

# Access to Public Benefits for Older Immigrants

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## Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972, we have focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

### Key Lessons

1. **Eligibility for public benefits depends on immigration status and program rules.** Most immigrants must have a “qualified” status for five years before they can receive federal public benefits such as Medicaid, TANF and SNAP.
2. **“Qualified Immigrants” must meet an additional condition to be eligible for Supplemental Security Income.** SSI eligibility is more restrictive and in some cases time-limited.
3. **States can expand eligibility for certain programs or provide similar assistance to broader categories of immigrants.** Many states choose to provide benefits such as cash assistance, food, and Medicaid to categories of immigrants who are not eligible for federal programs.
4. **“Lawfully present” immigrants with a sufficiently long work history may be eligible for premium-free Medicare Part A and premium Part B.** Non-citizens who do not qualify for premium-free Part A must be legal permanent residents with five years of continuous residency in the U.S. to be eligible to buy Parts A or B.

## Eligibility for Public Benefits Depends on Immigration Status and Program Rules

Older immigrants must overcome public benefits access hurdles *and* immigration law challenges. That is, an individual must: 1) have an eligible immigration status (or citizenship) and 2) satisfy the benefit program’s requirements such as residency, work history, disability determination, and income.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act.<sup>1</sup> The law greatly restricted immigrants’ access to federal public benefits, including Medicaid, CHIP (Children’s Health Insurance Program), TANF (Temporary Assistance for Needy Families), SNAP (Supplemental Nutrition Assistance Program), and SSI (Supplemental Security Income). The PRWORA created new categories of immigration statuses known as “qualified” and “not qualified.”<sup>2</sup> As a general rule, individuals must be “lawfully present,” meaning federally authorized to be in the United States, to be eligible for most federal public benefits. All qualified immigrants are lawfully present. On the other hand, individuals who are undocumented and not currently federally authorized to be in the U.S. are not “qualified” and therefore ineligible for the major federal public benefits.

<sup>1</sup> Pub. L. 104-193.

<sup>2</sup> 8 U.S.C. § 1641(b) (listing qualified statuses).

## Glossary

### “Qualified Immigrants”

Includes the following immigration statuses:

- Lawful Permanent Resident (LPR/green card holder)
- Refugee, Asylee, Granted Withholding of Deportation or Withholding of Removal, Conditional Entrant
- Cuban/Haitian Entrant, Amerasian, Iraqi & Afghan Special Immigrant
- Paroled by the U.S. Department of Homeland Security into the U.S. for at least one year
- Abused Spouse, and their Child and/or Parent
- Trafficking Survivor and Spouse, Child, Sibling or Parent
- Member of a federally-recognized Indian tribe or American Indian born in Canada

### “Lawfully Present”

Includes qualified immigrants as well as those with:

- Temporary Protected Status (TPS)
- Deferred Enforced Departure (DED)
- Deferred Action (except DACA)
- Paroled into the US for less than one year
- Individual with Non-immigrant Status (includes worker visas; student visas; U visas; citizens of Micronesia, the Marshall Islands, and Palau; and many others)
- Administrative order staying removal issued by the Department of Homeland Security
- Granted relief under the Convention Against Torture (CAT)
- Lawful Temporary Resident
- Family Unity Beneficiary

### 5-Year Bar

The five-year period during which qualified immigrants are generally ineligible for major federal benefits programs. The period begins when an individual attains a qualified status.

### Humanitarian Immigrant

Includes statuses such as refugee, asylee, and survivors of trafficking. These statuses may be “qualified” or “not qualified” for purposes of public benefits eligibility.

### PRWORA

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 reformed the U.S. welfare system, including immigrant eligibility for public benefits.

**Qualified immigrants** are generally ineligible for major federal benefits programs for the first five years they have a qualified status. However, there are a few important exceptions to this so-called “5-year bar” for older immigrants:

1. Qualified immigrants who entered the U.S. before August 22, 1996 and remained in the U.S. until they obtained a qualified status.
2. Certain “humanitarian immigrants,” as well as qualified immigrants who are honorably discharged U.S. veterans or on active military duty and their spouses or children.

3. Qualified immigrants who have at least 40 quarters of work history in the U.S. or who are receiving disability related assistance.

In addition, Medicare coverage for lawfully present individuals with sufficient work history (as discussed below), as well as Qualified Health Plan coverage and subsidies through the Affordable Care Act Marketplaces do not require a waiting period. Finally, states can also choose to use their own funds to provide benefits to qualified immigrants during their five-year waiting period.

### PRACTICE TIP

Certain limited public benefits are available to all immigrants, regardless of status. These include public health programs providing immunizations or treatment of communicable disease symptoms; short-term noncash emergency disaster assistance; and in-kind services to protect life/safety such as adult protective services, meals-on-wheels, shelters, disability, or substance abuse services.

### PRACTICE TIP

Oftentimes, a family or household includes both citizens and non-citizens, referred to as a “Mixed Status” family. For example, non-citizen seniors may be living with their citizen children and/or grandchildren. While eligibility for most public benefits is tied to the individual applicant, in some cases the immigration status of other members of the applicant’s household may implicate eligibility or the amount of the benefit. Therefore, it is important to always consult an immigration attorney to ensure understanding of what an individual’s application for and receipt of benefits means for them and their family.

## Qualified Immigrants Must Meet Additional Conditions to Receive Supplemental Security Income

The rules for Supplemental Security Income (SSI) are far more restrictive than the rules for Social Security.<sup>3</sup> In order to receive SSI an immigrant must generally be in the “qualified” category and meet at least one condition allowing for qualified immigrants to receive SSI. One exception is that immigrants who are “not qualified” but were receiving SSI benefits before August 22, 1996 continue to be eligible for benefits. In addition, victims of trafficking and their spouse, child, sibling, or parent are also eligible even if they are “not qualified,” albeit only for the first 7 years after they obtain such status.

In order for qualified immigrants to otherwise meet the eligibility requirements for SSI they must meet at least one condition of eligibility:

1. Receiving SSI prior to August 22, 1996.
2. Being a lawful permanent resident with 40 qualifying quarters (credits) of work.
  - » Individuals applying under this condition must wait at least 5 years after entry into the country before applying for SSI. In addition to the credits of the worker, the credits of the

<sup>3</sup> Immigrants who are lawfully present in the United States and have earned at least 40 qualifying quarters of work under Title II of the Social Security Act are eligible to receive Social Security benefits as long as they live in the United States. Lawfully present immigrants who are the survivors or minor children of qualified disabled or deceased workers are also eligible to receive Social Security spousal or survivors’ benefits while they are in the U.S. Immigrants who are citizens of countries that have entered into certain agreements with the U.S. may also continue to receive U.S. benefits if they live outside the United States. Individuals who receive benefits based on the record of a worker who died while in the U.S. military service or as a result of a service-connected disability may also continue to receive benefits outside the U.S.

worker's spouse and parents may also count towards the 40-quarter threshold. Furthermore, any quarters during which the worker, spouse, or parent received means-tested public benefits such as SNAP, Medicaid, TANF, or SSI are not counted.

3. Being an active duty or honorably discharged veteran (or spouse or child of a veteran).
4. Lawfully residing in the U.S. on August 22, 1996 and currently disabled (no age-based benefit).
  - » Those lawfully residing in the U.S. on August 22, 1996 who were not receiving SSI at that time are not eligible for age-based SSI benefits when they reach age 65. Instead, they are only eligible for SSI based on their disability status.
5. Being in one of the designated status classifications that allow for SSI eligibility, including refugees, asylees, and survivors of trafficking (benefits limited to 7 years).<sup>4</sup>
  - » The 7-year time limit for immigrants who fall into this category begins once the person obtains the relevant status. The date the person applies for SSI has no effect on this time limit. Therefore, a person arriving as a refugee in 2013, and applying for SSI in 2019, will still only be eligible for benefits until 2020.

Cash assistance is also available in five states (California, Hawaii, Illinois, Maine, and New Hampshire) to immigrant seniors and people with disabilities otherwise ineligible for SSI under federal law.<sup>5</sup>

## States Can Expand Eligibility for Certain Programs or Provide Similar Assistance to Broader Categories of Immigrants

### Eligibility for Medicaid

In most states, immigrants are eligible for Medicaid if they have a “qualified” status. Most qualified immigrants who entered the U.S. on or after August 22, 1996 must wait 5 years before they are eligible for non-emergency Medicaid. However, certain qualified immigrants are exempt from the five-year bar regardless of the date they entered: refugees, people granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, certain Amerasian immigrants, Iraqi and Afghan Special Immigrants, survivors of trafficking, qualified immigrant veterans, active duty military and their spouses and children, and children who receive federal foster care. In addition, some groups of “not qualified” immigrants may be eligible if they were receiving SSI on August 22, 1996, or are victims of trafficking or American Indians born abroad.

While states can expand Medicaid coverage to additional groups of immigrants such as lawfully residing children and pregnant women, several states restrict Medicaid coverage to qualified immigrants even further than described above. For example, in Texas most qualified immigrant adults who entered the U.S. on or after August 22, 1996, are ineligible regardless of whether they have met the 5-year bar. In Wyoming, non-pregnant LPRs must have 40 quarters of work history in the U.S. to be eligible for Medicaid.<sup>6</sup>

### PRACTICE TIP

Emergency Medicaid is available regardless of immigration status. States are required to provide Medicaid coverage for limited services necessary for the treatment of an emergency medical condition to individuals

<sup>4</sup> For the full list see the Social Security Administration's Program Operations Manual System (POMS) SI 00502.100 “Basic SSI Alien Eligibility Requirements,” available at [secure.ssa.gov/poms.nsf/links/0500502100](https://secure.ssa.gov/poms.nsf/links/0500502100).

<sup>5</sup> Guide to Immigrant Eligibility for Federal Programs Update Page, Table 9 “State-Funded SSI Replacement Programs,” available at [nilc.org/issues/economic-support/updatepage/](https://nilc.org/issues/economic-support/updatepage/).

<sup>6</sup> Medical Assistance Programs for Immigrants in Various States, National Immigration Law Center, available at: [nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf](https://nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf).

who meet the state's Medicaid income and state residency eligibility requirements regardless of their immigration status.<sup>7</sup> This limited coverage extends to undocumented immigrants.

## Eligibility for TANF and SNAP

TANF and SNAP have eligibility restrictions similar to Medicaid. To be eligible for TANF, most qualified immigrants who entered the U.S. on or after August 22, 1996 must wait five years. The exceptions to the 5-year bar are for refugees, people granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, certain Amerasian immigrants, Iraqi and Afghan Special Immigrants, survivors of trafficking, qualified immigrant veterans, active duty military, and their spouses and children. Victims of trafficking who are not qualified immigrants may also be eligible. Numerous states also use state funds to provide cash assistance to immigrants who are not eligible for federal TANF benefits.

SNAP is available only to: qualified immigrants who have met the 5 year bar, or one of the exceptions to the 5-year bar listed above for TANF; qualified immigrant children; lawful permanent residents with credit for 40 quarters of work history; certain Native Americans; lawfully residing Hmong and Laotian tribe members; and immigrants receiving disability-related assistance. In addition, qualified immigrant seniors who were born before August 22, 1931, may be eligible for SNAP if they were lawfully residing in the U.S. on August 22, 1996.<sup>8</sup> Six states (California, Connecticut, Illinois, Maine, Minnesota, and Washington) provide state-funded nutrition assistance to at least some immigrants who are ineligible for the federal SNAP program.

## Medicare has its own set of eligibility rules

To enroll in either Medicare Part A or Part B, an individual must either be a U.S. citizen or be lawfully present in the United States. Citizens and lawfully present individuals who are age 65 or older and eligible for Social Security because of their work history or who have been receiving SSDI for 24 months qualify for premium-free Part A and do not face any length of residency requirement. This includes both LPRs and individuals in Temporary Protected Status (TPS) who have sufficient work credits. Because they qualify for premium-free Part A, these individuals can enroll in both Part A and Part B without any length of residency requirement.

### CASE EXAMPLE

Ms. Lopez is an LPR who came to the U.S. three years ago. She married another LPR shortly after arriving. Her husband, who is now 66, has resided in the U.S. for 15 years and has over 40 quarters of work credits, making him eligible for premium-free Part A. Ms. Lopez is turning 65. Because of her husband's work history, she can start her Part A and Part B coverage right away, even though she has not been a U.S. resident for five years.

In most cases, a non-citizen who does not qualify for premium-free Part A must be a lawful permanent resident (LPR) with five years of continuous residence in the U.S. immediately prior to Medicare enrollment. The five-year period of U.S. residency begins the day the individual arrives in the U.S. with the intention of establishing a home. The period can start, for example, when the individual arrives under refugee or asylee status before becoming an LPR. It cannot start, however, with visitor status since visitors are assumed to be retaining their foreign residence.

<sup>7</sup> 42 U.S.C. § 1396b(v)(2)(A)-(C).

<sup>8</sup> Unlike TANF and Medicaid, qualified immigrants who entered the U.S. before August 22, 1996, are not eligible for SNAP unless they were both age 65 or older and lawfully residing in the U.S. on August 22, 1996.

Individuals who are not lawfully present (undocumented) are ineligible to receive any Medicare coverage under any circumstances.

Part D and Part C do not have separate citizenship or length of residency requirements. Medicare beneficiaries with *either* Part A or Part B coverage can enroll in Part D, the prescription drug benefit that is administered through private health plans. Beneficiaries with *both* Part A and Part B coverage have the option to receive their benefits through managed care, called Medicare Advantage. Part D and Medicare Advantage Plans are prohibited from requesting any documentation of citizenship or alien status.

## PRACTICE TIP

Immigrants who are eligible for and enrolled in either Part A or Part B may also be eligible for the Part D **Low-income Subsidy (LIS or Extra Help)** if they meet the income and asset eligibility requirements. There are no additional immigration status or residency length requirements for LIS beyond what is needed for Part A and Part B eligibility. The Social Security Administration determines LIS eligibility, and enrollment is automatic for Medicare beneficiaries receiving SSI and for those enrolled in any Medicaid program, including Medicare Savings Programs such as the QMB program. Others can apply by contacting the Social Security Administration.

It is important to note that the **Medicare Savings Programs** (e.g., QMB, SLMB) that relieve low-income individuals from Medicare premiums, and in some cases cost-sharing, are administered by state Medicaid programs. Therefore, in order for older immigrants to be eligible for these programs or for full Medicaid coverage, they have to meet the state's Medicaid immigration status and length of residency requirements. These restrictions mean that a Medicare-eligible individual with TPS cannot get help from Medicaid with Part B premiums or cost-sharing, and that others may have to wait five years to be eligible for this Medicaid assistance.

## PRACTICE TIP

Immigrants who do not qualify for premium-free Part A can also consider enrolling in private insurance coverage through the Affordable Care Act Marketplace (HealthCare.gov). “Lawfully present” immigrants are eligible to enroll in Marketplace coverage and may also qualify for federal financial assistance in the form of premium tax credits and cost-sharing reductions.<sup>9</sup> There are no length of residency requirements to be eligible for coverage or for premium tax credits and cost-sharing reductions. Further, lawfully present individuals who are ineligible for Medicaid because of their immigration status can receive federal financial assistance if their income is below 400% of FPL.<sup>10</sup>

## Conclusion

To be eligible for most major public benefits, immigrants must have both an eligible immigration status (or citizenship) and meet requirements such as length of residency, work history, disability determination, and income limits that vary from program to program. Many states choose to provide benefits such as cash assistance, food, and Medicaid to categories of immigrants who are not eligible for federal programs.

9 Ctr. on Budget & Policy Priorities, “Key Facts: Immigrant Eligibility for Health Insurance Affordability Programs,” (2015), available at [healthreformbeyondthebasics.org/key-facts-immigrant-eligibility-for-coverage-programs/](http://healthreformbeyondthebasics.org/key-facts-immigrant-eligibility-for-coverage-programs/).

10 26 U.S.C. § 36B(c)(B). Unlike U.S. citizens, lawfully present immigrants whose income is below 100% FPL may be eligible for financial assistance in the Marketplace if they are ineligible for Medicaid because of their immigration status.

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## Additional Resources

- Key Immigration Statutes:
  - » 8 U.S. Code §§ 1601 et. seq.
- Key Regulations:
  - » Program Operations Manual System (POMS): [SI 00502.000-00502.550 SSI Alien Eligibility](#)
  - » POMS: [HI 00801 Hospital Insurance Entitlement](#)
  - » 8 C.F.R. § 1.3.
- Federal Agency Information:
  - » SSA: [Spotlight on SSI Benefits for Aliens](#)
  - » CMS: [Eligibility for Non-Citizens in Medicaid and CHIP](#)
  - » [Coverage for Lawfully Present Immigrants](#)
- National Immigration Law Center: [Overview of Immigrant Eligibility for Federal Programs](#)
- Justice in Aging: [Older Immigrants and Medicare](#)

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**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).**

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