How are people apprehended by DHS and/or end up in removal proceedings?

- At the border (entry without inspection)
- Stopped randomly, or at checkpoint
- Filing immigration forms that results in denials or alerts DHS of potential grounds of deportability
- Travel
- Immigration discovers someone is convicted of a crime through the criminal justice system
- Information sharing

PART II: Immigration Relief

Northwest
IMMIGRANT
RIGHTS
Project

Immigration Protections

The following is an overview. It is important for individuals to get *individualized* advice about their situation!

Red Flags:

- Prior Contact With Immigration Authorities
- Prior Deportation / Removal Orders
- Criminal History

Types of Immigration Relief

- **Asylum**
- **Special Immigrant Juvenile Status (SIJS)**
- **Violence Against Women Act (VAWA)**
- **T Visa**
- **U Visa**
- **Family Visa**

Important Consideration: Possibility of Notice to Appear (“NTA”) After Denial

What is an NTA?

- The charging document issued by the U.S. Department of Homeland Security (“DHS”) to initiate removal proceedings in Immigration Court against a noncitizen.
- In Immigration Court, an immigration judge will determine whether the noncitizen is to be removed or allowed to remain in the U.S.

Prior to the Trump Administration, if a noncitizen’s application for humanitarian relief was denied, USCIS did *not* issue an NTA or refer them to ICE, except in specific cases involving fraud or certain serious criminal offenses. In 2018, USCIS issued a memo that announced the end of this long standing practice.

- As a result of the change in policy, NTAs were then routinely issued after the denial of humanitarian applications, such as the U visa, which normally take 5-6 years to process. So, a disproportionate number of people were affected who had applied for humanitarian relief before the new policy went into effect.

In 2021, under the new Biden Administration, the Trump memo was rescinded, and NTAs are not being issued after the denial of humanitarian relief. **But applicants still need to be warned of the risks!**

Best Practices When Applying for Humanitarian Relief

Evaluate case, and advise client of options, risks, benefits

- Conduct Freedom of Information Act (FOIA) requests
- Conduct criminal background checks
- Assess strength of case, likelihood of success
- Build record in support of positive exercise of discretion
- Discuss the possibility of NTA with clients
- Plan to exhaust administrative appeal process

Asylum / Withholding of Removal

For those who fear persecution in home country due to their:

- Race
- Religion
- Nationality
- Political Opinion
- Membership in a Particular Social Group (PSG)

To qualify, must apply within one (1) year of arrival; if not, eligible for Withholding of Removal (WOR), but much tougher, fewer benefits.

Convention Against Torture (CAT): if likely to be tortured (much tougher, fewer benefits).

SIJS and Eligibility

Nonimmigrant visa with path to Legal Permanent Residence (LPR) when visa priority date becomes current (category EB 4). Applicant must show:

- Dependent of juvenile court or the court must have committed the child to, or placed him or her under the custody of:
 - State agency or department, or
 - Individual or entity appointed by a state or juvenile court
- State court must find reunification with one or both parents not viable due to abuse, neglect, abandonment, or a similar basis under State Law.
- Not in best interest to return to country of nationality or last residence.
- Must be under 21 at time of filing with USCIS
- Juvenile Court should retain Jurisdiction.

VAWA Self-Petition

- Spouses, parents, or children (under 21) of an abusive LPR or USC may be eligible for relief under VAWA
- Had to have experienced “battery or extreme cruelty”
- May be immediately eligible to apply for residency if abuser is a USC.
- Open to both male and female survivors
- Other requirements specific to VAWA - joint residence in the US, good faith marriage, abuse during marriage, good moral character, etc.

Elements of T Visa Eligibility

Applicant must show that they:

- Are a victim of a severe form of trafficking in persons, as defined by the Act;
- Are physically present in the United States on account of the trafficking;
- Complied with reasonable request from law enforcement agency for assistance in the investigation or prosecution of human trafficking; and
- Would suffer extreme hardship involving unusual and severe harm if he or she were removed from the U.S.
- Admissible to the U.S. or eligible for a waiver of inadmissibility

Elements of U Visa Eligibility

- Victim of a qualifying criminal activity
- Suffered or are suffering “substantial physical or mental abuse” as a result of having been a victim of criminal activity
- Crime must have occurred in the U.S. or violated U.S. law
- **Must submit certification by law enforcement agency, stating that the applicant cooperated in LEA's investigation of the crime**
- USCIS can only grant 10,000 u visa each year. Huge backlog of 315,539 as of December 31, 2022
- Recently started issuing 4 year BFD work permits.
- Admissible to the U.S. or eligible for a waiver of inadmissibility

Fiscal Year 2023: First Quarter Numbers

Number of Form I-918 Petitions for U Nonimmigrant Status
By Fiscal Year, Quarter, and Case Status
Fiscal Years 2009-2023



U.S. Citizenship
and Immigration
Services

Period	Petitions by Case Status											
	Victims of Criminal Activities ¹				Family Members ¹				Fiscal Year Total			
	Petitions Received ²	Approved ³	Denied ⁴	Pending ⁵	Petitions Received ²	Approved ³	Denied ⁴	Pending ⁵	Petitions Received ²	Approved ³	Denied ⁴	Pending ⁵
Fiscal Year - Total⁶												
2009	6,850	6,045	661	11,740	4,102	2,838	158	9,275	10,952	8,883	819	21,015
2010	9,657	10,015	3,995	7,480	6,418	9,315	2,576	6,242	16,075	19,330	6,571	13,722
2011	14,647	10,025	2,007	10,250	10,033	7,602	1,645	8,329	24,680	17,627	3,652	18,579
2012	21,141	10,031	1,684	19,824	15,126	7,421	1,465	15,592	36,267	17,452	3,149	35,416
2013	25,486	10,022	1,840	33,409	18,266	7,724	1,234	24,480	43,752	17,746	3,074	57,889
2014	26,089	10,077	3,662	45,814	19,297	8,457	2,655	32,948	45,386	18,534	6,317	78,762
2015	30,129	10,060	2,440	63,779	22,636	7,649	1,754	46,507	52,765	17,709	4,194	110,286
2016	34,797	10,019	1,761	87,290	25,469	7,624	1,257	63,616	60,266	17,643	3,018	150,906
2017	37,287	10,011	2,042	112,272	25,703	7,628	1,612	79,971	62,990	17,639	3,654	192,243
2018	34,967	10,009	2,317	134,714	24,024	7,906	1,991	94,050	58,991	17,915	4,308	228,764
2019	28,364	10,010	2,733	151,758	18,861	7,846	2,397	103,737	47,225	17,856	5,130	255,495
2020	22,358	10,013	2,693	161,708	14,090	7,212	2,472	108,366	36,448	17,225	5,165	270,074
2021	21,874	10,003	3,594	170,805	15,290	6,728	3,085	114,450	37,164	16,731	6,679	285,255
2022	30,120	10,003	2,992	189,381	20,954	7,423	2,803	126,158	51,074	17,426	5,795	315,539
Fiscal Year 2023 by Quarter												
Q1 October - December	8,296	5,477	645	191,642	5,844	3,380	540	128,156	14,140	8,857	1,185	319,798
Q2 January - March												
Q3 April - June												
Q4 July - September												
TOTAL	8,296	5,477	645	191,642	5,844	3,380	540	128,156	14,140	8,857	1,185	319,798

<https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-918-application-u-nonimmigrant-status>

COMPARATIVE CHART: IMMIGRATION RELIEF FOR NONCITIZEN SURVIVORS

	I-360 VAWA Self Petition	I-751 Waiver	I-918 U Visa	I-914 T Visa
How are the applicant's children affected?	<ul style="list-style-type: none"> • Children present in the U.S. at the time of application receive the same benefits as the applicant; • Children outside the U.S. can only enter the U.S. AFTER the mother has received LPR status (which can take several years). 	<ul style="list-style-type: none"> • Children are included only if they became conditional residents at the same time as their mothers became conditional residents, otherwise, they must file separately later. 	<ul style="list-style-type: none"> • Children in or out of the U.S. can be derivatives or principal applicants (when child is crime survivor); • If undocumented child is crime survivor, parent can be derivative or indirect direct victim. If USC child is crime survivor, undocumented parent can file as principal applicant. 	<ul style="list-style-type: none"> • Children in or out of the U.S. can be derivatives of their principal applicant parent.
What are the limitations?	<ul style="list-style-type: none"> • Can take several years before she becomes an LPR and before children in the home country can enter the U.S.; • Applicant cannot travel in or out of the U.S. until she becomes an LPR; • Not eligible for all public benefits • Principal applicant can only apply from outside of U.S. if at least one incident of abuse occurred in U.S. 	<ul style="list-style-type: none"> • Children not always included. 	<ul style="list-style-type: none"> • Principal applicant may apply from outside of U.S. but crime need have occurred in the U.S. (or violate U.S. law abroad); • Travel may be an issue, particularly if client overstayed visa or originally entered unlawfully; • Takes several years before she becomes an LPR (this is currently exacerbated by the excruciatingly long U Visa grant waitlist); • Must continue to cooperate with investigation or prosecution or face losing U visa; • Law enforcement may refuse certification. 	<ul style="list-style-type: none"> • Human trafficking is distinctly different from human smuggling under the statute; • Travel may be an issue, particularly if client overstayed visa or originally entered unlawfully; • Takes several years before she becomes an LPR; • Must continue to cooperate with investigation or prosecution; • Must either provide law enforcement certification or attorney affidavit explaining why law enforcement certification is unavailable.
Time Sensitive Matters	<ul style="list-style-type: none"> • Divorce: Must file within two (2) years of divorcing abuser, if filing for step child, must file before divorce, if divorce eliminates relationship; • Deportation: Must file within two years of abuser being deported or losing his status AND find connection between abuse and deportation/loss of status; • Children: If kids included, must file before they turn 21; • Death of USC: Must file within two years of death. No self-petition if abuser was LPR and dies. 	<ul style="list-style-type: none"> • Should be filed before during 90 days before expiration of CLPR status; • Can be filed late if good cause is shown. 	<ul style="list-style-type: none"> • Can apply for U visa at any point after crime is committed (even years later) – as long as law enforcement is willing to sign off on certification; • If including derivatives, must file before they age out. 	<ul style="list-style-type: none"> • Can apply for T visa at any point after trafficking occurs (even years later) – as long as the trafficking incident was reported to law enforcement; • If including derivatives, must file before they age out.

Family Visa

- **Petitioner**
 - U.S. Citizen or Lawful Permanent Resident (LPR)
- **Beneficiary**
 - Qualifying relative of U.S. citizen or Lawful Permanent Resident, intending to immigrate to the United States
- **Immediate Relative: Spouse, under 21 & unmarried child, or parent of USC**
- **Sponsor/Joint Sponsor/Household Member**
 - Must be a U.S. citizen or Lawful Permanent Resident
- **Adjustment of Status**
- **Consular Process**

Who Can File?

- **Who can file a family petition (petitioner)?**
 - U.S. Citizens (USCs)
 - Lawful Permanent Residents (LPRs)
- **Who can benefit from a family petition (beneficiary)?**

Petitioner:	U.S. Citizen	Lawful Permanent Resident
Beneficiaries:	Children: <ul style="list-style-type: none"> • Under 21 & Unmarried - IR • Over 21- F1 / married - F3 	Children <ul style="list-style-type: none"> • Under 21 & Unmarried - F2A • Over 21 & unmarried - F2B
	Spouse - IR	Spouse - F2A
	Parents - IR	
	Siblings - F4	

PART III: NWIRP & Tacoma and South Unit (TSU)

Northwest
IMMIGRANT
RIGHTS
Project

Mission and Vision



Mission Statement

Northwest Immigrant Rights Project promotes justice by defending and advancing the rights of immigrants through direct legal services, systemic advocacy, and community education.

Our Vision

Northwest Immigrant Rights Project strives for justice and equity for all persons, regardless of where they were born.

NWIRP At A Glance

- **Founded in 1984**
- **Only statewide organization providing comprehensive immigration legal services for low-income people in Washington State**
- **Focus primarily on direct legal services**
- **Also engage in:**
 - Impact litigation
 - Community education
 - Advocacy
- **Four offices:**
 - Eastern Washington: Granger and Wenatchee
 - Western Washington: Seattle and Tacoma

HOW TO REFER IMMIGRANT SURVIVORS TO NWIRP

EASTERN WASHINGTON

Granger Office

Serving individuals in Adams, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Yakima, Walla Walla, and Whitman counties

Email: grangerintake@nwirp.org

Phone: 509.854.2100

Toll Free: 888.756.3641

Wenatchee Office

Serving individuals in Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties

Email: wenatcheeintake@nwirp.org

Phone: 509.570.0054 / Toll Free: 866.271.2084

WESTERN WASHINGTON

Seattle Office

Serving individuals in Island, King, San Juan, Skagit, Snohomish, and Whatcom counties.

Email: vawaintake@nwirp.org

VAWA Intake Phone: 206.957.8621

Main Phone: 206.587.4009

Toll Free: 800.445.5771

Tacoma Office

Serving individuals living in Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties.

Email: TSUintake@nwirp.org

Phone: 206.816.3893

Tacoma and South Unit: What do we help with?



- Asylum applications
- Defense in Removal Proceedings
- Family-based visas
- Violence Against Women Act (VAWA) Self-Petitions, U visas, T visas
- Special Immigrant Juvenile Status (SIJS)
- General Advice / Brief Services / Know Your Rights Presentations

Address: 1119 Pacific Ave, Suite 1400, Tacoma, WA 98402

Email: TSUintake@nwirp.org / Phone: 206.816.3893

PART IV: Access to Health Insurance/Public Benefits for Immigrants

Northwest
IMMIGRANT
RIGHTS
Project

Access to Health Insurance for Immigrants: Current Landscape

Currently, access to health insurance is very limited for immigrant populations:

- All children in WA state are eligible for Apple Health regardless of immigration status (income limits apply)
- Immigrants who are undocumented or are waiting on an immigration relief application decision have very limited access to healthcare.
- Some alternative options include:
 - Federally Qualified Health Centers (FQHC) - sliding scales and financial assistance
 - Financial Assistance/Charity Care at hospital systems
 - Non-profit and volunteer based clinics
 - Alien Emergency Medical (AEM)
 - DSHS Medical Care Services (MCS)
 - Crime Victim Compensation (CVC)
 - Apple Health family planning, pregnancy, and postpartum programs (FPO, APC, First Steps)

Access to Health Insurance for Immigrants: Current Landscape

NIWAP



AMERICAN UNIVERSITY
WASHINGTON
COLLEGE OF LAW

Access to State-Funded^a Public Benefits in Washington State for Survivors,
Based on Immigration Status^b

By: Monica Bates and Leslye E. Orloff^c (With Updates by Mary Ann McLean)
May 22, 2019 (Updated September 4, 2022)

	VAWA Self-Petitioner and Battered Spouse Waiver ¹	Refugee, ² Asylee, T Visa ³	T Visa ⁴ / Continued Presence ⁵	Deferred Action for Childhood Arrivals (DACA) ⁶	Special Immigrant Juvenile Status (SIJS) ⁷	U Visa, bona fide, or wait list approval. ⁸	U Visa Applicants	Undocumented
	<i>Qualified Immigrant^d</i>		<i>HHS Certification</i>	<i>Lawfully Present</i>			<i>Limited Benefits Eligibility⁹</i>	
Health Insurance Exchanges	Eligible with prima facie determination. ⁹⁹	<u>Refugee</u> : Eligible. ¹⁰⁰ <u>Asylee</u> : Eligible; applicants eligible if granted work authorization;	Human trafficking victims eligible: with an HHS Certification (based on continued presence or a bona fide determination on a T visa application),	Not eligible. ¹⁰⁶	Eligible upon filing SIJS application. ¹⁰⁷	Eligible upon U visa, bona fide determination, ¹⁰⁸ or wait list approval. ¹⁰⁹	Not eligible. ¹¹⁰	Not eligible. ¹¹¹

Source: <https://niwaplibrary.wcl.american.edu/pubs/washington-benefits>

Access to Health Insurance for Immigrants: Current Landscape

	VAWA Self-Petitioner and Battered Spouse Waiver ¹	Refugee, ² Asylee, T Visa ³	T Visa ⁴ / Continued Presence ⁵	Deferred Action for Childhood Arrivals (DACA) ⁶	Special Immigrant Juvenile Status (SIJS) ⁷	U Visa, bona fide, or wait list approval. ⁸	U Visa Applicants	Undocumented
Full-Scope Medicaid ¹⁶³	<p>Eligible with prima facie determination if arrived prior to August 22, 1996 and subject to five-year bar for those who arrived on or after August 22, 1996.¹⁶⁴</p> <p>Eligible for emergency Medicaid regardless of immigration status.¹⁶⁵</p> <p><i>In Washington, lawfully present¹⁶⁶ adults (including</i></p>	<p><u>Refugee/Asylee:</u> Eligible, exempt from five-year bar.¹⁷¹</p> <p><u>T visa:</u> with HHS certification or eligibility determination, immediately eligible under the Victims of Trafficking and Violence Protection Act of 2000 to the same extent as refugees.¹⁷²</p> <p><u>T visa holders and T visa applicants</u> with</p>	<p>Human trafficking victims are eligible with an HHS Certification (based on continued presence or a bona fide determination on a T visa application) or eligibility determination (under 18).¹⁷⁸</p> <p>Family members with T visa status eligible without HHS Certification or eligibility determination.¹⁷⁹</p> <p>These human trafficking victims are eligible to the same extent as refugees</p>	<p>Eligible for emergency Medicaid regardless of immigration status.¹⁸⁶</p> <p><i>In Washington, emergency medical assistance may be available under Washington Apple Health¹⁸⁷ and</i></p>	<p>Eligible for emergency Medicaid regardless of immigration status.¹⁹⁰</p> <p>Eligible after receiving lawful permanent residency, subject to five-year bar for those who arrived on or after August 22, 1996.¹⁹¹</p>	<p>Eligible for emergency Medicaid regardless of immigration status.¹⁹⁵</p> <p>If entered prior to August 22, 1996, eligible upon attaining lawful permanent residency.¹⁹⁶</p> <p>If arrived on or after August 22, 1996, eligible upon receiving lawful</p>	<p>Eligible for emergency Medicaid regardless of immigration status.²⁰³</p> <p><i>In Washington, U visa applicants or victims who are preparing to file a U visa application (and their spouses and children and if the child</i></p>	<p>Eligible for emergency Medicaid regardless of immigration status.²⁰⁸</p> <p><i>In Washington, emergency medical assistance may be available under Washington Apple Health²⁰⁹ and eligible for prenatal care, regardless of</i></p>

Access to Health Insurance for Immigrants: Promising Updates



Starting January 2024, all residents of WA state will be able to access the Health Benefit Exchange regardless of immigration status.

The U.S. Departments of Health and Human Services (HHS) and the Treasury approved Washington's application for its State Innovation Waiver under section 1332 of the Affordable Care Act (ACA).

This will allow all Washington residents regardless of immigration status to access qualified health plans (QHPs), stand-alone qualified dental plans (QDPs) and a state affordability program ([Cascade Care Savings](#)) that will lower monthly premium payments for eligible individuals (under 250% FPL).

The waiver approval is effective for January 1, 2024 through December 31, 2028. All residents of WA can purchase plans during Open Enrollment this November 2023.

****Washington is the first state to get approval for a 1332 waiver!****

More information: <https://www.cms.gov/files/document/1332-wa-fact-sheet.pdf>

Access to Health Insurance for Immigrants: Promising Updates

Northwest
IMMIGRANT
RIGHTS
Project

WA State's 2023-2025 budget will include:

- greater access to the Cascade Care Savings program starting January 2024
- a Medicaid-like program for undocumented individuals under 138% FPL starting July 2024. Funding is capped at \$49.5 million.

WAISN is leading implementation efforts. Sign up to participate [here](#).



FOR IMMEDIATE RELEASE: Saturday, April 22, 2023

Contact: nazibah@waisn.org, lsmith@aclu-wa.org

Health Equity for Immigrants Advocates Commend WA Legislature for Expanding Health Coverage for Immigrants by 2024; Disappointed in Delay and Insufficient Funding

"A person's right to health care access should not be dependent on their immigration status, the legislature's budget, or politics."

Olympia, WA - The state's 2023-2025 biennium budget, released today, includes critical funding for affordable health coverage programs for immigrants. There are over 105,000 Washingtonians who do not have access to insurance because of their immigration status, leading to unattended medical problems, worse health outcomes, and mounting medical debt. The legislature's final budget offers the opportunity for immigrants to access health coverage through the Cascade Care Exchange Program starting January 2024 and a Medicaid-like program starting July 2024, depending on income.

Public Benefit Access for Immigrants: T/U Visa and Asylum Applicants

Most undocumented immigrants are not eligible for public benefits, however there are some common exceptions:

If the individual is in the process of preparing to file, or has filed an application for a T/U visa or asylum, they are eligible for DSHS food and cash benefits for Survivors of Certain Crimes, including:

- **State Food Assistance Program (FAP):** alternative to SNAP
- **State Family Assistance Program (SFA):** for families with dependent children (alternative to TANF)
- **Medical Care Services (MCS):** if individual receives SFA or ABD

More information: <https://www.dshs.wa.gov/esa/citizenship-and-alien-status-requirements-specific-program/public-benefit-eligibility-survivors-certain-crimes>

Public Benefit Access for Immigrants: Mixed Status Families

If a parent is undocumented or awaiting an immigration application decision, but they have at least one U.S. Citizen child, they can apply for some benefits using the child's SSN, including:

- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Section 8/Housing Authority
- Childcare

Public Benefit Access for Immigrants: Washington State Residents

Some benefits are available to all Washington State residents, regardless of immigration status, including:

- The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Washington Application for State Financial Aid (WASFA)
- Apple Health for children (under age 19)
- Crime Victims Compensation (CVC)
- Washington State Working Families Tax Credit (WFTC)
- Driver's license
- Washington State Family Medical Leave (FMLA)

Public Benefit Access for Immigrants: Public Charge

A “public charge” is one of many grounds of inadmissibility that could be used to deny an applicant for a green card, visa, or admission to the U.S. An immigration officer must decide whether that applicant will likely become dependent on *certain* government benefits in the future.

The rule has been in place since 1999. The Trump administration put out more restrictive rules in 2020 and 2021, however the Biden administration issued a new final rule in December 2022 to return to the 1999 guidance.

There are many exceptions!

- Adjustment of status and consular processing for green cards are the main instances when public charge is assessed. Usually only for family-based petitions, employer petitions, and diversity visa winners (very rare). *Most humanitarian visas are excluded.*
- Only benefits considered are **cash assistance programs for income maintenance** (SSI, TANF) or **long-term institutionalized care paid for by Medicaid** (nursing home, adult family home, mental health institution).
- It is a forward looking rule, so it is looking at whether someone is *likely at any time to become a public charge in the future*. The immigration officer will also be taking into consideration a totality of circumstances, including an affidavit of support.

Safe to Use List – Many programs do NOT count towards public charge! Including:

- ALL Medicaid/Medi-Cal (except Medicaid/Medi-Cal used to pay for long-term institutionalization like in a nursing home)
- Health insurance through ACA, state-based marketplaces, etc.
- IHSS, other home and community-based services (HCBS)
- Children's Health Insurance Program (CHIP)
- COVID screening, treatment, vaccine
- Disaster relief
- Stimulus checks
- WIC (Special Supplemental Nutrition Program for Women, Infants, and Children)
- Food assistance programs like food stamps/EBT/SNAP/CalFresh/P-EBT (Pandemic EBT)
- Free and reduced-cost school meals
- Public education
- Housing benefits including Section 8
- Head Start
- Cash payments for childcare assistance or other supplemental, special purpose cash assistance
- Student loans
- Home mortgage loan programs
- Publicly funded scholarships, educational grants
- Foster care and adoption benefits
- Earned benefits like Social Security retirement, pensions, veterans' benefits, unemployment
- Tax credits like Child Tax Credit (CTC), Earned Income Tax Credit (EITC)
- ALL benefits received by family members
- ALL benefits received while in exempt status

Public Benefit Access for Immigrants: Navigating the maze



The [NIWAP Public Benefits Chart](#) is your friend!

Feel free to reach out to Megan Monahan at
meganm@nwirp.org or 206-627-0028

Questions:

Camila Maturana, camila@nwirp.org

Megan Monahan, meganm@nwirp.org

Thank You!

Northwest
IMMIGRANT
RIGHTS
Project

OPEN MIND
OPEN HEARTS
OPEN THE
BORDERS

